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Rules and Regulations

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

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 225

Summer Food Service Program; Child Nutrition and WIC Reauthorization Act Amendments

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim rule; Reopening of comment period.

SUMMARY: This rule reopens the comment period established in the Summer Food Service Program (SFSP) interim rule issued by the Department on April 10, 1990 (55 FR 13454). This action is being taken in order to provide Program administrators and sponsors additional time to provide comments on the implementation of the provisions of Public Law 101-147, the Child Nutrition and WIC Reauthorization Act of 1989, and the April 10, 1990 rulemaking.

DATES: To be assured of consideration, comments must be postmarked on or before September 30, 1991.

ADDRESS: Comments should be addressed to Mr. Robert Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, United States Department of Agriculture, 3101 Park Center Drive, Room 509, Alexandria, Virginia 22302. All written submissions will be available for public inspection at this location Monday through Friday, 8:30 a.m.-5 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Eadie at the above address or phone (703) 756-3620.

SUPPLEMENTARY INFORMATION:

Background

On April 10, 1990 the Department published at 55 FR 13454, an interim rule which implemented the Public Law 101-147, the Child Nutrition and WIC Reauthorization Act of 1989, provisions affecting the Summer Food Service Program. That rule provided for a public comment period to run through October 31, 1990. It specifically stated that comments were particularly encouraged from State agencies and sponsors operating under the new provisions brought about by Public Law 101-147 (e.g., private sponsors, academic year NYSP sponsors and sponsors which operate homeless sites). The Department believes that comments from State agencies and sponsors which reflect an additional full year of Program operations under the new provisions would be of considerable benefit in finalizing regulations. Accordingly, the Department is reopening the public comment period found in the April 10, 1990 regulations through September 30, 1991.

Dated: November 27, 1990
Betty Jo Nelsen,
Administrator.
[FR Doc. 90-28581 Filed 12-5-90; 8:45 am]
BILLING CODE 3410-30-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 770, 771, and 772

[Docket No. 901071-0271]

Exports to the Republic of Korea; Shorter Processing Time Frames and General License GCG

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: As part of the Department of Commerce initiative to encourage and recognize countries demonstrating increased ability to safeguard strategic goods and technology, the Bureau of Export Administration is granting certain licensing benefits to the Republic of Korea (South Korea). This action will lessen the administrative burden on U.S. exporters and their foreign customers.

Specifically, BXA is:

- Amending § 770.14 of the Export Administration Regulations (EAR) to provide shorter processing time for license applications for the Republic of Korea; and
- Amending General License GCG to authorize certain shipments of U.S.-origin commodities to the Republic of Korea. General License GCG authorizes shipments to agencies of cooperating governments, as defined in § 771.14 of the EAR.

EFFECTIVE DATE: This rule is effective December 6, 1990. The procedures and the time limits set forth in § 770.14 of the EAR apply to license applications for the Republic of Korea received in the Office of Export Licensing after December 6, 1990. Applications for the Republic of Korea received prior to that date will be processed under the previous time frames.

FOR FURTHER INFORMATION CONTACT: Rod Joseph, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone: (202) 377-8171.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. This rule is consistent with Executive Orders 12291 and 12661.

2. This rule involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under Control Numbers 0694-0005, 0694-0007, and 0694-0010. This change will reduce the paperwork burden on the public.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. The provisions of the Administrative Procedures Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a foreign and military affairs function of the United States. This rule does not impose a new control. No other law requires that a notice of proposed rulemaking and an

opportunity for public comment be given for this rule.

Accordingly, it is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Comments should be submitted to Patricia Muldonian, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects

15 CFR Part 770

Administrative practice and procedure, Exports.

15 CFR Parts 771 and 772

Exports, Reporting and recordkeeping requirements.

Accordingly, parts 770, 771, and 772 of the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

1. The authority citation for 15 CFR part 770 is revised to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981, by Pub. L. 99–64 of July 12, 1985 and by Pub. L. 100–418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); and E.O. 12002 of July 7, 1977 (42 FR 35623, July, 1977); Pub. L. 95–223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990).

2. The authority citations for parts 771 and 772 are revised to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981, by Pub. L. 99–64 of July 12, 1985 and by Pub. L. 100–418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986); Pub. L. 95–223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990).

PART 770—[AMENDED]

3. Section 770.14 is amended by revising paragraph (a) and (a)(3)(ii) to read as follows:

§ 770.14 Processing license applications for COCOM participating countries and other selected countries.

(a) Section 10(o) of the Export Administration Act provides for different processing time frames for license applications for exports of COCOM controlled items to countries participating in COCOM, the multilateral Coordinating Committee that cooperates in maintaining strategic export controls. These special processing time frames also apply to license applications for shipments to Austria, Finland, Korea (Republic of), and Switzerland. The procedures and time limits set forth in this section apply to license applications received in the Office of Export Licensing on or after the date that each country's eligibility was published in the **Federal Register**. License applications to one of the above countries received prior to that country's eligibility date will be processed under the previous time frames. Applications subject to nuclear non-proliferation controls that are referred to the interagency subgroup on Nuclear Export Coordination are not subject to the time limits in this section, but will be processed in accordance with § 770.13(g). As used in this section:

* * * * *

(3) * * *

(i) * * *

(ii) "*Other selected countries*" means Austria, Finland, Korea (Republic of), and Switzerland.

* * * * *

PART 771—[AMENDED]

§ 771.14 [Amended]

4. Section 771.14, paragraph (b) is amended by adding the phrase "Korea (Republic of)," immediately before the word "Singapore,".

PART 772—[AMENDED]

§ 772.11 [Amended]

5. Section 772.11(d)(3) is amended by adding the phrase "Korea (Republic of)," immediately before the word "Switzerland,".

Dated: November 29, 1990.

Michael P. Galvin,

Assistant Secretary for Export Administration.

[FR Doc. 90–28657 Filed 12–5–90; 8:45 am]

BILLING CODE 3510–DT–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Rel. No. 34–28660; File No. S7–11–89]

Prohibited Transactions in Connection With Partial Tender Offers

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting clarifying amendments to Rule 10b–4 under the Securities and Exchange Act of 1934, the short tendering rule, and is redesignating the rule as rule 14e–4. Rule 14e–4 will continue to prohibit both short tendering and hedged tendering. With one minor exception, the deletion of the prohibition of multiple tendering to competing partial offers, the amendments are not intended to effect any substantive change in the operation of current rule 10b–4.

EFFECTIVE DATE: December 6, 1990.

FOR FURTHER INFORMATION CONTACT: M. Blair Corkran or Jodie J. Kelley at (202) 272–2848, Office of Trading Practices, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 5–1, Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

The Securities and Exchange Commission is adopting amendments to clarify current rule 10b–4 ("Rule") [1] under the Securities Exchange Act of 1934 ("Exchange Act") [2] and to redesignate the rule as rule 14e–4. The Commission's clarification of the Rule is prompted in part by the decision of the United States Court of Appeals for the Second Circuit in *Merrill Lynch, Pierce, Fenner & Smith, Inc.* v. *Bobker.*[3]

The Commission adopted Rule 10b–4 in 1968 for the purpose of prohibiting short tendering.[4] Prior to today's amendments, the Rule provided that it was a "manipulative or deceptive device or contrivance" and a "fraudulent, deceptive, or manipulative act or practice" as those terms are used in sections 10(b) and 14(e) of the Exchange Act for any person, in response to an offer or invitation for tenders of any security, to tender securities that he did not own. Ownership is defined in paragraph (a) of the rule. The Rule applies to all partial tender offers, whether made by a third party or by the issuer of the securities sought.[5]

Partial tender offers involve risk to securityholders of the subject company that not all of the securities tendered will be accepted. This risk is referred to

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[1] 17 CFR 240.10b–4.

[2] 15 U.S.C. 78a *et seq.*

[3] 808 F.2d 930 (2d Cir. 1986). (cited as *Bobker*). *See* Securities Exchange Act Rel. No. 26609 (March 8, 1989) 54 FR 10675 (March 15, 1989) ("Proposing Release").

[4] Securities Exchange Act Rel. No. 8321 (May 28, 1968), 33 FR 8269 ("Release 34–8321") *See* n. 47 *infra.*

[5] 17 CFR 240.10b–4(c).

as "proration risk." [6] Before the adoption of rule 10b–4, some securityholders tendered more securities than they owned in order to diminish proration risk. Broker-dealers and other market professionals were able to do this by their ability to guarantee their tenders [7] and by their access to borrowable shares. By tendering more securities than they owned, market professionals were able to secure acceptance of a disproportionately larger number of the securities owned by them than could be secured by other persons who tendered only securities that they owned.[8]

Following the adoption of rule 10b–4, it became apparent that requiring a shareholder to tender from a long position did not prevent market professionals from tendering shares they owned and then selling a portion of their shares before the proration deadline to a purchaser who would then also be able to tender the shares. This practice, known as hedged tendering, permitted tendering persons who hedged their tenders to shift proration risk to others who did not hedge.[9] This avoidance of proration risk was similar to that achieved by short tendering. In recognition of this, the Commission's Advisory Committee on Tender Offers ("Advisory Committee") recommended that the Commission prohibit hedged tendering.[10]

In 1984, the Commission adopted amendments to rule 10b–4 that were designed to prohibit hedged tendering without unduly affecting tendering practices or the structure of the trading markets during tender offers.[11] The amendments required a tendering person to have a net long position [12] to the extent if the tender not only at the time of tendering, but also at the end of the proration period.[13] In 1985, the Commission adopted a further amendment to Rule 10b–4 to prohibit hedged tendering by use of call options. That amendment required that a tendering person's net long position be reduced by the number of shares underlying any in-the-money call options that the tendering person had written since the tender offer was announced.[14]

II. The Bobker Decision [15]

Bobker, a customer of Merrill Lynch, Pierce, Fenner & Smith Inc. ("Merrill Lynch"), owned and tendered 4000 shares of common stock in response to a partial offer. Subsequently, but before the proration date of the offer, Bobker sold 2000 shares of the common stock short, making delivery with borrowed shares. Shortly thereafter, Merrill Lynch's compliance department, apparently concerned about a potential violation of Rule 10b–4, canceled the short sale.[16] Bobker commenced an arbitration proceeding seeking $23,000 in profits that he would have earned if Merrill Lynch had not canceled his short sale. The arbitrators awarded Bobker $11,500 and Merrill Lynch appealed. The District Court vacated the arbitration award, finding that the arbitrators had acted in "manifest disregard of the law" with respect to the application of rule 10b–4 to Bobker's activities.[17]

The Second Circuit reversed and held that the arbitrators did not act in "manifest disregard of the law" in the manner in which they disposed of the arbitration proceeding.[18] In reaching its decision, the court stated that the arbitrators' "careful and conscientious analysis" of the application of rule 10b–4 to the facts of the case resulted in "serious doubts * * * about the rationality and interpretation of the 'net long' proviso and how it serves the rule's avowed purpose of preventing a stockholder such as Bobker from increasing his pro rata share of stock tendered and accepted over the *pro rata* share of that tendered by other stockholders."[19] The court reached this conclusion because it viewed Bobker's sale of 2000 shares as a transaction completely independent of his tender.

The court also noted that the term "net long" is not defined in the rule, and that the Commission has stated that the meaning of net long is the same as that employed in interpreting rule 10a–1 (the short sale rule)[20] under the Exchange Act.[21] The court cited a 1938 Commission release on rule 10a–1 explaining that a net long position is determined by offsetting against shares owned any shares sold short by the same person.[22] While specifically

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[6] Section 14(d)(6) of the Exchange Act, 15 U.S.C. 78n(d)(6), and rule 13e–4(f)(3) and rule 14d–8 under the Exchange Act, 17 CFR 240.13e–4(f)(3) and 240.14d–8, require an offeror to accept shares on a *pro rata* basis where more shares are tendered than the offeror is bound or willing to accept. When tendered securities are accepted on a *pro rata* basis, the offeror accepts only a percentage of the securities tendered by each securityholder. The percentage is calculated from a fraction whose numerator represents the total number of securities accepted and whose denominator represents the total number of securities tendered.

[7] A letter of guarantee promises the required shares will be delivered to the bidder in accordance with the terms of the offer.

[8] *See* Testimony of Chairman Manuel F. Cohen in Hearings on S. 510 Before the Subcommittee on Securities of the Senate Committee on Banking and Currency, 90th Cong., 1st Sess. 198–99 (1967).

[9] Both short tendering and hedged tendering enabled a market professional to significantly reduce its proration risk. The proration risk of persons who could not short tender or hedge their tenders, however, was increased because of the increase in the number of shares tendered. As the number of tendered shares increases, the percentage of shares accepted from each tendering shareholder decreases.

[10] As stated by the Advisory Committee: Notwithstanding contentions that short and hedged tendering operate to increase the efficiency of the market and to reduce the spread between the market price and tender price, thereby benefiting individuals who sell into the market rather than tender, the Committee strongly endorses continuation of Rule 10b–4's prohibition of short tendering and recommends that the rule be strengthened to prohibit specifically hedged tendering. Because short and hedged tendering opportunities are available almost exclusively to market professionals, they appear to provide a substantial, unfair advantage to market professionals. As a result, the Committee found that these techniques create too great a risk of undermining public confidence in the integrity of the markets.

Advisory Committee on Tender Offers, Report of Recommendations 47–48 (July 1983) ("Advisory Committee Report") (footnotes omitted).

[11] *See* Securities Exchange Act Rel. No. 20799 (March 29, 1984), 49 FR 13867 ("Release 34–20799").

[12] A person's net long position is determined by offsetting shares owned by any shares sold short and by shares that are subject to standardized call options representing a short position.

[13] 17 CFR 240.10b–4(a)(1).

[14] *See* 17 CFR 240.10b–4(a)(5) and Securities Exchange Act Release No. 21782 (February 22, 1985), 50 FR 8100. This amendment was also recommended by the Advisory Committee. *See* Advisory Committee Report 50.

[15] *See* Proposing Release, 54 FR at 10676, for a more complete discussion and analysis of *Bobker*.

[16] *See* 808 F.2d at 934 n.3. At the time of Bobker's short sale, the transaction did not violate the rule, because paragraph (b)(1) of the rule requires that a tendering person have a net long position equal to or greater than the amount of shares tendered only at the time of tendering and at the end of the proration period. However, it seems clear that Bobker did not intend to comply with the net long requirement, because the profits upon which his claim for damages was based would only have accrued if the short position remained open past the proration date. *See Merrill Lynch, Pierce, Fenner & Smith, Inc.* v. *Bobker*, 636 F. Supp. 444, 445 (S.D.N.Y. 1986).

[17] *Merrill Lynch, Pierce, Fenner & Smith, Inc.* v. *Bobker*, 636 F. Supp. 444 (S.D.N.Y. 1986). "Manifest disregard of the law" by arbitrators is a judicially created ground for vacating an arbitration award. *Bobker*, 808 F.2d at 933, *citing Wilko* v. *Swan*, 346 U.S. 427, 436–437 (1953), overruled on other grounds, *Rodriquez de Quijas* v. *Shearson/American Express, Inc.*, 490 U.S. 477 (1989).

[18] 808 F.2d at 936.

[19] 808 F.2d at 936–37. Two judges joined in the court's opinion, the third judge concurred in the result but disassociated himself from the court's discussion with respect to Rule 10b–4. 808 F.2d at 937–38 (Meskill, J., concurring).

[20] 17 CFR 240.10a–1.

[21] 808 F.2d at 934, *citing* Securities Exchange Act Rel. No. 8224 (January 3, 1968), 33 FR 513. For purposes of Rule 14e–4, the discussion of the determination of a person's "net long position" in that release is superseded by the adoption of today's amendments.

[22] 808 F.2d at 934, *citing* Securities Exchange Act Rel. No. 1571 (February 5, 1938), 11 FR 10969, 10970 (1946). "[I]f a person maintains two accounts and is short 1000 shares of a security in one and long 1000 shares of the same security in another, any sales of

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declining to decide whether the net long requirement of rule 10b–4 as administered by the Commission is invalid, the court suggested that the Commission's interpretation of the net long proviso as applied to Bobker's short sale was inconsistent with the purpose of the rule and lacked a rational basis.[23]

III. Discussion

The Commission believes that Bobker's short sale, assuming that Bobker did not either cover the short sale or reduce the amount of his tender to reflect the short sale by the end of the proration period, would have caused Bobker to violate the provisions of rule 10b–4. The 1984 amendments to the rule were designed specifically to address the unfairness and lack of disclosure inherent in transactions such as Bobker's.[24] Bobker was attempting to participate in the proration pool as an owner of 4000 shares even though his actual net interest in the shares was that of an owner of 2000 shares. His post-tender sale, whether or not structured as a separate transaction,[25] would have enabled him to shift his proration risk to other tendering shareholders,[26] who would have had their *pro rata* acceptance reduced to reflect the additional shares tendered by the buyer of Bobker's shares. Similarly, substantial undisclosed professional hedged tendering can mislead an investor in the calculation of proration risk, and thereby alter the decision as to whether to tender or sell into the market.

The Second Circuit's decision in *Bobker* created some uncertainty in the application of the rule 10b–4 prohibition against hedged tendering.[27] Accordingly, the Commission requested comment on a revised version of rule 10b–4 to clarify the net long requirement of the rule, and proposed to redesignate the Rule as rule 14e–4.[28] The Proposing Release also requested comment on whether the prohibition of hedged tendering and the prohibition of multiple tendering continued to be appropriate. The Commission received six letters of comment.[29]

A. Hedged Tendering

Two commenters expressly favored retaining the prohibition of hedged tendering. One of these commenters argued that it was unfair to permit market professionals effectively to obtain a greater percentage of acceptance of shares actually owned than is available to the general public. This commenter wanted no change in the substantive coverage of the rule. Another of these commenters said that there were valid arguments for and against the practice of hedged tendering, but on balance did not advocate a change in the current regulatory approach. A third commenter expressed appreciation that the Commission's Proposing Release clarified that hedged tendering continued to be prohibited.

Three commenters opposed the prohibition of hedged tendering. One of these commenters argued that arbitrageurs' ability to hedge their tenders enabled them to buy securities subject to a tender offer at a higher price, thereby benefiting public shareholders who wish to sell to avoid proration risk and the risk that a tender offer may be delayed or not consummated. This commenter stated that less sophisticated, smaller shareholders are likely to be those who are most risk-averse, and that there is no policy reason for the Commission to favor shareholders who tender rather than those who sell their shares in the market.[30]

The other two commenters who opposed the hedged tendering prohibition, both of whom were options market makers, focused on the rule's requirement that short in-the-money call option positions established after the announcement of a tender offer be deducted in determining a tendering person's net long position at the end of the proration period.[31] One of these commenters stated that option market makers suffer a hardship because they are not able to tender stock that they have acquired as a hedge against their short in-the-money call options, even though not all such options are exercised prior to the expiration of the tender offer.[32] Both of these commenters stated that the rule hindered their ability to maintain a liquid options market when the underlying stock was the subject of a tender offer.[33]

The Commission recognizes that there are valid arguments both for and against the prohibition of hedged tendering. Except for the comments submitted by the options market makers described above, the Commission notes, however, that none of the commenters offered any data or arguments not previously considered by the Commission when it adopted the hedged tendering prohibition in 1984 in accordance with the recommendation of the Advisory Committee.[34]

On balance, the Commission believes that hedged tendering should continue to be prohibited. Both short and hedged tendering require the ability to borrow shares, and market professionals have a clear advantage in obtaining access to such shares. Granting an advantage to those who can borrow shares contravenes the Congressional intent that each tendering shareholder receive equal treatment based solely on the shareholder's ownership interest in the securities that are the subject of a

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such security by such person are short sales and are subject to the provisions of the (short sale rule)." *Id.*

[23] 808 F.2d at 936. It should be noted that the majority's discussion of Rule 10b–4 does not constitute a holding in the case.

[24] *See* Rel. 34–20799 n.7, 49 FR at 13868 n.7.

[25] The effect of Bobker's "separate" short sale was the same as if he had tendered 4000 shares by letter of guarantee, sold 2000 of those shares in the market and delivered them, and then borrowed 2000 shares in order to deliver 4000 shares to the bidder. Borrowed shares are not considered part of a person's net long position for purposes of rule 10b–4.

While a separate short sale by a no-tendering person would potentially affect the proration pool in the same way as Bobker's sale, the sale would not be that of one participant in the proration pool securing an advantage at the expense of other tendering shareholders.

[26] If the hedged tenderer is able to estimate the *pro rata* acceptance rate closely, there is little proration risk, because the tender offer price or a tender offer-influenced market price would be received for all of the person's shares.

[27] *See, e.g.*, letter from Dennis H. Greenwald, Chairman, Securities Industry Association, to Richard Ketchum, Director, Division of Market Regulation, Securities and Exchange Commission (March 11, 1987), contained in File No. S7–11–89.

[28] *See* Proposing Release.

[29] Letter from Sheriff Securities Corporation (April 26, 1989); Letter from J. Stephen Fossett, President, Fossett Corporation (May 8, 1989); letter from Sullivan & Cromwell (May 15, 1989); letter from Committee on Federal Regulation of Securities, and Subcommittee on Proxy Solicitations and Tender Offers, Section of Business Law, American Bar Association (May 18, 1989); letter from Federal Regulation Committee, Securities Industry Association (May 18, 1989); and letter from The O'Connor Partnerships (June 5, 1989), contained in File No. S7–11–89.

[30] This commenter's position is similar to that expressed by former Commissioner Cox, who dissented when the Commission adopted the hedged tendering prohibition in 1984. *See* Release 34–20799, 49 FR 13867 (Commissioner Cox, dissenting).

[31] *See* rule 10b–4(a)(5), 17 CFR 240.10b–4(a)(5), and n.12 *supra*.

[32] This commenter suggested that market makers should be able to tender to the extent that their options positions are not exercised against them. The Commission believes that such a procedure would prevent the same shares from being tendered twice, but would be inconsistent with the principal rationale of the rule, *i.e.*, that all tendering persons participate in the proration pool on an equal basis. The market makers, by selling in-the-money call options during a tender offer and receiving a tender offer-influenced premium, in effect would have sold a portion or all of the shares hedging their options positions.

[33] The Commission believes that the impact on options market making is not substantial because market makers are able to sell their shares in the market.

[34] See n.10 *supra*. *See also* the letters of comment in File No. S7–903.

tender offer.[35] The Commission believes that a prohibition of both short and hedged tendering enhances the fairness of the proration process by preventing certain tendering persons from gaining an advantage in the proration pool at the expense of others, and that it assures equal application of the proration factor to each tendering person's net ownership interest in the tendered shares.[36] Accordingly, rule 14e–4 as adopted today retains the current prohibition of hedged tendering.

B. Multiple Tendering

The Commission requested comment on whether the prohibition of multiple tendering, set forth in paragraph (b)(3) of rule 10b–4, continues to be appropriate. Multiple tendering is the tendering of the same shares to more than one offer, by the use of one or more letters of guarantee. Since only partial offers are subject to the rule, the multiple tendering prohibition extended only to tendering to two or more partial offers. The one commenter who addressed the multiple tendering issue stated that the practice does not have sufficient impact to warrant regulation. This commenter expressed the view that while a shareholder's ability to tender into more than one competing partial offer might affect the aggregate proration pools of competing offers, the practice would not lessen that shareholder's proration risk at the expense of other shareholders with respect to any particular offer.[37]

As stated in the Proposing Release, the Commission is not aware of any problem in connection with multiple tendering to other offers where it has been permitted, *i.e.*, offers that are not subject to Rule 10b–4. Moreover, the elimination in 1986 [38] of the ten-day minimum proration period [39] took away the principal advantage that some tendering persons could obtain by multiple tendering.[40] The Commission has concluded that the prohibition of multiple tendering to two or more partial offers no longer appears to be necessary.[41]

C. Equivalent Securities

The Rule has permitted the holder of an "equivalent security" [42] to be deemed to own the securities underlying the equivalent securities in determining the person's net long position for purposes of tendering. The tendering person is required to convert, exchange, or exercise such equivalent security only to the extent of the bidder's acceptance of his tender.[43] This approach eliminates any hardship that would result from requiring a tendering person to convert, exchange, or exercise the person's entire equivalent security position where only a portion of the shares tendered are accepted by a bidder. The equivalent securities provision may also be beneficial in freeing shareholders from the need to convert equivalent securities to tender to an offer that is unsuccessful.

In the Proposing Release, the Commission requested comments as to whether the ability to tender a subject security based on ownership of an equivalent security remained necessary or appropriate. The usefulness of the provision has diminished, since it appears that recent partial tender offers have uniformly required delivery of all shares tendered, rather than only those accepted. In such circumstances, partial conversion, exchange, or exercise of an equivalent security is possible only if the additional (non-accepted) shares can be borrowed or purchased in the cash market. The only commenter who responded believed that the continued ability to tender subject securities based on ownership of an equivalent security was both necessary and proper. This commenter asserted that there was no reason to require a person to suffer the economic consequences of converting a security or exercising a right in order to tender shares, only to suffer the consequences of prorationing, where the terms of the tender offer did not require such a result. The Commission has determined to retain the equivalent security provision in rule 14e–4.

D. Restructuring and Redesignation of Rule

Three of the commenters that addressed the issue endorsed the proposed restructuring of the rule; one commenter favored retaining the rule in its present form. The commenters favoring the restructuring believed that the revised rule more clearly sets forth the requirement that a tendering person be "net long" the amount of shares that have been tendered. These commenters also stated that redesignating the rule as rule 14e–4 more accurately reflects the underlying rationale of the rule and more logically places the rule among those specifically dealing with tender offers.

Except for the elimination of the multiple tendering prohibition, rule 14e–4, as adopted, is not intended to effect any substantive change from the current rule, and is substantially identical to rule 14e–4 as proposed.[44] The rule has been restructured to clarify the net long proviso of the current rule. In addition, the title of the rule has also been changed as proposed to "Prohibited transactions in connection with partial tender offers." Accordingly, there is no need to delay effectiveness of the

[35] *See* Securities Act Rel. No. 6653 (July 11, 1986), 51 FR 25873.

[36] As discussed *infra*, substantial undisclosed hedged tendering also may mislead a public investor faced with a choice of tendering or selling into the market.

[37] A shareholder can tender into each offer only the shares that the shareholder owns as determined by paragraph (a) of the rule.

[38] *See* Securities Exchange Act Rel. No. 22788 (January 14, 1986), 51 FR 3031.

[39] Rule 14d–8 under the Exchange Act, 17 CFR 240.14d–8, and rule 13e–4(f)(3), 17 CFR 240.13e–4(f)(3), require offerors to accord *pro rata* treatment for all shares deposited during the period the offer remains open.

[40] Formerly, the ten-day minimum proration period created the opportunity, chiefly available to market professionals, to participate in the initial proration pool of two or more competing partial tender offers in order to guarantee acceptance of all shares tendered at the eventual highest price offered, where the winning bidder increased its offered consideration after the closing of its initial ten-day proration pool. The elimination of the possibility of multiple proration pools within a single offer renders moot the concern expressed by the Advisory Committee and the Commission in adopting the prohibition. *See* Advisory Committee Report at 48–49 (Recommendation 46).

[41] Multiple tendering, of course, could result in a violation of rule 14e–4 if acceptance of shares by one bidder reduces a tendering person's net long position with respect to a tender made to a partial offer, and the tendered shares are not withdrawn before the proration date of the partial offer.

[42] "Equivalent security" is defined in paragraph (a)(2) of the current rule and paragraph (a)(2) of rule 14e–4 as:

(i) Any security (including any option, warrant, or other right to purchase the subject security), issued by the person whose securities are the subject of the offer, that is immediately convertible into, or exchangeable or exercisable for a subject security, or (ii) any other right or option (other than a standardized call option) that entitles the holder thereof to acquire a subject security, but only if the holder thereof reasonably believes that the maker or writer of the right or option has title to and possession of the subject security and upon exercise will promptly deliver the subject security.

Equivalent securities are those representing a right to acquire only the security subject to the offer. Accordingly, financial instruments entitling the holder to receive a group of securities, *e.g.*, index products involving physical delivery, *see, e.g.*, Securities Exchange Act Rel. No. 26388 (December 22, 1988), 53 FR 52901 (index participations), are not equivalent securities. Therefore, such securities would have to be exercised before a tender could be based on ownership of the underlying securities. Similarly, a person's unexercised short position in these products would not be part of his short position in the subject security. Financial instruments that involve the actual purchase or sale of a group of securities, *e.g.*, a standardized basket of stocks, are not equivalent securities, and positions in the individual securities are included in the computation of a person's net long position.

[43] *See* rule 10b–4(b)(1)(ii), 17 CFR 240.10b–4(b)(1)(ii).

[44] No commenter responded to the Commission's invitation to address any of the proposed amendments that might operate differently from those of rule 10b–4. *See* Proposing Release, 54 FR at 10678.

revised rule beyond the date of publication in the **Federal Register**.

In order to remove any potential misunderstanding or ambiguity concerning the Rule's application to persons responding to a partial tender offer, paragraph (a)(1) defines the term "net long position." A person's "net long position" in a security is equal to the excess, if any, of his "long position" in that security over his "short position." A person's "long position," as defined in paragraph (a)(1)(i), includes: (1) Securities to which a person or his agent has title or has purchased but has not yet received, (2) securities for which a person has converted, exchanged, or exercised a standardized call option or an equivalent security, and (3) securities that a person is entitled to receive upon conversion, exchange, or exercise of an equivalent security. A person's "short position" is defined in paragraph (a)(1)(ii) as equivalent to the amount of subject securities that the person: (1) Has sold, (2) is obligated to return to a lender, (3) is obligated to deliver upon exercise of a non-standardized call option or right pursuant to which the holder may tender, or (4) is obligated to deliver upon exercise of an in-the-money standardized call option sold after a tender offer for the subject security has been announced or otherwise made known by the bidder. These provisions are all drawn from the current rule.[45]

Paragraph (a)(5) defines a "partial tender offer" as a tender offer for less than all of the outstanding securities subject to the offer where acceptance is by lot or on a *pro rata* basis, or a tender offer for all of the outstanding shares with different offered consideration that involves *pro rata* acceptance. This definition incorporates current paragraph (c) of the rule and the staff's interpretive position that rule 10b–4 applies to any tender offer involving prorationing.[46]

The amendments also reflect the full scope of the Commission's authority to promulgate the rule by substituting the phrase "it shall be unlawful" in paragraph (b).[47] Paragraph (b) is otherwise unchanged from the current rule, except to reflect changes made in paragraph (a), and the deletion of paragraph (b)(3), which prohibited multiple tendering. Thus, a tendering person must have a net long position in the security equal to or exceeding the number of securities tendered both at the time of tender and at the end of the proration period of the offer.[48]

IV. Regulatory Flexibility Act Certification and Effects on Competition

The Chairman of the Commission certified that the amendments to the rule will not have a significant economic impact on a substantial number of small entities because the amendments do not result in substantive changes to the rule. The Commission did not receive any comments that addressed the impact of the amendment on small entities.

Section 23(a)(2) of the Exchange Act[49] requires the Commission, in adopting rules under the Exchange Act, to consider the anti-competitive effects of such rules, if any, and to balance any impact against the regulatory gained in terms of furthering the purposes of the Exchange Act. The Commission has considered the amended rule in light of the standards cited in section 23(a)(2) and believes for the reasons stated in this release that adoption of the amendments to the Rule will not impose any burden on competition not necessary or appropriate in furtherance of the Exchange Act.

V. Text of the Rule Amendments

On the basis of the above discussion and analysis, the Commission hereby amends part 240 of chapter II of title 17 of the Code of Federal Regulations as follows:

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

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

1. The authority citation for part 240 is amended by adding the following citation:

Authority: 15 U.S.C. 78w, as amended, unless otherwise noted. * * * § 240.14e–4 also issued under the Exchange Act, 15 U.S.C. 78a *et seq.*, and particularly sections 3(b), 10(a), 10(b), 14(e), 15(c), and 23(a) of the Exchange Act (15 U.S.C. 78c(b), 78j(a), 78j(b), 78n(e), 78*o*(c), and 78w(a)).

2. The authority citation following § 240.10b–4 is removed.

§ 240.10b–4 [Redesignated as § 240.14e–4]

3. Part 240 is amended by redesignating § 240.10b–4 as § 240.14e–4, revising the section heading, and revising paragraphs (a)(1), (a)(5), (b) introductory text, (b)(1), and (c), and removing (b)(3) and (d) as follows:

§ 240.14e–4 Prohibited transactions in connection with partial tender offers.

(a) *Definitions.* For purposes of this section:

(1) The amount of a person's "net long position" in a subject security shall equal the excess, if any, of such person's "long position" over such person's "short position." For the purposes of determining the net long position as of the end of the proration period and for tendering concurrently to two or more partial tender offers, securities that have been tendered in accordance with the rule and not withdrawn are deemed to be part of the person's long position.

(i) Such person's "long position," is the amount of subject securities that such person:

(A) Or his agent has title to or would have title to but for having lent such securities; or

(B) Has purchased, or has entered into an unconditional contract, binding on both parties thereto, to purchase but has not yet received; or

(C) Has exercised a standardized call option for; or

(D) Has converted, exchanged, or exercised an equivalent security for; or

(E) Is entitled to receive upon conversion, exchange, or exercise of an equivalent security.

(ii) Such person's "short position," is the amount of subject securities or subject securities underlying equivalent securities that such person:

(A) Has sold, or has entered into an unconditional contract, binding on both parties thereto, to sell; or

(B) Has borrowed; or

(C) Has written a non-standardized call option, or granted any other right pursuant to which his shares may be tendered by another person; or

(D) Is obligated to deliver upon exercise of a standardized call option sold on or after the date that a tender offer is first publicly announced or otherwise made known by the bidder to holders of the security to be acquired, if the exercise price of such option is lower than the highest tender offer price or stated amount of the consideration offered for the subject security. For the

[45] Unexercised positions in substandardized put option contracts on the subject security do not affect a person's net long position. The exercise of such put option contracts reduces the exerciser's net long position; and the receipt of an exercise assignment with respect to such options increases the assignee's net long position.

[46] *See* Rel. 34–20799 n.13, 49 FR at 13869 n.13.

[47] Rule 14e–4, as amended, is adopted pursuant to sections 3(b), 10(a), 10(b), 13(e), 14(e), 15(c), and 23(a) of the Exchange Act, 15 U.S.C. 78c(b), 78j(a), 78j(b), 78m(e), 78n(e), 78*o*(c), and 78w(a), and employs the Commission's authority to "prescribe means reasonably designed to prevent [ ] such acts and practices as are fraudulent, deceptive, or manipulative."

[48] As proposed, former paragraph (d), which authorizes the Commission to grant exemptions, has been restructured and redesignated as paragraph (c).

[49] 15 U.S.C. 78w(a)(2).

purpose of this paragraph, if one or more tender offers for the same security are ongoing on such date, the announcement date shall be that of the first announced offer.

* * * * *

(5) The term *partial tender offer* means a tender offer or request or invitation for tenders for less than all of the outstanding securities subject to the offer in which tenders are accepted either by lot or on a *pro rata* basis for a specified period, or a tender offer for all of the outstanding shares that offers a choice of consideration in which tenders for different forms of consideration may be accepted either by lot or on a *pro rata* basis for a specified period.

* * * * *

(b) It shall be unlawful for any person acting alone or in concert with others, directly or indirectly, to tender any subject security in a partial tender offer:

(1) For his own account unless at the time of tender, and at the end of the proration period or period during which securities are accepted by lot (including any extensions thereof), he has a net long position equal to or greater than the amount tendered in:

(i) The subject security and will deliver or cause to be delivered such security for the purpose of tender to the person making the offer within the period specified in the offer; or

(ii) An equivalent security and, upon the acceptance of his tender will acquire the subject security by conversion, exchange, or exercise of such equivalent security to the extent required by the terms of the offer, and will deliver or cause to be delivered the subject security so acquired for the purpose of tender to the person making the offer within the period specified in the offer; or

* * * * *

(c) This rule shall not prohibit any transaction or transactions which the Commission, upon written request or upon its own motion, exempts, either unconditionally or on specified terms and conditions.

Dated: November 30, 1990.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-28567 Filed 12-5-90; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY

31 CFR Part 2

National Security Information

AGENCY: Department of the Treasury.

ACTION: Final rule.

SUMMARY: This amendment to Department of the Treasury regulations, contained in 31 CFR part 2, on safeguarding national security information provides for the use of United States Postal Service express mail for the transmittal of Secret information. This is an added means for the transmittal of Secret information.

This amendment is issued pursuant to a change issued by the Information Security Oversight Office (ISOO), General Services Administration, authorizing the use of U.S. Postal Service express mail service for transmittal of national security information classified Secret (see 32 CFR part 2001).

EFFECTIVE DATE: December 6, 1990.

FOR FURTHER INFORMATION CONTACT: Robert Alexander McMenamin, Acting Assistant Director, Office of Security, Department of the Treasury, Room 1302, Main Treasury Building, 1500 Pennsylvania Avenue NW., Washington, DC 20220 (202) 343-0260.

List of Subjects in 31 CFR Part 2

Classified information.

PART 2—NATIONAL SECURITY INFORMATION

1. The authority citation for 31 CFR part 2 is revised to read as follows:

Authority: 31 U.S.C. 321; E.O. 12356, 47 FR 14874, April 6, 1982.

2. Section 2.28(d)(1) is revised to read as follows:

§ 2.28 Transmittal [4.1(b)].

* * * * *

(d) * * *

(1) The 50 States, District of Columbia and Puerto Rico. Secret information may be transmitted within and between the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico by one of the means authorized for Top Secret information, by the United States Postal Service registered mail or express mail service; or by protective services provided by United States air or surface commercial carriers under such conditions as may be prescribed by the Departmental Director of Security. United States Postal Service express mail service shall be used only when it is the most effective means to accomplish a mission within security, time, cost and accountability constraints. To ensure direct delivery to the addressee, the "Waiver of Signature and Indemnity" block on the United States Postal Service Express Mail Label 11-B may not be executed under any circumstances. All Secret express mail shipments are to be processed through mail distribution centers or delivered directly to a United States Postal Service facility or representative. The use of external (street side) express mail collection boxes is prohibited. Only the express mail services of the United States Postal Service are authorized.

* * * * *

Linda M. Combs,

Assistant Secretary (Management).

[FR Doc. 90-28616 Filed 12-5-90; 8:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 221

[DoD Directive 6025.14]

Department of Defense Participation in the National Practitioner Data Bank

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This part implements the Memorandum of Understanding between the Department of Health and Human Services and the Department of Defense regarding DoD participation in the National Practitioner Data Bank.

EFFECTIVE DATES: November 1, 1990. Written comments on this rule must be received by January 7, 1990.

ADDRESSES: Forward comments to the Office of the Assistant Secretary of Defense (Health Affairs), Pentagon, Washington, DC 20301-1200.

FOR FURTHER INFORMATION CONTACT: Major P.T. Ray, telephone (703) 695-6800.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 221

Health professions, Reporting and recordkeeping requirements.

Accordingly, title 32, subchapter M is amended to add part 221 to read as follows:

PART 221—DEPARTMENT OF DEFENSE PARTICIPATION IN THE NATIONAL PRACTITIONER DATA BANK (NPDB)

Sec.
221.1 Purpose.
221.2 Applicability and scope.
221.3 Definitions.
221.4 Policy.
221.5 Responsibilities.
221.6 Procedures.
221.7 Information requirements.

Authority: Public Law 99-660, title IV (44 U.S.C. 11131-11152).

§ 221.1 Purpose.

This part:

(a) Establishes DoD policy, assigns responsibilities, and prescribes procedure for implementing Public Law 99–660, title IV and the objectives of the Memorandum of Understanding (MOU) between the Department of Health and Human Services (DHHS) and the Department of Defense, September 21, 1987, which outlines the DoD's participation in the National Practitioner Data Bank (NPDB).

(b) Specifies the content of confidential reports to the NPDB established under part B of Public Law 99–660, and reporting responsibilities.

§ 221.2 Applicability and scope.

This part applies to:

(a) The Office of the Secretary of Defense (OSD) and the Military Departments (including their National Guard and Reserve components). The term, "Military Departments," as used herein, refers to the Army, the Navy, and the Air Force.

(b) Healthcare personnel who are in professions required to possess a license under DoD Directive 6025.6 [1] and/or who are granted individual clinical privileges.

§ 221.3 Definitions.

(a) *Healthcare entity.* A hospital, ambulatory health clinic, or dental clinic with an independent healthcare practitioner staff that carries out professional staff review and provides healthcare to medical or dental patients; and applicable professional staff components of each Service, as designated by the respective Surgeon General, which also perform peer review as part of the quality assurance program.

(b) *Licensed healthcare practitioner.* Any healthcare practitioner of one of the professions required to possess a professional license, as prescribed in DoD Directive 6025.6.

(c) *The National Practitioner Data Bank (NPDB).* The organization developed according to Public Law 99–660 to receive and provide data on professional competence and conduct of physicians, dentists, and other licensed healthcare providers. In Public Law 99–660, it is referred to as the "National Data Bank." That name was changed after the MOU was signed.

§ 221.4 Policy.

It is DoD policy that:

(a) Professional review shall occur in every case of alleged malpractice.

(b) When a malpractice claim results in a monetary payment for the benefit of a physician, dentist, or other healthcare practitioner required to be licensed by DoD Directive 6025.6, it shall be reported to the NPDB.

(c) Practitioners shall have benefit of due process procedures for professional review activities under requirements of Public Law 99–660, Military Department regulations, and healthcare entity professional staff by-laws.

(d) Information on adverse privileging actions and other professional review actions shall be reported to the appropriate State agencies and the NPDB.

(1) The Department of Defense shall continue to provide State(s) of known licensure the information required by DoD Directive 6025.11.[2]

(2) Physicians and dentists shall be reported for both malpractice payment and privileging actions. All other personnel required to be licensed by DoD Directive 6025.6 shall also be reported for malpractice payments.

(3) Other healthcare personnel shall be reported for privileging actions only after the Assistant Secretary of Defense (Health Affairs) (ASD(HA)) notifies the Military Departments to begin submitting reports on a specified category of personnel.

(e) The NPDB shall be queried during the accessioning process of a healthcare practitioner, and at least every 24 months, thereafter, as a part of the Military medical departments' recredentialing and reprivileging procedures. Inquiries on healthcare practitioners, on board at the time this part is implemented, should be performed at the time of their next recredentialing and reprivileging. If the granting of initial clinical privileges occurs more than 1 year after the query for accessioning, querying the data bank shall be required as a part of the initial privileging.

§ 221.5 Responsibilities.

(a) The Assistant Secretary of Defense (Health Affairs) (ASD(HA)) shall:

(1) Monitor implementation of this part and issue such DoD Instructions as may be necessary.

(2) Authorize exceptions to requirements of this part, if deemed necessary.

(b) The General Counsel of the Department of Defense (GC, DoD) shall provide legal advice on the interpretation and implementation of this part and any subsequent DoD Instructions.

(c) The Secretaries of the Military Departments shall implement the requirements of this part and the DoD Instructions issued under paragraph (a) of this section.

§ 221.6 Procedures.

(a) The ASD(HA) shall issue Instructions, in accordance with § 221.5(a).

(b) The Military Departments shall:

(1) Develop policy and procedures that comply with requirements of this Directive and any subsequent DoD Instructions.

(2) Ensure that their Office of the Surgeon General (OTSG) sends the appropriate information, in accordance with § 221.7, to the NPDB and the Office of the Deputy Assistant Secretary of Defense (Professional Affairs and Quality Assurance) (ODASD(PA&QA)).

(3) Ensure that the NPDB is queried appropriately, in accordance with § 221.7.

§ 221.7 Information requirements.

(a) The method of reporting information to, and querying information from, the NPDB shall be by use of the Health Resources and Services Administration (HRSA) forms or, when possible, electronically.

(b) Reports to the ODASD(PA&QA) shall be submitted through electronic means, when available. Unitl then, DD Form 2499, "Health Care Provider Clinical Privileges Action Report," and DD Form 2526, "Case Abstract For Malpractice Claims," shall be used, as appropriate.

(c) The reporting requirements in this section have been assigned Report Control Symbols DD–HA(AR)1611 and DD–HA(AR)1782.

Dated: November 30, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90–28648 Filed 12–6–90; 8:45 am]

BILLING CODE 3810–01–M

[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[2] See footnote 1 to § 221.2(b).

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AE33

Burial Benefits

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) has amended its adjudication regulations on burial benefits. This change is based on VA General Counsel opinions holding that the 2-year time limit for filing claims does not apply to claims for service-connected burial allowance, reimbursement for the cost of transporting a veteran's remains to the place of burial, or monetary allowance in lieu of a Government-furnished headstone or grave marker. The intended effect of the change is to remove existing time limits for filing claims for those benefits.

EFFECTIVE DATE: January 7, 1991.

FOR FURTHER INFORMATION CONTACT: Don England, Chief, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-3005.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 5, 1990, (55 FR 22932-22933), VA published a proposed regulatory amendment to remove the existing time limit for filing claims for service-connected burial benefits, for reimbursement of the cost of transporting a veteran's remains to the place of burial and for monetary allowance in lieu of a Government-furnished headstone or grave marker. Interested persons were invited to submit written comments, suggestions or objections on or before July 5, 1990. One comment was received.

The commenter suggested that the change being made should include an extension of the 2-year period for claiming the nonservice-connected burial benefit provided under 38 U.S. 902 for those veterans, such as Merchant Marines, whose service has only recently been recognized as provided under Public Law 95-202.

General Counsel has advised us that VA does not have the authority to implement this suggestion as 38 U.S.C. 904 specifically provides that claims must be filed within two years of the date of burial. The only exception the law allows is for those veterans whose character of discharge was corrected by competent authority after their deaths. The suggested change would require legislative action.

It should be noted that the unpublished General Counsel Opinion dated July 31, 1989, (O.G.C. Conclusive 7-89), referred to in the preamble to the proposed rule has been reissued as a published General Counsel Precedent Opinion dated June 13, 1990, (O.G.C. Prec. 17-90).

VA appreciates the comment submitted in response to the proposed rule, but for the reasons indicated we are unable to adopt the suggestion. The proposed rule is adopted without change.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

(The Catalog of Federal Domestic Assistance program number is 64.101)

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: November 15, 1990.

Edward J. Derwinski,

Secretary of Veterans Affairs.

PART 3—[AMENDED]

38 CFR Part 3, Adjudication, is amended as follows:

§ 3.1601 [Amended]

1. Section 3.1601 is amended by revising paragraph (a) to read as follows:

(a) *Claims.* Claims for reimbursement or direct payment of burial and funeral expenses under § 3.1600(b) and plot or interment allowance under § 3.1600(f) must be received by VA within 2 years after the permanent burial or cremation of the body. Where the burial allowance was not payable at the death of the veteran because of the nature of his (or her) discharge from service, but after his (or her) death the discharge has been corrected by competent authority so as to reflect a discharge under conditions other than dishonorable, claim may be filed within 2 years from date of correction of the discharge. This time limit does not apply to claims for service-connected burial allowance under § 3.1600(a) or for the cost of transporting a veteran's body to the place of burial under § 3.1600(c) or § 3.1600(g).

* * * * *

§ 3.1612 [Amended]

2. Section 3.1612 is amended by revising paragraph (g) to read as follows:

* * * * *

(g) *Claims.* There is no time limit for filing claims for monetary allowance in lieu of a Government-furnished headstone or marker.

* * * * *

[FR Doc. 90-28680 Filed 12-5-90; 8:45 am]

BILLING CODE 8320-01

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38 CFR Part 21

RIN 2900-AE69

Veterans Education; Implementation of the Department of Defense Authorization Act for Fiscal Years 1990 and 1991

AGENCY: Department of Veterans Affairs.

ACTION: Final regulations.

SUMMARY: The Department of Defense Authorization Act for Fiscal Years 1990 and 1991 increases the "kicker" to the basic educational allowance payable to certain individuals training under the Montgomery GI Bill—Active Duty. This regulation will acquaint the public with the way in which the Department of Veterans Affairs (VA) intends to implement this provision of law.

EFFECTIVE DATES: November 29, 1989.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Education Policy and Program Administration, Vocational Rehabilitation and Education Service, Veterans Benefits Administration, (202) 233-2092.

SUPPLEMENTARY INFORMATION: In the **Federal Register** dated July 6, 1990, there was published a notice of intent to amend 38 CFR part 21 in order to implement the Department of Defense Authorization Act for Fiscal Years 1990 and 1991. Interested people were given 31 days to submit comments, suggestions or objections. VA received no comments, suggestions or objections.

Accordingly, VA is making the amended regulation final.

The Department of Veterans Affairs has determined that this amended regulation does not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulation will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. It will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

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

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

VA finds that good cause exists for making this amendment to 38 CFR 21.7136, like the section of the law it implements, retroactively effective on November 29, 1989. To achieve the maximum benefit of this legislation for the affected individuals, it is necessary to implement this provision of law as soon as possible. A delayed effective date would be contrary to statutory design; would complicate administration of this provision of law; and might result in awarding a smaller benefit to a veteran or servicemember than he or she is entitled by law to receive.

The Catalog of Federal Domestic Assistance number for the program affected by this regulation is 64.124.

List of Subjects in 38 CFR Part 21

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

Approved: November 14, 1990.

Edward J. Derwinski,

Secretary of Veterans Affairs.

38 CFR part 21 is amended as follows:

PART 21—[AMENDED]

In § 21.7136 paragraph (c)(1) through (4) are revised, (c)(5) and (c)(6) are added and the authority line is revised to read as follows:

§ 21.7136 Rates for payment of basic educational assistance.

* * * * *

(c) * * *

(1) For individuals who first become members of the Armed Forces before November 29, 1989, (other than those pursuing cooperative training, an apprenticeship or other on-job training), it may not exceed—

(i) $400 per month for full-time training,

(ii) $300 per month for three-quarter-time training,

(iii) $200 per month for one-half-time training, or for training which is less than one-half, but more than one-quarter-time, or

(iv) $100 per month for one-quarter-time training or less.

(2) For individuals who first become members of the Armed Forces after November 28, 1989, (other than those pursuing cooperative training, an apprenticeship or other on-job training), it may not exceed—

(i) $700 per month for full-time training,

(ii) $525 per month for three-quarter-time training,

(iii) $350 per month for one-half-time training or for training which is less than one-half, but more than one-quarter-time, or

(iv) $175 per month for one-quarter-time training or less.

(3) For individuals who first become members of the Armed Forces before November 29, 1989, and who are pursuing an apprenticeship or other on-job training, it may not exceed—

(i) $300 per month during the first six months of training,

(ii) $220 per month during the second six months of training, and

(iii) $140 per month during the remaining months of training.

(4) For individuals who first become members of the Armed Forces after November 28, 1989, and who are pursuing an apprenticeship or other on-job training, it may not exceed—

(i) $525 per month during the first six months of training,

(ii) $385 per month during the second six months of training, and

(iii) $245 per month during the remaining months of training.

(5) For individuals who first become members of the Armed Forces before November 29, 1989, and who are pursuing cooperative training, it may not exceed $320 per month.

(6) For individuals who first become members of the Armed Forces after November 28, 1989, and who are pursuing cooperative training, it may not exceed $560 per month.

(Authority: 38 U.S.C. 1432(d); Pub. L. 101–189) (Nov. 29, 1989)

* * * * *

[For Doc. 90–28545 Filed 12–5–90; 8:45 am]

BILLING CODE 8320–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 8F3659/R1091; FRL–3797–4]

Gliocladium Virens GL-21; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes an exemption from the requirement of a tolerance for residues of the biological fungicide *Gliocladium virens* GL-21 in or on all raw agricultural commodities when used as a fungicide for inoculation of plant growth media in greenhouses in accordance with good agricultural practices. This exemption was requested by W.R. Grace & Co. of Columbia, Maryland.

DATES: This regulation becomes effective December 6, 1990.

ADDRESSES: Written objections and/or requests for a hearing, identified by the document control number, (PP 8F3659/R1091), may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, room 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Susan T. Lewis, Product Manager (PM) 21, (H7505C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Room 227, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–1900.

SUPPLEMENTARY INFORMATION: EPA issued a notice in the **Federal Register** of October 12, 1988 (53 FR 39783), announcing that W.R. Grace & Co., 7379 Route 32, Columbia, MD 21044, had submitted pesticide petition (PP) 8F3659 to EPA proposing to amend 40 CFR part 180 by establishing a regulation to exempt from the requirement of a tolerance the residues of the biological fungicide *Gliosporium virens* GL-21 in or

on all raw agricultural commodities when used as a fungicide for inoculation of plant growth media in greenhouses in accordance with good agricultural practices.

Gliocladium virens GL-21 is a naturally occurring soil fungus which is antagonistic to plant pathogenic fungi such as *Pythium* and *Rhizoctonia*, which are causal agents in damping-off diseases of seedling plants. The product is a granular formulation containing a high concentration of *Gliocladium* spores suitable for inoculation of soil or other plant growing media under greenhouse conditions. The product is intended for application to the plant growing media or to the soil surface prior to or at planting of ornamental or food crops.

The data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the exemption from the requirement of a tolerance include an acute oral toxicity/pathogenicity study in rats using the formulated product, an acute pulmonary toxicity/pathogenicity study in rats using the fungal spores, and an acute intravenous toxicity/pathogenicity study in rats using fungal mycelium. These tests inlcuded all growth stages of the fungus in order to detect any potential adverse effects from stages other than the chlamydospores used in formulating the products. A review of these studies indicates that the biofungicide is not toxic to, infective in, or pathogenic to rats by oral or pulmonary routes of exposure and not infective in or pathogenic to rats by intravenous injection. The mycelial injection was acutely toxic and lethal to the test animals due to mechanical clogging of capillaries; however, these mortalities were not considered to be relevant in this case since injection would not be a normal route of exposure.

An acute dermal toxicity study was not required for this product since the product consists of large pellets. The label will require that gloves be worn when handling the material and that application will be by soil incorporation. Inert materials in the product have been exempted from the requirement of a tolerance according to § 180.1001, and no indications of toxicity have been reported in workers following 1 to 2 years of working with the organism. A primary eye irritation study was not required for this product because the label will require that protective eye covering must be worn during application and handling. The toxicity data are sufficient to demonstrate that no foreseeable human or domestic animal health hazards are likely to ensue from the use of this biofungicide.

Acceptable daily intake (ADI) and maximum permissible intake (MPI) considerations are not relevant to this petition because a tolerance will not be established. Because no tolerance will be established, no enforcement actions are expected and the requirement for an analytical method for enforcement purposes is not applicable for this exemption request. This is the first exemption from the requirement of a tolerance for this biofungicide.

Gliocladium virens GL-21 is considered useful for the purpose for which the exemption from the requirement of a tolerance is sought. Based on the information considered, the Agency concludes that establishment of the exemption will protect the public health. Therefore, the regulation is established as set forth below.

Pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(d) and 40 CFR 180.13, any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or requests for a hearing with the hearing Clerk, at the address given above. Such objections and/or requests must be filed pursuant to 40 CFR 180.13 and should specify the provision of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. See 40 CFR 180.14.

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

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

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 14, 1990.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

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

Authority: 21 U.S.C. 346a and 371.

2. New § 180.1100 is added to subpart D, to read as follows:

§ 180.1100 Gliocladium virens GL-21; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of the biofungicide *Gliocladium virens* GL-21 in or on all raw agricultural commodities when used as a fungicide for inoculation of plant growth media in greenhouses in accordance with good agricultural practices.

[FR Doc. 90-28530 Filed 12-5-90; 8:45 am]

BILLING CODE 6560-50-F

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40 CFR Part 180

[PP 9F3805/R1099; FRL-3839-3]

Trichoderma Harzianum, Rifai Strain KRL-AG2; Exemption From Requirement of Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes an exemption from the requirement of a tolerance for residues of the genetically modified biological fungicide *Trichoderma harzianum*, Rifai Strain DRL-AG2, in or on beans (green and dry), cabbage, corn (field and sweet), cotton, cucumbers, peanuts, potatoes, sorghum, soybeans, sugar beets, and tomatoes when used as a fungicide for treatment of seeds of these crops in accordance with good agricultural practices.

DATES: This regulation becomes effective November 23, 1990.

ADDRESSES: Written objections, identified by the document control number, [PP 9F3805/R1099], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, room 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Susan T. Lewis, Product Manager (PM) 21 (H7505C), Registration Division, Environmental Protection Agency, 401 M

St., SW., Washington, DC 20460. Office location and telephone number: Room 227, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-1900.

SUPPLEMENTARY INFORMATION: EPA issued a notice in the **Federal Register** of January 9, 1990 (55 FR 779), announcing that Eastman Kodak Co., 343 State St., Rochester, NY 14650, had submitted pesticide petition (PP) 9F3805 to EPA proposing to amend 40 CFR part 180 by establishing a regulation to exempt from the requirement of a tolerance the residues of the biological fungicide *Trichoderma harzianum*, Rifai Strain KRL-AG2, in or on beans (green and dry), cabbage, corn (field and sweet), cotton, cucumbers, peanuts, potatoes, sorghum, soybeans, sugar beets, and tomatoes when used as a fungicide for treatment of seeds of these crops in accordance with good agricultural practices.

The active ingredient is a strain of *Trichoderma harzianum* derived by protoplast fusion of auxotrophic mutants of two strains of *Trichoderma*. *Trichoderma harzianum* is an indigenous soil fungus which is antagonistic to other soil-inhabiting fungi, such as *Pythium* spp., which are causal agents of damping-off and seed rot diseases of seedling plants. The product is a powder formulation containing a high concentration of *Trichoderma* spores suitable for seed treatment through standard commercial slurry or mist-type seed-treating equipment.

The data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the exemption from the requirement of a tolerance include reports of an acute oral toxicity/pathogenicity study, an acute pulmonary toxicity/pathogenicity study, and an acute intravenous toxicity/pathogenicity study. The studies were performed using rats. All studies were classified as acceptable. The review of these studies indicates that the biofungicide is not toxic to, infective in, or pathogenic to rats by oral, pulmonary, or intravenous routes of exposure.

It was also requested that any sources of bacterial contamination and the steps in the manufacturing process where contamination might occur be identified to ensure the absence of pathogenic microorganisms and/or toxins. No human or animal pathogens were detected in any of the production batches of the products.

Acceptable daily intake (ADI) and maximum permissible intake (MPI) considerations are not relevant to this petition because a tolerance will not be established, no enforcement actions are expected, and the requirement for an analytical method for enforcement purposes is not applicable for this exemption request. This is the first exemption from the requirement of a tolerance for this biofungicide.

Trichoderma harzianum, Rifai Strain KRL-AG2, is considered useful for the purpose for which the exemption from the requirement of a tolerance is sought. Based on the information considered, the Agency concludes that establishment of the exemption will protect the public health. Therefore, the regulation is established as set forth below.

Pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(d) and 40 CFR 180.13, any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or requests for a hearing with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. See 40 CFR 180.14.

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

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

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests; Reporting and recordkeeping requirements.

Dated: November 23, 1990.

Douglas D. Campt,
Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

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

Authority: 21 U.S.C. 346a and 371.

2. New § 180.1102 is added, to read as follows:

§ 180.1102 Trichoderma harzianum, Rifai Strain KRL-AG2; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of the biofungicide *Trichoderma harzianum*, Rifai Strain KRL-AG2, in or on beans (green and dry), cabbage, corn (field and sweet), cotton, cucumbers, peanuts, potatoes, sorghum, soybeans, sugar beets, and tomatoes when used as a fungicide for the treatment of seeds of these crops in accordance with good agricultural practices.

[FR Doc. 90-28529 Filed 12-5-90; 8:45 am]
BILLING CODE 6560-50-F

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40 CFR Part 272

[FRL-3866-7]

Hazardous Waste Management Program Codification of Approved State Hazardous Waste Program for Idaho

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: The Resource Conservation and Recovery Act of 1976, as amended (RCRA) authorizes the United States Environmental Protection Agency (EPA) to grant Final and Interim Authorization to States to operate their hazardous waste management programs in lieu of the Federal program. Title 40 Code of Federal Regulations (CFR) part 272 codifies EPA's prior authorization of State programs and incorporates by reference those provisions of the State statutes and regulations that EPA will enforce under RCRA section 3008. This rule codifies Idaho's authorized State program in part 272.

DATES: The codification of Idaho's authorized hazardous waste program shall be effective February 4, 1991, unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on the Idaho authorized program codification must be received by the close of bussiness January 7, 1991. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552 (a) and 1 CFR part 51.

ADDRESSES: Written comments should be sent to Nina Kocourek, HW-112, Waste Management Branch, U.S. EPA, Region 10, 1200 Sixth Avenue, Seattle, Washington, 98101 or call (206) 442-6502.

FOR FURTHER INFORMATION CONTACT: Nina Kocourek, HW-112, Waste Management Branch, U.S. EPA, Waste Management Branch, Region 10, 1200 Sixth Avenue, Seattle, Washington, 98101, (206) 442-6502.

SUPPLEMENTARY INFORMATION:

Background

Section 3006 of the Resource Conservation and Recovery Act of 1976, as amended, (RCRA), 42 U.S.C. 6926 *et. seq.*, allows the U.S. Environmental Protection Agency (ERA) to authorize State hazardous waste programs to operate in the State in lieu of the Federal hazardous waste program. On March 26, 1990, EPA published a **Federal Register** notice announcing its decision to grant final and interim authorization to Idaho (See 55 FR 11015). Idaho received final authorization for the RCRA base program and those HSWA provisions promulgated as of July 7, 1987. Interim authorization was granted for the HSWA corrective action provisions promulgated as of July 7, 1987. Interim authorization is a temporary authorization which a state can request and which is granted if the evidence submitted shows the state requirements are at least substantially equivalent to the federal program requirement. (See section 3006(g)(2) 42 U.S.C. 6926(g)). All interim authorizations pursuant to section 3006(g) expire on January 1, 1993. Responsibility for the portion of the program returns (reverts) to EPA on that date, if a state has not received final authorization for those provisions.

Since that time, EPA has decided to codify its approval of State programs in part 272 of title 40, Code of Federal Regulations (CFR), and to incorporate by reference therein the State statutes and regulations that EPA will enforce under section 3008. The intended codifications reflects the State program that was in effect when EPA granted Idaho final and interim authorization under section 3006(b) for its hazardous waste program.

This effort will provide clearer notice to the public of the scope of the authorized program in each State. Such notice is particularly important in light of the Hazardous and Solid Waste Act Amendments of 1984 (HSWA), Public Law 98-618. Revisions of State hazardous waste programs are necessary when Federal statutory or regulatory authority is modified. Because HSWA extensively amended RCRA, State programs must be modified to reflect those amendments. By codifying the authorized Idaho program, and by amending the Code of Federal Regulations whenever a new or different set of requirements is authorized in Idaho, the status of the Federally approved requirements of the Idaho hazardous waste program will be readily discernible.

The Agency will only codify for enforcement purposes those provisions of the Idaho hazardous waste management program for which authorization approval has been granted by EPA. Concerning HSWA, some State requirements may be similiar to HSWA requirements that are in effect under Federal statutory authority in that State. However, as Idaho is only authorized for those federal requirements promulgated as of July 7, 1987, all other State HSWA-type requirements promulgated as of July 7, 1987, all other State HSWA-type requirements promulgated since that date are not authorized and will not be codified into the CFR until the Regional Administrator publishes his final decision to authorize the State for additional specific non-HSWA and HSWA requirements. Until such time, EPA will enforce the HSWA requirements and not the State analog.

To codify the Idaho authorized hazardous waste program, EPA will add subpart N to part 272 of title 40 of the CFR. Subpart N has previously been reserved for Idaho. Section 272.651(a)(1), (b)-(d), and § 272.652(a)(1) codifies for enforcement purposes, the State statutes and regulations, the Memorandum of Agreement, the Attorney General Statement; and the Program Description, which are authorized and made part of the hazardous waste management program under subtitle C of RCRA.

The Agency retains the authority under sections 3008, 3013 and 7003 of RCRA to undertake enforcement actions in authorized States. With respect to such enforcement action, the Agency will rely on Federal sanctions, Federal inspection authorities, and the Federal Administrative Procedures Act rather

than the authorized State analog to these requirements. Therefore, the Agency does not intend to codify such authorized Idaho enforcement authorities. Section 272.651(a)(2) lists those authorized Idaho authorities that would fall into this category.

The public also needs to be aware that some provisions of the State's hazardous waste management program are not part of the Federally authorized State program. These non-authorized provisions are not part of RCRA subtitle C program because they are "broader in scope" than RCRA subtitle C. See 40 CFR 271.1(i). As a result, State provisions which are "broader in scope" than the Federal program are not codified for purposes of enforcement in part 272. Section 272.651(a)(3) of the intended codification simply lists for reference and clarity the Idaho statutory and regulatory provisions which are "broader in scope" than the Federal program and which are not, therefore, part of the authorized program being codified. "Broader in scope" provisions will not be enforced by EPA; the State, however, will continue to enforce such provisions.

As noted above, the Agency is not amending part 272 to include any unauthorized HSWA requirements and prohibitions that are immediately effective in Idaho and other States. Section 3006(g) of RCRA provides that any requirement or prohibition of HSWA (including implementing regulations) takes effect in authorized States at the same time that it takes effect in non-authorized States. Thus, EPA has immediate authority to implement a HSWA requirement or prohibition once it is effective. A HSWA requirement or prohibition supersedes any less stringent or inconsistent State provision which may have been previously authorized by EPA. (See 50 FR 28702, July 15, 1985.) Because of the vast number of HSWA statutory and regulatory requirements taking effect over the next few years, EPA expects that many previously authorized and codified State provisions will be affected. The States are required to revise their programs to adopt the HSWA requirements and prohibitions by deadlines set forth in 40 CFR 271.21, and then to seek authorization for those revisions pursuant to section 271. EPA expects that the States will be modifying their programs substantially and repeatedly. In general, persons wanting to know whether a HSWA requirement or prohibition is in effect should refer to 40 CFR 271.1(j), as amended, which lists each such provision.

The codification of State authorized programs in the CFR should substantially enhance the public's ability to discern the current status of the authorized State program and clarify the extent of Federal enforcement authority. This will be particularly true as more State program revisions to adopt additional HSWA provisions are authorized.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this action will not have a significant economic impact on a substantial number of small entities. It codifies the decision already made to authorize Idaho's program and has no separate effect on handlers of hazardous waste in the State or upon small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Compliance With Executive Order 12291

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

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

List of Subjects in 40 CFR Part 272

Administrative practice and procedure, Confidential business information, Hazardous waste transportation, Hazardous waste, Incorporation by reference, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: November 28, 1990.

Dana A. Rasmussen,

Regional Administrator.

For the reasons set forth in the preamble, 40 CFR part 272 is revised as follows:

PART 272—APPROVED STATE HAZARDOUS WASTE MANAGEMENT PROGRAMS

1. The authority for 40 CFR part 272 continues to read as follows:

Authority: Sec. 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resources Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

2. Part 272 is amended by adding subpart N to read as follows:

Subpart N—Idaho 8

Sec.

272.650 State authorization.
272.651 State-administered program: Final authorization.
272.652 State-administered program: Interim authorization.
272.653 through 272.699 [Reserved]

Subpart N—Idaho

§ 272.650 State authorization.

(a) The State of Idaho is authorized to administer and enforce a hazardous waste management program in lieu of the Federal program under subtitle C of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6921 *et seq.*, subject to the Hazardous and Solid Waste Amendments of 1984 (HSWA), (Pub. L. 98–616, Nov. 8, 1984), 42 U.S.C. 6926(c) and (g)). The Federal program for which a State may receive authorization is defined in 40 CFR part 271. The State's program as administered by the Idaho Department of Health and Welfare, was approved by EPA pursuant to 42 U.S.C. 6926(b) and (g) and part 271 of this chapter. EPA's approval of Idaho's program was effective on April 9, 1990, see 55 FR 11015, March 26, 1990.

(b) Idaho is not authorized to implement any other HSWA requirements promulgated after July 7, 1987, in lieu of EPA unless EPA has explicitly indicated its intent to allow such action in a **Federal Register** notice granting Idaho authorization.

(c) Idaho has primary responsibility for enforcing its hazardous waste program. However, EPA retains the authority to exercise its enforcement authorities under sections 3007, 3008, 3013, and 7003 of RCRA, 42 U.S.C. 6927, 6928, 6934, and 6973, as well as under other Federal laws and regulations.

(d) Idaho must revise its approved program to adopt new changes to the Federal subtitle C program, in accordance with section 3006(b) of RCRA and 40 CFR part 271, subpart A. Idaho must seek final authorization for all program revisions pursuant to section 3006(b) of RCRA, but, on a temporary basis, may seek interim authorization for revisions required by HSWA pursuant to section 3006(g) of RCRA, 42 U.S.C. 6926(g). If Idaho obtains final authorization for the revised requirements pursuant to section 3006(g), the newly authorized provision will be listed in § 272.651 of this subpart. If Idaho obtains interim authorization for the revised requirements pursuant to

section 3006(g), the newly authorized provisions will be listed in § 272.652.

§ 272.651 State-administered program: Final authorization.

Pursuant to section 3006(b) of RCRA, 42 U.S.C. 6926(b): Idaho has final authorization for the following elements submitted to EPA in Idaho's program application for final authorization and approved by EPA effective on April 9, 1990.

(a) State statutes and regulations. (1) The requirements in the Idaho statutes and regulations cited in this paragraph are incorporated by reference and codified as part of the hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.* This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552 (a) and 1 CFR part 51.

(i) Statutory authority is vested in the State of Idaho, Board of Health and Welfare, by the Hazardous Waste Management Act of 1983 (HWMA). This includes the following statutes as contained in chapter 44 "Hazardous Waste Management", section 39 of the Idaho Code (I.C.), General Laws of Idaho Annotated, Volume 7A, published in May 1985 by the Michie Company, Law Publishers, Charlottesville, Virginia: I.C. 39–4401; 39–4402; 39–4406; 39–4407; 39–4412; 39–4416; 39–4417; 39–4418; 39–4419; 39–4420; 39–4421; 39–4422; 39–4427; 39–4428; 39–4429; 39–4430; 39–4431; 39–4432; and as contained in the 1988 Cumulative Pocket Supplement Idaho Code, Volume 7A, published in June 1988; by The Michie Company, Law Publishers, Charlottesville, Virginia: I.C. 39–4403; 39–4404; 39–4405; 39–4408; 39–4409 (1), (2), (3), (4), (6), (7), (8), 39–4410 (3); 39–4411; 39–4417B; 39–4423; and 39–4426.

(ii) The following are the Idaho Department of Health and Welfare Rules and Regulations, as contained in title 1, chapter 5, "Rules and Regulations and Standards for Hazardous Waste", published December 13, 1988, in effect as of June 10, 1988, (hereinafter referred to as "IDHW Regulations") are part of the approved program under RCRA: IDHW Regulations, §§ 16.01.5000; 16.01.5001; 16.01.5002, 01, 02; 16.01.5003; 16.01.5004; 16.01.5005; 16.01.5006, 01, 02; 16.01.5007; 16.01.5008 (with the exception of 16.01.5008, 06—appendix A, which is the counterpart to 40 CFR 264.101); 16.01.5009; 16.01.5010, 01, 02; 16.01.5011; 16.01.5012; 16.01.5013; 16.01.5356, 01, 02, 03, 04, 05; and appendix A. (Copies of the IDHW Regulations, edition dated December 13, 1988, in effect as of June 10, 1988, that are incorporated by reference in this paragraph are available from Idaho Department of Health and Welfare, Administrative Procedures Section, 1410 N. Hilton Boise, Idaho, 83720).

(2) The following statutes although *not* codified herein for enforcement purposes, are part of the authorized state program. These statutes are as contained in Chapter 44 "Hazardous Waste Management", section 39 of the Idaho Code (I.C.), General Laws of Idaho Annotated Volume 7A, published in May 1985 by the Michie Company, Law Publishers, Charlottesville, Virginia: I.C. 39–4414 ("Remedies") and I.C. 39–4415 ("Violations constituting misdemeanors") and as contained in the 1988 Cumulative Pocket Supplement Idaho Code, Volume 7A, published in June 1988; by The Michie Company, Law Publishers, Charlottesville, Virginia: I.C. 39–4413 ("Enforcement procedures").

(3) The following statutes and regulations concerning routing of hazardous waste shipments are "broader in scope" than the Federal program, are *not* codified herein for enforcement purposes and are *not* part of the authorized program. The statutes are as contained in chapter 44 "Hazardous Waste Management", section 39 of the Idaho Code (I.C.) 1988 Cumulative Pocket Supplement, Volume 7A, published June 1988; by The Michie Company, Law Publishers, Charlottesville, Virginia: I.C. 39–4410 (1), (2), (4), and (5); and the regulations as contained in Title 1, chapter 5, "Rules, Regulations and Standards for Hazardous Waste", published December 13, 1988, in effect as of June 10, 1988, hereinafter referred to as "IDHW Regulations" are: IDHW Regulations section 16.01.5500, 01 and 02.

(b) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region X and Idaho Department of Health and Welfare signed by the EPA Regional Administrator on March 26, 1990, is codified as part of the authorized hazardous waste management program under Subtitle C of RCRA 42 U.S.C. 6921 *et. seq.*

(c) *Statement of legal authority.* (1) "Attorney General's Statement for Final Authorization", signed by the Attorney General of Idaho on July 5, 1988; and (2) Letter by the Attorney General of Idaho to EPA signed on July 3, 1989, amending and supplementing the July 5, 1988 Attorney General's Statement for Final Authorization, are codified as part of the approved hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(d) *Program description.* The Program Description and any other materials submitted as part of the original application or as supplements thereto are codified as part of the approved hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

§ 272.652 State-administered program: Interim authorization.

Pursuant to section 3006(g) of RCRA as amended by the HSWA, 42 U.S.C. 6926(g): Idaho has interim authorization for the following elements submitted to EPA in Idaho's program application for interim authorization and approved by EPA on April 9, 1990 (see 55 FR 11015, March 26, 1990).

(a) *State Statutes and Regulations.* (1) The requirements in the Idaho statutes and regulations cited in paragraphs (a)(1)(i) and (a)(1)(ii) of this section are incorporated by reference and codified as part of the hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et seq.* This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(i) Statutory authority is vested in the State of Idaho, Board of Health and Welfare, by the Hazardous Waste Management Act of 1983 (HWMA). The following statute concerns the HSWA corrective action provision that received interim authorization as contained in the chapter 44 "Hazardous Waste Management", section 39 of the Idaho Code (I.C.), 1988 Cumulative Pocket Supplement, Volume 7A, published June 1988; by The Michie Company, Law Publishers, Charlottesville, Virginia: I.C. 39–4409(5).

(ii) The following Idaho Department of Health and Welfare Rule and Regulation which contains the corrective action provision for which Idaho received interim authorization is as contained in Title 1, chapter 5, "Rules, Regulations and Standards for Hazardous Waste" as published December 13, 1988, in effect as of June 10, 1988, (hereinafter referred to as "IDHW Regulations") and is part of the approved program under RCRA: IDHW Regulations, section 16.01.5008, 06 (with the exception of 16.01.5008, 06—Appendix A, which is the counterpart to 40 CFR 264.101). (Copies of this regulation and all other IDHW Regulations, edition dated December 13, 1988, in effect as of June 10, 1988, that are incorporated by reference in this paragraph are available from Idaho Department of Health and Welfare, Administrative Procedures Section, 1410 Hilton, Boise, Idaho, 83720).

§§ 272.652–272.699 [Reserved]

[FR Doc. 90–28539 Filed 12–5–90; 8:45 am]

BILLING CODE 6560–50–M

ACTION

45 CFR Part 1215

Freedom of Information Act Regulations; Technical Amendment

AGENCY: ACTION.

ACTION: Final rule; technical amendment.

SUMMARY: ACTION's final rule on the production, inspection and copying of records and documents under the Freedom of Information Act, as amended by Public Law 93–502, was published in the **Federal Register** on May 15, 1990 (55 FR 20152). A provision on records which may be exempt from disclosure was inadvertently omitted in that final rule. This amendment restores that provision.

EFFECTIVE DATE: January 7, 1991.

FOR FURTHER INFORMATION CONTACT: Edward F. Carey, FOIA Officer, ACTION, room 3202, 1100 Vermont Ave., NW., Washington, DC 20525; (202) 634–9242.

SUPPLEMENTARY INFORMATION: A section entitled "Records which may be exempt from disclosure," discusses in detail the types of records that may be exempted from disclosure pursuant to 5 U.S.C. 552 (b), and is being added as § 1215.10. The section on exemptions appeared in the Agency's former regulation, but was omitted when the revised regulation was published on May 15, 1990. The Agency has now determined that the section of exemptions should be reinstated.

List of Subjects in 45 CFR Part 1215

Freedom of information.

Accordingly, 45 CFR part 1215 is amended as follows:

PART 1215—PROCEDURES FOR DISCLOSURE OF RECORDS UNDER THE FREEDOM OF INFORMATION ACT

1. The authority citation for part 1215 is revised to read as follows:

Authority: Pub. L. 93–113, 87 Stat. 411 (42 U.S.C. 4951, et seq.); 42 U.S.C. 5042 (13); and 5 U.S.C. 552.

2. Section 1215.10 is added to read as follows:

§ 1215.10 Records which may be exempt from disclosure.

The following categories are examples of records maintained by ACTION which, under the provision of 5 U.S.C. 552(b), may be exempted from disclosure:

(a) Records required to be withheld under criteria established by an Executive Order in the interest of national defense or foreign policy and which are in fact properly classified pursuant to any such Executive Order. Included in this category are records required by Executive Order No. 11652, as amended, to be classified in the interest of national defense or foreign policy.

(b) Records related solely to internal personnel rules and practices. Included in this category are internal rules and regulations relating to personnel management and operations which cannot be disclosed to the public without substantial prejudice to the effective performance of significant function of the Agency.

(c) Records specifically exempted from disclosure by statute.

(d) Information of a commercial or financial nature including trade secrets given in confidence. Included in this category are records containing commercial or financial information obtained from any person and customarily regarded as privileged and confidential by the person from whom they were obtained.

(e) Interagency or intra-agency memoranda or letters which would not be available by law to a party other than a party in litigation with the Agency. Included in this category are memoranda, letters, interagency and intra-agency communications and internal drafts, opinions and interpretations prepared by staff or consultants and records of deliberations of staff, ordinarily used in arriving at policy determinations and decisions.

(f) Personnel, medical and similar files. Included in this category are personnel and medical information files of staff, volunteer applicants, former volunteers, and volunteers, lists of names and home addresses, and other files or material containing private or personal information, the public disclosure of which would violate a pledge of confidentiality and amount to a clearly unwarranted invasion of the privacy of any person to whom the information pertains.

(g) Investigatory files. Included in this category are files compiled for the enforcement of all laws, or prepared in connection with government litigation and adjudicative proceedings, provided however, that such records shall be made available to the extent that their production will not:

(1) Interfere with enforcement proceedings;

(2) Deprive a person of a right to a fair trial or an impartial adjudication;

(3) Constitute an unwarranted invasion of personal privacy;

(4) Disclose the identity of a confidential source, and in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful security intelligence investigation, confidential information furnished by confidential source;

(5) Disclose investigative techniques and procedures; or

(6) Endanger the life or physical safety of law enforcement personnel.

Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of portions which are exempt under this section.

Issued at Washington, DC, on November 23, 1990.

Jane A. Kenny,

Director.

[FR Doc. 90–28547 Filed 12–5–90; 8:45 am]

BILLING CODE 6050–25–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 153

[CGD 90–100]

RIN 2115–AC35

Bulk Hazardous Materials

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending its table summarizing the minimum requirements for the carriage of liquid, liquefied gas, or compressed gas hazardous materials in bulk by tankship. These amendments assign additional carriage requirements, a higher Pollution Category, or both to certain commodities already listed in the table. These amendments, which have no effect on tank barges, are necessary to align the minimum requirements in the table with those approved by the International Maritime Organization (IMO) for inclusion in its Chemical Codes applicable to tankships. These amendments should result in a further reduction in maritime pollution from tankships.

EFFECTIVE DATE: January 7, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis G. Payne, Hazardous Materials Branch, (202) 267–1577.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Mr. Curtis G. Payne, Project Manager, and Mr.

Stephen H. Barber, Project Counsel, Office of Chief Counsel.

Regulatory History

On September 6, 1990, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled "Bulk Hazardous Materials" in the **Federal Register** (55 FR 36670). The Coast Guard received no letters commenting on the proposal. A public hearing was not requested and one was not held.

Background and Purpose

This rule amends Table 1 of 46 CFR part 153, which summarizes the minimum requirements for the carriage of liquid and gas hazardous materials in bulk by tankship. The changes all consist of "upgrades" to commodities already listed in Table 1. An "upgrade" means that a commodity is assigned additional carriage requirements, a higher Pollution Category (Pol. Cat.), or both. Under this rulemaking, certain commodities become subject to one or more of the following existing special carriage requirements:

(a) *46 CFR 153.409—High level alarms.* Most commodities referenced in this rulemaking become subject to this requirement. High level alarms on tankship reduce the likelihood of a tank accidentally overflowing.

(b) *46 CFR 153.440—Cargo temperature sensors.* Four commodities become subject to this requirement. Sensors are needed to determine the cargo's temperature in order that the viscosity and melting point information under 46 CFR 153.908 may be applied. See paragraph (d) of this section.

(c) *46 CFR 153.488—Design and equipment for tanks carrying high melting point NLSs: Category B.* Two commodities, "Rosin oil" and "Tall oil (*crude and distilled*)", become subject to this requirement. Commodities subject to § 153.488 must be carried in tankships with a double bottom. In the preamble to the NPRM, "Creosote (coal tar)" was mistakenly identified as subject to this requirement (55 FR 36671). The proposed regulatory text, however, was correct.

(d) *46 CFR 153.908—Cargo viscosity and melting point information; measuring cargo temperature during discharge: Categories A, B, and C.* Seven commodities are affected by this section, which requires that the person in charge of a tankship be furnished with viscosity and melting point information on the commodity to be carried. Commodities subject to this requirement require heating to reduce their viscosity for efficient offloading. This in turn means less cargo remaining in a tank to be discharged overboard during tank cleaning or collected as slops to be disposed of at a port collection facility.

These additional requirements bring the carriage requirements for these commodities in line with the requirements for other cargoes with the same Pol. Cat. All of these amendments have been approved by IMO for incorporation in their Chemical Codes. IMO's incorporation became effective on October 13, 1990.

Discussion of Comments and Changes

1. No comments were received to the NPRM.

2. The NPRM mistakenly identified 46 CFR 153.903 as a special carriage requirement and added ".903" to the "Special requirements" column of Table 1 for seven commodities. Section 153.903, "Operating a United States ship in special areas: Categories A, B, and C", is a general requirement applicable to the carriage of any noxious liquid substance, rather than to a certain listed commodity. Therefore, all amendments proposing to add ".903" in the "Special requirements" column of Table 1 have been deleted in the final rule. Table 1 has no column for general requirements.

Regulatory Evaluation

This regulation is not major under Executive Order 12291 and not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). The Coast Guard expects the economic impact of this rulemaking to be so minimal that a Regulatory Evaluation is unnecessary.

This rulemaking amends a chemical table by adding requirements consistent with international law to further control pollution hazards. The special requirement contained in 46 CFR 153.488 which is imposed by this rulemaking will have no known effect on U.S. tankships. No U.S. Flag tankship are certificated to carry "Tall oil (*crude and distilled*)". Eight U.S. Flag tankships are permitted to carry "Rosin oil", however none of the eight currently carry, nor in the recent past have carried this commodity. The requirement that cargo viscosity and melting point information be furnished the person in charge (46 CFR 153.908) will impose a minimal burden in that this information should be readily available.

As for the high level alarm and cargo temperature sensor requirements (46 CFR 153.409 and 153.440), many tankships already have these devices for carriage of other commodities presently requiring them. Others may have had them installed in anticipation of the October 13, 1990, effective date for the IMO Chemical Code amendments. For these reasons, the Coast Guard does not expect that many tankships will be affected. No comments were received on this conclusion.

Small Entities

For the reasons set out under "Regulatory Evaluation," the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of the rulemaking and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, this final rule is categorically excluded from further environmental documentation. This final rule adds more stringent requirements for the carriage of certain chemicals to further control pollution hazards. A Categorical Exclusion Determination is included in the regulatory docket.

List of Subjects in 46 CFR Part 153

Barges, Hazardous materials transportation, Marine safety, Tank vessels.

For the reasons set out in the preamble, 46 CFR part 153 is amended as follows:

PART 153—SHIPS CARRYING BULK LIQUID, LIQUEFIED GAS, OR COMPRESSED GAS HAZARDOUS MATERIALS

1. The authority citation for part 153 continues to read as follows:

Authority: 46 U.S.C. 3703, 49 CFR 1.46. Section 153.40 issued under 49 U.S.C. 1804. Sections 153.470 through 153.491, 153.1100 through 153.1132, and 153.1600 through 153.1608 also issued under 33 U.S.C. 1903(b).

Table 1 [Amended]

2. Table 1 is amended by removing all bold-faced type wherever it may appear and adding, in its place, Roman type.

Table 1 [Amended]

3. Table 1 is amended as follows, and all material added is to appear in bold-faced type:

(a) For the entry "(iso-, n-) Butyl acrylate", in the "pollution category" column, remove the letter "D" and add, in its place, the letter "B" and, in the "Special requirements" column, add ".409" in sequential order.

(b) For the entry "2- or 3-Chloropropionic acid", in the "Special requirements" column, remove ".908(b)" and add, in its place, ".908(a), (b)".

(c) For the entry "Creosote (coal tar)", in the "pollution category" column, remove the letter "C" and add, in its place, the letter "A" and, in the "Cargo containment system" column, remove the Roman numeral "III" and add, in its place, the Roman numeral "II".

(d) For the entry "Ethyl acrylate", in the "pollution category" column, remove the letter "B" and add, in its place, the letter "A" and, in the "Special requirements" column, add ".409" in sequential order.

(e) For the entry "2-Ethylhexyl acrylate", in the "pollution category" column, remove the letter "D" and add, in its place, the letter "B" and, in the "Special requirements" column, add ".409" in sequential order.

(f) For the entry "Formaldehyde solution (37% to 50%)", in the "Special requirements" column, add ".440" and ".908(b)" in sequential order.

(g) For the entry "Methyl acrylate", in the "pollution category" column, remove the letter "C" and add, in its place, the letter "B" and, in the "Special requirements" column, add ".409" in sequential order.

(h) For the entry "Phthalic anhydride (molten)", in the "Special requirements" column, remove ".908(b)" and add, in its place, ".908(a), (b)".

(i) For the entry "Rosin oil", in the "Special requirements" column, remove the word "None" and add, in its place, ".409, .440, .488, .908(a), (b)".

(j) For the entry "Tall oil (*crude and distilled*)", in the "Special requirements" column, remove the word "None" and add, in its place, ".409, .440, .488, .908(a), (b)".

(k) For the entry "Tall oil, fatty acid (*resin acids less than 20%*)", in the "Special requirements" column, remove the word "None" and add, in its place, ".440, .908(a), (b)".

(l) For the entry "Toluenediamine", in the "Special requirements" column, remove ".908(b)" and add, in its place, ".908(a), (b)".

(m) For the entry "Vinyl neodecanate", in the "pollution category" column, remove the letter "C" and add, in its place, the letter "B" and, in the "Special requirements" column, add ".409" in sequential order.

(n) For the following entries, in the "Special requirements" column, remove the word "None" and add, in its place, ".409":

Calcium naphthenate in Mineral oil
2,4-Dichlorophenoxyacetic acid, dimethylamine salt solution
2,4-Dichlorophenoxyacetic acid, triisopropanolamine salt solution
Diphenyl ether
Diphenyl ether, Biphenyl phenyl ether mixtures
Dodecene (all isomers)
Glycidyl ester of Tridecyl acetic acid
N-Methyl-2-pyrrolidone
Methyl salicylate
Rosin soap (disproportionated) solution
Tributyl phosphate
1,1,1-Trichloroethane
1-Undecene

(o) For the following entries, in the "Special requirements" column, add ".409" in sequential order:

(n-, crude) Butyraldehyde
Chloroform
o-Chlorotoluene
m-Chlorotoluene
Coal tar naphtha solvent
Crotonaldehyde
Decyl alcohol (all isomers)
1,1-Dichloroethane
2,2'-Dichloroethyl ether
2,4-Dichlorophenoxyacetic acid, diethanolamine salt solution
1,1-, 1,2-, or 1,3-Dichloropropane
Diglycidyl ether of Bisphenol A
Diisobutyl phthalate
Dodecanol
Dodecyl diphenyl ether disulfonate solution
2-Ethylhexylamine
2-Ethyl-3-propylacrolein
Fumaric adduct of rosin, water dispersion
2-Methyl-5-ethylpyridine
Pyridine
Sodium hydrosulfide solution (45% or less)
Sodium-2-mercaptobenzothiazol solution
Styrene *monomer*
Tall oil soap (disproportionated) solution
1,1,2,2-Tetrachloroethane
1,1,2-Trichloroethane
Trichloroethylene
Trimethylhexamethylene diisocyanate (2,2,4- and 2,4,4-isomers)
Vinylidene chloride
Xylenol

Dated: November 30, 1990.

D.H. Whitten,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 90-28627 Filed 12-5-90; 8:45 am]

BILLING CODE 4910-14-M

Proposed Rules

Federal Register
Vol. 55, No. 235
Thursday, December 6, 1990

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 112

[Docket No. 89-105]

Viruses, Serums, Toxins, and Analogous Products, Amendment of the Labeling Requirements for Autogenous Biologics

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations pertaining to labeling of autogenous biologics. Current regulations prohibit manufacturers of autogenous biologics from including on the label the identity of the flock or herd from which the culture was isolated or the name of the person(s) responsible for making the isolation. This amendment would remove these restrictions and allow the manufacturers to provide more complete information on the labels of all autogenous biologics.

DATES: Consideration will be given only to comments received on or before January 7, 1991.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development Staff, APHIS, USDA, room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 89-105. Comments received may be inspected at USDA, room 1141, South Building, 14th and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Michele M. April, Senior Staff Veterinarian, Veterinary Biologics, BBEP, APHIS, USDA, room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-6332.

SUPPLEMENTARY INFORMATION:

Background

Autogenous biologics are products prepared from cultures of microorganisms which have been inactivated and are nontoxic. Microorganisms used to prepare autogenous products are isolated from sick or dead animals or birds and represent the causative agent or agents of the disease affecting such animals or birds. Under normal circumstances, microorganisms isolated from one herd or flock are not used to prepare an autogenous biologic for another herd or flock.

The regulations (§ 112.7(g)) prohibit autogenous biologics labels from showing the identity of the herd or flock from which the culture was isolated, or the name of the person(s) responsible for making the isolation. The Agency has received requests from manufacturers that they be permitted to include this information on their labels for autogenous biologics. Upon analyzing these requests and considering the nature of these products, it is the Agency's opinion that by allowing the addition of this information on labels, manufacturers would be able to provide more complete identification on their product. Current regulations allow manufacturers to use an organism for production of an autogenous biologic for up to 12 months. This may involve the use of the organism in the production and distribution of several serials during this time period. More complete identification on labeling would enable manufacturers to keep better records and better control of their inventory. This would help them to ensure that autogenous biologics are produced from the microorganisms isolated from a particular herd or flock. More complete identification on the product label would also provide the user and consumer added assurance that the autogenous biologic they receive from a manufacturer was produced from microorganisms isolated from their individual herd or flock.

Therefore, we are proposing to amend § 112.7 by removing paragraph (g) and redesignating paragraphs (h) through (l) as paragraphs (g) through (k). The general labeling requirements described in paragraph (g) also appear in § 112.2(a)(5), and need not be retained in § 112.7.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291 and Departmental Regulation 1512-1 and have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this proposed rule would have an effect on the economy of less than $100 million, would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, and would not cause 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. Currently, manufacturers of autogenous biologics are prohibited form including on labels the identity of the herd or flock from which the culture was isolated or the name(s) of the person(s) responsible for making the isolations. This proposed rule, if adopted, would allow for greater flexibility in labeling autogenous biologics.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the information collection provisions that are included in this proposed rule will be submitted for approval to the Office of Management and Budget. Your written comments will be considered if you submit them to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. You should submit a duplicate copy of your comments to: (1) Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782 and (2) Clearance Officer, OIRM, USDA, room 404-W, 14th Street and Independence Avenue SW., Washington, DC 20250.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 9 CFR Part 112

Animal biologics.

Accordingly, 9 CFR part 112 would be amended as follows:

PART 112—PACKAGING AND LABELING

1. The authority citation for 9 CFR part 112 would continue to read as follows:

Authority: 21 U.S.C. 151–159, 37 FR 28477, 28646, 38 FR 19141.

§ 112.7 [Amended]

2. In § 112.7, paragraph (g) would be removed, and paragraphs (h) through (l) would be redesignated as paragraphs (g) through (k).

Done in Washington, DC, this 30th day of November 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90–28576 Filed 12–5–90; 8:45 am]

BILLING CODE 3410-34-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 107

Small Business Investment Companies; Miscellaneous Amendments

AGENCY: Small Business Administration.

ACTION: Notice of proposed rulemaking (NPRM); extension of comment period.

SUMMARY: On September 27, 1990, SBA published in the **Federal Register** fifteen proposed amendments to the regulations governing the Small Business Investment Company program (*See* 55 FR 39422). That publication provided that comments would be accepted until November 27, 1990. The present notice extends the comment period until December 31, 1990, in order to provide more time for public comment.

DATES: Comments on the above-referenced NPRM must be received by December 31, 1990.

ADDRESSES: Written comments should be sent to Bernard Kulik, Associate Administrator for Investment, Small Business Administration, 1441 L Street NW., room 808, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Joseph L. Newell, Director, Office of Investment, Telephone (202) 653–6584.

Authority: 15 U.S.C. 687(c).

Dated: November 24, 1990.

Susan Engeleiter,

Administrator.

[FR Doc. 90–28553 Filed 12–5–90; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

RIN: 2900-AC83

Loan Guaranty: Suspension of Individual Employees of Manufactured Home Dealers

AGENCY: Department of Veterans Affairs.

ACTION: Notice of proposed rulemaking; withdrawal.

SUMMARY: This notice provides information to participants in the Department of Veterans Affairs (VA) loan guaranty program and other interested parties that VA is not longer considering a regulation, which was previously under consideration, concerning suspension of individual employees of manufactured home dealers.

EFFECTIVE DATE: December 6, 1990.

FOR FURTHER INFORMATION CONTACT: Ms. Judith Caden, Acting Assistant Director for Loan Policy (264), Loan Guaranty Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–3042.

SUPPLEMENTARY INFORMATION: On October 18, 1988, the Department of Veterans Affairs published a proposed regulatory amendment in the **Federal Register** (53 FR 40742). This proposal was titled Suspension of Individual Employees of Manufactured Home Dealers, and was designed to amend 38 CFR 36.4235 to authorize the suspension of individual employees of manufactured home dealers who engage in unfair or prejudicial practices. Since this authority is now set forth in VA's government-wide debarment and suspension regulations at 38 CFR part 44, a change to 38 CFR 36.4235 is no longer necessary.

Approved: September 4, 1990.

Edward J. Derwinski,

Secretary of Veterans Affairs.

[FR Doc. 90–28546 Filed 12–5–90; 8:45 am]

BILLING CODE 8320-01-M

FEDERAL MARITIME COMMISSION

46 CFR Parts 580 and 581

[Docket No. 90-25]

Publication and Filing of Payments Made by Common Carriers to Foreign Freight Forwarders and Ocean Freight Brokers in Tariffs and Service Contracts

AGENCY: Federal Maritime Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The proposed rule in this proceeding, published September 25, 1990 (55 FR 39181), would amend the Commission's foreign tariff filing regulations to require common carriers and conferences to state in their tariffs the amount of payments made, and a description of services for which any payments are made, to foreign freight forwarders or ocean freight brokers. The Proposed Rule would define foreign freight forwarders and ocean freight brokers. The Proposed Rule would also amend the FMC's service contract filing regulations to require common carriers and conferences to state in service contracts the amount of payments made, and a description of services for which any payments are made, to foreign freight forwarders or ocean freight brokers. The Proposed Rule would require public disclosure of any payments made by common carriers for services provided by foreign freight forwarders and ocean freight brokers. The proposal is intended to facilitate enforcement efforts to detect and prevent unlawful activity related to such payments. Comments on the Notice of Proposed Rulemaking were previously due November 26, 1990. The National Customs Brokers and Forwarders Association of America, Inc. and the Pacific Coast Council of Freight Forwarders and Customs Brokers now have requested an extension of time to file comments. This notice grants the requests in part and extends the time for filing comments to December 26, 1990. Because the instant requests were not filed until the very date comments were due, parties who have previously filed comments without knowing of a possible extension and who desire to supplement their submissions will be allowed to do so. Those submitting comments and supplementary comments are cautioned, however, that they are not permitted to include material in reply to those comments already filed.

DATES: Comments due December 26, 1990.

ADDRESSES: Send comments (original and fifteen copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573-0001, (202) 523-5725.

FOR FURTHER INFORMATION CONTACT: Austin L. Schmitt, Director, Bureau of Trade Monitoring, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573-0001, (202) 523-5787.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 90-28572 Filed 12-5-90; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 76

[MM Docket Nos. 90-570 [1] and 83-670; FCC 90-373]

Broadcast and Cable Services, Children's Television Act

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This Notice of Proposed Rule Making initiates a proceeding to implement the commercial limits and educational and informational programming requirements mandated in the Children's Television Act of 1990 (the Act). The Act imposes three requirements which affect FCC Rules. First, commercial television broadcast licensees and cable operators must limit the amount of advertising in children's programming to not more than 10.5 minutes per hour on weekends and not more than 12 minutes per hour on weekdays. Second, in its review of television broadcast renewal applications, the Commission must consider whether the licensee has complied with the commercial limits and has served "the educational and informational needs of children through the licensee's overall programming, including programming specifically designed to serve such needs." Finally, the Act requires that the Commission: (1) Complete a pending proceeding, MM Docket 83-670, which includes the issue of how to define and treat "program length commercials," and (2) conduct a rulemaking to prescribe standards implementing the statutorily-mandated commercialization limits on children's programming. In light of the mandate of the Act, the Commission initiates this new proceeding and consolidates it with MM Docket 83-670.

DATES: Comments are due by January 30, 1991, and reply comments are due by February 20, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Regina Harrison, Mass Media Bureau, Policy and Rules Division, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

1. This is a synopsis of the Commission's Notice of Proposed Rule Making (Notice) in MM Docket No. 90-570, FCC 90-373, adopted November 8, 1990, and released November 30, 1990.

2. The complete text of the *Notice* is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Synopsis of Notice of Proposed Rule Making

3. The Commission adopts this Notice in compliance with the Act (Pub. L. No. 101-437, enacted October 18, 1990). The Act requires that commercial television broadcast licensees and cable operators limit the amount of advertising in children's programs to "not more than 10.5 minutes per hour on weekends and not more than 12 minutes per hour on weekdays".[2] The Commission proposes to define "children" as 12 years of age and under for purposes of applying the commercial limits. This age range comports with the purpose of establishing the commercial limitations to protect youngsters not yet old enough to distinguish commercial from programming material. The Commission also proposes to define "commercial matter" in terms of common parlance, *i.e.*, as air time sold for the purposes of selling a product.

4. The commercial limits apply to commercial television stations, as well as to "cable operators" as defined in section 602 of the Cable Communications Policy Act of 1984 (47 U.S.C. 522(4)). The legislative history of the Children's Television Act suggests that if a cable operator merely passively transmits a commercial television broadcast station, the cable operator would not be independently liable for violations of the Act committed by the broadcast station. In addition, section 611(e) of the Cable Communications Policy Act of 1984 (47 U.S.C. 531(e)) provides that a cable operator "shall not exercise any editorial control over any public, educational, or governmental use of channel capacity provided pursuant to this Section." The Commission thus proposes that cable operators not be held responsible for ensuring compliance with the commercial limits either on the commercial television stations or the access channels they carry. The Commission proposes, however, to hold cable operators responsible for ensuring that the commercial limits are not exceeded in children's programming carried on any channel locally originated by the operator. The Commission seeks comment on these tentative conclusions. Neither the Act nor the legislative history would appear to intend to hold cable operators responsible for violations of the commercial limits on the part of cable network programs. The Commission seeks comment on the legal authority it would have to hold a cable network programmer directly liable for cable network program violations.

5. The Commission proposes to impose forfeitures on both cable and broadcast operators that exceed the commercial limits in more than a *de minimis* fashion. For continuing or otherwise egregious violations of these rules, television broadcast licensees would lose their license renewal expectancy and their renewal applications would be set for hearing. The Notice asks interested parties to comment on this proposal and on whether the Commission should permit commercial television broadcasters to certify compliance with the commercial limits in their renewal applications. Further, the Notice asks whether it would be necessary to impose any recordkeeping requirements with respect to the commercial limits.

6. The Act requires that, in reviewing television license renewal applications, the Commission consider whether the licensee has served "the educational and informational needs of children through the licensee's overall programming, including programming specifically designed to serve such needs." The statute provides that the Commission may also consider (1) "any special nonbroadcast efforts * * * which enhance the educational and informational value of such programming" and (2) any "special

[1] Pleadings and comments citing both captioned dockets will be physically filed and recorded as filed in Mass Media Docket No. 90-570.

[2] After January 1, 1993, the Commission may, after notice and comment and demonstration of need, modify these limits in accordance with the public interest. *See* the Act, Section 102(c).

effort" to produce or support programming broadcast by another station in the licensee's market that is "specifically designed to serve the educational and informational needs of children."

7. The Commission seeks comment on whether Congress intended that the Act's educational and informational programming requirements apply to both commercial and noncommercial stations. Additionally, the Commission solicits comments on how children should be defined for purposes of reviewing broadcasters' compliance with these requirements. The Notice seeks comment on whether the age range of "children" should be the same as for commercial limits, *i.e.*, 12 years of age or under, or whether it should be more broadly defined. Parties are also invited to comments on whether the Act requires broadcasters to target their programs to particular segments of the child audience, whether such targeting is feasible, and how such segments might be defined.

8. The Notice proposes to require each licensee to assess the needs of children given: (1) The circumstances with the community, (2) other programming on the station, (3) programming aired on other broadcast stations within the community, and (4) other programs for children available in the broadcaster's community of license. Each licensee should then air programs intended to meet the "educational and informational needs of children" responding to its assessment. The Commission seeks comment on this proposal. Commenters who believe that the Commission should attempt to define for broadcasters the parameters of the Act's children's programming requirement should address what definition of "educational and informational programming" might be used.

9. The Commission proposes to require broadcasters to maintain records sufficient to determine at renewal time whether the broadcaster has served the educational and informational needs of children as provided in the Act. The Notice proposes to leave to the broadcaster's judgment the form in which it will maintain such records. At a minimum, however, the records should include a description of the programming, as well as its time, date and duration. The Notice proposes to require broadcasters to maintain these records in their public inspection file. The Notice also proposes, consistent with the legislative history, that broadcasters be required to submit those records with their license renewal applications. The Commission seeks comment on these proposals, and on whether, given the legislative history of the Act, it would nevertheless be possible as an alternative to permit broadcasters to certify their compliance on a short-form renewal. The Notice also invites comment on whether the Commission's policy with respect to remedies for television broadcasters' failure to meet the educational and informational needs of children should be analogous to those proposed for commercialization limits.

10. The Notice solicits comment on what the effective date of our implementing rules with regard to renewal applications should be. One potential approach might be that any applications for renewal filed after the new commercialization and children's programming rules and policies are in effect, must demonstrate compliance with such rules and policies from the time of their effective date, however brief a period that may be. Although this approach comports with the language of the statute requiring review for compliance "[a]fter the standards required by section 102 [the commercial limits] are in effect," the legislative history of the Act suggests that Congress may have intended to afford licensees a longer period of notice with respect to the children's programming requirements. The Notice therefore requests comment on whether to require television broadcast renewal applicants to demonstrate compliance with the Act's programming requirements as of October 1991. It also seeks comment on whether we should allow a similar notice period for implementation of commercial limits.

11. The final provision of the Act requires that the Commission complete MM Docket No. 83–670 in 180 days. That docket concerns (1) the appropriate commercial levels in children's programming, an issue now superseded by the Act; and (2) the propriety of product-related programs, including those using interactive toys. The Commission now (1) incorporates the entire record of Docket 83–670 into this consolidated proceeding; (2) dismisses as moot, in light of the Act, that portion of Docket 83–670 relating to commercial limits, and (3) seeks further comment on the issue of product related programs. The Notice tentatively proposes to define "program-length commercial" in the context of children's programming as a program associated with a product in which commercials for that product are aired. The Notice observes that the Commission traditionally has defined "program-length commercial" as a program segment "so interwoven with, and in essence auxiliary to the sponsor's advertising * * * that the entire program constitutes a single commercial promotion for the sponsor's products or services." The Commission seeks comment on the utility of its proposed definition and on how it might be refined further for children's programming. Further, the Notice invites comment on whether any children's program that was found to be a "program-length commercial" would count toward the statutory commercial limits, and/or whether there should be a separate rule or policy applicable to such programs. The Notice also invites comment on whether and how application of the proposed definition or any other definition of "program-length commercial" would apply to existing programs.

12. The Commission tentatively finds that, since the issuance of the Further Notice of Proposed Rule Making/Notice of Inquiry (Further Notice) in MM Docket 83–670 (52 FR 44616, November 20, 1987) interactive toys have not been used with children's programs. The Notice requests comment on whether this impression is accurate and on whether there are any children's programs in which such toys are being used. Assuming the Notice is correct in this conclusion, there appears to be no need for further consideration of regulations relating to interactive toy programs. If, however, such toys are being used, the Notice invites comment on whether any Commission action is appropriate or necessary, and if so, what form should such Commission action take.

13. The Further Notice deferred a decision on requests by Action For Children's Television (ACT) that we require sponsorship identification announcements to be interspersed throughout programs involving interactive toys and program-length commercials. The Notice now seeks comment on when licensees should have a section 317 or other binding obligation (*see* 104 FCC 2d 371, n. 41) to air sponsorship identification announcements in product-related programs, either in the form that ACT requests or in some other manner. Also, the Notice seeks comment on whether the particular technique suggested by ACT, that of interspersing such announcements, would adequately apprise a child audience of the content of a program.

Paperwork Reduction Act Statement

14. The proposals contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980, and

found, if adopted, to impose new or modified information requirements on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget as prescribed by the Act.

Ex Parte Consideration

15. This is a non-restricted proceeding. *See* § 1.1231 of the Commission's Rules, 47 CFR 1.1231, for rules governing permissible *ex parte* contacts.

Comment Information

16. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before January 30, 1991, and reply comments on or before February 20, 1991. No extension of these comment periods is anticipated. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

Initial Regulatory Flexibility Act Analysis

17. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, the actions proposed in this decision, if enacted, will impact on commercial television stations, cable operators, program sponsors and potential sponsors, program producers and suppliers, and possibly non-commercial television stations. As prescribed by the Act, commercial limitations and educational and informational programming requirements would be effectuated. In the case of television broadcasters, compliance would be considered as part of the renewal process. The Act provides broadcasters with flexibility in fulfilling their children's programming obligations and in the accompanying recordkeeping burden, and that flexibility is maintained in the Commission's proposals. Public comment is requested on the initial regulatory flexibility analysis set out in full in the Commission's complete decision.

18. As required by section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, but they must have a separate and distinct heading designating them as responses to the Regulatory Flexibility Analysis. The Secretary shall send a copy of this Notice of Inquiry, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981)).

19. Authority for the actions proposed above is contained in sections 4(i), 4(j), 303(r), 317, and 503 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r), 317, and 503, and in the Children's Television Act of 1990, Pub. L. 101–437.

List of Subjects

47 CFR Part 73

Television broadcasting.

47 CFR Part 76

Cable television.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 90–28604 Filed 12–5–90; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 55, No. 235
Thursday, December 6, 1990

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

DEPARTMENT OF AGRICULTURE

Office of the Secretary

National Plant Genetic Resources Board Meeting

According to the Federal Advisory Committee Act of October 1972 (Pub. L. 92–463, 86 Stat. 770–776, the USDA, Science and Education, announces the following meeting:

Name: National Plant Genetic Resources Board.

Date: January 29–30, 1991.

Time: 8:30 a.m.–5 p.m., January 29; 8:30 a.m.–12 noon, January 30.

Place: Conference Room 104–A, Administration Building, Department of Agriculture, Washington, DC.

Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permits.

Comments: The public may file written comments before or after the meeting with the contact person below.

Purpose: To review matters that pertain to plant germplasm in the United States and possible impacts on related national and international programs; and discuss other initiatives of the Board.

Contact Person: H. L. Shands, Executive Secretary, National Plant Genetic Resources Board, U.S. Department of Agriculture, BARC–West, room 140, Building 005, Beltsville, Maryland 20705. Telephone: (301 344–3311. Done at Beltsville, Maryland, this 26th November 1990.

Henry L. Shands,

Executive Secretary, National Plant Genetic Resources Board.

[FR Doc. 90–28629 Filed 12–5–90; 8:45 am]

BILLING CODE 3510-03-M

Forest Service

Flying Twisp Timber Sale, Okanogan National Forest, Okanogan County, WA

AGENCY: Forest Service, USDA.

ACTION: Cancellation of an environmental impact statement.

SUMMARY: The Office of the Secretary, USDA, gave notice that the Chief of the Forest Service vacated the decision contained in the December 1988 Record of Decision which amended the Regional Guide for the Pacific Northwest Region with regard to management of northern spotted owl habitat. This notice appeared in the October 3, 1990 **Federal Register** (55 FR 40413). The announcement in the **Federal Register** further states that the Forest Service will conduct timber management activities in a manner not inconsistent with the May 1990 Interagency Scientific Committee recommendations pending enactment of new legislation. The Interagency Scientific Committee report recommends that a large portion of the Flying Twisp Timber Sale project area be placed in a Category 3 Habitat Conservation Area, which precludes timber harvest.

The Notice of Intent, published in the **Federal Register** of May 25, 1990, is hereby rescinded (55 FR 21637).

FOR FURTHER INFORMATION CONTACT: Jennifer Klepach, Presale Forester, Twisp Ranger District, P.O. Box. 188, Twisp, WA 98856; phone (509) 997–2131

Dated: November 19, 1990.

Sam Gehr,

Forest Supervisor.

[FR Doc. 90–28582 Filed 12–5–90; 8:45 am]

BILLING CODE 3410-11-M

Plumas National Forest, California; Intention To Prepare an Environmental Impact Statement on California Department of Forestry Conservation Camp

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: Notice is hereby given that the USDA Forest Service will prepare an Environmental Impact Statement to disclose the environmental consequences of a proposed California Department of Corrections Conservation Camp located on the La Porte Ranger District, Plumas National Forest, in Yuba County, California. The proposed location is approximately 35 air miles from Marysville, California, in T. 18 N. and Range 7 E., section 34, Mt. Diablo Meridian. The Forest Service invites written comments on this proposal. A full environmental analysis will be conducted. The Draft Environmental Impact Statement (DEIS) will be published in May 1991, and the Final Environmental Impact Statement (FEIS) will be available for review in August 1991.

DATES: Comments concerning the scope of analysis should be received in writing by January 30, 1991.

ADDRESSES: Submit written comments and suggestions to Charles W. Smay, District Ranger, P.O. Drawer 369, Challenge, CA 95925.

FOR FURTHER INFORMATION CONTACT: Michael A. Heath, Resource Officer, phone 916–675–2462.

SUPPLEMENTARY INFORMATION: The California Department of Forestry and Fire Protection and the California Department of Corrections propose jointly to operate a minimum security conservation camp in Yuba County. Several locations have been proposed on the Plumas National Forest and several locations on private lands.

The conservation camp will be designed to handle 140 men year round. An important aspect of the camp will be the various natural resource projects that will be performed by camp crews. These projects generally fall into the following categories:

1. Fire defense improvements, such as fuelbreak construction and roadside hazard reduction.
2. Forest conservation, such as tree seed collection, tree planting, wildlife habitat improvement, and recreation campground improvement.
3. Emergency activity (Firefighting, flood control, and search and rescue).
4. In camp projects (cabinet carpenter work, metal welding, and automotive maintenance).

The purpose of the conservation camp program is to provide training and use of inmates assigned to the camps for the furtherance of conservation and development of natural resources. A range of alternatives will be considered for the location of the camp including the use of private lands and state lands. One alternative will be no action.

Mary J. Coulombe, Forest Supervisor, Plumas National Forest, Quincy, California, is the responsible official.

Public participation will be especially important at several points during the analysis. The first point is during the scoping process (40 CFR 1501.7). Some initial scoping and analysis have been

completed for this proposed project. Comments received during the original scoping will be retained and considered in the analysis. The Forest Service will be seeking information, comments, and assistance from federal, state, and local agencies, other individuals and organizations who may be interested in or affected by the proposed action. This information will be used in preparation of the DEIS. The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Exploring addition, alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e. direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments.

The Fish and Wildlife Service, Department of the Interior, will be invited to participate as a cooperating agency to evaluate potential impacts on threatened and endangered species habitat if any such species are found to exist in the proposed project area.

The DEIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for the public to review by May 1991. At that time the EPA will publish a notice of availability of the DEIS in the **Federal Register**. The comment period on the DEIS will be 45 days from the date the Environmental Protection Agency's Notice of Availability appears in the **Federal Register**. It is very important that those interested in the location and management of the conservation camp participate at that time. To be most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions (*Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 533 (1978)), and the environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final Environment Impact Statement (*City of Angoon* v. *Hodel*, 803 F.2nd 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

After the comment period for the DESI ends, the comments received will be analyzed and considered by the Forest Service in preparation of the FEIS. The FIES is scheduled to be completed by August 1991. In the FEIS the Forest Service is required to respond to comments received (40 CFR 1503.4). The responsible official will consider comments, responses, environmental consequences discussed in the EIS, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to appeal under 36 CFR part 217.

Dated: November 19, 1990.

Mary J. Coulombe,

Forest Supervisor.

[FR Doc. 90-28577 Filed 12-5-90; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket No. 901100-0300]

Current Industrial Reports

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of determination.

SUMMARY: The Bureau of the Census will make the changes listed below, effective January 1, 1991, to the Current Industrial Reports (CIR) program. The Census Bureau conducts the surveys in the CIR program under authority of title 13, United States Code, sections 41, 61, 81, 131, 182, 224, and 225. This action is made necessary by a reduction to the 1991 fiscal year CIR base budget.

ADDRESSES: Director, Bureau of the Census, Washington, DC 20233.

FOR FURTHER INFORMATION CONTACT: Gaylord Worden on (301) 763-5850.

SUPPLEMENTARY INFORMATION: The Census Bureau, authorized by title 13, United States Code, conducts a series of monthly, quarterly, and annual surveys as part of the CIR program in order to provide key measures of production, shipments, and/or inventories on a national basis for selected manufacturered products. Changes to the CIR program were initially proposed in a Notice of Consideration, July 27, 1990, 55 FR 30732, to meet the reduction to the 1991 fiscal year CIR base budget. As a result of the Notice of Consideration, during the period July 27 to August 27, we received 137 letters resulting in over 230 comments pertaining to specific surveys. Virtually all of the letters were opposed to the proposed modifications, citing the loss of timely data as the primary concern. However, our ability to meet the needs of all data users is extremely limited due to the significant reduction to the CIR program budget. Therefore, unless non-Census Bureau funds are forthcoming, we must proceed with the following changes to the CIR program effective January 1, 1991.

Change Survey Frequency From Monthly to Quarterly

M20A—Flour Milling
M20J—Oilseeds, Beans, and Nuts
M20K—Fats and Oils
M22P—Cotton
M28A—Inorganic Chemicals
M28B—Inorganic/Phosphates Fertilizer
M28C—Industrial Gases
M28F—Paint, Varnish, Lacquer
M31A—Shoes and Slippers
M32D—Clay Construction Products
M37L—Truck Trailers

Discontinue Annual Surveys

MA20D—Confectionery
MA24F—Hardwood, Softwood Plywood
MA26A—Pulp, Paper, and Board
MA30A—Rubber
MA32J—Fibrous Glass
MA34N—Selected Heating Equipment

These surveys have been approved by the Office of Management and Budget (OMB Control Numbers 0607-0206, 0607-0392, 0607-0393, 0607-0395, 0607-0475, and 0607-0476) in accordance with the Paperwork Reduction Act, Public Law 96-511, as amended.

Dated: November 30, 1990.

Barbara Everitt Bryant,

Director, Bureau of the Census.

[FR Doc. 90-28563 Filed 12-5-90; 8:45 am]

BILLING CODE 3510-07-M

Foreign-Trade Zones Board

[Order No. 492]

Resolution and Order Approving the Application of the Manatee County Port Authority for a Foreign-Trade Zone in Manatee County, FL

Proceedings of the Foreign-Trade Zones Board, Washington, D.C.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Manatee County Port Authority, filed with the Foreign-Trade Zones Board on August 31, 1989, requesting a grant of authority for establishing, operating, and maintaining a general-purpose foreign-trade zone in Manatee County, Florida, within the Port Manatee Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's requlations are satisfied, and that the proposal is in the public interest, approves the application.

As the proposal involves open space on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to Section 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board for approval prior to the commencement of any manufacturing operation within the zone. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority To Establish, Operate, and Maintain a Foreign-Trade Zone In Manatee County, FL

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Manatee County Port Authority (the Grantee), has made application (filed August 31, 1989, FTZ Docket 14–89, 54 FR 37495, 9/11/89) in due and proper form to the Board, requesting the establishment, operation, and maintenance of a foreign-trade zone in Manatee County, Florida, within the Port Manatee Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied;

Now, Therefore, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 169, at the location mentioned above and more particularly described on the maps and drawings accompanying the application, subject to the provisions, conditions, and restrictions of the Act and the Regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also the following express conditions and limitations:

Operation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits shall be obtained from federal, state, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone site in the performance of their official duties.

The grant does not include authority for manufacturing operations, and the Grantee shall notify the Board for approval prior to the commencement of any manufacturing operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenues of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zone Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Office at Washington, DC, this 21st day of November, 1990, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Robert Mosbacher,

Secretary of Commerce, Chairman and Executive Officer.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 90–28667 Filed 12–5–90; 8:45 am]

BILLING CODE 3510–DS–M

[Order No. 493]

Resolution and Order Approving With Restriction the Application of the Greater Kansas City Foreign-Trade Zone, Inc., for a Special-Purpose Subzone for Sink Processing at the Metcraft Plant, Grandview, MO

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) has adopted the following Resolution and Order;

The Board, having considered the matter, hereby orders:

After consideration of the application of the Greater Kansas City Foreign-Trade Zone, Inc., grantee of FTZ 15, filed with the Foreign-Trade Zones Board (the Board) on September 5, 1989, requesting special-purpose subzone status for a period not beyond December 31, 1998, for the stainless steel sink finishing operation at the Metcraft, Inc., manufacturing plant in Grandview, Missouri, adjacent to the Kansas City Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the FTZ Board's regulations would be satisfied, and that the proposal would be in the public interest if approval were subject to a restriction that requires that all foreign merchandise admitted to the plant under foreign-trade zone procedures be reexported or destroyed, approves the application subject to the foregoing restriction and time period (12/31/98).

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority To Establish a Foreign-Trade Subzone in Grandview, MO

Whereas, by an act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the

Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the Greater Kansas City Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone 15, has made application (filed September 5, 1989, FTZ Docket 15-89, 54 FR 181, 9/20/89), in due and proper form to the Board for authority to establish a special-purpose subzone at the stainless sink operation of Metcraft, Inc., located in Grandview, Missouri;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations would be satisfied and that the proposal would be in the public interest if approval were given subject to the restriction in the resolution accompanying this action;

Now, therefore, in accordance with the application filed September 5, 1989, the Board hereby authorizes the establishment of a special-purpose subzone at the Metcraft plant in Grandview, Missouri, designated on the records of the Board as Foreign-Trade Subzone No. 15F at the location mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and regulations issued thereunder, to the restriction in the resolution accompanying this action, and also to the following express conditions and limitations:

Activation of the subzone shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto any necessary permits shall be obtained from federal, state, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzone facility in the performance of their official duties.

The grant shall not be construed to relieve responsible parties from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer or his delegate at Washington, DC, this 27th day of November 1990, pursuant to Order of the Board.

Marjorie A. Chorlins,

Acting Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 90-28668 Filed 12-5-90; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-351-606]

Tubeless Steel Disc Wheels From Brazil; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests from the petitioner, Budd Company, Wheel and Brake Division, and one manufacturer/exporter, Borlem S.A., Empreedimentos Industriais (Borlem), the Department of Commerce (the Department) has conducted an administrative review of the antidumping duty order on tubeless steel disc wheels from Brazil. The review covers one manufacturer/exporter and the period May 1, 1988 through April 30, 1989.

As a result of the review, the Department has preliminarily found no dumping margin for Borlem. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: December 6, 1990.

FOR FURTHER INFORMATION CONTACT: Britt Doughtie or Maria MacKay, Office of Countervailing Duty Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On May 28, 1987, the Department published in the **Federal Register** (52 FR 19903) an antidumping duty order on tubeless steel disc wheels from Brazil. The petitioner and one manufacturer/exporter requested, in accordance with § 353.22(a) of the Department of Commerce Regulations (19 CFR 353.22(a) (1989)), that we conduct an administrative review. We published a notice of initiation of administrative review on June 21, 1989 (54 FR 26069). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

Imports covered by this review are shipments of tubeless steel disc wheels from Brazil designed to be mounted with pneumatic tires which have a rim diameter of 22.5 inches or greater, suitable for use on class 6, 7, and 8 trucks, including tractors, and for use on semi-trailers and buses. During the beginning of the review period, such merchandise was classifiable under item number 692.3230 of the *Tariff Schedules of United States Annotated* (TSUSA). This merchandise is currently classifiable under the *Harmonized Tariff Schedule* (HTS) item number 8716.90.50. The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers one manufacturer/exporter of this merchandise to the United States and the period May 1, 1988 through April 30, 1989.

United States Price

In calculating United States price (USP), the Department used purchase price, as defined in section 772 of the Tariff Act, because the merchandise was sold to unrelated U.S. purchasers prior to importation. Purchase price was based on the packed, c.i.f. price to unrelated purchasers in the United States. We made deductions, where appropriate, for ocean freight, ocean insurance, foreign inland freight, foreign port charges, and brokerage fees. We also added to the USP the amount of Brazilian commodity taxes forgiven by reason of exportation of the merchandise to the United States. We calculated the adjustments by multiplying the involved price of the merchandise sold in the United States by the rates of each respective Brazilian commodity tax and added the result to

USP. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value, the Department used home market price, as defined in section 773 of the Act. Home market price was based on the packed, f.o.b. customer warehouse price to unrelated purchasers. We made adjustments, where applicable, for inland freight, credit, commodity taxes, and differences in home market and U.S. packing costs. In accordance with section 773(a)(4)(C) of the Act, we made adjustments to similar merchandise to account for the differences in the physical characteristics between the U.S. and home market products.

Preliminary Result of Review

As a result of our review, we preliminarily determine that there is no dumping margin for Borlem.

Parties to the proceeding may request disclosure within five days of the date of publication of this notice. Any interested party may request, a hearing with 10 days of publication. Any hearing, if requested, will be held as early as convenient for the parties but not later than 44 days after the date of publication, or the first workday thereafter. Pre-hearing briefs from interested parties may be submitted not later than 14 days before the date of the hearing or the first workday thereafter. Rebuttal briefs and rebuttal comments, limited to issues raised in the initial round of comments, may be filed not later than 7 days after submission of the initial round of comments. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

Further, as provided for by section 751(a)(1 of the Tariff Act, no cash deposit of estimated antidumping duties shall be required for this firm. for any future entries of tubeless steel disc wheels from a new exporter not covered in this or in prior reviews, whose first shipment occurred after April 30, 1989, and who is unrelated to the reviewed firm, no cash deposit shall be required. These deposit requirements are effective for all shipments of Brazilian tubeless steel disc wheels designed to be mounted on pneumatic tires which have a rim diameter of 22.5 inches or greater, suitable for use on class 6, 7, and 8 trucks, including tractors, and for use on semi-trailers and buses entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: November 30, 1990.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-28669 Filed 12-5-90; 8:45 am]

BILLING CODE 3510-DS-M

[A-475-401]

Preliminary Results of Antidumping Duty Administrative Review: Certain Valves and Connections, of Brass, for Use in Fire Protection Systems from Italy

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: In response to a request from Rubinetteria A. Giacomini, S.p.A. ("Giacomini"), the Department of Commerce ("the Department") is conducting an administrative review of the antidumping duty order on certain valves and connections, of brass, for use in fire protection systems from Italy. The review covers Giacomini, a manufacturer/exporter of this merchandise to the United States, and the period March 1, 1989 through February 28, 1990.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: December 6, 1990.

FOR FURTHER INFORMATION CONTACT: Mark Wells or Bradford Ward, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-3003 or (202) 377-5288, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 8, 1990, the Department published in the **Federal Register**(55 FR 19094) the amended final results of its prior administrative review of the antidumping duty order on certain valves and connections, of brass, for use in fire protection systems from Italy. In accordance with 19 CFR 353.22, the Department received a request from respondent to conduct this administrative review. We published in the **Federal Register** a notice of initiation of antidumping duty administrative review on April 27, 1990 (55 FR 17793). The Department is conducting the administrative review in accordance with section 751 of the Tariff Act of 1930, as amended ("the Act").

Scope of Review

Imports covered by this review are shipments from Italy of certain valves and connections, of brass, suitable for use in fire protection systems. Such merchandise is currently classifiable under Harmonized Tariff Schedule (HTS) sub-headings 8481.80.1050 and 8481.80.1070. HTS sub-headings are provided for convenience and customs purposes. The written description remains dispositive.

This review covers Giacomini, a manufacturer/exporter to the United States of certain valves and connections, of brass, for use in fire protection systems and the period March 1, 1989 through February 28, 1990.

United States Price

In calculating United States price, the Department used purchase price as defined in section 772(b) of the Act. Purchase price is based on the packed, C&F, CIF, or delivered price, duty excluded, to unrelated distributors in the United States. Where applicable, we made adjustments for foreign inland freight, ocean freight, marine insurance, brokerage and handling charges, and U.S. inland freight.

Foreign Market Value

Giacomini, the only respondent, did not make any sales to Italian customers during the review period. Consequently, in calculating foreign market value, the Department used either sales to a third country, Canada, or constructed value (CV), as defined in section 773 of the Act.

Third country sales price was based on the packed, FOB Italian port price to unrelated distributors in Canada. In cases in which there were no comparable Canadian sales of the subject merchandise, we calculated foreign market value based on CV.

When third country prices were used, we made a deduction, where appropriate, for foreign inland freight. We deducted third country packing costs and added U.S. packing costs.

We made circumstances of sale adjustments for differences in credit terms and commissions pursuant to 19 CFR 353.56. Where no payment date was reported for a specific date, we calculated a simple average of the reported credit days on a sale-by-sale basis for the corresponding customer, and used that average as best information available in calculating credit expense. For certain sales, we deducted from the foreign market value

credit revenue which Giacomini received from its United States customers. This amount was received by Gaicomini when the customer paid after the date specified in the payment terms.

Where appropriate, we made further adjustments to the third country price to account for differences in the physical characteristics of the merchandise in accordance with 19 CFR 353.57.

Because Giacomini did not provide differences in merchandise information for one model, we used the highest calculated margin for the most similar U.S. model as best information available, pursuant to section 776(c) of the Act.

We calculated CV in accordance with section 773(e)(1) of the Act. CV includes the costs of materials, fabrication, general expenses, profit, and packing. In all cases: (1) Since the actual general expenses exceeded the statutory ten percent minimum of materials and fabrication, actual expenses were used; (2) since actual profit exceeded the statutory minimum, the actual profit was applied; and (3) imputed credit was included in selling expenses. We calculated an offset to interest expense as reflected on the company's books to avoid double counting. Because there were no sales of subject merchandise in the home market during the period of review, we used third country data to derive selling expenses and profit.

We made circumstance of sale adjustments for differences in credit terms and commissions pursuant to 19 CFR 353.56.

The CV data submitted by Giacomini was relief upon except in those instances where the costs were not appropriately quantified or valued. The following adjustments were made to Giacomini's data: (1) General and administrative and interest expenses were adjusted based on cost of sales as reflected in Giacomini's financial statements; and (2) certain indirect selling expenses excluded from the Submission were added to general expenses.

Currency Conversion

In accordance with 19 CFR 353.60, we used the official exchange rates in effect on the appropriate dates for determining foreign market value. All currency conversions were made at the rates certified by the Federal Reserve Bank.

Preliminary Results of the Review

As a result of our review, we preliminarily determine the margin to be

Manufacturer/ exporter	Time period	Margin
Rubinetteria A. Giacomini, S.p.A...	03/01/89–02/28/90	1.87

The Department will issue appraisement instructions directly to the Customs Service upon completion of this administrative review.

Furthermore, the following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of certain values and connections, of brass, for use in fire protection systems from Italy entered, or withdrawn from warehouse, for consumption on or after that publication date, as provided by section 751(a) (1) of the Act: (1) The cash deposit rate for any shipments of this merchandise manufactured or exported by the remaining known manufacturers/ exporters not covered in this review will continue to be at the rate published in the amended final results of the prior administrative review for Giacomini (55 FR 19094, May 8, 1990); (2) the cash deposit rate for Giacomini will be that established in the final results of this administrative review; and (3) the cash deposit rate for any future entries of this merchandise from a new producer and/ or exporter, not covered in this review or any other prior review, whose first shipments occurred after February 28, 1990 and who is unrelated to the reviewed firm or any previously reviewed firm, will be the same as the rate established for Giacomini in the final results of this review.

Public Comment

In accordance with 19 CFR 353.38, case briefs or any other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than 30 days after the date of publication of this notice in the **Federal Register**, and rebuttal briefs no later than 37days after the date of publication. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Such hearing will be held on January 17, 1991 at 9:30 a.m., at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Interested parties who wish to participate in the hearing must submit a written request to the Assistant Secretary for Import Administration, room B–099, at the above address within ten days of the publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), an interested party may make an oral presentation only on arguments included in its briefs.

This administrative review and notice are in accordance with section 751(a)(1) of the Act, 19 U.S.C. 1675(a)(1), and 19 CFR 353.22.

Dated November 28, 1990.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 90–28670 Filed 12–5–90; 8:45 am]

BILLING CODE 3510–DS–M

[C–223–601]

Certain Cut Flowers From Costa Rica; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the agreement suspending the countervailing duty investigation on certain cut flowers from Costa Rica. We preliminarily determine that the signatories have complied with the terms of the suspension agreement during the period January 1, 1989 through December 31, 1989. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATES: December 6, 1990.

FOR FURTHER INFORMATION CONTACT: Millie Mack or Barbara Williams, Office of Agreements Compliance, International Trade Administration, U.S. Department of Commerce, Constitution Avenue and 14th Street NW., Washington, DC 20230; telephone: (202) 377–3793.

SUPPLEMENTARY INFORMATION:

Background

On January 24, 1990, the Department of Commerce ("the Department") published a notice of "Opportunity to Request an Administrative Review" (55 FR 2398) of the agreement suspending the countervailing duty investigation on certain cut flowers from Costa Rica (52 FR 1356; January 13, 1987). On January 30, 1990, the petitioner, the Floral Trade Council, requested an administrative

review of the suspension agreement. We initiated the review, covering January 1, 1989 through December 31, 1989, on February 28, 1990 (55 FR 7015). The Department has now conducted this review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act"). T' ɔ final results of the last ıdministrative review in this case were published in the **Federal Register** on April 25, 1990 (55 FR 17478).

Scope of Review

Imports covered by this review are shipments of miniature (spray) carnations, standard carnations, and pompon chrysanthemums from Costa Rica. This merchandise is currently classifiable under the *Harmonized Tariff Schedule* ("HTS") items 0603.10.30 and 0603.10.70. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period January 1, 1989 through December 31, 1989 and six programs. The producers and exporters listed in Appendix A, accounting for more than eighty-five (85) percent of total exports of subject merchandise from Costa Rica to the United States, are signatories to the suspension agreement.

Analysis of Programs

(1) Tax Credit Certificates

Certificados de Abono Tributario ("CAT") are bearer instruments issued by the Central Bank of Costa Rica. The value of the CAT is equal to 15 percent of the f.o.b. value of a firm's shipments of non-traditional exports. The suspension agreement prohibits Costa Rican producers and exporters of cut flowers from applying for or receiving any benefits under the CAT program for shipments of the subject merchandise to the United States. Effective the date of the agreement (January 13, 1987), any unused certificates received on prior shipments of the subject merchandise to the United States were to be returned to the Central Bank of Costa Rica. During verification, we found that none of the signatory producers and exporters applied for, received, or possessed unused CATs for the subject merchandise during the review period. Therefore, we preliminarily determine that, with respect to this program, the signatories have complied with the agreement.

(2) Certificates for Increasing Exports (CIEX)

This program provides grants to agricultural and agro-industrial producers who increase exports from one year to the next. The suspension agreement prohibits Costa Rican producers and exporters of cut flowers from applying for or receiving any benefits under the CIEX program. In August 1984, the program was discontinued due to lack of funds, and the last benefit was paid in 1986. In 1988, Congress approved a special emission of bonds for the purpose of liquidating the outstanding CIEX benefits for 1983/84, 1984/85, and 1985/86. During verification, we found that none of the signatory producers and exporters received benefits under this program during the review period and that none of them is on the government's list of bond recipients. Therefore, we preliminarily determine that the signatories were in compliance with the portion of the suspension agreement covering this program.

(3) Income Tax Exemptions for Export Earnings

Firms in Costa Rica are eligible for a tax exemption for export earnings. The suspension agreement prohibits Costa Rican producers and exporters of cut flowers from applying for or receiving any income tax exemptions for income derived from exports of the subject merchandise to the United States. During verification, we found that two signatories received tax exemptions on export earnings. One company, a new signatory, provided information during verification which showed that the company generated no earnings on exports of the subject merchandise. The other company stated that it inadvertently received the benefit but has subsequently repaid the exempt portion attributable to the subject merchandise. Therefore, we preliminarily determine that, with respect to this program, the signatories have complied with the agreement.

(4) Exporter Credit for Sales Tax and Consumption Tax on Certain Domestic Purchases

Exporting firms in Costa Rica are eligible for a rebate of sales taxes and selective excise taxes (*i.e.*, indirect taxes) paid on certain domestically-purchased articles. The suspension agreement prohibits Costa Rican producers and exporters of cut flowers from applying for or receiving any rebates of sales taxes and selective excise taxes on domestic purchases not physically incorporated into any exports. During verification, we found that none of the signatory producers and exporters applied for or received any rebates of these taxes during the review period on domestic purchases not physically incorporated into exports. Therefore, we preliminarily determine that, with respect to this program, the signatories have complied with the agreement.

(5) Exporter Exemptions for Taxes and Duties on Imports

At the time the suspension agreement was signed, Costa Rican firms had to have an export contract in order to be exempted from paying duties and taxes on imported raw materials, intermediate products, and capital goods used to produce exported finished products. The suspension agreement prohibits Costa Rican producers and exporters of cut flowers from applying for or receiving any exemptions from taxes, surcharges, and duties (*i.e.*, indirect taxes) on non-physically incorporated imports.

During the negotiation of the suspension agreement, the Costa Rican government asked the Department to look into the effects of the Agrichemical and FODEA laws, enacted in 1985 and 1987, respectively, on the countervailability of this program. We stated at that time that we would address this issue in a subsequent administrative review. During verification, we were informed that the two laws have been merged and are now referred to as the FODEA law. In addition, Costa Rican government officials stated that the FODEA law eliminated the possession of the export contract as the precondition for the receipt of this benefit and that the benefit is now available to any company or individual regardless of whether it exports. Therefore, the Costa Rican government asserts that this program is no longer an export subsidy and no longer countervailable.

During verification, we found that the laws specify that a company does not have to export to be eligible for exemptions for taxes and duties on imports. Although the program is no longer export-related, the laws do stipulate that exemptions may be granted only for specific imported products, and therefore, eligibility requirements may continue to make it countervailable but as a domestic benefit. At this time, information on the record does not support the elimination from the suspension agreement of the Exporter Exemptions for Taxes and Duties on Imports program. We have requested additional information regarding this program, and we will continue to review it.

During verification, we found that the agency responsible for granting the exemptions, the Centro para la Promocion de las Exportaciones y de las Inversiones ("CENPRO"), had instituted

a system of controls to ensure that no exemptions would be given for imports not physically incorporated into exports of the subject merchandise. As part of this system of controls, ACOFLOR received a list from CENPRO that showed those flower growers that applied for tax and duty exemptions under this program. Before any applications were processed, a representative of ACOFLOR visited the flower growers claiming the exemptions, inspected the imported good in question, and verified its intended use. If the ACOFLOR representative determined that the imported good would be used in the production of the subject merchandise, ACOFLOR would require that the flower grower promptly withdraw its application for exemption.

At verification, we examined the system of controls administered by ACOFLOR and CENPRO. We also visited a flower farm and inspected the imported items that received duty exonerations during the review period. During verification, we found that one company received an exemption for non-physically incorporated merchandise for which they could provide no documentation on the use of the import (*i.e.*, whether the import was used in the production of the subject merchandise). Company officials stated that they thought these products were used in the production of non-subject merchandise; however, the company has subsequently repaid the taxes that were exempted. Because we were able to verify satisfactorily that items receiving duty-free treatment did not provide benefits on the subject merchandise, we preliminarily determine that, with respect to this program, the signatories have complied with the agreement.

(6) Accelerated Depreciation

Exporting firms in Costa Rica may use accelerated depreciation for new equipment if they are authorized for that benefit by the Ministerio de Hacienda. The suspension agreement prohibits Costa Rican producers and exporters of cut flowers from making use of accelerated depreciation in the calculation of income taxes.

During verification, we found that none of the signatory firms used this program during the review period. Therefore, we preliminarily determined that, that with respect to this program, the signatories have complied with the suspension agreement.

Preliminary Result of Review

As a result of our review, we preliminarily determine that the signatories have complied with the terms of the suspension agreement for the period January 1, 1989 through December 31, 1989.

The agreement can remain in force only as long as shipments from the signatories account for at least 85 percent of imports of the subject cut flowers into the United States. Our information indicates that the 35 signatory companies accounted for substantially all of the imports into the United States of this merchandise during the period of review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days after the date of publication. Any hearing, if reqeusted, will be held 44 days after the date of publication or the first workday thereafter. Rebuttal briefs and rebuttals to written comments, limited to issues in those comments, must be filed not later than 37 days after the date of publication. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administration review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: November 30, 1990.

Marjorie A. Chorlins,

Acting Assistant Secreary for Import Administration.

Appendix A.—List of Signatory Procedures and Exporters

1. American Flower Corporation, S.A.
2. Flores del Cerro
3. Agroflor de Pariaso, S.A.
4. Hermelink y Garces, S.A.
5. Tico Flor, S.A.
6. Cooexflo, R.L.
7. Compania Agricola Flex, S.A.
8. Flor Bella, S.A.
9. Exporflor de Cartago, S.A.
10. Lianpa, S.A.
11. Floricultura de Costa Rica, S.A.
12. Vivero El Zamorano, S.A.
13. Flores de Iztaru, S.A.
14. Inversiones Costa Flor, S.A.
15. Cooperflor
16. Euroflores, S.A.
17. Flores y Follajhes del Tirol, S.A.
18. Flores del Volcan CRP, S.A.
19. Goreza, S.A.
20. Llano Claro, S.A.
21. Oranementales Cargil, S.A.
22. Floricultura La Colina, S.A.
23. Flores Intercontinentales, S.A.
24. Fincas Nabori, S.A.
25. Flores de Coris, S.A.
26. Florex, S.A.
27. C.R.B. Internacional, S.A.
28. Flores del Caribe, S.A.
29. Zurqui Flor de Costa Rica, S.A.
30. Rio Tapezco Ltda.
31. Jardin Botanico LDL de Costa Rica S.A.
32. Tropiflor de la Montana, S.A.
33. Floricultura Santa Rosa, S.A.
34. Corporacion Rica Flor, S.A.
35. Intertec, S.A.

[FR Doc. 90-28671 Filed 12-5-90; 8:45 am]

BILLING CODE 3510-DS-M

[C-301-601]

Miniature Carnations From Colombia; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the agreement suspending the countervailing duty investigation on miniature carnations from Colombia. The review covers the period January 1, 1989 through December 31, 1989 and ten programs. We preliminarily determine that Colombian miniature carnation exporters have complied with the terms of the suspension agreement. We invite interested parties to comment on these results.

EFFECTIVE DATE: December 6, 1990.

FOR FURTHER INFORMATION CONTACT: Robert Bolling or Barbara Williams, Office of Agreements Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-3793.

SUPPLEMENTARY INFORMATION: .

Background

On January 24, 1990, the Department of Commerce ("the Department") published a notice of "Opportunity to Request an Administrative Review" (55 FR 2398) of the agreement suspending the countervailing duty investigation on miniature carnations from Colombia (52 FR 1353; January 13, 1987). On January 30, 1990, the petitioner, the Floral Trade Council, requested an administrative review of the suspension agreement. We initiated the review, covering January 1, 1989 through December 31, 1989, on February 28, 1990 (55 FR 7015). The Department has now conducted this review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by these reviews are shipments of miniature carnations from Colombia. The merchandise is currently classifiable under the *Harmonized Tariff Schedule* (HTS) item number 0603.10.30. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period January 1, 1989 through December 31, 1989 and ten programs. The producers and exporters listed in Appendix I, accounting for more than eighty-five (85) percent of the total exports of miniature carnations from Colombia to the United States, are signatories to the suspension agreement.

Analysis of Programs

(1) Tax Rebate Certificate

On April 1, 1984, the Colombian government pursuant to Law 48/83, established the Tax Rebate Certificate ("CERT"), which replaced the Tax Reimbursement Certificate ("CAT"). According to the Colombian government, the CERT rebated all or part of the indirect taxes paid by exporters. The CERT is freely negotiable on the stock market and can be used for paying a variety of taxes.

Before the suspension agreement, the Colombian government provided payment to exporters of miniature carnations in the form of CERT. Rebates were calculated as a percentage of the value of the exported product attributable to the domestic value-added content.

As a term of the suspension agreement, the Colombian government terminated CERT payments on exports of miniature carnations to the United States. The response to the Department's questionnaire stated that none of the signatory producers and exporters received benefits under this program for shipment of miniature carnations to the United States during the review period. Therefore, we preliminarily determine that this program provided no countervailable benefits to the signatories and that they have complied with the terms of the agreement.

(2) Working Capital Resolutions

Resolution 59

Resolution 59/72 provided working capital financing at preferential rates to firms that manufacture, store, or sell products destined for export. This program was updated by Resolution 22/84. All industries were eligible, except producers of coffee, petroleum, and petroleum by-products. Resolution 22/84 loans are administered by the Export Promotion Fund ("PROEXPO"), an agency of the Colombian government. The loans are for 180 days and the interest is paid quarterly, in advance.

Because we found this program to be countervailable in the agreement suspending the countervailing duty investigation on certain textile mill products and apparel from Colombia (50 FR 9863; March 12, 1985), we included it in the January 13, 1987 suspension agreement on miniature carnations. Resolution 3/87, which is an update to Resolution 22/84, was passed by PROEXPO on February 26, 1987. Resolution 3/87 changed the short-term interest rate to 22.5 percent and required that the interest rate on all outstanding loans that were taken out under Resolution 22/84 be refinanced at the interest rate benchmark.

The questionnaire response for this review period stated that no exporter of the subject merchandise applied for, or received, any short-term working capital financing under this resolution for products destined for export. Therefore, we preliminarily determine that the signatories have complied with the terms of the agreement with respect to this program.

Resolution 11

Resolution 11/87 provides pre-shipment working capital loans. Resolution 11/87 established interest rates at either 22.5 percent per year prepaid quarterly or the certificate of deposit rate (DTF) paid at the end of the quarter, whichever is higher. The DTF rate is a market-determined rate. On October 13, 1988, PROEXPO passed Resolution 009/88, which updated Resolution 11/87 and set the interest rate at 22.5 percent or the DTF rate, whichever is higher, payable at the end of each quarter.

The suspension agreement requires that the miniature carnation exporters not apply for, or receive, any short-term export financing provided by PROEXPO other than that offered at or above the Department's short-term benchmark interest rate. The questionnaire response stated that exporters received pre-shipment working capital loans under Resolution 11/87. When the suspension agreement was signed, we established a short-term benchmark interest rate of 22.5 percent for short-term loans, which was the average rate of the Fondo Financiero Agropecuario ("FFA") and the Caja Agrarian Fund as of March 31, 1986. Based on information submitted in the questionnaire response, the Department has determined that the short-term benchmark interest rate of 22.5 percent is no longer appropriate. The Department bases this conclusion on documentation in the questionnaire response for this review indicating that short-term interest rates for the FFA and the Caja Agrarian Fund have increased. Therefore, for the purpose of this review period the Department has established a short-term benchmark interest rate of 24.0 percent, the average short-term rate of the FFA and the Caja Agrarian Fund. The questionnaire response stated that no exporter of the subject merchandise received any loans at a rate below the average DTF rate of 27.94 percent during the review period, which was higher than the Department's benchmark rate of 24.0 percent for this review period. Therefore, we preliminarily determine that the signatories have complied with the terms of the agreement with respect to this program.

Resolution 14

Resolution 14/87 provides working capital financing to export companies for various products, including miniature carnations. Resolution 14/87 established financing to miniature carnation exporters by setting the base rate at the highest rate of 25.0 percent prepaid quarterly or the DTF rate, which depended on the size of the company. On October 13, 1988, PROEXPO passed Resolution 009/88, which updated Resolution 14/87 and set the interest rate at 25.0 percent or applicable interest rate according to company size (as defined under Article 8 of Resolution 14), whichever is higher, payable at the end of each quarter. The questionnaire response for this review period stated that no exporter of the subject merchandise applied for, or received, any working capital financing under this resolution. Therefore, we preliminarily determine that the signatories have complied with the terms of the agreement with respect to this program.

(3) Fixed Capital Resolution

Resolution 40

Resolution 40/78 was approved under Decree 2366 of 1974. Decree 2366/74 provides exporters with fixed asset financing. On February 26, 1987, PROEXPO passed Resolution 4/87, which updated Resolution 40/78 and changed the interest rate to 21.0 percent. On December 21, 1987, PROEXPO passed Resolution 13/87 which set the interest rate at the highest rate of 25.0 percent per year prepaid quarterly or the DTF rate, which depended on the size of the company. On October 13, 1988, PROEXPO passed Resolution 009/88, which updated Resolution 13/87 and set

the interest rate at 25.0 percent or applicable interest rate according to company size (as defined under Article 7 of Resolution 13), whichever is higher, payable at the end of each quarter.

The suspension agreement states that miniature carnations exporters are required not to apply for, or receive, any long-term export financing provided by PROEXPO other than that offered at or above the Department's long-term benchmark interest rate. The questionnaire response stated that exporters received fixed asset financing under this resolution during the review period. When the suspension agreement was signed, the Department established a long-term benchmark interest rate of 21.0 percent, which was the FFA interest rate for long-term loans. Based on information submitted in the questionnaire response, the Department has determined that the long-term benchmark interest rate of 21.0 percent is no longer appropriate. The Department bases this conclusion on documentation in the questionnaire response for this review indicating that the long-term interest rate for the FFA has increased. Therefore, for the purpose of this review period the Department has established a long-term benchmark interest rate of 26.5 percent, which was the long-term interest rate of the FFA in effect during the review period. The questionnaire response stated that no exporter of the subject merchandise received any loans at a rate below the average DTF rate of 27.94 percent during the review period, which was higher than the Department's benchmark rate of 26.5 percent for this review period. Therefore, we preliminarily determine that the signatories have complied with the terms of the agreement with respect to this program.

(4) Duty and Tax Exemptions under Plan Vallejo

Plan Vallejo exempts exporters from import duties on imported raw materials, intermediate products, and capital goods used to produce exported products. In addition, on July 22, 1988, an operational modification was established under Resolution 2601/88. The new resolution provides that a bank guarantee can now be provided at the time the imported goods clear customs.

As a term of the suspension agreement, the Colombian government agreed to no longer provide Plan Vallejo contracts on imported capital goods that are used in the production of miniature carnations exported to the United States. The questionnaire response stated that none of the signatory producers and exporters received any Plan Vallejo benefits for shipments of miniature carnations to the United States during the review period. Therefore, we preliminarily determine that the signatories have complied with the terms of the agreement with respect to this program.

(5) Resolution 10

The flower exporters, on a voluntary basis, allowed the Banco de la Republica to withhold a certain percentage of their CAT/CERT rebates earned on non-U.S. exports. As a result of the suspension agreement on roses and other cut flowers from Colombia, the Banco de la Republica also held all CAT/CERT rebates that would have been paid on exports of the flowers subject to the suspension agreement from January 1983 until November 1985, when the rebate rate on those exports was reduced to zero. PROEXPO issued Resolution 10, effective January 23, 1986, to use these funds for the diversification and development of flowers and vegetables for external markets, for transport and control procedures to prevent drug and narcotic traffic in exports of flowers and vegetables, for the development of new markets, and for payment of local and technical services required in Colombia and abroad. The resolution requires that any funds expended under this program be disbursed in a manner consistent with the suspension agreement.

The questionnaire response stated that three new research projects and a laboratory for plant and soil disease analysis were established under this program during the review period. Two of the three research projects were initiated to continue research of fungal diseases afflicting carnations; the third project involved the control of white rust. The research will be conducted by the Universidad Nacional, the Universidad de los Andes, the Centro de Investigaciones Microbiologicas, a research center, and the Asocolflores; all findings will be made public. The questionnaire response stated that during the period of review expenditures from this fund were used for legal fees, security, generic promotion and services provided by a European association. We found no evidence to indicate that these funds were provided to exporters of miniature carnations to the United States. Therefore, we preliminarily detemine that signatories did not receive a countervailable benefit from this program during the review period.

(6) Other Programs

The questionnaire response indicated that exporters of miniature carnations did not use the following programs during the period of review:

(a) Fund for Agricultural Financing;
(b) Fund for Industrial Financing;
(c) Benefits to Free Industrial Zones;
(d) Preferential Export Insurance; and
(e) Countertrade.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the signatories complied with the terms of the suspension agreement during the period January 1, 1989 through December 31, 1989.

The agreement can remain in force only as long as shipments from the signatories account for at least 85 percent of imports of the subject merchandise into the United States. The questionnaire response indicated that the signatories accounted for all imports of this merchandise into the United States during the period of review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 44 days after the date of publication or the first workday thereafter. Rebuttal briefs and rebuttals to written comments, limited to issues in those comments, must be filed not later than 37 days after the date of publication. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: November 30, 1990.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-28672 Filed 12-5-90; 8:45 am]

BILLING CODE 3510-DS-M

[C-351-406]

Certain Round-Shaped Agricultural Tillage Tools (Discs) From Brazil; Final Results of Changed Circumstances Countervailing Duty Administrative Review and Determination Not To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of final results of changed circumstances countervailing duty administrative review and determination not to revoke countervailing duty order.

SUMMARY: On October 10, 1990, the Department of Commerce published the preliminary results of its changed circumstances countervailing duty administrative review and intent not to revoke the countervailing duty offer on certain round-shaped agricultural tillage tools (discs) from Brazil. We have now completed that review and determine that changed circumstances do not exist sufficient to warrant revocation of the countervailing duty order.

EFFECTIVE DATE: December 6, 1990.

FOR FURTHER INFORMATION CONTACT: Christopher Beach or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC, 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On October 10, 1990, the Department of Commerce (the Department) published in the **Federal Register** (55 FR 11265) the preliminary results of its changed circumstances countervailing duty administrative review and intent not to revoke the countervailing duty order on certain round-shaped agricultural tillage tools (discs) from Brazil (50 FR 43008; October 22, 1985). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

Imports covered by this review are shipments from Brazil of certain round-shaped agricultural tillage tools (discs) with plain or notched edge such as colters and furrow-opener blades. This merchandise is currently classifiable under item numbers 8432.21.00, 8432.29.00, 8432.80.00, and 8432.90.00 of the *Harmonized Tariff Schedule* (HTS). The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results and intent not to revoke. We received no comments.

Final Results of Review

As a result of our review, we determine that changed circumstances do not exist sufficient to warrant revocation of the countervailing duty order on certain round-shaped agricultural tillage tools from Brazil. Therefore, we do not intend to revoke the countervailing duty order.

The current requirements for the cash deposit of estimated countervailing duties will remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(b)(1) of the Tariff Act (19 U.S.C. 1675(b)(1)) and 19 CFR 355.22(h) and 355.25(d)(3).

Dated: November 30, 1990.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-28673 Filed 12-5-90; 8:45 am]

BILLING CODE 3510-DS-M

[Docket No. 900515-0306]

The Japan Corporate Program Under the Japan Export Promotion Program

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce (the "Department") has selected 20 "threshold" companies to participate in the Japan Corporate Program (the "Program"), a component of the Japan Export Promotion Program. The Program is intended to increase the number and level of activity of U.S. firms competing in the Japanese market. Nearly 130 firms requested participation in the Program. The "threshold companies" will be required to make a five-year commitment to enter and develop the Japanese market. The Department will assist such companies by supplying market information and strategic recommendations. This notice announces the 20 threshold firms.

FOR FURTHER INFORMATION CONTACT: Laureen Daly, Office of Planning and Coordination, Trade Development, U.S. Department of Commerce, telephone (202) 377-1125.

SUPPLEMENTARY INFORMATION: On May 18, 1990, 55 FR 20618, the Department announced its intention to select approximately twenty U.S. firms to participate in the Program. These "threshold companies" will undertake long-term commitments to enter and develop the Japanese market or to expand existing activity in Japan.

Selection of Threshold Firms

From a total of nearly 130 companies that requested participation in the Program, the Department has selected the following 20 firms as threshold companies:

ADC Telecommunications, Inc., Minneapolis, MN
American of Martinsville, Martinsville, VA
Anilam Electronics Corporation, Miami, FL
Applied Communications, Inc., Omaha, NE
Candela Laser Corporation, Wayland, MA
Compaq Computer Corporation, Houston, TX
Contact Lumber Company, Portland, OR
Dana Corporation, Toledo, OH
Detroit Center Tool, Inc., Detroit, MI
General DataComm, Inc., Middleburry, CT
Guardian Industries Corporation, Northville, MI
Halstead Industries, Greensboro, NC
The Hartwell Company, Hartwell, GA
Hurco Companies, Inc., Indianapolis, IN
Masstor Systems Corporation, New York, NY
Oracle Corporation, Redwood Shores, CA
Oracle Corporation, Redwood Shores, CA
Sperry Marine, Inc., Charlottesville, VA
Square D Company, Palatine, IL
Stonhard International, Maple Shade, NJ
The Timken Company, Canton, OH

Dated: November 29, 1990.

James C. Lake,

Deputy Assistant Secretary for Trade Development.

[FR Doc. 90-28658 Filed 12-5-90; 8:45 am]

BILLING CODE 3510-DR-M

Short-Supply Determination: Withdrawal of Request for Certain Continuous Cast Slabs

AGENCY: Import Administration/International Trade Administration, Commerce.

ACTION: Notice of withdrawal of a request for a short-supply determination on continuous cast slabs.

SUMMARY: On November 21, 1990, Tuscaloosa Steel Corporation ("TSC") submitted a letter to the Secretary of Commerce ("Secretary") withdrawing its October 30, 1990, request, under various steel arrangements, for a short-supply allowance for 125,000 net tons of certain continuous cast ("concast") steel slabs for the fourth quarter of 1990.

SHORT-SUPPLY REVIEW NUMBER: 30.

EFFECTIVE DATE: November 21, 1990.

SUPPLEMENTARY INFORMATION: On September 12, 1990, TSC requested a short-supply allowance for 125,000 net tons of certain concast slabs under article 8 of the Arrangement Between the European Coal and Steel Community and the European Economic Community, and the Government of the United States of America, Concerning Trade in Certain Steel Products (the "U.S.-EC arrangement") because domestic producers could not meet its needs for the fourth quarter of 1990 and because it could not obtain sufficient supplies through regular export licenses from its traditional offshore supplier. On October 10, 1990, the Secretary granted

a short-supply allowance to TSC for this tonnage.

On October 30, 1990, the Secretary received an adequate short-supply petition from TSC for 125,000 net tons of certain concast slabs for the fourth quarter of 1990 under the U.S.-EC arrangement, article 8 of the Arrangement Between the Government of Brazil and the Government of the United States Concerning Trade in Certain Steel Products (the "U.S.-Brazil arrangement"), Paragraph 8 of the Arrangement Between the Government of Mexico and the Government of the United States of America Concerning Trade in Certain Steel Products (the "U.S.-Mexico arrangement"), and Paragraph 8 of the Arrangement Between the Government of Venezuela and the Government of the United States of America Concerning Trade in Certain Steel Products (the "U.S.-Venezuela arrangement"). These concast slabs are used in the manufacture of hot-rolled coils, plate coils and cut-to-length plate. This petition did not request tonnage in addition to the October 10, 1990, allowance. Rather, TSC requested that the Secretary grant a short-supply allowance for this quantity under the U.S.-EC, U.S.-Brazil, U.S.-Mexico and U.S.-Venezuela arrangements.

The Secretary established an official record on this short-supply request on October 30, 1990 (Case Number 30) in the Central Records Unit, room B-099, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Section 4(b)(4)(B)(i) of the Steel Trade Liberalization Program Implementation Act, Public Law No. 101-221, 103 Stat. 1886 (1989) ("the Act"), and § 357.106(b)(2) of the Department of Commerce's Short-Supply Procedures (19 CFR 357.106(b)(2)) ("Commerce's Short-Supply Procedures"), require the Secretary to make a determination with respect to a short-supply petition not later than the 30th day after the petition is filed, unless the Secretary finds that one of the following conditions exists: (1) The raw steelmaking capacity utilization in the United States equals or exceeds 90 percent; (2) the importation of additional quantities of the requested steel product was authorized by the Secretary during each of the two immediately preceding years; or (3) the requested steel product is not produced in the United States. The Secretary found that none of these conditions exists with respect to the requested product and, therefore, considered this review under the 30-day guidelines. On November 13, 1990, the Secretary published a notice in the **Federal Register** announcing a review of this request and providing domestic steel producers an opportunity to comment. This notice stated that the Secretary would make a determination on this short-supply review not later than November 29, 1990.

On November 21, 1990, TSC submitted a letter to the Secretary indicating that it was withdrawing its October 30, 1990, request under multiple arrangements because it no longer needed authority to fill its requirements from sources outside the European Community.

CONCLUSION: The Secretary considers TSC's October 30, 1990, petition for a short-supply allowance to be withdrawn. The Secretary's short-supply review with respect to the requested concast steel slabs is hereby terminated.

Dated: November 30, 1990.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-28674 Filed 12-5-90; 8:45 am]

BILLING CODE 3510-DS-M

Short-Supply Determination: Withdrawal of Request For Certain Welding Quality Steel Billets

AGENCY: Import Administration/International Trade Administration, Commerce.

ACTION: Notice of withdrawal of a request for a short-supply determination on certain welding quality steel billets.

SUMMARY: On November 20, 1990, American Steel and Wire Corps. ("ASW") submitted a letter to the Secretary of Commerce ("Secretary") withdrawing its request for a short-supply allowance for 10,900 net tons of certain welding quality steel billets for the fourth quarter of 1990.

SHORT-SUPPLY REVIEW NUMBER: 27.

EFFECTIVE DATE: November 20, 1990.

SUPPLEMENTARY INFORMATION: On October 22, 1990, the Secretary received an adequate short-supply petition from ASW for the fourth quarter of 1990 under Article 8 of the Arrangement Between the Government of Australia and the Government of the United States of America Concerning Trade in Certain Steel Products for 10,900 net tons of certain welding quality steel billets used in the manufacture of wire rod which is used to make continuous welding wire. The Secretary established an official record on this short-supply request on October 22, 1990 (Case Number 27) in the Central Records Unit, room B-099, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Section 4(b)(4)(B)(i) of the Steel Trade Liberalization Program Implementation Act, Public Law No. 101-221, 103 Stat. 1886 (1989) ("the Act"), and § 357.106(b)(2) of the Department of Commerce's Short-Supply Procedures, (19 CFR 357.106(b)(2)) ("Commerce's Short-Supply Procedures"), require the Secretary to make a determination with respect to a short-supply petition not later than the 30th day after the petition is filed, unless the Secretary finds that one of the following conditions exists: (1) The raw steelmaking capacity utilization in the United States equals or exceeds 90 percent; (2) the importation of additional quantities of the requested steel product was authorized by the Secretary during each of the two immediately preceding years; or (3) the requested steel product is not produced in the United States. The Secretary found that none of these conditions exists with respect to the requested product and, therefore, considered this review under the 30-day guidelines. On October 31, 1990, the Secretary published a notice in the **Federal Register** announcing this short-supply review and requesting comments from interested parties. This notice stated that the Secretary would make a determination on this short-supply review not later than November 21, 1990.

On November 20, 1990, ASW submitted a letter to the Secretary indicating that it was withdrawing its short-supply request. ASW noted that "the supply situation for this type of billet has changed for the immediate future."

CONCLUSION: The Secretary considers ASW's petition for a short-supply allowance to be withdrawn. The Secretary's short-supply review with respect to the requested welding quality steel billets is hereby terminated.

Dated: November 28, 1990

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-28675 Filed 12-5-90; 8:45 am]

BILLING CODE 3510-DS-M

Short-Supply Review: Certain Tin-Free Steel

AGENCY: Import Administration/International Trade Administration, Commerce.

ACTION: Notice of short-supply review and request for comments on certain tin-free steel.

SUMMARY: The Secretary of Commerce ("Secretary") hereby announces a review and request for comments on a short-supply request for 8,013 metric tons of various sizes of certain tin-free steel ("TFS") under Paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Certain Steel Products for January 1, 1991-March 31, 1992.

Short-supply review number: 34.

SUPPLEMENTARY INFORMATION: Pursuant to section 4(b)(3)(B) of the Steel Trade Liberalization Program Implementation Act, Public Law No. 101-221, 103 Stat. 1886 (1989) ("the Act"), and § 357.104(b) of the Department of Commerce's Short-Supply Procedures, 19 CFR 357.104(b) ("Commerce's Short-Supply Procedures"), the Secretary hereby announces that a short-supply determination is under review with respect to certain TFS for use in the manufacture of photopolymer newspaper printing plates. On November 29, 1990, the Secretary received an adequate petition from NAPP Systems (USA) Incorporated ("NAPP") requesting a short-supply allowance for 8,013 metric tons of this product under Paragraph 8 of the Arrangement Between the Government of Japan and the Government of the United States Concerning Trade in Certain Steel Products.

The requested material meets the following specifications:

Thickness:
0.0066 inch (60 lbs/base box).
0.0094 inch (85 lbs/base box).
Thickness Tolerance: ±0.0005 inch.
Chromium Coating Weight:
Metallic Chromium—100 mg/m2.
Chromium Oxide—10 mg/m2.
Chemical Composition (maximum):
C—0.13%
Mn—0.60%
Si—0.15%
Cu—0.20%
P—0.04%
S—0.05%
Al—0.20%
Inclusion/Foreign Matter: No more than 15 inclusions/foreign matter in 15 feet (4.6 meters).
Camber: ¼ inch (6.3 mm) per 20 feet (6.1 meters).
Coilset or Curling:
0.0066—Maximum 5/32 inch (5.0 mm).
0.0094—Maximum 4/32 inch (3.2 mm).
Oil Can: Absolute depth maximum 5/64 inch (2.0 mm).
Wavy Edge: Height—maximum 5/64 inch (2.0 mm).
Width Ranges:
0.0066 inch—27.75 to 36 inches.
0.0094 inch—28 to 34 inches.
Weight: Minimum net 18, 000 lbs. (8,164.8 kg). Maximum net 20,000 lbs. (9,071.0 kg).

The quantity of 0.0066 inch and 0.0094 inch material requested by NAPP totals 7,285 and 728 metric tons, respectively, for January 1, 1991-March 31, 1992.

Section 4(b)(4)(B)(i) of the Act and § 357.106(b)(1) of Commerce's Short-Supply Procedures require the Secretary to make a determination with respect to a short-supply petition not later than the 15th day after the petition is filed if the Secretary finds that one of the following conditions exists: (1) The raw steelmaking capacity utilization in the United States equals or exceeds 90 percent; (2) the importation of additional quantities of the requested steel product was authorized by the Secretary during each of the two immediately preceding years; or (3) the requested steel product is not produced in the United States. The Secretary finds, on the basis of available information, that the requested steel product is not produced in the United States at this time. Therefore, in accordance with section 4(b)(4)(B)(i)(III) of the Act and § 357.106(b)(1)(iii) of Commerce's Short-Supply Procedures, the Secretary is applying a rebuttable presumption that this product is presently in short supply. Unless domestic steel producers provide comments in response to this notice indicating that they can and will supply this product within the requested period of time, provided it represents a normal order-to-delivery period, the Secretary will issue a short-supply allowance not later than December 14, 1990.

Comments: Interested parties wishing to comment upon this review must send written comments not later than December 13, 1990 to the Secretary of Commerce, Attention: Import Administration , room 7866, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230. All documents submitted to the Secretary shall be accompanied by four copies. Interested parties shall certify that the factual information contained in any submission they make is accurate and complete to the best of their knowledge.

Any person who submits information in connection with a short-supply review may designate that information, or any part thereof, as proprietary, thereby requesting that the Secretary treat that information as proprietary. Information that the Secretary designates as proprietary will not be disclosed to any person (other than officers or employees of the United States Government who are directly concerned with the short-supply determination) without the consent of the submitter unless disclosure is ordered by a court of competent jurisdiction. Each submission of proprietary information shall be accompanied by a full public summary or approximated presentation of all proprietary information which will be placed in the public record. All comments concerning this review must reference the above-noted short-supply review number.

FOR FURTHER INFORMATION CONTACT: Sally A. Craig or Richard O. Weible, Office of Agreements Compliance, Import Administration. U.S Department of Commerce, room 7866, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230, (202) 377-0165 or (202) 377-0159.

Dated: December 4, 1990.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-28776 Filed 12-5-90; 8:45 am]

BILLING CODE 3510-DS-M

Minority Business Development Agency

Business Development Center Applications: Montgomery, Alabama

November 30, 1990.

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with the provisions of Executive Order 11625, the Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3-year period, subject to available funds. The cost of performance for the first *12* months is estimated at *$194,118* for the project performance of *5/1/91* to *4/30/92*. The MBDC will operate in the *Montgomery, Alabama,* Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of *$165,000* in Federal Funds and a minimum of *$29,118* in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services).

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, non-profit and for-profit organizations, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to

accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations (50 points); the resources available to the firm in providing management and technical assistance (10 points); the firm's proposed approach to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). It is advisable that applicants have an existing office in the geographic region for which they are applying.

An applicant must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive.

The MBDC will operate for a 3-year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Applicants who have an outstanding account receivable with the Federal Government may not be considered for funding until these debts have been paid or arrangements satisfactory to the Federal government are made to pay the debt.

Applicants are subject to Governmentalwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR Part 26. In accordance with the Drug-Free Workplace Act of 1988, each applicant must make the appropriate certification as a "prior condition" to receiving a grant or cooperative agreement.

Awards under this program shall be subject to all Federal Departmental regulations, policies, and procedures applicable to Federal assistance awards.

A false statement on an application may be grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment.

Section 319 of Public Law 101-121 generally prohibits recipients of appropriated funds from lobbying the Executive or Legislative Branches of Federal Government in connection with a specific contract, grant, or loan. A "Certification for Contracts, Grants Loans, and Cooperative Agreements" and the SF-LLL, "Disclosure of Lobbying Activities" (if applicable), is required.

CLOSING DATE: The closing date for applications is January 15, 1991. Applications must be postmarked on or before January 15, 1991. The anticipated processing time is 120 days.

ADDRESSES: Atlanta Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 401 West Peachtree Street, NW., Room 1930, Atlanta, Georgia 30308-3516, 404/730-3300.

FOR FURTHER INFORMATION CONTACT: Carlton L. Eccles, Regional Director of the Atlanta Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

Note: A pre-application conference to assist all interested Applicants will be held at the U.S. Department of Commerce, Minority Business Development Agency, 401 West Peachtree Street, NW., Room 1930, Atlanta, Georgia, December 28, 1990, at 9 a.m.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: November 30, 1990.

Carlton L. Eccles,

Regional Director, Atlanta Regional Office.

[FR Doc. 90-28628 Filed 12-5-90; 8:45 am]

BILLING CODE 3510-21-M

Business Development Center Applications: Charlotte, North Carolina

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Correction of closing date.

SUMMARY: This amends the advertisement for the Minority Business Development Agency (MBDA) announcing that it is soliciting competitive applications under its Charlotte, North Carolina Minority Business Development Center (MBDC) Program to operate on MBDC for a 3-year period.

CLOSING DATE: The closing date has been changed to January 7, 1991. Applications must be postmarked on or before January 7, 1991.

ADDRESS: Atlanta Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 401 W. Peachtree St., NW, room 1930, Atlanta, Georgia 30308, 404/730-3300.

FOR FURTHER INFORMATION CONTACT: Carlton L. Eccles, Regional Director of the Atlanta Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

(11.800 Minority Business Development Catalog of Federal Domestic Assistance)

Note: A pre-application conference to assist all interested applicants will be held at the U.S. Department of Commerce, Minority Business Development Agency, 401 West Peachtree St., NW, room 1930, Atlanta, Georgia, December 19, 1990, at 9 a.m.

Dated: November 29, 1990.

Carlton L. Eccles,

Regional Director, Atlanta Regional Office.

[FR Doc. 90-28583 Filed 12-5-90; 8:45 am]

BILLING CODE 3510-21-M

National Institute of Standards and Technology

Visiting Committee on Advanced Technology; Meeting

AGENCY: National Institute of Standards and Technology, DOC.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the National Institute of Standards and Technology Visiting Committee on Advanced Technology will meet on Friday, January 11, 1991, from 9 a.m. to 10 a.m. The Visiting Committee on Advanced Technology is composed of nine members appointed by the Director of the National Insitute of Standards and Technology who are eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations. The purpose of this meeting is to discuss the Institute's organization and budget, and to present their 1990 Annual Report to the Secretary of Commerce. The Secretary will forward this report to the Congress by the Congressionally mandated deadline of January 31, 1991. The members of the Committee will discuss their findings as outlined in the report.

DATES: The meeting will convene January 11, 1991, at 9 a.m. and adjourn at 10 a.m. on January 11, 1991.

ADDRESS: The meeting will be held in Conference Room 5859, Department of Commerce, 14th and Constitution, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Dr. Dale E. Hall, Executive Director, Visiting Committee on Advanced Technology, National Institute of Standards and Technology,

Gaithersburg, Maryland 20899, telephone number (301) 975-2158.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on September 1, 1989, that portions of the meeting of the Visiting Committee on Advanced Technology which involve examination and discussion of the budget for the Institute may be closed in accordance with section 552(b)(9)(B) of title 5, United States Code, since the meeting is likely to disclose financial information that may be privileged or confidential.

John Lyons,

Director.

Dated: November 30, 1990.

[FR Doc. 90-28603 Filed 12-5-90; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

National Fish and Seafood Promotional Council; Public Meeting

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

TIME AND DATE: The meeting will convene at 8:30 a.m. on Monday, December 10, and adjourn approximately 12:30 p.m. on Tuesday, December 11, 1990.

PLACE: Omni Shoreham Hotel, 2500 Calvert Street, NW., Washington, DC 20008.

STATUS: NOAA announces a meeting of the National Fish and Seafood Promotional Council (NFSPC). The NFSPC, consisting of 15 industry members and the Secretary of Commerce as a non-voting member, was established by the Fish and Seafood Promotion Act of 1986 to carry out programs to promote the consumption of fish and seafood and to improve the competitiveness of the U.S. fishing industry.

The NFSPC is required to submit an annual marketing plan and budget to the Secretary of Commerce for his approval that describes the marketing and promotion activities the NFSPC intends to carry out. Funding for NFSPC activities is provided through Congressional appropriations.

Matters to be Considered

Portion Opened to the Public

December 10, 1990

8:30 p.m.-12 noon—Chairman's opening remarks; approval of minutes from previous meeting; review of meeting agenda and objectives; and presentation and discussion on seafood industry referendum process and strategy. 1:30 p.m.-5 p.m.—Presentation and discussion on advertising, public relations and promotion options and strategy for 1991.

December 11, 1990

8 a.m.-12:30 p.m.—Further discussion, as required, and decision on advertising and referendum strategies; discussion of committee functions; and other general business.

Portion Closed to the Public

None.

FOR FURTHER INFORMATION CONTACT: Jeanne M. Grasso, Program Manager, National Fish and Seafood Promotional Council, 1825 Connecticut Avenue, NW., room 620, Washington, DC 20235. Telephone: (202) 673-5237.

Dated: December 3, 1990.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90-28634 Filed 12-5-90; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Withdrawal of Notice of Prospective Grant of Exclusive Patent Licensing and Notice of Availability of Inventions for Licensing

The National Technical Information Service (NTIS), U.S. Department of Commerce, hereby withdraws its notices, announced in the **Federal Register**, Vol. 54, No. 124, p. 27419 (June 29, 1989) and Vol. 53, No. 164, p. 32271 (August 24, 1988) of its intention to grant Gilead Sciences, Inc. Foster City, CA exclusive licenses under U.S. Patent Applicants Serial Number 7-340,073, "Novel Oligonucleotides with 5' Linked Chemical Groups, Methods of Production Thereof and Use Thereof" and Serial Number 7-159,017, "Inhibitors for Replication of Retroviruses and for the Expression of Oncogene Products" respectively.

Serial No. 7-340,073 describes a synthesis method for novel oligodeoxynucleotides 5' linked to covalently phosphoramidites. The synthesis of the covalently attached chemical group to the phosphoramidite moiety occurs outside an automatic synthesizer, followed by application of this complex as a terminator of the 5' end of a phosphate-modified oligodeoxynucleotide in an automatic synthesizer. The compounds are used to attenuate or destroy mammalian gene expression or viral activity. The invention is related to the invention described and claimed in abandoned U.S. Patent Application 7-030,073, "Phosphorothioate Analogues of Oligodeoxynucleotides as Inhibitors for Replication and Cytopathic Effects of HIV-III Retroviruses and Other Foreign Nucleic Acids."

Serial No. 7-159,017 concerns the use of phosphorothioate oligodexynucleotide analogs to prevent replication of foreign nucleic acids in the presence of normal living cells and inhibit the proliferaton of neoplastic cells and is a continuation-in-part of Serial No. 7-030,073.

Serial No. 7-159,017 in turn has a continuation-in-part U.S. Patent Application 7-258,417, "Inhibitors for Replications of Viruses," which concerns the use of phosphorothiate oligodeoxyribonucelotide analogs to prevent replication of viruses such as herpes Simplex II and viruses that replicate by means of HBLV DNA polymerase in the presence of normal living cells.

Another related case is United States Patent Application Serial Number 7-246,688, "Phosphorothioate and Normal Oligodeoxynucleotides with 5' Linked Acridine," which describes methods for flourescently tagging the 5' end of an oligodeoxynucleotide.

Full rights are available for license under 7-340,073 and 7-246,688. Rights limited to fields of use other than prevention of replication of human T-cell lymphotropic virus type III are available for licenses under Nos. 7-159,017 and 7-258,417.

NTIS solicits applications from parties interested in obtaining a license under one or more of the above patent applications. Applicants for a license under 7-340,073 should be prepared to identify what rights, if any, under 7-159,017 and/or 7-258,417 would be necessary for them to practice a license under 7-340,073. License application forms and other information may be obtained from NTIS, Center for the Utilization of Federal Technology, Box 1423, Springfield, 22151, Attention: Papan Devnani, Phone: (703) 487-4738.

Copies of these patent applications may be purchased by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161 or by telephoning the NTIS Sales Desk at (703) 487-4650.

Douglas J. Campion,

Patent Licensing Specialist, Center for the Utilization of Federal Technology.

[FR Doc. 90-28614 Filed 12-5-90; 8:45 am]

BILLING CODE 3510-04-M

Prospective Grant of Exclusive Patent License

This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Technical Information Service (NTIS), United States Department of Commerce, is contemplating the grant of an exclusive license in the United States to practice the invention embodied in United States Patent Number 4,773,612, "Wading Tagline Reel" to Rickly Hydrological Company having a place of business at 2710 Joyce Avenue. Columbus, Ohio 43211. The patent rights in this invention have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license 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 license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The invention covers a lightweight plastic reel for retaining and dispensing tagline for measuring streams and rivers which comprises an outer plastic casing, a hollow plastic handle capable of receiving a support rod used in stationing the reel on the bank of a river, an inner plastic spool having spool locking means, a central shaft, and a simplified drag assembly comprised primarily of two metal plates which provide braking action on the rotation of the spool. The drag assembly of the reel is constructed so as to be virtually maintenance-free, and resistant to fouling from mud, dirt, grit or other conditions normally encountered in stream measurements.

The availability of the invention for licensing was published in the **Federal Register** of December 8, 1988 Vol. 53, No. 236, p. 49583. A copy of the instant patent may be purchased from the Commissioner of Patents, United States Patent and Trademark Office, Washington, DC 20231.

Inquiries, comments and other materials relating to the contemplated license must be submitted to Charles A. Beverlacqua, Center for Utilization of Federal Technology, NTIS, Box 1423, Springfield, VA 22151. Properly filed competing applications received by NTIS in response to this notice will be considered as objections to the grant of the contemplated license.

Douglas J. Campion,

Center for Utilization of Federal Technology, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 90-28615 Filed 12-5-90; 8:45 am]

BILLING CODE 3510-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Taiwan

November 30, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: December 7, 1990.

FOR FURTHER INFORMATION CONTACT: Kim-Bang Nguyen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-8791. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for swing, special shift, carryforward and cancellation of special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989). Also see 54 FR 53354, published on December 28, 1989.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 30, 1990.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 20, 1989 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Taiwan and exported during the period which began on January 1, 1990 and extends through December 31, 1990.

Effective on December 7, 1990, the directive of December 20, 1989 is being amended further to adjust the limits for the following categories, as provided under the provisions of the bilateral agreement, effected by exchange of notes dated August 21, 1990 and September 28, 1990:

Category	Adjusted 12-month limit [1]
Group I	
200-224, 225/317/326, 226, 227, 229, 300/301/607, 313-315, 360-363, 369-L/670-L/870,[2] 369-S,[3] 369-O,[4] 400-414, 464-469, 600-606, 611, 613/614/615/617, 618, 619/620, 621-624, 625/626/627/628/629, 665, 666, 669-P,[5] 669-T,[6] 669-O,[7] 670-H [8] and 670-O,[9] as a group.	502, 954, 348 square meters equivalent.
Sublevels in group I	
313	61,551,570 square meters.
314	24,764,463 square meters.
361	1,227,100 numbers.
363	11,729,103 numbers.
369-L/670-L/870	41,410,000 kilograms.
611	2,725,000 square meters.
613/614/615/617	16,900,183 square meters.
619/620	12,193,970 square meters.
625/626/627/628/629	16,163,819 square meters.
Group II	

Category	Adjusted 12-month limit [1]
237, 239, 330-332, 333/334/335, 336, 338/339, 340-345, 347/348, 349, 350/650, 351, 352/652, 353, 354, 359-C/659-C,[10] 359-H/659-H,[11] 359-O,[12] 431-444, 445/446, 447/448, 459, 630-632, 633/634/635, 636, 638/639, 640, 641-644, 645/646, 647/648, 649, 651, 653, 654, 659-S,[13] 659-O,[14] 831-844 and 846-859, as a group.	783,421,167 square meters equivalent.
Sublevels in group II	
239	5,250,000 kilograms.
331	540,988 dozen pairs.
333/334/335	254,400 dozen of which not more than 137,800 dozen shall be in Category 335.
336	119,407 dozen.
338/339	851,535 dozen.
342	261,908 dozen.
345	106,245 dozen.
347/348	1,294,913 dozen.
359-C/659-C	1,569,600 kilograms.
359-H/659-H	4,930,402 kilograms.
435	20,526 dozen.
444	110,920 numbers.
445/446	137,931 dozen.
631	4,462,630 dozen pairs.
633/634/635	1,674,829 dozen of which not more than 988,096 dozen shall be in Categories 633/634 and not more than 866,937 dozen shall be in Category 635.
636	356,551 dozen.
638/639	6,672,137 dozen.
642	789,217 dozen.
644	751,180 numbers.
659-S	1,920,490 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1989.

[2] Category 870; Category 369-L: only HTS numbers 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3015 and 4202.92.6000; Category 670-L: only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.3030 and 4202.92.9020.

[3] Category 369-S: only HTS number 6307.10.2005.

[4] Category 369-O: all HTS numbers except 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3015, 4202.92.6000 (Category 369-L); and 6307.10.2005 (Category 369-S).

[5] Category 669-P: only HTS numbers 6305.31.0010, 6305.31.0020 and 6305.39.0000.

[6] Category 669-T: only HTS numbers 6306.12.0000, 6306.19.0010 and 6306.22.9030.

[7] Category 669-O: all HTS numbers except 6305.31.0010, 6305.31.0020, 6305.39.0000 (Category 669-P); 6306.12.0000, 6306.19.0010 and 6306.22.9030 (Category 669-T).

[8] Category 670-H: only HTS numbers 4202.22.4030 and 4202.22.8050.

[9] Category 670-O: all HTS numbers except 4202.22.4030, 4202.22.8050 (Category 670-H); 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9020 (Category 670-L).

[10] Category 359-C: only HTS numbers 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659-C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.69.1000, 6104.69.3014, 6114.30.3040, 6114.30.3050, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[11] Category 359-H: only HTS numbers 6505.90.1530 and 6505.90.2060; Category 659-H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5060, 6505.90.6080, 6505.90.7060 and 6505.90.8060.

[12] Category 359-O: all HTS numbers except 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025, 6211.42.0010 (Category 359-C); 6505.90.1530 and 6505.90.2060 (Category 359-H).

[13] Category 659-S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010, and 6211.12.1020.

[14] Category 659-O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.69.1000, 6114.30.3040, 6114.30.3050, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659-C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5060, 6505.90.6080, 6505.90.7060, 6505.90.8060 (Category 659-H); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 (Category 659-S).

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90-28655 Filed 12-5-90; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency Advisory Board; Closed Meeting

AGENCY: Defense Intelligence Agency Advisory Board.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Public Law 92-463, as amended by section 5 of Public Law 94-409, notice is hereby given that a closed meeting of a panel of the DIA Advisory Board has been scheduled as follows:

DATES: Tuesday, January 29, 1991 (8:30 a.m. to 5 p.m.).

ADDRESSES: The DIAC, Bolling AFB, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel John G. Sutay, USAF, Chief, DIA Advisory Board Office, Washington, DC 20340-1328 (202/373-4930).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(1), title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on Counternarcotics.

Dated: November 30, 1990.

L.M., Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90-28649 Filed 12-5-90; 8:45 am]

BILLING CODE 3810-01-M

Department of the Navy

Secretary of the Navy's Advisory Committee on Naval History; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Secretary of the Navy's Advisory Committee on Naval History will meet on February 7, 1991 at 8:30 a.m. in the Dudley Knox Center for Naval History Conference Room, second floor, Building 57, Washington Navy Yard, Washington, DC. The meeting will be open to the public.

The purpose of the meeting is to review naval historical activities since the last meeting of the Advisory Committee in August 1987 and to make comments and recommendations on these activities to the Secretary of the Navy.

For further information concerning this meeting, write to the Director of Naval History, Washington Navy Yard, Washington, DC 20374, or telephone Dr. William S. Dudley, Senior Historian, at 202-433-2364.

Dated: November 29, 1990.

Wayne T. Baucino,

LT, JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 90-28621 Filed 12-5-90; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

Implementation Plan Concerning Criticality Safety at the Rocky Flats Plant; Response to Recommendation 90-6 of the Defense Nuclear Facilities Safety Board

AGENCY: Department of Energy.

ACTION: Notice and request for public comment.

SUMMARY: Pursuant to section 312(d) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2286(d), the Department of Energy (DOE) hereby publishes notice of a response of the Secretary of Energy (Secretary) to Recommendation 90-6 of the Defense Nuclear Facilities Safety Board,

concerning criticality safety at Rocky Flats Plant. DOE hereby requests public comment on the response of the Secretary to Recommendation 90-6.

DATES: Comments, data, views, or arguments concerning the Secretary's response are due on or before January 7, 1991.

ADDRESSES: Send comments, data, views, or arguments concerning the Secretary's response to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., suite 700, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Donald F. Knuth, Deputy Assistant Secretary for Operations, Defense Programs, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: November 30, 1990.

Donald F. Knuth,

Deputy Assistant Secretary for Operations, Defense Programs.

November 29, 1990.

The Honorable John T. Conway
Chairman, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Washington, DC 2004

Dear Mr. Conway: In accordance with section 315 of Public Law 100-456, please find enclosed the Department of Energy's Implementation Plan for Defense Nuclear Facilities Safety Board Recommendation 90-6, which I accepted in my letter to the Board dated July 24, 1990.

To date, several actions have been completed to reduce the probability of a critically event in the ventilation ducts and associated systems at the Rocky Flats Plant. The Plan describes those actions which have been completed as well as the remaining actions required to comprehensively address this issue, including measures to reduce and control material accumulations during future operations. We will keep you informed of our progress in executing this program.

Sincerely,

James D. Watkins,

Admiral, U.S. Navy (Retired).

Department of Energy Implementation Plan for the Defense Nuclear Facility Safety Board

[Recommendation 90-6]

October 7, 1990.

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1.0 Introduction

1.1 Purpose

Fissile materials and other undefined debris have been accumulating in the ventilation ducts and associated systems at the Rocky Flats Plant over many years of operation. The presence of such material in the ventilation ducts and associated systems is a matter of concern relating to the safety and health of the public, including on-site workers. These concerns arise from the effect that such materials might have on criticality safety, radiation exposure, system operability, and the potential for environmental contamination. This implementation plan describes the Department of Energy's program to address the accumulation of fissile and other materials in ventilation ducts and related systems and includes the actions necessary to respond to Defense Nuclear Facilities Safety Board recommendation 90-6 (Reference 1).

The objectives of this program are to ensure that: (1) Potential hazards associated with the accumulation of fissile and other materials in ventilation ducts and related systems are addressed and resolved in a safe and environmentally sound manner; and (2) actions are taken to ensure that material accumulation resulting from future operations will be prevented to the maximum extent practicable, effectively monitored, and controlled.

1.2 Background

In response to public concerns that nuclear criticality accidents involving plutonium may have occurred at the Department of Energy's (DOE) Rocky Flats Plant (RFP), an independent review was conducted by SCIENTECH, Inc. (hereafter referred to as SCIENTECH). The SCIENTECH Criticality Safety Assessment Team (CSAT) found no evidence of any criticality accident but made recommendations for improving criticality safety at the RFP. In particular, the accumulation of fissile material in several ventilation ducts and associated systems was identified as a potential criticality safety problem. The ventilation ducts and associated systems evacuate the atmosphere from gloveboxes to the building ventilation plenums where the exhaust gasses pass through four stages of High Efficiency Particulate Air (HEPA) filters prior to being released to the environment.

In their report to the DOE (Reference 2), the CSAT made a number of recommendations which, if fully implemented, would reduce the probability of a criticality accident and maintain an acceptably low level of risk to the workers and the public. In response to this report, EG&G Rocky Flats, Inc. (hereafter referred to as EG&G) issued an Action Plan on February 16, 1990. The EG&G Action Plan, was revised on May 4, 1990, in response to comments from the DOE Rocky Flats Operations Office (RFO). A second revision to the EG&G Action Plan was issued on May 16, 1990 (Reference 3) based on an independent review of the EG&G Action Plan, conducted by SCIENTECH, (Reference 4). The revised Action Plan was responsive to the recommendations of the CSAT (reference 2) and SCIENTECH noted that if properly implemented the revised Action Plan would result in a reduced probability of a criticality accident and maintain an acceptably low level of risk to the workers and the public.

Based on its review of this issue, the Defense Nuclear Facilities Safety Board (DNFSB) recommended (Reference 1) that the DOE prepare a written program, with commitments, to address the accumulation of fissile and other materials in ventilation ducts and related systems. The recommendation further stated that the written program should address and include the following:

- Description of remediation actions, including the scheduling and basis for same, that are deemed necessary prior to resumption of plutonium operations by DOE.
- Descriptions and justification of non-destructive assay techniques, calibration, modeling, and assay methodology.
- Estimation of radiation levels in areas of occupancy, both from gamma rays and fast neutrons.
- Determination of the effects of accumulation of fissile and other materials on the functionability of the ventilation ducts and related systems which must act to protect the health and safety of the public, including plant operating personnel.
- Description and justification of procedures and schedules, both short term and long term, for removal or reduction in amount and concentration of existing fissile and other unidentified debris in the ventilation ducts and related systems, as stated above.

• Determination of any design and operational changes in the ventilation ducts and related systems necessary to prevent further accumulation of significant amounts of fissile and other materials therein and to ensure continued operability of systems installed to protect the health and safety of the public including plant operating personnel. This includes a thorough study of the glovebox filters and ventilation and alarm systems.

• Establishment of a monitoring program for the ventilation ducts and related systems to establish that design and operational changes and modifications are effective in preventing significant additional accumulation of fissile and other materials.

The DNFSB was briefly by EG&G and SCIENTECH on June 26, 1990 concerning the Action Plans (references 3 and 4). On July 24, 1990 the Secretary of Energy accepted the DNFSB recommendation and established the following additional requirements (Reference 5):

1. All lines of ductwork containing more than 400 grams of plutonium shall be cleaned to remove the material to the maximum extent practicable but in no case to leave a residue exceeding 400 grams in any one system of ducts. This will physically rule out the possibility of a criticality in even the most unlikely series of events.

Note: Ducts not exceeding the 400 gram limit will be cleaned, to the maximum extent practicable, as soon as possible after resumption of operations. The 400 gram threshold limit was selected because there are no circumstances under which 400 grams (or less) of plutonium in any chemical form or geometry found at the Rocky Flats Plant can achieve a critical mass. To account for fissile material measurement uncertainties, measured values are doubled before applying the 400 gram criteria. Thus, if the measured amount of fissile material in a duct is greater than or equal to 200 grams, it is considered to meet the 400 gram criteria and remediation actions are required by the Secretary's policy (Reference 5).

2. The contractor shall develop and implement an Operational Safety Requirement (OSR) which includes a limiting condition for operation, a corresponding surveillance requirement, and a remediation action directive to assure that future operations do not lead to the accumulation of more than 400 grams of plutonium in any one system of ducts. The OSR must be submitted to and approved by DOE prior to resumption of operations.

3. If the contractor determines that the risks to workers during removal of material from ductwork exceeds the risks of continued operation with the material in the duct, the contractor must submit an analysis of the respective risks along with a justification for continued operation of the process lines contributing material to the affected ductwork. If it is not possible to remove the material for other valid reasons, the contractor shall also submit an analysis justifying continued operation of the affected process line. The Secretary shall determine, on a case-by-case basis, if continued operation is warranted.

EG&G has begun implementation of the revised Action Plan (Reference 3) and is now developing a comprehensive Program Plan for accomplishing the remaining actions required to fully address the accumulation of fissile and other materials in ventilation ducts and associated systems. The sections that follow provide detailed descriptions of the program for addressing the DNFSB recommendations and implementing the Secretary of Energy's requirements.

1.3 Terms and Definitions

The following terms and definitions are used in this implementation plan:

ALARA. Acronym for "As Low As Reasonably Achievable," a basic concept of radiation protection that specifies that the radioactive discharges from nuclear plants and radiation exposure to personnel be kept as far below regulatory limits as practical.

DOE Orders. The Department of Energy controls the activities under its cognizance by promulgating Orders which must be followed by all Departmental Elements and, in accordance with contractual provisions, by contractors performing work for the Department. The DOE Orders referenced in this document are briefly described in appendix A.

Duct. A duct, or system of ducts, is defined as a collection of header piping that forms a single upward flow path to an exhaust plenum. Included in the definition of a duct are the small diameter lateral lines that connect gloveboxes to headers.

Fissile Material. A nuclide capable of undergoing fission by interaction with slow neutrons provided the thermal neutron production cross section exceeds the effective thermal neutron absorption cross section. The fissile material discussed in this implementation plan is assumed to be plutonium with an isotopic content of 95 weight percent Pu^{239} and 5 weight percent Pu^{240} (and associated daughter products), which is representative of process stream material at the Rocky Flats Plant. The plutonium is combined with various unidentified materials in the ducts.

In uranium processing areas, any fissile material accumulations would consist of enriched uranium in various forms.

Independent Review. Independent reviews will be conducted in accordance with contractor independent review and appraisal system requirements delineated in Reference 6, DOE Order 5480.5, "Safety of Nuclear Facilities."

Prior to Resumption. Refers to remediation activities which will be completed as soon as practicable and which must be completed prior to resumption of operations involving fissile materials.

Remediation Action. Refers to any action that either reduces the amount of, mitigates the effects of, or prevents further accumulation of fissile and other materials in the ventilation ducts and associated systems.

2.0 Program Description

2.1 Scope

This program focuses primarily on public (including on-site workers) health and safety risks associated with the accumulation of fissile and other materials in the ventilation ducts and associated systems at the Rocky Flats Plant.

The program encompasses those activities which must be completed prior to the resumption of operations involving fissile materials and longer-term activities which may be completed after resumption.

2.2 Approach

To implement this program, EG&G established a task team responsible for: (1) Directing the plant-wide effort to determine more accurately the extent of the problem; (2) evaluating the associated hazards and risks; and (3) recommending and implementing measures to mitigate the problem and prevent its recurrence.

A program plan is being developed to comprehensively address the Board's recommendation and to implement the Secretary of Energy's policy. The program plan will encompass the Action Plan of reference 3. Six major tasks have been identified as follows:

Task 1: Determination of fissile material accumulation.

Task 2: Evaluation of nuclear safety risk.

Task 3: Evaluation of potential worker radiation exposures.

Task 4: Review of risk assessments and safety analyses.

Task 5: Prevention of fissile material accumulation.

Task 6: Removal of material from ventilation systems.

These tasks are described in further detail in Section 3.0, Detailed Technical Approach.

2.3 Program Objectives

The objectives established for this program are as follows:

2.3.1 *Objective to be Accomplished Prior to Resumption*

(a) Assure that a criticality accident does not take place.

(b) Assure that the presence of fissile and other materials in the ventilation ducts and associated systems does not result in an undue risk to the health and safety of the public, including on-site personnel.

(c) Assure that occupational radiation exposure resulting from the presence of fissile material in ventilation ducts and associated systems is As Low As Reasonably Achievable in accordance with Reference 7.

(d) Assure that future operations do not cause excessive accumulation of fissile and other materials in ventilation ducts and associated systems in the future.

2.3.2 *Objectives to be Accomplished After Resumption*

(a) Assure that fissile material and other debris in the ventilation ducts and associated systems will be properly removed or substantially reduced in amount and concentration.

(b) Assure that occupational radiation exposure resulting from the presence of fissile material in ventilation ducts and associated systems continues to be maintained As Low As Reasonably Achievable in accordance with Reference 7.

(c) Minimize future accumulations of fissile and other materials in ventilation ducts and associated systems.

3.0 Detailed Technical Approach

This section describes the six tasks that constitute the remediation program and indicates when activities must be completed relative to resumption of plutonium operations. The activities which must be completed complete prior to resumption will be reviewed for adequacy by the DOE Operational Readiness Review for each plutonium operations building. Decisions regarding remediation action requirements will be based on the policy outlined in Reference 5 and the following criteria (Reference 3).

(a) Criticality: $K_{eff} + 4$ sigma < 0.94 for fissile material found in exhaust ducts or waste lines including an account of: 1) the chemical form of Pu, 2) the effects of non-fissile material co-located with the Pu, and 3) the potential for relocation of Pu outside the exhaust duct or waste line. The methodology for criticality calculations assumes the accumulation of the fissile material in a minimum volume, minimum surface area, maximum density, optimally moderated (e.g., flooding) and fully reflected configuration.

(b) Occupational Radiation Exposure: Dose equivalent rate locations with possible continuous occupancy during normal operations < 0.4 mrem/hr. The federal annual allowable whole body radiation dose limit for occupational workers is 5 rem/year. The Rocky Flats Plant administrative whole body dose limit is 2 rem/year and will be further lowered to 1.8 rem/year in the near future. If a worker is exposed continuously to a 0.4 mrem/hour radiation source, for a full year (52 weeks $\times$ 40 hours/week), the resulting annual dose received by the worker would be 832 mrem (0.8 rem), which is less than one-half of the allowable limit.

(c) Environmental Release Source Term: Estimated radiological consequence to general public following creditable accident does not exceed limits established by DOE Order 6430.1A.

(d) System Operability Requirements: The accumulation of material does not hinder the safe operation of the process line or otherwise invalidate assumptions made in the Final Safety Analysis Reports regarding the operability of the ventilation ducts and associated systems.

(e) Removal and Disposal: The risk associated with the removal and disposal of the material that has accumulated in the duct does not exceed the risks associated with the presence of the material in the duct.

3.1 Task 1: Determination of Fissile Material Accumulation

The purpose of this task is to determine the quantity and distribution of fissile material accumulation in glovebox exhaust ducts through non-destructive assay (NDA) measurements. The main objective is to identify those ducts which require fissile material removal. Detailed descriptions and justification of non-destructive assay techniques, calibration modelling, and assay methodology are provided in Reference 8. The technical activities described by this task were previously reviewed by the CSAT, which found the corrective actions and plans to be technically adequate. Throughout the program, the NDA measurements will be independently reviewed, in accordance with Reference 6, including the treatment of the data, the assumptions made in evaluation of the data, and the validity of the statistical methods used in determining the sample size and composition for statistical measurements. This task is divided into sub-tasks as follows:

Prior to Resumption

3.1.1 *NDA Measurements Prior to Resumption*

The purpose of this sub-task is to perform measurements on the ductwork considered to have the highest probability of fissile material holdup based on analysis of operations performed and materials processed in gloveboxes served by the ducts.

(a) *General Survey.* General survey measurements were made utilizing the methodology employed by the SCIENTECH CSAT. A total of 5500 feet of duct was surveyed in Buildings 371, 707, 771, 776, and 779. The results were in agreement, within stated levels of uncertainty (see Reference 8), with the results obtained in Reference 2. The survey provided a gross conservative estimate of the maximum total accumulation of plutonium in ducts and also identified ducts containing sufficient accumulations of plutonium to warrant more detailed measurements. This sub-task was completed in September 1989.

(b) *Detailed Measurements.* More detailed NDA measurements were made of 1713 linear feet of glovebox exhaust ducts identified as continuing significant holdup of plutonium by the General Survey in Buildings 771, 707, and 777. A total of 6.75 Kg of plutonium were detected.

To further refine the upper bound and confidence limits on the total fissile material accumulation in the glovebox exhaust ducts detailed measurements will be made of all physically accessible ducts. These detailed measurements will begin after completion of the Statistical Sample described below.

(c) *Statistical Sampling.* After the initial survey, in which the selection of duct work for measurement was guided by the concern for nuclear safety, it was recognized that total plutonium accumulation in ventilation ducts would have to be determined to establish a new upper bound and confidence limits. Recognizing that available resources would constrain this effort, a Statistical Sampling Plan was developed by the Rocky Flats Statistical Applications group in conjunction with the Safeguards Measurements group. All glovebox exhaust ducts scheduled for NDA measurements prior to resumption were categorized in terms of their service, diameter, location, atmosphere (wet versus dry) and other pertinent factors and a representative sample of these ducts was selected for measurement. The statistical sample results provided rapid confirmation of the accuracy of predictions, based on operation analysis, regarding which ducts would likely contain significant quantities of material and which ducts would contain little or no material and thus increased the confidence that duct

measurements have been appropriately prioritized.

Measurements initially included in this task were completed in July 1990 in Buildings 371, 374, 559, 707, 771, 774, 776, 777, 779. Additional measurements of the second floor of Buildings 707, 771, and 776 were added to the scope of this sub-task in July 1990. These subsequent measurements in Buildings 707 and 776 have been completed. The results will be documented in a formal report.

3.1.2 *Validation of Assay Measurements and Methods*

The purpose of this task is to correlate the "before remediation" and "after remediation" NDA measurements with the actual laboratory analyses (calorimetric assay) of the material removed from the duct. This correlation will provide additional information that can be used to determine the validity of the NDA measurements and methods. The overall validation process will continue throughout the life of this program. However, measurements associated with individual ducts will be compared to calorimetric assays of removed material prior to resumption of operations in gloveboxes served by those ducts.

After Resumption

3.1.3 *NDA Measurements After Resumption*

NDA measurements will be made of ventilation systems in uranium buildings and ducts in fissile material handling buildings which were not measured prior to resumption because no accumulation of fissile material would be expected (e.g. room ventiliation ducts). Effort on this sub-task will begin at the completion of section 3.1.1 above. This sub-task will complete the determination of fissile material accumulation and identification of ventilation ducts and associated systems which might require remediation.

3.2 Task 2: Evaluation of Nuclear Safety Risk

The purpose of Task 2 is to assess the potential for a nuclear criticality accident due to the accumulation of fissile material in ventilation ducts and related systems. In Reference 9, the EG&G Nuclear Safety organization has documented, on a generic basis, the acceptable subcritical mass limits for pipes of various diameters and wall thicknesses.

Based on this generic analysis, all currently identified fissile material accumulations in ducts are considered safe and will remain safe in their current configuration unless catastrophic flooding and a combination of unlikely conditions should occur. These conditions would include the accumulation of the fissile material in a minimum volume, minimum surface area, maximum density, optimally moderated, and fully reflected configuration. The assumptions, calculations, and conclusions arising from these safety assessments will be independently reviewed, throughout the program. An initial review of the criticality safety analysis methodology has already been accomplished (Reference 10). This task is divided into the following sub-tasks:

Prior to Resumption

3.2.1 *Conduct Criticality Assessments Using the Results of Section 3.1.1 Measurements*

The purpose of this sub-task is to conduct a criticality safety evaluation of the amount of plutonium found in the ducts as a result of the section 3.1.1 measurements. The General Survey and Detailed Measurements identified fourteen ducts in buildings 707, 771, and 776 which must be cleaned to meet the requirements specified in reference 5. No ducts in building 559 have been identified as requiring material removal prior to resumption. The CSAT reviewed this work performed and found the results to be technically adequate.

Review of measurements from the Statistical Sampling program has identified five additional ducts in building 707 which must be cleaned. Since review of data from the statistical sampling conducted to date and the statistical sampling of the second floor of building 771 has not yet been performed it is anticipated that additional ducts might yet be identified.

The measurements which are to be made for the Complete Sampling phase of section 3.1.1 will also be evaluated by the Nuclear Safety organization and might identify other ducts requiring remediation.

After Resumption

3.2.2 *Review Duct Measurements Made After Resumption*

Criticality assessments will be made by the Nuclear Safety organization based on measurements made after resumption (see section 3.1.3) to identify ducts requiring remediation.

3.3 Task 3: Evaluation of Worker Radiation Exposure

The purpose of Task 3 is to evaluate exposure levels to personnel resulting from the presence of radioactive materials in ventilation ducts and associated systems and to develop and implement actions to assure that personnel radiation exposures do not exceed established limits and are maintained As Low as Reasonably Achievable in accordance with Reference 7. The predicted operator exposure data will be independently reviewed and the soundness of the recommended remediation actions will be validated throughout the program. If the dose equivalent rate at locations with possible continuous occupancy during normal operations equals or exceeds 0.4 mrem/hr, remediation action will be required prior to resumption. Additional remediation actions will be implemented after resumption of operations based on the ALARA principle. This Task is divided into the following subtasks:

Prior to Resumption

3.3.1 *Conduct Analysis of Worker Radiation Exposure Based on Survey Measurements*

The purpose of this sub-task is to analyze worker radiation exposures based on NDA measurements. Measurement data from Task 1.0 will be evaluated to determine which plant locations represent potential radiation exposure risks. Radiation measurements will then be made to determine actual radiation levels. As required, areas will be posted and controlled in accordance with Reference 7.

3.3.2 *Incorporate Occupancy Times and Calculate Annual Operator Exposures*

Once exposure rates are known, estimates of annual operating exposures will be made assuming that a worker would spend 2000 hr/yr at the work station. More realistic estimates of occupancy times will be combined with exposure rates to project annual exposures. These projected exposures will provide a basis for actions required to maintain exposures within established limits and As Low as Reasonably Achievable in accordance with Reference 7.

3.3.3 *Recommend Corrective Actions Based on Exposure*

The purpose of this sub-task is to develop corrective action recommendations based on exposure estimates from section 3.3.2 Exposure reduction measures might include installing shielding, limiting worker occupancy time, removing material from the duct, or removing a section of duct altogether. This task will continue through the end of removal operations.

After Resumption

3.3.4 *Reduce Personnel Radiation Exposure ALARA*

Measures to continually reduce personnel radiation exposure, per the ALARA principle in accordance with Reference 7, will be identified and implemented.

3.4 Task 4: Review of Risk Assessments and Safety Analyses

The purpose of this task is to: review existing safety analyses in view of the plutonium accumulations in the ventilation ducts and associated systems; update safety analyses as required; and implement corrective actions, if needed. This task is divided into the following sub-tasks:

Prior to Resumption

3.4.1 *Assess Impact of Accumulation on Current Safety Analyses*

The purpose of this sub-task is to review current safety analyses taking into account the plutonium accumulations determined in section 3.1.1 and to identify compensatory action requirements.

After Resumption

3.4.2 *Annually Assess Impact of Fissile Material Accumulations on Safety Analyses*

The purpose of this sub-task is to evaluate the need for revision of current safety analyses on an annual basis. The annual evaluations will take into account the residual fissile material remaining in ventilation ducts as determined by NDA measurements.

3.5 Task 5: Control of Fissile Material Accumulation

The purpose of this task is to develop and implement corrective actions to: increase criticality safety margins; reduce future accumulation of material; and assure continued operability of these systems. In reference 2, the CSAT identified root causes for the excessive accumulation of material in ventilation ducts and associated systems. These causes included design factors (e.g. unfiltered ventilation ducts) and operational factors (e.g. a history of workers puncturing prefilters with a sharp tool, such as a screwdriver). This task identifies activities for further identifying and addressing root causes. The technical activities described by this task were previously reviewed by the CSAT as documented by reference (4). The CSAT found the approach to be technically adequate. This task is divided into sub-tasks as follows:

Prior to Resumption

3.5.1 *Corrective Actions To Increase Criticality Safety Margins*

The purpose of this sub-task is to increase criticality safety margins by implementing actions to prevent flooding of four exhaust duct headers that have been identified to be of nuclear safety concern because $K_{eff} + 4$ sigma > 0.94, as discussed in section 3.0. Two corrective actions are planned as a result of this sub-task.

The first corrective action was installation of a flow control valve on the fire control sprinkler system in Plenum #101 in Building 707, which serves three of the four ducts in question. The fourth duct in Building 771 already had a flow control valve installed.

The second corrective action involves testing the criticality drains in the heat chambers of Plenum #101 and Plenum FU-2 Zone 5 in Building 771 to ensure their operability.

It is anticipated that additional corrective actions might be identified as a result of activities related to this sub-task.

3.5.2 *Corrective Actions To Minimize Further Accumulations*

The purpose of this sub-task is to implement measures to minimize any further accumulation of material in ventilation systems. Planned or completed corrective actions include:

(a) Inspection of currently installed HEPA prefilters located at the gloveboxes to ensure that: filter media were intact; pressure drops across the filters were within acceptable limits; and the filter housings were seated properly in their mounting frames. The inspections began in April 1990, and were completed in May 1990. Testing and surveillance will be performed at appropriate intervals to assure that HEPA filter efficiency continues to meet design requirements.

(b) Evaluation of design modifications to reduce, to the maximum extent practicable, the amount of material that could enter the ventilation ducts and associated systems through the bypass lines. Potential design modifications being studied include installation of filters on exhaust bypass ducts, blinking off, or alarming and monitoring bypass ducts.

(c) Implementation of an Operational Safety Requirement, which includes a Limiting Condition of Operation, a corresponding surveillance requirement, and a remediation action directive, to assure that future operations do not lead to the accumulation of more than 400 grams of plutonium in any one system of ducts.

(d) To prevent improper operational practices which could result in unnecessary accumulation of material in the ducts, operational procedures will be reviewed and upgraded and operations personnel will be trained to assure that operators adhere to the approved procedures.

3.5.3 *Verify Operability of Ventilation Ducts and Related Systems*

Operability of the glovebox ventilation systems and their major components will be verified as part of vital safety system operability verifications to be made prior to resumption of plutonium operations.

3.5.4 *Monitoring*

A plan will be developed and implemented to conduct periodic sampling to determine if the corrective actions are effectively reducing the rate of accumulation of material in ducts and to assure that unsafe quantities of fissile and other materials do not accumulate in ventilation ducts and related systems. Monitoring frequencies will be based on meaaured quantities and projected accumulation rates.

After Resumption

3.5.5 *Design Studies*

The purpose of this sub-task is to conduct studies to identify design related causes of material accumulation in the ventilation ducts and associated systems. These studies will evaluate the following:

- Means to improve exhaust filter seals
- Optimization of glovebox exhaust flow rates
- Reduction of the amount of heat, dust, and moisture in gloveboxes
- Redesign of glovebox duct systems
- Minimization of atmosphere flow past bypass valves when valves are closed
- Evaluation of the use of additional prefilters
- Evaluation of bypass valve alarm and prefilter systems
- Glovebox temperature, air flow, and humidity instrumentation

The completed studies will be evaluated to identify the need for design and operational modifications.

3.6 Task 6: Removal of Material From Ventilation Systems

The purpose of this task is to remove materials from ventilation ducts and associated systems identified as requiring such removal based on the criteria stated in section 3.0 or to meet

the Secretary of Energy's requirements of reference 5. Based on the above requirements a number of ducts in three buildings have been identified as requiring material removal operations for nuclear safety reasons. Other ducts may yet be identified as requiring material removal based on the criteria identified in section 3.0.

The actual removal of material from ventilation ducts and associated systems will be accomplished via a program that includes systematic inspections, sample analyses, and equipment verifications and rehearsal in a mock-up facility. Unique procedures are developed for removal of material from each duct. Specific duct configurations are modelled in the mock-up facility to permit training of personnel and verification of equipment and procedures. The removal of material typically involves loosening of material by abrasive, vibratory or mechanical techniques and then collecting the loosened material in a vacuum collection device. New technologies, including robotics devices, are being developed to enhance removal effectiveness.

This task is divided into two sub-tasks as follows:

Prior to Resumption

3.6.1 *Removal of Pu from Ducts Prior to Resumption*

Fissile and other materials will be removed to the maximum extent practicable from ducts containing exceeding the 400 gram (Pu) limit of Reference 5 prior to resumption of operations involving fissile materials in gloveboxes served by those ducts. In the event the contractor determines that the risks to workers during removal of material from ductwork exceeds the risks of continued operation with the material in the duct, the contractor must submit an analysis of the respective risks along with a justification for continued operation of the process lines contributing material to the affected ductwork. If it is not possible to remove the material for other valid reasons, the contractor shall also submit an analysis justifying continued operation of the affected process line. The Secretary of Energy shall determine, on a case-by-case basis, if continued operation is warranted. Prior to resumption, removal operations are planned in buildings 707, 771, and 776.

After Resumption

3.6.2 *Removal of Plutonium from Remaining Ducts*

All ducts identified as containing fissile material will be cleaned to reduce, to the maximum extent practicable, the amount and concentration of fissile and other materials.

4.0 Administration of the Program

4.1 Responsibilities

Deputy Assistant Secretary for Facilities, Defense Programs. The Deputy Assistant Secretary for Facilities has overall responsibility for conducting the preparations at Rocky Flats Plant for resumption of plutonium operations.

DOE Headquarters Rocky Flats Plant Resumption Program Office. The DOE Headquarters Rocky Flats Resumption Office is responsible for concurring in the EG&G Program Plan.

Rocky Flats Operations Office Manager. The Manager of the Rocky Flats Operations Office (RFO) is responsible for ensuring that duct remediation is performed in a safe and environmentally sound manner, coordinating DOE–RFO activities, approving EG&G plans, and ensuring the timely resolution of open items.

EG&G. EG&G is responsible for preparing plans and procedures and ensuring that ventilation ducts and associated system remediation actions are performed safely, efficiently, and in an environmentally sound manner. EG&G is also responsible for improving the conduct of plutonium operations at the Rocky Flats Plant to assure that future operations will not result in excessive accumulation of fissile and other materials in ventilation ducts and associated systems.

4.2 Program Plan

A Program Plan will be developed by EG&G and will document the plans, and management systems that those responsible for managing the program are to use.

The Program Plan will include:

(a) Program Summary (including a program description and objectives).

(b) Task Descriptions.

(c) Organization and Responsibilities.

(d) Budget.

4.3 Quality Assurance (QA)

The Rocky Flats quality assurance program is currently undergoing a major upgrade to consolidate the existing War Reserve Quality Manual and the Non-Weapons Quality Manual into one Rocky Flats Quality Assurance Manual. In conjunction with this consolidation, plans are being developed to bring the site into full compliance with DOE Order 5700.6B "Quality Assurance" (Reference 11) and ASME NQA–1 (Reference 12) which is identified in Reference 11 as the preferred quality assurance standard for nuclear facilities. The plan for achieving this upgrade is defined in the EG&G Rocky Flats, Inc., Quality Assurance Organization and Development Plan/Schedule, Dated July 31, 1990. This transition is planned to be completed by September, 1991.

Reference 13 describes QA program requirements which apply to all quality related resumption activities including the activities described in this plan. Upgrades to the following select elements of the QA Program are being accelerated in an effort to support strengthened management control of remediation and resumption activities. These elements are:

QR–1 Organization
QR–2 Quality Assurance Program
QR–5 Instructions, Drawings, and Procedures
QR–7 Control of Purchased Items and Services
QR–10 Inspection
QR–11 Test Control
QR–14 Inspection, Test, and Operating Status
QR–15 Control of Non-Conforming Items
QR–16 Corrective Action
QR–17 Quality Assurance Records
QR–18 Audits
QR–21 Surveillance

As other quality elements are fully implemented site-wide the upgraded requirements will apply to the activities covered by this plan.

5.0 Deliverables and Schedule

A Program Plan will be prepared by EG&G Rocky Flats, Inc. and approved by the DOE. The Program Plan will be provided to the DNFSB within 90 days of the date of this implementation plan. The Department of Energy does not feel that there is yet sufficient information upon which to base a detailed schedule for implementation of this plan. In lieu of a detailed schedule, the Board will be kept currently and fully informed with respect to implementation of the Board's recommendation as follows:

- Technical and other reports regarding this recommendation will be provided to the Board as they are made available to DOE.
- Progress reports will be prepared monthly by EG&G Rocky Flats, Inc. and transmitted to the DNFSB. The first progress report will be due to the Board within 30 days of the date of this implementation plan. The reports will summarize activities completed during the reporting period and discuss activities planned for the next reporting period.

The Board will be given a comprehensive briefing regarding the

status of implementation of this recommendation, as it pertains to each building, after completion of the Operational Readiness Review and prior to resumption of operations.

A written report, for each building, will be provided at least one week prior to the completion of the Operational Readiness Review.

It is expected that execution of this plan will take longer than one year. In this event, notifications will be made in accordance with reference 14.

References

1. Defense Nuclear Facilities Safety Board Recommendation for the Secretary of Energy pursuant to Section 312(5) of the Atomic Energy Act of 1954, as amended, of June 4, 1990.
2. SCIENTECH, Inc., An Assessment of Criticality Safety at the Department of Energy Rocky Flats Plant Plane, Golden CO. July—September 1989.
3. EG&G Rocky Flats, Inc., Revised Response to July-September 1989 Assessment of Criticality Safety at the Department of Energy Rocky Flats Plant, golden, Colorado, dated May 16, 1990.
4. SCIENTECH, Inc., A Review of EG&G Response to SCIENTECH's September 1989 Report "An Assessment of Criticality Safety at Rocky Flats Plant," dated June 6, 1990.
5. Secretary of Energy Letter to John T. Conway of July 24, 1990.
6. DOE Order 5480.5, "Safety of Nuclear Facilities."
7. DOE Order 5480.11, "Radiation Protection for Occupational Workers."
8. EG&G Rocky Flats, Inc., Non destructive Assay (NDA) Measurements of Process Holdup, dated July 19, 1990 (UCNI).
9. EG&G Rocky Flats Inc., Generic Criticality Safety Analysis of Plutonium in Glovebox Exhaust Systems, July 1990.
10. J.B. Briggs, letter to D.L. Mayfield, "Review of Generic Criticality Safety Analysis of Plutonium Glovebox Exhaust Systems", JBB-07-90, dated July 3, 1990.
11. DOE Order 5700.6B, "Quality Assurance."
12. ASME NQA-1, "Quality Assurance Program Requirements for Nuclear Facilities", 1985.
13. EG&G Rocky Flats, Inc., Plutonium Operations Phased Resumption Management Plan, Revision 3, September 14, 1990.
14. Public Law 100-456, section 315.

Appendix A—Summary Description of DOE Orders

DOE Order 6430.1A, General Design Criteria DOE Order 6430.1A provides general design criteria which apply to DOE facilities. Of particular interest, in section 0200-1.3, radiological siting guidelines are established for nonreactor nuclear facilities. The guidelines state that the maximum dose of an off-site individual shall not exceed 25 rem to the whole body, 300 rem to the thyroid, 300 rem to the bone surface, 75 rem to the lung, or 150 rem to any other organ from exposure to internally-deposited radioactive materials and/or to radiation from external sources. Accidents to be considered in evaluating radiological consequences include operational events and natural phenomena as applicable to the facility and site.

DOE Order 5480.5, Safety of Nuclear Facilities. DOE Order 5480.5 establishes nuclear facility safety program requirements for the Department of Energy (DOE) and DOE contractors in the areas of:

- Nuclear facility siting, design, construction, modification, operation, maintenance, and decommissioning;
- Radioactive and fissionable material production, processing, storage, transfer and handling;
- Environment, Safety, and Health; and
- Criticality hazards associated with fissionable material operations outside of nuclear reactors.

DOE Order 5480.11, Radiation Protection for Occupational Workers. DOE Order 5480.11 establishes radiation protection standards and program requirements for the DOE and its contractors with respect to the protection of workers from ionizing radiation. This Order defines a process whose objective it is to assure that dose levels are As Low As Reasonably Achievable.

DOE Order 5700.6B, Quality Assurance Program Requirements for Nuclear Facilities. DOE Order 5700.6B establishes DOE policy, sets forth requirements, and assigns responsibilities for establishing, implementing, and maintaining, plans and actions to assure quality achievement in DOE programs. The Order identifies ANSI/ASME NQA-1 as the preferred standard for Quality Assurance.

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BILLING CODE 6450-01-M

DOE Implementation Plan for Conducting an Operational Readiness Review at the Rocky Flats Plant Prior to Resumption of Operations; Response to Recommendation 90-4 of the Defense Nuclear Facilities Safety Board

AGENCY: Department of Energy.

ACTION: Notice and request for public comment.

SUMMARY: Pursuant to section 315(d) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2286(d), the Department of Energy (DOE) hereby publishes notice of a response of the Secretary of Energy (Secretary) to Recommendation 90-4 of the Defense Nuclear Facilities Safety Board, for conducting an Operational Readiness Review at the Rocky Flats Plant prior to resumption of operations. DOE hereby requests public comment on the response of the Secretary to Recommendation 90-4.

DATES: Comments, data, views, or arguments concerning the Secretary's response are due on or before January 7, 1991.

ADDRESSES: Send comments, data, views, or arguments concerning the Secretary's response to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW., suite 700, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Donald F. Knuth, Deputy Assistant Secretary for Operations, Defense Programs, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

Dated: November 30, 1990.

Donald F. Knuth,

Deputy Assistant Secretary for Operations, Defense Programs.

November 29, 1990

The Honorable John T. Conway,
Chairman, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW., Washington, D.C. 20004

Dear Mr. Conway: In accordance with section 315 of Public Law 100-456 and with Defense Nuclear Facilities Safety Board Recommendation 90-4, which I accepted in my June 20, 1990, letter to the Board, I am enclosing the Department of Energy's Implementation Plan for an operational readiness review at the Rocky Flats Plant. This review is to be conducted prior to resumption of plutonium production operations at the facility and will address the specific issues cited in Board Recommendation 90-4. The review will also address other issues required to evaluate plant, personnel, and procedural readiness.

A detailed schedule for the operational readiness review is not yet available. The enclosed Implementation Plan details the sequence of key review elements that will occur following the contractor's notification of readiness to the Department. I will provide you with more detailed scheduling information as soon as that information becomes available.

Sincerely,

James D. Watkins,

Admiral, U.S. Navy (Retired).

Implementation Plan for an Operational Readiness Review of the Safety of Plutonium Operations at the Rocky Flats Plant

1.0 Background

This Implementation Plan has been prepared in response to the Defense Nuclear Facilities Safety Board's (DNFSB) recommendation to conduct an operational readiness review (ORR) for plutonium operations at the Rocky Flats Plant (RFP). This plan responds to the specific DNFSB recommendations concerning the nuclear safety of plutonium operations. This plan does not attempt to describe other related initiatives taken by the Department of Energy (DOE) in the areas of nuclear materials controls and accountability; facility security; a systematic evaluation program for the design of structures, systems, and components; and long-term

waste management. DOE approval to resume plutonium operation at RFP will be based upon the results of the ORRs described in this Implementation Plan and the results of or plans for these other DOE Initiatives.

EG&G assumed responsibility for the safety of RFP on Januray 1, 1990, as the management and operations contractor to DOE. At that time, RFP was shut down for a semiannual nuclear material inventory as required by DOE Order 5633.3. However, a wide range of criticisms and concerns, which were indicative of systematic deficiences in the conduct of past operations, had been raised by oversight groups prior to shutdown. Reviews by EG&G management confirmed that there were deficiencies in operational control. It was concluded that troublesome incidents and events could continue to occur unless the underlying issues were identified and corrective actions were taken. Based on this assessment, EG&G recommended, and DOE agreed, that resumption of plutonium operations at RFP should be delayed to permit EG&G undertake the following measures:

(1) Perform a thorough review of the status of facilities and personnel

(2) Implement selected measures to improve the margin of safety associated with plutonium operations in the near term

(3) Formulate a long-term program for improvement of RFP operations

EG&G identified specific actions as essential elements for resumption of plutonium operations. Central to the EG&G resumption strategy was the introduction of short-term measures for early and substantial improvements in the formality and discipline of operations at RFP. Further review of operations and related activities by DOE, the DNFSB, and the Advisory Committee on Nuclear Facility Safety (ACNFS) identified additional short-term measures that should be completed prior to the resumption of plutonium operations.

DOE's normal practice after an extended outage at a nuclear complex is to conduct a comprehensive operational readiness review (ORR) before resuming operations. In keeping with this practice, and consistent with a May 3, 1990, DNFSB recommendation, the Secretary of Energy notified the DNFSB on June 20, 1990, that DOE would perform on ORR at RFP prior to resumption of plutonium operations.

EG&G is currently proceeding with a phased program to resume plutonium operations at RFP. Each phase of EG&G's resumption program is intended to allow plutonium operations to be resumed in a specific building. EG&G's resumption program for each building consists of a readiness program to upgrade the safety of operations, followed by an EG&G readiness review to confirm the success of the readiness program for that building, followed by a start-up test program to confirm the capability to resume plutonium operations safely. Since the plutonium-handling buildings at RFP will be made ready for operations individually, rather than all at once, DOE will conduct a separate ORR for each building after the completion of EG&G's readiness review for that building.

2.0 Purpose

The purpose of this DOE ORR process is to verify the readiness of RFP to resume plutonium opeations safely. As part of this process, DOE will conduct an ORR for each building in which plutonium operations are conducted to evaluate whether EG&G has satisfied DOE's safety objectives (contained in a document entitled "ORR Safety Objectives and Assignments" and discussed in Section 5.1, below). Each ORR conducted by DOE will include the following:

- Assessment of the adequacy and correctness of operating procedures for process and utility systems.
- Assessment of the adequacy of the level of knowledge achieved during operator requalification as evidenced by review of qualification and requalification documentation, including examination questions and results; selective oral examination of operators; and observation of operator performance by members of the ORR Team.
- Examination of records of tests of safety systems and calibration of other instruments that monitor limiting conditions of operation or that satisfy operating safety requirements.
- Verification that all plant changes, including modifications of vital safety systems and plutonium processing workstations, have been reviewed for potential impact on procedures, training and requalification and that training and requalification have been completed using the revised procedures.
- Examination of each building's Final Safety Analysis Report (FSAR) to ensure that its description of the plan, procedures, and accident analyses is consistent with the as-built plant, including those modifications made during the outage period.

Other areas to be addressed in each ORR to assure that adequate safety is achieved and maintained include the following:

- Status of safety-related structures, systems, and components, including operational interfaces between separate buildings. Safety-related structures, systems, and components include all vital safety systems and all other items which support safety functions
- Management systems, organization, practices and policies
- Self-assessment capability
- Operating experience review program
- Adequacy of the graded startup test program, including planning for the plutonium handling tests to be included in the program

3.0 Scope

In order to provide the Secretary of Energy with a partial basis for determining whether to allow EG&G to resume plutonium operations in each building, DOE Headquarters will implement an ORR for each building in which plutonium operations are conducted.

The DOE ORR will address the following for each plutonium operations building:

- The operational readiness review conducted by EG&G
- Implementation of DOE directives and resolution of recommendations and findings made by oversight groups and review teams
- Readiness of the plant, equipment, personnel, and administrative systems to resume plutonium processing operations
- Adequacy of operational support services in the areas of training, maintenance, waste management, environmental protection, industrial safety and hygiene, radiological protection and health physics, emergency preparedness, fire protection, quality assurance, criticality safety, and engineering

The DOE ORR process will also include briefing DOE senior management and the DNFSB on the result of each ORR, public hearings on the ORR results for Buildings 559 and 707 (i.e., the first two buildings evaluated), and input to the Secretary of Energy's determination to resume plutonium operations for each building.

The ORR process will include consideration of the results of a related DOE initiative to review RFP compliance with DOE orders. However, initiatives such as nuclear material control and accountability; facility security; a systematic evaluation program for the design of structures, systems, and components; and long-term waste management issues are not within

the scope of the ORR implementation plan.

4.0 Overall Approach

Each ORR will provide DOE senior management with independent, objective, building-by-building evidence of the adequacy of EG&G's preparations to resume plutonium operations safely.

The sequence of the ORR activities is discussed below.

a. *Readiness to Proceed Memorandum*—After successful completion of the readiness program and readiness review of a specific building, EG&G will issue a Readiness to Proceed memorandum requesting DOE approval for resumption of plutonium operations for that building.

b. *Operational Readiness Review*—After receiving the Readiness to Proceed memorandum from EG&G, DOE will initiate an ORR for the building. During each ORR, a team comprised of Technical Experts and Senior Nuclear Safety Experts will review EG&G's procedures and programs; inspect equipment, systems, and the building; audit records; interview personnel; and observe simulated operations. At the completion of each ORR, the Team Leader and the Senior Nuclear Safety Experts will prepare a report regarding the readiness to safely resume plutonium operations in the building.

c. *Operational Readiness Review Team Briefings*—Briefings on the ORR report will be presented to DOE senior management, the ACNFS, and the DNFSB, as requested. A briefing will be presented to the DNFSB prior to the resumption of plutonium operations in each building.

d. *Approval to Proceed Memorandum*—Once all resumption objectives have been met, the DOE-Headquarters Resumption Program Office will request the Secretary of Energy's approval for EG&G to resume plutonium operations associated with the Plutonium Startup Test Program by preparing an Approval to Proceed memorandum for each building. Each memorandum will be based, in part, upon the results of the ORR conducted by DOE for that building. Other DOE initiatives related to the approval to proceed are identified in section 3.0, above.

e. *Plutonium Startup Test Program*—Following the approval of resumption of plutonium operations, EG&G will conduct a plutonium startup test program in each building. Each plutonium operation in the building is to be performed in a supervised environment prior to final approval of operator qualifications This startup test program will simultaneously confirm the operability of equipment, the viability of procedures, and the training of operators in a production setting. Successful completion of the startup test program will permit the building to resume normal production activities subject to DOE approval.

In addition to these activities, DOE will hold public hearings prior to making recommendations to the Secretary of Energy regarding the resumption of plutonium operations for Buildings 559 and 707. These buildings, an analytical laboratory and a manufacturing facility, respectively, are expected to be the first buildings EG&G makes ready for resumption of plutonium operations. The operations conducted in Buildings 559 and 707 represent many of the types. of plutonium operations conducted at RFP. The public hearings will be held to provide the public with information concerning the DOE ORR and to address the public's questions and concerns.

The general process described above will be repeated for each building in which plutonium operations are conducted. However, as ORRs are conducted on each building, the scope of each ORR will be modified to reflect the results of the previous ORRs. For example, site-wide quality assurance procedures previously found to be acceptable would not have to be reviewed again for acceptability during ORRs of other buildings, but the implementation of these quality assurance procedures within each building would be reviewed in the subsequent ORRs. Consequently, the scope and the number of people assigned to ORR teams may decrease as the series of ORRs proceeds. The public will continue to be informed of the results of ORRs conducted for those buildings evaluated after Buildings 559 and 707.

5.0 Description

5.1 ORR Preparations

Each ORR will be conducted by a team of experts in engineering, science, nuclear facility safety, and plutonium processing operations. Team members will be individually chosen by the ORR Team Leader to ensure that collectively their backgrounds will include the important facets of operations to be reviewed at RFP. The experts will also be chosen to ensure that each ORR Team includes senior nuclear safety experts and technical specialists to cover the following functional areas, as appropriate, for each building:

- Emergency preparedness
- Facilities, process, and fabrication engineering
- Environmental protection and waste management
- Fire protection
- Industrial safety and hygiene
- Maintenance, testing, and surveillance
- Management, organization. and staffing
- Operations
- Quality assurance
- Radiological protection and health physics
- Nuclear safety assessment
- Training

The reviews conducted by each ORR Team will be guided by a specific DOE-approved ORR safety objectives and assignments document.[1] The safety objectives contained in this document will be grouped into the following three categories:

- Plant and equipment (hardware) readiness
- Management and personnel readiness
- Management programs (procedures, plans, etc.) readiness

A set of safety objectives has been developed based on (1) essential actions to be completed prior to the phased resumption of operations, as identified by EG&G; (2) directives issued by DOE; (3) findings and recommendations of oversight groups; and (4) recommendations of review teams. These objectives are contained in the ORR safety objectives and assignments document that will be revised for each ORR and will identify the members of each ORR Team and their specific assignments.

The ORR Team will be led by a senior DOE manager and will be comprised of Senior Nuclear Safety Experts and Technical Experts. The Senior Nuclear Safety Experts will assist the Team Leader in defining the issues to be addressed by the Technical Experts, overseeing and reviewing the activities of the Technical Experts, and preparing a report regarding the safety of resuming plutonium operations based on the Team's findings.

Before arriving at RFP, each Technical Expert on the team will be given instructions on how to review and use the safety objectives and assignments document to develop criteria that they will use in performing their reviews. The Team Leader may request that Team Members visit RFP for a limited time prior to the start of a building's ORR in

[1] The initial version of this document is attached to this plan. Subsequent revisions will be provided to the DNFSB and DOE internal oversight groups as prepared.

order to facilitate preparations for that ORR.

Criteria proposed by the Technical Experts will be based on their expertise in their assigned areas, their knowledge of DOE orders and other requirements, the operational history of RFP and other DOE facilities, the issue management system at the RFP, and past appraisals. The review approach proposed by the Technical Experts will identify the scope of their review and include plans for reviewing procedures and programs; inspecting equipment and facilities; auditing records; interviewing personnel; and observing operations during operational tests without plutonium. Some reviews may also recommend simulated operations by EG&G to test the response of operational and support personnel to normal and off-normal events.

The detailed criteria and the review approach prepared by each Technical Expert will be reviewed by the Team Leader, the Senior Nuclear Safety Experts, and the other Technical Experts on the Team. Revisions will be made to the criteria and review approach as appropriate. After final approval by the Team Leader and the Senior Nuclear Safety Experts, the Technical Experts will use the revised criteria and review approach to perform their reviews.

A copy of the criteria and review approach for each building will be provided to the DNFSB and DOE internal oversight groups.

5.2 ORR Process

After receiving and accepting EG&G's Readiness to Proceed memorandum for each building, the onsider portion of the ORR will begin. During a nominal 3-week onsite review, the ORR Team will use the inspection criteria and review approaches discussed above, and the ORR Technical Experts will assess whether the DOE safety objectives assigned to them for review have been met. The Senior Nuclear Safety Experts will actively participate in the reviews performed by the Technical Experts, and assist the Team Leader in providing oversight of the ORR.

Each ORR will consist of programmatic reviews of EG&G's readiness activities to assess whether plutonium operations could be conducted safely if allowed to resume. In addition, the ORR Team will evaluate EG&Gs performance in conducting ongoing activities, such as equipment operability checks and dry runs, and the simulated plutonium, operations requested by the Team Leader.

To facilitate Team coordination and the exchange of information, the Team will meet each evening during the onsite review period. The results of the reviews conducted by the Senior Nuclear Safety Experts and Technical Experts will be used by the Senior Nuclear Safety Experts and the Team Leader to refine and focus the future activities of the Technical Experts. For example, the Senior Nuclear Safety Experts may identify trends or patterns that indicate the need for additional investigation. An EG&G observer and a DOE-RFO observer will attend these meetings to aid in planning and coordinating upcoming activities and in validating the facts being relied upon by the ORR Team.

During the ORR, the documentation of review findings and the assembly of objective evidence of operational readiness will be the responsibility of individual Technical Experts in accordance with specific direction given by the Team Leader and the Senior Nuclear Safety Experts. Each Technical Expert's review findings will be documented on a standard worksheet.

At the end of the onsite portion of the ORR for each building, the Technical Experts will complete their evaluation of the operational readiness of the building, and their findings will be submitted to the Team Leader and the Senior Nuclear Safety Experts. The Senior Nuclear Safety Experts will review the Technical Experts' findings and assist the Team Leader in developing a recommendation regarding the readiness to safely resume plutonium operations in that building. A report will be prepared by the Senior Nuclear Safety Experts and the Team Leader to document the results of the ORR and provide justification for the Team's recommendation. The report will also identify any open items found in the review, including those that must be resolved prior to resumption of plutonium operations.

Team members will be asked to concur in the ORR report. Any dissenting opinions will be documented and attached to the report. The ORR report will be transmitted by the Team Leader to the Deputy Assistant Secretary for Facilities.

The Resumption Program Office in the Office of Defense Programs will prepare the Approval to Proceed memorandum for each building. The ORR report will become part of the basis for recommending to the Secretary the action that should be taken on EG&G's Readiness to Proceed memorandum. After the Secretary of Energy signs an Approval to Proceed memorandum, EG&G will be allowed to resume plutonium operations by initiating the graded plutonium startup test program for that building.

The Rocky Flats Operations Office (RFO) will verify closure, as necessary, of open items. In the event the open item requires action on the part of RFO, the closure of the item will be verified by DOE-Headquarters or an ORR Team member. The resources of the ORR Team will remain available to assist in determining the adequacy of closure.

6.0 Administration

6.1 Overall

This Implementation Plan is the top-level DOE document describing the activities necessary for safely resuming plutonium operations at each RFP building and serves the purpose of a management plan. The document hierarchy for the ORR is shown below.

- ORR Implementation Plan (top-level document for ORRs for all plutonium operations)
- ORR Safety Objectives and Assignments (mid-level document written for each building)
- Criteria and Review Approaches (bottom-level document controlling the work of each Technical Expert)

6.2 Quality Assurance and Document Control

The quality assurance (QA) and document control requirements for each ORR will be identified by the ORR Team Leader, with assistance by the Senior Nuclear Safety Experts, will be issued by the ORR Team Leader, and will be implemented by all ORR Team members. The QA requirements will include Team Leader approval of the qualifications of Technical Experts, daily onsite peer review of the findings of the Technical Experts, verification of facts relied upon in preparation of ORR reports, oversight of the activities of the Technical Experts by the Senior Nuclear Safety Experts, and specification of the form of reports and the retention of records on which the Team's conclusions are based.

6.3 Responsibilities

Deputy Assistant Secretary for Facilities, Defense Programs—The Deputy Assistant Secretary for Facilities has overall responsibility for conducting the Operational Readiness Reviews at the RFP in preparation for resumption of plutonium operations. The Deputy Assistant Secretary for Facilities has appointed the Director of the Office of Engineering and Operations Support as the Team Leader for the RFP Operational Readiness Reviews.

DOE Headquarters RFP Resumption Program Office—The DOE Headquarters RFP Resumption Program Office is responsible for coordinating

DOE Headquarters resumption activities, concurring in resumption plans, and the preparing the Approval to Proceed memorandum for each building. The Approval to Proceed memorandum will identify any unresolved issues and recommend actions for resolution and will address generic and specific issues. Issues raised by the Secretary, the ACNFS, or the DNFSB will be resolved or action plans to resolve the issues will be prepared, as appropriate, prior to forwarding each Approval to Proceed memorandum to the Secretary from the Assistant Secretary for Defense Programs.

EG&G—EG&G is responsible for ensuring that its phased resumption program sufficiently improves the safety of plutonium operations at the RFP Plant to allow the resumption of plutonium operations. In addition, EG&G is responsible for preparing a Readiness to Proceed memorandum for each building to notify DOE-RFO that EG&G's readiness review has been completed satisfactorily. EG&G is also responsible for supporting the activities of each DOE ORR Team. For example, EG&G shall conduct operations and tests requested by the Team Leader and ensure that EG&G is represented at daily meetings of each ORR Team and at other Team meetings, as requested.

ORR Team Leader—The Team Leader is responsible for the selection of ORR Team members; DOE direction and guidance to each ORR Team in accordance with this Implementation Plan; preparation of internal ORR Team correspondence; liaison with the Manager of the Rocky Flats Operations Office and the Director of the RFP Resumption Program Office; and submission of ORR reports to the Deputy Assistant Secretary for Facilities. The Team Leader is also responsible for issuing the ORR safety objectives and assignments document at least 4 weeks before the start of each ORR.

ORR Senior Nuclear Safety Experts—The ORR Senior Nuclear Safety Experts are responsible for providing assistance to the Team Leader in the exercise of his responsibilities; providing guidance to the Technical Experts; identifying the issues to be addressed during the ORR; approving the criteria and review approaches to be used by the Technical Experts; and assisting the ORR Team Leader in writing the report for each ORR. The ORR reports will be signed by all Senior Nuclear Safety Experts and the Team Leader. Any differing opinions will be attached in writing.

ORR Technical Experts—The Technical Experts are responsible for assessing the adequacy of EG&G's readiness results by conducting reviews in selected areas important to the safe resumption of plutonium operations. The Technical Experts will assist the Team Leader and the Senior Nuclear Safety Experts in defining the scope of review in their assigned area; documenting the criteria and review approach for their assigned area, subject to approval by the senior Nuclear Safety Experts and the Team Leader; attending Team meetings to coordinate activities with other Team members; documenting their own activities, findings and conclusions in a manner to be specified by the Team Leader and the Senior Nuclear Safety Experts; and concurring in final ORR reports written by the Team Leader and the Senior Nuclear Safety Experts (any differing opinions will be attached to the report in writing).

Rocky Flats Operations Office Manager—The Manager of the Rocky Flats Operations Office (RFO) is responsible for coordinating DOE-RFO resumption activities, approving the EG&G RFP resumption plans, and forwarding the Site Resumption Action Memorandum for each building to the Director, RFP Resumption Program Office, under a separate cover letter signed by the DOE-RFO Manager that includes any DOE-RFO recommendations. The Manager of the RFO is also responsible for ensuring that the DOE-RFO is represented at meetings of the ORR Team, as requested, and for verifying resolution of open items.

7.0 Deliverables and Schedule

The ORR safety objectives and assignments document will be issued at least 4 weeks prior to the start of each ORR and will be modified as necessary for each building. A copy of each Technical Expert's criteria and review approach, which are developed from the ORR safety objectives and assignments document for each building, will be approved prior to the start of ORR onsite inspections.

A report documenting the results of each ORR will be issued within 2 weeks of completion of the onsite portion of the ORR and prior to any public hearing on that ORR. The report will contain the recommendation of the ORR Team regarding the safety of resuming plutonium operations for that building.

A schedule for performing ORRs at RFP will be made available after EG&G issues a resumption schedule. The DNFSB will be informed of the ORR start date for each building when these dates have been selected.

Operational Readiness Review Safety Objectives and Assignments for the Rocky Flats Plant

1.0 Purpose

This document provides the initial safety objectives and team member assignments for conducting the Operational Readiness Review (ORR) at the Rocky Flats Plant (RFP). The approach for conducting the ORR is described in "Implementation Plan for an Operational Readiness Review of the Safety of Plutonium Operations at the Rocky Flats Plant." The specific assignments will be provided for each ORR by a revision of this document that is consistent with the Implementation Plan.

2.0 Team Composition

The individuals identified for participation in the initial ORRs are listed below. A statement of their credentials is provided in Appendix A. Additional skill areas may be identified before the initial ORRs are conducted.

Team Leader

James P. Knight

Senior Safety Experts

Roger J. Mattson, Coordinator
William Kerr
James P. O'Reilly
Lawrence J. Ybarrondo

Technical Experts

Lance E. Traver, Review Coordinator
Joseph F. Tinney, Issue Resolution
H. Michael Hawkins, Emergency Preparedness
Carl R. Forsberg, Engineering (Facilities, Process, Fabrication)
Gary J. Toman, Engineering (Facilities, Process, Fabrication)
Monique V. Helfrich, Environmental Protection and Waste Management
James A. Shurick, Fire Protection
Lawrence Blackwell, Industrial Safety
Charles R. Jones, Maintenance, Testing, and Surveillance
David M. Pinkston, Maintenance, Testing, and Surveillance Management, Organization, and Staffing [1]
Albert P. Baione, Management, Organization, and Staffing
Shirley J. Olinger, Management, Organization, and Staffing
Rowland E. Felt, Operations
Leonard W. Gray, Operations
Robert E. Hanvey, Operations
Matthew S. McCormick, Operations
Marvin P. Norin, Quality Assurance
Arthur J. Toy, Radiological Protection and Instrumentation
C. Leslie Brown, Safety Assessment
Elizabeth Conrad, Safety Assessment
Gilber A. Nicholson, Safety Assessment Training [1]

[1] Additional Technical Experts in this area are being sought.

John W. Robinson, Training
Eugene F. Redden, Training

3.0 Safety Objectives and Assignments

Readiness to resume plutonium operations at Rocky Flats will be evaluated using the safety objectives set forth in Sections 3.1 to 3.3. The safety objectives were developed by the ORR Team Leader and the Senior Nuclear Safety Experts based on professional judgment an experience input from the Technical Experts aided by a week-long meeting of the Team at the Plant in June 1990, and on information contained in references listed in appendix C. Particular attention was given to the following references:

- An EG&G report, "Rocky Flats Plan for Phased Resumption of Plutonium Operations" (Reference 17)
- Directives issued by DOE (References 8, 14, and 16)
- Findings and recommendations of oversight groups (References 11, 12, and 13)
- Recommendations of review teams (References 9, 10, and 15)

The information to be relied on by the ORR Team will be recorded and, where appropriate, references will be added to appendix C. The safety objectives of sections 3.1 and 3.3 were developed generically; they will be modified as necessary for each ORR based on the unique operating features of the building being evaluated.

Each Technical Expert will be assigned to evaluate a set of safety objectives based on their area of review. The Technical Experts will be responsible for determining whether their assigned objectives have been met in accordance with the process set forth in "Implementation Plan for an Operational Readiness Review of the Safety of Plutonium Operations at the Rocky Flats Plant." The assignments for each technical expert are listed in appendix B.

3.1 Plant and Equipment (Hardware) Readiness

The hardware objectives to be achieved prior to resumption of plutonium operations are listed and numbered below. Each objective is given a unique identifier (H.1, H.2, etc.). Under each objective, supporting objectives are identified and given a number (H.1.1, H.1.2, etc.).

H.1 The configuration of vital safety systems, including safety-related process systems and safety-related utility systems, is consistent with assumptions made about such systems in Safety Analysis Reports (SARs).

H.1.1 Vital safety systems have been correctly identified in the SARs.

H.1.2 Identification markers are installed on vital safety systems, including safety-related process systems, safety-related utility systems, and any other equipment and instrumentation used to demonstrate compliance with operational safety requirements.

H.1.3 The adequacy of labeling and drawings for vital safety systems has been verified.

H.1.4 The types, modes of operation, and locations of vital safety systems, including safety-related process systems and safety-related utility systems, identified in new procedures are physically verified.

H.2 The condition and operability of vital safety systems, including safety-related process systems and safety-related utility systems, are confirmed.

H.2.1 Instruments, indicators, and alarms that monitor limiting conditions of operation or that satisfy operational safety requirements have been demonstrated to be capable of performing their intended functions in the required manner.

H.2.2 The maintenance backlog for vital safety systems, including safety-related process systems and safety-related utility systems, is acceptable for resumption of operations.

H.2.3 Good housekeeping is practiced in all buildings that are involved with plutonium operations.

H.2.4 Tools and equipment for proper operation and maintenance of vital safety systems, including safety-related process systems and safety-related utility systems, have been identified, calibrated, tested, and are available.

H.2.5 Ductwork is evaluated to identify and characterize plutonium buildup. There is high confidence that all lines of ductwork with more than 400 grams of plutonium have been identified.

H.2.6 Plutonium is removed, or ductwork is replaced, to the maximum extent practicable, for those lines of ductwork containing more than 400 grams of plutonium. In no case shall a residue exceeding 400 grams of plutonium remain in any one line of ductwork unless approved by the Secretary of Energy.

H.2.7 Improved prefilters have been installed in those glovebox exhaust lines identified as requiring this modification.

H.2.8 Prefilters have been installed on ventilation system bypass lines, and other changes to guard against plutonium buildup in ductwork have been made, for all gloveboxes identified as requiring these modifications.

H.2.9 Operability of vital safety systems, including safety-related process systems and safety-related utility systems, is physically verified.

H.3 Facilities and equipment are available for operational support services, including training, maintenance, waste management, environmental protection, industrial safety and hygiene, radiological protection and health physics, emergency preparedness, fire protection, quality assurance, criticality safety, and engineering.

H.3.1 Equipment and facilities needed for operational support services are available.

H.3.2 Sampling and analysis capabilities exist to perform the monitoring and characterization activities needed for resumption of operations, including those for environmental protection and waste management.

H.3.3 Approved storage facilities exist to receive wastes and residues generated from operations within a building.

3.2 Management and Personnel Readiness

The personnel objectives to be achieved prior to resumption of plutonium operations are listed and numbered below. Each objective is given a unique identifier (P.1, P.2, etc.). Under each objective, supporting objectives are identified and given a number (P.1.1, P.1.2, etc.).

P.1 There are sufficient numbers of qualified plutonium operations personnel, supervisors, shift technical advisors, and managers to support the safe resumption of plutonium operations.

P.1.1 Plutonium operations personnel have an adequate understanding of technical fundamentals including chemistry, ionizing radiation, criticality, and plutonium pyrophorisity.

P.1.2 Plutonium operations personnel, supervisors, and shift technical advisors have been trained and qualified in accordance with the latest revision of approved procedures.

P.1.3 An adequate startup test program has been developed and will be used for final sign-off of operator qualification.

P.1.4 Plutonium operations personnel have been trained to adhere to procedures and operational safety requirements and to understand the importance of procedural compliance.

P.1.5 Qualification and staffing requirements have been established and met for plutonium operations personnel.

supervisors, shift technical advisors, and managers.

P.1.6 The level of knowledge achieved during operator qualification is adequate to operate safely.

P.2 As a minimum, one DOE person trained and qualified in plant operations will be stationed in each plutonium building during operations that involve plutonium.

P.2.1 Qualification requirements and staffing levels are established and met.

P.2.2 Training has been conducted.

P.2.3 Personnel are familiar with the buildings, equipment, operating procedures, and the identity of senior building managers.

P.3 Sufficient numbers of qualified personnel are provided for operational support services, including training, maintenance, waste management, environmental protection, industrial safety and hygiene, radiological protection and health physics, emergency preparednes, fire protection, quality assurance, criticality safety, and engineering.

P.3.1 Operational support personnel have a requisite understanding of technical fundamentals.

P.3.2 Operational support personnel and supervisors have been trained and qualified in accordance with the latest revision of approved procedures.

P.3.3 Qualification and staffing requirements have been established and met for operational support personnel.

P.3.4 The level of knowledge achieved during qualification is adequate to support resumption of operations.

P.4 Personnel exhibit an awareness of safety and environmental protection requirements and, through their actions, demonstrate a commitment to comply with those requirements.

3.3 Management Programs (Procedures, Plans, etc.) Readiness

The management systems objectives to be achieved prior to resumption of plutonium operations are listed and numbered below. Each objective is given a unique identifier (M.1, M.2, etc.). Under each objective, supporting objectives are identified and given a number (M.1.1, M.1.2, etc.).

M.1 There are adequate and correct procedures and safety limits for operating the process systems and the utility systems.

M.1.1 Procedures for operations, training, and maintenance reflect the current configuration (including changes made during the outage) of vital safety systems, including safety-related process systems and safety-related utility systems.

M.1.2 Operating and maintenance procedures for vital safety systems, including safety related process systems and safety-related utility systems, and building administrative procedures are consistent with approved operational safety requirements and deal with normal and abnormal events (e.g., spills).

M.1.3 Consistent with the contractor's operating philosophy, operating procedures for vital safety systems, including safety-related process systems and safety-related utility systems, contain sufficient detail to permit initiation of use of a "procedural compliance" concept at RFP.

M.1.4 Procedures produced or revised for the conduct of plutonium operations have undergone a joint walkdown verification by DOE and EG&G technical personnel.

M.1.5 The adequacy of operating procedures is demonstrated during equipment and system operability checks.

M.1.6 Operational safety requirements are established and measured to ensure that operations are conducted within the analyzed safety envelope.

M.1.7 Operational safety requirements have been developed by engineering and plutonium operations personnel.

M.1.8 A system has been established to ensure procedures are kept current and accurate, including temporary changes to procedures.

M.1.9 Safety limits are clearly stated and posted in appropriate locations.

M.2 Training and qualification programs for plutonium operations personnel have been established, documented, and implemented.

M.2.1 Contents of training and qualification programs properly account for plant and procedural changes.

M.2.2 Primers covering technical fundamentals, including chemistry, ionizing radiation, criticality, and plutonium pyrophorisity, are available.

M.2.3 Training and qualification programs, including building-specific training, job-specific training, and general employee training are available.

M.2.4 Instructor guides, examinations, lesson material, and reference documents are available and adequate to support an effective training program.

M.2.5 The training department uses post-training feedback, internal evaluations, and operating experience to modify their programs as needed.

M.2.6 An adequate startup test program has been developed and will be used to evaluate the adequacy of the training program for plutonium operations personnel.

M.3 Vital safety systems are defined, and a system to maintain control over the design and modification of plutonium facilities and vital safety systems, including safety-related process systems and safety-related utility systems, is established.

M.3.1 Administrative controls are provided to assure that modifications of plutonium facilities and vital safety systems, including safety-related process systems and safety-related utility systems, made during the outage have been analyzed, documented, and approved.

M.3.2 An adequate process has been established to assure that documentation for plutonium facilities and vital safety systems, including safety-related process systems and safety-related utility systems is established and kept current.

M.3.3 Administrative controls are in place to assure that deactivation of alarms is accomplished in a controlled manner requiring formal review and approval.

M.3.4 One-line drawings and other documentation relied upon to demonstrate compliance with operational safety requirements are up-to-date with the current plant configuration.

M.4 A system is in place to confirm and periodically reconfirm the condition and operability of vital safety systems, including safety-related process systems and safety-related utility systems.

M.4.1 Procedures are in place to verify the operability of alarms and instrumentation for vital safety systems, including safety-related process systems and safety-related utility systems.

M.4.2 Appropriate procedures, including monitoring requirements and operational constraints, are in place to assure that future operations will not allow the level of plutonium in any line of ductwork to exceed 400 grams.

M.4.3 Procedures are in place to assure that if the 400-gram limit for plutonium buildup in the ductwork is exceeded, or if the risks to personnel from accumulation of radioactive material in ductwork appear unacceptable, or if the level of accumulation of plutonium in ductwork presents an unreviewed public safety question, continued operation of such a ductwork system will require a full technical justification and Secretarial approval.

M.4.4 Surveillance requirements, procedures, and intervals are established and implemented.

M.5 A process has been established to identify, evaluate, and resolve recommendations and findings made by

oversight groups, official review teams, audit organizations, and the operating contractor.

M.5.1 A system for identifying, reviewing, and cataloging documents that describe deficiencies or recommendations is established and adequately implemented.

M.5.2 A system for prioritizing and tracking corrective actions and recommendations is established.

M.5.3 Criteria for identifying resumption issues have been developed.

M.5.4 Issues to be resolved prior to resumption of plutonium operations have been properly identified and corrective actions have been completed and verified.

M.6 A baseline compliance status review of the nine Category 1 DOE Orders has been performed and non-complying items have been addressed.

M.6.1 A process has been implemented to identify and evaluate noncompliance issues associated with the nine Category I DOE Orders and to determine which specific issues must be resolved prior to resumption of plutonium processing operations.

M.6.2 Noncompliance issues have been corrected or appropriately justified for use as is.

M.7 Management systems are established to assure operational support services (e.g., training, maintenance, waste management, environmental protection, industrial safety and hygiene, radiological protection, and health physics, emergency preparedness, fire protection, quality assurance, criticality safety, and engineering) are adequate for the resumption of plutonium processing.

M.7.1 Organizational responsibilities for and interfaces with operational support services have been formally identified and implemented.

M.7.2 Readiness for the resumption of plutonium operations has the concurrence of cognizant operational support services organizations.

M.7.3 An effective public information program is established, including provision for comment by the public, oversight groups, and Federal, State and local agencies.

M.7.4 An emergency preparedness program has been established and drills and exercises are conducted at appropriate intervals. Drills and exercises have demonstrated the capability to perform emergency preparedness activities.

M.7.5 An adequate maintenance program has been established.

M.7.6 An adequate quality assurance program has been established, including processes for tracking, trending, and correcting significant conditions adverse to quality.

M.7.7 Necessary environmental permits have been obtained and necessary environmental compliance agreements are in place.

M.7.8 Safety programs have been established that ensure that plant personnel are trained and can respond correctly to safety hazards.

M.7.9 Adequate reviews are conducted by operational support organizations with quality personnel at suitable intervals to monitor safety performance.

M.7.10 A program for adequate oversight of unresolved safety question determinations has been implemented.

M.7.11 Operational support organizations have the appropriate administrative controls (e.g. schedules, plans, policies, surveillances, procedures) to ensure compliance with appropriate Federal and State regulations and good practices.

M.8 A formal program is established to develop a site-wide culture that places the highest priority on safety and protection of the environment.

M.8.1 Policies, plans, and procedures are established that can reasonably be expected to support the desired cultural changes such as placing the highest priority on safety and protection of the environment, formality and discipline of operations, and inquisitive employee attitudes.

M.8.2 A self-assessment process is in place to provide a mechanism to measure safety performance and to determine and correct the root causes of unusual occurrences.

M.8.3 Facility management personnel are made aware of safety issues and occurrences that could affect their operations, and lessons learned are applied.

M.8.4 The philosophy of openness on matters affecting safety, health, and environment is supported by an effective public information program and line management practices.

M.8.5 Management commitment to the safe operation of the facility is evident from personal involvement, interest, and knowledge.

M.9 The results of the EG&G corporate review verify the readiness of hardware, personnel, and management systems to resume plutonium operations.

M.10 An adequate startup test program has been developed and the non-plutonium handling portion has been adequately implemented to confirm the operability of equipment, the viability of procedures and the training of operators. The startup test program shall also include adequate plans for graded plutonium testing to simultaneously confirm operability of equipment, the viability of procedures, and the training of operators.

M.11 Functions, assignments, responsibilities, and reporting relationships of individuals are clearly defined, understood, and effectively implemented with line management responsibility for control of safety.

M.11.1 Responsibility, authority, and accountability of each element of line management, from top-level management through shift supervisors, is clearly defined by policy and evident by practice.

M.11.2 Effective coordination and communication exists among the line organizations.

M.12 The DOE Rocky Flats Operations Office (DOE/RFO) has established oversight programs to support the resumption of plutonium processing operations.

M.12.1 The DOE/RFO organization is committed to the safe operation of the facility as evidenced by its day-to-day involvement with operations activities and its level of knowledge of plant operations.

M.12.2 The DOE/RFO has the capability to verify the adequacy of EG&G's operations at RFP prior to and following resumption of operations.

M.12.3 The DOE/RFO has established a formal program to foster a safety culture that places the highest priority on safety and protection of the environment.

Appendix A—Statements of Credentials

Albert P. Baione is a nuclear engineer with 11 years experience. Mr. Baione worked in the DOE Division of Naval Reactors for 10 years in nuclear facility operations and safety. The majority of this work involved the development and evaluation of refueling and radiological control programs, including evaluations of management and organizational performance. Mr. Baione led Naval Reactors Headquarters inspection teams that appraised the performance of nuclear-powered ships and nuclear ship repair facilities in their implementation of Headquarters radiological control requirements. He serves as Engineering Group Manager in SCIENTECH's Rockville, Maryland, office and participates in various safety and regulatory projects related to nuclear engineering for the NRC and DOE.

Lawrence Blackwell is a Ph.D. physicist with 32 years of management experience. He provides consulting services in nuclear facility safety, personnel reliability programs, emergency management, specialized

training, and industrial safety. In his 12 years of employment at Los Alamos National Laboratory (LANL), Dr. Blackwell held assignments in the Health, Safety, and Environment Division including Safety Director, Associate Division Leader, Fire Protection Program Manager, and Construction Project Manager, giving him a broad background in industrial safety. He was responsible for the complete revision and documentation of the LANL industrial safety program and developed the necessary training and evaluation systems to ensure implementation and compliance. Dr. Blackwell also designed and operated the LANL Emergency Operations Center and directed the Emergency Management Program.

C. Leslie Brown has 30 years experience in nuclear criticality safety. He is a Fellow Scientist with the Westinghouse Hanford Company and is currently serving as a criticality safety representative at the plutonium finishing plant. Mr. Brown has conducted criticality experiments with fast reactor fuel and performed criticality safety analyses for commercial nuclear power plants. He has served as a process engineer at the plutonium fabrication plant and was trained in criticality safety at the Hanford Critical Mass Laboratory. He was elected a Fellow of the American Nuclear Society (ANS) in 1980 and received the Bronze George Westinghouse Signature Award for Excellence in 1988 and the ANS Criticality Safety Division Achievement Award in 1978. He has published 76 documents, 14 ANS transaction papers, and 11 journal articles on the subject of criticality safety.

Elizabeth A. Conrad is a chemical engineer with 9 years expereince in nuclear chemical processing operations at Westinghouse Hanford Company (WHC). As a process engineer in the PUREX Plant, she provided technical shift support during the 1983 restart of the plant and served as lead engineer for neptunium recovery startup in 1985. In 1987, she was chosen as the technical team leader for the criticality safety review of chemical process operations. As a senior process engineer at the plutonium finishing plant (PFP), Ms. Conrad contributed to the successful restart of plutonium metal production after the plant was shut down for safety reasons. In 1988, she established and managed the PFP Operations Training Group instituting formal criteria for the evaluation of operator and shift management qualifications. Ms. Conrad is currently assigned as the WHC technical advisor on plutonium processing to the DOE Office of Nuclear Materials.

Rowland E. Felt is a Ph.D. chemical engineer with 26 years experience in plutonium and uranium processing at the DOE Hanford Site. His experience includes development of aqueous and pyrochemical processes for plutonium conversion and scrap recovery. Dr. Felt served as the Process Engineering Manager for the 234–5 Z Plant and served as the Separation Process Engineering Manager for the 200 Area at Hanford. His safety experience includes participating in the fire investigation at Rocky Flats in 1969, conducting plutonium fire experiments, and follow-on evaluation of plutonium release fractions associated with accident analyses. Dr. Felt's recent assignment with Westinghouse Idaho Nuclear Company included the development of a flowsheet and supporting process analysis for dose reduction, waste minimization, and plant support operations for the Special Isotope Separation Program. He is currently serving as the Idaho National Engineering Laboratory representative to the Planning Support Group at the Savannah River Site.

Carl R. Forsberg has been involved in the design and construction of high explosive and nuclear material processing facilities for the past 34 years. He served in the Plant Engineering Department at the Lawrence Livermore National Laboratory for 17 years and served the Atomic Energy Commission and DOE Office of Military Applications for 12 years. Mr. Forsberg was the construction project manager during the design of the Lawrence Livermore National Laboratory plutonium facility and was the DOE Headquarters project manager for the Office of Military Applications during the latter half of construction of the Rocky Flats Plutonium Recovery and Waste Treatment Facility, Building 371/374. He retired from DOE in 1985; since then he has been providing consulting services primarily related to construction project management and facility design.

Leonard W. Gray has a Ph.D. in inorganic chemistry, and is an internationally recognized expert in actinide processing. He has 20 years experience at the Savannah River Site and 2 years experience at Lawrence Livermore National Laboratory (LLNL). Dr. Gray has authored or coauthored more than 50 publications and presentations, the majority having been written as a result of new plutonium feedstocks or problems resulting from process upsets. As a process troubleshooter, he dealt with the following unit operations in plutonium processing: dissolution, feed clarification, purification (solvent extraction, cation exchange, anion exchange, and selective precipitation), isolation, and conversion to either metal or oxide. Dr. Gray is the Section Leader for the Plutonium Processing Technology Section of the Special Isotope Separation Program at LLNL. He provides technical leadership in all areas of plutonium processing (aqueous and molten salt-based chemistries), equipment engineering, process automation, and process control.

Robert E. Hanvey has 35 years experience in nuclear chemical processing at the Savannah River Site (SRS) where he worked in both plutonium finishing and residue recovery operations. He has prepared safety analysis reports for plutonium processing at SRS, was a member of the DOE Operational Readiness Review team at Lawrence Livermore National Laboratory, and participated in special studies for DOE Headquarters for plutonium residue recovery. Since 1987, Mr. Hanvey has been a production planner for Westinghouse Savannah River Company at SRS. He works with representatives from other DOE Nuclear Weapons Complex Sites regarding the transfer and processing of plutonium-239. Mr. Hanvey also provides input on the future direction for process improvements and production schedules for the entire DOE Nuclear Weapons Complex.

H. Michael Hawkins has a Graduate Certificate in National Security and Emergency Mobilization; he has 18 years experience in emergency preparedness and safeguards and security with the Atomic Energy Commission, NRC, DOE, and in the commercial nuclear industry. Mr. Hawkins has recently been involved in DOE's NMP contract as an SAIC senior scientist in support of the review and evaluation of the Emergency Management Program. These efforts include involvement with rewriting DOE Order 500.3A, participation in the Occurrence Reporting Pilot Program at the Savannah River Site and Rocky Flats Plant, assistance to the DOE Office of Defense Programs in the order compliance review of Westinghouse and EG&G, and various activities in direct support of the DOE Office of Emergency Operations. For 8 years, Mr. Hawkins was actively involved in the NRC's Emergency Preparedness Program and was instrumental in the design, construction, and operation of the NRC Operations Center. Mr. Hawkins was the Manager of the Seabrook Nuclear

Power Plant Emergency Plans and Procedures organization and was an active participant in Seabrook's Initial Federal Emergency Preparedness Exercise. His field assignment at the Comanche Peak Steam Electric Station included overall coordination and scenario development of the initial Emergency Preparedness exercise among Texas Utilities (TU) Electric, Federal (NRC and FEMA), State of Texas, and various local governments.

Monique V. Helfrich is a Senior Environmental Engineer at SAIC; she has 9 years experience in safety and environmental issues at various DOE facilities. Ms. Helfrich has an M.S. in Systems Engineering and is currently providing technical support on environment, safety, and health issues to the Assistant Secretary for Defense Programs. Ms. Helfrich was a senior environmental and systems engineer and on-site project manager for a technical support contract to the Rocky Flats Office Waste Management Branch. This support included analysis of the responsibilities and schedules inherent in compliance agreements entered into by DOE, the Environmental Protection Agency, and the Colorado Department of Health; and evaluation of waste disposal efforts in the Pondcrete Pad Clearance and Solar Evaporation Ponds Cleanup projects.

Charles R. Jones has an M.S. in Mechanical Engineering with 24 years of experience including a 20-year career in nuclear reactor and nuclear weapon technology with the United States Navy. In the Navy, he served as a senior nuclear engineer and operator on several nuclear-powered surface ships, qualified as Chief Engineer of the USS Nimitz, CVN 68, conducted a training program for nuclear plant Chief Engineers, and participated in team inspections of nuclear power plants for the Pacific Fleet. He is an experienced engineering troubleshooter for technical problems associated with power plant machinery, procedures, operator training, plant system operations, and qualification of maintenance personnel. From 1981 to 1986, he worked in the Navy advanced weapons program on nuclear weapons safety, security, and control matters. Since his retirement from the Navy in 1986, he has assisted in safety system inspections and system operational reliability studies for various commercial nuclear power plants. As an employee of SCIENTECH, Inc., Mr. Jones participated in the September 1989 and June 1990 Criticality Safety Assessments at Rocky Flats, the December 1989 Rocky Flats Facility Observation Team, and two Technical Safety Appraisals in the area of maintenance. He is currently providing assistance to DOE Headquarters on monitoring the progress of the Savannah River Site Reactor Safety Improvement Program (RSIP).

William Kerr is a Ph.D. electrical engineer with 47 years of experience. He has been a professor at the University of Michigan since 1953, where he served as Chairman of Nuclear Engineering for 13 years and director of Michigan Memorial-Phoenix Project from 1961 to the present time. He has been a member of the Advisory Committee on Reactor Safeguards (ACRS) of the Nuclear Regulatory Commission since 1972, having served three years as ACRS Chairman, most recently in 1987 and 1988. Dr. Kerr has consulted with Atomic Power Development Associates, Oak Ridge National Laboratory, and the Department of State and was a member of the Michigan Governor's Task Force on Nuclear Waste Disposal. He has received the Compton Award of the American Nuclear Society, Outstanding Educator in America Award, and the NRC's Meritorious Service Award.

James P. Knight has 30 years experience in mechanical and nuclear engineering. He worked for 8 years as a design engineer and analyst for spacecraft, biochemical process, and reactor equipment components. In the later part of this period, he was Chief of the Engineering Services Section for the National Bureau of Standards Reactor (NBSR) and Vice Chairman of the NBSR Hazards Committee. For 17 years, Mr. Knight served on the staff of the Atomic Energy Commission and the Nuclear Regulatory Commission in the regulation of nuclear facility safety. He managed the safety review and evaluation efforts on the mechanical, structural, materials, and geosciences areas for over 85 nuclear power plants as well as other regulated nuclear facilities. He also led numerous special evaluation teams dealing with nuclear safety issues requiring resolution at the Commission level. For the past 5 years, Mr. Knight has managed the Department of Energy headquarters programs for licensing, quality assurance, and safety appraisals. Mr. Knight is presently Director, Office of Engineering and Operations Support, Office of Defense Programs.

Matthew S. McCormick has 8 years experience in nuclear facility safety analysis, reactor operation, radiological controls, environmental compliance, procedures, and nuclear systems. He currently is a supervisory nuclear engineer at DOE Rocky Flats Operations Office. Previously, he was a Senior Nuclear Engineer with the Savannah River Restart Office and was a Nuclear Engineer with the Office of Environment, Safety, and Health. Mr. McCormick has also served as a DOE Headquarters site representative at the Savannah River Site. He was a supervisory nuclear engineer at Mare Island Naval Shipyard.

Roger J. Mattson is a Ph.D. mechanical engineer with 26 years of experience. He worked in nuclear facility design for 3 years at Sandia Laboratory, served the Atomic Energy Commission and the NRC for 17 years in the regulation of nuclear facility safety, managed radiation surveillance and emergency preparedness at the Environmental Protection Agency, assisted the U.S. Government in responding to accidents at Three Mile Island and Chernobyl, and assisted the International Atomic Energy Agency with siting standards and safety principles. For 7 years at NRC, Dr. Mattson directed the technical review of applications for construction permits and operating licenses for nuclear power plants. He has received NRC Meritorious and Distinguished Service Awards. Since 1987, he has been Vice President of SCIENTECH, Inc., where he manages offices in Rockville, Maryland, Washington, D.C., and Dallas, Texas, and consults in the areas of nuclear safety, waste management, and environmental protection. Dr. Mattson was the Team Leader for the September 1989 and June 1990 Criticality Safety Assessments at the Rocky Flats Plant.

Gilbert A. Nicholson has an M.S. in chemical engineering and 28 years experience in the radiochemical processing field. His process engineering responsibilities have ranged from shift process control engineer to team leader and coordinator for process engineering and safety support functions at the Hanford PUREX Plant. His management experience includes process engineering and control management at the PUREX Plant, and management of the Hanford Plutonium Finishing Plant. His Hanford Site safety support experience includes development of the draft Operational Safety Requirements document and Final Safety Analysis Report (FSAR) for the PUREX Plant. With SAIC, Mr. Nicholson has provided extensive technical support to the DuPont-Savannah River Site (SRS) in the preparation of a major revision to the SRS F-Canyon Safety Analysis Report and to Westinghouse Hanford Company in the preparation of major revisions to the FSAR's for the Aging Waste Facility and the B-Plant Waste Processing Facility.

Marvin P. Norin has an M.S. in mechanical engineering and 37 years of experience. He is a Senior Scientist at SAIC and has participated in various readiness inspections and safety reviews at numerous DOE facilities, including the DOE Quality Verification at Oak Ridge and a quality inspection of the High Flux Isotope Reactor. He assisted the DOE Office of Materials Production in the development of an Action Plan responding to the Tiger Team Assessment of the Feed Materials production Center in Fernald, Ohio. Prior to joining SAIC, he worked for DOE and its predecessor agencies as Director of Regulatory Development and as Deputy Director of Safety, Quality Assurance, and Safeguards in the Nuclear Energy Program; Chief of Codes and Standards Branch; and was a systems engineer for the Fast Flux Test Facility and breeder demonstration plant design studies. He serves on the Nuclear Standards Board of the American National Standards Insitute and is a former member of the Institute's Executive Standards Council. He is a member of the American Society of Mechanical Engineers.

Shirley J. Olinger has 8 years experience in nuclear facility safety analysis, technical specification and operational safety requirements, reactor operations, operational readiness reviews, radiological controls, procedures, and nuclear systems. She is a supervisory nuclear engineer at the DOE Rocky Flats Office. She was also the supervisory nuclear engineer at the Savannah River Restart Office. In these two positions, she has evaluated management and organizational performance in implementing DOE safety requirements. Prior to these positions she served as a DOE Headquarters site representative at Savannah River and as a nuclear engineer for various DOE offices. Ms. Olinger also was a supervisory nuclear engineer at the Pearl Harbor Naval Shipyard.

James P. O'Reilly is a nuclear operations management expert with 32 years of experience. Mr. O'Reilly served in the U.S. Navy nuclear power program, served in the Atomic Energy Commission and the NRC for 23 years as the Chief Reactor Inspector and Regional Administrator for Regions I and II, and managed the nuclear operations program for the Georgia Power Company as Senior Vice President. Mr. O'Reilly directly participated in the response to the Three Mile Island accident and many of the abnormal operational occurrences that have occurred at commercial nuclear power plants. He received the NRC Meritorious and Distinguished Service Awards and the Presidential Meritorious Service Award. Since early 1988, Mr. O'Reilly has been a full-time nuclear management consultant. He has provided services to problem nuclear plants, law firms, consulting firms, and the U.S. Government.

David M. Pinkston is a chemical engineer with more than 7 years experience in nuclear power plant operations and safety. He served for 5 years in the U.S. Naval Nuclear Propulsion Program where he qualified as Chief Engineer for nuclear cruiser propulsion plants and gained experience in supervising reactor plant operations and maintenance. Mr. Pinkston was an operations liaison engineer at the Savannah River Site plutonium production facility, where he coordinated the design, management, and technical support needed for major projects and upgrades in the areas of plutonium processing and waste handling. Since October 1989, he has worked as consulting engineer for SAIC providing technical support and programmatic analysis for DOE. Specific activities include review and development of operational safety requirements for various DOE facilities and development of detailed reporting criteria for a new DOE incident reporting system.

Eugene F. Redden has an M.S. in engineering management, and is a nuclear engineer with over 32 years experience with the Air Force, DOE and predecessor organizations, and the commercial nuclear power industry. His analytical, management, and consulting services have covered a broad spectrum of activities, including nuclear power plant operations, tritium processing and handling, packaging and transport of nuclear materials, disposal of nuclear waste, conduct of Operational Readiness Reviews, and the review and critique of Safety Analysis Reports. Mr. Redden has participated in Operational Readiness Reviews as a technical expert in training and operations for the Remote Mechanical C Line at Richland, the Neptunium Processing Line at Savannah River, the Fluorinel Dissolution Facility at Idaho, the Enriched Uranium Conversion Facility at Oak Ridge, the Engineered Demonstration System at Livermore, the High Flux Isotope Reactor, and the High Flux Beam Reactor. He has also participated in several DOE training initiatives, including Training Resource and Data Exchange (TRADE).

John W. Robinson has 10 years experience in performance-based training for nuclear operations, radiation protection, and industrial safety. As Manager, Fuel Dissolution Processing and Nuclear Safety Training at Westinghouse Idaho Nuclear Company, Mr. Robinson is responsible for coordination, development, and implementation of operations training for fuel processing, fuel handling, waste processing, and radiological and nuclear safety training courses for all levels of company personnel. Mr. Robinson has been involved in several DOE training initiatives, including the development of the Training Resource and Data Exchange (TRADE) Special Interest Group on Radiation Protection Training, served as coordinator and principal author of the DOE Guide to Good Practice in Radiation Protection Training; and functioned as a lead developer of the DOE Training Accreditation Program. He currently serves on the DOE TRADE Executive Committee. In October 1988, Mr. Robinson received the "Jack M. Brewer" award from DOE for individual excellence in human resource development, primarily for his efforts in training.

James A. Shurick is a fire protection and safety engineer with 41 years of experience. He worked for 20 years with Factory Insurance Association (now Insurers Risk Insurance) as a Field Inspector and Chief Engineer. Mr. Shurick served the Atomic Energy Commission and the DOE for 19 years as a fire protection design engineer and was responsible for fire protection requirements in the construction of new facilities and the modification of existing facilities. Engineering efforts included improvement to water supplies, sprinkler protection, heat and smoke detection, special protection and construction, exit requirements, and emergency lighting.

Joseph F. Tinney has a Ph.D. in Engineering Sciences and 25 years of Defense Programs experience, the last 8 years as the Program Manager for SAIC's technical support services in DOE's Office of Defense Programs. Since joining SAIC, Dr. Tinney has been the Principal Investigator on projects for the Defense Nuclear Agency, the Nuclear Regulatory Commission, and the Federal Emergency Management Administration. Dr. Tinney has served on, and provided technical support for, the Plutonium Special Isotope Separation (SIS) Program Peer Review (1982), the SIS Process Readiness Review Team (1986), the New Production Reactor (NPR) Site Evaluation Team (1988), and the Technical Support Team for the Energy

Research Advisory Board's NPR Technology Assessment Panel (1987–1988). Dr. Tinney worked for 12 years at the Lawrence Livermore National Laboratory. He served as the Head of the Hazards Control Department supervising 200 health, safety, and environmental personnel; served as Safety Review Team Leader for the design and construction of a new plutonium facility; served as a Senior Scientific Advisor on the Nuclear Weapons Accident Response Group and Nuclear Emergency Search Team; and served as Division Director for the Special Projects Division.

Gary J. Toman is an electrical engineer with 20 years of experience. He has 10 years experience in commercial nuclear power plant operations and a total of 14 years experience in commercial nuclear power plant licensing, maintenance, equipment qualification, quality assurance, component failure evaluation, and safety-system functional inspections. Most recently, Mr. Toman led a functional assessment of the electric power distribution system for Palo Verde Nuclear Generating Station. He has broad experience with verification of equipment operability and has developed a nondestructive test methodology for evaluating aging of installed electrical cable insulation. Mr. Toman has also contributed to the NRC's Nuclear Plant Aging Research Program in the areas of relays, circuit breakers, solenoid valves, and pressure transmitters. He evaluated reactor trip circuit breaker failures for the U.S. Nuclear Regulatory Commission at the Salem Nuclear Generating Station and the San Onofre, McGuire, North Anna, and D.C. Cook plants. He is a Principal Engineer with ERC Environmental and Energy Services Company.

Arthur J. Toy has a Ph.D. in Radiation Biophysics and has worked at Lawrence Livermore National Laboratory for 27 years. He is the Facility Manager of LLNL's Plutonium Facility, where he is responsible for assuring environmental and personnel safety for all operations in the Facility. In a previous position, as the Hazards Control Department Head/Safety Program Leader, Dr. Toy was responsible for assuring implementation of the LLNL's Safety Program. Dr. Toy also managed environmental monitoring of LLNL and local environs, environmental assessments of Laboratory construction, and Laboratory compliance with all Federal, State and local environmental regulations. He has written safety analysis reports for nuclear facilities and was the editor of the LLNL Environmental Impact Statement.

Lance E. Traver is a nuclear engineer with 7 years experience. Mr. Traver served in the U.S. Naval Nuclear Propulsion Program for 5 years where he developed an understanding of reactor operations and safety principles. He qualified as Chief Engineer and Senior Supervisor of Naval Nuclear Propulsion Plants. As an employee of SCIENTECH, Inc., he has participated in evaluating the reactor restart program for the Savannah River Site Production Reactors and has conducted root cause analyses of safety issues at both the Savannah River Site and the Rocky Flats Plant. Mr. Traver provided technical support to the September 1989 and June 1990 Criticality Safety Assessments at the Rocky Flats Plant.

Lawrence J. Ybarrondo is a Ph.D. mechanical engineer with 30 years experience. Dr. Ybarrondo worked in nuclear facility design, construction, analysis, testing, and operations at the Idaho National Engineering Laboratory. He held the position of Associate General Manager of EG&G, Idaho, and was in charge of the operations of four nuclear reactor facilities. He has served on the Board of Directors of the American Nuclear Society and on its executive committee on nuclear reactor safety. Dr. Ybarrondo assisted the U.S. Government in responding to the accidents at Three Mile Island and Chernobyl. He was the Deputy Team Leader for the September 1989 and June 1990 Criticality Safety Assessments at the Rocky Flats Plant.

Appendix B.—Assignments

To be provided at a later date.

Appendix C.—References

1. "Guidelines for Application of Readiness Reviews to Department of Energy Activities," January 1987.
2. "Process Operational Readiness and Operational Readiness Follow-On," DOE–76–45/39, SSDC–39, February 1987.
3. *Occupancy-Use Readiness Manual,* "Safety Considerations," ERDA–76–45–1, SSDC–1, September 1976.
4. "Events and Casual Factors Charting" (regarding management oversight and risk free development and use), DOE–76–45/14, SSDC–14, Rev. 1, August 1978.
5. *Mort User's Manual* (for use with management oversight and risk free analytical logic diagram), DOE–76–45/4, SSDC–4, Rev. 2, May 1983.
6. "Operational Readiness Assessment Team Inspections," NRC Inspection Procedure 93806, August 21, 1989.
7. *Guidelines for the Conduct of Operations at Nuclear Power Stations,* Guideline INPO 85–017, Rev. 01, April 1988.
8. Memorandum from Victor Stello, Jr., to R. Nelson, "Order Compliance Verification at the Rocky Flats Plant," May 3, 1990.
9. "Technical Safety Appraisal of the Rocky Flats Plant," DOE/EH–0081, January 1989.
10. "An Assessment of Criticality Safety at the Department of Energy Rocky Flats Plant," SCIE–DOE–201–89, July-September 1989.
11. Defense Nuclear Facilities Safety Board, "Recommendation to the Secretary of Energy" (regarding resumption of plutonium processing operations at the Rocky Flats Plant), May 4, 1990.
12. Defense Nuclear Facilities Safety Board, "Recommendation to the Secretary of Energy" (regarding criticality safety and resumption of plutonium processing operations at the Rocky Flats Plant), June 5, 1990
13. Advisory Committee on Nuclear Facility Safety, letters to the Secretary of Energy regarding resumption of plutonium processing operations at Rocky Flats, dated November 30, 1989, March 28, 1990, and June 4, 1990.
14. Memorandum to Acting Assistant Secretary for Defense Programs from Secretary of Energy regarding "Resumption of Plutonium Processing at the Rocky Flats Plant," June 5, 1990.
15. "Environmental Tiger Team Assessment of the Rocky Flats Plant," June 6 to July 21, 1989.
16. Letter from Secretary of Energy to the Defense Nuclear Facilities Safety Board, "Response to May 4, 1990, Recommendation," June 20, 1990.
17. "Rocky Flats Plan for Phased Resumption of Plutonium Operations," EG&G Rocky Flats, March 5, 1990 (including the April 19, and May 25, 1990 updates).

[FR Doc. 90–28659 Filed 12–5–90; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. CP89-362-000, CP89-362-001, CP89-363-000, and CP89-363-001]

North Country Gas Pipeline Co.; Intent To Prepare an Environmental Assessment for the Proposed North Country Pipeline Project and Request for Comments on its Scope

November 30, 1990.

Notice is hereby given that the staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) on the natural gas facilities proposed in the above-referenced dockets. The proposed will be referred to as the North Country Project.

Pursuant to §§ 153.1 through 153.12 of the Commission's regulations, North Country Gas Pipeline Company (North Country) seeks the issuance of a Presidential Permit to connect a natural gas facility at a point of entry on the United States/Canadian border near the town of Champlain, New York. North Country also seeks Natural Gas Act section 3 authorization from the Commission to construct, operate, and maintain such facilities at the point of entry for the importation of natural gas.

The jurisdictional point of importation into the United States would be located on the United States/Canadian border about one-half mile west of the U.S. Customs post on Interstate 87 near the town of Champlain, in Clinton County, New York. A meter station would be constructed at this location on a three-quarter-acre site.

Additional proposed nonjurisdictional facilities related to this proposal would consist of 26 miles of 12-inch-diameter pipeline, three 79 megawatt (MW) cogeneration facilities, and approximately 17 miles of new, upgraded, or replaced electric transmission line. The 26 miles of 12-inch-diameter pipeline would be owned and operated by North Country and would extend from Champlain in a southerly direction to Plattsburgh. The three cogeneration facilities would be located adjacent to the proposed 12-inch-diameter pipeline and would be owned and operated by affiliates of North Country. The electric transmission lines would be owned by the New York State Electric and Gas Company (NYSEG). All of the facilities related to this project are located within Clinton County, New York. Any State or local approval or ongoing environmental analysis of the nonjurisdictional facilities will be utilized by the Commission staff in conducting its National Environmental Policy Act review in order to avoid duplication.

Falcon Seaboard Gas Company, an affiliate of North Country, proposes to import 20 Bcf of natural gas per year, or 54 MMcf per day, from TransCanada Pipeline Limited (TransCanada) for a period of 15 years. The gas would be transported through the proposed facilities of North Country for sale to three proposed cogeneration facilities and the Georgia-Pacific Corporation (Georgia-Pacific), all in the Plattsburgh area. Each cogeneration facility would be 79 MW in size and would consume approximately 16,000 to 18,200 Mcf of natural gas per day. North Country is also willing to transport approximately 7,500 Mcf of gas per day for NYSEG if it desires such delivery of gas for resale to residential, commercial, and industrial customers in the Plattsburgh area. Currently, the area proposed to be served by the proposed North Country pipeline is without natural gas service.

Maps showing the location of the pertinent facilities are contained in the attached appendix.[1]

The 26 miles of 12-inch-diameter pipeline would extend from Champlain in a southerly direction to Plattsburgh, in Clinton County, New York. The pipeline would cross the towns of Champlain, Chazy, Beekmantown, and Plattsburgh as well as the city of Plattsburgh. The proposed pipeline would roughly parallel the Adirondock Northway (Interstate 87) at an average distance of one-half to one mile to the west from milepost (MP) 0.0 to MP 14.0 and closely parallel the interstate from MP 14 to MP 27. The pipeline would cross the Great Chazy River at MP 1.3, the Lake Alice State Game Management Area at MP 9.5, Dead Creek at MP 21, the Saranac River at MP 26, and the Plattsburgh Air Force Base at MP 26.1.

The proposed pipeline would be constructed on new natural gas pipeline right-of-way. North Country proposes to clear a 60-foot-wide construction right-of-way and to maintain a 30-foot wide permanent right-of-way.

North Country has filed an application for a Certificate of Environmental Compatibility and Public Need for the pipeline facilities with the New York Public Service Commission (PSC). As part of the resulting proceeding, the Department of Public Service (DPS) is currently conducting a detailed environmental review of the proposed pipeline route. Most State level permits or approvals that would be required, such as for road crossings, stream crossings, and agricultural concerns of the New York Department of Agriculture and Markets, will be consolidated into the PSC certificate. Other Federal approvals will be required, such as the U.S. Army Corps of Engineers sections 10 (River and Harbors Act) and 404 (Clean Water Act) permits, and a State Coastal Zone Management Consistency Determination.

Additionally, the cogeneration plant applicants will be required to file Draft Environmental Impact Statements (DEIS's) with the New York Department of Environmental Conservation (DEC) in accordance with the New York State Environmental Quality Review procedures (SEQR). The DEC's environmental review will address the cogeneration plants and associated electric transmission lines.

The project proponents have filed DEIS's with the New York DEC addressing the proposed cogeneration plants and the associated electric transmission lines. The DEC's review period will end in mid-December 1990. Approval of the cogeneration facilities and related electric transmission facilities will require the DEC's acceptance of the adequacy of the DEIS's. The U.S. Department of Energy, Office of Fossil Energy (DOE/FE) has issued Opinion and Order No. 394 (Order), dated May 21, 1990, granting the importation of the requested volumes of natural gas for this project. The Order is conditional upon the DOE/FE's review of the FERC's environmental assessment, thereby fulfilling its National Environmental Policy Act responsibilities. TransCanada has also received National Energy Board approval for the export of the required volumes of natural gas.

Current Environmental Issues

The Commission's EA will address the environmental concerns that have been and will be identified by the FERC staff, interveners, and by concerned resource agencies and individuals. Subject to the condition noted under Comment Procedures, the EA will address the entire 26 miles of proposed pipeline, the cogeneration plants, and the associated electrical transmission lines. The following issues have been identified for consideration in the EA:

Cultural Resources—Effect on properties listed or eligible for listing on the National Register of Historic Places.

Biological Resources—Impact on threatened and endangered species.

—Impact on wetlands and fisheries.

—Habitat alteration.

[1] The map appendix is not being printed in the Federal Register. Copies are available from the Commission's Public Reference Branch, telephone (202) 208-1371.

Land Use—Utilization of existing right-of-way.
—Coastal zone management plan consistency.
—Impact at the point of importation on land use and aesthetics.

Comment Procedures

Comments from Federal, State, and local agencies and the public are requested to help identify significant issues or concerns related to the proposed action, to determine the scope of issues that need to be analyzed, and to identify and eliminate from detailed review the issues which are not significant. All comments on specific environmental issues should contain supporting documentation or rationale.

If no significant issues are raised concerning the nonjurisdictional facilities, and the facilities have been approved or are under environmental review at the State or local level, the Commission staff intends to rely on such analysis in order to take advantage of existing data and not duplicate effort. However, in this case, the review would still address the potential effects on federally listed or proposed threatened and endangered species, cultural resources, and consistency with approved coastal zone management plans.

Comments should be submitted on or before December 31, 1990, reference Docket Nos. CP89-362-000, CP89-362-001, CP89-363-000, and CP89-363-001 and should be addressed to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. A copy of the comments should also be sent to Mr. Howard Wheeler, Project Manager, Federal Energy Regulatory Commission, 825 North Capitol Street NE., room 7312, Washington, DC 20426.

The EA will be based on the FERC staff's independent analysis of the proposal, and together with the comments received, will comprise part of the record to be considered by the Commission in this proceeding.

The EA may be offered as evidentiary material if an evidentiary hearing is held in this proceeding. In the event that an evidentiary hearing is held, anyone not previously a party to this proceeding and wishing to present evidence on environmental or other matters must first file with the Commission a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214).

Lois D. Cashell,

Secretary.

[FR Doc. 90-28584 Filed 12-5-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP91-513-000, et al.]

El Paso Natural Gas Co., et al.; Natural Gas Certificate Filings

November 29, 1990.

Take notice that the following filings have been made with the Commission:

1. El Paso Natural Gas Co.

[Docket No. CP91-513-000]

Take notice that on November 28, 1990, El Paso Natural Gas Company (El Paso), P.O. box 1492, El Paso, Texas 79978, filed in Docket No. CP91-513-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for PSI, Inc., and Utilicorp United Inc., brokers, under the blanket certificate issued in Docket No. CP88-433-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

El Paso states that, pursuant to an agreement dated June 1, 1990, under its Rate Schedule T-1, it proposes to transport up to 103,000 MMBtu per day equivalent of natural gas. El Paso indicates that the gas would be transported from various gathering system points of receipt on El Paso's system, and would be redelivered in the High Island Area, Offshore Texas. El Paso further indicates that it would transport 51,500 MMBtu on an average day and 18,797,500 MMBtu annually.

El Paso advises that service under § 284.223(a) commenced October 1, 1990, as reported in Docket No. ST91-3806-000.

Comment date: January 14, 1991, in accordance with Standard Paragraph G at the end of this notice.

2. High Island Offshore System

[Docket No. CP91-461-000]

Take notice that on November 19, 1990, High Island Offshore System (HIOS), 500 Renaissance Center, Detroit, Michigan 48243, filed a request with the Commission in Docket No. CP91-461-000 pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to provide an interruptible transportation service for BHP Gas Marketing Company (BHP), a producer, under the blanket certificate issued by the Commission's Order No. 509 corresponding to the rates, terms and conditions filed in Docket No. RP89-82-000, pursuant to section 7 of the NGA, all as more fully set forth in the request which is open to public inspection.

HIOS proposes an interruptible natural gas transportation service of 100,000 Mcf on peak and average days, and 36,500,000 Mcf annually for BHP, pursuant to an April 1, 1990, agreement under its Rate Schedule IT. HIOS states that it would transport the gas from offshore Texas and would deliver the gas in offshore Louisiana and offshore Texas. HIOS also states that began its transportation service for BHP under § 284.223(a) of the Regulations on September 18, 1990, as reported in Docket No. ST-91-62.

Comment date: January 14, 1991, in accordance with Standard Paragraph G at the end of this notice.

3. Columbia Gas Transmission Corp.

[Docket Nos. CP91-421-000, CP91-422-000, CP91-423-000, CP91-424-000, CP91-425-000]

Take notice that on November 13, 1990, Columbia Gas Transmission Corporation (Applicant), P.O. box 1273, Charleston, West Virginia 25325-1273, filed in the respective dockets as supplemented on November 26, 1990, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP86-240-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identify of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by the Applicant and is summarized in the attached appendix.

Applicant states that each of the proposed services would be provided under an executed transportation agreement, and that Applicant would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: January 14, 1991, in accordance with Standard Paragraph G at the end of this notice.

Docket No. (date filed)	Shipper name	Peak day, [1] average, annual	Points of		Start up date rate schedule	Related [2] dockets
			Receipt	Delivery		
CP91-421-000 (11-13-90)	NGC Transportation, Inc..	200,000 160,000 73,000,000	KY, OH	DE, KY, NJ, NY, OH, VA, WV.	7-25-90, ITS	ST90-4485-000
CP91-422-000 (11-13-90)	Panhandle Trading Company.	100,000 80,000 36,500,000	KY	MD, PA, OH, VA, DE, NY, WV.	8-1-90, ITS	ST90-4484-000
CP91-423-000 (11-13-90)	Transatlantic Energy Corporation.	4,000 3,200 1,460,000	OH	WV	8-2-90, ITS	ST90-4482-000
CP91-424-000 (11-13-90)	American Central Gas Marketing Company.	100,000 80,000 36,500,000	OH, WV KY	MA, NJ, NY, PA, RI	8-1-90, ITS	ST90-4481-000
CP91-425-000 (11-13-90)	R.E. Fox & Associates	11,000 8,800 4,015,000	PA, WV	KY, NY, OH, PA, VA, WV.	8-10-90, ITS	ST90-4483-000

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

4. United Gas Pipe Line Co.

[Docket Nos. CP91-469-000, CP91-470-000, CP91-471-000, CP91-472-000, CP91-473-000, CP91-474-000, CP91-475-000]

Take notice that on November 19, 1990, United Gas Pipe Line Company, P.O. Box 1478, Houston, Texas 77251-1478, filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP88-6-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[1]

A summary of each transportation service which includes the shippers identity, the peak day, average day and annual volumes, the receipt point(s), the delivery point(s), the applicable rate schedule, and the docket number and service commencement date of the 120-day automatic authorization under § 284.223 of the Commission's Regulations is provided in the attached appendix.

Comment date: January 14, 1991, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

Docket No. (date filed)	Applicant	Shipper name	Peak day,[1] average annual	Points of		Start up date rate schedule	Related [2] dockets
				Receipt	Delivery		
CP91-469-000 (11-19-90)	United Gas Pipe Line Company.	Laser Marketing Company.	618,000 618,000 225,570,000	LA, TX	AL, FL, LA, MS, TX	10-25-90, ITS	CP88-6-000 ST91-2861-000
CP91-470-000 (11-19-90)	United Gas Pipe Line Company.	Gulf South Pipeline Co.	309,000 309,000 112,785,000	LA, TX	AL, LA, MS, TX	10-25-90, ITS	CP88-6-000 ST91-2858-000
CP91-471-000 (11-19-90)	United Gas Pipe Line Company.	Phoenix Gas Pipeline Company.	209 209 76,285	TX	TX	10-4-90, FTS	CP88-6-000 ST91-2850-000
CP91-472-000 (11-19-90)	United Gas Pipe Line Company.	Phoenix Gas Pipeline Company.	262 262 95,630	TX	TX	10-4-90, FTS	CP88-6-000 ST91-2852-000
CP91-473-000 (11-19-90)	United Gas Pipe Line Company.	Phoenix Gas Pipeline Company.	175 175 63,875	TX	TX	10-4-90, FTS	CP88-6-000 ST91-2851-000
CP91-474-000 (11-19-90)	United Gas Pipe Line Company.	Phoenix Gas Pipeline Company.	300 300 109,500	TX	TX	10-4-90, FTS	CP88-6-000 ST91-2743-000
CP91-475-000 (11-19-90)	United Gas Pipe Line Company.	Sport Pipeline Corporation.	257,500 257,500 93,987,500	LA, MS	LA	10-13-90, ITS	CP88-6-000 ST91-2742-000

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

5. Panhandle Eastern Pipe Line Co.

[Docket No. CP91-446-000]

Take notice that on November 16, 1990, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP91-446-000 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act, as amended, and the regulations promulgated thereunder for the issuance of a certificate of public convenience and necessity and for amendments to certain certificates for the authorization to implement an interim Gas Inventory Charge ("GIC") applicable to sales customers purchasing firm sales service pursuant to Panhandle's Rate Schedules G and LS, pending the restructuring of long-term sales agreements with such customers and the filing of a permanent Gas Inventory Charge, approval of the Interim Service Agreements; and,

authorization for abandonment of Sales Contract Demand ("CD"), all as more fully set forth in the application which is on file with the Federal Energy Regulatory Commission (Commission) and open for public inspection.

Specifically, Panhandle states that all General Service and Limited Service sales agreements, which are due to expire April 1, 1991, will be replaced by interim service agreements which will be effective April 1, 1991 through October 31, 1992, thus bridging the gap between the termination of the Seasonal Sales Program (SSP) and the implementation of long-term restructured services. Panhandle further states that the interim service agreements will allow for specified Contract Demand reductions, effective April 1, 1991, and for specified conversion to firm transportation.

Comment date: December 20, 1990, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 90-28585 Filed 12-5-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ST90-4570-000 through ST90-5354-000]

Algonquin Gas Transmission Co.; Self-Implementing Transactions

November 30, 1990.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to part 284 of the Commission's regulations, sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA) and section 5 of the Outer Continental Shelf Lands Act.[1]

The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction.

A "B" indicates transportation by an interstate pipeline on behalf of an intrastate pipeline or a local distribution company pursuant to § 284.102 of the Commission's regulations and section 311(a)(1) of the NGPA.

A "C" indicates transportation by an intrastate pipeline on behalf of the interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.122 of the Commission's regulations and section 311(a)(2) of the NGPA.

A "D" indicates a sale by an intrastate pipeline to an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an interstate to any interstate pipeline or local distribution company pursuant to § 284.163 of the Commission's regulations and section 312 of the NGPA.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.222 and a blanket certificate issued under § 284.221 of the Commission's regulations.

A "G-S" indicates transportation by interstate pipelines on behalf of shippers other than interstate pipelines pursuant to § 284.223 and a blanket certificate issued under § 284.221 of the Commission's regulations.

A "G-LT" or "G-LS" indicates transportation, sales or assignments by a local distribution company on behalf of or to an interstate pipeline or local distribution company pursuant to a blanket certificate issued under § 284.224 of the Commission's regulations.

A "G-HT" or "G-HS" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.224 of the Commission's regulations.

A "K" indicates transportation of natural gas on the Outer Continental Shelf by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.303 of the Commission's regulations.

A "K-S" indicates transportation of natural gas on the Outer Continental Shelf by an interstate pipeline on behalf of shippers other than interstate pipelines pursuant to § 284.303 of the Commission's regulations.

Lois D. Cashell,

Secretary.

[1] Notice of a transaction does not constitute a determination that the terms and conditions of the proposed service will be approved or that the noticed filing is in compliance with the Commission's regulations.

Docket No. [1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity [2]
ST90-4570	Algonquin Gas Transmission Co.	Tejas Power Corp.	09-04-90	G-S	500,000
ST90-4571	Algonquin Gas Transmission Co.	Everett Energy Corp.	08-04-90	G-S	42,000
ST90-4572	Algonquin Gas Transmission Co.	Citizens Gas Supply Corp.	09-04-90	G-S	60,000
ST90-4573	Algonquin Gas Transmission Co.	Boston Gas Co.	09-04-90	B	510,000
ST90-4574	Algonquin Gas Transmission Co.	Catamount Natural Gas, Inc.	09-04-90	G-S	70,721
ST90-4575	Florida Gas Transmission Co.	Mobil Natural Gas Inc.	09-04-90	G-S	200,000
ST90-4576	Florida Gas Transmission Co.	Mobil Oil Corp.	09-04-90	G-S	200,000
ST90-4577	Florida Gas Transmission Co.	Mobil Exploration & Producing U.S., Inc.	09-04-90	G-S	200,000
ST90-4578	Florida Gas Transmission Co.	Mobil Explor. & Prod. N. America, Inc.	09-04-90	G-S	200,000
ST90-4579	Florida Gas Transmission Co.	Howell Gas Management Co.	09-04-90	G-S	50,000
ST90-4580	Florida Gas Transmission Co.	Mobil Rocky Mountain, Inc.	09-04-90	G-S	200,000
ST90-4581	Florida Gas Transmission Co.	Tennessee Gas Pipeline Co.	09-04-90	G	300,000
ST90-4582	Florida Gas Transmission Co.	Paragon Gas Corp.	09-04-90	G-S	40,000
ST90-4583	Florida Gas Transmission Co.	Mobil Exploration & Producing Se, Inc.	09-04-90	G-S	200,000
ST90-4584	Florida Gas Transmission Co.	Mobil Producing TX and NM, Inc.	09-04-90	G-S	200,000
ST90-4585	Florida Gas Transmission Co.	Union Texas Petroleum Corp.	09-04-90	G-S	100,000
ST90-4586	Southern Natural Gas Co.	Howell Gas Management Co.	09-04-90	G-S	50,000
ST90-4587	Southern Natural Gas Co.	Alabama Gas Corp.	09-04-90	B	100,000
ST90-4588	Southern Natural Gas Co.	Gulf States Pipeline Corp.	09-04-90	B	16,000
ST90-4589	Sonat Intrastate-Alabama Inc.	Transcontinential Gas Pipe Line Corp.	09-04-90	C	35,000
ST90-4590	Gas Gathering Corp.	U.S. Exploration Co.	09-04-90	K	5,000
ST90-4591	Stingray Pipeline Co.	Arco Natural Gas Marketing, Inc.	09-04-90	K-S	150,000
ST90-4592	Stingray Pipeline Co.	Equitable Resources Marketing Co.	09-04-90	K-S	50,000
ST90-4593	Delhi Gas Pipeline Corp.	Tennessee Gas Pipeline Co.	09-04-90	C	1,200
ST90-4594	Kentucky West Virginia Gas Co.	Equitable Resources Marketing Co.	09-04-90	G-S	80,000
ST90-4595	Dow Pipeline Co.	TPC Transmission, Inc.	09-04-90	C	25,000
ST90-4596	Natural Gas Pipeline Co. of America	Trans Marketing Houston, Inc.	09-04-90	G-S	250,000
ST90-4597	Natural Gas Pipeline Co. of America	Vesta Energy Co.	09-04-90	G-S	4,200
ST90-4598	Natural Gas Pipeline Co. of America	Howell Gas Management Co.	09-04-90	G-S	100,000
ST90-4599	Southern Natural Gas Co.	Municipal Gas Authority of Georiga	09-04-90	G-S	100,000
ST90-4600	Southern Natural Gas Co.	Alabama Gas Corp.	09-04-90	B	100
ST90-4601	Natural Gas Pipeline Co. of America	Eastex Gas Transmission Co.	09-05-90	B	300,000
ST90-4602	United Gas Pipe Line Co.	Pine Pipeline Co.	09-05-90	G-S	25,750
ST90-4603	United Gas Pipe Line Co.	FEC Marketing	09-05-90	G-S	8,343
ST90-4604	United Gas Pipe Line Co.	Mississippi Fuel Co.	09-05-90	G-S	38,625
ST90-4605	United Gas Pipe Line Co.	Gulf Coast Energy, Inc.	09-05-90	G-S	1,030
ST90-4606	United Gas Pipe Line Co.	FEC Marketing	09-05-90	G-S	15,450
ST90-4607	Transcontinental Gas Pipe Line Corp.	United Texas Transmission Co.	09-05-90	B	55,000
ST90-4608	U T Offshore System	Chevron U.S.A., Inc.	09-06-90	K-S	67,000
ST90-4609	U T Offshore System	Phillips Petroleum Co.	09-06-90	K-S	68,500
ST90-4610	U T Offshore System	NGC Transportation, Inc.	09-06-90	K-S	225,000
ST90-4611	Northern Natural Gas Co.	Mock Resources, Inc.	09-06-90	G-S	100,000
ST90-4612	ANR Pipeline Co.	End Users Supply System	09-06-90	G-S	25,000
ST90-4613	Williston Basin Interstate P/L Co.	Rainbow Gas. Co.	09-06-90	G-S	65,000
ST90-4614	Florida Gas Transmission Co.	Coast Energy Group, Inc.	09-06-90	G-S	75,000
ST90-4615	Florida Gas Transmission Co.	Associated Natural Gas Co., Inc.	09-06-90	G-S	30,000
ST90-4616	Florida Gas Transmission Co.	Winnie Pipeline Co.	09-06-90	B	20,555
ST90-4617	Florida Gas Transmission Co.	Tex/Con Gas Marketing Co.	09-06-90	G-S	250,000
ST90-4618	Florida Gas Transmission Co.	Texaco Gas Marketing, Inc.	09-06-90	G-S	200,000
ST90-4619	Florida Gas Transmission Co.	Stellar Gas Co.	09-06-90	G-S	100,000
ST90-4620	Florida Gas Transmission Co.	Sonat Marketing Co.	09-06-90	G-S	250,000
ST90-4621	Florida Gas Transmission Co.	Reliance Gas Marketing Co.	09-06-90	G-S	50,000
ST90-4622	Florida Gas Transmission Co.	PPG Industries, Inc.	09-06-90	G-S	60,000
ST90-4623	Florida Gas Transmission Co.	Exxon Corp.	09-06-90	G-S	250,000
ST90-4624	Florida Gas Transmission Co.	Users Supply System	09-06-90	G-S	100,000
ST90-4625	Natural Gas Pipeline Co. of America	Acacia Gas Corp.	09-07-90	G-S	50,000
ST90-4626	Natural Gas Pipeline Co. of America	Louis Dreyfuss Energy Corp.	09-07-90	G-S	100,000
ST90-4627	Panola/Rusk Gatherers	Natural Gas Pipline Co. of America	09-07-90	G-S	10,000
ST90-4628	Florida Gas Transmission Co.	Arco Natural Gas Marketing, Inc.	09-07-90	G-S	200,000
ST90-4629	Florida Gas Transmission Co.	C.F. Industries, Inc.	09-07-90	G-S	200,000
ST90-4630	Florida Gas Transmission Co.	Eastex Hydrocarbons, Inc.	09-07-90	G-S	308,325
ST90-4631	Florida Gas Transmission Co.	Tenngasco Corp.	09-07-90	G-S	200,000
ST90-4632	Florida Gas Transmission Co.	Meridian Oil Trading, Inc.	09-07-90	G-S	200,000
ST90-4633	Florida Gas Transmission Co.	Entrade Corp.	09-07-90	G-S	100,000
ST90-4634	Florida Gas Transmission Co.	Citrus Marketing, Inc.	09-07-90	G-S	400,000
ST90-4635	United Gas Pipe Line Co.	Cornerstone Natural Gas Co.	09-07-90	G-S	3,090
ST90-4636	United Gas Pipe Line Co.	Delta Pipeline Co.	09-07-90	G-S	41,200
ST90-4637	United Gas Pipe Line Co.	Delta Pipeline Co.	09-07-90	G-S	10,300
ST90-4638	United Gas Pipe Line Co.	Gulf States Gas Corp.	09-07-90	G-S	41,200
ST90-4639	United Gas Pipe Line Co.	Gulf States Gas Corp.	09-07-90	G-S	48,142
ST90-4640	United Gas Pipe Line Co.	Gulf States Gas Corp.	09-07-90	G-S	41,200
ST90-4641	United Gas Pipe Line Co.	Endevco Pipeline Co	09-07-90	G-S	6,180
ST90-4642	United Gas Pipe Line Co.	Calcasieu Gas Gathering System	09-07-90	G-S	82,400
ST90-4643	United Gas Pipe Line Co.	Gulf States Gas Corp.	09-07-90	G-S	48,142
ST90-4644	United Gas Pipe Line Co.	Endevco Pipeline Co.	09-07-90	G-S	4,120
ST90-4645	United Gas Pipeline Co.	Endevco Pipeline	09-07-90	G-S	3,090
ST90-4646	United Gas Pipe Line Co.	Endevco Pipeline Co.	09-07-90	G-S	515
ST90-4647	United Gas Pipe Line Co.	Texas Southern Pipeline, Inc.	09-07-90	G-5	7,210
ST90-4648	United Gas Pipe Line Co	Texas Southern Pipeline, Inc.	09-07-90	G-5	45,475
ST90-4649	United Gas Pipe Line Co.	Texas Southern Pipeline, Inc.	09-07-90	G-S	48,256

Docket No. [1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity [2]
ST90-4650	United Gas Pipe Line Co.	Calcasieu Gas Gathering System	09-07-90	G-S	61,800
ST90-4651	United Gas Pipe Line Co.	Endevco Pipeline Co.	09-07-90	G-S	5,150
ST90-4652	United Gas Pipe Line Co.	Endevco Oil & Gas Co.	09-07-90	G-S	515
ST90-4653	United Gas Pipe Line Co.	Endevco Pipeline Co.	09-07-90	G-S	721
ST90-4654	United Gas Pipe Line Co.	Texas Southern Pipline, Inc.	09-07-90	G-S	1,030
ST90-4655	United Gas Pipe Line Co.	Rally Pipeline Corp.	09-07-90	G-S	20,600
ST90-4656	United Gas Pipe Line Co.	Gulf States Gas Corp.	09-07-90	G-S	41,200
ST90-4657	United Gas Pipe Line Co.	Calcasieu Gas Gathering System	09-07-90	G-S	43,260
ST90-4658	United Gas Pipe Line Co.	Cornerstone Natural Gas Co.	09-07-90	G-S	12,360
ST90-4659	United Gas Pipe Line Co.	Gulf States Gas Corp.	09-07-90	G-S	41,200
ST90-4460	United Gas Pipe Line Co.	Gulf States Gas Corp.	09-07-90	G-S	10,300
ST90-4461	United Gas Pipe Line Co.	Endevco Oil and Gas Co.	09-07-90	G-S	15,450
ST90-4662	United Gas Pipe Line Co.	Gulf States Gas Corp.	09-07-90	G-S	41,200
ST90-4663	United Gas Pipe Line Co.	Gulf States Gas Corp.	09-07-90	G-S	41,200
ST90-4664	United Gas Pipe Line Co.	Gulf States Gas Corp.	09-07-90	G-S	41,200
ST90-4665	United Gas Pipe Line Co.	Gulf States Gas Corp.	09-07-90	G-S	41,200
ST90-4666	United Gas Pipe Line Co.	Calcasieu Gas Gathering System	09-07-90	G-S	81,584
ST90-4667	United Gas Pipe Line Co.	Endevco Oil and Gas Co.	09-07-90	G-S	20,600
ST90-4668	United Gas Pipe Line Co.	Endevco Oil and Gas Co.	09-07-90	G-S	30,900
ST90-4669	United Gas Pipe Line Co.	Endevco Oil and Gas Co.	09-07-90	G-S	25,750
ST90-4670	United Gas Pipe Line Co.	Cornerstone Natural Gas Co.	09-07-90	G-S	25,750
ST90-4671	United Gas Pipe Line Co.	Delhi Gas Pipeline Corp.	09-07-90	B	103,000
ST90-4672	Equitrans, Inc.	Consolidated Fuel Corp.	09-07-90	G-S	20,482
ST90-4673	Gas Transport, Inc.	River Gas Co.	09-07-90	B	2,000
ST90-4674	Transcontinental Gas Pipe Line Corp.	Texas Ohio Gas, Inc.	09-07-90	G-S	1,000
ST90-4675	ANR Pipeline Co.	Brooklyn Union Gas Co, et al.	09-07-90	B	50,000
ST90-4676	ANR Pipeline Co.	Coastal Gas Marketing Co.	09-07-90	G-S	800,000
ST90-4677	ANR Pipeline Co.	NGC Transportation, Inc.	09-07-90	G-S	100,000
ST90-4678	ANR Pipeline Co.	Hunt Oil Co.	09-07-90	G-S	20,000
ST90-4679	ANR Pipeline Co.	Coastal Gas Marketing Co.	09-07-90	G-S	500,000
ST90-4680	ANR Pipeline Co.	Amoco Production Co.	09-07-90	G-S	60,000
ST90-4681	ANR Pipeline Co.	Coastal Gas Marketing Co.	09-07-90	G-S	800,000
ST90-4682	Columbia Gas Transmission Corp.	Ashland Exploration, Inc.	09-07-90	G-S	30,000
ST90-4683	Tennessee Gas Pipeline Co.	Mississippi Fuel Co.	09-07-90	B	1,000,000
ST90-4684	Natural Gas Pipeline Co. of America	Centran Corp.	09-10-90	G-S	30,000
ST90-4685	Natural Gas Pipeline Co. of America	Marathon Oil Co.	09-10-90	G-S	20,000
ST90-4686	Natural Gas Pipeline Co. of America	Phillips Petroleum Co.	09-10-90	G-S	28,000
ST90-4687	Oasis Pipe Line Co.	El Paso Natural Gas Co.	09-10-90	C	50,000
ST90-4688	Oasis Pipe Line Co.	El Paso Natural Gas Co.	09-10-90	C	30,000
ST90-4689	Houston Pipe Line Co.	Transcontinental Gas Pipe Line Corp.	09-10-90	C	1,500
ST90-4690	Houston Pipe Line Co.	Florida Gas Transmission Co.	09-10-90	C	20,000
ST90-4691	Houston Pipe Line Co.	United Gas Pipe Line Co.	09-10-90	C	10,000
ST90-4692	Houston Pipe Line Co.	Seagull Interstate Corp.	09-10-90	C	10,000
ST90-4693	Houston Pipe Line Co.	Transcontinental Gas Pipe Line Corp.	09-10-90	C	1,000
ST90-4694	Houston Pipe Line Co.	Black Marlin Pipeline Co.	09-10-90	C	50,000
ST90-4695	Houston Pipe Line Co.	El Paso Natural Gas Co.	09-10-90	C	30,000
ST90-4696	Tennessee Gas Pipeline Co.	Cranberry Pipeline Corp.	09-10-90	B	4,775
ST90-4697	U T Offshore System	Houston Gas Exchange Corp.	09-10-90	K-S	100,000
ST90-4698	U T Offshore System	Energy Marketing Exchange, Inc.	09-10-90	K-S	300,000
ST90-4699	U T Offshore System	Excel Gas Marketing, Inc.	09-10-90	K-S	100,000
ST90-4700	U T Offshore System	Stellar Gas Co.	09-10-90	K-S	1,400,000
ST90-4701	U T Offshore System	Continental Natural Gas, Inc.	09-10-90	K-S	100,000
ST90-4702	U T Offshore System	LL & E Gas Marketing, Inc.	09-10-90	K-S	35,000
ST90-4703	U T Offshore System	Koch Hydrocarbons Co.	09-10-90	K-S	250,000
ST90-4704	U T Offshore System	ARCO Natural Gas Marketing, Inc.	09-10-90	K-S	1,670,000
ST90-4705	U T Offshore System	Marathon Oil Co.	09-10-90	K-S	28,000
ST90-4706	U T Offshore System	Meth Corp.	09-10-90	K-S	145,000
ST90-4707	Williston Basin Interstate P/L Co.	Montana-Dakota Utilities Co.	09-10-90	B	190,370
ST90-4708	Kentucky West Virginia Gas Co.	Equitable Resources Energy Co.	09-10-90	G-S	40,000
ST90-4709	Sabine Pipe Line Co.	Louisiana Resources Co.	09-10-90	B	200,000
ST90-4710	Sipco Gas Transmission Corp.	Natural Gas Pipeline Co. of America	09-10-90	C	50,000
ST90-4711	Texas Gas Transmission Corp.	Graham Energy Marketing Co.	09-11-90	G-S	5,000
ST90-4712	Panola/Rusk Gatherers	Natural Gas Pipeline Co. of America	09-11-90	C	5,000
ST90-4713	Tennessee Gas Pipeline Co.	Associated Natural Gas, Inc.	09-05-90	G-S	90,000
ST90-4714	Stingray Pipeline Co.	Shell Gas Trading Co.	09-11-90	K-S	200,000
ST90-4715	Northern Natural Gas Co.	Meadco Properties	09-11-90	G-S	15
ST90-4716	Northern Natural Gas Co.	Phillips Gas Marketing Co.	09-11-90	G-S	100,000
ST90-4717	Mississippi River Transmission Corp.	Amgas, Inc.	09-11-90	G-S	5,300
ST90-4718	Northern Natural Gas Co.	Equitable Resources Marketing Co.	09-11-90	G-S	257,500
ST90-4719	Texas Eastern Transmission Corp.	O & R Energy Development, Inc.	09-11-90	G-S	80,000
ST90-4720	Northern Natural Gas Co.	Phillips 66 Natural Gas Co.	09-12-90	G-S	200,000
ST90-4721	Northern Natural Gas Co.	Mobil Natural Gas, Inc.	09-12-90	G-S	300,000
ST90-4722	Northern Natural Gas Co.	Phillips Petroleum Co.	09-12-90	G-S	100,000
ST90-4723	Northern Natural Gas Co.	Fremont Dept. of Utilities	09-12-90	B	20,000
ST90-4724	Northern Natural Gas Co.	Superior Water, Light and Power Co.	09-12-90	B	20,000
ST90-4725	Natural Gas Pipeline Co. of America	Mobil Natural Gas, Inc.	09-13-90	G-S	50,000
ST90-4726	Tennessee Gas Pipeline Co.	Florida Gas Transmission Co.	09-12-90	G	1,000,000
ST90-4727	El Paso Natural Gas Co.	Mar Oil and Gas Corp.	09-13-90	G-S	1,030
ST90-4728	U T Offshore System	Midcon Marketing Corp.	09-13-90	K-S	250,000
ST90-4729	U T Offshore System	Centran Corp.	09-13-90	K-S	37,000

Docket No. [1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity [2]
ST90-4730	U T Offshore System	Superior Natural Gas Corp.	09-13-90	K-S	50,000
ST90-4731	U T Offshore System	Access Energy Corp.	09-13-90	K-S	290,000
ST90-4732	U T Offshore System	Illinois Power Co.	09-13-90	K-S	200,000
ST90-4733	U T Offshore System	Delmarva Power and Light Co.	09-13-90	K-S	100,000
ST90-4734	Texas Gas Transmission Corp.	Access Energy Corp.	09-13-90	G-S	30,000
ST90-4735	Taft Pipeline Co.	Northern Natural Gas Co.	09-13-90	C	20,000
ST90-4736	Transok, Inc.	Williams Natural Gas Co.	09-13-90	C	50,000
ST90-4737	U T Offshore System	TXG Gas Marketing Co.	09-14-90	K-S	120,000
ST90-4738	U T Offshore System	Pontchartrain Natural Gas System	09-14-90	K-S	100,000
ST90-4739	U T Offshore System	BP Gas Inc.	09-14-90	K-S	220,000
ST90-4740	U T Offshore System	Eastern Shore Natural Gas Co.	09-14-90	K	50,000
ST90-4741	U T Offshore System	Texaco Gas Marketing, Inc.	09-14-90	K-S	300,000
ST90-4742	U T Offshore System	Reliance Gas Marketing Co.	09-14-90	K-S	600,000
ST90-4743	U T Offshore System	Consolidated Edison Co. of NY, Inc.	09-14-90	K-S	1,400,000
ST90-4744	U T Offshore System	Sun Operating Limited Parternship	09-14-90	K-S	152,200
ST90-4745	Tennessee Gas Pipeline Co.	Ocean State Power	09-14-90	G-S	60,000
ST90-4746	Black Marlin Pipeline Co.	Transok, Inc.	09-14-90	B	20,408
ST90-4747	Columbia Gas Transmission Corp.	Public Service Electric and Gas Co.	09-14-90	B	66,000
ST90-4748	Gas Co. of NM (Div. Public Serv. Co. NM)	El Paso Natural Gas Co.	09-14-90	G-HT	10,000
ST90-4749	Sea Robin Pipeline Co.	Baltimore Gas and Electric Co.	09-14-90	B	100,000
ST90-4750	United Gas Pipe Line Co.	Coast Energy Group, Inc.	09-14-90	G-S	30,900
ST90-4751	United Gas Pipe Line Co.	Sigo Marketing, Inc.	09-14-90	G-S	4,892
ST90-4752	Williston Basin Interstate P/L Co.	Chevron U.S.A., Inc.	09-14-90	G-S	13,148
ST90-4753	Williston Basin Interstate P/L Co.	Montana-Dakota Utilities Co.	09-14-90	B	438
ST90-4754	Williston Basin Interstate P/L Co.	Western Gas Processors, Ltd.	09-14-90	G-S	226,645
ST90-4755	Williston Basin Interstate P/L Co.	Western Gas Processors, Ltd.	09-14-90	G-S	50,600
ST90-4756	Enogex Inc.	Williams Natural Gas Co.	09-17-90	C	50,000
ST90-4757	Natural Gas Pipeline Co. of America	Longhorn Natural Gas Co., Inc.	09-17-90	G-S	10,000
ST90-4758	Natural Gas Pipeline Co. of America	Ep Operating Co.	09-17-90	G-S	30,000
ST90-4759	United Gas Pipe Line Co.	Shell Gas Trading Co.	09-17-90	G-S	15,450
ST90-4760	United Gas Pipe Line Co.	Polo Energy Corp.	09-17-90	G-S	4,120
ST90-4761	United Gas Pipe Line Co.	Pennzoil Gas Marketing Co.	09-17-90	G-S	206,000
ST90-4762	United Gas Pipe Line Co.	Shell Gas Trading Co.	09-17-90	G-S	257,500
ST90-4763	United Gas Pipe Line Co.	Shell Gas Trading Co.	09-17-90	G-S	41,200
ST90-4764	United Gas Pipe Line Co.	Shell Gas Trading Co.	09-17-90	G-S	13,390
ST90-4765	United Gas Pipe Line Co.	Pennzoil Gas Marketing Co.	09-17-90	G-S	206,000
ST90-4766	United Gas Pipe Line Co.	Pennzoil Gas Marketing Co.	09-17-90	G-S	206,000
ST90-4767	United Gas Pipe Line Co.	Shell Gas Trading Co.	09-17-90	G-S	28,840
ST90-4768	United Gas Pipe Line Co.	Shell Gas Trading Co.	09-17-90	G-S	13,390
ST90-4769	United Gas Pipe Line Co.	Polo Energy Corp.	09-17-90	G-S	1,030
ST90-4770	United Gas Pipe Line Co.	Shell Gas Trading Co.	09-17-90	G-S	51,500
ST90-4771	United Gas Pipe Line Co.	Shell Gas Trading Co.	09-17-90	G-S	30,900
ST90-4772	United Gas Pipe Line Co.	Shell Gas Trading Co.	09-17-90	G-S	12,360
ST90-4773	United Gas Pipe Line Co.	Shell Gas Trading Co.	09-17-90	G-S	25,750
ST90-4774	United Gas Pipe Line Co.	Shell Gas Trading Co.	09-17-90	G-S	13,390
ST90-4775	United Gas Pipe Line Co.	Pennzoil Gas Marketing Co.	09-17-90	G-S	20,600
ST90-4776	United Gas Pipe Line Co.	Shell Gas Trading Co.	09-17-90	G-S	41,200
ST90-4777	United Gas Pipe Line Co.	Shell Gas Trading Co.	09-17-90	G-S	13,900
ST90-4778	United Gas Pipe Line Co.	Pennzoil Gas Marketing Co.	09-17-90	G-S	20,600
ST90-4779	United Gas Pipe Line Co.	FEC Marketing	09-17-90	G-S	15,450
ST90-4780	Williams Natural Gas Co.	Reliance Gas Marketing Co.	09-17-90	G-S	50,000
ST90-4781	Williams Natural Gas Co.	Reliance Gas Marketing Co.	09-17-90	G-S	50,000
ST90-4782	Williams Natural Gas Co.	Mega Natural Gas CO.	09-17-90	G-S	65,000
ST90-4783	Williams Natural Gas Co.	Frito-Lay, Inc.	09-17-90	G-S	2,000
ST90-4784	Williams Natural Gas Co.	Centran Corp.	09-17-90	G-S	220
ST90-4785	High Island Offshore System	Conoco, Inc.	09-17-90	K-S	205,000
ST90-4786	High Island Offshore System	Corpus Christi Oil & Gas Co.	09-17-90	K-S	36,000
ST90-4787	High Island Offshore System	Eastern Shore Natural Gas Co.	09-17-90	K	25,000
ST90-4788	High Island Offshore System	Anadarko Trading Co.	09-17-90	K-S	120,000
ST90-4789	High Island Offshore System	Natural Gas Pipeline Co. of America	09-17-90	K	500,000
ST90-4790	High Island Offshore System	Fina Oil and Chemical Co.	09-17-90	K-S	34,500
ST90-4791	High Island Offshore System	Equitable Resources Marketing Co.	09-17-90	K-S	395,000
ST90-4792	High Island Offshore System	Enron Gas Marketing	09-17-90	K-S	1,530,000
ST90-4793	High Island Offshore System	Oxy, U.S.A., Inc.	09-17-90	K-S	30,000
ST90-4794	High Island Offshore System	Reliance Gas Marketing Co.	09-17-90	K-S	60,000
ST90-4795	High Island Offshore System	Tex/Con Marketing Co.	09-17-90	K-S	185,000
ST90-4796	High Island Offshore System	Total Minatome Corp.	09-17-90	K-S	54,900
ST90-4797	U T Offshore System	Power Authority of the State of NY	09-17-90	K-S	110,000
ST90-4798	U T Offshore System	PSI, Inc.	09-17-90	K-S	100,000
ST90-4799	U T Offshore System	PSI, Inc.	09-17-90	K-S	100,000
ST90-4800	U T Offshore System	Bishop Pipeline Corp.	09-17-90	K-S	200,000
ST90-4801	U T Offshore System	Northern Illinois Gas Co.	09-17-90	K-S	210,000
ST90-4802	U T Offshore System	Public Service Electric and Gas Co.	09-17-90	K-S	300,000
ST90-4803	U T Offshore System	Calcasieu Gas Gathering System	09-17-90	K-S	100,000
ST90-4804	U T Offshore System	Mobil Natural Gas, Inc.	09-17-90	K-S	200,000
ST90-4805	U T Offshore System	Associated Natural Gas Co., Inc.	09-17-90	K-S	200,000
ST90-4806	U T Offshore System	Graham Energy Marketing Co.	09-17-90	K-S	75,000
ST90-4807	U T Offshore System	Philadelphia Electric Co.	09-17-90	K-S	200,000
ST90-4808	U T Offshore System	Total Minatome Corp.	09-17-90	K-S	200,000

Docket No. [1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity [2]
ST90-4809	U T Offshore System	Brooklyn Interstate Natural Gas Corp.	09-17-90	K-S	100,000
ST90-4810	U T Offshore System	Spindletop Gas Distribution System	09-17-90	K-S	100,000
ST90-4811	U T Offshore System	Neches Pipeline System	09-17-90	K-S	100,000
ST90-4812	Northern Natural Gas Co.	Entrade Corp.	09-17-90	K-S	50,000
ST90-4813	Northern Natural Gas Co.	Mobil Natural Gas, Inc.	09-17-90	K-S	20,000
ST90-4814	Northern Natural Gas Co.	Mobil Natural Gas, Inc.	09-17-90	K-S	20,000
ST90-4815	U T Offshore System	EP Operating Co.	09-17-90	K-S	10,000
ST90-4816	U T Offshore System	Coastal Gas Marketing Co.	09-18-90	K-S	700,000
ST90-4817	U T Offshore System	Western Methane Co.	09-18-90	K-S	400,000
ST90-4818	U T Offshore System	Amoco Gas Co.	09-18-90	K-S	190,000
ST90-4819	U T Offshore System	Natural Gas Pipeline Co. of America	09-18-90	K	500,000
ST90-4820	Valero Transmission, L.P.	El Paso Natural Gas Co.	09-18-90	C	30,000
ST90-4821	Texas Eastern Transmission Corp.	Philadelphia Electric Co.	09-18-90	G-S	53,104
ST90-4822	K N Energy, Inc.	Coastal Gas Marketing Co.	09-18-90	G-S	30,000
ST90-4823	K N Energy, Inc.	Arkla Energy Marketing	09-18-90	G-S	35,000
ST90-4824	United Gas Pipe Line Co.	Pennzoil Gas Marketing Co.	09-18-90	G-S	180,250
ST90-4825	United Gas Pipe Line Co.	Pennzoil Gas Marketing Co.	09-18-90	G-S	30,900
ST90-4826	United Gas Pipe Line Co.	Nicor Exploration Co.	09-18-90	G-S	41,120
ST90-4827	United Gas Pipe Line Co.	United Texas Transmission Co.	09-18-90	G-S	82,400
ST90-4828	United Gas Pipe Line Co	Pennzoil Gas Marketing Co	09-18-90	G-S	30,900
ST90-4829	United Gas Pipe Line Co	Pennzoil Gas Marketing Co	09-18-90	G-S	309,000
ST90-4830	United Gas Pipe Line Co	Victoria Gas Corp.	09-18-90	G-S	29,355
ST90-4831	United Gas Pipe Line Co	Victoria Gas Corp.	09-18-90	G-S	10,300
ST90-4832	United Gas Pipe Line Co	Victoria Gas Corp.	09-18-90	G-S	1,133
ST90-4833	United Gas Pipe Line Co	Victoria Gas Corp.	09-18-90	G-S	567
ST90-4834	United Gas Pipe Line Co	Victoria Gas Corp.	09-18-90	G-S	41,200
ST90-4835	United Gas Pipe Line Co	Rally Pipeline Corp	09-18-90	G-S	51,500
ST90-4836	United Gas Pipe Line Co	Victoria Gas Corp.	09-18-90	G-S	10,300
ST90-4837	United Gas Pipe Line Co	Rally Pipeline Corp	09-18-90	G-S	51,500
ST90-4838	United Gas Pipe Line Co	Victoria Gas Corp.	09-18-90	G-S	20,600
ST90-4839	United Gas Pipe Line Co	Victoria Gas Corp.	09-18-90	G-S	5,150
ST90-4840	United Gas Pipe Line Co	Mid Louisiana Gas Co	09-18-90	G-S	41,200
ST90-4841	United Gas Pipe Line Co	Pennzoil Gas Marketing Co	09-18-90	G-S	51,500
ST90-4842	United Gas Pipe Line Co	Victoria Gas Corp.	09-18-90	G-S	32,960
ST90-4843	United Gas Pipe Line Co	Victoria Gas Corp.	09-18-90	G-S	1,030
ST90-4844	United Gas Pipe Line Co	Pennzoil Gas Marketing Co	09-18-90	G-S	51,500
ST90-4845	United Gas Pipe Line Co	Pennzoil Gas Marketing Co	09-18-90	G-S	82,400
ST90-4846	United Gas Pipe Line Co	Victoria Gas Corp.	09-18-90	G-S	10,300
ST90-4847	United Gas Pipe Line Co	Victoria Gas Corp.	09-18-90	G-S	77,250
ST90-4848	United Gas Pipe Line Co	Pennzoil Gas Marketing Co	09-18-90	G-S	30,900
ST90-4849	United Gas Pipe Line Co	Pennzoil Gas Marketing Co	09-18-90	G-S	25,750
ST90-4850	United Gas Pipe Line Co	Pennzoil Gas Marketing Co	09-18-90	G-S	206,000
ST90-4851	United Gas Pipe Line Co	Pennzoil Gas Marketing Co	09-18-90	G-S	30,900
ST90-4852	Northern Natural Gas Co	Michigan Gas Co	09-18-90	B	2,000
ST90-4853	Superior Offshore Pipeline Co	Access Energy Corp	09-18-90	G-S	500
ST90-4854	Williams Natural Gas Co	Reliance Gas Marketing Co.	09-18-90	G-S	300
ST90-4855	Williams Natural Gas Co	City Utilities of Springfield	09-18-90	G-S	1,539
ST90-4856	Williams Natural Gas Co	Reliance Gas Marketing Co.	09-18-90	G-S	85
ST90-4857	Williams Natural Gas Co	Reliance Gas Marketing Co.	09-18-90	G-S	119
ST90-4858	Williams Natural Gas Co	Reliance Gas Marketing Co.	09-18-90	G-S	779
ST90-4859	Williams Natural Gas Co	Reliance Gas Marketing Co.	09-18-90	G-S	2,000
ST90-4860	Williams Natural Gas Co	Brock Gas Systems and Equipment Co	09-18-90	G-S	950
ST90-4861	Columbia Gulf Transmission Co.	Centran Corp	09-18-90	G-S	100,000
ST90-4862	Columbia Gulf Transmission Co.	Exxon Corp	09-18-90	G-S	75,000
ST90-4863	Columbia Gulf Transmission Co.	NGC Transportation, Inc	09-18-90	G-S	200,000
ST90-4864	Columbia Gulf Transmission Co.	Tenngasco Corp.	09-18-90	G-S	55,000
ST90-4865	Panhandle Eastern Pipe Line Co	Anadarko Trading Co	09-19-90	G-S	50,000
ST90-4866	Panhandle Eastern Pipe Line Co	Union Electric Co	09-19-90	B	200
ST90-4867	Panhandle Eastern Pipe Line Co	Amgas, Inc	09-19-90	G-S	60
ST90-4868	Panhandle Eastern Pipe Line Co	Amgas, Inc	09-19-90	G-S	70
ST90-4869	United Gas Pipe Line Co	American Cyanamid Co.	09-19-90	G-S	6,180
ST90-4870	United Gas Pipe Line Co	Air Products & Chemicals, Inc.	09-19-90	G-S	36,050
ST90-4871	United Gas Pipe Line Co	Access Energy Corp	09-19-90	G-S	25,750
ST90-4872	United Gas Pipe Line Co	Brandywine Industrial Gas, Inc.	09-19-90	G-S	10,030
ST90-4873	United Gas Pipe Line Co	Crescent Gas Corp	09-19-90	G-S	10,300
ST90-4874	United Gas Pipe Line Co	Consolidated Fuel Corp	09-19-90	G-S	77,250
ST90-4875	United Gas Pipe Line Co	Brandywine Industrial Gas, Inc.	09-19-90	G-S	1,957
ST90-4876	United Gas Pipe Line Co	Crescent Gas Corp	09-19-90	G-S	30,900
ST90-4877	United Gas Pipe Line Co	Coastal States Gas Transmission Co	09-19-90	G-S	25,750
ST90-4878	United Gas Pipe Line Co	Canadian Occidental California, Inc	09-19-90	G-S	149,350
ST90-4879	United Gas Pipe Line Co	American Cyanamid Co.	09-19-90	G-S	12,360
ST90-4880	United Gas Pipe Line Co	American Pipeline Co	09-19-90	G-S	1,545
ST90-4881	United Gas Pipe Line Co	Arkla Energy Marketing	09-19-90	G-S	5,150
ST90-4882	United Gas Pipe Line Co	Scott Paper Co.	09-19-90	G-S	3,090
ST90-4883	United Gas Pipe Line Co	Arkla Energy Marketing	09-19-90	G-S	103,000
ST90-4884	United Gas Pipe Line Co	Chunchula Energy Corp	09-19-90	G-S	721
ST90-4885	United Gas Pipe Line Co	Access Energy Corp	09-19-90	G-S	25,750
ST90-4886	United Gas Pipe Line Co	Access Energy Corp	09-19-90	G-S	41,200
ST90-4887	United Gas Pipe Line Co	Coastal States Gas Transmission Co	09-19-90	G-S	1,030
ST90-4888	United Gas Pipe Line Co	Crescent Gas Corp	09-19-90	G-S	15,450

Docket No. [1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity [2]
ST90-4889	United Gas Pipe Line Co	Brandywine Industrial Gas, Inc	09-19-90	G-S	10,300
ST90-4890	United Gas Pipe Line Co	Cornerstone Production Corp	09-19-90	G-S	1,288
ST90-4891	United Gas Pipe Line Co	Crescent Gas Corp	09-19-90	G-S	2,575
ST90-4892	United Gas Pipe Line Co	Brock Oil & Gas Corp	09-19-90	G-S	618
ST90-4893	United Gas Pipe Line Co	Associated Intrastate Pipeline Co	09-19-90	G-S	10,300
ST90-4894	United Gas Pipe Line Co	Coastal Gas Marketing Co	09-19-90	G-S	1,854
ST90-4895	United Gas Pipe Line Co	Bay-Tech Operating Co	09-19-90	G-S	1,133
ST90-4896	United Gas Pipe Line Co	Shreveport Intrastate Gas Trans., Inc	09-19-90	G-S	63,860
ST90-4897	United Gas Pipe Line Co	Associated Intrastate Pipeline Co	09-19-90	G-S	206,000
ST90-4898	United Gas Pipe Line Co	Arkla Energy Marketing	09-19-90	G-S	20,600
ST90-4899	United Gas Pipe Line Co	Shreveport Intrastate Gas Trans., Inc	09-19-90	G-S	63,860
ST90-4900	United Gas Pipe Line Co	Shreveport Intrastate Gas Trans., Inc	09-19-90	G-S	3,090
ST90-4901	United Gas Pipe Line Co	Shreveport Intrastate Gas Trans., Inc	09-19-90	G-S	63,860
ST90-4902	United Gas Pipe Line Co	ANR Gathering Co	09-19-90	G-S	10,300
ST90-4903	Sea Robin Pipeline Co	Seagull Marketing Services, Inc	09-19-90	G-S	48,410
ST90-4904	Sea Robin Pipeline Co	PSI, Inc	09-19-90	G-S	103,000
ST90-4905	Sea Robin Pipeline Co	SNG Trading Co	09-19-90	G-S	12,360
ST90-4906	Sea Robin Pipeline Co	Santa Fe Minerals	09-19-90	G-S	25,750
ST90-4907	Sea Robin Pipeline Co	PSI, Inc	09-19-90	G-S	103,000
ST90-4908	Sea Robin Pipeline Co	Marathon Oil Co	09-19-90	G-S	30,900
ST90-4909	Sea Robin Pipeline Co	Seagull Marketing Services, Inc	09-19-90	G-S	48,410
ST90-4910	Delhi Gas Pipeline Co	Panhandle Eastern Pipe Line Co	09-20-90	C	1,400
ST90-4911	Valero Transmission, L.P	Texas Eastern Transmission Corp	09-20-90	C	3,000
ST90-4912	Trunkline Gas Co	Llano, Inc	09-20-90	B	50,000
ST90-4913	Florida Gas Transmission, Co	NGC Transportation, Inc	09-20-90	G-S	2,152
ST90-4914	U T Offshore System	Philbro Energy, Inc	09-19-90	K-S	400,000
ST90-4915	Williams Natural Gas Co.	Golden Gas Energies, Inc	09-20-90	G-S	20,000
ST90-4916	Williams Natural Gas Co.	Coastal Gas Marketing Co	09-20-90	G-S	20,000
ST90-4917	Williams Natural Gas Co.	Vesta Energy Co	09-20-90	G-S	7,000
ST90-4918	Williams Natural Gas Co.	Continental Natural Gas, Inc.	09-20-90	G-S	2,000
ST90-4919	Williams Natural Gas Co.	V.H.C. Gas System, L.P.	09-20-90	G-S	100,000
ST90-4920	Louisiana Resources Co.	Florida Gas Transmission Co., et al.	09-20-90	C	100,000
ST90-4921	Kentucky West Virginia Gas Co.	Southeastern Gas Co.	09-20-90	G-S	1,000
ST90-4922	Columbia Gas Transmission Corp.	Columbia Gas of Pennsylvania, Inc.	09-20-90	B	600
ST90-4923	Columbia Gas Transmission Corp.	North Carolina Natural Gas Corp	09-20-90	B	50,000
ST90-4924	Williams Natural Gas Co.	Golden Gas Energies, Inc	09-21-90	G-S	1,125
ST90-4925	Williams Natural Gas Co.	Continental Natural Gas, Inc.	09-91-90	G-S	680
ST90-4926	Williams Natural Gas Co.	Golden Gas Energies, Inc	09-21-90	G-S	400
ST90-4927	Williams Natural Gas Co.	Golden Gas Energies, Inc	09-21-90	G-S	400
ST90-4928	Williams Natural Gas Co.	Golden Gas Energies, Inc	09-21-90	G-S	628
ST90-4929	ANR Pipeline Co.	American Central Gas Companies	09-21-90	G-S	5,000
ST90-4930	Red River Pipeline	K N Energy, Inc	09-24-90	C	30,000
ST90-4931	Columbia Gas Transmission Corp.	Direct Gas Supply Corp.	09-21-90	G-S	25,000
ST90-4932	Columbia Gas Transmission Corp.	Catamount Natural Gas, Inc.	09-21-90	G-S	30,000
ST90-4933	Columbia Gas Transmission Corp.	Columbia Gas of Pennsylvania, Inc.	09-21-90	B	100
ST90-4934	Columbia Gas Transmission Corp.	Columbia Gas of Ohio, Inc.	09-21-90	B	2,961
ST90-4935	Columbia Gas Transmission Corp.	City of Charlottesville	09-21-90	B	1,000
ST90-4936	Columbia Gas Transmission Corp.	Columbia Gas of Pennsylvania, Inc.	09-21-90	B	50,000
ST90-4937	U T Offshore System	Louis Dreyfus Energy Corp.	09-21-90	K-S	100,000
ST90-4938	U T Offshore System	Coast Energy Group, Inc.	09-21-90	K-S	250,000
ST90-4939	Algonquin Gas Transmission Co.	Berkshire Gas Co.	09-21-90	B	51,250
ST90-4940	Algonquin Gas Transmission Co.	Philbro Distributors Corp.	09-21-90	G-S	50,000
ST90-4941	Algonquin Gas Transmission Co.	Philbro Distributors Corp.	09-21-90	G-S	50,000
ST90-4942	Algonquin Gas Transmission Co.	Orange and Rockland Utilities, Inc.	09-21-90	B	40,000
ST90-4943	Tennessee Gas Pipeline Co.	Channel Industries Gas Co.	09-24-90	B	2,000
ST90-4944	Acadian Gas Pipeline System	Texas Eastern Gas Pipeline Co.	09-24-90	C	10,000
ST90-4945	Acadian Gas Pipeline System	Natural Gas Pipeline Co. of America	09-24-90	C	30,000
ST90-4946	Northern Natural Gas Co.	Seadrift Pipeline Co.	09-24-90	B	30,000
ST90-4947	Northern Natural Gas Co.	Osage Municipal Utilities	09-24-90	B	5,000
ST90-4948	Northern Natural Gas Co.	Duluth Water and Gas Co.	09-24-90	B	10,000
ST90-4949	Northern Natural Gas Co.	City of Hibbing	09-24-90	B	7,000
ST90-4950	Northern Natural Gas Co.	Austom Utility Dept.	09-24-90	B	20,000
ST90-4951	Northern Natural Gas Co.	Western Gas Utilities, Inc.	09-24-90	B	20,000
ST90-4952	Northern Natural Gas Co.	Llano, Inc.	09-24-90	B	25,000
ST90-4953	Northern Natural Gas Co.	Shell Gas Trading Co.	09-24-90	G-S	30,000
ST90-4954	Northern Natural Gas Co.	Burro Corp. (The)	09-24-90	G-S	2,000
ST90-4955	Questar Pipeline Co.	Northwest Pipeline Corp.	09-24-90	G	10,000
ST90-4956	ONG Transmission Co.	Northern Natural Gas Co.	09-24-90	C	20,000
ST90-4957	U T Offshore System	Enron Gas Marketing, Inc.	09-24-90	K-S	1,000,000
ST90-4958	U T Offshore System	Conoco, Inc.	09-24-90	K-S	165,000
ST90-4959	Transcontinental Gas Pipe Line Corp.	Nassau District Energy Corp.	09-24-90	G-S	22,000
ST90-4960	Questar Pipeline Co.	Barrett Energy Co.	09-24-90	G-S	14,000
ST90-4961	Natural Gas Pipeline Co. of America	Coastal Gas Marketing Co.	09-25-90	G-S	50,000
ST90-4962	Natural Gas Piepeline Co. of America	Total Minatome Corp.	09-25-90	G-S	75,000
ST90-4963	Exxon Gas System, Inc.	El Paso Natural Gas Co.	09-25-90	C	5,000
ST90-4964	Colorado Interstate Gas Co.	Rangeline Corp.	09-25-90	G-S	10,000
ST90-4965	Colorado Interstate Gas Co.	Northern Gas Co.	09-25-90	B	15,000
ST90-4966	Colorado Interstate Gas Co.	Interenergy Transmission Partners	09-25-90	G-S	5,000
ST90-4967	Transwestern Pipeline Co.	Access Energy Corp.	09-25-90	G-S	100,000
ST90-4968	Transwestern Pipeline Co.	Continental Natural Gas, Inc.	09-25-90	G-S	50,000

Docket No. [1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity [2]
ST90-4969	Transwestern Pipeline Co.	Mesa Operating Limited Partnership	09-25-90	G-S	10,000
ST90-4970	Northern Border Pipeline Co.	Canterra Natural Gas, Inc.	09-25-90	G-S	30,000
ST90-4971	Northern Border Pipeline Co.	Koch Hydrocarbons Co.	09-25-90	G-S	200,000
ST90-4972	Northern Border Pipeline Co.	Chevron U.S.A., Inc.	09-25-90	G-S	100,000
ST90-4973	Northern Border Pipeline Co.	Mobil Natural Gas, Inc.	09-25-90	G-S	200,000
ST90-4974	Northern Border Pipeline Co.	Western Gas Processors	09-25-90	G-S	200,000
ST90-4975	Northern Border Pipeline Co.	Amoco Energy Trading Corp.	09-25-90	G-S	400,000
ST90-4976	Northern Border Pipeline Co.	Amoco Energy Trading Corp.	09-25-90	G-S	400,000
ST90-4977	Northern Border Pipeline Co.	Alenco Resources, Inc.	09-25-90	G-S	75,000
ST90-4978	Northern Border Pipeline Co.	V.H.C. Gas System, L.P.	09-25-90	G-S	200,000
ST90-4979	Northern Border Pipeline Co.	National Steel Corp.	09-25-90	G-S	90,000
ST90-4980	Northern Border Pipeline Co.	Semco Energy Services, Inc.	09-25-90	G-S	50,000
ST90-4981	Northern Border Pipeline Co.	Bethlehem Steel Corp.	09-25-90	G-S	80,000
ST90-4982	Northern Border Pipeline Co.	Colony Natural Gas Corp.	09-25-90	G-S	200,000
ST90-4983	Northern Border Pipeline Co.	Access Energy Corp.	09-25-90	G-S	150,000
ST90-4984	Northern Border Pipeline Co.	Dolphin Energy, Inc.	09-25-90	G-S	200,000
ST90-4985	Northern Border Pipeline Co.	American Central Gas Cos., Inc.	09-25-90	G-S	100,000
ST90-4986	Northern Border Pipeline Co.	Victoria Gas Corp.	09-25-90	G-S	100,000
ST90-4987	Columbia Gulf Transmission Co.	LL & E Gas Marketing, Inc.	09-25-90	G-S	7,500
ST90-4988	Columbia Gulf Transmission Co.	Amalgamated Gas Pipeline Co.	09-25-90	G-S	45,000
ST90-4989	Columbia Gulf Transmission Co.	Konatz, Inc.	09-25-90	G-S	10,000
ST90-4990	Columbia Gulf Transmission Co.	Laser Marketing Co.	09-25-90	G-S	15,000
ST90-4991	Columbia Gulf Transmission Co.	Laser Marketing Co.	09-25-90	G-S	20,000
ST90-4992	Columbia Gulf Transmission Co.	Equitable Resources Marketing Co.	09-25-90	G-S	20,000
ST90-4993	Columbia Gulf Transmission Co.	Mobil Natural Gas, Inc.	09-25-90	G-S	10,000
ST90-4994	Columbia Gulf Transmission Co.	Louisiana State Gas Corp.	09-25-90	G-S	25,000
ST90-4995	Columbia Gulf Transmission Co.	Endevco Oil & Gas Co.	09-25-90	G-S	20,000
ST90-4996	Columbia Gulf Transmission Co.	American Central Gas Co.	09-25-90	G-S	40,000
ST90-4997	Columbia Gulf Transmission Co.	Ledo, Inc.	09-25-90	G-S	50,000
ST90-4998	Columbia Gulf Transmission Co.	Eastex Gas Transmission Co.	09-25-90	G-S	60,000
ST90-4999	Columbia Gulf Transmission Co.	Equitable Resources Marketing Co.	09-25-90	G-S	100,000
ST90-5001	Columbia Gulf Transmission Co.	Eastex Gas Transmission Corp.	09-25-90	G-S	30,000
ST90-5002	Columbia Gulf Transmission Co.	Entrade Corp.	09-25-90	G-S	50,000
ST90-5003	Columbia Gulf Transmission Co.	CNG Trading Co.	09-25-90	G-S	10,000
ST90-5005	Columbia Gulf Transmission Co.	Polaris Pipeline Corp.	09-25-90	G-S	50,000
ST90-5006	Columbia Gulf Transmission Co.	Shell Gas Trading Co.	09-25-90	G-S	30,000
ST90-5007	Columbia Gulf Transmission Co.	Transco Energy Marketing, Inc.	09-25-90	G-S	75,000
ST90-5008	Columbia Gulf Transmission Co.	Transco Energy Marketing, Inc.	09-25-90	G-S	150,000
ST90-5009	Columbia Gulf Transmission Co.	Enron Gas Marketing, Inc.	09-25-90	G-S	23,000
ST90-5010	Columbia Gulf Transmission Co.	Enron Gas Marketing, Inc.	09-25-90	G-S	20,000
ST90-5011	Columbia Gulf Transmission Co.	PNG Energy Co.	09-25-90	G-S	30,000
ST90-5012	Columbia Gulf Transmission Co.	Shell Offshore, Inc.	09-25-90	G-S	80,000
ST90-5013	Columbia Gulf Transmission Co.	Excel Gas Marketing, Inc.	09-25-90	G-S	25,000
ST90-5014	Columbia Gulf Transmission Co.	Krupp & Associates	09-25-90	G-S	40,000
ST90-5015	Columbia Gulf Transmission Co.	Stellar Gas Co.	09-25-90	G-S	50,000
ST90-5017	Columbia Gulf Transmission Co.	Gulf Ohio Corp.	09-25-90	G-S	14,000
ST90-5018	Columbia Gulf Transmission Co.	Adobe Gas Co.	09-25-90	G-S	100,000
ST90-5019	Columbia Gulf Transmission Co.	Enron Gas Marketing, Inc.	09-25-90	G-S	50,000
ST90-5020	Columbia Gulf Transmission Co.	Texican Natural Gas Co.	09-25-90	G-S	1,000
ST90-5021	Columbia Gulf Transmission Co.	OXY U.S.A., Inc.	09-25-90	G-S	6,000
ST90-5022	Columbia Gulf Transmission Co.	OXY U.S.A., Inc.	09-25-90	G-S	6,000
ST90-5023	Columbia Gulf Transmission Co.	OXY U.S.A., Inc.	09-25-90	G-S	6,000
ST90-5024	Columbia Gulf Transmission Co.	North Atlantic Utilities, Inc.	09-25-90	G-S	15,000
ST90-5025	Columbia Gulf Transmission Co.	Public Service Electric & Gas Co.	09-25-90	G-S	50,000
ST90-5026	Columbia Gulf Transmission Co.	Crescent Gas Corp.	09-25-90	G-S	25,000
ST90-5027	Columbia Gulf Transmission Co.	Southland Royalty Co.	09-25-90	G-S	35,000
ST90-5028	Sea Robin Pipeline Co.	OXY U.S.A., Inc.	09-25-90	G-S	38,110
ST90-5029	Sea Robin Pipeline Co.	Southland Royalty Co.	09-25-90	G-S	36,050
ST90-5030	Sea Robin Pipeline Co.	Midcon Marketing Corp.	09-25-90	G-S	206,000
ST90-5031	Sea Robin Pipeline Co.	Sonat Marketing Co.	09-25-90	G-S	54,590
ST90-5032	Sea Robin Pipeline Co.	Stellar Gas Co.	09-25-90	G-S	51,500
ST90-5033	Sea Robin Pipeline Co.	Quivira Gas Co.	09-25-90	G-S	5,150
ST90-5034	Sea Robin Pipeline Co.	Midcon Ventures, Inc.	09-25-90	G-S	206,000
ST90-5035	Sea Robin Pipeline Co.	Transco Energy Marketing Co.	09-25-90	G-S	103,000
ST90-5036	Sea Robin Pipeline Co.	NGC Intrastate Pipeline Co.	09-25-90	G-S	103,000
ST90-5037	Sea Robin Pipeline Co.	Texican Natural Gas Co.	09-25-90	G-S	25,750
ST90-5038	Sea Robin Pipeline Co.	OXY U.S.A., Inc.	09-25-90	G-S	38,110
ST90-5039	United Gas Pipe Line Co.	Prior Intrastate Corp.	09-25-90	G-S	515,000
ST90-5040	United Gas Pipe Line Co.	Polaris Pipeline Co.	09-25-90	G-S	25,750
ST90-5041	United Gas Pipe Line Co.	Polaris Pipeline Co.	09-25-90	G-S	51,500
ST90-5042	United Gas Pipe Line Co.	Polaris Pipeline Co.	09-25-90	G-S	25,750
ST90-5043	United Gas Pipe Line Co.	Transco Energy Marketing Co.	09-25-90	G-S	103,000
ST90-5044	United Gas Pipe Line Co.	Westvaco Corp.	09-25-90	G-S	4,120
ST90-5045	United Gas Pipe Line Co.	Natgas U.S., Inc.	09-25-90	G-S	422,300
ST90-5046	United Gas Pipe Line Co.	Westvaco Corp.	09-25-90	G-S	4,120
ST90-5047	United Gas Pipe Line Co.	TXG Gas Marketing Co.	09-25-90	G-S	20,600
ST90-5048	United Gas Pipe Line Co.	TXG Gas Marketing Co.	09-25-90	G-S	246,479
ST90-5049	United Gas Pipe Line Co.	OXY U.S.A., Inc.	09-25-90	G-S	22,660
ST90-5050	United Gas Pipe Line Co.	Natgas U.S., Inc.	09-25-90	G-S	422,300
ST90-5051	United Gas Pipe Line Co.	TXG Gas Marketing Co.	09-25-90	G-S	41,200

Docket No. [1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity [2]
ST90-5052	United Gas Pipe Line Co.	Riverway Gas Pipeline Co.	09-25-90	G-S	206,000
ST90-5053	United Gas Pipe Line Co.	Westvaco Corp.	09-25-90	G-S	4,120
ST90-5054	United Gas Pipe Line Co.	Texas School Land Board	09-25-90	G-S	1,030
ST90-5055	United Gas Pipe Line Co.	Tranam Energy Inc.	09-25-90	G-S	103,000
ST90-5056	United Gas Pipe Line Co.	Public Service Electric and Gas Co.	09-25-90	G-S	61,800
ST90-5057	United Gas Pipe Line Co.	TXO Gas Marketing Corp.	09-25-90	G-S	272,950
ST90-5058	United Gas Pipe Line Co.	Riverway Gas Pipeline Co.	09-25-90	G-S	123,600
ST90-5059	United Gas Pipe Line Co.	OXY U.S.A., Inc.	09-25-90	G-S	22,660
ST90-5060	United Gas Pipe Line Co.	Amerada Hess Corp.	09-25-90	G-S	4,120
ST90-5061	United Gas Pipe Line Co.	Delhi Gas Pipeline Corp.	09-25-90	G-S	14,420
ST90-5062	United Gas Pipe Line Co.	Prior Intrastate Corp.	09-25-90	G-S	14,420
ST90-5063	United Gas Pipe Line Co.	Dow Intrastate Gas Co.	09-25-90	G-S	20,600
ST90-5064	United Gas Pipe Line Co.	Amerada Hess Corp.	09-25-90	G-S	6,160
ST90-5065	United Gas Pipe Line Co.	Amerada Hess Corp.	09-25-90	G-S	6,180
ST90-5066	United Gas Pipe Line Co.	Dow Intrastate Gas Co.	09-25-90	G-S	56,650
ST90-5067	United Gas Pipe Line Co.	Enmark Gas Corp.	09-25-90	G-S	1,030
ST90-5068	United Gas Pipe Line Co.	Enmark Gas Corp.	09-25-90	G-S	3,193
ST90-5069	United Gas Pipe Line Co.	Excel Gas Marketing, Inc.	09-25-90	G-S	121,025
ST90-5070	United Gas Pipe Line Co.	Concorde Gas Marketing, Inc.	09-25-90	G-S	41,071
ST90-5071	United Gas Pipe Line Co.	FRM, Inc.	09-25-90	G-S	2,060
ST90-5072	United Gas Pipe Line Co.	Delhi Gas Pipeline Corp.	09-25-90	G-S	103,000
ST90-5073	United Gas Pipe Line Co.	Amerada Hess Corp.	09-25-90	G-S	51,500
ST90-5074	United Gas Pipe Line Co.	Dow Intrastate Gas Co.	09-25-90	G-S	56,650
ST90-5075	United Gas Pipe Line Co.	Amerada Hess Corp.	09-25-90	G-S	51,500
ST90-5076	United Gas Pipe Line Co.	Houston Pipe Line Co.	09-25-90	G-S	5,150
ST90-5077	United Gas Pipe Line Co.	Enmark Gas Corp.	09-25-90	G-S	4,120
ST90-5078	United Gas Pipe Line Co.	Enmark Gas Corp.	09-25-90	G-S	6,592
ST90-5079	United Gas Pipe Line Co.	Prior Intrastate Corp.	09-25-90	G-S	200,129
ST90-5080	United Gas Pipe Line Co.	Natgas U.S., Inc.	09-25-90	G-S	422,300
ST90-5081	United Gas Pipe Line Co.	Texas Gulf South Pipeline Co.	09-25-90	G-S	10,300
ST90-5082	United Gas Pipe Line Co.	Enmark Gas Corp.	09-25-90	G-S	27,079
ST90-5083	United Gas Pipe Line Co.	Amerada Hess Corp.	09-25-90	G-S	10,300
ST90-5084	United Gas Pipe Line Co.	Caddo Natural Gas Co.	09-25-90	G-S	17,510
ST90-5085	United Gas Pipe Line Co.	Huggs Gas Marketing	09-25-90	G-S	6,180
ST90-5086	United Gas Pipe Line Co.	Concorde Gas Marketing, Inc.	09-25-90	G-S	5,150
ST90-5087	United Gas Pipe Line Co.	Delhi Gas Pipeline Corp.	09-25-90	G-S	103,000
ST90-5088	United Gas Pipe Line Co.	Houston Pipe Line Co.	09-25-90	G-S	5,150
ST90-5089	United Gas Pipe Line Co.	Excel Gas Marketing, Inc.	09-25-90	G-S	100,940
ST90-5090	United Gas Pipe Line Co.	First Chemical Corp., MS	09-25-90	G-S	5,150
ST90-5091	Columbia Gas Transmission Corp.	Northeast Ohio Natural Gas Corp.	09-25-90	B	4,500
ST90-5092	Delhi Gas Pipeline Corp.	Southern Natural Gas Co.	09-26-90	C	500
ST90-5093	Delhi Gas Pipeline Corp.	Transwestern Pipeline Co.	09-26-90	C	15,000
ST90-5094	Natural Gas Pipeline Co. of America	Odeco Oil & Gas Co.	09-26-90	G-S	75,000
ST90-5095	Natural Gas Pipeline Co. of America	Anadarko Trading Co.	09-26-90	G-S	100,000
ST90-5096	Natural Gas Pipeline Co. of America	Clinton Gas Transmission Inc.	09-26-90	G-S	50,000
ST90-5097	Natural Gas Pipeline Co. of America	Amerada Hess Corp.	09-26-90	G-S	100,000
ST90-5098	Natural Gas Pipeline Co. of America	Torch Energy Marketing, Inc.	09-26-90	G-S	10,000
ST90-5099	Natural Gas Pipeline Co. of America	Enron Gas Marketing, Inc.	09-26-90	G-S	200,000
ST90-5100	Northern Natural Gas Co.	PSI, Inc.	09-26-90	G-S	250,000
ST90-5101	U T Offshore System	Kaztex Energy Management, Inc.	09-26-90	K-S	25,000
ST90-5102	U T Offshore System	Oxy U.S.A., Inc.	09-26-90	K-S	50,000
ST90-5103	U T Offshore System	BHP Gas Marketing Co.	09-26-90	K-S	100,000
ST90-5104	U T Offshore System	V.H.C. Gas System, L.P.	09-26-90	K-S	400,000
ST90-5105	U T Offshore System	Anadarko Trading Co.	09-26-90	K-S	40,000
ST90-5106	U T Offshore System	Amoco Production Co.	09-26-90	K-S	185,000
ST90-5107	Algonquin Gas Transmission Co.	Catamount Natural Gas, Inc.	09-26-90	G-S	100,000
ST90-5108	Algonquin Gas Transmission Co.	Catamount Natural Gas, Inc.	09-26-90	G-S	100,000
ST90-5109	Algonquin Gas Transmission Co.	Catamount Natural Gas, Inc.	09-26-90	G-S	100,000
ST90-5110	Enogex Inc.	Phillips Gas Pipeline Co.	09-26-90	C	50,000
ST90-5111	Enogex Inc.	Natural Gas Pipeline Co. of America	09-26-90	C	200,000
ST90-5112	Enogex Inc.	Williams Natural Gas Co.	09-26-90	C	10,000
ST90-5113	Transcontinental Gas Pipe Line Corp.	Baltimore Gas & Elect. Co., et al.	09-26-90	B	15,000
ST90-5114	Transcontinental Gas Pipe Line Corp.	City of Shelby	09-26-90	B	81,200
ST90-5115	Sabine Pipe Line Co.	PSI Gas Marketing, Inc.	09-26-90	G-S	100,000
ST90-5116	Sabine Pipe Line Co.	Seagull Marketing Services, Inc.	09-26-90	G-S	40,000
ST90-5117	Sabine Pipe Line Co.	LL & E Gas Marketing, Inc.	09-26-90	G-S	25,000
ST90-5118	Sabine Pipe Line Co.	Williams Gas Marketing Co.	09-26-90	G-S	100,000
ST90-5119	Sabine Pipe Line Co.	Mobil Natural Gas, Inc.	09-26-90	G-S	200,000
ST90-5120	Sabine Pipe Line Co.	Phibro Energy, Inc.	09-26-90	G-S	500,000
ST90-5121	Sabine Pipe Line Co.	Chevron U.S.A., Inc.	09-26-90	G-S	100,000
ST90-5122	Sabine Pipe Line Co.	Tex/Con Oil & Gas Co.	09-26-90	G-S	100,000
ST90-5123	Sabine Pipe Line Co.	Eastex Hydrocarbons, Inc.	09-26-90	G-S	50,000
ST90-5124	Sabine Pipe Line Co.	Citizens Gas Supply Corp.	09-26-90	G-S	50,000
ST90-5125	Sabine Pipe Line Co.	Excel Gas Marketing, Inc.	09-26-90	G-S	100,000
ST90-5126	Sabine Pipe Line Co.	Ledco, Inc.	09-26-90	G-S	25,000
ST90-5127	Sabine Pipe Line Co.	Tejas Hydorcarbons Co.	09-26-90	G-S	50,000
ST90-5128	Sabine Pipe Line Co.	Cornerstone Production Corp.	09-26-90	G-S	100,000
ST90-5129	Sabine Pipe Line Co.	Shell Gas Trading Co.	09-26-90	G-S	50,000
ST90-5130	Sabine Pipe Line Co.	Pontchartrain Natural Gas System	09-26-90	G-S	220,000
ST90-5131	Sabine Pipe Line Co.	Amoco Energy Trading Corp.	09-26-90	G-S	100,000

Docket No. [1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity [2]
ST90-5132	Sabine Pipe Line Co.	Brooklyn Interstate Natural Gas Corp.	09-26-90	G-S	100,000
ST90-5133	Sabine Pipe Line Co.	Calcasieu Gas gathering System	09-26-90	G-S	220,000
ST90-5134	Sabine Pipe Line Co.	Tejas Power Corp.	09-26-90	G-S	50,000
ST90-5135	Sabine Pipe Line Co.	Hadson Gas Systems, Inc.	09-26-90	G-S	35,000
ST90-5136	Sabine Pipe Line Co.	Coastal Gas Marketing Co.	09-26-90	G-S	100,000
ST90-5137	Sabine Pipe Line Co.	Arco Oil & Gas Co.	09-26-90	G-S	100,000
ST90-5138	Sabine Pipe Line Co.	Enron Gas Marketing, Inc.	09-26-90	G-S	100,000
ST90-5139	Sabine Pipe Line Co.	Woodward Marketing, Inc.	09-26-90	G-S	15,000
ST90-5140	Sabine Pipe Line Co.	Access Energy Corp.	09-26-90	G-S	100,000
ST90-5141	Sabine Pipe Line Co.	Midcon Marketing Corp.	09-26-90	G-S	50,000
ST90-5142	Sabine Pipe Line Co.	Entrade Corp.	09-26-90	G-S	150,000
ST90-5143	Sabine Pipe Line Co.	Oryx Gas Marketing Limited Partners	09-26-90	G-S	20,000
ST90-5144	Sabine Pipe Line Co.	Tejas Power Corp.	09-26-90	G-S	20,000
ST90-5145	Sabine Pipe Line Co.	Krupp and Assoc.	09-26-90	G-S	36,000
ST90-5146	Sabine Pipe Line Co.	Transco Energy Marketing Co.	09-26-90	G-S	300,000
ST90-5147	Sabine Pipe Line Co.	NGC Transportation, Inc.	09-26-90	G-S	250,000
ST90-5148	Sabine Pipe Line Co.	Eagle Natural Gas Co.	09-26-90	G-S	40,000
ST90-5149	Sabine Pipe Line Co.	Superior Natural Gas Corp.	09-26-90	G-S	50,000
ST90-5150	Sabine Pipe Line Co.	Trans Marketing Houston, Inc.	09-26-90	G-S	250,000
ST90-5151	Sabine Pipe Line Co.	Louis Dreyfuss Energy Corp.	09-26-90	G-S	100,000
ST90-5152	Sabine Pipe Line Co.	Louisiana Gas Marketing Co.	09-26-90	G-S	100,000
ST90-5153	Sabine Pipe Line Co.	Bishop Pipeline Corp.	09-26-90	G-S	75,000
ST90-5154	Williams Natural Gas Co.	Natural Gas Clearinghouse, Inc.	09-26-90	G-S	16,800
ST90-5155	Williams Natural Gas Co.	ARCO Natural Gas Marketing, Inc.	09-26-90	G-S	207,000
ST90-5156	Williams Natural Gas Co.	Seagull Marketing Services, Inc.	09-26-90	G-S	88,888
ST90-5157	Williams Natural Gas Co.	Quivira Gas Co.	09-26-90	G-S	26,000
ST90-5158	Williams Natural Gas Co.	Natural Gas Clearinghouse, Inc.	09-26-90	G-S	34,530
ST90-5159	Columbia Gas Transmission Corp.	Clinton Gas Marketing	09-26-90	G-S	5,500
ST90-5160	Columbia Gas Transmission Corp.	AGF Direct Gas Sales, Inc.	09-26-90	G-S	8,000
ST90-5162	Gas Transport, Inc.	A. B. Chance Co.	09-26-90	G-S	1,500
ST90-5163	Gas Transport, Inc.	Transatlantic Energy Corp.	09-26-90	G-S	2,000
ST90-5164	Valero Interstate Transmission Co.	Val Gas, L.P.	09-27-90	G-S	70,000
ST90-5165	Valero Interstate Transmission Co.	Shell Western E & P, Inc.	09-27-90	G-S	20,000
ST90-5166	Questar Pipeline Co.	Grand Valley Gas Co.	09-27-90	G-S	11,500
ST90-5167	Questar Pipeline Co.	Universal Resources Corp.	09-27-90	G-S	279,600
ST90-5168	Questar Pipeline Co.	Union Pacific Fuels, Inc.	09-27-90	G-S	90,000
ST90-5169	Questar Pipeline Co.	Celsius Energy Co.	09-27-90	G-S	6,000
ST90-5170	Questar Pipeline Co.	Chevron U.S.A., Inc.	09-27-90	G-S	20,000
ST90-5171	Questar Pipeline Co.	Williams Gas Marketing Co.	09-27-90	G-S	54,000
ST90-5172	Questar Pipeline Co.	Conoco, Inc.	09-27-90	G-S	25,000
ST90-5173	Questar Pipeline Co.	Phillips Natural Gas Co.	09-27-90	G-S	25,000
ST90-5174	Questar Pipeline Co.	Oregon Natural Gas Development Corp.	09-27-90	G-S	10,000
ST90-5175	Questar Pipeline Co.	Amoco Production Co.	09-27-90	G-S	8,200
ST90-5176	Questar Pipeline Co.	Grand Valley Gas Co.	09-27-90	G-S	75,000
ST90-5177	Sabine Pipeline Co.	Panhandle Trading Co.	09-27-90	G-S	75,000
ST90-5178	Sabine Pipeline Co.	Intercom Gas, Inc.	09-27-90	G-S	5,000
ST90-5179	Sabine Pipeline Co.	Pennzoil Gas Marketing Co.	09-27-90	G-S	75,000
ST90-5180	Sabine Pipeline Co.	Energy Marketing Exchange, Inc.	09-27-90	G-S	20,000
ST90-5181	Sabine Pipeline Co.	Centran Corp.	09-27-90	G-S	10,000
ST90-5182	Sabine Pipeline Co.	Anadarko Trading Co.	09-27-90	G-S	80,000
ST90-5183	Sabine Pipeline Co.	Texaco Gas Marketing Inc.	09-27-90	G-S	100,000
ST90-5184	Sabine Pipeline Co.	AEC Gas Co.	09-27-90	G-S	10,500
ST90-5185	Sabine Pipeline Co.	Mobil Natural Gas Inc.	09-27-90	G-S	100,000
ST90-5186	Sabine Pipeline Co.	TXG Gas Marketing Co.	09-27-90	G-S	50,000
ST90-5187	Sabine Pipeline Co.	Seagull Marketing Services, Inc.	09-27-90	G-S	3,130
ST90-5188	Sabine Pipeline Co.	Exxon Corp.	09-27-90	G-S	50,000
ST90-5189	Sabine Pipeline Co.	Mobil Natural Gas, Inc.	09-27-90	G-S	100,000
ST90-5190	Sabine Pipeline Co.	Reliance Gas Marketing Co.	09-27-90	G-S	50,000
ST90-5191	Sabine Pipeline Co.	Coast Energy Group, Inc.	09-27-90	G-S	45,000
ST90-5192	Sabine Pipeline Co.	Continental Natural Gas, Inc.	09-27-90	G-S	50,000
ST90-5193	Sabine Pipeline Co.	Diamond Shamrock Offshore Partners, L.P.	09-27-90	G-S	150,000
ST90-5194	Sabine Pipeline Co.	Delhi Gas Pipeline Corp.	09-27-90	G-S	50,000
ST90-5195	Sabine Pipeline Co.	Enron Gas Marketing, Inc.	09-27-90	G-S	3,130
ST90-5196	Sabine Pipeline Co.	Enron Gas Marketing, Inc.	09-27-90	G-S	5,216
ST90-5197	Sabine Pipeline Co.	Enron Gas Marketing, Inc.	09-27-90	G-S	7,302
ST90-5198	Sabine Pipeline Co.	Morgan Stanley Capital Group, Inc.	09-27-90	G-S	250,000
ST90-5199	Sabine Pipeline Co.	Access Energy Corp.	09-27-90	G-S	45,000
ST90-5200	Sabine Pipeline Co.	Citrus Industrial Sales Co., Inc.	09-27-90	G-S	5,000
ST90-5201	ONG Transmission Co.	Panhandle Eastern Pipe Line Co.	09-27-90	C	5,000
ST90-5202	Natural Gas Pipeline Co. of America	AMOCO Gas Co.	09-27-90	B	360,000
ST90-5203	Natural Gas Pipeline Co. of America	Midcon Marketing Corp.	09-27-90	G-S	100,000
ST90-5204	Natural Gas Pipeline Co. of America	Mitchell Marketing Co.	09-27-90	G-S	50,000
ST90-5205	Natural Gas Pipeline Co. of America	Delhi Gas Pipeline Corp.	09-27-90	B	200,000
ST90-5206	Sea Robin Pipeline Co.	Industrial Energy Services Co.	09-27-90	G-S	2,000
ST90-5207	Sea Robin Pipeline Co.	Entrade Corp.	09-27-90	G-S	7,210
ST90-5208	Sea Robin Pipeline Co.	Exxon Corp.	09-27-90	G-S	22,660
ST90-5209	Sea Robin Pipeline Co.	Hadson Gas Systems, Inc.	09-27-90	G-S	53,000
ST90-5210	Sea Robin Pipeline Co.	Panhandle Trading Co.	09-27-90	G-S	77,250
ST90-5211	Sea Robin Pipeline Co.	Union Texas Petroleum Corp.	09-27-90	G-S	66,950
ST90-5212	Sea Robin Pipeline Co.	Pontchartrain Natural Gas System	09-27-90	G-S	51,500

Docket No. [1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity [2]
ST90-5213	Sea Robin Pipeline Co.	Citizens Gas Supply Corp.	09-27-90	G-S	41,200
ST90-5214	Sea Robin Pipeline Co.	Calcasieu Gas Gathering System	09-27-90	G-S	300,000
ST90-5215	Sea Robin Pipeline Co.	Heath Petra Resources, Inc.	09-27-90	G-S	20,000
ST90-5216	Sea Robin Pipeline Co.	Corpus Christi Oil & Gas Co.	09-27-90	G-S	20,600
ST90-5217	Sea Robin Pipeline Co.	Coastal Gas Marketing Co.	09-27-90	G-S	200,000
ST90-5218	Sea Robin Pipeline Co.	Enmark Gas Corp.	09-27-90	G-S	15,450
ST90-5219	Sea Robin Pipeline Co.	Industrial Energy Services Co.	09-27-90	G-S	10,300
ST90-5220	Sea Robin Pipeline Co.	Crescent Gas Corp.	09-27-90	G-S	10,300
ST90-5221	Sea Robin Pipeline Co.	LL & E Gas Marketing, Inc.	09-27-90	G-S	20,000
ST90-5222	Sea Robin Pipeline Co.	Adobe Gas Marketing Co.	09-27-90	G-S	25,750
ST90-5223	Sea Robin Pipeline Co.	Diamond Shamrock Offshore Partners, L.P.	09-27-90	G-S	10,000
ST90-5224	Sea Robin Pipeline Co.	Exxon Corp.	09-27-90	G-S	51,510
ST90-5225	United Gas Pipe Line Co.	Seagull Marketing Services, Inc.	09-27-90	G-S	41,200
ST90-5226	United Gas Pipe Line Co.	Bishop Pipeline Corp.	09-27-90	G-S	2,060
ST90-5227	United Gas Pipe Line Co.	Armstrong World Industries, Inc.	09-27-90	G-S	3,605
ST90-5228	United Gas Pipe Line Co.	Hadson Gas Systems, Inc.	09-27-90	G-S	41,200
ST90-5229	United Gas Pipe Line Co.	Bay Minette Utilities Board	09-27-90	G-S	345
ST90-5230	United Gas Pipe Line Co.	Hadson Gas Systems, Inc.	09-27-90	G-S	25,750
ST90-5231	United Gas Pipe Line Co.	KM Texas Pipeline Corp.	09-27-90	G-S	20,600
ST90-5232	United Gas Pipe Line Co.	Bishop Pipeline Corp.	09-27-90	G-S	41,200
ST90-5233	United Gas Pipe Line Co.	Hadson Gas Systems, Inc.	09-27-90	G-S	41,200
ST90-5234	United Gas Pipe Line Co.	Natural Gas Clearinghouse, Inc.	09-27-90	G-S	30,900
ST90-5235	United Gas Pipe Line Co.	Bishop Pipeline Corp.	09-27-90	G-S	5,150
ST90-5236	United Gas Pipe Line Co.	Seagull Marketing Services, Inc.	09-27-90	G-S	51,500
ST90-5237	United Gas Pipe Line Co.	Seagull Marketing Services, Inc.	09-27-90	G-S	97,850
ST90-5238	United Gas Pipe Line Co.	Valero Transmission Co.	09-27-90	G-S	20,600
ST90-5239	United Gas Pipe Line Co.	Woodwork Marketing, Inc.	09-27-90	G-S	15,450
ST90-5240	United Gas Pipe Line Co.	Apache Transmission Corp.	09-27-90	G-S	30,900
ST90-5241	United Gas Pipe Line Co.	Tristar Energy, Inc.	09-27-90	G-S	30,900
ST90-5242	United Gas Pipe Line Co.	V.H.C. Gas System, L.P.	09-27-90	G-S	206,000
ST90-5243	United Gas Pipe Line Co.	Sigco Marketing, Inc.	09-27-90	G-S	1,467
ST90-5244	United Gas Pipe Line Co.	NGC Intrastate Pipeline Co.	09-27-90	G-S	51,500
ST90-5245	United Gas Pipe Line Co.	NGC Intrastate Pipeline Co.	09-27-90	G-S	103,000
ST90-5246	United Gas Pipe Line Co.	NGC Intrastate Pipeline Co.	09-27-90	G-S	20,600
ST90-5247	United Gas Pipe Line Co.	NGC Intrastate Pipeline Co.	09-27-90	G-S	103,000
ST90-5248	United Gas Pipe Line Co.	Natural Gas Clearinghouse, Inc.	09-27-90	G-S	71,379
ST90-5249	United Gas Pipe Line Co.	Natural Gas Clearinghouse, Inc.	09-27-90	G-S	20,600
ST90-5250	United Gas Pipe Line Co.	Wookwork Marketing, Inc.	09-27-90	G-S	15,450
ST90-5251	United Gas Pipe Line Co.	NGC Intrastate Pipeline Co.	09-27-90	G-S	103,000
ST90-5252	United Gas Pipe Line Co.	Natural Gas Clearinghouse, Inc.	09-27-90	G-S	20,600
ST90-5253	United Gas Pipe Line Co.	Natgas U.S. Inc.	09-27-90	G-S	422,300
ST90-5254	United Gas Pipe Line Co.	NGC Intrastate Pipeline Co.	09-27-90	G-S	103,000
ST90-5255	United Gas Pipe Line Co.	Bishop Pipeline Corp.	09-27-90	G-S	113,300
ST90-5256	United Gas Pipe Line Co.	Energy Marketing Exchange, Inc.	09-27-90	G-S	77,250
ST90-5257	United Gas Pipe Line Co.	Bishop Pipeline Corp.	09-27-90	G-S	15,450
ST90-5258	United Gas Pipe Line Co.	Bishop Pipeline Corp.	09-27-90	G-S	5,150
ST90-5259	United Gas Pipe Line Co.	Bishop Pipeline Corp.	09-27-90	G-S	10,300
ST90-5260	United Gas Pipe Line Co.	Dow Intrastate Gas Co.	09-27-90	G-S	36,050
ST90-5261	United Gas Pipe Line Co.	Hadson Gas Systems, Inc.	09-27-90	G-S	77,250
ST90-5262	United Gas Pipe Line Co.	Bishop Pipeline Corp.	09-27-90	G-S	15,450
ST90-5263	United Gas Pipe Line Co.	Hadson Gas Systems, Inc.	09-27-90	G-S	5,150
ST90-5264	United Gas Pipe Line Co.	Bishop Pipeline Corp.	09-27-90	G-S	5,150
ST90-5265	United Gas Pipe Line Co.	Bishop Pipeline Corp.	09-27-90	G-S	5,150
ST90-5266	United Gas Pipe Line Co.	Bishop Pipeline Corp.	09-27-90	G-S	3,090
ST90-5267	United Gas Pipe Line Co.	KM Texas Pipeline Corp.	09-27-90	G-S	20,600
ST90-5268	United Gas Pipe Line Co.	Hadson Gas Systems, Inc.	09-27-90	G-S	51,500
ST90-5269	United Gas Pipe Line Co.	Seagull Marketing Services, Inc.	09-27-90	G-S	20,600
ST90-5270	United Gas Pipe Line Co.	Apache Transmission Corp.	09-27-90	G-S	10,300
ST90-5271	United Gas Pipe Line Co.	Southern Industrial Gas Corp	09-27-90	G-S	618
ST90-5272	United Gas Pipe Line Co.	Seagull Marketing Services, Inc.	09-27-90	G-S	1,030
ST90-5273	United Gas Pipe Line Co.	Seagull Marketing Services, Inc.	09-27-90	G-S	309,000
ST90-5274	United Gas Pipe Line Co.	Seagull Marketing Services, Inc.	09-27-90	G-S	77,250
ST90-5275	United Gas Pipe Line Co.	Seagull Marketing Services, Inc.	09-27-90	G-S	97,850
ST90-5276	United Gas Pipe Line Co.	Richardson Products Co.	09-27-90	G-S	824
ST90-5277	United Gas Pipe Line Co.	Bishop Pipeline Corp.	09-27-90	G-S	15,450
ST90-5278	United Gas Pipe Line Co.	Seagull Marketing Services, Inc.	09-27-90	G-S	103,000
ST90-5279	United Gas Pipe Line Co.	Seagull Marketing Services, Inc.	09-27-90	G-S	77,250
ST90-5280	United Gas Pipe Line Co.	Seagull Marketing Services, Inc.	09-27-90	G-S	103,000
ST90-5281	United Gas Pipe Line Co.	Seagull Marketing Services, Inc.	09-27-90	G-S	103,000
ST90-5282	ANR Pipeline Co.	Brooklyn Union Gas Co	09-27-90	B	40,000
ST90-5283	ANR Pipeline Co.	New York State Electric & Gas	09-27-90	S	200,000
ST90-5284	ANR Pipeline Co.	Michigan Consolidated Gas Co.	09-27-90	B	20,000
ST90-5285	ANR Pipeline Co.	East Ohio Gas Co. (The)	09-27-90	B	100,000
ST90-5286	ANR Pipeline Co.	Fountaintown Gas Co.	09-27-90	B	5,000
ST90-5287	ANR Pipeline Co.	Mountaineer Gas Co.	09-27-90	B	5,000
ST90-5288	ANR Pipeline Co.	Michigan Gas Utilities Co.	09-27-90	B	1,000
ST90-5289	ANR Pipeline Co.	Michigan Gas Utilities Co.	09-27-90	B	33,333
ST90-5290	ANR Pipeline Co.	Frito-Lay, Inc.	09-27-90	G-S	500
ST90-5291	Sabine Pipe Line Co.	Louisiana Resources Co.	09-27-90	B	100,000
ST90-5292	U T Offshore System	UGI Corp.	09-27-90	K-S	77,474

Docket No. [1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity [2]
ST90-5293	U T Offshore System	Elf Exploration, Inc.	09-27-90	K-S	75,000
ST90-5294	U T Offshore System	Polaris Pipeline (The)	09-27-90	K-S	46,100
ST90-5295	Mississippi River Transmission Corp.	O & R Energy, Inc.	09-27-90	G-S	40,000
ST90-5296	Columbia Gas Transmission Corp.	Grandview Hospital	09-27-90	G-S	400
ST90-5297	Texas Eastern Transmission Corp.	Nortech Energy Corp.	09-27-90	G-S	50,000
ST90-5298	Panhandle Eastern Pipe Line Co.	Trunkline Gas Co.	09-27-90	G	150,000
ST90-5299	Trunkline Gas Co.	Catamount Natural Gas, Inc.	09-27-90	G-S	150,000
ST90-5300	Trunkline Gas Co.	Panhandle Trading Co.	09-27-90	G-S	100,000
ST90-5301	Trunkline Gas Co.	Tennegasco Corp	09-27-90	G-S	100,000
ST90-5302	Trunkline Gas Co	BP Gas, Inc.	09-27-90	G-S	50,000
ST90-5303	Trunkline Gas Co.	Amoco Production Co	09-27-90	G-S	50,000
ST90-5304	Trunkline Gas Co	Peoples Gas Light and Coke Co	09-27-90	B	150,000
ST90-5305	Texas Eastern Transmission Corp.	Herbert Oil & Gas Corp.	09-27-90	G-S	60,000
ST90-5306	Texas Eastern Transmission Corp.	Marathon Oil Co.	09-27-90	G-S	48,000
ST90-5307	Williams Natural Gas Co.	Pittsburgh Corning Corp.	09-28-90	G-S	1,800
ST90-5308	Williams Natural Gas Co.	Natural Gas Clearinghouse, Inc.	09-28-90	G-S	300,000
ST90-5309	Williams Natural Gas Co.	Williams Gas Marketing Co.	09-28-90	G-S	5,812
ST90-5310	United Gas Pipe Line Co.	Bishop Pipeline Corp.	09-28-90	G-S	41,200
ST90-5311	United Gas Pipe Line Co.	Bishop Pipeline Corp.	09-28-90	G-S	15,450
ST90-5312	United Gas Pipe Line Co.	Bishop Pipeline Corp.	09-28-90	G-S	15,450
ST90-5313	United Gas Pipe Line Co.	Bishop Pipeline Corp.	09-28-90	G-S	5,150
ST90-5314	United Gas Pipe Line Co.	Amax Petroleum Corp	09-28-90	G-S	1,545
ST90-5315	United Gas Pipe Line Co.	Apache Transmission Corp.	09-28-90	G-S	30,900
ST90-5316	United Gas Pipe Line Co.	Tristar Energy, Inc.	09-28-90	G-S	36,050
ST90-5317	United Gas Pipe Line Co.	Tristar Energy, Inc.	09-28-90	G-S	36,050
ST90-5318	United Gas Pipe Line Co.	Bishop Pipeline Corp.	09-28-90	G-S	15,450
ST90-5319	United Gas Pipe Line Co.	NGC Transportation, Inc.	09-28-90	G-S	139,050
ST90-5320	United Gas Pipe Line Co.	Bishop Pipeline Corp.	09-28-90	G-S	15,450
ST90-5321	United Gas Pipe Line Co.	Bishop Pipeline Corp.	09-28-90	G-S	15,450
ST90-5322	United Gas Pipe Line Co.	Endevco Industrial Gas Sales Co.	09-28-90	G-S	7,210
ST90-5323	United Gas Pipe Line Co.	Amax Petroleum Corp.	09-28-90	G-S	1,545
ST90-5324	Sea Robin Pipeline Co.	Exxon Corp.	09-28-90	G-S	51,510
ST90-5325	Sea Robin Pipeline Co.	Enmark Gas Corp.	09-28-90	G-S	15,450
ST90-5326	Sea Robin Pipeline Co.	Texaco Gas Marketing, Inc.	09-28-90	G-S	77,250
ST90-5327	Sea Robin Pipeline Co.	Texaco Gas Marketing, Inc.	09-28-90	G-S	206,000
ST90-5328	Sea Robin Pipeline Co.	LL & E Gas Marketing, Inc.	09-28-90	G-S	20,000
ST90-5329	Southern Natural Gas Co.	Midcon Marketing Corp.	09-28-90	G-S	300,000
ST90-5330	Southern Natural Gas Co.	Ashton Energy Co.	09-28-90	G-S	30,000
ST90-5331	Southern Natural Gas Co.	Superior Natural Gas Corp.	09-28-90	G-S	50,000
ST90-5332	Southern Natural Gas Co.	Canton Municipal Utilities	09-28-90	B	100,000
ST90-5333	Southern Natural Gas Co.	Midcon Marketing Corp.	09-28-90	G-S	300,000
ST90-5334	U T Offshore System	Enmark Gas Corp.	09-28-90	K-S	103,800
ST90-5335	Transok, Inc.	Black Marlin Pipeline Co	09-28-90	C	100,000
ST90-5336	Transok, Inc.	Panhandle Eastern Pipeline Co.	09-28-90	C	100,000
ST90-5337	Transok, Inc.	Williams Natural Gas Co	09-28-90	C	100,000
ST90-5338	Transok, Inc.	Arkla Energy Resources	09-28-90	C	100,000
ST90-5339	Transok, Inc.	North American Resources Co.	09-28-90	C	20,000
ST90-5340	Transok, Inc.	Enron Industrial Natural Gas Co.	09-28-90	C	70,000
ST90-5341	Transok, Inc.	Phillips Gas Pipeline Co.	09-28-90	C	100,000
ST90-5342	Transok, Inc.	Northern Natural Gas Co	09-28-90	C	100,000
ST90-5343	Transok, Inc.	Natural Gas Pipeline Co. of America	09-28-90	C	100,000
ST90-5344	Gulf Energy Pipeline Co	Tennessee Gas Pipeline Co.	09-28-90	C	15,000
ST90-5345	Transwestern Pipeline Co.	Hadson Gas Systems, Inc.	09-28-90	G-S	100,000
ST90-5346	Trunkline Gas Co.	Amerada Hess Corp.	09-28-90	G-S	75,000
ST90-5347	Natural Gas Pipeline Co. of America	Mobil Vandervilt-Beaumont Pipeline Co	09-28-90	B	100,000
ST90-5348	Natural Gas Pipeline Co. of America	Pacific Gas & Electric Co.	09-28-90	B	50,000
ST90-5349	Stingray Pipeline Co.	V.H.C. Gas Systems, L.P.	09-28-90	K-S	250,000
ST90-5350	Natural Gas Pipeline Co. of America	Tejas Power Corp.	09-28-90	G-S	100,000
ST90-5351	Stingray Pipeline Co.	Brooklyn Interstate Natural Gas Corp.	09-28-90	K-S	100,000
ST90-5352	Rocky Mountain Natural Gas Co.	Northwest Pipeline Corp.	09-28-90	G-HT	4,000
ST90-5353	Texas Gas Gathering Co.	Natural Gas Pipeline Co. of America	09-28-90	C	20,000
ST90-5354	Texas Gas Gathering Co.	Natural Gas Pipeline Co. of America	09-28-90	C	20,000

[1] Notice of transactions does not constitute a determination that filings comply with commission regulations in accordance with order No. 436 (final rule and notice requesting supplemental comments, 50 FR 42,372, 10/10/85).
[2] Estimated maximum daily volumes reported by the filing company in MMBTU, MCF and DT.

[FR Doc. 90-28589 Filed 12-5-90; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TQ91-2-21-000, TM91-5-21-000]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

November 30, 1990.

Take notice that Columbia Gas Transmission Corporation (Columbia) on November 28, 1990, tendered for filing the following proposed changes to its FERC Gas Tariff, First Revised Volume No. 1, to be effective December 1, 1990:

Sixth Revised Sheet No. 26
Sixth Revised Sheet No. 26A
Sixth Revised Sheet No. 26B
Sixth Revised Sheet No. 26C
Seventh Revised Sheet No. 163

Columbia states that the sales rate set forth on Sixth Revised Sheet No. 26 reflects an overall increase of 10.01¢ per Dth in the Commodity rate and no change in the Demand rate. In addition, the transportation rates set forth on Sixth Revised Sheet No. 26C reflect an increase in the Fuel Charge component of .24¢ per Dth.

The purpose of the revised tariff sheets is to reflect the following:

(1) A Current Purchased Gas Cost Adjustment Applicable to Sales Rate Schedules;

(2) A continuation of certain surcharges which were accepted by the Commission to be effective through April 30, 1991; and

(3) A Transportation Fuel Charge Adjustment.

Columbia states that copies of the filing were served upon the Company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's rules of practice and procedure. All such motions or protests should be filed on or before December 7, 1990. 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 Columbia's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-28586 Filed 12-5-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-156-002]

Natural Gas Pipeline Co. of America; Changes in FERC Gas Tariff

November 30, 1990.

Take notice that on November 27, 1990, Natural Gas Pipeline Company of America (Natural) submitted for filing Substitute Original Sheet No. 191A to be part of its FERC Gas Tariff, Third Revised Volume No. 1.

Natural states that the tariff sheet was submitted in compliance with the Commission's Order issued November 19, 1990, at Docket No. RP90-156-001.

Natural requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheet to become effective August 27, 1990.

Natural states that a copy of this filing was mailed to its jurisdictional customers, interested state regulatory agencies, and all parties set out on the official service list at Docket No. RP90-156-000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's rules of practice and procedure (18 CFR 385.214, 385.211 (1990). All such protests should be filed on or before December 7, 1990. 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-28587 Filed 12-5-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP89-38-010, RP89-99-010, CP90-1874-001 and CP76-118-019]

U-T Offshore System; Tariff Filing

November 30, 1990

Take notice that on November 14, 1990, U-T Offshore System (U-TOS) tendered the following tariff sheets for filing as part of the U-TOS' FERC Gas Tariff, Second Revised Volume No. 1:

First Revised Sheet No. 1
Second Revised Sheet No. 5
Original Sheet No. 72
Original Sheet No. 72-A
Original Sheet No. 72-B

On November 14, 1990 U-TOS made a tariff filing in compliance with an order issued by the Federal Energy Regulatory Commission (Commission) on October 30, 1990 in the above-refenced dockets. The October 30 Order approved an uncontested settlement that provided for, among other things, an experimental program of firm transportation capacity brokering on the U-TOS system, and specfied the terms and conditions applicable to the brokering program.

U-TOS tenders the required tariff sheets, subject to the October 30 Order becoming final and non-appealable without further substantive modification. U-TOS reserves the right to withdraw the tendered tariff sheets if the Commission's approval of the settlement is modified on rehearing.

Sheet No. 1 contains a revised Table of Contents for the tariff, showing inclusion of the Experimental Capacity Brokering section. Sheet No. 5 contains the settlement rates, including the rates for brokered capacity. Sheet Nos. 72, 72-A and 72-B contain the terms and conditions of the Experimental Capacity Brokering program.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's rules of practice and procedure (18 CFR 385.214, 385.211 (1990). All such protests should be filed on or before December 7, 1990. 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-28588 Filed 12-5-90; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL 3866-6]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA)

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 7, 1991.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382-2840.

SUPPLEMENTARY INFORMATION:

Office of Pesticides and Toxic Substances

Title: Section 313 Supplier Notification Survey (EPA ICR #1575.01). This ICR requests approval of a new collection.

Abstract: As part of the Toxic Release Inventory (TRI) section 313 reporting requirements of the Emergency Planning and Community Right-to-Know Act (EPCRA), certain industrial facilities that supply mixtures or trade name products containing one or more of the listed chemicals must notify their customers of the contents of the products they have purchased. These "supplier notification requirements" provide recipient facilities with information on the toxic chemical composition of the products they use. The planned survey will evaluate the compliance with the supplier notification requirement, determine the quality of the information passed on by suppliers, and examine whether the information in the notifications is helpful in making threshold determinations, reducing overall burden in filing the TRI Form R.

The survey is designed as a telephone interview of environmental compliance personnel at each of three types of facilities: Manufacturers, distributors, and users/processors. The survey will use a stratified sampling frame and rely on two databases: 1988 versions of the TRI database and the Dun and Bradstreet Dun's Marketing Identifiers (DMI) establishment file. The desired number of completed interviews is 480, with 270 allocated among manufacturers, 70 among distributors, and 140 among users/processors. The survey is not an enforcement activity, and participation is both voluntary and confidential.

Selected facilities will be asked to report: (1) Their general customer category (manufacturer, distributor), (2) the number of mixtures or trade name products they manufacture, distribute or use/process that contain 313 chemicals, (3) the number of mixtures and trade name products for which they provide or receive supplier notification, (4) if applicable, the reasons for not providing notification for all mixtures or trade name products that contained 313 chemicals (manufacturers and distributors only), (5) source of knowledge of the supplier notification requirement, (6) the amount of time the company saved or spent due to supplier notification in 1989, (7) the degree to which supplier notification was helpful in filling out Form R (users/processors), (8) the effect, if any, supplier notification has had on business (manufacturers, distributors), and (9) the number of full-time employees at the facility.

Burden Statement: The public reporting burden for this collection of information is estimated to average 7 minutes for chemical manufacturers and user/processors, and 5 minutes for chemical distributors. it will not be necessary for respondents to review instructions or gather and maintain the data needed to fill out the questionnaire. Respondent activities are limited to agreeing to participate and verbally responding to questions posed by telephone interviewers.

Respondents: A stratified sample of facilities manufacturing, distributing, using or proceeding section 313 chemicals.

Estimated No. of Respondents: 480.

Estimated Total Annual Burden on Respondents: 54 hours.

Frequency of Collection: One-time survey.

Send comments regarding the burden estimate, or any other aspect of this information collection, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223), 401 M Street, SW., Washington, DC 20460,

and

Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street NW., Washington, DC 20530.

Dated: November 27, 1990.

Rick Westland,

Acting Director, Regulatory Management Division.

[FR Doc. 90-28542 Filed 12-5-90; 8:45 am]

BILLING CODE 6560-50-M

[OPP-200000; FRL 3841-3]

Request for Proposals; Research and Development on Antimicrobial Test Methodology and Statistical Support on Experimental Design and Data Analysis

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The purpose of this Request For Proposal (RFP) is to solicit proposals to conduct research and development on the sporicidal test method; and to provide independent statistical analysis on antimicrobial test methodology research. Proposals to conduct research on the sporicidal test method will result in the development of a reproducible, reliable, and statistically valid sporicidal test method used to evaluate the efficacy of antimicrobial products bearing sterilizer or sporicidal claims. Research is expected to improve the sporicidal test method by upgrading the current Association of Official Analytical Chemists (AOAC) Sporicidal Test Method or developing a new test method. Proposals for statistical support will assist the Agency in evaluating experimental designs of projects and analyzing results from on-going test methodology research by statistical analysts who will work independently of the research teams.

DATES: The original and nine copies of the application must be received by January 30, 1991.

ADDRESSES: The original and eight copies must be sent to: Grants Operations Branch (PM-216F), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. One copy of the original must be sent to: Susan Parker, Registration Division (H7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Application kits may be obtained by writing to: Research Grants Staff (RD-675), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, or by calling (202) 382-7445.

FOR FURTHER INFORMATION CONTACT: For general information: By mail: Susan Parker, Registration Division (H7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: room 711, CM # 2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703-557-2141). For technical information: By mail: Juanita Wills, Registration Division (H7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Room 711, CM # 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-3661).

SUPPLEMENTARY INFORMATION: This notice solicits proposals to conduct research and development on antimicrobial test methodology and to provide statistical support on experimental design and data analysis. Both types of proposals are expected to be funded through cooperative agreements under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. EPA anticipates funding the research/statistical analysis for a 2-year project period.

I. Background

The Office of Pesticide Programs within EPA regulates antimicrobial pesticides under the statutory authority of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended. A current source of test methods used to evaluate antimicrobial efficacy is the "Official Methods of Analysis" published by the Association of Official

Analytical Chemists (AOAC). In recent years, the public health community has raised concerns regarding the reliability, accuracy, and reproducibility of the permitted test methods. Consequently, EPA intends to commit funds for research and development to upgrade antimicrobial test methodologies and appropriate performance standards, thus assuring the data submitted to the Agency in support of product registration are based on reliable, reproducible, and statistically valid test methods. EPA expects to award funds under cooperative agreements to qualified applicants to conduct developmental research on the sporicidal test method and to provide statistical support for on-going test methodology research evaluation.

II. Research Proposal Parameters

Solicitations are being made for research on the development of a reproducible, statistically valid, and reliable sporicidal test method under a cooperative agreement with EPA. EPA intends to be substantially involved in the test methodology research and development by approving work by stages, approving any subcontracts, conducting on-site visits/inspections at reasonable intervals, co-authoring published reports relative to the funded study, and halting research activity if the intent, approach, or anticipated phases leading to the accomplishment of the study are not being achieved, or have been revised without prior Agency approval.

Currently, the test methods used for sporicidal efficacy testing are alleged to lack reliability and reproducibility due to the following conditions:

1. The variability introduced by the hardness of the dilution water is not addressed.
2. The efficacy of currently authorized neutralizers is unknown.
3. The current performance standard of zero out of 720 may be too stringent.
4. The soil-extract medium used during the AOAC Sporicidal test has not been defined or standardized.
5. The existing growth medium for *Clostridium sporogenes* may be unreliable.
6. Carriers which provide the best "real use" testing conditions and highest stringency to assure efficacy need to be developed.
7. Uniform carrier conditions need to be developed and defined.
8. The spore load on the carriers has not been standardized.
9. The range of 2 to 20 minutes for HCl resistance for spores allows for variability in results. Questions have been raised about the correlation between HCl resistance and sporicide resistance.
10. It has not been verified that sporicides will also kill *Mycobacterium tuberculosis*.

The above issues should be considered when developing a proposal for research on test methodology. The experimental design of the study should follow the AOAC Handbook for development of AOAC methods. The study should also be designed to permit meaningful statistical analysis to be performed on the data (as in the AOAC Statistical Manual). Research must include a plan for a collaborative study under the auspices of the AOAC to validate the developed test method. AOAC Manuals may be obtained from AOAC, 2200 Wilson Blvd., suite 400, Arlington, VA, 22201, or by phoning (703) 522-3032.

III. Statistical Support Proposal Parameters

Solicitations are also being made for proposals to conduct statistical analysis independent of the researchers developing the new test methods. Statistical support is needed to evaluate experimental designs and to assist in the analysis of the research results. The statisticians will evaluate both proposed test methodology research and the research currently underway to validate or revise AOAC test methods for efficacy evaluation of antimicrobial products.

Statistical proposals should demonstrate a good grasp of background issues necessitating the issuance of the RFP and of the importance of statistical assistance in the design and review of the planned studies. Proposals should address the need for rigorous efficacy testing in the evaluation of germicidal agents and demonstrate some familiarity with the parameters in need of most serious attention.

Proposals should demonstrate a sound understanding of the areas of statistical support that are relevant to the proposed studies. Issues of experimental design, such as sample size, replication and statistical power for distinguishing sources of variability should be addressed.

Types of statistical testing to be explored should be documented, including some discussion of the relative merits of different types of proposed tests. The possibility of mathematical modeling of efficacy factors should be addressed, including discussion of the likely appropriateness of different types of models.

Proposals should discuss computer hardware and software capabilities for data reduction, graphical display, and data analysis. In addition, methods for transferring data between facilities should be discussed, including a plan for assuring the data quality and integrity.

Finally, methods for communicating with the performing laboratories should be specified for participation in the design of the studies, for onsite monitoring of study progress, for data transfer, and for collaboration in the data analysis and interpretation of results.

IV. Mechanisms of Support

EPA funding of methodology development and research is authorized under FIFRA. The research and statistical support are expected to be funded under cooperative agreements requiring substantial involvement by EPA personnel in the proposed study.

Federal grant regulation 40 CFR 30.307 requires all recipients to provide a minimum of 5 percent of the total project cost, which may not be taken from Federal sources.

V. The Application

Each application will consist of the Application for Federal Assistance Forms (standard forms 424 and 424A) and an addendum to forms 424 and 424A, as stated below, which will include the following: Curriculum vitae for the principal investigator; an abstract of the proposed project; a narrative description of the statistical method(s) that will be used to assess data; the required Quality Assurance Program Plan; a narrative certification of intent to conduct studies in accordance with GLP standards, 40 CFR part 160; and a narrative certification that EPA will be notified of any non-EPA sources of cost-sharing.

VI. Addendum to Forms 424 and 424A

The following information must be included in an addendum to Forms 424 and 424A:

1. *Principal investigator and key personnel*: Present a biographical sketch of the principal investigator incorporating the following information: name, address, phone number, education, background and other qualifying experience for the project. Also, list the name and training discipline of other key personnel who will be engaged in the project. Identify other projects in which the principal investigator is presently engaged and the amount of time he/she devotes to each. Provide a bibliography of the principal investigator's publications. Provide a summary of employment, including contracts and consultancies, for the present and for the past 2 years

for the principal investigator and each of the key personnel.

2. *Objectives of this project*: Describe the principal and subordinate objectives of the project. Pinpoint any relevant physical, economic, social, financial, institutional, or other problems requiring solution. Supporting documents from concerned interests other than the applicant may be used. Any relevant data based on planning studies should be included and footnoted.

3. *Approach:* a. Provide a detailed work plan for the accomplishment of the scope and detail of the proposed project. Cite factors which might accelerate or decelerate the work. Indicate why this approach has been taken rather than alternatives. Describe any unusual features of the project such as design or innovations, reductions in cost or time, or extraordinary social and community involvement.

b. Describe all facilities presently available for use in carrying out the project.

c. For all applications, list by name all non-Federal sources of funds and facilities to be utilized in the performance of the proposed project.

d. List in chronological order a schedule of accomplishments, progress, or milestones that are anticipated over the length of the project.

e. Indicate by whom each element of the work plan will be carried out including supporting agencies, consultants and contractors.

f. Give a narrative description of the collaborative study proposed and the statistical method(s) used to assess the data and basic research findings.

4. *General project information:* a. Identify the kind of data to be collected (and maintained) and discuss the criteria to be used to evaluate the results and success of the project.

b. *Discuss*: (1) The effect of this project on or its relationship to other work planned, anticipated, or underway by the grantee, recipient of the funds, or other Government agencies; (2) Federal, State, interstate, and local programs with which the work will be coordinated and the extent and nature of the coordination.

5. *Quality assurance*: The application must include a quality assurance plan as described in 40 CFR 30.503(d) of the grant regulations (Part 30—General Regulations for Assistance Programs Other than State and Local Governments). In addition, certification of intent to conduct studies in accordance with GLP Standards, 40 CFR part 160, must be included.

VII. Administrative Details of Proposal

a. The proposal must consist of no more than a total of 35 pages (regular size type - no smaller than elite, single or double spaced, standard "8 1/2 x 11" pages) one side only including application forms and all enclosures, covers, or attachments. Proposals exceeding 35 pages will not be reviewed.

b. Curriculum vitaes or resumes may not exceed two pages for each principal investigator.

c. The identification tag "OPP/RD/APB" must be printed in the upper right hand corner of the EPA assistance application forms. The absence of this identifier from an application absolves EPA of any responsibility if it is not reviewed along with the other applications responding to this notice.

VIII. Application Review

All applications received in response to this notice will be reviewed and evaluated for scientific merit according to the following criteria:

1. Quality of proposed research, to include sound rationale of experimental design, originality, and significance of the anticipated results.

2. Qualifications and competency of individuals designated to conduct the research as evidenced by prior experience in the proposed or similar research areas.

3. Adequacy of support offered by the applicant's organization in terms of laboratory facilities, adequate and appropriate laboratory equipment, support personnel and services, library, etc.

4. Appropriateness of the proposed budget and budget period needed for completion of the specified research.

According to 40 CFR 40.150, the reviewer of applications for research and development must arrange for a minimum of one intramural (In-House) review and two extramural (non-EPA) reviews to assess the technical and scientific merit of all relevant applications.

Dated: November 19, 1990.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 90-28532 Filed 12-5-90; 8:45 am]

BILLING CODE 6560-50-F

[FRL 3866-1]

Identification and Evaluation of Biological Indicators of Terrestrial Ecosystem Stress

AGENCY: Environmental Protection Agency.

ACTION: Request for Applications (RFA) B10-02-91.

SUMMARY: The purpose of this RFA is to solicit proposals which will result in the development of methods to measure stresses within an ecosystem. Of particular interest are those biological markers which can distinguish between stresses due to anthropogenic activity from those caused by natural disturbances. Issues of ecological stress/response/recovery processes apply across all levels of biological organization, from molecular, cellular, organ and organism levels, through population, community, ecosystem, and landscape levels of the environment.

DATES: The original and eight copies of the application must be received no later than the close of business, March 15, 1991 to be considered.

ADDRESSES: The applications must be sent to: Grants Operations Branch (PM-216F), U.S. Environmental Protection Agency, Washington, DC 20460, or for overnight express mail, the address is: Grants Operation Branch, Grants Administrative Division, U.S. Environmental Protection Agency, 499 South Capitol Street SW., Washington, DC 20460, 202/382-5266.

APPLICATION KITS MAY ALSO BE OBTAINED FROM: Research Grants Staff (RD-675), 401 M Street SW., Washington, DC 20460, or by calling on (202) 382-7445.

FOR FURTHER INFORMATION CONTACT: Clyde C. Bishop, by telephone (202) 382-7445.

SUPPLEMENTARY INFORMATION:

I. Background

Ecosystems and their component organisms are continually exposed to stresses, both natural and anthropogenic. One task of the Environmental Protection Agency (EPA) is to determine whether systems are sufficiently stressed by anthropogenic agents to cause damage. Problems to be addressed by scientists are the difficulty in detecting stress and to identify the causative stressors. These problems are particularly acute because of the interactive nature of stress, in which multiple anthropogenic factors act in an integrated manner with multiple natural stressors.

The following is presented as a conceptual basis for a research program to address these problems. Organisms expose to stress undergo a predictable sequence of changes in response to stress. At low to moderate levels of stress, behavioral responses (avoidance), acclimation (physiological

response) and compensation occur. Acclimation and compensation allow organisms to continue functioning while exposed to a stressor, but growth and allocation costs are incurred. At some level of stress, adaptation (genetic response) occurs. When the stress exceeds the ability of organisms to acclimate, or exceeds the ability of populations to adapt, damage occurs. Each of these processes produces measurable changes in ecosystems, populations, or organism states and processes. Detection of acclimation or compensation could serve as an early warning, which would trigger more intensive monitoring of a system. These changes may or may not result in degradation, but they may provide information about causal factors.

Distinguishing ecological responses associated with anthropogenic stresses from natural stresses is the central step in the proposed strategy for characterizing ecological responses to human activities. Experience has shown that this is a difficult task because of the inherent uncertainties and the lack of an adequate baseline data for monitoring a single ecological system or for system comparisons. Consequently, this area of ecological research requires special attention. Only through distinguishing anthropogenic stress responses from other stress responses can causal factors be inferred that specifically relate ecosystem damage to human activity.

The development of new tools and criteria for detecting stress and determining the cause(s) would enhance the ability to EPA to assess the impacts of anthropogenic stress and would play a particularly important role in early detection of ecosystem change due to stress.

II. Scope

The purpose of this Request for Application (RFA) is to promote research on identifying and evaluating biological indicators of ecosystem stress responses in terrestrial environments.

An indicator is a specific organism (plants or animals) or measures (proteins, lipids or other macromolecules) that characterizes an endpoint, either directly (e.g., the population level or an endpoint species) or indirectly (e.g., coliform count as an indicator of water contamination). Ecological research is needed to identify the types of indicators that are appropriate for different ecosystems and the particular types of indicators most appropriate for characterizing endpoints. Of particular importance are those biological indicators and endpoints which can distinguish between anthropogenic and natural disturbances.

For the purposes of this RFA, the focus should be limited to biological indicators applicable to terrestrial ecosystems including forests, soils, grasslands, deserts, etc., or other relevant terrestrial systems not described in this announcement.

III. Mechanisms of Support

Assistance under this RFA will be provided by a research grant, administered through EPA's investigator-initiated research grants program. The applicant will be responsible for the planning, direction and execution of the proposed research. Support under this program is limited to non-profit organizations and educational institutions.

Approximately 1.0 million dollars will be available from fiscal 1991 funds and it is estimated that about ten projects will be supported. Each project will be supported for a period of two years and approximately at $100,000 per year. This RFA is for a single competition with a deadline of March 15, 1991.

IV. The Application

Each application will consist of Application for Federal Assistance forms (standard forms 424 and 424A), separate sheets providing the budget breakdown for each year of the project, curriculum vitae for the principal investigator, abstract of the proposed project, and a project narrative. All certification (drug free work-place, etc.) forms must be signed and included with the application. Attachments, appendices or other materials included in addition to those identified above will not be forwarded to the reviewers. Application forms, instructions, and other pertinent information are contained in the Federal grant application kit obtainable from: Research Grants Staff (RD–675), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, or by calling on (202) 382–7445.

V. Special Instructions

1. The project narrative or proposal must not exceed 30 single sided 8½ by 11 inch pages. Typeface must be standard 10–12 characters per inch.

2. CVs or resumes must not exceed 2 pages for each principal investigator and should focus on education, positions held and most recent or related publications.

3. Project period will be for two years.

4. Applications in response to this RFA must be identified by printing "RFA BIO–02–91" in item 10 on the face page of form 424 or in item 3 if you are using the old form 5700–12. The absence of this identifier from an application absolves EPA of any responsibility if it is not reviewed along with the other applications responding to this RFA.

VI. Application Review

All applications in response to this solicitation will be reviewed at a single meeting of a scientific peer panel which will evaluate and rank each proposal according to its scientific merit as a basis for recommending agency approval or disapproval. The panel will consider:

- Quality of research plan (including theoretical and/or experimental design, originality, and creativity),
- Qualifications of the research team,
- Availability and adequacy of facilities and equipment, and
- Appropriateness of the proposed budget.

VII. Application Submission

The original and eight copies of the application must be received no later than the close of business, March 15, 1991, to be considered. The applications must be sent to: Grants Operation Branch (PM–216F), Grants Administration Division, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; or for overnight express mail, the address is: Grants Operations Branch, Grants Administration Division, U.S. Environmental Protection Agency, 499 South Capital Street, SW., Washington, DC 20460, 202/382–5266.

VIII. Staff Contact

Questions relating to this solicitation may be directed to Clyde Bishop by telephone on (202) 382–7445.

Dated: November 27, 1990.

Robert Papetti,

Director, Research Grants Staff.

[FR Doc. 90–28661 Filed 12–5–90; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3867–3]

Transfer of Data to Contractors

AGENCY: Environmental Protection Agency.

ACTION: Notice of transfer of data and request for comments.

SUMMARY: The Environmental Protection Agency (EPA) will transfer to its contractor, Wade Miller Associates, Inc., and their subcontractor Apogee Research, information which has been submitted to EPA under the 1986

National Survey of Hazardous Waste Treatment, Storage, Disposal, and Recycling Survey (TSDR). (The contractor will not identify specific facilities). Some of this information may have a claim of business confidentiality. These firms will use information submitted by facilities that responded to the TSDR Survey as part of the data inputs to a computerized simulation model. The model will create several projection scenarios for hazardous waste management capacity. The contractor will not identify specific facilities.

DATE: Transfer of confidential data submitted to EPA will occur no sooner than December 13, 1990.

ADDRESSES: Comments should be sent to Margaret Lee, Document Control Officer, Office of Solid Waste (OS-312), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Comments should be identified as "Transfer of Confidential Data".

FOR FURTHER INFORMATION CONTACT: Margaret Lee, Document Control Officer, Office of Solid Waste (OS-312), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-3410.

SUPPLEMENTARY INFORMATION:

I. Transfer of data

The U.S. Environmental Protection Agency is in the process of preparing a national report which will analyze the data submitted in the 1989 State CAPs. This assessment will include projection scenarios through simulation modeling of hazardous waste demand and management capacity.

Under Contract No. 68-03-3514, the contractor provides support to the Office of Drinking Water as it develops regulations to control contamination of drinking water, and as it undertakes new initiatives to protect public and private drinking water supply systems. The primary function of the contractor under this contract is to provide support of regulatory analysis required under the Safe Drinking Water Act. The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) section 104(c)(9) requires that as a condition for receiving further EPA remedial funding after October 17, 1989, each State must provide an assurance that sufficient hazardous waste capacity would exist to manage 20 years of hazardous waste generated in that State. States used the TSDR Survey as an information source for determining hazardous waste management capacity.

In cooperation with the Office of Solid Waste, Waste Management Division, and the Office of Drinking Water, Wade Miller Associates, Inc., and their subcontractor, Apogee Research will use the TSDR information as part of the data inputs to a computerized simulation model. The model will create several projection scenarios for hazardous waste management capacity.

In accordance with 40 CFR 2.305(h), EPA has determined that Wade Miller Associates, Inc., and their subcontractor, Apogee Research require access to confidential business information (CBI) submitted to EPA under the authority of RCRA to perform the particular work outlined under the above noted contract. EPA is issuing this notice to inform all submitters of confidential business information that EPA may transfer to this firm, on a need-to-know basis CBI collected under the authority of RCRA. Upon completing their review of materials submitted, Wade Miller Associates, Inc., and their subcontractor, will return all such materials to EPA.

The contractor and their subcontractor have been authorized access to RCRA CBI under the EPA "Contractor Requirements for the Control and Security of RCRA Confidential Business Information" security manual. EPA will approve the security plan of the contractor and will inspect their facility, and approve them prior to RCRA CBI being transmitted to the contractor. Personnel from Wade Miller Associates, Inc., and their subcontractor, Apogee Research will be required to sign non-disclosure agreements and be briefed on appropriate security procedures before they are permitted access to confidential information, in accordance with the "RCRA Confidential Business Information Security Manual" and the Contractor Requirements Manual.

Dated: November 30, 1990.

Mary A. Gade,

Acting Assistant Administrator.

[FR Doc. 90-28535 Filed 12-5-90; 8:45 am]

BILLING CODE 6560-50-M

[FRL 3867-2]

Transfer of Data to Contractors

AGENCY: Environmental Protection Agency.

ACTION: Notice of transfer of data and request for comments.

SUMMARY: The Environmental Protection Agency (EPA) will transfer to its contractor, Research Triangle Institute, information, which has been or will be, submitted to EPA under the authority of the Resource Conservation and Recovery Act (RCRA). The RCRA of 1976, as amended, requires EPA to institute a national program to control hazardous wastes. The Environmental Protection Agency's Office of Solid Waste (OSW) is involved in various activities to support the development of hazardous waste regulations, including method development, quality assurance and control, and actions related to other aspects of 40 CFR, parts 260-265. RTI will provide support to the Office of Solid Waste in the areas of health and ecological exposure and risk assessments; toxic and pharmacokinetic studies; analyzing regulatory options and impacts; investigating impacts of infectious wastes; and evaluating the RCRA manifest tracking system. Some of the information may have a claim of business confidentiality.

DATES: Transfer of confidential data submitted to EPA will occur no sooner than December 13, 1990.

ADDRESSES: Comments should be sent to Margaret Lee, Document Control Officer, Office of Solid Waste (OS-312). U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Comments should be identified as "Transfer of Confidential Data."

FOR FURTHER INFORMATION CONTACT: Margaret Lee, Document Control Officer, Office of Solid Waste (OS-312), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-3410.

SUPPLEMENTARY INFORMATION:

I. Transfer of Data

The U.S. Environmental Protection Agency is required under the Resource Conservation and Recovery Act of 1976, as amended, to institute a national program to control hazardous waste. Under Contract 68-W0-0032, RTI will provide support to the Characterization and Assessment Division of the Office of Solid Waste to develop the hazardous waste regulations, including method development, quality assurance and control and other actions related to 40 CFR parts 260-265. RTI will also assist OSW in the area of health and ecological exposure and risk assessments, toxic and pharmacokinetic studies, investigate the impact of infectious wastes and evaluate the RCRA manifest tracking system.

In accordance with 40 CFR 2.305(h), EPA has determined that RTI requires access to confidential business information (CBI) submitted to EPA under the authority of RCRA to perform work satisfactorily under the above noted contract. EPA is issuing this

notice to inform all submitters of confidential business information that EPA may transfer to this firm, on a need-to-know basis CBI collected under the authority of RCRA. Upon completing their review of materials submitted, RTI will return all such materials to EPA.

RTI has been authorized to have access to RCRA CBI under the EPA "Contractor Requirements for the Control and Security of RCRA Confidential Business Information" security manual. EPA will approve the security plan of the contractor and will inspect their facility, and approve them prior to RCRA CBI being transmitted to the contractor. Personnel from RTI will be required to sign non-disclosure agreements and be briefed on appropriate security procedures before they are permitted access to confidential information, in accordance with the "RCRA Confidential Business Information Security Manual" and the Contractor Requirements Manual.

Dated: November 29, 1990.

Don R. Clay,

Assistant Administrator.

[FR Doc. 90-28534 Filed 12-5-90; 8:45 am]

BILLING CODE 6560-50-M

[PF-540; FRL-3840-7]

Hoechst Celanese Corp.; Revision of Pesticide Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received from the Hoechst Celanese Corp. a request to amend pesticide petition (PP) 9F3714 that proposes amending 40 CFR 180.430 to establish tolerances for the herbicide fenoxaprop-ethyl, [(±)-ethyl 2-[4-[(6-chloro-2-benzoxazolyl)oxy]phenoxy]propanoate] and its metabolites 2-[4-[(6-chloro-2-benzoxazolyl)oxy]phenoxy]propanoic acid and 6-chloro-2,3-dihydrobenzoxazol-2-one, each calculated as parent, in or on various raw agricultural commodities. This notice follows two previous notices for the petition.

ADDRESSES: By mail, submit written comments to: Public Docket and Freedom of Information Section, Field Operations Division (H-7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Room 246, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Information submitted and any comment(s) 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(s) that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed test and any written comments will be available for public inspection in room 246 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne I. Miller, Acting Product Manager (PM-23), Registration Division (H-7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Room. 237, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703)-557-1830.

SUPPLEMENTARY INFORMATION: This notice announces that EPA has received from the Hoechst Celanese Corp., P.O. Box 2500, Somerville, NJ 08876-1258, a request to amend PP 9F3714 that proposes amending 40 CFR 180.430 by establishing tolerances for residues of the herbicide fenoxaprop-ethyl, [(±)-ethyl 2-[4-[(6-chloro-2-benzoxazolyl)oxy]phenoxy]propanoate] and its metabolites 2-[4-[(6-chloro-2-benzoxazolyl)oxy]phenoxy]propanoic acid and 6-chloro-2,3-dihydrobenzoxazol-2-one, each calculated as parent, in or on the following raw agricultural commodities: wheat, grain at 0.05 part per million (ppm); wheat, straw at 0.50 ppm; cattle fat, meat, and meat byproducts (mbyp) at 0.05 ppm; goat fat, meat, and mbyp at 0.05 ppm; hog fat, meat, and mbyp at 0.05 ppm; horse fat, meat, and mbyp at 0.05 ppm; sheep fat, meat, and mbyp at 0.05 ppm; and milk at 0.02 ppm.

The proposed analytical method for determining residues is gas chromatography with electron-capture detector.

Previous notices regarding PP 9F3714 appeared in the **Federal Register** of February 28, 1989 (54 FR 8393) and January 9, 1990 (55 FR 780).

Authority: 21 U.S.C. 136a.

Dated: November 21, 1990.

Herbert S. Harrison,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 90-28531 Filed 12-5-90; 8:45 am]

BILLING CODE 6560-50-F

[PF-539; FRL-3801-6]

Mobay Chemical Corp.; Withdrawals of Pesticide Petitions and Feed Additive Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received from the Mobay Chemical Corp. requests to withdraw without prejudice to future filing notices of three pesticide petitions, PP's 3F2917, 7F1951, 7F1988, and a feed additive petition, FAP 7H5169.

ADDRESSES: By mail, submit written comments to: Public Docket and Freedom of Information Section, Field Operations Division (H-7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Room 246, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Information submitted and any comment(s)-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(s) that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed test and any written comments will be available for public inspection in room 246 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Marilyn Mautz, Acting Product Manager (PM-16), Registration Division (H-7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Room 211, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703)-557-2600.

SUPPLEMENTARY INFORMATION: This notice announces that EPA has received from the Mobay Chemical Corp., Chemagro Agricultural Div., P.O. Box 4913, Kansas City, MO 64120, the following requests to withdraw without prejudice to future filings notices of filing of three pesticide petitions and a feed additive petition.

1. *PP 3F2917.* Mobay has requested the withdrawal of PP 3F2917, notice of which appeared in the **Federal Register** of February 8, 1984 (49 FR 4840), which proposed that 40 CFR 180.387 be

amended by establishing tolerances for the combined residues of the insecticide1-methylethyl 2-[[ethoxy [(1-methylethyl) amino]phosphinothioyl] oxy]benzoate and its cholinesterase-inhibiting metabolites 1-methylethyl 2-((ethoxy((1-methylethyl)amino)phosphinoyl)oxy) benzoate, 1-methylethyl 2-((ethoxy(1-amino)phosphinoyl)oxy) benzoate, and 1-methylethyl 2-(ethoxy((1-amino) phosphinothioyl)oxy) benzoate in or on the commodities broccoli, brussels sprouts, cabbage, and cauliflower at 0.3 part per million (ppm).

2. *PP 7F1951.* Mobay has reqested the withdrawal of PP 7F1951, notice of which appeared in the **Federal Register** of June 30, 1977 (42 FR 33363), which proposed that 40 CFR 180.320 be amended by establishing a tolerance for residues of the insecticide mesurol, 3,5-dimethyl-4-(methylthio) phenyl methylcarbamate and its cholinesterase-inhibiting metabolites in or on the raw agricultural commodities artichokes at 0.1 part per million (ppm), beans (lima) at 0.1 ppm, beans (snap) at 1.0 ppm, cabbage at 20 ppm, cauliflower at 5.0 ppm, strawberries at 7.0 ppm, and tomatoes at 0.5 ppm. A correction notice, published in the **Federal Register** of July 25, 1977 (42 FR 37847), added the raw agricultural commodities broccoli at 2.0 ppm and brussels sprouts at 1.0 ppm. A revised section F, published in the **Federal Register** of September 23, 1981 (46 FR 47008), proposed that tolerances be increased for artichokes from 0.1 ppm to 0.2 ppm; beans (lima) from 0.1 to 0.2 ppm; cauliflower from 5.0 ppm to 7.0 ppm; and tomatoes from 0.5 ppm to 1.0 ppm. Mobay also proposed that a tolerance be established for bean vines and hay at 1.0 ppm.

3. *PP 7F1988.* Mobay has requested the withdrawal of PP 7F1988, notice of which appeared in the **Federal Register** of August 23, 1977 (42 FR 42372), which proposed that 40 CFR 180.320 be amended by establishing a tolerance for residues of the insecticide 3,5-dimethyl-4-(methylthio) phenyl methylcarbamate and its cholinesterase-inhibiting metabolites in or on the raw agricultural commodities apples at 15 parts per million (ppm); meat, fat, and meat byproducts of cattle, goats, horses, sheep, and swine at 0.05 ppm; and milk at 0.01 ppm.

4. *FAP 7H5169.* Mobay has requested the withdrawal of FAP 7H5169, notice of which appeared in the **Federal Register** of August 23, 1977 (42 FR 42373), which proposed to amend 40 CFR part 561 (redesignated as 40 CFR part 186 in the **Federal Register** of June 29, 1988 (53 FR 24668)), by establishing a regulation permitting the use of the insecticide 3,5-dimethyl-4-(methylthio)phenyl methylcarbamate and its cholinesterase-inhibiting metabolites in or on the commodity dried apple pomace with a tolerance limitation of 30 parts per million (ppm) resulting in animal feed when present as a result of application of the pesticide chemical to the growing commodity apples.

Authority: 21 U.S.C. 346a and 348.

Dated: October 31, 1990.

Anne E. Lindsay.

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 90-28528 Filed 12-5-90; 8:45 am]

BILLING CODE 6560-50-F

[OPP-36177; FRL 3803-5]

Reevaluation and Update of Pesticide Assessment Guidelines, Subdivision N, Chemistry: Environmental Fate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for comments.

SUMMARY: In October 1982, EPA published the Pesticide Assessment Guidelines, Subdivision N, Chemistry: Environmental Fate. Subdivision N presented information on the required test substance, proposed methods, and required data to be reported with respect to the environmental fate of pesticides and their degradate(s). The studies were designed to assess the fate of pesticides and their degradates in air, soil and water environments in order that exposure quantifications could be made. Twelve years of experience with the Subdivision N Guidelines and its predecessors, and advances in scientific and technological knowledge since 1982 have illustrated the need to modify the guidelines and associated documents. This notice is requesting scientific and technological comments and information on the tests given in Subdivision N in order to bring them up to date in light of these advances and experiences.

DATE: Comments must be received on or before April 4, 1991.

ADDRESSES: Submit three copies of written comments, identified with the Docket Control Number "OPP-36177" by mail to: Public Docket and Freedom of Information Section, Field Operations Division (H7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. Office location to deliver comments to: Room 246, CM # 2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked "confidential" or "confidential Business Information" may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in room 244 Bay at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Robert W. Holst, Deputy Chief, Environmental Fate and Ground Water Branch, Environmental Fate and Effects Division (H7507C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington DC 20460. Office location and telephone number: Room 700, CM # 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557-5734.

SUPPLEMENTARY INFORMATION: The Pesticide Assessment Guidelines, Subdivision N, Chemistry: Environmental Fate, describes protocols and data to be reported in the performance of pesticide environmental fate studies to support the registration of pesticides under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) as amended. A description of the organization of these Guidelines and their relationship to pesticide data requirements appears in 40 CFR part 158, Data Requirements for Registration. The Agency is also in the process of updating the data requirements to register pesticides, as specified in 40 CFR part 158, and will independently publish proposed modifications for public comment.

Subdivision N was proposed for public comment in 1978 (as subpart N to 40 CFR part 163), and after extensive public comment and modification based on these comments, Subdivision N was published in 1982 as a non-regulatory guideline. Data Reporting Guidelines have been published as addenda to these guidelines, however, there has been no major scientific or technical reevaluation of this Guideline since 1982. There have been numerous advances in technology in pesticides, application methods and analytical methods since 1982 which are not reflected in the Guidelines or their

supporting documents. Also, experience in dealing with the various pesticide environmental fate studies is not captured in these documents. Questions have arisen as to the scientific usefulness of certain tests, the clarity of the description of certain tests and the necessity of adding to, changing, or deleting certain portions or whole studies. In addition, the Agency's and scientific community's interpretation as to what constitutes scientifically valid test results, including quality control and assurance, has subtly changed.

This request for comments is designed to combine the EPA's and the public's practical experience with the Subdivision N Guidelines and the scientific advances in pesticide environmental fate testing since about 1980.

Certain areas of technical and scientific changes have occurred over the past decade that have impacted on the assessment and presence of pesticides in the environment for which the EPA requests specific comments about their inclusion in Subdivision N:

1. Mathematical models have become increasingly popular in supporting environmental exposure assessments (i.e., potential surface water, ground water and aerial movement contamination). The EPA is requesting comment on the employment and usefulness of these models and their effect upon or replacement of the submission of required field data.

2. Although the models are being used in exposure assessments and sometimes to replace expensive field studies, most models still require extensive validation. The EPA requests comments on the use of small-scale monitoring studies to estimate large-scale exposure and the need to validate modeling.

3. Monitoring studies are designed to determine the extent of the presence of pesticides in the environment. The EPA requests comments on the scaling up of small-scale monitoring measurements to reflect a large water shed or large aquifer scenarios.

4. The presence of pesticides in the air, especially localized air masses, has become an increasing concern. The EPA requests comments on the inclusion of appropriate data requirements to estimate potential presence and movement of pesticides in the atmosphere (e.g., pesticides in fogs).

5. Newer pesticides are being applied in orders of magnitude quantities smaller than a decade ago which leads to problems in detecting micro-quantities of the pesticide in the environment. The classic detection methods cannot be used to definitively identify these pesticides in the environment. The EPA requests comments on the acceptability and use of nonclassical analytical chemistry methods (e.g., ALISA - immunoassays and bioassays) as means to quantify pesticides in the environment.

All interested parties are encouraged to submit scientifically and technically directed and supported comments on the Subdivision N Guidelines and their supporting documents. Comments are generally expected to fall into the following categories: (1) The scientific usefulness of certain tests; (2) the clarity of the description of certain tests; and (3) the necessity of modifying certain tests. Comments should specify the test by name, number and paragraph or subparagraph. Recommended changes/modifications must be supported by current scientific/technical knowledge and include supporting references. References may be to other existing guidelines (from EPA or other Federal or State agencies), the published literature, studies submitted to the Agency in support of registration, and unpublished information. Citations must be sufficiently detailed to allow the Agency to obtain copies of the publicly available documents (unless furnished with the comments). Unpublished data must be supplied with the comments and be in sufficient detail to allow evaluation.

Comments on Subdivision N will be considered by the Agency and such modifications of the Guidelines and the accompanying Standard Evaluation Procedures (SEPs) which are considered to be of scientific and technical merit will be drafted into the Guidelines and SEPs, respectively. The draft of the modified Guidelines and SEPs will be made available for public comment and will be presented to the FIFRA Scientific Advisory Panel (SAP) at a public meeting for their comments before being published in a final form.

Copies of the Pesticide Assessment Guidelines, Subdivision N, its amendments, and the associated Standard Evaluation Procedures (SEPs) may be obtained from the National Technical Information Service (NTIS). Orders may be placed to NTIS at: National Technical Information Service, Attention: Order Desk, 5285 Port Royal Road, Springfield, VA 22161. Titles and order numbers are as follows:

Titles	Order Number
Guidelines:	
Subdivision N, Chemistry Environmental Fate	PB83-153973
Subdivision N, Chemistry Environmental Fate - Adden 1	PB86-247848
Subdivision N, Chemistry Environmental Fate - Adden 2	PB87-208393
Subdivision N, Chemistry Environmental Fate - Adden 3	PB88-159892
Subdivision N, Chemistry Environmental Fate - Adden 4	PB88-159900
Subdivision N, Chemistry Environmental Fate - Adden 5	PB88-161187
Subdivision N, Chemistry Environmental Fate - Adden 6	PB88-161195
Subdivision N, Chemistry Environmental Fate - Adden 7	PB88-191721
Subdivision N, Chemistry Environmental Fate - Adden 8	PB88-191739
Standard evaluation procedures (SEPs):	
Aerobic soil metabolism	PB86-129368
Anaerobic soil metabolism	PB89-100341
Aqueous photolysis	PB86-129350
Hydrolysis	PB86-129343
Soil column leaching	PB86-129384
Soil photolysis	PB86-129376
Terrestrial field dissipation	PB90-208935

The Agency will also use this occasion as an opportunity to combine those portions of Subdivision N that have been published at different times into a single document for public dissemination.

Dated: November 15, 1990.

Anne L. Barton,

Director, Environmental Fate and Effects Division, Office of Pesticide Programs.

[FR Doc. 90-28533 Filed 12-5-90; 8:45 am]

BILLING CODE 6560-50-F

[FRL-3866-9]

Benton, Inc. Site: Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Environmental Protection Agency (EPA) has agreed to settle claims for response cost at Benton, Inc. Site, Ashland, Mississippi. EPA will consider public comments on the proposed settlement for thirty days.

EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate. Copies of the proposed settlement are available from: Ms. Carolyn McCall, Waste Programs Branch, Waste Management Division, U.S. EPA, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365, 404-347-5059.

Written comments may be submitted to the person above by January 7, 1991.

Dated: October 23, 1990.

Donald J. Guinyard,

Acting Director, Waste Management Division.

[FR Doc. 90-28541 Filed 12-5-90; 8:45 am]

BILLING CODE 6560-50-M

[FRL 3867-7]

Proposed Settlement of Administrative Order by Consent, Summit National Site, OH

AGENCY: Environmental Protection Agency (U.S. EPA)

ACTION: Proposed *De Minimis* settlement.

SUMMARY: U.S. EPA is proposing to settle a claim under section 122 of CERCLA with a *de minimis* potentially responsible party for costs that have been and will be incurred during remedial and removal activities at the Summit National Site in Deerfield, Ohio. Respondent, Mansfield Industries, Inc., has agreed to pay $62,702 into a specially created escrow account that will be used by the *de minimis* settlors for remedial work at the Site, or, in the event a consent order is not entered into between U.S. EPA and the *de minimis* settlors, the money will be used to reimburse the U.S. EPA for costs incurred during U.S. EPA's removal and remedial actions at the Site. This action is being taken to settle all liability related to the Summit National site with the Respondent pursuant to the intent of section 122(g) of CERCLA, as amended.

DATES: Comments on this proposed settlement must be received on or before January 7, 1991.

ADDRESS: A copy of the proposed settlement is available at the following address for review: (It is recommended that you telephone Cheryl Allen at (312) 353-6196, before visiting the Region V Office).

U.S. Environmental Protection Agency, Region V, Office of Superfund, Remedial and Enforcement Response Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

Comments on the proposed settlement should be addressed to: (Please submit an original and three copies, if possible).

Cheryl Allen, Community Relations Coordinator, Office of Public Affairs, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Cheryl Allen, Office of Public Affairs, at (312) 353-6196.

SUPPLEMENTARY INFORMATION: The Summit National Site, which is listed on the National Priorities List, was operated as a waste disposal facility from 1974 until 1980, when it was closed by the State of Ohio. Due to the nature of the material received by the facility when it was in operation, the release of hazardous substances into the environment has caused the U.S. EPA to take emergency removal actions at the Site and to conduct an investigation as to long term remedial measures necessary to rectify the environmental hazard at the Site.

Mansfield Industries, Inc. is a small quantity generator of the hazardous substances sent to the Site. Respondent's share of the waste delivered to the Site does not exceed 0.2 percent of the total waste delivered to the Site.

A 30-day period, beginning on the date of publication, is open pursuant to section 122(i) of CERCLA for comments on the proposed settlement. Comments should be sent to the Office of Public Affairs (5PA-14), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

Robert Springer,

Acting Regional Administrator—Region V, U.S. Environmental Protection Agency.

[FR Doc. 90-28663 Filed 12-5-90; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-140139; FRL-3837-4]

Access to Confidential Business Information by Certain Contractors and Subcontractor

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized the following contractors and subcontractor for access to information which has been submitted to EPA under the Toxic Substances Control Act (TSCA): (1) General Sciences Corporation (GSC), of Laurel, Maryland has been authorized access to information which has been submitted to EPA under sections 4, 5, 6, and 8 of TSCA, (2) Research and Evaluation Associates, Incorporated (REA), of Chapel Hill, North Carolina has been authorized access to information which has been submitted to EPA under all sections of TSCA, and, (3) TMC Micrographics (TMC), of Columbus, Ohio has been authorized access to information which has been submitted to EPA under sections 5 and 8 of TSCA. Some of the information may be claimed or determined to be confidential business information (CBI). This document also includes an addendum to a contract authorized to Versar Incorporated (VER), of Springfield, Virginia that was published in the **Federal Register** of January 19, 1990.

DATES: Access to confidential data submitted to EPA will occur no sooner than December 20, 1990.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-545, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: EPA is issuing this notice to inform all submitters of information under TSCA that EPA may provide the following contractors and subcontractor access to these CBI materials on a need-to-know basis.

Under contract number 68-D0-0080, contractor GSC, of 6100 Chevy Chase Drive, Laurel, MD will assist the Office of Toxic Substances (OTS) in using computerized models to estimate physicochemical properties of chemicals, to assess fate of chemicals, and to estimate human and environmental exposures. GSC personnel will be given access to information submitted under sections 4, 5, 6, and 8 of TSCA. All access to TSCA CBI under this contract will take place at EPA Headquarters only. In a previous notice published in the **Federal Register** of August 25, 1987 (52 FR 32053), GSC was authorized for access to CBI submitted to EPA under sections 4, 5, 6, and 8 of TSCA, under contract number 68-02-4281, until June 15, 1990. Clearance for access to TSCA CBI under contract number 68-D0-0080 may continue until June 30, 1993.

Under contract number 68-D0-0063, contractor REA, of 100 Europa Drive, Suite 590, Chapel Hill, NC will assist the Office of Air Quality Planning and Standards (OAQPS) in designing and implementing a system for the handling,

tracking, and safeguarding of CBI materials gathered by OAQPS under TSCA and the Clean Air Act. REA personnel will be given access to information submitted under all sections of TSCA. All access to TSCA CBI under this contract will take place at EPA Durham, NC facilities only. In a previous notice published in the **Federal Register** of November 8, 1989 (54 FR 46981), REA was authorized for access to CBI submitted to EPA under all sections of TSCA, under contract number 68-D8-0063, until September 30, 1990. Clearance for access to TSCA CBI under contract number 68-D0-0063 may continue until September 30, 1994.

Under contract number 68-W0-0028, subcontractor TMC, of 9100 Bank Street, Columbus, OH under subcontract to Chemical Abstracts Service (CAS), of 2540 Olentangy River Road, Columbus, OH will assist OTS in microfilming TSCA CBI materials. TMC personnel will be given access to information submitted under sections 5 and 8 of TSCA. All access to TSCA CBI under this subcontract will take place either at CAS's Columbus, OH facility, or the subcontractor may take TSCA CBI materials to its facility for the purpose of microfilming, providing that the transfer of materials is done so only under the direct supervision of a CAS official authorized for TSCA CBI access, and that all TSCA CBI materials be returned daily to CAS's facility. In a previous notice published in the **Federal Register** of September 4, 1990 (55 FR 35955), CAS was authorized for access to CBI submitted to EPA under sections 5 and 8 of TSCA at its Columbus, OH facility under contract number 68-W0-0028. Clearance for access to TSCA CBI under contract number 68-W0-0028 may continue until June 30, 1995.

In addendum to a **Federal Register** of January 16, 1990 (55 FR 1513), concerning contract number 68-D9-0166, EPA is extending VER's TSCA CBI access to include access to CBI materials submitted to EPA under section 21 of TSCA. All other aspects of the contract will remain the same.

In accordance with 40 CFR 2.306(j), EPA has determined that under contract numbers, 68-D0-0080, 68-D0-0063, 68-W0-0028, and 68-D9-0166, the aforementioned contractors and subcontractor will require access to CBI submitted to EPA under TSCA to successfully perform the duties specified under the respective contracts.

GSC, REA, TMC, and VER personnel, will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Dated: November 27, 1990.

Linda A. Travers,

Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 90-28665 Filed 12-5-90; 8:45 am]

BILLING CODE 6560-50-F

[FRL-3867-6]

Indiana Department of Natural Resources Underground Injection Control Primacy Application

AGENCY: Environmental Protection Agency.

ACTION: Notice of public comment period and of public hearing.

SUMMARY: The purpose of this notice is to announce that: (1) The United States Environmental Agency (USEPA) has received a complete application from the Indiana Department of Natural Resources requesting approval of its Underground Injection Control program; (2) the application is available for inspection and copying; (3) public comments are requested; and (4) a public hearing will be held.

The proposed comment period and public hearing will provide USEPA with the breadth of information and public opinion necessary either to approve, partially approve, or disapprove the application from the Indiana Department of Natural Resources to regulate Class II injection wells.

DATES: A public hearing will be held beginning at 7 p.m. on January 8, 1991. Written comments must be received by January 22, 1991.

ADDRESSES: Comments and requests to testify may be mailed to Richard J. Zdanowicz, Underground Injection Control Section (5WD-TUB-9), United States Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604. Copies of the application and pertinent material are available for inspection and copying between 9 a.m. and 4:30 p.m. Monday through Friday at the following locations:

United States Environmental Protection Agency, Region V Library, 14th Floor, 230 South Dearborn Street, Chicago, Illinois 60604 (312) 353-2022.

Indiana Department of Natural Resources, Division of Oil and Gas, Old Trails Building, 309 West Washington Street, suite 601, Indianapolis, Indiana 46204 (317) 232-4055.

The hearing will be held at 7 p.m. on January 8, 1991, in the Executive Inn, Highway 41, Vincennes, Indiana.

FOR FURTHER INFORMATION CONTACT: Richard J. Zdanowicz, Underground Injection Control Section (5WD-TUB-9), United States Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-1502. Comments should also be sent to this address.

SUPPLEMENTARY INFORMATION: The application from the Indiana Department of Natural Resources is for the regulation of Class II injection wells. Injection wells are regulated under the Safe Drinking Water Act (SDWA) of 1974, amended 1980 and 1986; the delegation of primary enforcement authority by section 1425 of the SDWA. USEPA has held primary enforcement authority over injection well activities in Indiana since the Underground Injection Control portion of the SDWA was implemented in 1984.

The Underground Injection Control program seeks to protect as "underground sources of drinking water" (USDWs) all aquifers capable of yielding a significant amount of water containing less than 10,000 mg/l of total dissolved solids. If this application for Indiana is approved, the State would protect USDWs from endangerment caused by the following kinds of injection of fluids produced during oil or natural gas protection, injection of fluids for the storage of hydrocarbons, injection of fluids for enhanced recovery of oil or natural gas.

At present, Indiana has approximately 1800 Class II wells, and a permit to operate will be required for all Class II wells. The permit would specify a number of techical requirements designed to assure that the injection did not result in native or injected fluids reaching USDWs. Such requirements include criteria for siting, construction, testing, operation, monitoring and abandonment.

This application includes a description of the State Underground Injection Control program, copies of all applicable regulations and forms, a statement of legal authority, and the memorandum of agreement between the Indiana Department of Natural Resources and the Region V office of the Environmental Protection Agency.

Dated: November 29, 1990.

Robert Springer,

Acting Regional Administrator.

[FR Doc. 90-28662 Filed 12-5-90; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Applications for Consolidated Hearing

1. The Commission has before it the following groups of mutually exclusive applications for three new FM stations:

Applicant, city and state	File No.	MM Docket No.
I		
A. Sundown Communications; Lenoir, NC	BPH-890612MI	90-430
B. Maria M. Ochoa; Lenoir, NC	BPH-890615ME	
C. Bowman Communications, Inc.; Lenoir, NC	BPH-890616MK	
D. Furniture City Broadcasters, Inc.; Lenoir, NC	BPH-890616MM	
E. Gateway Media Limited Partnership; Lenoir, NC	BPH-890616MN	
F. Jenet W. Lingafelt; Lenoir, NC	BPH-890616MO	
G. Mystic Radio Corp.; Lenoir, NC	BPH-890616MQ	
H. Foothills Broadcasting, Inc.; Lenoir, NC	BPH-890616MR	
I. R. Donnie Goodale; Lenoir, NC	BPH-890615MF (Dismissed herein)	

Issue heading and Applicants
1. Air Hazard, H
2. Comparative, A,B,C,D,E,F,G,H
3. Ultimate, A,B,C,D,E,F,G,H

Applicant, city and state	File No.	MM Docket No.
II		
A. Golden Gulf Coast Broadcasting Company; Ocean Springs, MS	BPH-880914MF	90-429
B. Hughes, Moore and Bell; Ocean Springs, MS	BPH-880914MG	
C. H. Hunter White, III; Ocean Springs, MS	BPH-880914MP	
D. Royal Broadcasting, Inc.; Ocean Springs, MS	BPH-880914MU	
E. Ocean Springs Broadcasting Co.; Ocean Springs, MS	BPH-880914MY	
F. Oceola Broadcasting Ltd.; Ocean Springs, MS	BPH-880914NA	
G. Mark Albert Hinterlang; Ocean Springs, MS	BPH-880909MG (Dismissed herein)	

Issue heading and Applicants

1. Financial, A
2. Environmental, B
3. See Appendix, D
4. See Appendix, D
5. See Appendix, D
6. Comparative, A-F
7. Ultimate, A-F

Applicant, city and state	File No.	MM Docket No.
III		
A. Tallahassee Minority Partners; Tallahassee, FL	BPH-880324MH	90-431
B. Ferguson Communications, Inc.; Tallahassee, FL	BPH-880324MN	
C. Dolphin Communications, Ltd.; Tallahassee, FL	BPH-880324MR	
D. Capital City Broadcast, Inc.; Tallahassee, FL	BPH-880324MW	
E. Moorhead/ Kiedrowski, Ltd.; Tallahassee, FL	BPH-880324NE	
F. Marantha Broadcasting Company, Inc.; Tallahassee, FL	BPH-880324NG	
G. WCVC, Inc.; Tallahassee, FL	BPH-880324NI	
H. Tally Radio, Inc.; Tallahassee, FL	BPH-880324NL	
I. Women's Broadcasting Corp.; Tallahassee, FL	BPH-880324NQ	
J. Kenneth B. Darby; Tallahassee, FL	BPH-880324NX	
K. Metro Tallahassee Broadcasters Limited Partnership; Tallahassee, FL	BPH-880324OA	
L. Quad Communications, Inc.; Tallahassee, FL	BPH-880324OD	
M. John S. Matthews, Jr.; Tallahassee, FL	BPH-880324OH	
N. J.L.J.B. Wireless, Inc.; Tallahassee, FL	BPH-880324OL	

Issue heading and Applicants
1. Financial, B
2. See Appendix, D
3. See Appendix, D
4. See Appenidx, D
5. Air Hazard, C,D,E,G,I,K,L,M,N
6. Comparative, A-N
7. Ultimate, A-N

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

3. If there is any non-standardized issue in this proceeding, the full text of the isuse and the applicants to which it applies are set forth in an appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,
Assistant Chief, Audio Services Division.

Appendix (Ocean Springs, Mississippi)

3. To determine whether Sonrise Management Services, Inc. is an undisclosed party to the application of D (Royal).

4. To determine whether D's (Royal's) organizational structure is a sham.

5. To determine, from the evidence adduced pursuant to Issues 3 and 4 above, whether D (Royal) possesses the basic qualifications to be a licensee of the facilities sought herein.

Appendix (Tallahassee, Florida)

2. To determine whether Sonrise Management Services, Inc. is an undisclosed party to the application of D (Capital).

3. To determine whether D's (Capital's) organizational structure is a sham.

4. To determine, from the evidence adduced pursuant to Issues 2 through 3 above, whether D (Capital) possesses the basic qualifications to be a licensee of the facilities sought herein.

[FR Doc. 90-28681 Filed 12-5-90; 8:45 am]
BILLING CODE 6712-01-M

FEDERAL LABOR RELATIONS AUTHORITY

Senior Executive Service; Performance Review Board

AGENCY: Federal Labor Relations Authority.

ACTION: Notice.

SUMMARY: Notice is hereby given of the names of the Performance Review Board.

DATE: December 6, 1990.

FOR FURTHER INFORMATION CONTACT: Theresa J. Jackson, Director of Personnel and EEO, Federal Labor Relations

Authority, 500 C St., SW., Washington, DC 20424, (202) 382-0751.

SUPPLEMENTARY INFORMATION: Sec. 4314(c) (1) through (5) of title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more performance review boards. The board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations, to the appointing authority relative to the performance of the senior executive.

The following person will serve on the FLRA's Performance Review Board:

Susan D. McCluskey, Office of the Chairman, FLRA
Brenda M. Robinson, Office of General Counsel, FLRA
Johnny J. Butler, Equal Employment Opportunity Commission
Paul D. Mahoney, Merit Systems Protection Board
Peter J. Basso, Office of Management and Budget

Theresa J. Jackson,

Director of Personnel and EEO.

[FR Doc. 90-28664 Filed 12-5-90; 8:45 am]

BILLING CODE 6727-01-M

FEDERAL MARITIME COMMISSION

Filing And Effective Date of Agreement

The Federal Maritime Commission hereby gives notice that on November 28, 1990, the following agreement was filed with the Commission pursuant to section 5 (d) of the Shipping Act of 1984 and was considered effective that date to the extent it constitutes an assessment agreement as described in section 3 (3) of the Shipping Act of 1984.

Agreement No: 224-000083-005.

Title. Master Contract Assessment Agreement.

Parties:

Carriers Container Council, Inc.
New York Shipping Association, Inc.
Southeast Florida Employers Port Association
Council of North Atlantic Shipping Associations
The International Longshoremen's Association, AFL-CIO.

Synopsis: The Agreement provides for the settlement of Master Contract issues agreed to on October 30, 1990.

Dated: November 30, 1990.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 90-28573 Filed 12-5-90; 8:45 am]

BILLING CODE 6730-01-M

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and 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 10220. Interested parties may submit protests or 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 and protests are found in § 560.602 and/or 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.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224-002813-008.

Title: San Francisco Port Commission/Metropolitan California Stevedore Terminal Agreement.

Parties:

San Francisco Port Commission (Port)
Metropolitan California Stevedore (MCS).

Synopsis: The Agreement amends the basic agreement to: reduce the crane rental rate for carriers that guarantee 3,500 crane rental hours per year; and set forth rent credits for MCS to provide certain transtainer work.

Agreement No.: 224-002813-007.

Title: San Francisco Port Commission/Metropolitan California Stevedore/California Stevedore & Ballast Co. Terminal Agreement.

Parties:

San Francisco Port Commission (Port).
Metropolitan California Stevedore (MCS).
California Stevedore & Ballast Co. (CSB).

Synopsis: The Agreement provides for CSB to assign and transfer to MCS all its right in the basic agreement, and for MCS to assume obligations to the Port under the basic agreement.

Agreement No.: 224-200444.

Title: San Francisco Port Commission/Companies Sud-America de Vapores (CSAV) Terminal Agreement.

Parties:

San Francisco Port Commission (Port).
Companie Sub-America de Vapores (CSAV).

Synopsis: The Agreement provides for the non-exclusive use of the South Container Terminal for berthing vessels and loading and discharging of cargo. CSAV agrees to use the Port as its published regularly scheduled Northern California port of call and will receive certain reduced dockage and wharfage rates.

Agreement No.: 224-200332-003.

Title: San Francisco Port Commission/Nedlloyd Lines (U.S.A.) Corp. Terminal Agreement.

Parties:

San Francisco Port Commission.
Nedlloyd Lines (U.S.A.) Corp.

Synopsis: The Agreement amends the basic agreement to revise guarantees for: The annual minimum vessel calls, the annual minimum container throughput, and the hours of crane rental per year. The Agreement also provides a wharfage charge of $25 per full 20-foot equivalent unit.

Dated: November 30, 1990.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 90-28574 Filed 12-5-90; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Lincolnland Bancorp, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for banking holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected

to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 26, 1990.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Lincolnland Bancorp, Inc.*, Dale, Indiana; to acquire Ayer-Wagoner Insurance Agency, Inc., Rockport, Indiana, and Deal Insurance Agency, Inc., Rockport, Indiana, and thereby engage in insurance activities pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y. These activities will be conducted in Rockport, Indiana.

Board of Governors of the Federal Reserve System, November 30, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-28595 Filed 12-5-90; 8:45 am]

BILLING CODE 6210-01-M

Mid-Citco Inc.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 26, 1990.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Mid-Citco Incorporated*, Chicago, Illinois; to engage *de novo* through its subsidiary, Mid-Citco Data Services, Inc., Chicago, Illinois, and thereby engage in providing data processing services subsidiary banks and third parties including payroll services, data processing and data transmission services, facilities (including data processing and data transmission hardware, software, documentation or operating personnel), data bases, or access to such services, facilities or data bases by any technological means pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 30, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-28596 Filed 12-5-90; 8:45 am]

BILLING CODE 6210-01-M

David A. Rosow and Jean D. Rosow; Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act 12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than December 20, 1990.

A Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *David A. Roscow and Jean D. Rosow.* Fairfield, Connecticut; to acquire an additional 15.23 percent of the voting shares of Westport Bancorp, Inc., Westport, Connecticut, for a total of 24.9 percent, and thereby indirectly acquire Westport Bank & Trust Company, Westport, Connecticut.

Board of Governors of the Federal Reserve System, November 30, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-28597 Filed 12-5-90; 8:45 am]

BILLING CODE 6210-01-M

Wilmington Trust Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentaton would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 26, 1990.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Wilmington Trust Corporation*, Wilmington, Delaware; to become a bank holding company by acquiring 100 percent of the voting shares of Wilmington Trust Company, Wilmington, Delaware.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Folden Financial Corporation*, Hendricks, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of First Security Bank-Hendricks, Hendricks, Minnesota.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Cedar Creek Bancshares, Inc.*, Seven Points, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Cedar Creek Bank, Seven Points, Texas.

2. *TFBC Acquisition Corporation*, Dallas, Texas; to become a bank holding company by acquiring 78.5 percent of the voting shares of Tahoka First Bancorp, Inc., Dallas, Texas, and thereby indirectly acquire Cedar Creek Bank, Seven Points, Texas, and First National Bank of Tahoka, Tahoka, Texas.

Board of Governors of the Federal Reserve System, November 30, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-28598 Filed 12-5-90; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 111290 AND 112390

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
John H. Harland Company, Courier Dispatch Group, Inc., Courier Dispatch Group, Inc.	91-0089	11/13/90
Mr. Vincent Piazza, TRW Inc., the Customer Service Division	91-0146	11/13/90
Publicker Industries, Inc., Hanson PLC, 10 wholly-owned subsidiaries of HM Holidays Inc.	91-0148	11/13/90
CPI Development Corporation, E.I. du Pont de Nemours and Company, E.I. du Pont de Nemours and Company	91-0159	11/14/90
Adia SA, BellSouth Corporation, Dataserv Equipment, Inc.	91-0160	11/14/90
Mercy Health System, Lourdes Hospital, Inc., Lourdes Hospital, Inc.	91-0174	11/14/90
Craig O. McCaw, Graphic Scanning Corp., Cellular Mobile Systems of Illinois, Inc.	91-0080	11/15/90
Graphic Scanning Corp., Craig O. McCaw, Indiana Cellular Holdings, Inc.	91-0118	11/15/90
Philip Morris Companies, Inc., Ms. Virginia Figge, Santa Ana Beverage, Inc. & Virginia Figge	91-0132	11/15/90
General Cinema Corporation, The Neiman Marcus Group, Inc., The Neiman Marcus Group, Inc.	91-0162	11/15/90
PacifiCorp, Adobe Resources Corporation, Adobe Resources Corporation	91-0168	11/15/90
PepsiCo, Inc., Collins Foods International, Inc., Collins Foods International, Inc.	91-0072	11/16/90
Preussag AG, Charles Faust, North American Steel Corporation	91-0123	11/16/90
Carena Holdings Inc., GWU Capital Corp., Arbor Living Centers of America, Inc.	91-0145	11/16/90
Legend Capital Group, L.P., Sharon Steel Corporation, subsidiaries	91-0158	11/16/90
Gerald W. Schwartz, Wasserstein, Perella Partners, L.P., Wickes Elco Corporation and Dura Acquisition Corp.	91-0166	11/16/90
Gerald W. Schwartz, Blackstone Capital Partners L.P., Wickes Elco Corporation and Dura Acquisition Corp.	91-0167	11/16/90
US West, Inc., IP Partners, MFT Corp.	91-0199	11/16/90
Joseph Kruger II, an individual, Marshall Field V, an individual, Manistique Papers, Inc.	91-0049	11/18/90
KELP-1987 Limited Partnership, Krupp Cash Plus Limited Partnership, Krupp Cash Plus Limited Partnership	91-0081	11/19/90
KELP-1987 Limited Partnership, Krupp Cash Plus-II Limited Partnership, Krupp Cash Plus-II Limited Partnership	91-0082	11/19/90
KELP-1987 Limited Partnership, Krupp Cash Plus-III Limited Partnership, Krupp Cash Plus-III Limited Partnership	91-0083	11/19/90
KELP-1987 Limited Partnership, Krupp Cash Plus-IV Limited Partnership, Krupp Cash Plus-IV Limited Partnership	91-0084	11/19/90
Unocal Corporation, Oryx Energy Company, Sun Operating Limited Partnership	91-0119	11/19/90
Charles P. Gallagher, Dudley D. Malone, Liquid Container Corp.	91-0170	11/19/90
Adobe Resources Corporation, USX Corporation, TXO Production Corporation	91-0171	11/19/90
James A. Collins, Collins Foods International, Inc., Bucket Project, Inc.	91-0191	11/19/90
Ford Motor Company, Hongkong and Shanghai Banking Corporation, Limited, Marine Midland Automotive Financial Corporation	91-0197	11/19/90
Scripps Memorial Corporation, Scripps Clinic and Research Foundation, Scripps Clinic and Research Foundation	91-0094	11/20/90
Scripps Clinic and Research Foundation; Scripps Memorial Corporation, Scripps Memorial Corporation	91-0095	11/20/90
David N. Jones, National Convenience Stores Incorporated, National Convenience Stores Incorporated	91-0097	11/20/90
International Paper Company, Cookson Group plc, Cookson Graphic Arts Group	91-0173	11/20/90
Herbert T. Hayashi, 900 Partners' Investments, Amfac, Inc.	91-0180	11/20/90
North West Water Group PLC, Jeffrey J. Steiner, Enviro Holding Company	91-0185	11/20/90
Kamori Kanko Co., Ltd., William D. Killebrew, Heavenly Valley, a Nevada limited partnership	91-0189	11/20/90
URCARCO, Inc., Pacific Automart, Inc., Pacific Automart, Inc.	91-0190	11/20/90
Cox Enterprises, Inc., RMB Anchor Media Investors, Ltd., Anchor Media, Ltd.	91-0198	11/20/90
Markel Corporation, V. Prem Watsa, F-M Acquisition Corporation	91-0207	11/20/90
Cimenteries CBR S.A., Paul and Karen Taylor, Jon Magnussen, Cadman Gravel Co. Inc.	91-0114	11/21/90
Chiles Offshore Corporation, Grosvenor Holding Limited, Manhattan Maritime Corporation	91-0172	11/21/90
Oglethorpe Power Corporation, The Southern Company, Georgia Power Company	91-0193	11/21/90
Fred R. Adams, Jr., Jack Linville, Sunnyside Eggs, Inc.	91-0195	11/21/90

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 111290 AND 112390—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Pinault P.L.C., CFAO, CFAO	91-0217	11/21/90
Triton Holdings Limited, Triton Container Partners 1985-A2, Triton Container Partners 1985-A2	91-1597	11/23/90
Triton Holdings Limited, Triton Container Partners 1985-A1, Triton Container Partners 1985-A1	91-1598	11/23/90
Asko Oy, Concorde Industries, Inc., Concorde Industries, Inc.	91-0147	11/23/90
Share, Physicians Health Plan of Minnesota, Physicians Health Plan of Minnesota	91-0161	11/23/90
Physicians Health Plan of Minnesota, Share, Share	91-0165	11/23/90
Green Capital Investors, L.P., William Farley, West Point-Pepperell, Inc.	91-0187	11/23/90
General Motors Corporation, The Morgan Stanley Leveraged Equity Fund II, L.P., Fort Howard Corporation	91-0247	11/23/90

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Renee A. Horton, Contact Representatives.

Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580 (202) 326-3100.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 90-28639 Filed 12-5-90; 8:45 am]

BILLING CODE 6750-01-M

[Docket No. C-3311]

E-Z-EM, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, a Westbury, N.Y., based corporation to divest, within twelve months of the issuance of this order, the Lafayette Pharmacal barium business and assets to a Commission-approved acquirer. Respondents are prohibited, for a period of ten years, from acquiring any interest in any other firm in the relevant market without prior Commission approval, and from selling or otherwise disposing of any interest in or assets of respondents to such a firm without providing thirty days prior notice to the Commission.

DATES: Complaint and Order issued October 29, 1990.[1]

FOR FURTHER INFORMATION CONTACT: Susan Pettee, FTC/S-2308, Washington, DC 20580. (202) 326-2682.

SUPPLEMENTARY INFORMATION: On Thursday, July 19, 1990, there was published in the **Federal Register**, 55 FR 29420, a proposed consent agreement with analysis In the Matter of E-Z-EM, Inc., et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18.

Donald S. Clark,

Secretary.

[FR Doc. 90-28638 Filed 12-5-90; 8:45 am]

BILLING CODE 6750-01-M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Partial Suspension Lifted; Laboratory Again Meets Minimum Standards To Engage in Confirmatory Drug Testing for Amphetamines

AGENCY: National Institute on Drug Abuse, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services routinely publishes in the **Federal Register** a list of standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (53 FR 11986) dated April 11, 1988. The following laboratory's certification to engage in urine drug testing for federal agencies was partially suspended on October 22, 1990 (53 FR 43219, October 26, 1990) and was reinstated effective November 29, 1990:

Roche Biomedical Laboratories, Inc., 1912 Alexander Drive, P.O. Box 13973, Research Triangle Park, NC 27709; Telephone (919)-361-7770.

FOR FURTHER INFORMATION CONTACT: Mona W. Brown, Press Officer, National Institute on Drug Abuse, room 10-A-54, 5600 Fishers Lane, Rockville, Maryland 20857; Telephone (301)-443-6245.

Charles R. Schuster,

Director, National Institute on Drug Abuse.

[FR Doc. 90-28801 Filed 12-5-90; 8:45 am]

BILLING CODE 4160-20-M

Food and Drug Administration

[Docket No. 90N-0418]

Drug Export; Chiron[R] RIBA™ HCV Test System Second Generation Assay

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Chiron Corp., has filed an application requesting approval for the export of the biological product Chiron[R] RIBA™ HCV Test System Second Generation Assay to Australia, Austria, Canada, Denmark, Federal Republic of Germany, Finland, France, Ireland, Italy, Japan, New Zealand, Norway, Spain, Sweden, Switzerland, and The United Kingdom.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contract person identified below. Any future inquiries concerning the export of human biological products under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Carl J. Chancey, Center for Biologics Evaluation and Research (HFB-124), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8191.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of biological products that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Chiron Corp., 4560 Horton St., Emeryville, CA 94608, has filed an application requesting approval for the export of the biological product Chiron[R] RIBA™ HCV Test System Second Generation Assay to Australia, Austria, Canada, Denmark, Federal Republic of Germany, Finland, France, Ireland, Italy, Japan, New Zealand, Norway, Spain, Sweden, Switzerland, and The United Kingdom. The Chiron[R] RIBA™ HCV Test System Second Generation Assay is a nitrocellulose based supplemental test for the HCV antibody ELISA which qualitatively detects antibodies to HCV encoded antigens in human serum or plasma. The application was received and filed in the Center for Biologics Evaluation and Research on November 9, 1990, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by December 17, 1990, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (section 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated under 21 CFR 5.44.

Dated: November 21, 1990.

Thomas S. Bozzo,

Director, Office of Compliance, Center for Biologics Evaluation and Research.

[FR Doc. 90-28623 Filed 12-5-90; 8:45 am]

BILLING CODE 4160-01-M

Food and Drug Administration

[Docket No. 90P-0386]

Cottage Cheese Deviating From the Standard of Identity; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Friendship Dairies, Inc., to market test a product designated as "nonfat cottage cheese" that deviates from the U.S. standards of identity for cottage cheese (21 CFR 131.128) and lowfat cottage cheese (21 CFR 133.131). The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the product, identify mass production problems, and assess commercial feasibility.

DATES: This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than March 6, 1991.

FOR FURTHER INFORMATION CONTACT: Joanne Travers, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0106.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to Friendship Dairies, Inc., 4900 Maspeth Ave., Maspeth, NY 11378.

The permit covers limited interstate marketing tests of a product that deviates from the U.S. standards of identity for cottage cheese (21 CFR 133.128) and lowfat cottage cheese (21 CFR 133.131) in that the milkfat content of the test product is 0.1 percent compared to not less than 4 percent milkfat in cottage cheese and 0.5 to 2.0 percent in lowfat cottage cheese. The product meets all requirements of the standards with the exception of this deviation. The purpose of this variation is to offer the consumer a product that is nutritionally equivalent to cottage cheese and lowfat cottage cheese but contains less fat.

For the purpose of this permit, the name of the product is "nonfat cottage cheese." In accordance with FDA's current views, "fat free" food labeling is acceptable because the product contains 0.1 percent milkfat per serving. The information panel of the label must bear nutrition labeling in accordance with 21 CFR 101.9.

The permit provides for the temporary marketing of a total of 1,200,000 pounds (544,320 kilograms) of test product to be packaged in 16-ounce (453.6-gram) containers and distributed in California, Connecticut, Florida, Georgia, Illinois, Maryland, New Jersey, New York, Pennsylvania, Texas, and Washington, DC. The test product will be produced and packaged at Friendship Dairies, Inc., Friendship, NY 14739.

Each of the ingredients used in the food must be stated on the label as required by the applicable sections of 21 CFR part 101. This permit is effective for 15 months, beginning on the date the food is introduced into interstate commerce, but not later than March 6, 1991.

Dated: November 28, 1990.

Douglas L. Archer,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 90-28624 Filed 12-5-90; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 90P-0389]

Eggnog Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to the Roberts Dairy Co., to market test a product designated as "lite eggnog" that deviates from the U.S. standard of identity for eggnog (21 CFR 131.170). The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the product.

DATES: This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than March 6, 1991.

FOR FURTHER INFORMATION CONTACT: Shellee A. Davis, Center for Food Safety and Applied Nutrition (HFF-414), Food

and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0343.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to the Roberts Dairy Co., P.O. box 1435, Omaha, NE 68101.

The permit covers limited interstate marketing tests of a product that deviates from the U.S. standard of identity for eggnog in 21 CFR 131.170 in that: (1) The fat content of the product is reduced from 6 percent to 1 percent, and (2) sufficient vitamin A palmitate is added in a suitable carrier to ensure that a 4-fluid-ounce (118.5-milliliter) serving of the product contains 8 percent of the U.S. Recommended Daily Allowance for vitamin A. The product meets all requirements of the standard with the exception of these deviations. The purpose of the variation is to offer the consumer a product that is nutritionally equivalent to eggnog but contains fewer calories and less fat.

For the purpose of this permit, the name of the product is "lite eggnog." The principal display panel of the label must include the statements "reduced calories" and "reduced fat" following the name. In addition, the label must bear the comparative statements "⅓ less calories" and "75% less fat than regular eggnog".

The product complies with the reduced calories labeling requirements in 21 CFR 105.66(d). In accordance with FDA's current views, reduced fat food labeling is acceptable because there is at least a 50-percent reduction in the fat content of the product. The information panel of the label will bear nutrition labeling in accordance with 21 CFR 101.9.

This permit provides for the temporary marketing of 350,000 quarts (331,205 liters) of the test product. The product will be manufactured at Roberts Dairy Co., 2901 Cuming St., Omaha, NE 68101, and distributed in Colorado, Illinois, Iowa, Kansas, Missouri, Nebraska, and South Dakota.

Each of the ingredients used in the food must be declared on the label as required by the applicable sections of 21 CFR part 101. This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than March 6, 1991.

Dated: November 28, 1990.

Douglas L. Archer,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 90-28625 Filed 12-5-90; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 90F-0320]

Leonard S. Finegold; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Leonard S. Finegold has filed a petition proposing that the food additive regulations be amended to provide for the safe use of poly(phenyleneterephthalamide) resins as a repeated-use cooking bag material for popping corn in microwave or conventional ovens.

FOR FURTHER INFORMATION CONTACT: Marvin D. Mack, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (section 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that Leonard S. Finegold, P.O. box 23033, San Diego, CA 92123, has filed a petition (FAP OB4220) proposing that the food additive regulations be amended to provide for the safe use of poly(phenyleneterephthalamide) resins as a repeated-use cooking bag material for popping corn in microwave or conventional ovens.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: November 28, 1990.

Douglas L. Archer,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 90-28626 Filed 12-5-90; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88N-0201]

International Drug Scheduling; Convention on Psychotropic Substances; Propylhexedrine; Delta-9-THC; Certain Exempt Preparations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing interested persons with the opportunity to submit written comments and to request an informal public meeting concerning recommendations by the World Health Organization (WHO) to impose international manufacturing and distributing restrictions, pursuant to international treaties, on certain drug substances. The comments received in response to this notice and/or public meeting will be considered in preparing the U.S. position on these proposals for a meeting of the United Nations Commission on Narcotic Drugs (CND) in Vienna, Austria, in January 1991. This notice is issued pursuant to the Controlled Substances Act (CSA).

DATES: Written comments by December 21, 1990; written requests for a public meeting and the reasons for such a request by December 17, 1990.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, room 4-62, 5600 Fishers Lane, Rockville, MD 20857. Written requests for a public meeting and the reasons for such a request to Nicholas P. Reuter, Office of Health Affairs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Nicholas P. Reuter, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION:

I. Background

The United States is a party to the 1971 Convention on Psychotrophic Substances (the Convention). Section 201(d)(2)(B) of the CSA (21 U.S.C. 811(d)(2)(B)) provides that when the United States is notified under Article 2 of the Convention that CND proposes to decide whether to add a drug or other substance to one of the schedules of the Convention, transfer a drug or substance from one schedule to another, or delete it from the schedules, the Secretary of State must transmit notice of such information to the Secretary of Health and Human Services (HHS).

The Secretary of HHS must then publish a summary of such information in the **Federal Register** and provide opportunity for interested persons to submit comments. The Secretary of HHS shall then evaluate the proposal and furnish a recommendation to the Secretary of State which shall be binding on the representative of the United States in discussions and negotiations relating to the proposal.

As detailed below, the Secretary of State has received three notifications from the Secretary-General. These notifications reflect the recommendations from the 27th WHO Expert Committee for Drug Dependence (ECDD), which met in September 1990. ECDD recommended that one substance, *delta*-9-THC be transferred from Schedule I to Schedule II of the Convention. In addition, ECDD recommended that propylhexedrine, presently controlled in Schedule IV of the Convention, be removed from international control under the Convention. Finally, ECDD recommended the partial termination of exemption provisions for 55 preparations (pharmaceutical products) containing butalbital. A full discussion of these recommendations follows.

A. Propylhexedrine

In 1986, the United States filed a petition with the United Nations requesting that propylhexedrine be removed from Schedule IV of the Convention. The United States took this action because it strongly believed that insufficient evidence was available to demonstrate that propylhexedrine met the criteria for scheduling described in Article 2, paragraph 4 of the 1971 Convention. Of primary concern was the fact that the recommendation to add propylhexedrine to Schedule IV of the Convention in 1986, did not include evidence that the substance was currently abused or was likely to be abused in a manner so serious as to present a public health or social problem. WHO has reviewed the United States Government request and has recommended that propylhexedrine be removed from international control under the 1971 Convention.

B. Delta-9-THC

In 1987, the United States Government transmitted a petition to the Secretary-General requesting that the substance *delta*-9-THC be transferred from Schedule I to Schedule II of the Convention. At that time, tetrahydrocannabinols (all isomers) were listed under control in Schedule I of the Convention. The United States petition followed the approval, in 1986, of the drug product Marinol, which contained one isomeric form of *delta*-9-THC (specifically dronabinol, or synthetic (-)-*delta*-9-(trans)-THC) as the active ingredient.

In 1989, WHO recommended that dronabinol be transferred from Schedule I to Schedule II of the Convention. This recommendation was considered by the United Nations CND in 1990. The WHO recommendation did not receive the necessary votes (27) at the CND meeting; however, CND recommended that WHO re-evaluate dronabinol and present its findings to a subsequent CND. Accordingly, after reviewing the available data in 1989, and again in 1990, WHO has recommended that all *delta*-9-THC isomers, including dronabinol, be transferred from Schedule I to Schedule II of the Convention.

C. Partial Revocation of Preparation Exemptions

Under Article 3 of the Convention, a party may exempt preparations (pharmaceutical preparations) containing substances controlled in Schedule II through IV, from certain Convention requirements. The requirements that may be exempted pertain to licenses (Article 8), records (Article 11), import and export (Article 13), inspection (Article 15), reports (Article 16), and penal provisions (Article 22). In addition, Article 3, paragraph 4 sets forth the procedure for WHO actions (review and recommendations as appropriate) on these exemptions.

In 1990, WHO reviewed an updated list of 111 preparations which have been exempted by the United States from various control measures under the CSA. As a result of this review, WHO has recommended that portions of the exemptions pertaining to Article 12, paragraph 2 be terminated for 55 substances. All 55 of these preparations contain butalbital, which is controlled in Schedule III of the Convention. Article 12, paragraph 2 pertains to export declarations that, at present, are not required under domestic laws and regulations. If the WHO recommendations are endorsed by CND, domestic actions would be necessary to comply with the United States' obligations under the Convention.

Although this notification does not pertain to the modification in the control of substances under the Convention, FDA seeks comments and information on the partial termination of these product exemptions.

The full text of the notifications from the Secretary-General of the United Nations is provided below in section II of this notice. Section 201(d)(2)(B) of the CSA (21 U.S.C. 811(d)(2)(B)) requires the Secretary of HHS, after receiving a notification proposing scheduling to publish a notice in the **Federal Register**, to provide the opportunity for interested parties to submit information and comments on the proposed scheduling action.

II. United Nations Notifications

The formal United Nations notifications which identify the two drug substances and explain the basis for the recommendations are reproduced below.

A. Notification on Propylhexedrine

Reference: NAR/CL.20/1990, DND 411/1(2) WHO/ECDD 27

The Secretary-General of the United Nations presents his compliments to the Secretary of State of the United States of America and has the honour to refer to his note NAR/CL.10/1986 of 17 November 1986 by which he informed the Government of a notification received from the Government of the United States pursuant to article 2, paragraph 1, of the Convention on Psychotropic Substances, to the effect that *N*, alpha-dimethyl-cyclohexaneethylamine (hereinafter referred to as propylhexedrine), which is presently in Schedule IV of the Convention, should be deleted from that schedule without transferring it to any other schedule annexed to the Convention.

The Secretary-General also transmitted a copy of that notification to the World Health Organization, in accordance with the provisions of article 2, paragraph 2, of the Convention, for consideration by the Twenty-fifth WHO Expert Committee on Drug Dependence (25th ECDD) in April 1988.

The 25th ECDD examined the notification in question and, based on data available at that time, recommended that no change be made in the current scheduling of propylhexedrine but that the substance should be reviewed again in two years time

The 27th ECDD which met in September 1990 examined this question again and, based on new data, recommended to the Director-General of WHO that propylhexedrine be removed from international control under the 1971 Convention.

In accordance with the provisions of article 2, paragraphs 1 and 6, of that Convention, the World Health

Organization has accordingly notified the Secretary-General on 22 October 1990 that it is the opinion that propylhexedrine be removed from international control under the Convention on Psychotropic Substances.

The Secretary-General hereby transmits the text of that notification, together with the relevant information in support of that recommendation, as an annex to the present note, pursuant to article 2, paragraph 2, of the Convention.

In accordance with the provisions of article 2, paragraph 2, of the Convention on Psychotropic Substance, the notification from the World Health Organization will be brought to the attention of the Commission on Narcotic Drugs at its thirty-fourth session in January-February 1991. Any action or decision taken by the Commission with respect to this notification, pursuant to article 2, paragraphs 5 and 6, of the Convention, will be notified to States Parties in due course. Article 2, paragraphs 5 and 6, read as follows:

5. The Commission, taking into account the communication from the World Health Organization, whose assessment shall be determinative as to medical and scientific matters, and bearing in mind the economic, social, legal, administrative and other factors it may consider relevant, may add the substance to Schedule I, II, III or IV. The Commission may seek further information from the World Health Organization or from other appropriate sources.

6. If a notification under paragraph 1, relates to a substance already listed in one of the Schedules, the World Health Organization shall communicate to the Commission its new findings, any new assessment of the substance it may make in accordance with paragraph 4 and any new recommendations on control measures it may find appropriate in the light of that assessment. The Commission, taking into account the communication from the World Health Organization as under paragraph 5 and bearing in mind the factors referred to in that paragraph, may decide to transfer the substance from one Schedule to another or to delete it from the Schedules.

In order to assist the Commission in reaching a decision, it would be appreciated if any economic, social, legal, administrative or other factors the Government may consider relevant to the question of the possible descheduling of propylhexedrine could be communicated to the Secretary-General, c/o Division of Narcotic Drugs, P.O. Box 500, A-1400 Vienna, Austria, by 30 November 1990.

8 November 1990

Reference: NAR/CL.20/1990 Annex

Annex

Note addressed to the Secretary-General by the Director-General of the World Health Organization on 22 October 1990

The Director-General of the World Health Organization presents his compliments to the Secretary-General of the United Nations and has the honour to transmit, in accordance with Article 2, paragraphs 1 and 6, of the Convention on Psychotropic Substances, 1971, assessments and recommendations of the World Health Organization, as set forth in the annex hereto, concerning proposed international control in respect of propylhexedrine.

Summary of the Recommendations Arising out of the 27th Expert Committee on Drug Dependence

Propylhexedrine

1. *Substance identification.* Propylhexedrine (INN, CA3 101-40-6) is chemically *N*, alpha-dimethyl-cyclohexaneethylamine. It has one chiral carbon atom in the molecule, so that two stereoisomeric forms and one racemate are possible.

2. *Similarity to already known compounds and effects on the central nervous system.* Animal pharmacological studies indicated that propylhexedrine has some stimulant actions, for example on locomotor activity and pressor effects, in common with amfetamine.

In humans, propylhexedrine produced pressor and stimulant effects similar to those of (+)-amfetamine but was significantly less potent. Administered by inhalation, propylhexedrine had local vasoconstrictor activity similar to that of ephedrine, but the duration of the activity was longer. Mucosal rebound congestion and chronic rhinitis may occur following excessive use of propylhexedrine in nasal inhalers. Amfetamine-like intoxication symptoms have been observed after oral or intravenous abuse.

3. *Dependence potential.* Studies in rats infused with propylhexedrine indicated that it acts as a typical stimulant of the central nervous system to which some tolerance develops. In drug-discrimination studies, propylhexedrine produced complete generalization to amfetamine in monkeys but only partial generalization in pigeons. It was self-administered by monkeys trained to self-administer cocaine, but at much lower response rates.

There have been no controlled laboratory studies of the dependence potential of propylhexedrine in human subjects.

4. *Actual abuse and/or evidence for likelihood of abuse.* Oral and intravenous abuse of propylhexedrine has been documented over a period of about 30 years, usually in the form of single case reports. Some of these reports mention severe adverse reactions after intravenous use, including myocardial infarction, "shock lung" syndrome and death. Since 1988 when WHO last reviewed propylhexedrine, more information has become available on the incidence of abuse. People who abuse a variety of drugs on a chronic basis do not find the subjective effects of propylhexedrine very appealing and rarely bother to use it despite its easy availability. The Drug Abuse Warning Network of the United States of America reported two emergency room and one medical examiner mentions of propylhexedrine from 1988 to 1989. Earlier data from the Drug Abuse Warning Network were also considered. This network has not detected a significant amount of propylhexedrine abuse over the past seven years. The threshold for inclusion in the list of "most frequently mentioned drugs" (which recently contained 256 drugs) is ten reported episodes of abuse in any one year. Propylhexedrine did not exceed this threshold in 1983, 1984, 1986, 1987, 1988 or 1989. Since 1982, there have been only 50 mentions of propylhexedrine abuse out of a total of a million reported episodes of drug abuse. These mentions were considered in relation to production within the USA and Canada of about 2,500,000 inhalers (approximately equivalent to 100 kg) annually, all of which were readily available on an over-the-counter basis. Since 1988, illicit traffic has been reported in only two countries. In the Federal Republic of Germany, only one prescription forgery was reported. In the USA, 4 cases involving propylhexedrine were reported. Three cases primarily involving seizures of small amounts (a total of 8.8 grams) of propylhexedrine from facilities described as "clandestine laboratories", and 2 nasal inhalers.

Based on these recent trends and the length of time that propylhexedrine has been available, it has been concluded that propylhexedrine is not likely to be abused so as to constitute significant public health and social problems. However, it is considered desirable not to make propylhexedrine available over-the-counter in forms other than an inhaler.

5. *Therapeutic usefulness.* Propylhexedrine is used in an inhalant form for nasal decongestion. An oral formulation of the hydrochloride has been used as an anorectic agent in the

treatment of obesity. A number of alternative drugs are available for both these indications. The therapeutic usefulness of propylhexedrine is rated as little to moderate.

6. *Recommendation.* Based on new data documenting that the incidence of abuse and trafficking was still low thus confirming the absence of any significant public health problems, it is recommended that propylhexedrine be removed from international control under the Convention on Psychotropic Substances, 1971.

B. Notification on Delta-9-THC

Reference: NAR/CL.21/1990 DND 411/1(2) WHO/ECDD 27

The Secretary-General of the United Nations presents his compliments to the Secretary of State of the United States of America and has the honour to refer to his note NAR/CL.3/1988 of 28 January 1988 by which he informed the Government of a notification received from the Government of the United States pursuant to article 2, paragraph 1, of the Convention on Psychotropic Substances, to the effect that *delta*-9-tetrahydro-cannabinol, (hereinafter referred to as *delta*-9-THC), which is presently in Schedule I of the Convention, should be transferred from that schedule to Schedule II of the same Convention.

The Secretary-General also transmitted a copy of that notification to the World Health Organization, in accordance with the provisions of article 2, paragraph 2, of the Convention, for consideration by the Twenty-sixth WHO Expert Committee on Drug Dependence (26th ECDD) in April 1989.

The 26th ECDD examined the notification in question and, based on data available at that time, recommended to the Director of WHO that only dronabinol, one of the stereochemical variants of *delta*-9-THC, should be transferred from Schedule I to Schedule II of the Convention on Psychotropic Substances.

The Commission on Narcotic Drugs, at its eleventh special session in 1990, considered the proposal and decided not to transfer dronabinol from Schedule I to Schedule II of that Convention.

The 27th ECDD which met in September 1990, examined this question again and recommended that *delta*-9-THC and its stereochemical variants should be rescheduled from Schedule I to Schedule II of that Convention.

In accordance with the provisions of article 2, paragraphs 1 and 6, of the Convention, the World Health Organization notified the Secretary-General on 22 October 1990 of its assessment and recommendation concerning the rescheduling of *delta*-9-THC and its stereochemical variants. In this regard, it recommended that *delta*-9-THC and its stereochemical variants should be transferred from Schedule I to Schedule II of the Convention.

The Secretary-General hereby transmits the text of that notification, together with the relevant information in support of that recommendation, as an annex to the present note, pursuant to article 2, paragraph 2, of the Convention.

In accordance with the provisions of article 2, paragraph 2, of the Convention on Psychotropic Substances, the notification from the World Health Organization will be brought to the attention of the Commission on Narcotic Drugs at its thirty-fourth session in January-February 1991. Any action or decision taken by the Commission with respect to this notification, pursuant to article 2, paragraphs 5 and 6, of the Convention, will be notified to States Parties in due course. Article 2, paragraphs 5 and 6, read as follows:

5. The Commission, taking into account the communication from the World Health Organization, whose assessment shall be determinative as to medical and scientific matters, and bearing in mind the economic, social, legal, administrative and other factors it may consider relevant, may add the substance to Schedule I, II, III or IV. The Commission may seek further information from the World Health Organization or from other appropriate sources.

6. If a notification under paragraph 1 relates to a substance already listed in one of the Schedules, the World Health Organization shall communicate to the Commission its new findings, any new assessment of the substance it may make in accordance with paragraph 4 and any new recommendations on control measures it may find appropriate in the light of that assessment. The Commission, taking into account the communication from the World Health Organization as under paragraph 5 and bearing in mind the factors referred to in that paragraph, may decide to transfer the substance from one Schedule to another or to delete it from the Schedules.

In order to assist the Commission in reaching a decision, it would be appreciated if any economic, social, legal, administrative or other factors the Government may consider relevant to the question of the possible rescheduling of *delta*-9-THC could be communicated to the Secretary-General, c/o Division of Narcotic Drugs, P.O. Box 500, A-1400 Vienna, Austria, by 30 November 1990.

8 November 1990

Reference: NAR/CL.21/1990 **Annex**

Note addressed to the Secretary-General by the Director-General of the World Health Organization on 23 October 1990

The Director General of the World Health Organization presents his compliments to the Secretary-General of the United Nations and has the honour to transmit, in accordance with Article 2, paragraphs 1 and 6, of the Convention on Psychotropic Substances, 1971, assessments and recommendations of the World Health Organization, as set forth in the annex hereto, concerning proposed international control in respect of *delta*-9-tetrahyro-cannabinol and its stereochemical variants.

Summary of the recommendations arising out of the 27th Expert Committee on Drug Dependence

Delta-9-tetrahydrocannabinol and its stereochemical variants

1. *Introduction.* Dronabinol [INN, CA3 1972-08-3, for (-)-*trans-delta*-9-tetrahydorcannabinol], the active principle of cannabis, is included in Schedule I of the Convention on Psychotropic Substances, 1971. Dronabinol was reviewed by WHO in 1989 in response to a notification by the Government of the United States of America, requesting the transfer of all *delta*-9-tetrahydro-cannabinols (*delta*-9-THC) from Schedule I to Schedule II of the Convention. Based on data available at that time, it was recommended that only dronabinol be rescheduled from Schedule I to Schedule II.

The United Nations Commission on Narcotic Drugs did not endorse this recommendation. Some delegations pointed out that the value of dronabinol in therapy did not seem to counterbalance its high potential for abuse, which would constitute a serious disadvantage if dronabinol would be moved to Schedule II. It was suggested, however, that WHO should continue collecting data on the therapeutic usefulness for another review.

WHO reviewed additional data compiled on therapeutic usefulness, and reconsidered its abuse potential and possible implications of rescheduling, bearing in mind the various concerns expressed by the Commission on Narcotic Drugs.

2. *Assessment of therapeutic usefulness.* Dronabinol is an effective antiemetic in the management of cancer chemotherapy-induced nausea and vomiting, with efficacy similar to that of oral phenothiazines. There is evidence

that when used in combination with phenothiazines efficacy is enhanced and side-effects are reduced. There are limited data comparing dronabinol with the most effective antiemetic regimens used today to manage chemotherapy-induced nausea and vomiting. There are some data which indicate that dronabinol is less effective than intravenous metoclopramide when used in the treatment of nausea and vomiting caused by highly emetogenic cancer chemotherapy drugs. There are no adequate comparative data on dexamethasone or $5HT_3$-receptor blockers. It should be noted, however that the $5\text{-}HT_3$ blockers are not as yet generally available.

Dronabinol causes various adverse reactions due to its effects on the central nervous system. Although the frequent occurrence of these side-effects lessens its value as a therapeutic agent, dronabinol currently has a real but limited place in the management of chemotherapy-induced nausea and vomiting and may be useful in patients refractory to other antiemetics.

It is concluded that dronabinol has therapeutic usefulness definitely greater than that of other substances in Schedule I, which have "very limited, if any" therapeutic usefulness, and comparable to a number of drugs in Schedule II.

However, the therapeutic usefulness of dronabinol, which is based on the balance between its therapeutic benefits and adverse consquences, may vary from country to country depending on a number of factors such as the prevalence of cancer and the extent of use of cancer chemotherapy as well as the supply of pharmaceutical products in general.

3. *Assessment of abuse liability and public health and social consequences of abuse of dronabinol.* The pharmacology of dronabinol is regarded to be identical to that of cannabis since the psychoactive pharmacological effects of cannabis are attributable to the effects of this substance. However, the likelihood of actual abuse and adverse public health and social consequences of dronabinol and/or synthetic THC is assessed to be substantially lower than that of cannabis, based on an examination of other determinants of the abuse liability which involve social factors such as popularity, availability, and price.

Reports on actual abuse of dronabinol and its public healty and social consequences are nil. Introduction of pure *delta*-9-tetrahydrocannabinols into the illicit market place through illicit production is not economically viable either by synthesis or extraction from plant material. As a matter of fact, no single case of clandestine manufacturing of dronabinol has been reported in the United States of America and only one minor report worldwide. Also, diversion of dronabinol preparations are extremely rare; only one case of diversion and some cases of theft have been reported in the United States of America since the drug was marketed in 1986.

Thus, it was concluded that the extent of the risk that might be caused by abuse of licit and illicit synthetic THC will not be especially serious particularly in the light of the massive volume and relatively low cost of cannabis in the illicit market place.

4. *Assessment of the possibility of dronabinol's transfer to Schedule II leading to an increase in its abuse.* Substances in Schedule II of the Convention on Psychotropic Substances, 1971 are subject to strict control measures similar to those applicable to narcotic drugs in Schedule I of the Single Convention on Narcotic Drugs, such as morphine. Although it is likely that the licit supply and use of dronabinol will increase, it is reasonable to predict that its abuse or diversion into illicit traffic will remain insignificant based on the experience in the countries where it is already marketed. This may also be inferred from the absence of evidence of significant abuse of nabilone, a synthetic homologue of dronabinol with a similar pharmacological profile which is not controlled at the international level, in spite in its marketing in several countries since 1983.

With regard to the possibility of increasing the abuse of illicit dronabinol or clandenstinely manufacturing *delta*-9-THC, it is unlikely that the change in the scheduling status of dronabinol will favour the economic viability of its clandestine manufacturing in view of the massive availability of cannabis, a strong competitior of natural origin, at relatively low cost.

5. *Assessment of the possibility of dronabinol's transfer to Schedule II leading to an increase in the abuse of cannabis.* Since cannabis is controlled under the Single Convention on Narcotic Drugs, there will be no change in the control status of cannabis. Nevertheless, there might be a concern about the possibility that the official recognition of therapeutic usefulness of dronabinol might encourage the "medicinal" use of cannabis and thus its abuse. However, cannabis is already the most widely abused illicit drug in the world, with an annual seizure figure of 30,000 to 40,000 tons. It is unlikely that such recognition will make a significant difference to the current level of massive cannabis abuse.

6. *Scope of recommendation.* Although the data on the theraputic usefulness and dependence liability relate only to one stereochemical variant of *delta*-9-tetrahydrocannabinol (dronabinol), it was noted that making a distinction between the one single isomer and the others contained in this group may create legal and forensic analytical problems in some countries. For this reason, it is recommended that *delta*-9-THC and its stereochemical variants be rescheduled together.

7. *Recommendation.* It is recommended that *delta*-9-tetrahydrocannabinol and its stereochemical variants be rescheduled from Schedule I to Schedule II of the Convention on Psychotropic Substances, 1971.

C. Notification on Exempted Preparations

Reference:
NAR/CL.19/1990
DND 411/1(2) WHO/ECDD 27
DND 421/12 (2) USA

The Secretary-General of the United Nations presents his compliments to the Secretary of State of the United States of America and has the honour to refer to his note NAR/CL.19/1989 of 30 November 1989 concerning the exemption by the Government of the United States of America of 111 preparations containing psychotropic substances from certain control measures under the provisions of the Convention on Psychotropic Substances.

Article 3 of that Convention provides that, if certain conditions are met, a Party may decide to exempt various preparations containing psychotropic substances from certain measures of control provided for in the Convention except for specific obligatory requirements. Article 3, paragraph 4, of the Convention stipulates in part that

> If a Party or the World Health Organization has information regarding a preparation exempted pursuant to paragraph 3 which in its opinion may require the termination, in whole or in part, of the exemption, it shall notify the Secretary-General and furnish him with the information in support of the notification. The Secretary-General shall transmit such notification, and any information which he considers relevant, to the Parties, to the Commission and, when the notification is made by a Party, to the World Health Organization.

In accordance with the provisions of article 3, paragraph 4, of the Convention, the Director-General of the World Health Organization notified the

Secretary-General on 22 October 1990 that the World Health Organization recommends that the exemption of the 33 preparations containing butalbital be terminated, so that the requirements of article 12, paragraph 2, of the 1971 Convention should apply to those preparations.

The Secretary-General accordingly hereby transmits that notification, together with the relevant information in support of that recommendation, as annex I to the present note.

The exact composition of the preparations in question, as communicated by the Government of the United States of America in its notification of 12 June 1989, is given in annex II.

In accordance with the provisions of article 3, paragraph 4, of the Convention on Psychotropic Substances, the notification from the World Health Organization will be brought to the attention of the Commission on Narcotic Drugs for consideration at its thirty-fourth session in January-February 1991. Article 3, paragraph 4, further stipulates that

> The Commission, taking into account the communication from the World Health Organization, whose assessment shall be determinative as to medical and scientific matters, and bearing in mind the economic, social, legal, administrative and other factors it may consider relevant, may decide to terminate the exemption of the preparation from any or all control measures.

Any action or decision taken by the Commission with respect to this notification, pursuant to article 3, paragraph 4, of the Convention, will be notified to Governments in due course.

In order to assist the Commission in reaching a decision, it would be appreciated if any economic, social, legal, administrative or other factors the Government may consider relevant to the question of the termination of the exemption concerning the 55 preparations containing butalbital could be communicated to the Secretary-General, c/o Division of Narcotic Drugs, P.O. Box 500, A-1400 Vienna, Austria, by 30 November 1990.

8 November 1990

Annex I

Note addressed to the Secretary-General by the Director-General of the World Health Organization on 22 October 1990

The Director-General of the World Health Organization presents his compliments to the Secretary-General of the United Nations and, with reference to his note verbale (DND 421/12(2) USA) dated 18 December 1989, has the honour to transmit, in accordance with Article 3, paragraph 4 of the Convention on Psychotropic Substances, 1971, an assessment and recommendation of the World Health Organization, as set forth in the annex hereto, concerning the preparations exempted from certain control measures by the Government of the United States of America.

Summary of the recommendations arising out of the 27th Expert Committee on Drug Dependence

Exempted Preparations by the United States of America

1. *Outline of exempted preparations.* A total of 111 preparations, 55 containing butalbital and 56 containing either chlordiazepoxide, phenobarbital, secbutabarbital or their salts, have been exempted from various control measures by the Government of the United States of America. Butalbital is in Schedule III of the Convention on Psychotropic Substances, 1971, and the other cited substances are in Schedule IV of the same Convention. Those preparations containing barbiturates are compounded with such drugs as antipyretic analgesics, anticholinergics, ephedrine and xanthines in varying quantities. Those of chlordiazepoxide or its salt are compounded either with sodium estrone sulfate or clidinium bromide. The rationale applied by the exempting authorities of the United States of America is based on the concept of combining with the controlled substance an amount of counteractive drug sufficient to cause early subjective deterrent effects.

2. *Assessment and Recommendation.* There is some concern about the possibility that some of the 111 preparations, or some substances extracted from them, will be abused so as to constitute significant public health and social problems if exported to another country. Although they are reported to have caused no significant abuse problems in the exempting country, their possible exportation requires a more careful review in the future in order to determine whether termination of the exemption of some of these preparations will be needed.

It is also noted that the Guidelines for the Exemption of Preparations from Certain Control Measures under the Provisions of Article 3 of the 1971 Convention on Psychotropic Substances, adopted by the Commission on Narcotic Drugs in 1984,[1] state that there should be no exemption from the requirements of article 12, export declarations, and of article 10, paragraph 2, prohibition of advertisement to the general public (unless such exemption would be in keeping with national statutory requirements). In this regard, the exemption with respect to the 55 preparations containing butalbital from the requirement of article 12 is inconsistent with the 1984 Guidelines, although it would appear that the requirement of article 10, paragraph 2 is met anyway by the national requirements applicable to products sold only on prescription.

As a result of the above, it is recommended that the exemption of the 55 preparations containing butalbital from the requirement of article 12, paragraph 2, be terminated.

It would also be desirable if appropriate measures were taken by the Government of the United States of America to ensure that none of the 111 preparations would be exported without appropriate notice to the authorities of the importing country until such time that WHO can conduct a systematic review of the exemptions. This would be consonant with resolution 1987/30 "Improvement of the control of international trade in psychotropic substances listed in Schedules III and IV of the 1971 Convention", adopted by the Economic and Social Council of the United Nations in 1987.

[1] Resolution 1 (S-VIII) of the United Nations Commission on Narcotic Drugs, United Nations document E/CN.7/1984/13.

ANNEX II

ANNEXE II

ANEXO II

[Schedule III]

[Tableau III]

[Lista III]

Substance, substance, substancia	Name of preparation, nom de la preparation, nombre del preparado	Composition of exempted preparation, composition de la preparation exemptee, composicion del preparado exento
Butalbital	Acetaminophen 325 mg, Butalbital 50 mg	(per tablet) Acetaminophen: 325.0 mg. Butalbital: 50.0 mg.
Butalbital	Acetaminophen 500 mg, Butalbital 50 mg	(per tablet) Acetaminophen: 500.0 mg. Butalbital: 50.0 mg.
Butalbital	Amaphen, reformulated	(per capsule) Acetaminophen: 325.0 mg. Butalbital: 50.0 mg. Caffeine: 40.0 mg.
Butalbital	Anolor 300	(per capsule) Acetaminophen: 325.0 mg. Butalbital: 50.0 mg. Caffeine: 40.0 mg.
Butalbital	Anoquan, modified formula	(per capsule) Acetaminophen: 325.0 mg. Butalbital: 50.0 mg. Caffeine: 40.0 mg.
Butalbital	Axotal	(per tablet) Acetaminophen: 650.0 mg. Butalbital: 50.0 mg.
Butalbital	B-A-C	(per tablet) Aspirin: 650.0 mg. Butalbital: 50.0 mg. Caffeine: 40.0 mg.
Butalbital	Bancap	(per capsule) Acetaminophen: 325.0 mg. Butalbital: 50.0 mg.
Butalbital	Blue Cross Butalbital APAP and Caffeine	(per tablet) Acetaminophen: 325.0 mg. Butalbital: 50.0 mg. Caffeine: 40.0 mg.
Butalbital	Bucet	(per tablet) Acetaminophen: 325.0 mg. Butalbital: 50.0 mg. Caffeine: 40.0 mg.
Butalbital	Bucet	(per capsule) Acetaminophen: 650.0 mg. Butalbital: 50.0 mg.
Butalbital	Butace	(per capsule) Acetaminophen: 325.0 mg. Butalbital: 50.0 mg. Caffeine: 40.0 mg.
Butalbital	Butacet	(per capsule) Acetaminophen: 325.0 mg. Butalbital: 50.0 mg. Caffeine: 40.0 mg.
Butalbital	Butalbital and Acetaminophen	(per tablet) Acetaminophen: 325.0 mg. Butalbital: 50.0 mg.
Butalbital	Butalbital and Acetaminophen Tablets 50/325	(per tablet) Acetaminophen: 325.0 mg. Butalbital: 50.0 mg.
Butalbital	Butalbital and Acetaminophen Tablets 50/650	(per tablet) Acetaminophen: 650.0 mg. Butalbital: 50.0 mg.
Butalbital	Butalbital with Acetaminophen, Caffeine	(per tablet) Acetaminophen: 325.0 mg. Butalbital: 50.0 mg. Caffeine: 40.0 mg.
Butalbital	Butalbital, Acetaminophen or Caffeine	(per tablet) Acetaminophen: 325.0 mg. Butalbital: 50.0 mg. Caffeine: 40.0 mg.

ANNEX II—Continued

[Schedule III]

[Tableau III]

[Lista III]

Substance, substance, substancia	Name of preparation, nom de la preparation, nombre del preparado	Composition of exempted preparation, composition de la preparation exemptee, composicion del preparado exento
Butalbital	Butalbital, APAP and Caffeine	(per tablet) Acetaminophen: 325.0 mg. Butalbital: 50.0 mg. Caffeine: 40.0 mg.
Butalbital	Butalbital, Acetaminophen Caffeine	(per capsule) Acetaminophen: 325.0 mg. Butalbital: 50.0 mg. Caffeine: 40.0 mg.
Butalbital	Butalbital, Acetaminophen and Caffeine	(per tablet) Acetaminophen: 325.0 mg. Butalbital: 50.0 mg. Caffeine: 40.0 mg.
Butalbital	Butalbital Acetaminophen and Caffeine II	(per tablet) Acetaminophen: 500.0 mg. Butalbital: 50.0 mg. Caffeine: 40.0 mg.
Butalbital	Butalbital Compound	(per capsule) Acetaminophen: 325.0 mg. Butalbital: 50.0 mg. Caffeine: 40.0 mg.
Butalbital	Con-Ten	(per capsule) Acetaminophen: 650.0 mg. Butalbital: 50.0 mg.
Butalbital	Dolmar	(per capsule) Acetaminophen: 325.0 mg. Butalbital: 50.0 mg. Caffeine: 40.0 mg.
Butalbital	Endolar	(per capsule) Acetaminophen: 325.0 mg. Butalbital: 50.0 mg. Caffeine: 40.0 mg.
Butalbital	Esgic	(per capsule) Acetaminophen: 325.0 mg. Butalbital: 50.0 mg. Caffeine: 40.0 mg.
Butalbital	Esgic	(per tablet) Acetaminophen: 325.0 mg. Butalbital: 50.0 mg. Caffeine: 40.0 mg.
Butalbital	Esgic Forte	(per tablet) Acetaminophen: 500.0 mg. Butalbital: 50.0 mg. Caffeine: 40.0 mg.
Butalbital	Ezol	(per capsule) Acetaminophen: 325.0 mg. Butalbital: 50.0 mg. Caffeine: 40.0 mg.
Butalbital	Fabophen	(per tablet) Acetaminophen: 325.0 mg. Butalbital: 50.0 mg. Caffeine: 40.0 mg.
Butalbital	Febridyne Plain	(per capsule) Acetaminophen: 325.0 mg. Butalbital: 50.0 mg. Caffeine: 40.0 mg.
Butalbital	Femcet	(per capsule) Acetaminophen: 325.0 mg. Butalbital: 50.0 mg. Caffeine: 40.0 mg.
Butalbital	Fioricet	(per capsule) Acetaminophen: 325.0 mg. Butalbital: 50.0 mg. Caffeine: 40.0 mg.
Butalbital	G-1 Capsule	(per capsule) Acetaminophen: 325.0 mg. Butalbital: 50.0 mg. Caffeine: 40.0 mg.
Butalbital	IDE-Cet	(per tablet) Acetaminophen: 325.0 mg. Butalbital: 50.0 mg. Caffeine: 40.0 mg.

ANNEX II—Continued

[Schedule III]

[Tableau III]

[Lista III]

Substance, substance, substancia	Name of preparation, nom de la preparation, nombre del preparado	Composition of exempted preparation, composition de la preparation exemptee, composicion del preparado exento
Butalbital	Isocet	(per tablet) Acetaminophen: 325.0 mg. Butalbital: 50.0 mg. Caffeine: 40.0 mg.
Butalbital	Isopap	(per capsule) Acetaminophen: 325.0 mg. Butalbital: 50.0 mg. Caffeine: 40.0 mg.
Butalbital	Margesic	(per capsule) Acetaminophen: 325.0 mg. Butalbital: 50.0 mg. Caffeine: 40.0 mg.
Butalbital	Medigesic	(per tablet) Acetaminophen: 325.0 mg. Butalbital: 50.0 mg. Caffeine: 40.0 mg.
Butalbital	Pacaps	(per capsule) Acetaminophen: 325.0 mg. Butalbital: 50.0 mg. Caffeine: 40.0 mg.
Butalbital	Pacaps. modified formula	(per capsule) Acetaminophen: 325.0 mg. Butalbital: 50.0 mg. Caffeine: 40.0 mg.
Butalbital	Phrenilin	(per tablet) Acetaminophen: 325.0 mg. Butalbital: 50.0 mg.
Butalbital	Phrenilin Forte	(per capsule) Acetaminophen: 325.0 mg. Butalbital: 50.0 mg.
Butalbital	Repan	(per capsule) Acetaminophen: 325.0 mg. Butalbital: 50.0 mg. Caffeine: 40.0 mg.
Butalbital	Repan	(per capsule) Acetaminophen: 325.0 mg. Butalbital: 50.0 mg. Caffeine: 40.0 mg.
Butalbital	Rogesic	(per capsule) Acetaminophen: 325.0 mg. Butalbital: 50.0 mg. Caffeine: 40.0 mg.
Butalbital	Sangesic	(per tablet) Acetaminophen: 200.0 mg. Butalbital: 30.0 mg. Salicylamide: 200.0 mg.
Butalbital	Sedapap-10	(per tablet) Acetaminophen: 650.0 mg. Butalbital: 50.0 mg.
Butalbital	Tencet	(per capsule) Acetaminophen: 325.0 mg. Butalbital: 50.0 mg. Caffeine: 40.0 mg.
Butalbital	Tencet	(per tablet) Acetaminophen: 325.0 mg. Butalbital: 50.0 mg. Caffeine: 40.0 mg.
Butalbital	Triad	(per tablet) Acetaminophen: 325.0 mg. Butalbital: 50.0 mg. Caffeine: 40.0 mg.
Butalbital	Triad	(per capsule) Acetaminophen: 325.0 mg. Butalbital: 50.0 mg. Caffeine: 40.0 mg.
Butalbital	Triaprin	(per capsule) Acetaminophen: 325.0 mg. Butalbital: 50.0 mg.

ANNEX II—Continued

[Schedule III]

[Tableau III]

[Lista III]

Substance, substance, substancia	Name of preparation, nom de la preparation, nombre del preparado	Composition of exempted preparation, composition de la preparation exemptee, composicion del preparado exento
Butalbital	Two-Dyne Revised	(per tablet) Acetaminophen: 325.0 mg. Butalbital: 50.0 mg. Caffeine: 40.0 mg.

III. Discussion

Although WHO has made specific scheduling recommendations for each of the drug substances, CND is not obliged to follow the WHO recommendations. Options available to CND include: (1) Acceptance of the WHO recommendations; (2) acceptance of the recommendations to control but control the drug substance in a schedule other than that recommended; or (3) reject the recommendations entirely.

Propylhexerdrine and *delta*-9-THC, are controlled under the CSA in Schedules V and I, respectively. The proposed international drug scheduling actions, if adopted by CND, will result in no greater degree of control of these substances than are currently applied domestically.

FDA, on behalf of the Secretary of HHS, invites interested persons to submit comments on the United Nations notifications concerning these two drug substances and the notification on the exempted preparations. FDA, in cooperation with the National Institute on Drug Abuse, will consider the comments on behalf of HHS in evaluating the WHO scheduling recommendations. Then, pursuant to section 811(d)(2)(B) of the CSA, HHS will recommend to the Secretary of State what position the United States should take when voting on the recommendations at the CND meeting in January 1991.

IV. Submission of Comments and Opportunity for Public Meeting

Interested persons may, on or before December 21, 1990, submit to the Dockets Management Branch (addressed above) written comments regarding this notice. FDA does not presently plan to hold a public meeting. If any person believes that, in addition to its written comments, a public meeting would contribute to the development of the U.S. position on any of these two substances, a request for a public meeting and the reasons for such a request should be sent to Nicholas P. Reuter (address above) on or before December 17, 1990. The short time period for the submission of comments and requests for a public meeting is needed to assure that HHS may, in a timely fashion, carry out the required action and be responsive to the United Nations. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 30, 1990.

Ronald G. Chesemore,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 90-28622 Filed 12-5-90; 8:45 am]

BILLING CODE 4160-01-M

National Institutes of Health

Predictability and Stability of Biomedical Research; Meeting on Draft Financial Management Plan

Notice is hereby given that the National Institutes of Health (NIH) will hold a public forum to solicit views and comments on a draft financial management plan developed in response to concerns expressed by the Congress regarding the predictability and stability of NIH funding for biomedical research. The meeting will be held on November 17, 1990, from 9 a.m. to 4:30 p.m. in the Lipsett Amphitheater in the Warren Grant Magnuson Clinical Center (Building 10) at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

To facilitate discussions, a panel will receive testimony from public witnesses. Each witness will be limited to a maximum of ten minutes. Attendance and the number of presentations will be limited to the time and space available. Consequently, all individuals wishing to attend or to present a prepared statement at this public meeting should notify, in writing, Ms Jackie Brockman, Editorial Experts, Inc., 66 Canal Center Plaza, suite 200, Alexandria, Virginia 22314 (FAX No. 703-683-4915). Those planning to make a presentation should file a one-page summary of their remarks with Ms. Brockman by December 10, 1990; a copy of the full text of these remarks should be submitted for the record at the time of the meeting.

Additional information may be obtained by calling Ms. Jackie Brockman on (703) 683-0683.

Dated: November 27, 1990.

William F. Raub,

Acting Director, National Institutes of Health.

[FR Doc. 90-28590 Filed 12-5-90; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-90-3075; FR-2916-N-01]

Mortgagee Review Board Administrative Actions

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: In compliance with section 202(c)(5) of the National Housing Act, notice is hereby given of the cause and description of administrative actions taken by HUD's Mortgagee Review Board against HUD-approved mortgagees.

FOR FURTHER INFORMATION CONTACT: William Heyman, Director, Office of Lender Activities and Land Sales Registration, 451 Seventh Street, SW., room 9146, Washington, DC 20410, Telephone: (202) 708-1824. The

Telecommunications Device for the Deaf (TDD) number is (202) 708-4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Section 202(c)(5) of the National Housing Act (added by section 142 of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101-235, approved December 15, 1989)) requires that HUD "publish in the **Federal Register** a description of and the cause for administrative action against a (HUD-approved) mortgagee" by the Department's Mortgagee Review Board. In compliance with the requirements of section 202(c)(5) of the National Housing Act, notice is hereby given of final administrative actions taken by the Mortgagee Review Board from the date that section 142 of the HUD Reform Act of 1989 was signed into law (December 15, 1989) and the causes for such actions.

1. Philadelphia Freedom Corporation, Las Vegas, Nevada

Action: Proposed withdrawal of HUD mortgagee approval.

Cause: HUD monitoring review citing violations of HUD-FHA single family program loan origination requirements. The violations included: Failure to perform face-to-face interviews with mortgagors; failure to assure that mortgagors made the minimum required investment in the property; overinsured mortgage; failure to document implementation of a Quality Control Plan; improper styling of mortgagor escrow accounts; and improper compensation of staff appraisers.

2. Denver Mortgage Banking Corporation, Denver, Colorado

Action: Withdrawal of HUD mortgagee approval.

Cause: HUD monitoring review citing violations of HUD-FHA single family program loans origination requirements. The violations included: Submitting loans to HUD-FHA without disclosing that the loan applications were previously rejected by other HUD-approved mortgages; failure to disclose mortgagor liabilities and past credit performance; submitting inaccurate information concerning the number of mortgagors' dependents; and failure to implement and maintain a Quality Control Plan.

3. First Commercial Mortgage Company, Little Rock, Arkansas

Action: Settlement Agreement that provides for indemnification to HUD for future claim losses in connection with 26 improperly originated loans.

Cause: HUD monitoring review citing noncompliance with HUD-FHA single family program loan origination requirements. The violations included; False gift letters; failure to ensure that mortgagors made the minimum required investment in the property; omitting mortgagor liabilities; permitting verification documents to be hand-carried by interested third parties; and use of non-employees to assist in preparing HUD-FHA mortgage insurance applications.

4. Simmons First Mortgage Company, Little Rock, Arkansas

Action: Letter of Reprimand and a Settlement Agreement that provides for indemnification to HUD in the amount of $179,450 for claim losses and agreement to indemnify HUD for future claim losses in connection with 30 improperly originated loans.

Cause: HUD monitoring review citing noncompliance with HUD-FHA single family program loan origination requirements. The violations included; Failure to assure that mortgagors made the minimum required investment in the property; failure to obtain supporting documentation for approving loans; omitting mortgagor liabilities; permitting verification documents to be hand-carried by interested third parties; failure to perform face-to-face interviews with mortgagors; failure to determine mortgators' source of funds; and failure to implement a Quality Control Plan.

5. First Security Mortgage Company, Tulsa, Oklahoma

Action: Withdrawal of HUD mortgagee approval.

Cause: Unauthorized transfers of escrow funds of approximately $1.1 million from the Government National Mortgage Association (GNMA) principal and interest account for loans serviced by the company. Failure to pay securities holders under the GNMA Mortgage-Backed Securities Program.

6. Delson Financial Mortgage Bankers, Phoenix, Arizona

Action: Settlement Agreement that provides for indemnification to HUD in the amount of $317,917 for claim losses in connection with nine improperly originated loans.

Cause: HUD Office of Inspector General Audit citing noncompliance with HUD-FHA single family program loan origination requirements by the company's Arizona branch office. The violations included: Failure to verify mortgagor assets or income; failure to obtain proper appraisals; permitting mortgagors to sign blank loan documents; and overinsured mortgages.

7. Carl I. Brown and Company, Overland Park, Kansas

Action: Settlement Agreement that provides for indemnification to HUD in the amount of $181,858 for claim losses in connection with twelve improperly originated loans.

Cause: HUD monitoring review citing noncompliance with HUD-FHA single family program loan origination requirements by the company's Kansas City branch office. The violations included: Failure to assure that mortgagors made the minimum required investment in the properties; and submitting loans that were in default for HUD-FHA mortgage insurance.

8. Conner Mortgage Company, Arlington, Texas

Action: Withdrawal of HUD mortgagee approval and referral for possible action under the False Claims Act.

Cause: HUD monitoring review citing violations of HUD-FHA single family program loan origination requirements and failure to submit an annual audited financial statement. The loan origination violations included: Submission of false statements; failure to assure that mortgagors made the required minimum investment in the property; improper disbursements or failure to account for mortgage proceeds; and failure to maintain a Quality Control Plan.

9. United Austin Mortgage Company, Austin, Texas

Action: Probation and proposed Settlement Agreement that would provide for indemnification for claim losses in the amount of $1.1 million for 27 improperly originated mortgages.

Cause: Office of Inspector General audit citing violations of HUD-FHA single family program loan origination violations. The violations included: Failure to verify borrowers assets; overinsured mortgages; failure to assure that borrowers made the minimum required investment in the property; failure to assure that mortgagors' income was sufficient to support the mortgages; and failure to maintain an effective Quality Control Plan.

10. Innovative Mortgage, Inc., Houston, Texas

Action: Probation and Settlement Agreement that provides for future indemnification for two improperly originated loans, a buydown on two loans relating to violations of repair escrow agreements and a buydown of two loans relating to overcharging mortgagors for interim interest.

Cause: HUD monitoring review citing violations of HUD-FHA single family program loan origination requirements. The violations included: Misrepresenting the marital status of mortgagors; failure to adhere to requirements relating to repair escrows; and overcharging mortgagors for interim interest.

11. Flagship Mortgage Services, Inc., Bedford, Texas

Action: Withdrawal of HUD mortgagee approval.

Cause: HUD monitoring review citing violations of HUD-FHA single family program loan origination requirements. The violations included: Submission of false verifications of employment for mortgagors; failure to assure that mortgagors made the minimum required investment in the property; omitting borrowers liabilities; failure to properly maintain mortgagor escrow accounts; and failure to implement a Quality Control Plan.

12. Pacific Bancorp, Inc., Spokane, Washington

Action: Withdrawal of HUD mortgagee approval.

Cause: Failure to remit mortgage insurance premiums to HUD in connection with 62 loans for which the premiums were collected from mortgagors and used for unauthorized purposes; and failure to submit an acceptable audited financial statement.

13. First Union Mortgage Corporation, Raleigh, North Carolina

Action: Letter of Reprimand and Settlement Agreement that provides for indemnification to HUD for claim losses of $297,832 in connection with ten improperly originated loans and agreement to indemnify HUD for future claim losses on seven loans.

Cause: HUD Office of Inspector General audit of the company's Mesa, Arizona branch office that disclosed violations of HUD-FHA single family program loan origination violations. The violations included: Failure to perform face-to-face interviews with borrowers; failure to assure that mortgagors made the minimum required investment in the property; and submitting inaccurate information.

14. American Residential Mortgage Corporation, La Jolla, California

Action: Settlement Agreement that provides for indemnification to HUD in the amount of $496,194 for claim losses in connection with eight improperly originated mortgages and agreement not to submit future claims on 6 improperly originated loans. Also, an additional 126 loans are to be reviewed by HUD for non-compliance with HUD-FHA requirements and indemnification will be made to HUD for any loan that was knowingly originated by the company in violation of HUD-FHA requirements.

Cause: HUD Office of Inspector General audit of the company's Phoenix and Gilbert, Arizona branch offices citing violations of HUD-FHA single family program loan origination requirements. The violations included: Failure to assure that borrowers made the minimum required investment in the property; excessive mortgage buydowns; failure to properly determine the mortgagors' source of funds; overinsured mortgages; and improper double escrow loan transactions.

15. CityFed Mortgage Company, Bellevue, Washington

Action: Letter of Reprimand and proposed Settlement Agreement that provides for indemnification to HUD in the amount of $366,960 for claim losses in connection with 11 improperly originated loans and agreement not to submit future claims on two loans.

Cause: HUD Office of Inspector General audit of the company's Nashville, Tennessee branch office citing violations of HUD-FHA single family program loan origination requirements. The violations included: Failure to verify borrowers' cash assets; failure to assure that borrowers made the minimum required investment in the property; and failure to perform a face-to-face interview in one loan transaction.

16. Mortgage and Trust, Inc., Houston, Texas

Action: Probation and a proposed negotiated settlement that would provide for reimbursement to HUD for claim losses for improperly originated and serviced FHA mortgages.

Cause: HUD Office of Inspector General audit citing violations of HUD-FHA single family program loan origination requirements including: Failure to assure that borrowers had sufficient assets to close the loan transaction; failure to verify earnest money deposits; and failure to verify borrowers gift deposits; also a HUD monitoring review of the company's loan servicing practices cited; failure to take prompt collection action and meet HUD-FHA servicing requirements on delinquent loans; failure to properly administer the assignment program; and failure to initiate foreclosures in a timely manner.

17. City Mortgage Company, Anchorage, Alaska

Action: Proposed Settlement Agreement that provides for indemnification to HUD in the amount of $152,491 for claim losses in connection with two improperly originated mortgages and a buydown of an overinsured mortgage.

Cause: HUD monitoring review citing violations of HUD-FHA single family program loan origination requirements. The violations included: Submitting a loan in default for HUD-FHA mortgage insurance; overinsured mortgage; and closing loans on more than seven adjacent or contiguous rental units for the same mortgagor.

18. MidFirst Mortgage Company, Oklahoma City, Oklahoma

Action: Proposed Settlement Agreement.

Cause: HUD Office of Inspector General audit citing violations of HUD-FHA requirements by the company's San Antonio, Texas branch office. The violations included: Failure to assure that independent verifications of mortgagors' employment and deposit were obtained; failure to properly analyze mortgagors' rental income; failure to perform face-to-face interviews with mortgagors; and failure to obtain proper support for the source of mortgagors' downpayments.

19. Master Financial, Inc., Anaheim, California

Action: Letter of Reprimand and Settlement Agreement that provides for future indemnification to HUD for any claim loss in connection with an improperly originated loan.

Cause: HUD monitoring review citing violations of HUD-FHA single family program loan origination requirements. The violations included: Failure to timely remit mortgage insurance premiums in connection with nine loans; submission of a loan for mortgage insurance with an unacceptable subleasehold interest; and interest overcharges to mortgagors.

Dated: November 28, 1990.

Arthur J. Hill,

Acting Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 90-28592 Filed 12-5-90; 8:45 am]

BILLING CODE 4210-27-M

Office of Administration

[Docket No. N-90-3076]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Wendy Sherwin, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: November 29, 1990.

John T. Murphy,

Director, Information Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Mortgagee Review Board—FR 2801.

Office: Housing.

Description of the Need for the Information and its Proposed Use: 'Mortgagee Review Board FR-2801'—Section 202(c) of the HUD Reform Act of 1989 establishes within the Department a Mortgagee Review Board for the purpose of imposing administrative sanctions on HUD-approved mortgagees that violate the Department's requirements in the origination and servicing of HUD-FHA insured mortgages.

Form Number: None.

Respondents: Businesses or Other For-Profit and Small Businesses or Organizations.

Frequency of Submission: Annually.

Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Information Collections	35		1		92.5		3,238

Total Estimated Burden Hours: 3,238.

Status: New.

Contact: Andrew Zirneklis, HUD, (202) 708-1824, Scott Jacobs, OMB, (202) 395-6880.

Dated: November 29, 1990.

[FR Doc. 90-28591 Filed 12-5-90; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Information Collection Submitted to the Office of Management and Budget for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the bureau clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1084-0009), Washington, DC 20503, telephone (202) 395-7340.

Title: Nondiscrimination on the Basis of Handicap in Federal Assisted Programs of the Department of the Interior, 43 CFR part 17, subpart B.

OMB approval number: 1084-0021.

Abstract: Department of the Interior's regulation effectuating section 504 of the Rehabilitation Act of 1973, prohibits discrimination on the basis of handicap in federally assisted programs or activities. The regulation requires that recipients collect, maintain, and occasionally report certain types of civil rights compliance information regarding their operations to the Department. The regulation requires recipients to provide assurances or certification relative to their compliance status. Additionally, the regulation provides for the conduct of recipient self-evaluations on a nonrecurring basis; the adoption of grievance procedures; and notices to employees and beneficiaries regarding the requirements of the Act.

Bureau form number: None.

Frequency: On occasion.

Description of respondents: State and local government agencies receiving Federal financial assistance from the Department of the Interior.

Estimated completion time: 20 hours.

Annual responses: 278.

Annual burden hours: 5,560.

Bureau clearance officer: John Strylowski, 202-208-5345.

Dated: November 19, 1990.

Carmen R. Maymi,

Director, Office for Equal Opportunity.

[FR Doc. 90-28613 Filed 12-5-90; 8:45 am]

BILLING CODE 4310-RE-M

Performance Review Board Appointment

AGENCY: Office of the Secretary, Department of the Interior.

ACTION: Notice of appointment of a replacement individual for a performance review board.

SUMMARY: This notice provides the name of a replacement individual who has been appointed to serve as a member of one of the Department of the Interior's Performance Review Boards. The entire Assistant Secretary—Land and Minerals Management Performance Review Board is listed which includes the name of the replacement member. The publication of this appointment is required by section 405(a) of the Civil Service Reform Act of 1978 (Pub. L. 95-454, 5 U.S.C. 4314(c)(4).

DATES: This appointment is effective December 6, 1990.

FOR FURTHER INFORMATION CONTACT: Morris A. Simms, Director of Personnel, Office of the Secretary, Department of the Interior, 1800 C Street, NW., Washington, DC 20240, Telephone Number: 208-6761.

Department of the Interior Performance Review Board

As of October 30, 1990

Assistant Secretary—Land and Minerals Management

James Hughes (NC) (Chairperson)
Jennifer Salisbury (NC) (replacing Ed Cassidy)
Carson Culp (CA)
Robert Fagin (CA)
Thomas Gernhofer (CA)
Sustan Recce-Lamson (NC)
Dean Stepanek (CA)

Dated: October 31, 1990.

For the Executive Resources Board.

Charles E. Kay,

Principal Deputy Assistant Secretary—Policy, Management and Budget.

[FR Doc. 90-28618 Filed 12-5-90; 8:45 am]

BILLING CODE 4310-10-M

Bureau of Indian Affairs

Fort Hall Irrigation Project, Idaho

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed operation and maintenance rates.

SUMMARY: The purpose of this notice is to change the assessment rates for operating and maintaining the Fort Hall Irrigation Project. The assessment rates are based on a prepared estimate of the cost of normal operation and maintenance of the irrigation project. Normal operation and maintenance is defined as the average per acre cost of all activities involved in delivering irrigation water, including maintaining pumps and other facilities.

EFFECTIVE DATES: Interested parties may submit written comments no later than January 7, 1991.

FOR FURTHER INFORMATION CONTACT: Portland Area Director, Portland Area Office, Bureau of Indian Affairs, 911 NE. 11th Avenue, Portland, Oregon 97232-4169, telephone FTS 429-6750; commercial (503) 231-6750.

SUPPLEMENTARY INFORMATION: This notice of proposed operation and maintenance rates and related information is published under the authority delegated to the Assistant Secretary—Indian Affairs by the Secretary of the Interior in 230 DM 1 and delegated by the Assistant Secretary—Indian Affairs to the Area Director in BIAM 3.

This notice is given in accordance with § 171.1(e) of part 171, subchapter H, chapter I, of title 25 of the Code of Federal Regulations, which provide for the Area Director to fix and announce the rates for annual operation and maintenance assessments and related information of the Fort Hall Irrigation Project for Calendar year 1991 and subsequent years. This notice is proposed pursuant to the authority contained in the Acts of March 1, 1907 (34 Stat. 1024), and August 31, 1954 (68 Stat. 1026).

The purpose of this notice is to announce an increase in the Fort Hall Project assessment rates proportionate with actual operation and maintenance costs. The proposed assessment rates for 1991 will amount to an increase of 14% for the Fort Hall unit which has not had an increase for the past eight years and a 17.5% increase for the Michaud Unit due to an increase in power rates. The public is welcome to participate in the rule making process of the Department of the Interior. Accordingly, interested persons may submit written comments, views and arguments with respect to the proposed rates and related regulations to the Area Director, Portland Area Office, Bureau of Indian Affairs, 911 NE. 11th Avenue, Portland, Oregon 97232-4169, no later than 30 days after publication of this notice in the **Federal Register.**

Fort Hall Irrigation Project

Regulations and Charges Administration

The Fort Hall Irrigation Project, which consists of the Fort Hall Unit including the ceded area south of the Fort Hall Reservation, the Michaud Unit and the Minor Units on the Fort Hall Indian reservation, Idaho, is administered by the Bureau of Indian Affairs. The Superintendent of the Fort Hall Agency is the Officer-in-Charge and is fully authorized to carry out and enforce the regulations, either directly or through employee designated by him. The general regulations are contained in part 171, Operation and Maintenance, title 25—Indians, Code of Federal Regulations.

Irrigation Season

Water will be available for irrigation purposes from May 1 to September 30 of each year. These dates may be varied by 15 days depending on weather conditions and the necessity for doing maintenance work.

Methods of Irrigation

Where soil, topography, and other physical conditions are unfavorable for surface irrigation, and the project facilities are designed to deliver water to farm units for sprinkler irrigation, the Officer-In-Charge may limit deliveries to this type of irrigation.

Distribution and Apportionment of Water

(a) *Delivery:* Water for irrigation purposes will be delivered throughout the irrigation season by either the continuous flow or rotation method at the discretion of the Officer-in-Charge. If during a time when delivery is by the rotation method, a water user desires to loan his turn to another eligible water user, he shall notify either the watermaster or the ditch rider who may permit such exchange, if feasible.

(b) *Preparation and submission of water schedule:* If the decision of the Officer-in-Charge is to deliver water by the rotation method, the watermaster will assist the water users on each lateral in preparing a rotation schedule should they choose to get together and prepare the schedule. In cases where the water users fail to exercise this right before March 1, the watermaster will prepare the schedule which shall be final for the season. Owners of 120 acres or more in one farm unit may elect between the continuous flow and rotation method of delivery, provided such choice does not interfere with delivery to other lands served by the lateral.

(c) *Application for deliveries of irrigation water:* Request for water changes will be made at least 24 hours in advance. Not more than one change will be made per day. Changes will be made only during the ditch rider's regular tour. Pump shut-down, regardless of duration, without the required notice will result in the delivery being closed and locked. Water users

will change their sprinkler lines without shutting off more than one-half of their lines at one time. Sudden and unexpected changes in ditch flow results in operating difficulties and waste of water.

Duty of Water

Depending upon available supplies of water for each unit of the Project, the duty of water is based on the delivery to the farm unit of 3.5 acre-feet of water per acre per irrigation season. This duty of water may be varied at the discretion of the Officer-in-Charge depending on supplies available, but each irrigable acre shall be entitled to its pro-rate share of the total water supply.

Charges

Bills covering irrigation charges will be issued to the owner of record taken from the Bannock, Bingham or Power County records as of December 31, preceding the due date. In the case of Indian-owned land leased to a non-Indian, when an approved lease contract is on file with the superintendent of the Fort Hall Agency, operation and maintenance charges will be billed to the leasee of record.

Basic and Other Water Charges

(a) The annual basic water charges for the operation and maintenance of the Fort Hall Irrigation Project lands in non-Indian ownership, and assessable Indian-owned lands leased to a non-Indian or a non-member of the Shoshone-Bannock Tribes of the Fort Hall Indian Reservation, Idaho, are fixed for the Calendar Year 1991 and subsequent years until further notice as follows:

(1) Fort Hall Unit basic rate.....$19.40 per acre
(2) Michaud Unit basic rate.....$25.00 per acre
Additional rate for sprinkler when pressure is supplied by project...$12.00 per acre
(3) Minor Units basic rates.....$14.00 per acre

(b) The minimum bill issued for any tract will be $25.00.

Payments

The water charges become due on April 1 of each year and are payable on or before that date. To all assessments on lands in non-Indian ownership, and lands in Indian ownership which do not qualify for free water, remaining unpaid on or after July 1 following the due date shall be considered delinquent. No water shall be delivered to any of these lands until all irrigation charges have been paid.

Interest and Penalty Fees

Interest and penalty fees will be assessed, where required by law, on all delinquent operation and maintenance assessment charges as prescribed in the Code of Federal Regulations, title 4, part 102, Federal Claims Collection Standards; and 42 BIAM Supplement 3, part 3.8 Debt Collection Procedures.

Assessments on Indian Owned Land

When land owned by members of the Shoshone-Bannock Tribes of the Fort Hall Indian Reservation is first leased to non-Indians or non-members of the tribe, and an approved lease is on file at the Fort Hall Agency, the leased land is not subject to operation and maintenance assessments for three years. The three years the land is not subject to assessment need not run consecutively. When land has been leased for a total of three years, the land, when under lease to non-Indians or non-members of the tribe, is subject to operation and maintenance assessments the same as lands in non-Indian ownership and lands owned by non-members of the tribe within the project. (See Solicitor's Opinion M 28701, approved September 24, 1936, and the instructions of September 19, 1938, and instructions of December 1, 1938).

Wilford Bowker,

Acting Portland Area Director.

[FR Doc. 90-28635 Filed 12-5-90; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[G-910-G1-0407-4214-10; NMNM 55234]

Record of Decision (ROD); Waste Isolation Pilot Plant (WIPP); Correction

In **Federal Register** document 90-22097, Vol. 55, No. 182, on the issue of Wednesday, September 19, 1990, beginning on page 38586, the following corrections are made:

1. On page 38587, in part E. Public Involvement, the third sentence is corrected to read: "Comments on the Draft SEIS were received and were considered by the DOE in preparing their FSEIS, their ROD, and this ROD."

2. On the same page, same heading, the acronym "FSEIS" in the second to last sentence is corrected to read: "the DRAFT SEIS," and the "eight locations nationwide" is corrected to read "nine locations nationwide."

Dated: November 27, 1990.

Kathy Eaton,

Acting State Director.

[FR Doc. 90-28606 Filed 12-5-90; 8:45 am]

BILLING CODE 4310-FB-M

[AZ-050-1-4212-13; CAAZCA 19693]

California: Realty Action, Noncompetitive Sale of Public Lands in San Bernardino County

AGENCY: Bureau of Land Management, Interior.

ACTION: The following described land has been found suitable for direct sale under sections 203 and 209, Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713), to Mr. and Mrs. Charles W. Butler, at not less than fair market value. This sale will resolve a longstanding inadvertent trespass.

T. 9 N., R. 22 E., San Bernardino Meridian, Sec. 13, lot 7, containing .45 acre, more or less.

This land is not required for any Federal purpose. Disposal is consistent with the Bureau's planning for this area and would be in the public interest. The land will not be offered for sale until at least 60 days after publication of this notice in the **Federal Register.**

In the event of a sale, conveyance of the available mineral interests will occur simultaneously with the sale of the land. The mineral interest being offered have no known mineral value. Acceptance of a direct sale offer will constitute an application for conveyance of those mineral interests. The applicant will be required to pay a $50 nonreturnable filing fee for conveyance of the available mineral interests.

The patent, when issued, will contain the following reservation to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

Upon publication of this notice in the **Federal Register,** the land will be segregated from all forms of appropriation under the public land laws, including the general mining laws. This segregation will terminate upon issuance of a patent or 270 days from the date of this publication.

DATES: On or before January 22, 1991, 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: Jerry Page, Supervisory Natural Resource Specialist, Havasu Resource

Area, 3189 Sweetwater Avenue, Lake Havasu City, Arizona 86403.

Dated: November 28, 1990.

Bill Watters,

Acting District Manager.

[FR Doc. 90-28632 Filed 12-5-90; 8:45 am]

BILLING CODE 4310-32-M

[ID-942-01-4730-12]

Filing of Plats of Survey; Idaho

The plat of survey of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., November 30, 1990.

The plat representing the dependent resurvey of a portion of the Boise Meridian (east boundary, T. 15 N., R. 1 W.), and a portion of the subdivisional lines, and subdivision of certain sections, T. 15 N., R. 1 E., Boise Meridian, Idaho, Group No. 791, was accepted November 27, 1990.

This survey was executed to meet certain administrative needs of this Bureau.

All inquiries about this land should be sent to the Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: November 30, 1990.

Jerrold E. Knight,

Acting Chief Cadastral Surveyor for Idaho.

[FR Doc. 90-28637 Filed 12-5-90; 8:45 am]

BILLING CODE 4310-GG-M

[ID-943-01-4214-11; IDI-15266]

Proposed Continuation of Withdrawal, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Bureau of Reclamation, Department of the Interior, proposes that the withdrawal of 84.00 acres for the minidoka Reclamation Project in Power County be continued for an additional 16 years. The land is still being used for the purpose for which it was withdrawn. The land would remain closed to surface entry and mining, but has been and would remain open to mineral leasing.

DATES: Comments should be received by March 6, 1990.

FOR FURTHER INFORMATION CONTACT: Sally Carpenter, Idaho State Office, BLM, 3380 Americana Terrace, Boise, Idaho 83706, 208-334-1720.

The U.S. Bureau of Reclamation proposes that the existing land withdrawal made by Secretarial Order dated April 23, 1924, be continued for a period of 16 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:

Boise Meridian

T. 8 S., R. 30 E.,

Sec. 22, lot 4 and SE¼SW¼.

The area described contains 84.00 acres in Power County.

The withdrawal is essential for continued administrative jurisdiction for control, operation, and maintenance of the project. The withdrawal closed the land to surface entry and mining but not to mineral leasing. No change in the segregative effect or use of the land is proposed by this action.

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 Idaho State Director at the above address.

The authorized officer of the Bureau of Land Management will undertake such investigations as necessary to determine the existing and potential demand for the land and its resources. A report will also 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 of the withdrawal will be published in the **Federal Register.** The existing withdrawal will continue until such final determination is made.

Dated: November 26, 1990.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 90-28636 Filed 12-5-90; 8:45 am]

BILLING CODE 4310-GG-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Public Information Collection Requirements Submitted to OMB for Review

The Agency for International Development (A.I.D.) submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of the entry no later than ten days after publication. Comments may also be addressed to, and copies of the submissions obtained from the Reports Management Officer, Fred D. Allen, (703) 875-1573, MO/CPM, room 1109B, SA-14, Washington, DC 20523.

Date Submitted: November 30, 1990.

Submitting Agency: Agency for International Development.

OMB Number: 0412-0535.

Form Number: AID 1384-1.

Type of Submission: Renewal.

Title: IAP Usage Report.

Purpose: The IAP-66A Usage Report form is to establish a procedure to ensure accountability in the Use of the IAP-66A forms. The IAP-66A forms are applications submitted to the Immigration and Naturalization Service for entry visas or extension of visas of A.I.D. participants who are being trained in the U.S. Collection of this information from A.I.D. field missions and participating contractors is used to improve accuracy in the accountability of IAP-66A forms being issued, voided, or lost.

Annual Reporting Burden: Respondents: 300; annual responses: 1; average hours per response: 1.5; burden hours: 450.

Reviewer: Marshall Mills (202) 395-7340, Office of Management and Budget, Room 3201, New Executive Office Building, Washington, DC 20503.

Dated: November 29, 1990.

Elizabeth Baltimore,

Communications and Program Management Division.

[FR Doc. 90-28620 Filed 12-5-90; 8:45 am]

BILLING CODE 6116-01-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-293]

Commission Investigative Attorney

In the Matter of Certain Crystalline Cefadroxil Monohydrate.

Notice is hereby given that, as of this date, James M. Gould, Esq., of the Office of Unfair Import Investigations is designated as the Commission investigative attorney in the above-cited investigation instead of George C. Summerfield, Esq.

The Secretary is requested to publish this Notice in the **Federal Register.**

Dated: November 29, 1990.

Respectfully submitted,

Lynn I. Levine,

Director, Office of Unfair Import Investigations.

[FR Doc. 90-28565 Filed 12-5-90; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-315]

Change of Commission Investigative Attorney

In the Matter of Certain Plastic Encapsulated Integrated Circuits.

Notice is hereby given that, as of this date, Thomas L. Jarvis, Esq. and Linda C. Odom, Esq. of the Office of Unfair Import Investigations are designated as the Commission Investigative Attorneys in the above-captioned matter instead of Thomas L. Jarvis, Esq. and Deborah J. Kline, Esq.

The Secretary is requested to publish this Notice in the **Federal Register**.

Dated: November 30, 1990.

Respectfully submitted,

Lynn I. Levine,

Director, U.S. International Trade Commission, Office of Unfair Import Investigations.

[FR Doc. 90-28566 Filed 12-5-90; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree; Marathon Electric Manufacturing Corp.

In accordance with Departmental policy, notice is hereby given that on November 7, 1990, a proposed Consent Decree in *United States* v. *Marathon Electric Manufacturing Corporation, et al.*, Case No. 90-C-831-S, was lodged with the United States District Court for the Western District of Wisconsin. The proposed Consent Decree requires the defendants address the groundwater contamination at the Wausau Groundwater Contamination Site, located in Marathon County, Wisconsin. The defendants are required, pursuant to the proposed Consent Decree, to perform soil vapor extraction, utilize two municipal wells for capturing contaminants, and to continue to operate an extraction well, installed pursuant to a previous Consent Decree. In addition, the proposed Consent Decree provides for reimbursement to the United States of $1,650,000.00, plus 8.47% interest form April 1, 1990, for response costs incurred by the United States Environmental Protection Agency under the Comprehensive Environmental Response, Compensation, and Liability Act at the Wausau Groundwater Contamination Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Marathon Electric Manufacturing Corporation, et al.* D.J. reference #90-11-2-444A.

The proposed Consent Decree may be examined at the office of the United States Attorney, Western District of Wisconsin, 120 North Henry Street, Madison, Wisconsin 53703, at the Region V office of the United States Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, and at the Environmental Enforcement Section, Environment and Natural Resources Division of the Department of Justice, Room 1515, 10th Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Environment and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $68.00 payable to the Consent Decree Library.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 90-28578 Filed 12-5-90; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree; City of Phoenix, AZ and State of Arizona

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *City of Phoenix, Arizona and State of Arizona*, Civil Action No. 89-1646-PHX-CAM, has been lodged in the United States District Court for the District of Arizona on November 13, 1990. This consent decree settles the claims alleged in a previously filed complaint pursuant to the Clean Water Act, 33 U.S.C. 1251 *et seq.*, for injunctive relief and civil penalties for violations of the Clean Water Act, the Environmental Protection Agency's ("EPA") pretreatment regulations at 40 CFR part 403, and the City's National Pollutant Discharge Elimination System ("NPDES") permits issued by EPA for the City's two publicly-owned treatment works ("POTW"): The 23rd Avenue Wastewater Treatment Plant (WWTP); and the 91st Avenue Wastewater Treatment Plant.

Under the terms of the proposed consent decree, the City has agreed: to implement and enforce its EPA-approved wastewater pretreatment program; develop technically-based local discharge limits and, when approved by EPA, incorporate such limits in an enforceable city ordinance; to issue or reissue permits to all significant and/or categorical industrial users of the City's WWTPs; and, to monitor and report progress on implementation of its approved wastewater pretreatment program. In addition, the City has agreed to pay a civil penalty of $450,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Phoenix, Arizona and State of Arizona*, D.J. Ref. 90-5-1-1-3378.

The proposed Consent Decree may be examined at the following offices of the United States Attorney and the Environmental Protection Agency ("EPA"):

EPA Region IX

Contact: Gary Hess, Office of Regional Counsel, U.S. Environmental Protection Agency, 1235 Mission Street, San Francisco, CA 94103 (415) 556-5955.

United States Attorney's Office

230 North First Avenue, Phoenix, Arizona 85025.

The proposed Consent Decree may also be examined at the Environmental Enforcement Section Document Center, 1333 F Street, NW., suite 600, Washington, DC 20004, 202-347-7829. A copy of the proposed Consent Decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $7.50 (25 cents per page reproduction costs) payable to Consent Decree Library.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 90-28579 Filed 12-5-90; 8:45 am]

BILLING CODE 4410-10-M

Drug Enforcement Administration

[Docket No. 88-106]

Devendranathan Chanmugram, M.D.; Revocation of Registration

On October 14, 1988, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Devendranathan

Chanmugram, M.D. (Respondent) of the Martin County Medical Clinic, Route 40, P.O. Box 784, Inez, Kentucky, proposing to revoke his DEA Certificate of Registration BC0880371 and to deny any pending applications for the renewal of such registration as a practitioner under 21 U.S.C. 823(f). The Order to Show Cause alleged that Respondent's registration would be inconsistent with the public interest, as the term is used in 21 U.S.C. 823(f) and 824(a)(4).

Respondent, through counsel, requested a hearing on the issues raised in the Order to Show Cause and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. Following prehearing procedures, a hearing was held in Louisville, Kentucky on June 27 and 28, 1989. On February 16, 1990. Judge Bittner entered her opinion and recommended ruling, findings of fact, conclusions of law and decision, recommending that the Administrator revoke Respondent's registration and that any pending applications for renewal of that registration be denied. On March 12, 1990, Respondent filed exceptions to the administrative law judge's opinion and on May 29, 1990, filed a motion and documentation regarding Respondent's attendance and participation in programs relating to controlled substances.

On April 12, 1990, Judge Bittner transmitted the record of these proceedings, including the Respondent's exceptions, to the Administrator. The Administrator has considered the record in its entirety and, pursuant to 21 CFR 1316.67, hereby issues his final order in this matter.

The administrative law judge found that Respondent studied medicine in Sri Lanka and England. He became a member of the Royal College of Physicians in London in internal medicine in 1959. He returned to Sri Lanka in 1960, came to the United States for about three years in 1962, and then went back to Sri Lanka. In 1985, Respondent returned to the United States. In April 1987, Respondent began working for Dr. Parameswaran who operated two medical clinics in Kentucky. In is essential to note that Dr. Parameswaran is the respondent in Ekambaram Parameswaran, M.D., Docket No. 88-107, which was consolidated in the instant case for hearing. See 55 FR 26029 (June 26, 1990).

The administrative law judge found that Dr. Parameswaran had been the subject of an investigation by the West Virginia State Police, the Drug Control Branch of the Kentucky Cabinet for Human Resources and the Kentucky Board of Medical Licensure. During the course of that investigation, an Investigator with the Medical Board obtained the medical records of approximately eighty to ninety patients of the medical clinic. The medical records contained entries by both Respondent and Dr. Parameswaran. At the request of the Medical Board, a physician reviewed those medical charts and concluded that the prescribing practices of both Respondent and Dr. Parameswaran were excessive and inappropriate. They prescribed inappropriate combinations of drugs and prescribed controlled substances for an excessive period of time to certain patients. A review of the patient charts revealed that Respondent prescribed Percodan, Tylenol No. 4, and Valium simultaneously. The physician testified that prescribing Percodan with Tylenol No. 4 is "inappropriate and excessive, and coupled with Valium certainly raise[s] the specter of abuse." In addition to the physician's testimony regarding Respondent's prescribing practices, he also provided a written analysis of the patient charts that he reviewed. In this review of these patient records, the physician characterized Respondent's prescribing practices as "excessive," and in some instances as "prolonged" and/or "inapprorpiate." The physician further testified that Respondent had essentially followed and duplicated Dr. Parameswaran's prescribing practices.

As a result of the foregoing, the Kentucky Medical Board issued an Order of Temporary Restriction on October 22, 1987, suspending Respondent's controlled substance handling authority.

On May 30, 1989, the Medical Board dismissed the Order and the underlying complaint.

On February 26, 1988, in Martin County, Kentucky, Respondent was indicated for trafficking in controlled substances by dispensing and/or prescribing Percodan, Didrex, Tylenol No. 3 and No. 4, Valium and Phentermine without good medical reason. On October 4, 1988, the Commonwealth moved to dismiss Respondent as a defendant on the grounds of insufficient evidence to proceed against him. The court granted the motion and dismissed the indictment against Respondent on October 25, 1988.

At the DEA administrative hearing, Respondent testified on his own behalf and claimed that prior to coming to the United States he had never come across the problem of addiction to medications, and that in hindsight he realized that he should have been more attentive to the problem. Further, he testified that he had not realized that Percodan was a popular medication with drug addicts The Respondent also stated that he never intentionally overprescribed or inappropriately prescribed any medication. Respondent further argued that the criminal indictment has been dismissed, the state authorities have permitted him to retain his medical license, and that even if Respondent's prescribing practices were inappropriate, he has learned from experience. Respondent's ultimate conclusion in his own behalf was that revocation of his DEA registration would not be in the public interest.

The Administrator adopts the opinion and recommended ruling, findings of fact, conclusions of law and decision of the administrative law judge as set forth herein.

Under 21 U.S.C. 823(f) and 824(a)(4), the Administrator has the authority to revoke a registration based upon a sufficient showing that the continued registration would be inconsistent with the public interest. The factors which are considered in determining whether the continued registration would be inconsistent with the public interest are:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

There is no requirement that the Administrator make findings with respect to all five of the listed factors. Instead, the Administrator has the discretion to give each factor the weight he deems appropriate, depending upon the facts and circumstances presented in each case, in determining the public interest. See *Henry J. Schwarz, Jr., M.D.*, Docket No. 88-42, 54 FR 16422 (1989); *England Pharmacy*, 52 FR 1674 (1987); and *Felix Seisin, M.D.*, Docket No. 85-53, 51 FR 3863 (1986).

The administrative law judge concluded that Respondent inappropriately provided controlled substances to a substantial number of patients. The record clearly supports this finding. The Respondent's experience with dispensing controlled substances and his own acknowledgement that he is unfamiliar with the serious addictive nature and propensity for illegal use of certain

controlled substances is substantial evidence in and of itself that Respondent's continued registration is inconsistent with the public interest. Further, Respondent's own testimony is indicative of his failure to consider the consequences of his actions in excessively and inappropriately prescribing controlled substances. Such irresponsible professional conduct is a threat to the public health and safety which the Administrator cannot ignore.

Although the Respondent was found not to be responsible for the recordkeeping violations found in Dr. Parameswaran's practice while Respondent was in his employ, and although the criminal indictment against him was dismissed, the Administrator is nevertheless greatly concerned about the circumstances revealed by the Kentucky State investigations of Respondent's prescribing practices. The evidence in this record, including both the state investigations and the findings of the reviewing physician, clearly show that Respondent inappropriately provided controlled substances to a substantial number of patients.

The Administrator has considered the material submitted by the Respondent after the record in this matter was closed. The information submitted was considered due to the fact that it indicated tht the Respondent has taken initial steps toward educating himself in the abuse of controlled substances. The Respondent's initial efforts toward education must be balanced against the weight of the fact that the Respondent was indiscriminate in his prescription practices merely because of his alleged lack of information about American drug problems.

After considering the evidence in the record, the Administrator concludes that the Respondent's continued registration would be inconsistent with the public interest, and that Respondent's DEA registration must be revoked. Therefore, under the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), the Administrator of the Drug Enforcement Administration hereby orders that DEA Certificate of Registration BC0880371 issued to Devendranathan Chanmugram, M.D., be, and it hereby is, revoked. Any pending applications for registration or renewal are hereby denied.

Due to Respondent's indicated willingness to undergo continuing education with regard to substance abuse and the abuse of prescribed controlled substances, the Administrator finds that the Respondent has demonstrated initial efforts to reform his prior activities. Should the Respondent obtain employment with a registrant in the future, DEA, upon request and sufficient proof of reform and education, will consider waiving the provisions of 21 CFR 1301.76 which state,

(1) The registrant shall not employ as an agent or employee who has access to controlled substances any person who has had an application for registration denied, or has had his registration revoked, at any time.

See, *Joseph Bruce Friedman, M.D.*, Docket No. 81-17, 46 FR 58621 (1981); *Joseph Henry Pritchett, M.D.*, Docket No. 81-12, 47 FR 26053 (1982); and, *Frank T. Riforgiato, M.D.*, 47 FR 50589 (1982).

This order is effective January 7, 1991.

Dated: November 29, 1990.

Robert C. Bonner,

Administrator.

[FR Doc. 90-28564 Filed 12-5-90; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 90-20]

Bobbie W. Deshotel, M.D., Basile, LA; Hearing

Notice is hereby given that on February 22, 1990, the Drug Enforcement Administration, Department of Justice, issued to Bobbie W. Deshotel, M.D., and Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate of Registration, AD3404011, and deny any pending applications for a DEA Certificate of Registration.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing have been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on December 18, 1990, commencing at 9:30 a.m., at the U.S. Tax Court, Courtroom Number 211, U.S. Custom House, 423 Canal Street, New Orleans, Louisiana.

Dated: November 28, 1990.

Robert C. Bonner,

Administrator, Drug Enforcement Administration.

[FR Doc. 90-28647 Filed 12-5-90; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Registration

By Notice dated October 4, 1990, and published in the **Federal Register** on October 15, 1990, (55 FR 41776), Arenol Chemical Corporation, 189 Meister Avenue, Somerville, New Jersey 08876, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Amphetamine (1100)	II
Methamphetamine (1105)	II
Phenylacetone (8501)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: November 21, 1990.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 90-28643 Filed 12-5-90; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on September 19, 1990, Hoffmann-LaRoche, Inc., 340 Kingsland Street, Nutley, New Jersey 07110, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Levorphanol (9220)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20357, Attention: DEA Federal Register Representative (CCR), and must be filed no later than January 7, 1991.

Dated: November 19, 1990.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 90-28644 Filed 12-5-90; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Registration

By Notice dated October 1, 1990, and published in the **Federal Register** on October 9, 1990 (55 FR 41147), Radian Corporation, P.O. Box 201088, 8501 Mopac Boulevard, Austin, Texas 78759, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of Pentobarbital (2270), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: November 21, 1990.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 90-28645 Filed 12-5-90; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Registration

By Notice dated October 22, 1990, and published in the **Federal Register** on November 2, 1990, (55FR46262), Toxi-Lab Inc., 2 Goodyear, Irvine, California 92718, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Phencyclidine (7471)	II
1-piperidinocyclohexanecarbonitrile (PCC)(8603).	II
Benzoylecgonine (9180)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the applications submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: November 21, 1990.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 90-28646 Filed 12-5-90; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Comments on this information collection must be submitted by January 7, 1991.

ADDRESSES: Send comments to Mr. Dan Chenok, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington, DC 20503; (202) 395-7316). In addition, copies of such comments may be sent to Mrs. Anne C. Doyle, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202-682-5401).

FOR FURTHER INFORMATION CONTACT: Mrs. Anne C. Doyle, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202-682-5401) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The Endowment requests the revision of a currently approved collection of information. This entry is issued by the Endowment and contains the following information: (1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: Design Arts Application Guidelines for FY 1992.

Frequency of Collection: One time.

Respondents: Individuals or households; State or local governments; Non-profit institutions.

Use: Guideline instructions and applications elicit relevant information from individual artists, non-profit organizations, and State or local arts agencies that apply for funding under specific Design Arts Program categories. This information is necessary for the accurate, fair, and thorough consideration of competing proposals in the peer review process.

Estimated Number of Respondents: 910.

Average Burden Hours per Response: 31.

Total Estimated Burden: 28,480.

Anne C. Doyle,

Administrative Services Division, National Endowment for the Arts.

[FR Doc. 90-28561 Filed 12-5-90; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Collection of Information Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting this notice of information collection that will affect the public. Interested persona are invited to submit comments by January 4, 1991. Comments may be submitted to:

(1) *Agency Clearance Officer.* Herman G. Fleming, Division of Personnel and Management, National Science Foundation, Washington, DC 20550, or by telephone (202) 357-7335. and to;

(2) *OMB Desk Officer.* Office of Information and Regulatory Affairs, ATTN: Dan Chenok, Desk Officer, Paperwork Reduction Project (3145-0067), OMB, 722 Jackson Place, Room 3208, NEOB, Washington, DC 20503.

Title. 1991/1993 National Survey of Academic Research Instruments and Instrumentation Needs.

Affected Public. Non-profit institutions.

Responses/Burden Hours. 6,400 responses / 30 minutes per response.

Abstract. This study of academic scientific research instruments, to be conducted during 1991-94, will update measures of equipment quantity, age, condition, utilization, and need obtained in three previous surveys (1983-84, 1986-87, and 1989-90). Changes and trends

occurring over the period since the earlier studies will be documented, and reassessments made.

Dated: November 30, 1990.

Herman G. Fleming,

NSF Reports Clearance Officer.

[FR Doc. 90-28575 Filed 12-5-90; 8:45 am]

BILLING CODE 7555-01-M

Denial of Permit Applications Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of denial of permit applications under the Antarctic Conservation Act of 1978, Public Law 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued or denied under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers, Permit Office, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

SUPPLEMENTARY INFORMATION: On October 23, 1990, the National Science Foundation published a notice in the **Federal Register** of permit applications received. One applicant, Society Expeditions Inc., submitted two applications to take various bird and mammal specimens. On November 28 these applications were denied.

Charles E. Myers,

Permit Office, Division of Polar Programs.

[FR Doc. 90-28617 Filed 12-5-90; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 030-17088; License No. 53-19179-01, EA 89-101]

C&R Laboratories, Inc., Pearl City, Hawaii; Order Modifying License

I

C&R Laboratories, Inc. (C&R or Licensee) is the holder of NRC License No. 53-19179-01 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR part 34. The license authorizes the Licensee to receive, possess, and utilize sealed sources of Iridium 192 and Cobalt 60 in industrial radiographic exposure devices. The license was issued on March 21, 1980, was most recently renewed on July 8, 1986, and is due to expire on July 31, 1991.

II

Under C&R License Condition 16, and sections 5.C. and 13.B. of the C&R Operating and Emergency Procedures, as set forth more fully in the Notice of Violation and Proposed Imposition of Civil Penalty attached to this Order, personnel performing licensed activities under C&R's license are required to conduct radiation surveys when exposure devices are removed from or returned to their storage areas, and to conduct such surveys to confirm that radiation levels in the passenger compartments and on the outside surfaces of vehicles used to transport licensed materials are within required limits.

On December 12, 1988, an NRC investigator observed a Licensee radiographer, Gary Wood, and another individual, remove a radiation exposure device from the Licensee's "mobile laboratory" vehicle located in front of the residence of Mr. Roland Watson, President of C&R Laboratories, Inc., place the device in the back of a pickup truck, and drive to an industrial site to perform radiography. Later on the same day, Mr. Wood and the second individual returned to Mr. Watson's residence and returned the exposure device to the mobile laboratory. The investigator observed that at no time during the removal from and return to the mobile laboratory did Mr. Wood or the accompanying individual perform surveys of the radiation exposure device or of the mobile laboratory. When NRC personnel reviewed Licensee records on March 9, 1989, they found records signed by Mr. Wood purportedly documenting that the surveys had been performed as required on December 12, 1988. The investigator attempted to interview Mr. Wood to obtain his version of what occurred, but he refused to be interviewed. Under the circumstances, it is reasonable to conclude that the survey record was falsified. The investigator also observed that Mr. Wood failed to survey the vehicle into which the device was loaded.

On May 12, 1989, NRC representatives held an enforcement conference with the Licensee, at which time Mr. Watson informed the NRC that upon learning from the NRC of Mr. Wood's actions described above, C&R, on its own initiative, had terminated Mr. Wood's employment with C&R. On August 17, 1990, NRC representatives contacted Mr. Watson by telephone and discussed the findings of the investigation. During the discussion, Mr. Watson stated that the Licensee had not reemployed and does not intend to reemploy, Gary Wood to perform radiography. Mr. Watson also indicated that should C&R's intent in this regard change, the Licensee would provide NRC prior notice of any intention to employ Mr. Wood.

III

Considering the importance of compliance with all safety requirements in the conduct of radiography and the fact that radiographers work independently, the NRC must have confidence that each radiographer will comply with these requirements. I find the Licensee's commitments, as stated in the telephone discussion on August 17, 1990, and as modified below, acceptable and necessary in order to protect the public health and safety. In view of the foregoing, I have determined that it is appropriate that the Licensee's commitments concerning Mr. Wood, as modified, be formalized by this Order.

IV

Accordingly, pursuant to sections 81, 161b, 161c, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204 and 10 CFR part 34, It is hereby ordered that License No. 53-19179-01 is modified as follows:

C&R Laboratories, Inc. shall not utilize Mr. Gary Wood in licensed activities without providing written notice to the NRC two weeks in advance of the scheduled utilization. Such notice shall be provided to the Regional Administrator, Region V, and shall explain why the Licensee will have confidence that Mr. Wood will comply with the requirements of License No. 53-19179-01. This condition will expire five years from the date of this modification.

The Regional Administrator, Region V, may relax or rescind, in writing, the above conditions upon a showing of good cause by the Licensee.

V

The Licensee, Mr. Gary Wood, or any other person adversely affected by this Order may submit an answer to this Order or request a hearing on this Order within 20 days of its issuance. The answer shall set forth the matters of fact and law on which the Licensee or other persons affected relies and the reasons as to why the Order should not have been issued. Any answer filed within 20 days of the date of this Order may include a request for a hearing. Any answer or request for a hearing shall be submitted to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region V,

1450 Maria Lane, Suite 210, Walnut Creek, California 94596, and to the Licensee, if the answer or hearing request is by a person other than the Licensee. If a person other than the Licensee or Mr. Gary Wood requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Committee will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at the hearing shall be whether this Order should be sustained.

Upon the Licensee's consent to the provisions set forth in section IV of this Order, or on failure of the Licensee or Mr. Gary Wood to file an answer within the specified time, and in the absence of any request for hearing, the provisions specified in section IV above shall be final without further Order or proceedings.

Dated at Rockville, Maryland this 28th day of November 1990.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Material Safety, Safeguards, and Operations Support.

[FR Doc. 90-28641 Filed 12-5-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-192]

The University of Texas; Consideration of Application for Renewal of Facility License

The U.S. Nuclear Regulatory Commission (the Commission) is considering renewal of Facility License No. R-92, issued to the University of Texas for a possession-only license for the University of Texas Research Reactor located on the University's campus in Austin, Texas.

The renewal would extend the expiration date of Facility License No. R-92 to February 12, 1993, in accordance with the licensee's application for renewal dated October 19, 1990. The licensee received an Order dated March 9, 1987 authorizing dismantling of the facility, and it is anticipated that the term of renewal will be sufficient to complete dismantling and terminate the license.

Prior to a decision to renew the license, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

By January 7, 1991, the licensee may file a request for a hearing with respect to renewal of the subject facility license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the renewal under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Thse permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, at 2120 L Street, NW., Washington, DC by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Seymour H. Weiss: petitioner's name and telephone number; date petition was mailed; The University of Texas, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 and to Ray Farabee, Vice Chancellor and General Counsel of the University of Texas System, 201 West 7th Street, Austin, Texas 78701, the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for renewal dated October 19, 1990, which is available for public inspection at the Commission's Public Document Room at 2120 L Street NW., Washington, DC 20555.

Dated at Rockville, Maryland this 29th day of November 1990.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors, Decommissioning and Environmental Projects Directorate Division of Advanced Reactors and Special Projects Office of Nuclear Reactor Regulation.

[FR Doc. 90–28642 Filed 12–5–90; 8:45 am]

BILLING CODE 7590–01–M

Florida Power and Light Co.

[Docket Nos. 50–250–OLA–6 and 50–251–OLA–6, (Emergency Power System Enhancement) ASLBP No. 91–625–02–OLA–6]

Establishment of Atomic Safety and Licensing Board To Preside in Proceeding

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding to rule on petitions for leave to intervene and/or requests for hearing and to preside over the proceeding in the event that a hearing is ordered.

Florida Power and Light Co., Turkey Point Plant, Unit Nos. 3 and 4

[Facility Operating License Nos. DPR–31 and DPR–41]

This Board is being established pursuant to a notice published by the Commission on September 26, 1990 in the **Federal Register** (55 FR 39331) entitled, "Consideration of Issuance of Amendments to Facility Operating Licenses and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing." The proposed amendments would modify the electrical power systems, including the addition of two emergency diesel generators, two additional battery chargers, an additional battery bank, and the associated support equipment and electrical distribution equipment such as motor control centers, load centers, and switchgear. The amendments would also modify the Technical Specifications (TS), primarily those concerning electric power supplies, so that they are applicable to the improved design.

The Board is comprised of the following administrative judges:

John H. Frye, III, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Charles N. Kelber, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

David R. Schink, Department of Oceanography, Texas A&M University, College Station, Texas 77843

All correspondence, documents and other materials shall be filed with the Board in accordance with 10 CFR 2.701 (1980).

Issued at Bethesda, Maryland, this 30th day of November 1990.]

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 90–28640 Filed 12–5–90; 8:45 am]

BILLING CODE 7590–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

SUMMARY OF PROPOSAL(S):

(1) *Collection title:* Application and Claim for RUIA Benefits Unpaid at Death

(2) *Form(s) submitted:* ID–28(a)(1), SI–62 and UI–63

(3) *OMB Number:* 3220–0055

(4) *Expiration date of current OMB clearance:* Three years from date of approval

(5) *Type of request:* Extension of the expiratiaon date of a currently approved collection collection without any change in the substance or in the method of collection

(6) *Frequency of response:* On occasion

(7) *Respondents:* Individuals or households

(8) *Estimated annual number of respondents:* 375

(9) *Total annual responses:* 375

(10) *Average time per response:* .133 hours

(11) *Total annual reporting hours:* 50

(12) *Collection description:* The collection obtains the information needed by the Railroad Retirement Board to pay, under section 2(g) of the RUIA benefits under that Act accrued but not paid because of the death of the employee.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed forms and supporting documents can be obtained from Dennis Eagan, the agency clearance officer (312–751–4693). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503.

Dennis Eagan,

Clearance Officer.

[FR Doc. 90–28612 Filed 12–5–90; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–28664; File No. SR–Amex–90–24]

Self-Regulatory Organizations; Proposed Rule Change by American Stock Exchange, Inc., Relating to Proposed Amendments To Exchange Procedures Governing Administration of Securities Industry Arbitration

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 7, 1990, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex is proposing to amend its rules and procedures governing the administration at the Exchange.[1]

II. Self-Regulatory Organization's Statement of the Purposes of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The American Stock Exchange is proposing to amend its rules and procedures governing the administration of arbitration. These amendments codify modifications to the Uniform Code of Arbitration ("Uniform Code") already approved by the Securities Industry Conference on Arbitration ("SICA").[2]

Rule 608 In order to discourage adjournments of scheduled hearing sessions, the Exchange is proposing to amend Rule 608(e) to increase the fee for adjournments and provide arbitrators with the authority to dismiss cases without prejudice in instances of repeated adjournments.

Rule 618 The form and content of the written arbitration award has been the focus of discussion for some time. Currently, an award must, in pertinent part, identify the parties and contain a summary of the issues involved. The proposed amendment to Rule 618 will require that the award identify the product involved in the dispute. Including such information will give the public a better general understanding of the award. In addition, the award will identify the parties' counsel, if any.

In order to encourage prompt payment of awards and to increase confidence in the arbitration process, the proposal also amends Exchange Rule 618 to provide arbitrators with express authority to award interest and to determine the rate of such interest. The amended rule will also state that awards shall bear interest from the date of the award and require that awards be paid within thirty days of receipt.

Rule 620 It is proposed that Exchange Rule 620 be amended to increase the total fees paid by claimants, and to increase the amounts which may be retained by the Exchange when a case is settled or withdrawn prior to a hearing. Specifically, the amendment requires parties, at the time of filing a claim, counterclaim, third-party claim or Cross-Claim, to deposit a hearing session fee in addition to the filing fee and permits the Exchange to retain the filing fee and hearing deposit when a case is resolved in any manner other than by a hearing (*i.e.*, through settlement or withdrawal of the claim). Currently, the Exchange retains $100 when a case is resolved other than by a hearing, regardless of the amount of the claim or the number of claims and parties involved. This amount does not begin to reflect the costs actually borne by the Exchange in selecting a panel, paying the arbitrators and other administrative costs. Under the proposed rule, the arbitrators may determine in the award that a party must reimburse another party for any non-refundable filing fee or hearing session deposit such party has paid.

In order to eliminate uncertainty regarding the fees for pre-hearing conferences, the Exchange is also proposing to amend Exchange Rule 620 to set forth a table of fees for such conferences, based on the amount of the claim. Currently, the rule provides merely the rate of calculation for pre-hearing conference fees and does not specify on which figures the calculation is based.

Rule 622 In order to conform the Exchange's schedule of fees to those of other SRO, the proposal sets forth a new Exchange Rule 622 to specify a separate filing fee schedule for member/member controversies. The proposed rule also provides a schedule of fees for pre-hearing conferences with an arbitrator in member/member cases.

The following miscellaneous procedural changes also are proposed:

- Rule 606(d) will set forth the elements required for joinder or consolidation.
- Rule 616(a) will provide for service of amended pleadings by the parties themselves rather than by the Exchange.
- Rule 619 will dictate that the Exchange's arbitration rules shall be deemed incorporated by reference in all agreements to arbitrate.
- Rules 620 and 622 will eliminate ambiguity regarding classifications of disputes by setting forth three distinct categories: customer claimants, industry claimants against non-members and member claimants against members (member/member controversies).

(2) Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it is designed to promote just and equitable principles of trade and protect investors and the public interest by improving the administration of an impartial forum for the resolution of disputes relating to the securities industry.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the

[1] For the exact language of the proposed rule change *see* Exhibit A to File No. SR-Amex-90-24.

[2] The Commission notes that SICA originally developed the Uniform Code in 1977. The self-regulatory organizations ("SROs") that maintain arbitration forums, including the Amex, have adopted the Uniform Code, and, therefore, the arbitration procedures at these SROs are substantially similar. Further, the Amex's proposal being noticed herein is substantially similar to a proposed rule change submitted by the New York Stock Exchange, Inc. ("NYSE") which recently was approved by the Commission. *See* Securities Exchange Act Release No. 28421 (September 10, 1990), 55 FR 38181 (order approving File No. SR-NYSE-90-19).

Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 522, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-90-24 and should be submitted by December 27, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 30, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-28651 Filed 12-5-90; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-28662; File No. SR-CBOE-90-29]

Self-Regulatory Organizations; Chicago Board Options Exchange Inc.; Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to New Listing Criteria Under Exchange Rule 31.5

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 7, 1990, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The CBOE has requested accelerated approval of the proposal. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend Exchange Rule 31.5 to include listing criteria for new securities not otherwise covered under the existing provisions of the Exchange's rules.[1] Criteria for subscription rights currently covered in Rule 31.5(F) would be incorporated into Rule 31.22(I) on Subscription Rights, which sets forth the procedures for listing these lights.[2] The exact text of the proposed listing standards was attached to the rule filing as Exhibit A and is available at the CBOE and the Commission at the address noted in Item III below.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

(a) Listing Guidelines—the CBOE currently has provisions in its listing criteria to accommodate securities that could not be readily categorized under the Exchange's listing guidelines for common and preferred stocks, bonds, debentures, and warrants. For example, the Exchange has specific listing guidelines covering foreign currency and index warrants in Rule 31.5(E).

Today, more so than at any time in the past, issuers and underwriters are proposing to list new types of securities. These securities may contain features borrowed from more than one category of currently listed securities, *e.g.*, fixed face amount debt securities incorporating an opportunity for equity appreciation and fixed amount payment certificates based on the price level of the issuer's equity securities. Such securities are often designed to achieve more than one objective in connecting with a specific corporate transaction, and, on occasion, have involved assets or categories of assets that traditionally may not have been segregated or used as collateral for a particular issue. Consequently, such securities may take a variety of forms depending upon the particular objective(s) being sought, as well as general market conditions.

The Exchange believes it is necessary to provide added flexibility in its guidelines to accommodate such multi-faceted and/or multi-purpose issues without having to continually add new provisions to its listing criteria. The proposed Rule 31.5(F) criteria are intended to allow the Exchange added flexibility to consider the listing of new securities on a case-by-case basis, in light of the suitability of the issue for auction market trading. However, the proposed criteria are not intended to accommodate the listing of securities that raise significant new regulatory issues.[3]

The proposed numerical listing criteria are intended to accommodate major issuers with assets of $100 million and stockholders' equity of $10 million. These criteria substantially exceed the Exchange's standard listing criteria for common stock, which require, for example, that an issuer have stockholder's equity of at least $4 million. In addition, issuers of securities under the proposed criteria generally would be expected to meet the Exchange's earnings criteria, set forth in Rule 31.5, which requires pre-tax income of at least $750,000 in the last fiscal year or in two of the last three fiscal years. Issuers not meeting the Exchange's earnings criteria generally would be required to have assets in excess of $200 million and stockholders' equity of $10

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[1] The Commission has recently approved similar proposals by the New York ("NYSE") and American ("Amex") Stock Exchanges. *See* Securities Exchange Act Release No. 28217 (July 18, 1990), 55 FR 30056 (July 24, 1990) (adoption by the NYSE of listing standards for new hybrid products); Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8624 (March 8, 1990) (adoption by the Amex of listing standards for new hybrid products).

[2] The CBOE's proposed new listing criteria would be included in Rule 31.5 as subparagraph (F). The existing language under subparagraph (F), which deals with subscription rights, would be moved to Rule 31.22(I).

[3] The Commission notes that the listing of securities that raise significant new regulatory issues would require a separate filing with the Commission pursuant to Rule 19b-4 under the Act. Examples of securities that have raised significant new regulatory issues in the past include Americus Trusts [See Securities Exchange Act Release No. 21863 (March 18, 1985), 50 FR 11972 (March 26, 1985) (File No. SR-Amex-84-35)]; currently warrants [See Securities Exchange Act Release No. 24555 (June 5, 1987), 52 FR 22570 (June 12, 1987) (File No. SR-Amex-87-15) (proposal to list warrants on foreign currencies)]; index warrants [See Securities Exchange Act Release No. 26152 (October 3, 1988), 53 FR 39832 (October 12, 1988) (order approving File No. SR-39832 (October 12, 1988) (order approving File No. SR-Amex-87-27) (listing guidelines for foreign currency and index warrants) and Securities Exchange Act Release No. 27565 (December 22, 1989), 55 FR 376 (January 4, 1990) (File No. SR-Amex-89-22) (proposal to list index warrants based on the Nikkei Stock Average)]; and unbundled stock units ("USUs") [See File Nos. SR-NYSE-88-39 and 88-40 (proposals to list USUs and constituent securities, subsequently withdrawn by the NYSE)].

million, or, alternatively, assets in excess of $100 million and stockholders' equity of $20 million.

The distribution criteria is proposed paragraph (F) are comparable to those currently existing in Rule 31.5 for equity issues, except that when trading is expected to occur in much larger than average trading units, *e.g.*, $1,000 principal amount, a minimum of 100 holders would be expected which is the same number required for debt securities of non-listed issuers. The aggregate market value of issues listed under paragraph (F) would be expected to be at least $20 million, the same as the standard for debt securities on non-listed securities.

Where such an instrument contains cash settlement provisions, settlement would be required to be made in U.S. dollars. Where the instrument contains mandatory redemption provisions, the redemption price must be at least $3 per unit.

The CBOE proposes to apply the Exchange's existing criteria for continued listing, which is set forth in Rule 31.94 (Suspension and Delisting Policies), to paragraph (F) securities as appropriate, in light of the specific nature of the securities, *e.g.*, debt/equity characteristics.

Finally, the Exchange proposes to further amend existing paragraph (F) of Rule 31.5 by deleting the provision on subscription rights and repositioning it to Rule 31.22 (Subscription Rights), which sets forth the Exchange's procedure for listing subscription rights.

(b) Membership Circular—Securities listed for trading under paragraph (F) of Rule 31.5 are likely to possess characteristics common to debt and equity instruments alike. For this reason, prior to trading securities admitted to listing under paragraph (F), the Exchange will evaluate the nature and complexity of the issue and, if appropriate, distribute a circular to the membership providing guidance regarding member firm compliance responsibilities when handling transactions in such securities. In determining whether such a membership circular is necessary, the Exchange will consider such characteristics of the issue as: Unit size and term; cash-settlement; exercise or call provisions; characteristics that may affect payment of dividends and/or appreciation potential; whether the securities are primarily of institutional interest; and such other features of the issues that might entail special risks not normally associated with securities currently listed on the Exchange.

(2) Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.'

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to file No. SR-CBOE-90-29 and should be submitted by December 27, 1990.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the CBOE's proposal to provide listing standards for new types of hybrid securities that cannot be readily categorized under the Exchange's existing listing standards is consistent with the requirements of the Act and the rules and requirements thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5) of the Act.[4] In particular, the Commission believes that the proposal is consistent with the Section 6(b)(5) requirement that the rules of an exchange be designed to promote just and equitable principles of trade and not to permit unfair discrimination between customers, issuers, brokers, or dealers. Over the past several years, the Commission has approved listing criteria for various new products for trading on exchange markets, such as index warrants [5] and foreign currency warrants.[6] In addition, the Commission has recently approved listing standards on the Amex and the NYSE to accommodate new products.[7] In response to these new products, the Commission has carefully identified and evaluated certain regulatory concerns which must be addressed by the exchange that proposes to list and trade these products.

The Commission believes that the CBOE's proposal to establish listing criteria for new hybrid products addresses the special concerns raised by these new investment products. The proposed quantitative listing standards should ensure that only substantial companies capable of meeting their financial obligations are eligible to have their new products listed on the Exchange. This is an important consideration in light of the contingent financial obligations which may be created by these instruments, and should serve to protect investors by ensuring that the companies listing their new products have sufficient financial means to meet their settlement obligations.

In addition, the Commission that the proposed membership circular addresses the additional sales practice concerns raised by these new products. These novel products, by combining features of debt, equity, and securities derivative products, may be more risky and complex than straight stock, bond, or equity warrants. The Commission believes, therefore, that the portion of the proposed rule change requiring the Exchange to evaluate the nature and complexity of each issue in order to determined whether to distribute a membership circular indicating member firm compliance responsibilities, prior to trading securities admitted to listing under Rule 31.5(F), will provide the CBOE with the ability to address any potential sales practice problems and questions that may arise in connection with these new issues. Moreover, the Commission believes that the

[4] 15 U.S.C. 78f (1982).

[5] *See supra* note 3.

[6] *Id.*

[7] *See supra* note 1.

distribution of this circular should help to ensure that only customers with an understanding of the specific risks attendant to the trading of particular securities products trade these products on their broker's recommendations. Finally, the Commission believes that the membership circular requirement will help to ensure that investors and the public interest are protected when the new products are traded on the Exchange.

Finally, the Commission believes that the proposed rule change is consistent with the requirements of section 6(b)(5) of the Act because it relates only to those securities which are similar to products currently listed for trading on the Exchange. If a new product raises novel or significant regulatory issues, the CBOE must file a proposed rule change so that the Commission would have an opportunity to review the regulatory structure for the product.[8]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof. As discussed *supra*, the Commission has approved an identical proposal by the Amex to provide listing criteria for hybrid securities.[9] In addition, the Commission recently approved a substantially similar proposal by the NYSE.[10] Further, the Commission recently approved proposals by the NYSE, the Midwest ("MSE"), and the Pacific ("PSE") Stock Exchanges to adopt listing criteria to trade Contingent Value Rights ("CVRs"), which are akin to the type of hybrid products the CBOE proposal would include.[11] The Commission did not receive any comments on the those proposals or on the NYSE or Amex hybrid products filings. In light of the lack of new regulatory issues raised by the CBOE proposal, the Commission believes it is in the public interest to approve it on an accelerated basis so that the CBOE will be able to compete sooner with other exchanges for hybrid securities.

It is therefore ordered, pursuant to section 19(b)(2) of the Act [12] that the proposed rule change is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 30, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-28652 Filed 12-5-90; 8:45 am]

BILLING CODE 8010-01-M

[8] *See supra* note 3.

[9] *See* Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8624 (March 8, 1990) (order approving File No. SR-Amex-89-29).

[10] *See* Securities Exchange Act Release No. 28217 (July 18, 1990), 55 FR 30056. The CBOE's proposal differs from the NYSE proposal in four principal respects: 1) the NYSE evaluates net tangible assets available to common stock while the CBOE uses "stockholders' equity"; 2) the NYSE distribution criterion looks to round lot holders, or alternatively all holders together with average monthly trading volume, while the CBOE requires a minimum number of holders; 3) the NYSE proposal contains no minimum price per share criterion either for original or continued listing while CBOE provides for a minimum redemption price per unit; and 4) the NYSE provides a debt listing standard based upon minimum public market value and the CBOE has no such listing criterion. As noted above, the CBOE proposal is identical to the Amex proposal to list hybrid securities (SR-Amex-89-29).

[11] *See* Securities Exchange Act Release No. 28072 (May 30, 1990), 55 FR 23166 (June 8, 1990) (approving the NYSE proposal to list CVRs on the Exchange); Securities Exchange Act Release No. 28143 (June 25, 1990), 55 FR 27317 (July 2, 1990) (granting accelerated approval to the MSE's proposal to list CVRs); and Securities Exchange Act Release No. 28558 (October 22, 1990), 55 FR 43238 (October 26, 1990) (granting accelerated approval to the PSE's proposal to list CVRs).

[12] 15 U.S.C. 78s(b)(2) (1982).

[Release No. 34-28663; International Series Release No. 198; File No. SR-NASD-90-65]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc. Notice of Filing and Order Granting Accelerated Temporary Approval to Proposed Rule Change Relating to the Quotation Linkage Between the NASD and the International Stock Exchange of the United Kingdom and the Republic of Ireland, Ltd.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 28, 1990, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD hereby files, pursuant to section 19(b)(1) of the Act and Rule 19b-4 thereunder, for Commission authorization to extend for 90 days the informational linkage between the NASD and the International Stock Exchange of the United Kingdom and the Republic of Ireland, Ltd. ("NASD-ISE linkage" or "linkage"). The Commission's temporary approval of the NASD-ISE linkage will extend the operation of the linkage through March 1, 1991. Absent such an extension, the NASD's link with the ISE will terminate December 1, 1990. During the requested extension period, there will be no change in the linkage's operational characteristics or access terms.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On October 2, 1987, the Commission issued an order approving operation of the linkage for a pilot term of two years, through October 2, 1989;[1] and subsequently approved a one year extension of the linkage's operation on December 1, 1989.[2] The NASD-ISE linkage permits an interchange of quotation information ("linkage information") on approximately 740 securities ("linkage securities"). Of that total, each marketplace has designated approximately half as its "pilot group" of linkage securities. NASD and ISE members that function as market makers in one or more of a subset of linkage securities that are quoted in both the NASDAQ and ISE dealer systems ("common issues") may access linkage information without paying a separate charge to receive the information.

During the proposed extension, the NASD and ISE will continue to explore various options regarding the linkage's future structure and operational capabilities in relation to the needs of the international investment community. These discussions may lead to a substantive enhancement of the linkage or the pursuit of other initiatives responsive to the challenges posed on the internationalization of major

[1] Securities Exchange Act Release No. 24979 (October 2, 1987), 52 FR 37684 (October 8, 1987), approving File No. SR-NASD-87-20.

[2] Securities Exchange Act Release No. 27494 (December 1, 1989) 54 FR 50674 (December 8, 1989), approving File No. SR-NASD-89-44.

securities markets. Either outcome will entail another Rule 19b-4 filing that will enable the Commission (and other interested parties) to focus on relevant policy and regulatory issues. In the interim, the continuation of the linkage, as proposed, would be supportive of the NASD's and ISE's efforts to define system linkages capable to accommodating cross-border trading more efficiently.

Regarding the statutory basis of the extension of the NASD-ISE linkage, the NASD relies on sections 11A(a)(1)(B) and (C), 15A(b)(6), and 17A(a)(1)(C) and (D) of the Act. Subsections (B) and (C) of Section 11A(a)(1) set forth the Congressional goals of achieving more efficient and effective market operations, the availability of information with respect to quotations for securities and the execution of investor orders in the best market through the application of new data processing and communciations techniques. Section 15A(b)(6) requires that the rules of the NASD be designed "to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market * * *" Section 17A(a)(1) sets forth the Congressional goal of linking all clearance and settlement facilities and reducing costs involved in the clearance and settlement process through new data processing and communications techniques. The NASD believes that the requested extension of the linkage is fully consistent with the policy goals articulated in the foregoing statutory provisions and with the Commission's efforts to advance the process of internationalization of securities markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

In its original release announcing interim approval of the NASD-ISE linkage, the Commission referenced certain competitive concerns raised by Instinet Corporation ("Instinet") through its counsel.[3] In response, the NASD, after consultation with the ISE, made a good faith effort to address those concerns by narrowing the universe of firms and terminals permitted access to linkage information at no cost. Those changes were reflected in File No. SR-NASD-87-20, which the Commission approved by issuing the 1987 Order. Further, in File No. SR-NASD-89-44 (which resulted in the linkage's current authorization until December 1, 1990), the NASD submitted statistical and cost information relative to its participation in the linkage. In the event the NASD and ISE determine to seek permanent approval of the linkage, every effort will be made to supply the Commission with the empirical data needed for its deliberations.

With respect to the instant filing, the NASD believes that a three month extension of the linkage will not create any competitive burden *vis-a-vis* Instinet or any other vendor of securities information. The linkage will continue to operate in accord with the terms of the October 1987 Order. Moreover, Instinet and other interested parties will have ample opportunity to comment on any subsequent Rule 19b-4 filing involving permanent approval and/or substantive enhancement of the linkage. Finally, during the requested extension, the sponsoring markets will not use linkage information for purposes of operating an intermarket, automated execution system.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD requests the Commission to find good cause for approving the proposed rule change prior to the 30th day after its publication in the **Federal Register**. The Association maintains that the requested extension of the pilot period will allow the NASD and ISE to continue to explore various options regarding the linkage's future structure and operational capabilities in relation to the needs of the international investment community.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof. The Commission believes the accelerated approval is appropriate to avoid termination of the linkage formalization of the sponosrs' plans for the future operation of this program. The brief extension being approved should allow sufficient time for the NASD and the ISE to evaluate feasible enhancements to the linkage as well as alternative projects intended to advance the internationalization of securities markets through more efficient computerized systems. Further, the Commission acknowledges the limited nature of the linkage and that no substantive changes will be implemented during the proposed extension. Based on the foregoing, the Commission finds good cause for granting accelerated approval of this proposed rule change in accordance with section 19(b)(2)(B) of the Act.

IV. Solicitation of Comment

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by December 27, 1990.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of sections 11A(a)(1)(B) and (C), 15A(b)(6), 17A(a)(1) and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that File No. SR-NASD-90-65, be, and hereby is, approved for a period of 90 days from the date of this Order.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: November 30, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-28650 Filed 12-5-90; 8:45 am]

BILLING CODE 8010-01-M

[3] *See* Securities Exchange Act Release No. 23158 (April 21, 1986), 51 FR 15989 (April 29, 1986). See also letter from Daniel T. Brooks, Counsel for Instinet, to John Wheeler, Secretary, SEC, dated April 16, 1986.

[Release No. 34-28657; File No. SR-NASD-90-53]

Self-Regulatory Organizations; Notice of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Retention of Jurisdiction and Conforming Changes to the Code of Procedure

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 16, 1990,[1] the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to amend Article III, section 5(b) and Article IV, sections 3 and 4 of the NASD By-Laws, and Article IV, section 5 of the NASD Rules of Fair Practice to: (1) Place on hold a termination for cause where the Uniform Termination Notice for Securities Industry Registration ("Form U-5") indicates the possibility of misconduct; (2) permit the NASD, in any case, to declare the termination effective at any time; (3) declare a termination ineffective retroactively where the NASD receives notice of the possibility of misconduct; (4) clarify that in the case of a termination that does not take effect, the person remains subject to the filing of a complaint until one year following the NASD's determination to permit the termination to take effect; (5) retain jurisdiction over persons where registration has been revoked for one year for purposes of filing a complaint; (6) expand the NASD's jurisdiction to file a complaint with respect to a member whose membership has been canceled or revoked; and (7) expand the NASD's jurisdiction to file a complaint with respect to a terminated member or revoked person for failure to provide information pursuant to Article IV, section 5 of the Rules of Fair Practice.

The NASD is also proposing to amend Article V, sections 1 and 3 of the Rules of Fair Practice to change the term "penalty" to "sanction" and empower the National Business Conduct Committee ("NBCC") to impose sanctions for violations of NASD rules, and authorize the NBCC to impose costs of disciplinary proceedings on respondents.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

A significant aspect of the NASD's self-regulatory activity is the investigation of members and associated persons to determine if their activities comply with the Association's rules and the federal securities laws. In addition to investigating the full range of potential violations, the Association also routinely investigates associated persons who have been terminated for cause to determine whether the circumstances leading to the termination involved violations of the NASD's or other securities rules. Currently, Article IV, section 3(a) of the Association's By-Laws only provides the NASD authority to place on hold a termination for cause where any complaint or action that involves the associated person is in progress. Where no complaint, action, or examination is in progress, the NASD's practice has been to place a hold on terminations for cause when the Form U-5 indicates the possibility of misconduct to ensure adequate time to investigate such matters fully and to bring disciplinary action where appropriate. The effect of the hold is to prevent the termination from becoming effective and thus postpone the commencement of the one year period within which, under Article IV, section 4 of the By-Laws, an individual no longer associated with a member firm remains subject to the NASD's jurisdiction to file a complaint.

The NASD is, therefore, proposing to amend Article IV, section 3(a) of the NASD By-Laws to codify the NASD's current practice of placing a hold on a termination for cause of a person associated with a member when the Form U-5 indicates that the circumstances surrounding the termination may have involved actionable misconduct. The proposed amendment would also codify the NASD's position that although it may declare a termination effective at any time, a hold may be imposed retroactively; that is, where a termination is permitted to become effective, the NASD may rescind the effective termination date based upon the subsequent receipt of an amended Form U-5 or other information that discloses previously undiscovered misconduct. Any hold placed on the termination of the registration of an associated person operates only to preserve the Association's jurisdiction and does not affect the termination of the person's relationship with his firm.

The NASD is also proposing to amend Article IV, section 4 of the By-Laws to codify the NASD's practice of placing a hold on a termination and preventing the termination from taking effect, thus extending the one year jurisdictional period within which the NASD may file a complaint against the person.

The amendment would also provide that failure of a person to respond to a request for information pursuant to Article IV, section 5 of the Rules of Fair Practice during the period that a person is subject to the NASD's jurisdiction to file a complaint may be charged as a violation of the NASD's rules, notwithstanding that such failure occurred after the person ceased to be associated with an NASD member. Finally, the NASD is proposing to amend this provision to retain jurisdiction over persons whose registration has been revoked for purposes of filing a complaint.

A similar issue arises in connection with the membership status of firms whose membership has been canceled or revoked. When a member firm resigns its membership voluntarily, Article III, section 5(b) of the By-Laws currently provides that the firm remains subject to the NASD's jurisdiction to file a complaint for one year. Further, a resignation does not take effect if a complaint, action or examination is pending. The membership of numerous firms has been canceled or revoked by the NASD for failure to pay dues, fees and fines and to file financial reports with the NASD. However, because Article III, section 5(b) of the By-Laws does not apply to canceled or revoked firms, the NASD does not cancel or revoke the membership of a firm as a matter of practice. Instead, the NASD holds the cancellation or revocation of the firm's membership in abeyance pending completion of any investigation

[1] Amendment No. 1 to the proposal, filed with the Commission on November 12, 1990, sets forth the results of the member vote on SR-NASD-90-53.

where it is determined that a formal disciplinary action may be warranted. This procedure frustrates the NASD obligation to cancel or revoke the membership of firms that do not comply with NASD requirements and can lead to firms remaining in the securities business for an extended period of time.

The NASD is, therefore, proposing to renumber current section 5(b) to Article III of the By-Laws as new section 6 and revise the provision to codify the NASD's current practice of retaining jurisdication over members for one year whose membership has been cancelled or revoked by the NASD for failure to pay a fee or a fine or to file financial reports.

The NASD is also proposing to amend Article IV, section 5 of the Rules of Fair Practice to codify the NASD's position that the obligation to respond to a request for information extends to persons who remain subject to the NASD's jurisdiction to file a complaint. The NASD believes it essential that persons whose terminations are being investigated for possible misconduct be under an obligation to provide information necessary to enable the staff to determine whether a complaint is warranted.

Investigations of terminations for cause, as with other investigations, necessarily involve obtaining information from terminated individuals, typically by means of a request for information pursuant to Article IV, section 5 of the Rules of Fair Practice. The NASD has consistently taken the position that an individual who remains subject to the filing of a complaint pursuant to Article IV, Section 4 of the By-Laws, or whose termination is subject to a hold, remains a "person associated with a member" for purposes of the individual's obligation to provide information requested by the NASD pursuant to Article VI, section 5 of the Rules of Fair Practice. Further, the NASD regards any failure by a member or associated person to respond to Article IV, section 5 requests for information a violation of Article III, section 1 of the Rules of Fair Practice. When required to provide information with regard to any matter involved in an NASD investigation, a member or associated person is required to testify on the record if so directed by any committee, or duly authorized agent of any such committee, in order to comply with Article IV, section 5. The NASD's ability to require such persons to provide information regarding the circumstances of their termination and to impose sanctions for failure to do so is essential to the discharge of its regulatory obligations.

In addition, the NASD is proposing to amend Section 5 to provide that "failure" to respond to an Article IV, Section 5 request for information constitutes a violation of the NASD's rules, rather than a "refusal" as is presently provided. Also, when a member or associated person is required to report with regard to any matter, that person will be required to testify on the record if so directed by any NASD committee or duly authorized agent of any such committee. It is also proposed that section 5 by amended to provide that a request for information is properly made if sent to a member's or person's last address of record with the NASD.

Finally, the NASD is proposing to amend Article V, Sections 1 and 3 of the Rules of Fair Practice to conform those rules to amendments to the Code of Procedure made previously in SR-NASD-90-35,[2] which implemented the recommendation of the Special Committee on NASD Structure and Governance. SR-NASD-90-35 provides that decisions of the National Business Conduct Committee ("NBCC") are the final decisions of the NASD in disciplinary cases and do not require action by the full Board of Governors to become effective. The proposed amendment to Section 1 would change the term "penalty" to "sanction" and empower the NBCC to impose sanctions for violations of NASD rules. The amendment to section 3 would authorize the NBCC to impose costs of disciplinary proceedings on respondents.

The NASD believes that the proposed rule change is consistent with the provisions of sections 15A(B) (6), (7) and (8) of the Act, which requires that the rules of a national securities association be designed to protect investors and the public interest, provide for the disciplining of members and associated persons for violations of the securities laws, rules and the Association's rules, and that such rules provide a fair procedure for conducting disciplinary proceedings. The NASD believes that by codifying its practice of retaining jurisdication over member firms and associated persons until it has had sufficient time to uncover potential violations, the Association enhances its ability to discipline violators of the securities laws, rules and the Association's rules, thereby protecting investors and the general public. In addition, the NASD believes that by codifying its practices and adopting the conforming rule change it ensures that the Association's rules provide for a fair procedure for conducting disciplinary actions by providing express notice of the rules governing such actions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change imposes any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

In April, 1990, the Association issued Notice to Members 90-20 requesting comments on the proposed amendments to Article III, section 5(b) and Article IV, sections 3 and 4 of the NASD By-Laws, and Article IV, section 5 of the NASD Rules of Fair Practice. No comments were requested or received with respect to the conforming amendments to Article V, sections 1 and 3 of the Rules of Fair Practice.

The Association received one comment on the proposed rule change published for comment in Notice to Members 90-20 which was generally in favor of the proposal.

Lincoln National Corporation ("Lincoln") expressed general support for the proposed amendments, but requested clarification on several points. Primarily, Lincoln wanted to ensure that the placing of a "hold" by the NASD on the termination of an associated person would be done solely for the purpose of retaining NASD jurisdiction, and would not have any effect on the cessation of the relationship between that person and his or here former firm. Lincoln was concerned with the possible impact of such a "hold practice" on existing rules, including those regarding private securities transactions, outside business activities, and dual registration. Lincoln stated that it should be clear that a firm would not have any responsibility for, or continuing relationship with, a person who has been terminated. Lincoln was also concerned that firms not be responsible for providing current addresses for such terminated persons to the NASD in order to ensure that the NASD has current information for service of requests for information pursuant to Article IV, section 5 of the Rules.

The Association does not believe that the concerns raised by Lincoln require any changes to the proposed rule change. A statement was added to the

[2] See Securities Exchange Act Release No. 28554 (October 18, 1990); 55 FR 42925 (October 24, 1990), approving File No. SR-NASD-90-35.

Notice to Members requesting member vote on the proposal noting that a "hold" on the termination of the registration of associated person operates only to preserve the Associations' jurisdiction and does not affect the termination of the person's relationship with his firm.

In addition, as a result of further consideration of the proposed rule change, language was added to Article IV, sections 3 and 4 that would allow the Association to retroactively "hold" a termination if violative activity comes to the attention of the Association from sources other than an amended Form U-5. The addition of this language is consistent with the proposed rule change and is consistent with prior practices.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comment

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by December 27, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: November 29, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-28666 Filed 12-5-90; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-28661; File No. SR-PSE-90-42]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Notice of Filing and Order Granting Temporary Accelerated Approval of a Proposed Rule Change Relating to Alternate Specialists

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] notice is hereby given that on November 21, 1990, the Pacific Stock Exchange ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The PSE has requested accelerated approval of the proposal. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE proposes to extend, for an additional one-year period, its current pilot program governing the activities of alternate specialists on its two equity trading floors in order to allow the Exchange an opportunity to continue to evaluate the effectiveness of the policies.[3] The text of the policies was attached to the rule filing as Exhibit A and is available at the PSE and the Commission at the address noted in Item III below.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Purposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its original submission to the Commission in September, 1989 (File No. SR-PSE-89-25), the PSE proposed the adoption, on a six-month pilot basis, of several policy statements concerning the operation of the Exchange's alternate specialist system. These proposals were approved by the Commission [4] and were incorporated as commentaries into PSE Rule II, section 10(d).[5] Upon termination of the original pilot, the PSE filed a proposed rule change (SR-PSE-90-24) to renew the pilot program for an additional six months in order to allow the Exchange the opportunity to continue its evaluation of the effectiveness of these proposals.[6] on

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1989).

[3] In File No. SR-PSE-89-25, the Commission approved, on a six-month pilot basis ending June 1, 1990, the adoption of several policy statements concerning the operation of the Exchange's alternate specialist system. *See* Securities Exchange Act Release No. 27493 (December 1, 1989), 54 FR 50833. Subsequent to the original pilot, the Commission approved the renewal of the pilot program for an additional six-month period in order to allow the Exchange additional time to evaluate the effectiveness of the policies, and to amend Rule II, Section 10(d), Commentary .02, to exempt the alternate specialist from clearing both posts when he or she has been requested by the primary specialist to participate in a transaction. *See* Securities Exchange Act release No. 28112 (June 13, 1990), 55 FR 24953 (June 19, 1990) (File No. SR-PSE-90-24). The six-month pilot program of SR-PSE-90-24 expires December 1, 1990.

[4] *See* Securities Exchange Act Release No. 27493 (December 1, 1989), 54 FR 50833 (December 11, 1989) (order approving File No. SR-PSE-89-25). The original six month pilot expired June 1, 1990.

[5] These policies, which were added to PSE Rule II, Section 10(d) as Commentaries .02 through .05, provide: (1) A clarification of the duty of alternate specialists to clear both primary specialist posts on each of the PSE's two equity trading floors prior to entering into a trade; (2) sanctions for alternate specialists if their specialist evaluation ranking falls in the bottom 10% of their trading floor; (3) a 500-share minimum requirement for alternate specialists participating in certain pre-opening orders when requested to do so by a specialist; and (4) that the names of the alternate specialist and designated stocks be displayed at each specialist post in alphabetical order.

[6] In addition to seeking a six-month renewal of the pilot program, the Exchange, in SR-PSE-90-24, proposed an amendment to Commentary .02 which would exempt the alternate specialist from clearing both posts when a primary specialist has requested the alternate specialist's participation in the transaction.

June 13, 1990, the Commission approved SR-PSE-90-24 and renewed the pilot program for an additional six-month period ending on December 1, 1990.

In its approval order, the Commission requested that, during the renewed pilot period, the PSE develop criteria to evaluate the effects of its policy statements on the activities of alternate specialists and to determine, for example, whether implementation of these policy statements is increasing the performance and effectiveness of alternate specialists within the specialist system. Specifically, the Commission requested that the PSE submit a report to the Commission describing how the implementation of commentaries .02, .03, and .04 to Rule II, section 10(d) are improving the effectiveness of the PSE's alternate specialist system.

In response to the Commissions request, the PSE submitted a letter which indicated that the policies regarding the activities of alternate specialists set forth in the pilot program have been beneficial to the Exchange in evaluating the performance of alternate specialists.[7] In this letter, the Exchange stated that these policy statements are serving as an incentive to specialists acting as alternate specialists to improve their performance, thereby improving the overall effectiveness of the Exchange's specialist system. The PSE letter states that, since the inception of the pilot program, the PSE surveillance program has included provisions for the investigations of complaints regarding violations of the clearing the post requirement of Commentary .02.[8] The PSE reports that, since the pilot program began, thee have been no specific instances of violations of this policy. In addition, the PSE reports that there have been no specific complaints of non-compliance with Commentary .04, which sets forth a 500-share minimum requirement for alternate specialists participating in certain pre-opening orders when requested to do so by a primary specialist.

In a subsequent letter submitted to the Commission, the PSE described the Exchange's experiences with regard to Commentary .03, which provides that a specialist whose specialist evaluation ranking falls in the bottom 10% of his or her trading floor is precluded from acting as an alternate specialist until his or her ranking rises above the bottom 10%.[9] The Exchange reported that out of the specialists who fell into the bottom 10%, four in each quarter also were alternate specialists. Pursuant to Commentary .03, these specialists became subject to the sanctions of this rule, that is, they would be precluded from acting as alternate specialists until their specialist ranking rose above the bottom 10%, unless the Exchange Equity Allocation Committee ("Committee") determined otherwise. The Committee found that one specialist in each quarter received poor performance rankings due to mitigating circumstances and was relieved from the sanctions of this rule. Based on poor performance, however, the remaining specialists were precluded from acting as alternate specialists in the quarter following their poor performances. These specialists will not be allowed to resume alternate specialist activities until their performance rankings rise above the bottom 10%.

Because the pilot is due to expire on December 1, 1990, the Exchange now seeks Commission approval to extend the pilot program for an additional one-year period in order to allow the Exchange the opportunity to continue its evaluation of the effectiveness of these proposals.

The statutory basis for the proposed rule change and policy amendments is section 6(b)(5) of the Act in that they will act to facilitate transactions in securities and will help to protect the mechanism of a free and open market in Exchange-listed securities, by furthering the effectiveness of the alternate specialist within the trading system.

B. Self-Regulatory Organization's on Burden on Competition

The Exchange does not believe that its policy statements regarding the activities of alternate specialists will impose any burden on competition that is not necessary or appropriate in furtherance of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR-PSE-90-42 and should be submitted by December 27, 1990.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the PSE's proposal to extend its pilot program is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6 of the Act.[10] The Commission notes that the extension of the pilot furthers the protection of investors and the public interest because it allows the Exchange additional time to evaluate the effectiveness of the pilot program.

The Commission notes that the preliminary reports submitted by the PSE indicate that the pilot program has been helpful to the Exchange in the evaluation of the performance of specialists who are acting as alternate specialists. For instance, the Exchange has stated that a specialist who was precluded from acting as an alternate specialist during the last quarter of 1990 because of poor performance will not be allowed to resume alternate specialist activities on the Exchange until his or her performance ranking rises above the bottom 10%. The Commission therefore agrees with the PSE's conclusions that precluding specialists from acting as alternate specialists in accordance with this rule should act as an effective incentive in encouraging specialists with

[7] *See* letter from Kenneth J. Marcus, Senior Staff Attorney, Equity Compliance, PSE, to Elizabeth Pucciarelli, Attorney, Branch of Exchange Regulation, Division of Market Regulation, SEC, dated November 1, 1990.

[8] Commentary .02 provides that an alternate specialist shall clear both posts prior to effecting a transaction shall clear both posts prior to effecting a transaction on the equity trading floors or over ITS, except when the alternate specialist has been called upon by a registered primary specialist to participate in a transaction.

[9] *See* letter from Kenneth J. Marcus, Senior Staff Attorney, Equity Compliance, PSE, to Elizabeth Pucciarelli, Attorney, Branch of Exchange Regulation, Division of Market Regulation, SEC, dated November 27, 1990.

[10] 15 U.S.C. 78f (1982).

poor performances to improve their scores. This improved performance by specialists should enhance competition among specialists and alternate specialists on the Exchange floor and strengthen the PSE specialist system. Moreover, this enhanced performance by alternate specialists should make them more effective in aiding primary specialists in creating a more effective and competitive market.

During the extended pilot period, the Commission expects the Exchange to continue to develop criteria to evaluate the effects of its policy statements on the activities of alternate specialists and to determine, for example, whether implementation of these policy statements is increasing the performance and effectiveness of alternate specialists within the specialist system. In particular, the Commission expects the Exchange to submit a report to the Commission by October 1, 1991, describing how the implementation of commentaries .02, .03, and .04 to Rule II, section 10(d) has improved the effectiveness of the PSE's alternate specialist system. In its reports, the Commission requests that the PSE address, among other things, the following issues: whether there have been any complaints or any disciplinary actions against alternate specialists for violating the policies in the pilot program; whether requiring alternate specialists to clear the posts on the Exchange's two trading floors has helped in ensuring that public customers obtain the best possible executions of their securities orders; whether any specialists have been precluded from acting as alternate specialists on the Exchange based on their performance rankings; and whether implementation of a 500-share participation requirement for alternate specialists on certain pre-opening orders has added depth to the PSE market. Finally, the Commission expects the PSE to file a proposed rule change by October 1, 1991, requesting one of the following: (1) An extension of the pilot, if further time is needed for evaluation; (2) permanent approval of the alternate specialist system policy statements; or (3) termination of the pilot program.

The Commission finds good cause for approving the proposed renewal of the pilot prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission believes it is necessary to extend the pilot program's operation so as to afford both the Exchange and the Commission an opportunity to evaluate the pilot's operation on an uninterrupted basis. In addition, the reports submitted by the PSE indicate that the pilot program has been effective in evaluating the performance of alternate specialists and in encouraging alternate specialists to improve their performance. As stated previously, the Commission believes that improved performance by alternate specialists will strengthen the overall effectiveness and competitiveness of the PSE's specialist system. Further, the substance of the proposal has been noticed previously in the **Federal Register** for the full statutory period and the Commission did not receive any comments on it. The Commission believes, therefore, that accelerated effectiveness of the proposal for an additional one-year period is appropriate.

It is therefore ordered, pursuant to section 19(b)(2) of the Act [11] that the proposed rule change is hereby approved for a one-year period ending on December 1, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Dated: November 30, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-28653 Filed 12-5-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-28659; File No. SR-NASD-90-54]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Notification to District Offices on the Occurrence of Certain Events Affecting Ownership or Control of a Member

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 16, 1990 the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD has proposed an amendment to schedule C to the By-Laws that would require members to provide written notification to the appropriate District Office within ten days upon the occurrence of the following events affecting the ownership or control of a member: (1) The merger of a member; (2) an acquisition by a member; (3) an acquisition of a member or substantially all of its assets; and (4) any change in the equity ownership or partnership capital of the member which results in one person or entity owning 50% or more of such equity ownership or partnership capital.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The NASD proposes to add a new section to Part I of Schedule C to the By-Laws which would require prompt written notification to NASD district offices within ten days on the occurrence of certain specific events affecting the ownership or control of a member.

Schedule C to the NASD By-Laws currently permits an NASD member to experience a change in ownership or control without prior review by the appropriate NASD district office. Pursuant to section (4) to part I of schudule C to the NASD By-Laws, in cases where the ownership or control of an existing member changes, the NASD has the discretion to condition continuance in membership on prompt compliance with the pre-membership interview procedures. Notice of a change in ownership or control of a member must be filed on a revised Form BD whenever the information previously on file changes. Since the form does not specify a time for filing, a general rule of thumb has developed that filing is required within 30 days. In certain cases, a previously dormant member can become active unexpectedly or be sold or taken over by new management. While a new pre-membership interview can be conducted, regulatory problems

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[11] 15 U.S.C. 78s(b)(2) (1982).

[12] 17 CFR 200.30-3(a)(12) (1989).

may have already occurred in reference to the merger, purchase, or change of ownership of a member. The NASD believes that prompt notification of such a change in ownership will allow the NASD to act more expeditiously in determining whether a new pre-membership interview should be scheduled.

The amendment would require prompt notification to the member's district office after a specified significant event. The amendment would require members to provide notification in writing to the applicable district office no later than ten business days after a specific event, thereby indicating that notifying the district prior to the event is permitted but not required.

The NASD believes the proposed rule change is consistent with section 15A(b)(6) of the Act which mandates that the rules of a national securities association be designed to promote just and equitable principles of trade and to remove impediments to, and perfect the mechanisms of, a free and open market because it will permit the NASD to act more expeditiously in determining whether a new pre-membership interview should be scheduled in situations where there are certain changes in the ownership or control of an NASD member.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change imposes any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The proposed amendment was published for comment in NASD Notice to Members 90-43 in July 1990. As a result of this Notice, the NASD received five comment letters. All five generally supported the proposal with suggested modifications.

Two commentators suggested changing the notice period from 5 to 10 days and one of those commentators suggested only requiring notification of an acquisition by the member if it had a material impact on the broker-dealer's business. Similarly, two other commentators expressed concern over whether notification was necessary for every variety of acquisition by a member. Both commentators felt that notification of an acquisition by a member of a non-securities related entity would be unnecessary. One other commentator suggested that notice be given via CRD or by requiring that a revised Form BD be filed within 5 days.

The NASD concurred in the suggestions of two commentators to change the notice period from 5 to 10 days, but did not agree with commentators who suggested requiring notification of an acquisition by the member only if it had a material impact on the member's business. The NASD believes that leaving the determination of what constitutes material impact to the member may be too subjective an approach and somewhat at odds with the intent of the rule. The NASD also modified the proposal to require notification if any change in the equity or partnership capital of a member resulted in a person or entity owning 50% or more of such equity or capital.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. In particular, the Commission is interested in commentary on the appropriateness of the proposed ten (10) day deadline for member notification contained in the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 522, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submission should refer to the file number in the caption above and should be submitted by December 27, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: November 29, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-28568 Filed 12-5-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-28656; File No. SR-NSCC-90-23]

Self-Regulatory Organizations; National Securities Clearing Corp.; Order Granting Accelerated Approval of a Proposed Rule Change Relating to Elimination of Correspondent Delivery and Collection Service

November 29, 1990.

I. Introduction

On October 18, 1990, the National Securities Clearing Corporation ("NSCC") filed a proposed rule change (File No. SR-NSCC-90-23) with the Securities and Exchange Commission ("Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on November 15, 1990, to solicit comments from interested persons.[2] No comments were received. As discussed below, this order approves the proposal on an accelerated basis.

II. Description of the Proposal

The purpose of the proposed rule filing is to eliminate NSCC's Correspondent Delivery and Collection Service ("CDCS"). CDCS is a service which provides for the physical delivery of securities in exchange for payment between NSCC Members and non-Members ("CDCS Participants") at various locations throughout the United States.[3] Currently, NSCC has agreements with nine banks, clearing agencies, exchanges, and depositories that act as CDCS facilities for the purpose of receiving and/or delivering securities on behalf of CDCS Participants.

NSCC is eliminating the service due to the minimal volume and participation in

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Rel. No. 28599 (November 7, 1990), 55 FR 47822.

[3] To use the service, CDCS Participants place their securities for delivery in an envelope and forward it to NSCC one day before scheduled settlement. NSCC processes, sorts, and distributes the envelopes, via armored couriers, to the appropriate CDCS facility. On settlement day, the envelope is presented to the receiving party.

recent years. The volume has declined from a daily average of thirty-one transactions in 1988 to a daily average of fourteen transactions to date in 1990. There are currently only eight NSCC Members who use the service on a daily basis. Due to the limited usage, NSCC is unable to cover its costs of providing the service. This year NSCC increased its fee for the service in an effort to cover its costs but continues to suffer a loss on this service. NSCC believes that a further increase would not remedy the problem because it would made CDCS more expensive for CDCS Participants than alternative solutions.

The decline in the use of CDCS is primarily due to the decline in the use of physical certificates. With the industry's movement to a book entry environment, there is and will be a significantly reduced need to transfer physical certificates in securities transactions. In addition, in the event that a minimal need for this kind of service remains, NSCC believes there are viable alternatives available to CDCS Participants. Banks offer drafting and collection services for a fee comparable to NSCC's. In addition, firms can use express mail, registered mail, or telemail. The Midwest Clearing Corporation also has a similar service which could be used.

NSCC has contacted each of the eight CDCS Participants who utilize the service on a daily basis to determine whether the elimination of the service would negatively impact them. According to NSCC, none of the firms objected to the proposal, and in fact, all stated that they were aware of alternatives.

The proposed rule change also modifies NSCC's fee structure to reflect the elimination of the CDCS service.

III. NSCC's Rationale for the Proposal

NSCC believes that the proposal will eliminate a service that has minimal volume and is not cost effective, thereby minimizing its financial losses incurred in connection with providing the service. Thus, NSCC believes the proposed rule change is consistent with section 17A of the Act and the rules and regulations thereunder applicable to it.

IV. Discussion

The Commission believes that NSCC's proposed rule change is consistent with the Act and, in particular, with Section 17A. Accordingly, for the reasons discussed below, the Commission is approving the proposal.

The Commission believes that the proposal is consistent with section 17A(b)(3)(D) of the Act.[4] That Section provides that the rules of a clearing agency must provide for the equitable allocation of reasonable dues, fees, and other charges among its participants. Because CDCS is generating operating losses and has minimal participation, NSCC is in effect subsidizing a service that is benefitting only a few of its members. As a result, NSCC Members not utilizing the service are nevertheless paying for it, thus creating an unequitable allocation of charges among NSCC Members. As proposed, the elimination of CDCS will remedy this problem and will foster an environment at NSCC wherein the allocation of dues, fees, and other charges is more equitable.

The Commission also believes that the proposal is consistent with NSCC's obligation to provide efficient procedures for clearance and settlement that do not impose unnecessary costs on its members. Congress articulated this general obligation as part of its findings embodied in section 17A of the Act. Specifically, section 17A(a)(1)(B) of the Act [5] delineates the obligation to provide efficient, cost-effective clearance and settlement procedures. As discussed above, CDCS is generating an operating loss and non-users of the service are subsidizing the users. The unnecessary costs incurred by the non-users of CDCS will be eliminated by the proposal. Additionally, the existence of the loss associated with CDCS is an inefficiency that will be eliminated along with CDCS's elimination.

The proposal also is consistent with sections 17A(b)(3) (A) and (F) of the Act,[6] which provide, among other things, that a clearing agency be organized and its rules be designed to promote the prompt and accurate clearance and settlement of securities transactions. By eliminating a service that provides for the delivery of physical certificates, NSCC is streamlining its operation towards the predominant use of certificateless securities in a book-entry environment. The Commission believes that such an environment is more efficient than one that involves the transfer of physical certificates and will thus promote the prompt and accurate clearance and settlement of securities transactions. However, should an NSCC Participant have need for the delivery of physical certificates, NSCC has indicated that there exist several viable alternatives for such participants. Additionally, NSCC has indicated that the current principal users of CDCS have been informed of its proposed elimination and have neither expressed any objections to NSCC nor submitted comments in response to the relevant notice in the **Federal Register**.

Finally, the Commission finds "good cause" under section 19(b)(2) of the Act [7] for approving this proposal prior to the thirtieth day after publication of notice because the expedited elimination of the service will minimize NSCC's financial loss incurred in providing the service.

V. Conclusion

For the reasons stated above, the Commission finds that NSCC's proposal is consistent with section 17A of the Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that NSCC's proposed rule change (SR-NSCC-0-23) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Jonathan G. Katz,

Secretary.

[FR Doc. 90-28569 Filed 12-5-90; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-28658; File No. SR-OCC-90-10]

Self-Regulatory Organizations; Proposed Rule Change by Options Clearing Corp. Relating to Addition of Put Margin Credit

November 29, 1990.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice hereby is given that on August 20, 1990, the Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change (File No. SR-OCC-90-10) as described in Items I, II and III below, which items have been prepared by the self-regulatory organization ("SRO"). The Commission is publishing this notice solicit comments on the proposed rule change from interested persons.

I. SRO's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would add a new Paragraph (e), (captioned "Put Margin Credit"), to OCC's existing rule 604 (captioned "Forms of Margin") to authorize the development of a Put Margin Credit ("PMC") Program. The

[4] 15 U.S.C. 78q-1(b)(3)(D).

[5] 15 U.S.C. 78q-1(a)(1)(B).

[6] 15 U.S.C. 78q-1(b)(3) (A) and (F).

[7] 15U.S.C. 78s(b)(2).

[8] 17 CFR 200.30-3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

PMC Program would maximize the margin credit that OCC could give to its clearing members where they hold, in combination, long positions in: (1) Puts of a class of American-style options,[2] and (2) the underlying stock.[3] The proposed PMC Program would combine such stock and option positions to generate greater clearing margin credits than either position could provide individually in either OCC's existing clearing margin system [4] or its Valued Securities programs.[5]

II. SRO's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and statutory basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The SRO has prepared summaries, set forth in sections A, B, and C below, or the most significant aspect of such statements.

A. SRO's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

One of the major problems that arose during the October 1987 and October 1989 market breaks was a generalized cash squeeze for OCC's clearing members. In particular, OCC clearing members that were utilizing OCC's Market-Maker Pledge System [6] to pledge long call option positions to banks were faced with repaying loans as the value of their collateral rapidly declined. During this same period, clearing members that had stocks pledged as collateral for loans and letters of credit, or were lenders of such securities, had to use substantial amounts of their cash to pay down loans as some banks reduced the amount of credit they would extend against the collateral to meet marks-to-market and to pay for returned stock.

During these same market breaks, many of OCC's clearing members held in their proprietary market-maker accounts substantial long put positions that were rapidly increasing in value. Many banks, however, were reluctant to accept clearing members' long put options as collateral for loans at that time. Although clearing members received clearing margin credit from OCC for their long put positions, the clearing margin credit calculated by OCC's clearing margin system did not reflect the full value of put options that were held in combination with underlying stocks.

To rectify this situation, OCC has developed the PMC Program that will maximize the clearing margin credit that can be given to long put positions and underlying stock positions held in combination. For the reasons stated above, OCC believes this program will be especially helpful in a declining marketplace. The PMC Program would combine long put positions with positions in underlying stocks to generate greater margin credits than either position individually would provide in OCC's existing margin or Valued Securities programs. Consequently, OCC anticipates that in some situations a clearing member would have a reduced need to borrow from commercial banks in order to meet its clearing margin requirements at OCC.

The proposed PMC Program would be limited to clearing members' proprietary market-maker and proprietary specialist accounts under section 5(c)(10) of Regulation U of the Board of Governors of the Federal Reserve System.[7] The PMC Program would allow a clearing number that is carrying long positions in put options on individuals stocks in such proprietary market-maker and proprietary specialist accounts to direct OCC to treat the put options and the shares of underlying stocks covered by the options as a combined position for purposes of clearing margin credit.[8] Because the combined option/stock position can never be worth less than the option's exercise price, which would be realized if the underlying stock were delivered pursuant to an exercise of the option, OCC can prudently give clearing margin credit for the combined position equal to 100% of the exercise price. On the other hand, the combined position could theoretically be worth more than the exercise price if the market value of the stock substantially exceeds the exercise price of the option. Accordingly, OCC would give margin credit for the combined position equal to 100% of: (1) The greater of the exercise price of the option, or (2) the maximum loan value (i.e., 50% of current market value) that would be given to the stock alone under OCC's Valued Securities Program.

In order to avoid any "double counting," options that are included in the PMC Program would generate no margin credit in calculating the clearing margin requirement for the account. Further, the underlying securities that are included in the PMC Program would not receive any additional credit under the Valued Securities Program during the time they are included in the PMC Program.

Because put options, under certain circumstances, might provide more margin credit if they were spread against short option positions, rather than included in the PMC Program, the decision as to whether or not to include them in the PMC Program would be for the clearing member, who would be permitted to make this decision on a daily basis in light of existing positions.

Finally, underlying stocks that are included in the PMC Program would not be counted in the 10% limitation that applies to stocks of any one issuer for purposes of the Valued Securities Program; i.e., the 10% stock concentration ratio of OCC rule 604(d) would not apply to the PMC Program. The reason for this exclusion is that 10% limitation is intended only to protect OCC against concentration of risk where a particular stock position might decrease very substantially in value, but because a combined position in the PMC Program would not be worth less than the exercise price of the option regardless of the market value of the underlying stock, the concentration risk does not exist with respect to such securities.[9]

[2] The term "American-style option" means an option contract that may be exercised, subject to certain rules, at any time from its commencement date until its expiration date. This is in distinction from a "European-style option" that may be exercised only on its expiration date. *See* OCC By-Laws, Art. I, Section 1(ttt), (uuu). The OCC has represented by letter to the Commission that no European-style option will be eligible for its PMC Program. *See* letter from Stuart C. Harvey, Jr., Attorney, to Thomas C. Etter, Jr., Attorney, SEC, dated October 26, 1990.

[3] The term "held in combination," for the purposes of this rule proposal, means holdings of both put options and of the underlying stock. Telephone conversation between Stuart C. Harvey, Jr., Attorney, OCC, and Thomas C. Etter, Jr., Attorney, SEC (October 25, 1990).

[4] See OCC rule 601.

[5] See OCC rule 604(d).

[6] See OCC rule 614(a).

[7] 12 CFR 221.5(c)(10).

[8] This proposal assumes that the clearing member in question had deposited stocks underlying such options as clearing margin pursuant to OCC's Valued Securities Program. See OCC rule 604(d).

[9] OCC takes the position that the 10% concentration ratio of OCC rule 6049(d) is not warranted in the PMC Program because other protections eliminate the need for the ratio. OCC states that such other protections are twofold: (1) The positions would be hedged and therefore without market risk; and (2) OCC always would have the alternative of exercising the puts (i.e., putting in-the-money puts to assignees for cash) and/or selling the stock. Telephone conversation between Stuart C. Harvey, Jr., Attorney, OCC, and Thomas C. Etter, Jr., Attorney, SEC (October 26, 1990).

The proposed rule change is consistent with the purposes of section 17A of the Act in that it reduces the need for cash margin a declining market, while protecting the integrity of OCC's back-up systems for the clearance and settlement of option transactions.

B. SRO's Statement on Burden on Competition

OCC believes that the proposed rule change will have no burden on competition.

C. SRO's Statement on Comments Received on the Proposed Rule Change Received from Members, Participants or Others

OCC did not solicit nor did it receive any comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the SRO consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing also will be available for inspection and copying at the principal office of OCC. All submissions should refer to the File No. SR-OCC-90-10 and should be submitted by December 27, 1990.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Jonathan G. Katz,

Secretary.

[FR Doc. 90-28570 Filed 12-5-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17887; 812-7557]

Dean Witter Reynolds Inc.; Application and Temporary Order

November 29, 1990.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Temporary order and notice of filing of application for permanent order of exemption under the Investment Company Act of 1940 (the "Act").

Applicant: Dean Witter Reynolds Inc. ("DWR" or "Applicant").

Relevant 1940 Act Sections: Permanent order requested and temporary order granted under section 9(c) of the Act granting exemption from section 9(a).

Summary of Application: DWR has been granted a temporary order and has requested a permanent order exempting it from the provisions of section 9(a) to relieve it from any ineligibility resulting from the employment of three individuals who are subject to injunctions against certain securities or commodities related offenses.

Filing Date: The application was filed on July 10, 1990, and amended on July 30, 1990, August 27, 1990, September 25, 1990, and October 16, 1990.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 26, 1990, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, Dennis H. Greenwald, Esq., Dean Witter Reynolds Inc., Two World Trade Center, New York, New York 10048.

FOR FURTHER INFORMATION CONTACT: Robert B. Carroll, Staff Attorney, at (202) 272-3043, or Max Berueffy, Branch Chief, at (202) 272-3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. DWR, a Delaware corporation, is a registered broker-dealer and registered investment adviser. DWR is a subsidiary of Dean Witter Financial Services Group Inc. Its ultimate parent is Sears, Roebuck and Co.

2. Through its InterCapital Division, DWR serves as the investment adviser or sub-investment adviser for 38 registered investment companies listed in Exhibit A to the application and, except as disclosed in such exhibit, as the principal underwriter for each such company. These investment companies and portfolios had aggregate assets of approximately $41,702,257,000 on June 29, 1990. DWR anticipates serving in similar capacities with regard to registered investment companies and portfolios thereof that may be organized in the future.

3. DWR is the sole depositor and principal underwriter of the series of the unit investment trusts registered as investment companies listed in Exhibit B to the application. DWR is a depositor and principal underwriter, but not the sole depositor and sole principal underwriter, for the series of the unit investment trusts listed in Exhibit C to the application. DWR anticipates serving as underwriter and depositor for future series of the unit investment trusts listed in Exhibits B and C and for other unit investment trusts that may be organized in the future.

4. Applicant currently employs two individuals subject to securities-related injunctions, John E. Kilfoyle and Shelley Cohen, and one individual subject to a commodities-related injunction, John Farwell Howe III (Kilfoyle, Cohen, and Howe are collectively referred to as the "Subject Employees").

5. Kilfoyle is an account executive and a registered representative in DWR's Glendale, California branch office. He has been employed by DWR since 1975. In March 1988, Kilfoyle consented to the entry of a permanent injunction in a suit filed by the Commission alleging that he effected profitable trades in the stock of Early California Industries, Inc. for one customer while in possession of material, non-public information regarding a possible tender offer for the

[10] 17 CFR 200.30-3(a)(12).

securities of the company. The injunction permanently enjoined Kilfoyle from aiding and abetting violations of section 17(a) of the Securities Act of 1933 (the "1933 Act"), section 10(b) of the Securities Exchange Act of 1934 (the "1934 Act"), or Rule 10b–5 thereunder. Kilfoyle also agreed to disgorge the sum of $1,600. In April 1988, the Commission issued an order that simultaneously instituted an administrative proceeding, made findings, and imposed sanctions against Kilfoyle. The Commission accepted an offer of settlement in the proceeding pursuant to which Kilfoyle agreed to a suspension from association with any broker, dealer, municipal securities dealer, investment company, or investment adviser for a period of 30 days. Kilfoyle's association with DWR was continued by the New York Stock Exchange ("NYSE"), DWR's principal self-regulatory organization, on November 27, 1989.

6. Cohen is an account executive and registered representative in DWR's Hallandale, Florida branch office. She has been employed by DWR since May 1981. On July 5, 1983, the Commission filed suit against Cohen alleging that in 1980, as a registered representative of Bache Halsey Stuart Shields, Inc., she manipulated the market for certain securities of Intercontinental Diamond Corp., purchased and sold certain securities of that company for her own account, induced others to purchase and sell such securities, and participated in a distribution of such securities in violation of the federal securities laws. On the same date, Cohen consented to the entry of an injunction permanently enjoining her from violating section 17(a) of the 1933 Act, section 10(b) of the 1934 Act, or Rules 10b–5 or 10b–6 thereunder. Cohen also agreed to be suspended from association with any broker-dealer for a period of 60 days, to be barred from any position of supervision with any broker-dealer, and to not make any recommendations to customers for the purchase of non-exchange listed securities without authority from her branch manager. Cohen's association with DWR was continued by the NYSE on May 21, 1985.

7. Howe is a registered representative and regional insurance coordinator based in DWR's Norwell, Massachusetts branch office. He has been employed by DWR since 1988. In 1976, the Commodity Futures Trading Commission ("CFTC") filed suit against Howe and his former employer, First Commodity Corp. of Boston, alleging violations of the anti-fraud provisions of the Commodity Exchange Act ("CEA") in connection with trades for a customer account. On November 11, 1976, Howe consented to the entry of a permanent injunction against future violations of various sections of the CEA. In 1978, in an administrative proceeding before the CFTC arising out of the same set of facts, the Administrative Law Judge found that Howe should have been registered as a commodity trading advisor under the CEA and that Howe has violated the anti-fraud provisions of the CEA. Howe and First Commodity Corp. of Boston were ordered to pay a reparation award of $3,218. Howe's association with DWR was approved by the NYSE on February 27, 1989.

8. The existence of the injunctions against the Subject Employees disables DWR, under section 9(a)(3) of the Act, from acting as an investment adviser to any registered investment comppany, as a principal underwriter of any registered open-end investment company, or as a principal underwriter or depositor of any registered unit investment trust, unless an exemption is obtained pursuant to section 9(c).

9. DWR previously knew of the existence of each of the injunctions, but until recently was unware of their significance for purposes of section 9(a) of the Act. Prior to the present time, DWR did not have in place procedures to screen specifically for section 9(a) disqualifications.

10. Since the entry of their respective injunctions and related administrative sanctions, none of the Subject Employees has been enjoined by any court or sanctioned by the Commission, the CFTC, any self-regulatory organization, or any state securities commission.

11. Senior members of DWR's Law and Compliance Departments have reviewed each of the Subject Employees' records during the course of his or her employment with DWR and represent that each of them is satisfactory. Except as set forth below with respect to Kilfoyle and Cohen, there have been no customer complaints against any of the Subject Employees during their employment with DWR.

12. There have been two customer complaints relating to Kilfoyle during his employment with DWR. The most recent complaint was brought in August 1987 by a customer who alleged that Kilfoyle recommended an unsuitable investment and claimed damages of approximately $80,000. DWR settled this complaint on October 2, 1988 for $37,500, of which Kilfoyle contributed $5,000. The other complaint, brought in November 1984, also involved an alleged unsuitable investment and sought approximately $41,000. DWR settled this claim for $15,000. DWR states that although it disputed each of the foregoing claims, it was willing to settle in order to avoid the costs of litigation.

13. There has been one customer complaint relating to Cohen while she has been employed by DWR. The complaint was brought on December 29, 1989 and is currently pending. The complaint makes several claims including unsuitablility, churning, and lack of diversification in connection with Cohen's recommendation of certain limited partnership interests and municipal securities and seeks damages in excess of $2,000,000. DWR is contesting the claims and expects the complaint to go to arbitration in the near future.

14. None of the Subject Employees serves in any capacity related to providing investment advice to any registered investment company or at acting as principal underwriter or depositor to any registered open-end investment company or as principal underwriter or depositor to any registered unit investment trust. None of the Subject Employees is an officer of DWR or serves in a policy making role. None of the Subject Employees has any relation to DWR's management or adminstrative activities relating to registered investment companies.

15. The conduct that precipitated the injunctive actions against the Subject Employees was unrelated to providing investment advice or acting as depositor or underwriter for any registered investment company.

16. Prior to becoming employed by DWR, Howe disclosed to DWR the existence of the injunction against him and Cohen disclosed the existence of the investigation that lead to the injunction against her. DWR was fully aware of the proceedings involving Kilfoyle because they arose during the course of his employment by DWR. DWR and each of the Subject Employees took the necessary steps to obtain the approval of the NYSE, DWR's principal self-regulatory organization, with respect to the association of each of the Subject Employees with the firm.

17. Pending disposition of DWR's request for temporary relief, DWR has required each of the Subject Employees to take a leave of absence with pay. If temporary relief is granted, DWR will permit the Subject Employees to return to work on a normal basis pending determination as to permanent relief.

18. DWR and its subsidiaries are amending their compliance and registration procedures to assure that any prospective employee subject to a

statutory disqualification under section 9(a) is not employed by any DWR company involved in registered investment company activities as a principal underwriter, depositor, or investment adviser (a "Covered Company") until all section 9(a) issues concerning that propsective employee are resolved. These new procedures include notification of DWR's Law Department whenever a statutory disqualification is disclosed in an employment application for a prospective employee. Prior to receiving a permanent order, DWR's general counsel will file with the Commission a certificate attesting to the adequacy and implementation of DWR's compliance procedures.

19. Upon recognizing the significance of the injunctions under section 9(a), DWR met with the staff of the SEC's Division of Investment Management and agreed to deposit its investment advisory fees in an escrow account until the Commission acted on the application for a permanent exemption. Because of an internal misunderstanding, the account was not actually opened. When this failure was discovered on August 23, 1990, DWR informed the staff and, on the same day, established the account. All investment advisory fees accruing on or after June 27, 1990 have been and will continue to be deposited in the account until the Commission has acted upon DWR's application of a permanent exemption. Because DWR initially failed to establish the account as agreed, the staff advised DWR that it is unwilling to rely solely upon its representatives regarding the implementation and adequacy of its compliance procedures and requested an independent review of DWR's compliance procedures. DWR has agreed to obtain this review.

20. DWR has advised the independent directors of the investment companies that pay advisory fees to it of the facts leading to, and the contents of, its application for relief. DWR represents that such advice will be updated as new developments arise.

Applicant's Legal Analysis

1. Each of the Subject Employees is ineligible to serve or act as an investment adviser, principal underwriter, or depositor for a registered investment company. Each of these individuals is an employee, and thus an "affiliated person," of DWR. DWR is therefore ineligible under section 9(a)(3) of the Act to serve or act in the capacities enumerated unless it obtains an exemption under section 9(c).

2. For the reasons discussed below, DWR asserts that the prohibitions of section 9(a) are unduly or disproportionately severe as applied to DWR, and the conduct of DWR does not make it against the public interest or the protection of investors to grant the requested relief.

3. DWR submits that the activities that gave rise to the injunctions are not sufficiently related to DWR or to the investment companies for which DWR acts as investment adviser, principal underwriter, or depositor to justify barring DWR from acting in such capacities. Furthermore, there is no basis to assert that the employment of the Subject Employees may affect DWR's performance of its responsibilities to any registered investment company.

4. DWR asserts that the balance of fairness requires that the application be granted. In particular, DWR argues that if the exemption is not granted, it would be required to terminate the employment of the Subject Employees in order to continue the affected business. DRW contends that such a result would be manifestly unfair since each of the Subject Employees has fulfilled the terms of his or her sanction and has performed his or her duties satisfactorily over the years.

Conditions to the Requested Relief

1. As a condition to the temporary relief, Applicant will continue to escrow all investment advisory fees until the Commission acts on DWR's request for a permanent exemption. Amounts paid into the escrow account will be disbursed to the investment companies paying such fees or to DWR, as the case may be, after the Commission has acted on DWR's application for permanent relief.

2. As a condition to the permanent relief, DWR will not employ any of the Subject Employees in any capacity related directly to the provision of investment advisory services or to acting as depositor for a registered investment company or as a principal underwriter for a registered open-end investment company, registered unit investment trust, or registered face-amount certificate company without first making further application to the Commission.

3. DWR will take appropriate steps reasonably to confirm that there are no other employees subject to a section 9(a) disqualification. These steps may include reviewing the personnel files of other employees, requesting employees to confirm that they are not subject to a statutory disqualification, or utilizing some other combination of procedures that may vary depending on the level and type of employee. A permanent order will not be granted until DWR has notified the Commission in writing that these steps have been completed.

4. As a condition to the permanent relief, DWR will file as an exhibit to the application a representation, attested to by its General Counsel, stating that he has reviewed the compliance procedures described in the application, that he believes after due inquiry that those procedures have been fully implemented, and that they are reasonable and appropriate to prevent persons subject to a statutory disqualification from becoming affiliated with DWR in the future.

5. As a condition to the temporary relief, DWR agrees to appoint, at DWR's sole expense, a Special Reviewer (the "Reviewer") acceptable to the Commission within 30 days of the entry of the temporary order. The Reviewer will review the compliance procedures described in the application and prepare a written report for DWR containing all recommendations relating to DWR's compliance procedures: Copies of the report shall be submitted to the staff of the Commission at the same time that they are submitted to DWR.

6. As a condition to the permanent relief, the Reviewer will submit to the Commission a final written report (a) describing the compliance procedures adopted and implemented in connection with the application and (b) certifying that he has reviewed DWR's compliance procedures, that to the best of his knowledge those procedures have been fully implemented, and that those procedures are reasonable and appropriate to prevent persons subject to a statutory disqualification from becoming affiliated with DWR in the future.

Temporary Order

The Commission has considered the matter and finds under the standards of section 9(c), that Applicant has made the necessary showing to justify granting a temporary exemption.

Our decision to grant the requested relief is based primarily on two factors. First, the Subject Employees have not been, and (without further Commission action) will not be, engaged in investment advisory or investment company activities. Second, DWR has represented that it is correcting the deficiencies in its compliance procedures that allowed these violations of section 9(a) to occur. It is also relevant to our determination that each of the Subject Employees fully disclosed the existence of the injunctions to DWR on a timely basis and was authorized by action of the NYSE to associate with DWR as a registered representative. The

Commission's decision to allow DWR to continue to employ the Subject Employees in non-investment adviser, non-investment company activities is thus consistent with the actions of the self-regulatory organization.

However, we must express our serious concern with the conduct of DWR with respect to the establishment of the escrow account. The Commission's procedure for obtaining exemptive orders under the Act depends to a great extent upon the accuracy of the representations in an application. DWR repeatedly represented to the staff that it has established such an account, when, in fact, it had not. In light of this, the staff and the Commission are reluctant to rely entirely on DWR's representations as to the implementation and adequacy of its new compliance procedures. We have, therefore, required DWR to obtain an independent review of its compliance procedures as a condition to the granting of the permanent relief.

In recent months, the Commission has become aware of a number of companies that have violated section 9(a)(3) of the Act under circumstances similar to this case. *See Smith Barney, Harris, Upham & Co., Inc.*, Investment Company Act Release Nos. 17404 and 17404A (April 2 and April 11, 1990) (notice and temporary order), 17501 (May 21, 1990) (permanent order); *PaineWebber Inc.*, Investment Company Act Release Nos. 17588 (July 16, 1990) (notice and temporary order), 17789 (October 10, 1990) (permanent order); *Prescott, Ball & Turben, Inc.*, (File No. 812-7576); *Prudential-Bache Securities, Inc.*, (File No. 812-7591). We view such violations with concern because they evidence fundamental compliance system deficiencies which have resulted in the employment of disqualified employees for extended periods without discovery. In granting DWR relief under section 9(c), we weighed heavily that it voluntarily undertook a review of its employees to determine the existence of such violations within a reasonable time after publication of the notice and order in *Smith Barney*. However, we may not be as sympathetic to future applicants that are less timely or less forthcoming.

Accordingly, *It is Ordered*, under section 9(c) of the 1940 Act, that Applicant is hereby temporarily exempted from the provisions of section 9(a) for the shorter of 90 days or until the Commission takes final action on the application for an order granting Applicant a permanent exemption from the provisions of section 9(a).

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-28571 Filed 12-5-90; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster Loan Area #7171]

Washington; Declaration of Disaster Loan Area

The City of Mountlake Terrace, Snohomish County, and the contiguous counties of Chelan, King, and Skagit in the State of Washington constitute an Economic Injury Disaster Loan Area due to arson fires which occurred in the City of Mountlake Terrace on August 6 and 11, 1990. Eligible small businesses without credit available elsewhere and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance until the close of business on August 21, 1991 at the address listed below:

Disaster Area 4 Office, Small Business Administration, P.O. Box 13795, Sacramento, CA 95853-4795 or other locally announced locations. The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: November 21, 1990.

Susan Engeleiter,

Administrator.

[FR Doc. 90-28554 Filed 12-5-90; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2469]

Washington; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on November 26, 1990, I find that the Counties of Skagit, Snohomish, and Whatcom in the State of Washington constitute a disaster area as a result of damages caused by severe storms and flooding beginning on November 9, 1990. Applications for loans for physical damage may be filed until the close of business on January 25, 1991, and for loans for economic injury until the close of business on August 26, 1991, at the address listed below:

Disaster Area 4 Office, Small Business Administration, P.O. Box 13795, Sacramento, CA 95853-4795 or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the contiguous counties of Chelan, Island, King, Kitsap, Okanogan, and San Juan in the State of Washington may be filed until the specified date at the above location. The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	8.000
Homeowners Without Credit Available Elsewhere	4.000
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-profit Organizations Without Credit Available Elsewhere	4.000
Others (Including Non-profit Organizations) With Credit Available Elsewhere	9.250
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 246906 and for economic injury the number is 719400.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: November 29, 1990.

Alfred E. Judd,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 90-28555 Filed 12-5-90; 8:45 am]

BILLING CODE 8025-01-M

Region IX Advisory Council; Public Meeting

The U.S. Small Business Administration Region IX Advisory Council, located in the geographical area of San Francisco, will hold a public meeting at 10 a.m. on Friday, December 14, 1990, at the Small Business Administration, 211 Main Street, 5th floor, Conference room 543, San Francisco, California, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call the Office of the District Director, San Francisco District Office, 211 Main Street, 4th floor, San Francisco, California 94105, telephone (415) 744-6801.

Dated: November 21, 1990.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 90-28556 Filed 12-5-90; 8:45 am]

BILLING CODE 8025-01-M

Region V Advisory Council Public Meeting

The U.S. Small Business Administration Region V Advisory Council, located in the geographical area of Cleveland, will hold a public meeting at 9:30 a.m. on Friday, December 14, 1990, at the Administration Building—Cuyahoga Community College, 2900 Community College Avenue, room 210, Cleveland, Ohio, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Norma M. Nelson, District Director, U.S. Small Business Administration, 1240 East Ninth Street, room 317, Cleveland, Ohio 44199-2095, phone (216) 522-4180.

Dated: November 29, 1990.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 90-28557 Filed 12-5-90; 8:45 am]

BILLING CODE 8025-01-M

Region V Advisory Council Public Meeting

The U.S. Small Business Administration Region V Advisory Council, located in the geographical area of Columbus, will hold a public meeting at 9:30 a.m. on Friday, December 7, 1990, at the U.S. Federal Courthouse, 85 Marconi Blvd., room 512, Columbus, Ohio, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Frank D. Ray, District Director, U.S. Small Business Administration, 85 Marconi Blvd., room 512, Columbus, Ohio 43215, phone (614) 469-7310.

Dated: November 27, 1990.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 90-28558 Filed 12-5-90; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 03/03-0194]

Rural America Fund, Inc.; Application for a License To Operate as a Small Business Investment Company

An application for a license to operate a small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958, as amended (Act) (15 U.S.C. 661 *et seq.*) has been filed by Rural America Fund, Inc. (Rural), 2201 Cooperative Way, Herndon, VA 22071, with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1990).

The proposed officers, directors, and owner of Rural are as follows:

Name and address	Position	Percentage of ownership
Carl R. Weber, 13448 Marble Rock Drive, Chantilly, VA 22021	Manager	
Gary A. Gordy, 2167 Greenkeepers Ct., Reston, VA 22091	President	
Richard B. Bulman, 10840 Burr Oak Way, Burke, VA 22015	Director	
Truman L. Brandt, 6863 Williamsburg Pond Ct., Falls Church, VA 22043	Director	
National Rural Utilities, Cooperative Finance Corp., 2201 Cooperative Way, Herndon, VA 22071	Sole shareholder	100

The Applicant will begin operations with a capitalization of $1,000,000 and will be a source of equity capital and long-term loan funds for qualified small business concerns. The Applicant intends to conduct its business throughout the United States.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owner and management, and the probability of successful operations of the applicant under their management including profitability and financial soundness, in accordance with the Act and Regulations.

Notice is hereby given that any person may, no later than 30 days from the date of publication of this Notice, submit written comments on the proposed Applicant. Any such communication should be addressed to the Associate Administrator for Investment, Small Business Administration, 1441 L Street, NW., Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in Herndon, Virginia.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: November 21, 1990.

Bernard Kulik,

Associate Administrator for Investment.

[FR Doc. 90-28559 Filed 12-5-90; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 04/04-0256]

Southeast SBIC, Inc.; Application for License To Operate as a Small Business Investment Company

An application for a license to operate a small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958, as amended (Act) (15 U.S.C. 661 *et seq.*) has been filed by Southeast SBIC, Inc. (Southeast), One Southeast Financial Center, Miami, Florida 33131, with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1990).

The proposed officers, directors, and owner of Southeast are as follows:

Name and address	Position	Percentage of ownership
Thomas M. Melitor, 1016 Southeast 8th Street, Ft. Lauderdale, FL 33316	President, Director	
Fernando I. Vazquez, 3267 SW. 24 Terrace, Miami, FL 33145	Vice President	
John P. Bullard, Jr., 1001 Alfonso Ave., Coral Gables, FL 33146	Director	
William Crowley, Jr., 3505 South Mooring Ways, Coconut Grove, FL	Director	
Thomas R. Woolsey, 11720 SW. 97th CT., Miami, FL 33176	Secretary	
Southeast Bank, N.A., One Southeast Financial Center, Miami, FL 33131	Sole shareholder	100

The Applicant will begin operations with a capitalization of $1,000,000 and will be a source of equity capital and long-term loan funds for qualified small business concerns. The Applicant

intends to conduct its business in the State of Florida.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owner and management, and the probability of successful operations of the applicant under their management including profitability and financial soundness, in accordance with the Act and Regulations.

Notice is hereby given that any person may, no later than 30 days from the date of publication of this Notice, submit written comments on the proposed Applicant. Any such communication should be addressed to the Associate Administrator for Investment, Small Business Administration, 1441 L Street, NW, Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in Miami, Florida.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: November 21, 1990.

Bernard Kulik,

Associate Administrator for Investment.

[FR Doc. 90-28560 Filed 12-5-90; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96-511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration, (20A5A), Department of Veterans Affairs. 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233-2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7316. Please to not send applications for benefits to the above addressees.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before January 7, 1991.

Dated: November 30, 1990.

By direction of the Secretary:

Frank E. Lalley,

Director, Office of Information Resources Policies.

Extension

1. Veterans Benefits Administration
2. Request to Mortgage Company for Amount of Unpaid Mortgage
3. VA Form Letter 29-712
4. The form letter is used to request the amount of veteran's unpaid mortgage from the lending institution with whom veteran carries his/her mortgage. The information is used by VA to determine the veteran's Veterans Mortgage Life Insurance (VMLI) premiums.
5. On occasion
6. Business or other for-profit
7. 450 responses
8. ⅙ hour
9. Not Applicable

[FR Doc. 90-28600 Filed 12-5-90; 8:45 am]

BILLING CODE 8320-01-M

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s); if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96-511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration, (20A5A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233-2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7316. Please do not send applications for benefits to the above addressees.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before January 7, 1991.

Dated: November 30, 1990.

By direction of the Secretary:

Frank E. Lalley,

Director, Office of Information Resources Policies.

Revision

1. Veterans Benefits Administration
2. Application for Cash Surrender Value or Policy Loan
3. VA Form Letter 29-1546
4. The form is used by the insured to apply for cash surrender value or policy loan on his/her insurance. The information is used to initiate the processing of the insured's request for a policy loan or cash surrender
5. On occasion
6. Individuals or households
7. 29,636 responses
8. ⅙ hour
9. Not Applicable

[FR Doc. 90-28601 Filed 12-5-90; 8:45 am]

BILLING CODE 8320-01-M

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the

Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96–511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration, (20A5A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395–7316. Please do not send applications for benefits to the above addressees.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before January 7, 1991.

Dated: November 30, 1990.

By direction of the Secretary:

Frank E. Lalley,

Director, Office of Information Resources Policies.

Extension

1. Veterans Benefits Administration.
2. Notice for Election to Convey and/or Invoice for Transfer of Property.
3. VA Form 26–8903.
4. The form is used by lenders to notify VA of the conveyance of a property to VA incident to foreclosure of a GI home loan. The form serves four purposes: lender's election to convey; invoice for the purchase price of the property; VA's voucher for authorizing payment to the lender; and establishment of VA's property records.
5. On occasion.
6. Businesses or other for-profit; Small businesses or organizations.
7. 35,000 responses.
8. ⅙ hour.
9. Not applicable.

[FR Doc. 90–28602 Filed 12–5–90; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 235
Thursday, December 6, 1990

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).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 2 p.m., Monday, December 17, 1990.

PLACE: 2033 K St., NW., Washington, DC, 8th floor Hearing room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 90-28785 Filed 12-4-90; 3:02 pm]

BILLING CODE 6351-01-M

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NUMBER: 90-28218.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, December 6, 1990, 10:00 a.m., Meeting Open to the Public.

The following item has been added to the agenda:

Change in Vote Procedures Concerning Requests for Extension of Time.

The following item has been deleted from the agenda:

Advisory Opinion 1990-14—Michael A. Nemeroff on behalf of the American Telephone & Telegraph Company and its subsidiary, AT&T Communications, Inc.

DATE AND TIME: Tuesday, December 11, 1990, 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Correction and Approval of Minutes
Advisory Opinions:
- AO 1990-14—Michael A. Nemeroff on behalf of the American Telephone & Telegraph Company and its subsidiary, AT&T Communications, Inc.
- AO 1990-25—Morgan L. Staines on behalf of Community Psychiatric Centers Federal PAC.

Regulations: Public Financing of Presidential Primary and General Election Candidates: Notice of Proposed Rulemaking
Administrative Matters

DATE AND TIME: Tuesday, December 11, 1990, to Convene After Open Meeting.

PLACE: 999 E Street, N.W., 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 concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 376-3155.

Hilda Arnold,

Administrative Assistant, Office of the Secretariat.

[FR Doc. 90-28764 Filed 12-4-90; 1:28 pm]

BILLING CODE 6715-01-M

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD:

TIME AND DATE: 1:30 p.m., December 17, 1990.

PLACE: 5th Floor, Conference Room, 805 Fifteenth Street, N.W., Washington, D.C.

STATUS: Open

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the November 19, 1990, Board meeting.
2. Thrift Savings Plan activity report by the Executive Director.
3. Audit status review.
4. Ethics briefing.

CONTACT PERSON FOR MORE INFORMATION: Tom Trabucco, Director, Office of External Affairs, (202) 523-5660.

Dated: December 3, 1990.

Francis X. Cavanaugh,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 90-28778 Filed 12-4-90; 3:02 pm]

BILLING CODE 6760-01-M

LEGAL SERVICES CORPORATION

BOARD OF DIRECTORS MEETING CHANGES

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: FR Doc. 90-28851, 55 FR 50080.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: Meeting commencing at 9:00 a.m. on December 11, 1990.

CHANGES IN THE MEETING: The meeting has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: Maureen R. Bozell, Executive Office, (202) 863-1839.

Date Issued: December 4, 1990.

Maureen R. Bozell,

Corporation Secretary.

[FR Doc. 90-28804 Filed 12-4-90; 3:53 pm]

BILLING CODE 7050-01-M

Corrections

Federal Register
Vol. 55, No. 235
Thursday, December 6, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. 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 HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 90N-0390]

Ciba-Geigy Corp., et al.; Withdrawal of Approval of New Drug Applications

Correction

In notice document 90-26905 beginning on page 47807 in the issue of Thursday, November 15, 1990, make the following correction:

On page 47808, in the second column of the table, in the fifth from last entry, "I-242" should read "I-131".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 90P-0331]

Sour Cream Deviating From Identity Standards; Temporary Permit for Market Testing

Correction

In notice document 90-27176 appearing on page 48174 in the issue of Monday, November 19, 1990, under the **DATES** caption, in the last line, the date should read "February 19, 1991"..

BILLING CODE 1505-01-D

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301-81]

Initiation of Section 302 Investigation, Proposed Determinations, Public Hearing, and Request for Written Comments: Denial of Benefits Under a Trade Agreement by the European Communities

Correction

In the heading of notice document 90-27333 beginning on page 48197 in the issue of Monday, November 19, 1990, the docket number should read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-ASW-45; Amdt. 39-6750]

Airworthiness Directives; McDonnell Douglas Helicopter Co.; Model 369 Series Helicopters

Correction

In rule document 90-22125 beginning on page 38542 in the issue of Wednesday, September 19, 1990, make the following corrections:

§ 39.13 [Corrected]

1. On page 38543, in the first column, in § 39.13, under **MCDONNELL DOUGLAS HELICOPTER CO.**, starting in the fifth line the part numbers should read:

"(P/N's) 369A1100-BSC, -501, -503, -505, -601, 369D21100-BSC, -503, -505, -507, -509, -511, -513, and 369D21102-BSC; or (2) Main rotor hub lead-lag link assemblies having P/N's 369A1203-BSC, -3, -11, 369H1203-BSC, -11, -21, -31. (Docket No. 88-ASW-45)

§ 39.13 [Corrected]

2. In the same section, in the same column, the part numbers in the last six lines, as well as, the first six lines of the next column should read as follows:

"P/N's 369A1100-BSC, -501, -503, -505, -601; 369D21100-BSC, -503, -505, -507, -509, -511, -513; 369D21100-BSC; and of the exposed portions of the attach lugs of the main rotor hub lead-lag links, P/N's 369A1203-BSC, -3, -11; 369H1203-BSC, -11, -21, -31."

BILLING CODE 1505-01-D

federal register

Thursday
December 6, 1990

Part II

Environmental Protection Agency

40 CFR Part 260, et al.
Wood Preserving; Identification and Listing of Hazardous Waste; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, 262, 264, 265, 270, 271, and 302

[EPA/OSW-FR-91-008/FRL-3856-7]

RIN 2050-AC43

Identification and Listing of Hazardous Waste; Wood Preserving

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency is today amending its regulations under the Resource Conservation and Recovery Act (RCRA) by listing as hazardous three categories of wastes from wood preserving operations that use chlorophenolic, creosote, and/or inorganic (arsenical and chromium) preservatives. Today's rule finalizes portions of a proposed rule published by EPA on December 30, 1988 (53 FR 53282).

The listings finalized today include wastewaters, process residuals, preservative drippage, and spent preservatives from wood preserving processes at facilities that use or have previously used chlorophenolic formulations, facilities that use creosote formulations, and facilities that use inorganic preservatives containing arsenic or chromium. With respect to wastes from surface protection processes that use chlorophenolic formulations (proposed waste F033), EPA is deferring a final listing until more information can be collected on which to support a decision. These wastes may, however, exhibit the Toxicity Characteristic and consequently, may already be regulated as hazardous waste under subtitle C.

Today's rule includes permitting and interim status standards for drip pads used to assist in the collection of treated wood drippage. These standards include requirements for drip pad design and operation, inspections, and closure. Under today's rule, generators may be eligible for a 90-day generator exemption from permitting if their pads meet all of the technical standards for drip pads.

The effect of listing F032, F034, and F035 will be to subject them to the hazardous waste regulations of 40 CFR parts 124, 262 through 266, 268, 270, and 271; the notification requirements of section 3010 of RCRA; and the notification requirements under CERCLA section 103.

DATES: Today's final rule will become effective on June 6, 1991. For compliance deadlines, see section VIII of this preamble. The information collection requirements contained in the following paragraphs have not been approved by the Office of Management and Budget (OMB) and are not effective until OMB has approved them: § 261.35(b)(1), (b)(3), (c); § 262.34(a)(2)(i), (a)(2)(ii); § 264.571(a), (b); § 264.572(i), (k), (m)(1)(i), (m)(1)(iv), (m)(3), (o); § 264.573(a); § 264.574(c)(1)(i), (c)(1)(ii); § 265.441(a); (b); § 265.443(g), (i), (k), (m)(1)(i), (m)(1)(iv), (m)(3), (n); § 265.444(a); § 265.445(c)(1)(i), (c)(1)(ii); § 270.22(a), (b), (c). A **Federal Register** Notice will be published in which the effective dates for these regulations will be established.

ADDRESSES: The official record for this rulemaking is identified as Docket Number F-90-WPWF-FFFFF and is located in the EPA RCRA Docket, room M2427, 401 M Street SW., Washington, DC 20460. The public must make an appointment in order to review docket materials by calling (202) 475-9327, for the RCRA portion of the docket, or (202) 382-3046 for the CERCLA portion of the docket. Both dockets are available for inspection from 9 a.m. to 4 p.m., Monday through Friday, excluding holidays. The public may copy up to 100 pages from the docket at no charge. Additional copies cost $0.15 per page.

FOR FURTHER INFORMATION CONTACT: The RCRA/CERCLA Hotline at (800) 424-9346 or, in the Washington, DC area, at (202) 382-3000. For technical information on the RCRA portion of the rule contact Mr. Ed Freedman or Mr. Edwin F. Abrams of the Office of Solid Waste (OS-333) at (202) 382-4770. For technical information on the CERCLA portion of the rule, contact Mr. Daniel Chellaraj, Response Standards and Criteria Branch, Emergency Response Division, Office of Emergency and Remedial Response (OS-210) at (202) 382-2344. Both offices are located at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Legal Authority
II. Background
III. Summary of the Regulation
  A. Overview of the Proposed Rule
  B. Overview of the Final Rule
  C. Industry Overview
  D. Wastes Included in Today's Listing
  E. Basis for Listing
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I. Legal Authority

These regulations are being promulgated under the authority of sections 2002(a) and 3001(b) and (e)(1) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a) and 6921(b) and (e)(1) (commonly referred to as RCRA), and section 102(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) 42 U.S.C. 9602(a).

II. Background

Pursuant to section 3001 of subtitle C of the Resource Conservation and Recovery Act (RCRA), this notice lists as hazardous certain wastes generated from wood preserving processes that use either chlorophenolic, creosote, and/or inorganic (arsenical and chromium) preservatives. EPA proposed to list these and other wastes generated at wood preserving and surface protection facilities as hazardous in a notice published in the **Federal Register** on December 30, 1988 (see 53 FR 53282). Certain other wastes from wood preserving are already regulated as hazardous waste under RCRA. An overview of past RCRA regulatory

actions taken by the Agency that affect the wood preserving industry was provided in the preamble to the proposed listing (see 53 FR 53283).

Today's listing for wastes from wood preserving processes that use or have previously used pentachlorophenol formulations (F032) partially fulfills the requirements of section 3001(e)(1) of RCRA, added by the Hazardous and Solid Waste Amendments (HSWA) of 1984. This section requires EPA to list, as appropriate, wastes containing chlorinated dioxins or chlorinated dibenzofurans, within certain specified deadlines.

EPA proposed four listings pertaining to wastes from wood preserving and surface protection, including two listings for pentachlorophenol wastes, on December 30, 1988. Today's notice promulgates three of the four listings, including one of the listings for chlorophenolic wastes, with some modifications.

EPA notes that today's listings do not in any way affect the present listing for hazardous waste number K001, bottom sediment sludge from the treatment of wastewaters from wood preserving processes that use creosote and/or pentachlorophenol. K001 wastes are not included in the listings being promulgated today. Today's listings supplement the existing K001 listing and increase the quantity and numbers of types of wastes from wood preserving processes regulated under subtitle C of RCRA.

Today, EPA is amending § 261.31 by adding three broad categories of wastes from wood preserving processes that use organic and/or inorganic preservatives to the list of wastes from non-specific sources. These wastes (which were described fully in the preamble to the proposed rule, see 53 FR 53288–53291) include wastewaters, process residuals, treated wood drippage (i.e. drippage from treated wood), and spent preservative. Table 1 lists the constituents of concern that constitute the basis for listing the three categories of wastes. These constituents typically occur in the wastes at concentrations that pose a threat to human health and the environment if the wastes are mismanaged. EPA has described the data documenting the hazards posed by these wastes in the preamble to the proposed rule (see 53 FR 53284 and 53291–53308). Because these wastes are capable of posing a threat to human health and the environment when improperly treated, stored, transported, disposed, or otherwise handled, EPA is listing them as hazardous. Consequently, as a result of today's final rule, these wastes are subject to the applicable requirements of 40 CFR parts 124, 260 through 266, 268, 270, and 271.

TABLE 1.—CONSTITUENTS OF CONCERN

	F032	F034	F035
Chlorophenols			
Pentachlorophenol	X		
PAHs			
Benz (a) anthracene	X	X	
Benzo (a) pyrene	X	X	
Benzo (k) fluoranthene		X	
Dibenz (a,h)anthracene	X	X	
Indeno (1,2,3-c,d) pyrene	X	X	
Naphthalene		X	
Dioxins and Furans			
Tetrachlorodibenzo-p-dioxins	X		
Pentachlorodibenzo-p-dioxins	X		
Hexachlorodibenzo-p-dioxins	X		
Heptachlorodibenzo-p-dioxins	X		
Tetrachlorodibenzofurans	X		
Pentachlorodibenzofurans	X		
Hexachlorodibenzofurans	X		
Heptachlorodibenzofurans	X		
Inorganics			
Arsenic	X	X	X
Chromium	X	X	X
Lead			X

Note: X indicates that constituents have been found to be present at levels of regulatory concern in individual listings.

III. Summary of the Regulation

A. Overview of the Proposed Rule

The notice published on December 30, 1988 proposed to add the following four listings pertaining to wastes from wood preserving and surface protection processes to the list of wastes from non-specific sources:

F032—Wastewaters, process residuals, preservative drippage, and discarded spent formulations from wood preserving processes at facilities that currently use or have previously used chlorophenolic formulations (except wastes from processes that have complied with the cleaning or replacement procedures set forth in § 261.35 and do not resume or initiate use of chlorophenolic formulations). This listing does not include K001, bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol.

F033—Wastewaters, process residuals, protectant drippage, and discarded spent formulations from wood surface protection processes at facilities that currently use or have previously used chlorophenolic formulations (except wastes from processes that have complied with the cleaning or replacement procedures set forth in § 261.35 and do not resume or initiate use of chlorophenolic formulations).

F034—Wastewaters, process residuals, preservative drippage, and discarded spent formulations from wood preserving processes at facilities that currently use creosote formulations. This listing does not include K001, bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol.

F035—Wastewaters, process residuals, preservative drippage, and discarded spent formulations from wood preserving processes at facilities that currently use inorganic preservatives containing arsenic or chromium. This listing does not include K001, bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol.

All four of the listings were proposed to be designated as toxic (T) hazardous waste.

The scope of the proposed F032 listing included wastes from creosote and inorganic processes that currently use or previously used chlorophenolic formulations because these wastes may be cross-contaminated with chlorinated dioxins and/or dibenzofurans. Similarly, the F033 listing covered wastes from surface protection processes that currently use or previously used chlorophenolic formulations.

EPA included the cross-contaminated wastes in the F032 and F033 listings because we concluded that such cross-contamination is likely to occur under two circumstances:

(1) When creosote or inorganic processes are located at a plant where chlorophenolic preservatives are or have been used; and

(2) When equipment used for a non-chlorophenolic process has been previously employed in a chlorophenolic process.

EPA anticipated that some generators might benefit from provisions for demonstrating that the potential for cross-contamination had been eliminated through proper cleaning and/or replacement of contaminated equipment. For example, surface protectors can change to protectants or formulations that are not addressed by the listings. With standards for proper equipment cleaning and replacement, EPA anticipated that the wastes generated after changing protectants could be removed from subtitle C coverage, if they also did not exhibit any of the characteristics of hazardous waste. The proposal, therefore, included standards for proper cleaning and replacement of equipment, documentation of the cleaning and replacement procedures, and certification that the procedure used followed a plan previously approved by the Regional Administrator of State Director.

Another important component of the December 1988 proposed rule was the technical standards for drip pads, which assist in collection and containment of

treated wood drippage. Typically, drippage is generated at two points in the wood preserving process: (1) Immediately after the treated wood is removed from the treating vessel (i.e., retort or tank) while it is held in an area often called the "kick-back" area and (2) during the time that the wood is held in storage after treatment is complete. At those plants that collect drippage, a concrete drip pad, sometimes equipped with sumps, is typically used. In developing the proposed rule, EPA, therefore, included interim status and permitting standards for drip pads.

The proposed rule defined a drip pad as "* * * a curbed, impermeable base installed to assist collection of drippage and accumulated precipitation in drip or kick-back areas at wood preserving facilities or in treated wood storage yards" (see 53 FR 53325). Under the proposed rule, all drip pads were to have associated collection systems or sumps that conform to the 40 CFR parts 264 and 265 standards for tanks. The standards for drip pads included technical requirements for containment, a general operating requirement designed to prevent tracking of hazardous waste and hazardous waste constituents off the drip pad, inspection requirements, and closure requirements. While EPA regulations generally require that RCRA permits be obtained for all hazardous waste management units, the proposed rule provided an extension of the existing § 262.34 exemption for generators who store hazardous waste in tanks or containers for no more than 90 days. Under this proposed exemption, owners and operators of drip pads used in handling treated wood drippage would not have been required to obtain RCRA permits for their drip pads provided that they remove the waste from the pad at least every 90 days and comply with the 40 CFR part 265 interim status standards for drip pads.

EPA proposed the F032 and F033 listings in response to the Hazardous and Solid Waste Amendments (HSWA) of 1984. HSWA required EPA to consider listing dioxin and furan-containing wastes as hazardous and the listings for F032 and F033 that were proposed described dioxin and furan-containing wastes. Thus, appropriate modifications to the part 271 list of regulations implementing the Hazardous and Solid Waste Amendments of 1984 were also included in the proposed rule. Finally, the proposed rule included provisions for designating the four categories of waste streams as CERCLA hazardous substances and established proposed reportable quantities for the wastes.

B. Overview of the Final Rule

Today's rule adds to the list of wastes from non-specific sources three of the four listings proposed on December 30, 1988, with some modification. These are:

F032—Wastewaters, process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that currently use or have previously used chlorophenolic formulations (except potentially cross-contaminated wastes that have had the F032 waste code deleted in accordance with § 261.35 of this chapter and where the generator does not resume or initiate use of chlorophenolic formulations). This listing does not include K001, bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol.

F034—Wastewaters, process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that use creosote formulations. This listing does not include K001, bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol.

F035—Wastewater, process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that use inorganic preservatives containing arsenic or chromium. This listing does not include K001, bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol.

These listings are the same as those proposed for F032, F034, and F035 (for a complete description of the wood preserving processes affected by today's listing, see 53 FR 53287 et seq. EPA has deleted the term "discarded" from the listings, as it was used in reference to spent formulations. The reason for this change is that a spent material need not actually be discarded to be a solid waste. This change does not change the scope of the listing in any way. Spent formulations normally include drippage. The listing language refers to drippage separately, however, in order to be clear. Throughout this preamble and rule, the term "drippage" refers to excess preservative that is kicked back from the wood following treatment. It does not apply to precipitation that drips from a stack of wood in the storage yard when it falls from wood that had ceased to drip on the process area drip pad before being moved to the storage yard. As explained later in this preamble and rule, drippage must cease on the drip pad before the treated wood can be moved to the storage yard. In addition, the word "generated" has been added immediately before "at plants" in each listing to further clarify that only wastes generated at wood preserving plants are included in today's final listings. Finally, the term "plant" has been substituted for "facility" because the term "facility" has a specific meaning under 40 CFR 260.10, which is not applicable here.

Today's rule does not include a final listing for F033, wastewaters, process residuals, protectant drippage, and spent formulation from wood surface protection processes at facilities that use chlorophenolic formulations (for a complete description of the surface protection processes proposed to be affected by the F033 listing, see 53 FR 53288). After considering the comments received and evaluating the data which provided the basis for the proposed F033 listing, EPA has concluded that it has insufficient information at this time on which to base a final listing decision for F033. The Agency has, therefore, decided to defer the F033 listing until such time as further information concerning waste quantities and waste characterization can be collected and evaluated. EPA will conduct a program of site visits in order to collect additional information and better characterize the surface protection industry and the waste generated by surface protection processes. The Agency will take action on the proposal to list F033 when this additional data collection is complete. EPA encourages commenters to submit data to the Agency that may aid in analysis of the F033 listing.

Today's rule makes several modifications to the technical standards proposed for drip pads, under new subpart W of parts 264 and 265, to account for issues raised by commenters and to ensure that all drip pads at wood preserving plants provide the same level of protection, whether permitted under part 264 or exempt from permitting under the 90-day accumulator provisions of § 262.34 (the technical standards for drip pads were included as subpart T in the proposed rule). The specific provisions of today's rule are discussed in detail later in this preamble.

Finally, EPA has removed the prescriptive technical standards for equipment cleaning and replacement from the rule and replaced them with a general provision that allows the F032 waste code to be deleted from F034 or F035 wastes generated at plants that previously used chlorophenolic formulations. Thus, rather than carrying two waste codes (e.g., F032 and F034 or F035), these wastes will carry only one code (F034 or F035). This provision is available to generators who comply with certain performance standards for

equipment cleaning and replacement, recordkeeping requirements, and certification requirements, and provided that the generator does not resume or initiate use of chlorophenolic preservatives.

EPA recognizes that today's rule affects a large number of small businesses, many of which may not have previously been subject to regulation under RCRA and are therefore unfamiliar with Federal and state programs for hazardous waste management. To assist the regulated community with RCRA compliance, EPA provides informational assistance through its RCFA/CERCLA Hotline. The regulated community can contact the Hotline, toll free, at (800) 424–4396 (or, in the Washington, DC area at (202) 382–3000) daily, exclusive of holidays and weekends, between the hours of 8 a.m. and 4 p.m., Eastern Standard or Daylight Time. Hotline personnel are able to answer questions regarding the regulations and provide any written materials requested. Additionally, EPA staff (as listed at the opening of this Notice) are available to answer technical questions regarding the rule, also between the hours of 8 a.m. and 4 p.m. daily.

The following sections discuss all of the technical and administrative aspects of today's final rule and describe changes that have been made to the proposed rule in response to comments received. EPA's response to certain comments are also presented in this section because they constitute the basis for changes made to the proposal. Elsewhere in today's preamble (see section IV), we provide EPA's response to comments on six major topics addressed by commenters. A comprehensive summary of all comments received and the Agency's response to the significant comments is provided as part of the public docket to this rule and is available for inspection.

1. Requirements for Drip Pads

As in the proposed rule, today's rule includes technical standards under 40 CFR parts 264 and 265 for drip pads used to assist in the collection, storage, or management (treatment prior to reuse or recycling of preservatives) of treated wood drippage. Because today's rule explicitly prohibits moving treated wood off of the drip pad until drippage has ceased, EPA anticipates that owners and operators will elect to construct drip pads only in process or kick-back areas (i.e., immediately adjacent to treatment tanks or cylinders). Drip pads may also be constructed in long term storage yards, in accordance with the applicable technical standards, if it is anticipated that drippage from treated wood will be generated in the storage yard.

EPA is aware that past releases of drippage and other residuals associated with routine practices in the wood preserving industry have resulted in considerable environmental contamination at some sites. Before building new drip pads, generators should assess the extent of any existing contamination and conduct appropriate clean-up activities. Where such contamination is significant, EPA Regional or state authorities may require clean up in the future under Federal or state CERCLA authority. Additionally, EPA Regional authorities may require clean-up under RCRA section 7003, or, if the facility is required to obtain a RCRA permit in the future, under section 3004(u) and/or section 3004(v) of RCRA. EPA will be continuing to assess whether other authorities might be available to address this problem.

Should generators fail to clean up the process area where past drippage has accumulated prior to constructing a new drip pad, drip pads will likely have to be destroyed and excavated in the event that clean-up is required. Generators should also note that certain states have enacted legislation requiring certification that all environmental contamination has been eliminated from a property before real estate transactions can be completed. For these reasons, EPA urges generators to take steps to assess the extent of potential contamination at their plant sites and to work with the appropriate EPA Regional and/or state authorities to ensure proper cleanup before building new drip pads.

In response to comments on the proposed rule, EPA has made changes to the technical standards for drip pads. These changes are intended to address issues concerning drip pad design and requirements for impermeability, identified by commenters. They provide for equivalent levels of protection under parts 264 and 265. The following paragraphs discuss each of the sections of subpart W (parts 264 and 265).

Section 264.570 (265.440)—Applicability. The subpart W standards are applicable to all drip pads that are used to handle hazardous waste from wood preserving operations. This section provides for exemptions from the requirements for run-on and run-off controls, as appropriate, for drip pads that are enclosed in structures or covered (and hence, protected from precipitation in a manner that prevents run-on and run-off). A drip pad, according to the definition added to 40 CFR 260.10, is: "an engineered structure consisting of a curbed, free-draining base, constructed of non-earthen materials and designed to convey preservative kick-back or drippage from treated wood, precipitation and surface water run-on to associated collection systems at wood preserving plants."

Today's rule distinguishes between new and existing drip pads by defining new drip pads as those constructed after December 6, 1990, and those for which owners and operators have not yet entered into binding financial or other agreements for construction. Existing drip pads are defined as those in use as of today and those for which owners or operators have entered into binding financial or other agreements for construction.

Section 264.571 (265.441)—Assessment of Existing Drip Pad Integrity. EPA is aware that there are some drip pads in use that meet most of the standards for design and operation but may not have liners and leak detection systems. In order to avoid unnecessary destruction and excavation of these pads, today's rule provides that such pads, if they are capable of meeting all of the requirements for new pads except those for liners and leak detection systems, may continue to operate without upgrading for a period of up to 15 years (depending on the age of the drip pad), when also retrofitted with an impermeable coating, sealant, or other material.

The purpose of the requirements for liners and leak detection systems beneath drip pads is to provide secondary containment beneath the pad (which provides primary containment). This secondary containment serves as protection against leakage reaching the soil beneath the pad, in the event of an undetected leak. Commenters pointed out that concrete, a common material used in drip pad construction, is not impermeable. Further, concrete is subject to cracking and degradation associated with heavy vehicular traffic such as forklifts. Such cracking may occur underneath the top layer and would not be detected during inspections. However, EPA believes that a properly installed and maintained impermeable coating or cover on the surface of the drip pad is a viable temporary substitute for bottom liners and leak detection systems.

To ensure that existing pads are structurally sound and capable of containing hazardous waste, subpart W requires that owners and operators of existing drip pads complete an assessment of the integrity of their drip pads with regard to the subpart W standards. The assessment must be

complete on the effective date of today's rule. The purpose of the assessment is to have the owner/operator document that (1) the pad is capable of containing drippage by preventing run-on and run-off as well as penetration through the pad and (2) the pad meets all of the subpart W requirements except those for liners and leak detection systems. Owners and operators must maintain a copy of the results of the assessment on file at the facility. Additionally, the rule requires that the written assessment be reviewed and approved by an independent qualified, registered professional engineer. This assessment must be reviewed and re-certified annually until the drip pad is brought into compliance with all of the requirements of subpart W. Owners and operators should be aware, however, that such certification (and the other certifications required in this rulemaking) will in no way be deemed to be compliance with the regulations.

Section 264.571(c) (265.441(c)) allows owners and operators to establish a schedule for upgrading drip pads to meet the requirements for bottom liners and leak detection systems based on the age of the drip pad. Today's rule states that all upgrades, repairs, or modifications necessary to bring drip pads of known and documented age into compliance with all subpart W requirements, including those for bottom liners and leak detection systems, must be completed no later than two years after the effective date of this rule or by the time the drip pad is 15 years of age, whichever is later. For drip pads of unknown or undocumented age, the date for completing all upgrades, repairs or modifications will be set based on the age of the wood preserving plant. For drip pads for which the age of the pad or the age of the plant cannot be documented, upgrades, repairs and modifications must be completed within eight years of the effective date of this rule. However, facilities that are more than seven years old must comply with all design and operating standards by the time the facility reaches 15 years of age or no later than two years after the effective date of this rule, whichever is later.

EPA has selected 15 years of age as the limit for making repairs and upgrades because information from the wood preserving industry indicates that 15 years is a somewhat conservative estimate of a reasonable life-expectancy for a well-built drip pad. After 15 years, drip pads may begin to deteriorate significantly and often must be replaced or undergo extensive repairs in order to maintain containment integrity.

In developing today's rule, EPA considered several options for establishing a compliance period. For example, EPA considered establishing a fixed period of 15 years for all existing drip pads. The provisions of today's rule were selected because they account for wide variability in the ages of existing drip pads.[1] EPA intends that this provision allow for reasonable schedules to be established for drip pad modification and anticipates that most will need to be completed in time periods considerably shorter than 15 years.

Today's rule anticipates three different compliance circumstances for existing drip pads:

1. Pads that are cracked and leaking, or otherwise unfit for use must be removed from service on the effective date of today's rule. Those that can be repaired may be put back into service after repairs are complete and upgraded in accordance with the appropriate schedule constraints, based on the age of the pad. Those that operate after the effective date and cannot or will not be repaired must be closed in accordance with § 264.574 (§ 265.445) and all applicable requirements of part 264/265 subpart G (Closure and Post-Closure).

2. Pads that are not unfit for use and for which the age can be documented may remain in use after the integrity assessment is complete. All upgrades must be complete either by the time the pad is 15 years old or by two years after the effective date of this rule, whichever is later.

3. Pads that are not unfit for use for which the age cannot be documented may remain in use after the integrity assessment is complete. All upgrades must be complete within eight years after the effective date of this rule. However, if the wood preserving plant (rather than the pad) is known to be more than seven years old, all upgrades must be completed by the time the facility is 15 years old or by two years after the effective date of this rule.

During the period between the effective date of today's rule and the date when repairs and modifications must be complete, owners and operators must re-evaluate the initial drip pad assessment, make any necessary changes, and have the updated assessment reviewed and certified by an independent, qualified registered professional engineer annually. The certified assessment must be maintained at the facility and must include documentation of the age of the drip pad or, where drip pad age cannot be definitively established, the information that constitutes the basis for establishing the compliance schedule. Also during this period, owners and operators are subject to all provisions of subpart W pertaining to operating practices, recordkeeping, inspections, and closure, including the provisions for repairing any conditions that have led or could lead to leakage from the pad. No later than two years before the date that all upgrades will be completed, owners and operators must prepare a plan for upgrading the drip pad to meet all design standards. This plan must be certified by an independent, qualified registered professional engineer and must be submitted to the Regional Administrator or State Director. The plan should provide sufficient detail to allow the Regional Administrator or State Director to make a determination that the pad will meet all of the requirements of subpart W upon completion. The plan must also include information documenting the age of the drip pad or, where the age cannot be established, information constituting the basis for establishing the compliance schedule.

EPA recognizes that, at some wood preserving plants, new drip pads have recently been built that may continue to be protective of human health and the environment, although they may not have synthetic liners and leak detection systems, beyond the date established for compliance with these requirements. Consequently, today's rule allows for owners and operators of such facilities to petition the Regional Administrator for a reasonable extension of the deadline for compliance with liner and leak detection requirements. In deciding whether to grant such extensions, the Regional Administrator will be concerned with whether the drip pad is in compliance with all of the requirements of § 264.571, except those for liners and leak detection systems, and that the pad design and operation are protective of human health and the environment.

As stated previously, EPA has developed the requirements of § 264.571 (265.441) in order to ensure that all existing drip pads in use after the effective date of the rule are capable of containing any drippage, contaminated precipitation, or other waste that may fall on them and minimizing releases to the soil, ground water or surface water. The rule also allows owners and operators ample time to upgrade their

[1] See RCRA section 3004(a), stating that EPA "* * * should, where appropriate, distinguish in [performance] standards between requirements appropriate for new facilities and for facilities in existence on the day of promulgation of such regulations."

drip pads as needed to comply with the design and operating requirements of Subpart W without closing drip pads, except where necessary to prevent releases to the environment. These requirements ensure that all drip pads will be brought into compliance with the same protective standards before any failure of the drip pad is likely to occur. Numerous commenters responding to the proposed rule stated that owners and operators of drip pads would require more than six months to bring existing drip pads into compliance. Today's rule addresses their concerns while preventing operation of any pad that is likely to fail, causing a release of hazardous waste to the soil, ground water, or surface water.

Section 264.575 (§ 265.442)—Design and Installation of New Drip Pads.

Under § 265.442, owners and operators must ensure that any new drip pads that will be operated in accordance with the § 265.34 exemption from permitting for 90-day accumulation, are built and operated in compliance with all of the requirements of subpart W. For facilities that do not have drip pads, generators should note that, as of the effective date of today's rule, treated wood drippage will be subject to all of the requirements of subtitle C of RCRA and cannot be disposed of on the land except in a properly permitted land disposal facility.

Section 264.572 (265.443)—Design and Operating Requirements. The subpart W standards for drip pads included in today's rule require that drip pads consist of a base that is constructed of non-earthen materials, excluding wood and non-structurally supported asphalt. Drip pads must have a collection area or device (system) designed to collect drippage, leakage, and the water volume resulting from a 24-hour, 25-year storm. Drip pads must be sloped to free-drain treated wood drippage and any other waste that falls on the pad to the associated collection system and must have a curb or berm around the perimeter. They must be of sufficient strength and thickness to prevent failure due to physical contact, climate conditions, the stress of installation, and the stress of daily operations (e.g., stresses caused by vehicles, wood movement, or other activities).

The surface of drip pads must be sealed, coated, or covered with an impermeable material such that it is capable of containing drippage and accumulated precipitation and preventing any leakage to the underlying soil as the waste is conveyed to the collection system. Commercially available epoxy or polyurethane sealants or synthetic coatings similar to liners may be used for this purpose. Additionally, EPA anticipates that, where possible, drip pad joints will be fitted with chemically-resistant water stops to ensure an impermeable surface.

To ensure that drippage and related wastes are contained on the pad and that migration of hazardous wastes from the pad to the underlying soil or ground water is prevented, the subpart W standards require that all drip pads (except certain, temporarily exempt existing pads) be underlaid with leak detection systems, as defined in 40 CFR 260.10. The standards further require that the pad and leak detection system be underlaid with a chemically-resistant synthetic liner. As stated previously, this synthetic liner will provide secondary containment to ensure that any leakage resulting from undetected cracks in the drip pad is not released to the environment.

EPA developed the revised standards in response to commenters' concerns regarding use of the term "impermeable" in the proposed rule. Commenters generally believed that EPA should define impermeable so that the regulated community would be more certain of the meaning of the standard. Rather than define a numeric standard for impermeability (or a standard for acceptable permeability), we have added technical requirements that better define acceptable design characteristics. These requirements are intended to ensure that drip pads are capable of containing all drippage and related wastes and of minimizing the likelihood of releases of hazardous waste to the soil or ground water under the pad.

Today's rule therefore requires a containment system with three components: (1) The drip pad itself, coated or covered with an impermeable material, (2) a leak detection system, and (3) a chemically resistant, synthetic bottom liner. The coated or covered drip pad provides primary containment for drippage and other hazardous waste. The drip pad must be structurally sound so that it can withstand the stresses of daily activities. Because EPA expects that drip pads will crack with time in service, subpart W includes a requirement for inspecting drip pads once every 7 days and procedures for making repairs in the event that a condition (i.e., a crack or detection of leakage) is recognized that could lead to a release of hazardous waste.

As stated previously, EPA also recognizes, however, that all cracks are not necessarily visible from the surface of the pad, or may not be recognized as significant at the time of inspection. Consequently, we have included the requirement for leak detection systems. These systems will allow owners and operators to know when drip pads are leaking, although no significant cracks have been identified. Furthermore, the synthetic liner under the leak detection system will ensure that such leakage is not released to the environment. EPA believes that this three-component containment system will ensure "impermeability" and make clear to owners and operators what EPA expects in terms of drip pad design.

In order to ensure that drip pads are designed to meet all of the design requirements of subpart W, today's rule requires that drip pads be examined and evaluated for compliance with the standards and that owners and operators obtain a certification attesting to compliance from an independent qualified, registered professional engineer. This certification must be maintained at the facility as part of the operating log and/or submitted with a RCRA permit application if such an application is filed for the drip pad.

Section 264.572 (265.443) also requires the following operating practices:

—Drip pads must be maintained free of cracks, corrosion, or deterioration that could lead to leakage.

—Drip pads and their associated collection systems must be designed and operated to collect drippage or precipitation that falls onto the pad.

—Drip pads must have run-on and run-off control to prevent contamination or surface water, unless enclosed in a structure.

—Drippage and precipitation must be removed from the collection system as necessary to prevent overflow onto the drip pad. Collection systems must be emptied as soon as possible following storms to ensure that the design capacity of the system is maintained.

—Drip pads must be operated and maintained so as to minimize tracking of hazardous waste from the pad as a result of the activities of personnel or equipment. EPA believes that in most cases, owners and operators will choose to have equipment (i.e., fork lifts, trams, etc.) dedicated to a particular drip pad in order to comply with this requirement. Procedures for cleaning equipment before leaving the pad to minimize tracking of waste or waste constituents from the pad are also acceptable.

—To ensure that inspections are as effective as possible, drip pad surfaces must be thoroughly cleaned at least once every seven days to remove accumulated residues (these residues are hazardous waste and must be managed accordingly). The

cleaning procedure must employ detergents or techniques such as steam cleaning as necessary to remove accumulated residues; permanent stains, however, need not be removed. Owners and operators are required to document the date and time of each cleaning and record the procedure used in the facility operating log.

—Owners and operators are also required to document past operating and waste management practices in the facility operating log. This information will assist in determining the potential extent and severity of contamination at the facility site.

—Treated wood must be held on drip pads until drippage has ceased. The owner or operator must maintain records documenting compliance with this requirement.

This final requirement has been added to the rule in order to ensure that only minimal drippage occurs after the wood is moved to the storage yard. EPA believes that, in most cases, this requirement will result in deminimis levels of drippage in storage yards, making drip pads unnecessary in these areas. If in the future, EPA receives evidence that significant drippage is generated in storage yards despite this requirement, the Agency may amend today's rule to require drip pads in storage yards.

Today's rule includes requirements that drip pads (or portions of drip pads) discovered to be leaking or in danger of leaking be removed from service and repaired or closed immediately. Upon discovery of cracks or other conditions that are causing or may cause leaks, owners and operators are required to close the affected area of the pad and notify the Regional Administrator or State Director within 24 hours of the extent and nature of the damage. Within 10 working days of discovering damage, the owner or operator must provide a written notice to the Regional Administrator or State Director, together with a description of steps that will be taken to repair the damage, and the schedule for making repairs.

The Regional Administrator or State Director will review the information provided and make a determination regarding whether the pad must be taken out of service completely or partially until repairs are complete. This determination may or may not involve an inspection of the drip pad by a regional or state inspector. The pad or affected portion of the pad must remain out of service throughout this period. Once all repairs are complete, the owner or operator must notify the Regional Administrator or State Director and provide a statement, signed by an independent qualified, registered professional engineer, confirming that repairs have been completed in accordance with the plan provided. The drip pad, or affected portion of the pad, may be put back in service upon completion of the repairs. These procedures apply to all drip pads, regardless of their permitting status, throughout their active life. EPA believes that they are necessary to protect against contamination that could pose a threat to human health or the environment.

Owners and operators of drip pads are also required to comply with all of the general facility requirements of subparts C and D of part 264 (if obtaining a RCRA permit) and subparts C and D of part 265, if operating under the 90-day accumulator exemption.

Section 264.573 (265.444)—Inspections. Subpart W requires owners and operators to inspect drip pads weekly during operation and after storms to detect evidence of any conditions that could lead to failure. Owners and operators are required to maintain records of all inspections and to conduct inspections in accordance with a written inspection plan, as required by §§ 264.15 and 265.15.

Section 264.574 (265.445)—Closure. Today's rule requires that, upon closure, owners and operators remove or decontaminate all drip pad materials, liners, equipment, wastes, and contaminated soils. In the event that the owner or operator finds that all contaminated materials cannot be decontaminated or removed, the facility must be closed as a hazardous waste landfill and the owner or operator must comply with the requirements for post-closure care specified at 40 CFR 264.310 and 265.310. The closure requirements provide for post-closure care where owners or operators are unable to remove all contaminated soil. For permitted units, the requirement to have a permit continues throughout the post-closure period.

2. 90-Day Accumulator Exemption

Today's rule retains the proposed exemption for drip pads under § 262.34. Under this provision, generators of wood preserving wastes are not required to operate under interim status or to obtain RCRA permits for their drip pads provided that:

(1) All wastes are removed from the pad and the associated collection system at least once every 90 days,

(2) The drop pad meets all of the technical design and operating standards for drip pads included in subpart W of part 265, and

(3) The generator complies with certain recordkeeping requirements related to documenting proper waste removal from the drop pad.

EPA intends for all drip pads in use to meet the same technical standards and, consequently, provide the same level of protection to human health and the environment, regardless of whether they have a RCRA permit. To ensure that this will be the case, today's rule requires that drip pads operating under the part 265 interim status standards be designed, operated, and maintained to meet the same technical standards as permitted drip pads (except during the period allowed for existing drip pads to come into compliance with the requirements for liners and leak detection systems, as discussed later in this preamble).

In addition to meeting the same standards as permitted facilities, owners and operators of drip pads operating under the 90-day accumulator exemption will be required to maintain records documenting that their drip pads and associated collection systems are emptied of all wastes at least once every 90 days. The recordkeeping requirements specify that owners and operators maintain, as part of the facility operating record, a description of all procedures that will be followed to ensure that all wastes are removed from the drip pad and associated collection system at least every 90 days. Owners and operators must also document each waste removal in the operating record by recording, at a minimum, the quantity of waste removed, and the date and time of removal.

If an owner or operator fails to comply with the provisions of the 90-day generator exemption, EPA may require that they apply for and obtain a RCRA permit, and/or bring an enforcement action under RCRA section 3008. Additionally, section 7003 of RCRA provides the Agency with authority to bring suit where past or present handling, treatment, storage, disposal, or transportation of a solid or hazardous waste presents an imminent and substantial endangerment to human health or the environment.

3. Equipment Cleaning and Replacement

As stated previously, the proposed rule published on December 30, 1988, included standards for proper cleaning and replacement of wood preserving equipment that has been used in the past for the application of chlorophenolic preservatives. These standards were intended to minimize

cross-contamination of wastes generated using other types of preservatives (i.e., creosote and inorganic formulations) with constituents typical of chlorophenolic processes. In the preamble to the proposed rule, EPA requested public comment on the need for such standards and the appropriateness of the standards proposed. In response, commenters pointed out many technical issues with the standards (see section IV.F. of this preamble). Because the extent of cross-contamination will vary considerably among facilities as a result of many site-specific variables, EPA has developed a process by which generators who previously used chlorophenolic formulations but believe their wastes are not significantly cross-contaminated may have the F032 waste code deleted from their wastes so that the wastes only carry a code of F034 or F035, as appropriate.

Today's rule includes an amendment to 40 CFR part 261 which adds § 261.35. This new section provides a process by which generators of cross-contaminated waste may have the F032 waste code deleted from their wastes, if warranted. The process involves documenting that equipment once used for pentachlorophenol processes has been cleaned or replaced in such a manner as to ensure that cross-contamination or the potential for cross-contamination has been eliminated. The provision requires that contaminated equipment be replaced, or that waste residues be removed from equipment, using an appropriate solvent, such that the final rinse shows no detection levels of contaminants at or below the lower method calibration limit in Table 1 of Method 8290 in SW-846. Water or steam constitute an appropriate solvent only for water-soluble contaminants. Alternatively, generators who have previously cleaned or replaced their equipment after switching from pentachlorophenol to another preservative and who have not resumed use of pentachlorophenol may compile documentation of the cleaning process conducted and maintain this documentation as part of the facility operating log in order to take advantage of this provision and have the F032 waste code deleted from their waste (i.e., generators who have previously cleaned or replaced equipment need not necessarily repeat the process, provided that the procedures conducted meet the requirements of today's rule and can be documented). This provision is substantially similar to that included in the proposed rule. Today's rule varies from the proposed rule, however, in that it provides for deletion of the F032 waste code by a self-implementing process. That is, once generators conduct the equipment cleaning and replacement procedure, in accordance with the rule, and establish all required documentation, their wastes no longer meet the listing description of F032 and should be classified only as F034 or F035.

C. Industry Overview

In the preamble to the proposed rule, EPA presented a description of the wood preserving and surface protection industry, information on the wood preserving and surface protection chemicals addressed by the listing, and a description of wood preserving and surface protection processes. With only a few exceptions, as discussed below, the information provided in the premable to the proposed rule continues to be the most recent and accurate information available to EPA. Readers should note that EPA has continued to rely on the industry description presented in the December 30, 1988 proposal for this final rule, although all of the information is not repeated here.

Preserved wood production and treatment chemical consumption for the industry are summarized in Table 2. In the proposal, 1985 data were presented (Micklewright, 1987) to describe the industry. One commenter who responded to the proposal provided the most recent Micklewright report (see F-88-WPWP-00128.B], which summarizes an industry survey for 1987. This recent data has been incorporated into Table 2 (Micklewright, 1989).[2]

[2] Micklewright, J.T., 1989, Wood Preservation Statistics, 1987. A Report to the Wood-Preserving Industry in the United States, December, 1989.

TABLE 2.—PRESERVED WOOD PRODUCTION AND TREATMENT CHEMICAL CONSUMPTION, 1987

	Preservative type		
	Creosote solutions	Pentachlorophenol	Inorganics
Number of plants *	114	78	490
Products Treated:			
Crossties, switch and bridge ties (million cubic meter)	2.0	0.001	0
Lumber and timbers (million cubic meters)	0.16	0.07	10.2
Poles (million cubic meters)	0.5	1.2	0.44
Other (million cubic meters)	0.2	0.08	1.3
Total volume of wood preserved (million cubic meters)	2.8	1.4	11.9
Treating Chemical Consumed:			
Creosote and creosote/coal tar (million liters)	308		
Petroleum solvent (million liters)	35	112	
Pentachlorophenol (million kg)		9	
Inorganic salts (million kg)			65

* Plants that use more than one preservative type are counted in multiple categories. The total number of plants is 583.
Source: Micklewright (1989).

One commenter who responded to the proposed rule stated that the Micklewright data are unrepresentative of the industry because non-certified plants (i.e., plants not certified by the Society of American Wood Preservers) are not accounted for in the Micklewright survey. The commenter estimated that an additional 100 soak-treatment (i.e., non-pressure) plants are operating in the United States. EPA acknowledges that additional facilities

may exist that are not accounted for in the Micklewright surveys. These plants, which are all non-pressure soak-treatment plants (and are covered by today's rule), constituted only approximately three percent of the industry in 1987. The Micklewright surveys constitute the most recent and most comprehensive body of descriptive data available. Moreover, the differences pointed out by commenters have no bearing on EPA's decision to list wood preserving wastes.

In 1987, three major product groups accounted for 90 percent of the total production of preserved wood in the United States: (1) Lumber and timbers, mostly preserved with inorganic preservatives; (2) railroad crossties, switch ties, and bridge ties, almost all preserved with creosote; and (3) poles, 58 percent preserved with pentachlorophenol, 22 percent with creosote, and 20 percent with inorganic preservatives. The remainder of 1987 production consisted of fence posts, piling, plywood, and other products (Micklewright, 1989).[3]

The distribution of preservative use by the wood preserving industry is summarized in Table 3. This table also has been revised to reflect the 1987 Micklewright data. Twelve percent of the plants treated wood with more than one preservative in 1987. Wastes generated at these plants can be contaminated with the constituents of concern identified for all of the preservatives used at the plant.

The American Wood Preservers Institute (AWPI) reported that 588 plants produced treated wood in 1987. Approximately 60 percent of these plants are in the southeast and south central portions of the United States and account for 64 percent of 1987 production. Most plants that treat with creosote and/or pentachlorophenol are more than 25 years old; several operating plants are more than 75 years old.

TABLE 3.—DISTRIBUTION OF PRESERVATIVE USE, 1987

Plants Treating With	No. of Plants
Creosote	55
Creosote/pentachlorophenol	17
Creosote/inorganics	21
Pentachlorophenol/inorganics	19
Pentachlorophenol	21
Inorganics	429

[3] Report submitted by AWPI as part of the AWPI comment. F-88-WPWP-00128B.

TABLE 3.—DISTRIBUTION OF PRESERVATIVE USE, 1987—Continued

Plants Treating With	No. of Plants
Creosote/pentachlorophenol/Inorganics	21
Total	[1] 583

[1] An additional 19 plants treated wood using nonpressure processes.

Source: Regulatory Impact Analysis for the Final Listing of Certain Wood Preserving Wastes.

D. Wastes Included in Today's Listing

In the preamble to the December 1988 proposed rule, EPA presented detailed information describing the residuals included in today's listings. This information included descriptions of the wastes, estimated annual waste generation quantities, and information concerning waste management practices currently used by industry.[4] EPA also provided data describing the composition of the wastes proposed for listing (see 53 FR 53284–53291). This information remains the most current and reliable available to EPA and, although not repeated in entirety here, EPA continues to rely on the waste characterization, waste generation, and waste management information (pertaining to F032, F034, and F035) provided in the preamble to the proposed rule. Commenter data pertaining to drippage rates have been evaluated and are presented in the Background Document for this rule. As stated previously, EPA is reviewing the information presented in the preamble to the proposed rule pertaining to F033 wastes and will publish any revisions necessary with the Agency's final decision concerning the F033 listing.

E. Basis for Listing

In the preamble to the December 1988 proposed rule, EPA provided a detailed discussion of the basis for listing F032, F033, F034, and F035, and why F032 and F033 wastes should be designated as toxic (rather than as acute hazardous) (see 53 FR 53291–53308). The discussion presented included quantitative data on the concentrations of constituents of concern found in the wastes, summaries of the known health effects of the constituents of concern, data describing the relative persistence and mobility of the constituents of concern, and an analysis of the relative hazards posed by the wastes. In general, the information presented in the preamble to the proposed rule remains the most current available to EPA and serves as the basis for today's listings for F032, F034, and F035.

While the proposed rule was in development, EPA had received the results of a recent 1988 bioassay, conducted by the National Toxicology Program (NTP), which demonstrates the carcinogenicity of commercial grade pentachlorophenol in mice. At the time of publication of the proposal, EPA had not completed its formal review of the study. While the results of the study served as our basis for designating the proposed F032 and F033 as toxic hazardous waste, in our analysis of the relative hazards posed by the constituents of concern in proposed F032 and F033, we continued to rely on previous data and treated pentachlorophenol as a systemic toxicant rather than as a potential carcinogen (Class B_2 carcinogen). EPA has now completed its review of the NTP bioassay, has designated pentachlorophenol as a Class B_2 carcinogen, and calculated an oral dose slope factor of 1.2 X 10E–1 mg/kg/day and a Risk Specific Dose (RSD) of 8.3 X 10E–6 mg/kg/day in drinking water at a 10–6 risk level, assuming a 70 kg man ingesting 2 liters of water per day. The RSD translates to a concentration of 2.7 X 10E–4 parts per million in drinking water. Table 4 is a revised version of Table 11 from the preamble to the proposed rule, reflecting the new RSD for pentachlorophenol. Table 4 is part of a set of tables, which appeared in the preamble to the proposed rule, that EPA used to demonstrate the relative hazards posed by the four waste streams proposed for listing (see 53 FR 53295–53300). The tables for F034 and F035 wastes (Tables 13 and 14 in the preamble to the proposed rule) are not repeated here. Table 12 in the proposal pertained to wastes from surface protection process that use pentachlorophenol preservatives (proposed RCRA waste F033) and is not pertinent to today's listing. EPA continues to rely on Tables 13 and 14 from the preamble to the proposed rule for purposes of the final listing for F034 and F035 wastes.

[4] EPA would like to clarify one point made in the proposal. There, EPA indicated that drippage and drippage residuals include preservative that is washed off treated wood by precipitation (53 FR 53289). The Agency also suggested that storage area rainwater might become subject to regulation when it is disposed together with drippage covered by the listing (53 FR 53288). Those statements were premised upon a proposal that did not include the final rule requirement that treated wood be held on a drip pad until drippage has ceased. We clarify that today's listings do not apply to precipitation run-off from treated wood in storage yards without drip pads, where the owner or operator has complied with the no drippage requirement. This is consistent with (and factually supported by) the general position not to apply the derived from rule to precipitation run-off (see 40 CFR 261.3(c)(2) and 45 FR 33096 (May 19, 1980)).

TABLE 4.—BASIS FOR LISTING: HEALTH EFFECTS OF THE CONSTITUENTS OF CONCERN IN F032

Hazardous constituent	Average waste concentration detected [1] (ppm)	Health-based water concentration limits (ppm)	Basis [2]	Estimated DA 100	Drinking conc.[3] DA 1000	Well (ppm) DA 10,000	Calculated based limit DA 100	Conc. to ratios [4] DA 1000	Health-DA 10,000
Benz(a)anthracene	900	1.0×10^{-5}	RSD(B_2)	9	0.9	0.09	900,000	90,000	9,000
Benzo(a)pyrene	500	2.0×10^{-4}	RSD(B_2)	5	0.5	0.05	25,000	2,500	250
Dibenz(a,h)anthracene	200	7.0×10^{-7}	RSD(B_2)	2	0.2	0.02	2,800,000	280,000	28,000
Indeno(1,2,3-cd)pyrene	70	2.0×10^{-3}	RSD(C)	0.7	0.07	0.007	350	35	3.5
Pentachlorophenol	20,000	2.7×10^{-4}	RSD(B_2)	200	20	2	740,000	74,000	7,400
Arsenic	2,000	0.05	MCL	20	2	0.2	400	40	4
Chromium	3,000	0.05	MCL	30	3	0.03	600	60	6
Dibenzo-p-Dioxins [5]:									
TCDDs	3×10^{-3}	2.2×10^{-10}	RSD(B_2)	3×10^{-5}	3×10^{-6}	3×10^{-7}	136,000	13,600	1,360
PeCDDs	1×10^{-3}	4.4×10^{-10}	RSD(B_2)	1×10^{-5}	1×10^{-6}	1×10^{-7}	23,000	2,300	227
HxCDDs	2	2.2×10^{-9}	RSD(B_2)	0.02	0.002	2×10^{-4}	9,091,000	910,000	91,000
HpCDDs	30	2.2×10^{-8}	RSD(B_2)	0.3	0.03	0.003	13,640,000	1,364,000	136,400
Dibenzofurans [5]:									
TCDFs	2×10^{-2}	2.2×10^{-10}	RSD(B_2)	2×10^{-4}	2×10^{-5}	2×10^{-6}	909,000	90,900	9,090
PeCDFs	0.5	6.1×10^{-9}	RSD(B_2)	5×10^{-3}	5×10^{-4}	5×10^{-5}	819,700	81,970	8,200
HxCDfs	3	2.2×10^{-9}	RSD(B_2)	0.03	3×10^{-3}	3×10^{-4}	13,640,000	1,364,000	136,400
HpCDFs	44	2.3×10^{-8}	RSD(B_2)	0.44	0.044	4×10^{-3}	1,818,000	181,000	18,180

[1] Average concentrations calculated from process residuals or process sludge data.
[2] Reference Dose (RfD), risk Specific dose (RSD), and Maximum Contaminant Level (MCL) are explained later in the preamble, as are the classes of RSDs. Class A, B, and C carcinogens are based on exposure limits at a 10^{-6} risk level.
[3] Calculated for three dilution/attention (DA) levels.
[4] Ratio obtained by dividing assumed drinking well concentration column by health-based water concentration limit column, for all three dilution/attenuation (DA) levels.
[5] Health-based water concentration limits presented for dioxins and furans are based on the International Toxicity Equivalency Factors (I-TEF) for the 2,3,7,8-isomers of each homolog group (see Risk Assessment Forum, 1989). Within the PeCDF homologue group, the 1,2,3,7,8- congener has an I-TEF of 0.05 and the 2,2,4,7,8- congeners has the I-TEF of 0.5. In this table a simple arithmetic average of the I-TEF was used to calculate health-based concentration limits.
Source: Table 11 Wood Preserving Wastes Preamble and Proposed Rule, December 30, 1988.

Table 4 of today's preamble and Tables 13 and 14 in the preamble to the proposed rule (see 53 FR 53299–53300) summarize the Agency's analysis of the hazards posed by the constituents of concern present in F032, F034, and F035 wastes. In this analysis, EPA examined hypothetical ground water concentrations for the constituents of concern assuming three dilution and attenuation factors: 100, 1,000, and 10,000. These three levels encompass a broad range of dilution/attenuation factors (DA). The drinking water well concentrations calculated for dilution/attenuation levels of 100, 1,000, and 10,000 assume that the concentration of each constituent of concern in the well water are 1 percent, 0.1 percent, and 0.01 percent, respectively, of their concentrations in the waste. The tables show that, in the vast majority of cases, the constituents of concern, including pentachlorophenol, are likely to appear in ground water at concentrations that exceed the health-based levels of concern by one to four orders of magnitude using the extremely liberal dilution and attenuation factor of 10,000. Thus, even if the Agency did not evaluate the hazard conservatively, these wastes clearly would contain concentrations of constituents of concern far in excess of safe human exposure levels. EPA also believes that the constituents of concern pose a serious threat to the environment via potential releases to surface water, as discussed in section VIII of this preamble. EPA notes that the change from the RfD used in the proposed rule for pentachlorophenol to the RSD used in Today's Table 4 (and based on the NTP 1988 study, does not affect this conclusion.

After considering all of the factors of 40 CFR 261.11(a)(3), based on the information presented in the preamble to the proposed rule, and the information presented here, because these wastes contain high concentrations of highly toxic constituents that are mobile and persistent and are unlikely to degrade in the environment before reaching receptors, and because past mismanagement of these wastes has already resulted in serious environmental damage and risk to human health, EPA is adding F032, F034, and F035 to the list of hazardous wastes from non-specific sources.

F. Applicability of RCRA Rules for Recycled or Reclaimed Hazardous Waste

In the preamble to the proposed rule, EPA recognized that certain wastes from wood preserving and surface protection, most notable drippage, are reclaimed and then returned to the wood preserving process for reuse (see 53 FR 53311). EPA noted that information regarding the manner in which process residuals are reclaimed in wood preserving and surface protection processes indicates that the materials are not typically reused directly and that recycling does not take place in a closed-loop system, as defined in EPA's existing regulations. Hence, EPA concluded that most on-site recycling at wood preserving and surface protection plants would not be excluded from regulation under the existing rules (see 40 CFR 261.2(e)(1)(i) and 261.4(a)(8)(i)) or under the exclusion proposed on January 8, 1988 (see 53 FR 519).

Numerous commenters who responded to the proposed rule stated that waste recycling and reuse practices at wood preserving and surface protection plants should be excluded from the Definition of Solid Waste. We respond to those comments below. Our response indicates why drippage and wastewaters captured on pads, reclaimed and returned to the wood preserving process is a solid waste under the current rules and why those rules are legally valid. This discussion also deals with how the recent DC Circuit opinions in *API* v. *EPA*, 906 F. 2d 729 (DC Cir. 1990) and *American Mining Congress* v. *EPA*, 907 F. 2d 1179 (DC Cir. 1990) [AMC II] bear on this determination.

Under the Agency's current rules, spent materials that must be reclaimed are defined as solid wastes (see 40 CFR 261.2(c)(3)). Drippage and wastewaters

that escape from the process and are unfit for use until they can be decontaminated by filtering or other means are types of spent material, and the purification step is a type of reclamation (see § 261.1(c) (1) and (4)). The rules recognize that some types of on-site reclamation are so integrally related to a facility's production activity as to be properly viewed as an aspect of that process, and so do not involve any aspect of discarding. Such closed-loop processes are characterized by tank storage through point of reclamation and hard pipe (or comparable) connection between tanks (see § 261.4(a)(8)). Drip pads used in the wood preserving industry do not meet the terms of this exclusion, given that they are not closed devices like tanks, and given that pads at existing facilities have been characterized by leakage and other releases to the environment.

Commenters did not contend that, as a factual matter, their operations met the terms of this exclusion. (Of course, EPA would evaluate such a factual argument in a specific context rather than in this rulemaking. The point addressed above is whether the normal drip pad/reclamation operation, as the Agency understands it, fits within the terms of the existing closed-loop exclusion).

Rather, they maintained that the Agency lacks jurisdiction over such activities as a matter of law based on the DC Circuit's opinion in *American Mining Congress* v. *EPA*, 824 F.2d 1177 (DC Cir. 1987) [AMC I]. They read this opinion to state that if a material is recycled rather than being literally thrown away, it is not "discarded" (see RCRA § 1004) and hence cannot be a solid waste. EPA has never accepted this argument, and the argument was rejected by the DC Circuit in *API* and *AMC II*, cited above. In those opinions, the court made clear that simply because a material may be destined for some type of recycling does not prevent EPA from classifying it as "discarded" and hence a solid waste (see 907 F.2d 1186 and 906 F.2d 740–741). Only those materials that are " 'destined for *immediate reuse* in another phase of the industry's ongoing production process' and that 'have not yet become part of the waste disposal problem' " are outside the Agency's jurisdiction (907 F.2d 1186, quoting *AMC I*, emphasis original). The Agency also retains flexibility in interpreting when materials are "discarded" under this standard.

The Agency sees no jurisdictional defect in its present rules as applied to drippage and wastewaters in the wood preserving industry that are destined for recovery and returned to the wood preserving process. Drippage and wastewaters escaping from the process and falling on the ground or into some capture device can be viewed as a discarding both because the process need no longer be viewed as continuous, and more importantly, because such escape from the process can be "part of the waste disposal problem." Certainly this operation has caused past environmental harm because of releases of drippage into the environment from improperly designed and maintained pads (see *AMC II*, 907 F.2d 1187)—threat of release from management use sufficient to accord EPA flexibility to determine that a material is "discarded"). The Agency concludes, therefore, that the current regulations do not impermissibly classify drippage and wastewaters destined for reclamation as a solid waste when the capture and conveyance mechanisms do not meet the terms of the current closed-loop exclusion in the regulations.

Two further points should be made, however. First, there is a case-by-case variance in the current regulations that could apply to particular wood preserving facilities. This provision (§ 260.31b)) allows a Regional Administrator (or authorized State Director) to determine that a particular reclamation operation is an essential part of the production process based on a weighing of a number of criteria, including how carefully the material is handled before it is reclaimed. Wood preserving plants with well-designed and well-maintained drip pads that are collecting drippage for reclamation and return to the wood preserving process may qualify for a case-by-case exclusion under this provision (pending a factual determination by the decisionmaker).

In addition, while the current rules remain in place, the Agency retains some flexibility in evaluation whether materials destined for reprocessing/recycling are discarded, and how environmental considerations (such as whether the operation is potentially "part of the waste disposal problem") plays a part in this determination. Today's discussion is not intended to foreclose any such exercise of flexibility. The Agency is addressing a number of broad issues concerning the definition of solid waste in a series of forums outside the scope of this rulemaking. For example, the Agency is sponsoring a series of meetings with a range of interested groups to consider whether it may be appropriate to revise the solid waste definition. The Agency may consider publishing an advanced notice of proposed rulemaking as an outgrowth of this process.

The wastes from use of reclaimed drippage are once again drippage (or spent preservative) and subject to the listing, unless and until they are reclaimed again. Additionally, spent preservative or drippage that is not contained in the system (i.e., that which is spilled or otherwise removed from the drip pad) is not reclaimed and is therefore hazardous waste.

EPA has previously promulgated regulations for recyclable materials that are used in a manner constituting disposal (see 40 CFR 266.20 through 266.23) and standards for hazardous waste burned for energy recovery (see 40 CFR 266.30 through 266.35). Generators should note that, to the extent that the wastes listed today are recycled in ways that constitute disposal or are burned for energy recovery in boilers or industrial furnaces that are exempt from regulation under subpart O part 264, the appropriate standards of part 266 apply.

In addition to comments asserting that spent preservative should be exempt from the Definition of Solid Waste, commenters also noted that products (i.e., treated wood) made from reclaimed spent preservative should be excluded from the Definition of Solid Waste. EPA agrees with these commenters. Pursuant to 40 CFR 261.4(c)(2)(i), reclaimed spent preservative will cease to be a solid waste when it is reclaimed (i.e., upon reinsertion in the process—to a work or storage tank that delivers formulation to the treatment cylinder or tank). The Agency acknowledges, however, that the applicable regulatory provisions could be interpreted such that the reclaimed preservative and the wood products treated with reclaimed spent preservative would be subject to regulation under subtitle C because wood products are often used in a manner constituting disposal (i.e, used in a manner that involves placement on the land). Under such an interpretation, wood products that are treated with reclaimed spent preservative and are subsequently placed on the land would be waste-derived products subject to regulation under 40 CFR part 266.

Regulating reclaimed spent preservative and products made with reclaimed spent preservative was not and is not EPA's intent. To avoid such erroneous interpretation of the rules, today's rule adds an exclusion from the Definition of Solid Waste under § 261.4 for reclaimed spent wood preserving solutions. This action prevents any interpretation that products made from reclaimed spent preservative are subject

to regulation under subtitle C as a result of today's new listing.

Regulatory Integration Under RCRA

The largest number of comments received by the Agency concerning the proposed rule pertained to the statutory framework for regulation. These commenters expressed the belief that RCRA is an inappropriate statute for regulating all or most of the wood preserving wastes included in today's listing. The majority of comments received on this subject stated that the industry should be regulated using a multi-statute approach pursuant to section 1006(b)(1) of RCRA, which states that the Administrator shall integrate the provisions of RCRA and avoid duplication with certain other environmental statutes to the maximum extent practicable, provided that such integration can be done in a manner consistent with the goals and policies of RCRA and those other statutes.

The multi-statute approach proposed by a large number of commenters would utilize the Clean Water Act (CWA) to regulate process wastewaters and stormwaters. Specifically, the control of process wastewaters under National Pollutant Discharge Elimination System (NPDES) Effluent Guidelines (issued under section 402(a) of the Clean Water Act) and the control of run-off under stormwater discharge permits, under section 402(p) of the Clean Water Act, were urged. These commenters also proposed regulation of drippage under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Commenters suggested that this be accomplished by voluntary FIFRA pesticide label changes to require the use of drip pads and process changes to reduce the amount of drippage. Process residuals were generally accepted by commenters as appropriate for listing under RCRA. Commenters favoring the multi-statute approach cited section 1006(b)(1) of RCRA which requires the Agency to "avoid duplication, to the maximum extent practicable," by integrating RCRA regulation with regulation under certain other environmental statutes administered by EPA.

While there may be aspects of regulatory programs under statutes other than RCRA that are available to regulate wood preservative pesticides and associated wastes, the Agency disagrees with commenters who assert that section 1006 of RCRA requires EPA to use other statutes preferentially to RCRA. Furthermore, section 1006(b)(1) states that "such integration shall be effected only to the extent that it can be done in a manner consistent with the goals and policies expressed in [RCRA] and the other acts referred to in this subsection."

IV. Summary of Public Comments and Responses

A Statutory Framework for Regulation

Thus, as EPA has previously stated, section 1006(b) does not mandate that where EPA's statutory authorities provide overlapping jurisdiction over certain activities, the Agency must promulgate regulations under a statute other than RCRA. Nor is EPA required to give preference to another statue. Rather, it is within the Administrator's discretion to decide which regulatory program or programs are best suited to regulate the activities, considering the goals and policies of the various statutes. See 45 FR 33154, 33172–73, 33218–19 (1980); 55 FR 22520, 22653 (1990). In short, section 1006(b) requires EPA to consider whether and what type of regulatory integration is appropriate, but does not in any way dictate a particular result. EPA favors integrating cross-media regulations to promote efficiency and streamlined regulation when consistent with protecting health and the environment.

If, as a number of commenters suggested, Congress intended either FIFRA or the CWA to be the exclusive statutory basis for regulating several aspects of the wood preserving industry, the relevant statutes would have so stated. Where Congress has meant to impose limits on RCRA jurisdiction, it has done so clearly. For example, the definition of "solid waste" under RCRA section 1004(27) excludes "solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under section 402 of the Federal Water Pollution Control Act."

No provision of RCRA, the CWA or FIFRA so limits EPA's authority to regulate wood preserving wastes under RCRA. The only relevant provision of any of these statutes points in the opposite direction of the commenters' arguments. Section 19(h) of FIFRA states that "[n]othing in this section shall diminish the authorities or requirements of the Solid Waste Disposal Act." Congress added this subsection when it amended FIFRA in 1988, one year after the wood preserving industry began advocating its multi-statute approach.

Clean Water Act

EPA has considered whether, as suggested by many commenters, drippage in the facility storage yards and wastewaters should be regulated under the CWA, rather than RCRA. EPA notes first that to the extent process water or storm water is discharged to waters of the United States, an individual NPDES permit is required (the timing of the stormwater permit requirement is discussed below). However, not all drippage is discharged to surface waters, and EPA believes it is important to implement a comprehensive regulatory resolution, rather than address drippage in a piecemeal fashion. For example, drippage that seeps to groundwater that has no hydrological connection to surface water is not currently regulated under the Clean Water Act. Thus, neither stormwater permits nor a revision to the Effluent Guideline could address ground water protection. As is discussed in the preamble to the proposed listing (see 53 FR 53323) and the Background Document to the proposed listing, groundwater contamination has been a serious problem at many wood preserving facilities.

The Agency rejects the suggestion that regulation of storage yard drippage and wastewaters be deferred into some future planned Effluent Guideline rulemaking. It is not the Agency's current plan to revise the Effluent Guideline and standard for the Timber Products Processing industry category (the guidelines category that includes wood preserving). The Clean Water agenda for effluent guideline rulemakings is set under section 304(m) of that Act, which requires a biannual plan for review and revision of existing effluent guidelines and promulgation of new effluent guidelines. The Agency reads that provision as directing it to set priorities for the promulgation of new guidelines, and has established criteria which assess the presence and quantity of toxic and nonconventional pollutants in discharges to waters of the United States, the utility of national guidelines covering categories of dischargers under consideration, and the presence of specific legislative or judicial mandates to issue guidelines for particular categories (see generally 55 FR 80, 82).

The first such 304(m) plan was announced on January 2, 1990 and announced an Agency intention to engage in six rulemakings for "new" industry categories and three "revisions." The projected promulgation dates for these rulemakings range from 1992 to 1995, reflecting the reality that effluent guideline rulemakings are, of necessity, complex regulatory projects which require extensive data gathering and analysis. The next scheduled 304(m) plan will be announced in January 1992, using the criteria outlined above. While Timber Products are among the industry categories under consideration, even a decision to undertake rulemaking in 1992 would not result in a regulation in less than 3 to 5 years after that date. In contrast, the listing under RCRA

addresses the entire problem and is accomplished today without further delay. In any case, the industry concedes that the process of establishing a guideline is similar to establishment of land disposal restriction standards (LDRs). Yet, the industry fails to note that LDRs apply to land disposal, not surface water discharge.

Similarly, the Agency's rulemaking activities addressed to regulation of stormwater under the CWA would not adequately resolve at this time the issues raised by this listing. As set out above, the requirements of the Clean Water Act would reach only a portion of drippage. Furthermore, the current rule addressing stormwater, signed by the Administrator on October 31, 1990 (and expected to be published in the **Federal Register** by November 15, 1990), is designed only to establish permit application requirements. The rule establishes that applications for industrial permits must be received between 12 to 18 months after promulgation of the final rule. Thus, it could be years before stormwater permits are issued.

Finally, the commenters contend that listing wood preserving wastewaters as hazardous under RCRA is unprecedented and will seriously limit or eliminate the wood preserving industry's ability to discharge wastewaters to municipal sewage treatment systems. This argument is unfounded. EPA has listed under RCRA wastewaters from many industries; these wastewaters are routinely discharged to municipal systems following pretreatment. Moreover, any possible difficulty in discharging to municipal systems would not serve as an adequate basis to support a decision not to list the wastewaters. See *Hazardous Waste Treatment Council* v. *EPA*, 861 F.2d 270 (DC Cir. 1988). (EPA was not permitted to consider stigmatic consequences of listing recycled oil in deciding whether to list it as a hazardous waste under RCRA).

Federal Insecticide, Fungicide, and Rodenticide Act

In reviewing the multi-statute proposal of AWPI and other industry commenters, EPA considered a wide variety of individual issues; however, the Agency focused on three major categories: applicability, enforceability, and timeliness. EPA believes that any regulatory system for addressing the drippage/spill problems at wood treatment facilities must be generally applicable to all facilities, readily enforceable, and, in light of the history of significant pollution problems at these facilities, capable of being implemented in the near future. In each of these areas, the Agency has determined that, in this situation, a more comprehensive, efficient, and effective system could be developed under RCRA than under FIFRA.

In its comments in support of a multi-statute approach, AWPI also proposes that drippage and spills from wood treatment processes be regulated under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq., through labeling provisions for pressure treatment wood preservative pesticides. Specifically, AWPI proposes that

> all production process area drippage * * * be regulated under FIFRA along with any other production process areas which might result in spills, leaks, and drips of preservative and/or kick-back material. The areas to be regulated under FIFRA include the process area drip pad, pesticide unloading area, pesticide storage and handling areas, and the pesticide application area * * * along with associated process units and equipment (AWPI Comments at 38).

While EPA agrees that labeling under FIFRA is one mechanism that could be used to regulate certain wood treatment drippage and spills, the Agency does not agree that it is the best or only approach.

The label provisions proposed by AWPI would not (and do not appear to be intended to) cover all wood treatment products and/or facilities. For example, the most obvious groups not addressed are nonpressure treatment products and facilities. Also, because labeling is a part of the registration process, the label provisions proposed by AWPI would not directly affect use of unregistered wood treatment pesticides (often prepared on site by combining several chemicals acquired as unregistered chemicals and therefore not labeled pursuant to FIFRA). It is the Agency's understanding that both nonpressure treatment and unregistered pesticides are currently being used at some wood treatment facilities. Even assuming that the bulk of the registrants could come to some voluntary agreement with EPA on label provisions, anything less than 100% participation and/or continued use of unregistered or non-pressure treatment products would necessitate EPA taking affirmative action under FIFRA or RCRA (e.g., rulemaking or cancellation actions) to impose comparable protective measures.

Use of RCRA would also provide the Agency with more comprehensive and readily available enforcement powers than use of FIFRA. This is because of the greater number and type of enforcement actions available under RCRA, the generally larger penalties, and the greater number of RCRA enforcement officials in the field. For example, under RCRA section 7002, any citizen may bring a civil action against any person who is alleged to be in violation of a RCRA regulation or permit. There is no comparable citizen suit provision under FIFRA. Moreover, the penalty provisions for Federal enforcement actions are substantially higher under RCRA. In RCRA civil enforcement actions, a penalty of up to $25,000 per day of noncompliance for each violation may be assessed. For a knowing violation, a person is subject to a criminal fine of up to $50,000 for each day of violation, as well as a prison term of as long as two to five years, depending on the circumstances (see RCRA section 3008). Under FIFRA, in contrast, the maximum civil penalty for a commercial applicator is $5,000 per violation. For a knowing violation, the maximum criminal fine is $5,000 and the maximum prison term is one year (FIFRA section 14).

In addition, because the problems to be addressed relate to use of wood treatment pesticides, rather than the sale or distribution of pesticides, RCRA currently provides the more direct mechanism for inspection of user facilities, the cornerstone of an effective enforcement program. Under FIFRA, enforcement against wood treaters for label violations would generally be available only after inspections uncover misuse; however, because FIFRA does not contain an explicit provision authorizing neutral inspections of user facilities, inspection of such a facility must be by consent, or to the extent allowed under FIFRA section 9(b), pursuant to a warrant. By the time either could be obtained, considerable environmental damage could have occurred. Under RCRA section 3007(a), consent or a warrant is not needed to inspect a facility. All of these factors indicate that the enforcement mechanisms available under RCRA are more appropriately applicable to the situation being addressed than those currently available under FIFRA. These same factors also increase the likelihood that violators would be caught and punished.

Finally, under the AWPI approach, it could be several years before all wood treatment products/facilities would be regulated. As indicated above, any products/facilities not regulated through voluntary adoption of label provisions agreed upon by EPA and the registrants would have to be addressed by other actions under FIFRA and/or RCRA. Any of these nonvoluntary actions could take

months (if not years) and considerable resources to implement, with no guarantee that the outcomes would be comparable to those voluntarily adopted for registered, pressure treatment products/facilities.[5] Moreover, given the expense and technical complexity of installing the recycling systems included in the AWPI label proposal, the hardship "variance procedures" also proposed by AWPI (AWPI Comments at 39) could mean that a significant number of wood treatment facilities would not be in compliance for an extended period of time. If label provisions under FIFRA were the only mechanism used by the Agency to control the drippage and spills of wood preservatives at these noncomplying facilities, these situations would essentially be unregulated.

In summary, EPA has carefully considered the proposal included in the comments of AWPI and other industry commenters, and has concluded that, while label provisions under FIFRA may be able to address some of the pollution problems identified at wood treatment facilities, they are not the most appropriate means of reaching all wood treatment products and facilities in one action, at one time. Conversely, the mechanisms available under RCRA provide a more comprehensive, efficient, and effective approach to addressing the whole range of problems in a single regulatory action.

Conclusion

In general, the commenters' proposed multi-statute approach would rely on future regulation which EPA believes would not provide the same protective standards available under RCRA. Given the extent of contamination at many wood preserving facilities and the serious risks to health and the environment posed by the wastes listed today, EPA believes that setting any less protective standards would be unjustified. Moreover, the Agency cannot justify deferring to regulation under other statutes on the basis of requirements that do not yet exist. This is especially true because EPA cannot guarantee that it will adopt a particular regulatory approach in the future, even if it intended to today. Consistent with its obligations under the Administrative Procedure Act, the Agency must analyze public comments on a proposed rule and change the rule as appropriate.

[5] For example, the most straightforward approach to the regulation of unregistered pesticides under FIFRA appears to be promulgation of a rule under FIFRA section 3(a), which gives the Agency authority to limit the use of an unregistered pesticide, by regulation, "* * * to the extent necessary to prevent unreasonable adverse effects on [human health and] the environment."

Section 1004(5) of RCRA states that all solid wastes capable of causing a substantial present or potential hazard to human health and the environment if mismanaged are subject to regulation as hazardous wastes. The damage incidents presented in the record to the proposed rule, supplemented by case studies and other analyses developed as part of the evaluation of benefits resulting from today's regulation (see section IX of this preamble), document the fact that wood preserving wastes pose a substantial present or potential threat to human health and the environment when mismanaged. Consequently, after careful consideration of comments received, EPA has concluded that listing only process residuals under RCRA and relying on other statutes to regulate other wastes, as suggested by commenters, has serious shortcomings and would not provide the level of protection equivalent to that afforded by listing all of the wastes covered by the F032, F034, and F035 under RCRA, particularly with respect to hazardous waste releases to ground water. EPA notes, however, that this final RCRA rule does not preclude promulgation of requirements applicable to wood preserving plants in the future under CWA or FIFRA. In fact, the Agency believes that today's action will help, not hinder, any future efforts to further integrate environmental regulation of the wood preserving industry.

B. Listing for Storage Yard Drippage

Many of the commenters who responded to the proposed rule addressed the listing for treated wood drippage. These commenters made three important points: (1) That most drippage from treated wood occurs in the kick-back area immediately following removal of the treated wood from the treatment vessel, (2) that drippage in the storage yard is minimal, and (3) that EPA had failed to demonstrate that treated wood drippage generated in storage yards poses a significant hazard to human health and the environment. Commenters also noted that changes in wood pressure treating processes can be made, such as the application of a final vacuum step, to reduce the amount of drippage generated.

EPA agrees with commenters that current operating practices in the industry are such that most drippage from treated wood is generated in kick-back areas immediately following removal of wood from the treatment tank or cylinder. Site visits conducted by EPA indicate that treated wood is often held on a kick-back area drip pad for a period of 24 to 48 hours to ensure that most of the drippage generated is collected. Site visits and information from commenters also confirm that process modifications designed to minimize drippage, such as the application of a final vacuum step, are also being used increasingly. EPA encourages generators to continue to develop and implement such changes in order to minimize the amount of drippage generated.

EPA disagrees with commenters, however, with respect to the evidence that uncontrolled drippage in treated wood storage yards does not pose a hazard to human health and the environment. Case studies evaluated by the Agency in support of today's listing indicate that storage yards are one of several potential sources of soil and surface water contamination at wood preserving sites. Many RCRA Facility Assessment reports that have been developed by EPA's Regional Offices for purposes of implementing corrective action at wood preserving sites identify treated wood storage yards as a significant source of contamination and designate them solid waste management units targeted for corrective action. Although at many sites, contamination is ubiquitous and cannot be directly attributed to a single source, such as the storage yard, information reviewed by EPA indicates clearly that uncontrolled disposal of drippage in treated wood storage yards has been a significant contributor to environmental contamination at wood preserving sites.

For this reason, today's rule requires that treated wood drippage be contained on a drip pad that meets the Subpart W standards. EPA believes that holding treated wood on a process or kick-back area drip pad until drippage has ceased, as required by Subpart W, will minimize or eliminate the need to construct large drip pads in treated wood storage yards.

EPA believes that generators of F032, F034, and F035 will take steps to minimize drippage (for example, by implementing wood treatment process modifications and/or by holding wood under cover until completely dry after treatment) to avoid possible enforcement consequences such as criminal or civil penalties, facility-wide corrective action, and/or liability claims related to damages that may occur from disposal of drippage on the land. EPA notes also that today's rule of course, does not in any way preclude owners and operators from installing drip pads in treated wood storage yards to protect against possible inadvertent disposal of drippage on the land.

C. Technical Standards for Drip Pads

EPA received many comments regarding aspects of the subpart W standards for drip pads. Commenters addressed issues related to drip pad construction, operating practices, inspection requirements, and closure requirements. Commenters concerns and EPA's responses to these issues are summarized in the following discussions.

1. Drip Pad Construction

Ten commenters expressed concerns related to the requirement that drip pads be impermeable. Five of these stated that concrete has a tendency to crack and therefore makes a poor material for drip pads. One suggested that drip pads be constructed of stainless steel with welded seams. Two suggested that roofs be used instead of pads to prevent runoff. Commenters also suggested that the subpart W standards for drip pad design are too lenient, should be more like those for other hazardous waste management units, and should include requirements for double liners and leak detection and collection.

EPA agrees with the commenters' suggestions regarding the need to be more specific in defining impermeability and using roofs or enclosures to control surface water run-on and runoff. The purpose of the subpart W standards is to ensure that drip pads are designed to contain all hazardous waste that may come into contact with them. EPA used the term "impermeable" in the proposed rule as a performance standard for the ability of a drip pad to provide complete containment, recognizing that there are many ways in which containment may be achieved. We agree with commenters that the standards can be made more specific with respect to those aspects of drip pad design that contribute to "impermeability" and believe that making such changes to the rule will enhance its enforceability and give the regulated community a clear understanding of what EPA considers an effective drip pad design. Consequently, today's final rule includes requirements that drip pad surfaces be sealed, coated, or covered with an impermeable material to ensure impermeability and that drip pads be equipped with a leak detection system underlaid with a chemically-resistant liner. Commercially available epoxy or polyurethane sealants or coatings, or synthetic covers may be used to meet the standard for sealing or coating drip pad surfaces. Additionally, where appropriate and possible, special steps should be taken to seal drip pad joints, for example, by installing chemically-resistant water stops.

Provisions have been added to address drip pad strength and thickness that require drip pads to be capable of preventing failure due to physical contact, climatic conditions, the stress of installation, and the stress of daily operations to further ensure the ability of drip pads to contain hazardous waste. Finally, in deference to commenters' suggestion, today's rule adds provisions for exempting drip pads from requirements for run-on and runoff controls, as appropriate, where the pads are enclosed in a structure and covered such that neither runoff nor run-on are generated.

As stated previously, today's rule requires a containment system with three components: (1) The drip pad itself, coated or covered with an impermeable material, (2) a leak detection system, and (3) a chemically resistant, synthetic bottom liner. The coated or covered drip pad provides primary containment for drippage and other hazardous waste. The drip pad must be structurally sound so that it can withstand the stresses of daily activities. Because EPA expects that drip pads will crack with time in service, subpart W includes a requirement for inspecting drip pads once every 7 days and procedures for making repairs in the event that a condition (i.e., a crack or detection of leakage) is recognized that could lead to a release of hazardous waste.

EPA also recognizes, however, that all cracks are not necessarily visible from the surface of the pad, or may not be recognized as significant at the time of inspection. Consequently, we have included the requirement for leak detection systems. These systems will allow owners and operators to know when drip pads are leaking, although no significant cracks have been identified. Furthermore, the synthetic liner under the leak detection system will ensure that such leakage is not released to the environment. EPA believes that this three-component containment system will ensure "impermeability" and make clear to owners and operators what EPA expects in terms of drip pad design.

The rule does not dictate that drip pads be constructed of concrete, contrary to commenters' assertions. Rather, subpart W states that drip pads must be constructed of non-earthen materials and that they be maintained free of cracks, gaps, corrosion, or other deterioration that could cause waste to leak from the pad. Today's rule specifically states that wood and non-structurally supported asphalt cannot be used to construct drip pads because these materials do not provide the structural support necessary to prevent cracking and maintain impermeability.

2. Operating Practices

Commenters addressed two aspects of the subpart W requirements for operating practices: The requirement to minimize tracking of hazardous waste from drip pads and the need for establishing a holding time for wood after treatment and before moving to the storage yard.

Six commenters were concerned with the requirements for preventing tracking of hazardous waste from drip pads. These commenters contended that the requirement constitutes a requirement for dedicated equipment. Four stated that no tracking requirement should be included in the rule. Two contended that use of dedicated equipment is not standard practice and is not achievable in some segments of the industry.

For the reasons stated in the proposal, EPA remains concerned about potential contamination of the soil and surface water in the vicinity of drip pads that could result from tracking of waste and waste constitutents off drip pads by equipment and/or personnel. Consequently, today's rule retains a requirement that tracking of hazardous waste or waste constituents from the drip pad be minimized. EPA agrees that methods for effectively preventing such migration of contaminants will vary depending on plant configuration and other factors. The requirement is therefore stated in terms of a performance standard. EPA believes that many owners and operators will choose to dedicate equipment to the pad in order to comply with this standard. Other techniques, such as procedures for washing all equipment before leaving the pad are also acceptable.

With regard to treated wood holding times, two commenters suggested that EPA establish a standard that treated wood be held under cover for a minimum of 24 hours at a temperature of at least 45 degrees. Commenters noted that the effectiveness of air-drying treated wood would vary depending on climate and other conditions, but stated that such a requirement would serve to minimize or eliminate storage yard drippage.

EPA agrees that holding wood on the process area drip pad after treatment will help to minimize drippage in storage yards. A specific numeric standard for holding time could not be established, however, because the time required to dry wood after treatment varies based on many site-specific conditions.

Consequently, today's rule requires that owners and operators account for climate and other conditions that affect drying by holding wood on the drip pad until drippage has stopped.

3. Inspection Requirements

Seven commenters were concerned about inspection requirements. One stated that a weekly inspection requirement is overly-burdensome because of the need to move lumber and the associated equipment and personnel requirements. Four commenters stated that inspections should only be required monthly, upon removal of wood, or should apply only to drip pad surfaces that are visible (i.e., there should be no requirement to move wood in order to inspect the entire surface of the pad). Other commenters stated that the inspection requirement should be supplemented with requirements to record the time that each stack of wood is held on the drip pad in order to document compliance.

EPA agrees that recordkeeping specific to treated wood holding times is warranted and today's rule includes such provisions. Owners and operators of drip pads should note that they are subject to the general requirements for inspections (subpart B of parts 264 and 265), which require, among other things, that owners and operators develop and follow an inspection plan that ensures compliance with all specific inspection requirements.

EPA disagrees with commenters who contended that inspections should be conducted less frequently than weekly or that the entire surface of the drip pad need not be inspected each time. The inspection requirement provides routine monitoring of the integrity of the pad and must be conducted carefully, thoroughly, and systematically throughout the life of the pad in order to be effective. Owners and operators may establish a plan and schedule for weekly inspections that facilitates or is compatible with schedules for storing and/or moving wood on and off the drip pad that involve, for example, inspecting portions of the pad on different days, provided that the entire surface is inspected weekly, (i.e., once every seven days).

4. Closure Requirements

Two commenters were concerned about closure requirements. One stated that a provision should be added to close drip pads as landfills. The second commenter stated that, without specification of a decontamination method, owners and operators would be unable to estimate closure costs as required.

EPA agrees that provisions should be made to close drip pads as land disposal units where all contamination cannot be removed. Consequently, today's rule requires that owners and operators who are unable to achieve clean closure (i.e., remove all contamination from the drip pad site) must close the drip pad in accordance with the requirements for closure of land disposal units, including provisions for post-closure care and ground-water monitoring.

EPA disagrees that a specific method for decontamination must be specified in the regulation in order to make closure cost estimates possible. Today's rule therefore does not specify a particular decontamination method. Effective methods will vary, depending on the size of the pad, its construction materials, and other factors. Owners and operators should select an effective method for decontamination and calculate costs accordingly.

D. Basis for Listing and Toxic Designations

In response to the proposed rule, many commenters raised issues regarding EPA's basis for proposing to list F032, F033, F034, and F035. Their principal concerns were the evaluation of hazards presented in the preamble and the designation of proposed wastes F032 and F033 as toxic rather than acute hazardous. The main points made by commenters and EPA's response to those comments are summarized below.

Numerous commenters who responded to the proposed rule questioned the hypothetical ground water concentrations used in Tables 11 through 14 of the preamble to the proposed rule and their relevance to EPA's basis for listing wastes from wood preserving and surface protection processes as hazardous. Some commenters contended that the hypothetical ground water concentrations should not be used to indicate the hazards posed by the wastes because the calculated concentrations were based on oversimplified speculative assumptions, are not supported by analytical data, and do not represent the range of possible variations in environmental conditions.

EPA agrees with commenters that the analyses presented in the tables may not represent the range of variation that occurs in the environment. We do not agree, however, that the analysis is irrelevant to a determination of potential hazard. Rather, EPA believes that commenters have misinterpreted the intent of Tables 11 through 14 of the preamble to the proposed rule. As stated previously in the preamble to the proposed rule, the three dilution and attenuation factors used in the analyses were intended to encompass a broad range of possibilities. They were not specifically selected to represent any particular environmental conditions or range of environmental conditions. The tables demonstrate that, to the extent that the three dilution and attenuation factors represent a range of possible assumptions varying from 1 percent of the waste disposed reaching the point of exposure, or very little dilution and attenuation (this is the dilution and attenuation factor used in the Agency's recently-promulgated Toxicity Characteristic rule, see 55 FR 11827, May 29, 1990), to 0.01 percent of the waste disposed reaching the point of exposure (i.e., a high degree of dilution and attenuation), the wastes examined pose a potential threat to human health and the environment across a wide range of circumstances. In fact, the tables show that the actual assumptions used to project ground water concentrations have little bearing on the conclusion that the wastes are hazardous since the wastes are clearly hazardous under all of the scenarios examined. EPA therefore disagrees with commenters that the analyses shown in the tables were inappropriately used to support the proposed listing.

Other commenters referred to the dilution and attenuation factors as a model and criticized assumptions which, they contend, are built into the model. The commenters contend that the tables inappropriately represent only oily waste transport, which is inapplicable to proposed wastes F033 and F035, that the tables incorrectly assume that ground water concentrations in drinking water wells will be equivalent to ground water concentrations beneath the facility, and that the tables incorrectly assume that the constituents of concern will migrate to ground water in the same relative concentrations that appear in the wastes.

EPA believes that these commenters have also misinterpreted the intent of Tables 11 through 14 in the preamble to the proposed rule. The analyses presented in these tables in no way represent an attempt by EPA to model or mathematically simulate actual transport of hazardous constituents from the wastes into the ground water or in the environment. While EPA has, in other RCRA rulemakings, discussed a variety of ground water transport models and their applicability to rulemaking decisions, none of these models serve as the basis for the tables presented in the preamble to the proposed rule. Hence, commenters'

assertions that the underlying assumptions are inappropriate or incorrect are not relevant. The tables represent neither oily waste transport nor any other specific form of transport in the environment. Nor do they attempt to relate ground water quality beneath a facility to ground water quality in a drinking water well. They also do not account for the many chemical and physical processes (degradation and mobility) that might affect the relative concentrations actually occurring in the environment. Instead, the analyses shown in the tables were conducted simply to show that in a wide range of circumstances, representing a wide range of assumptions that might be used, the constituents of concern may migrate to ground water and reach drinking water wells in concentrations that exceed established acceptable human exposure levels. Moreover, some degree of uncertainty as to the levels of constituents that reach ground water or environmental receptors is not grounds for deciding not to list these hazardous wastes (see RCRA sections 1002, 1003 and 1004 (d), (e) and (g)).

The tables did not stand alone as EPA's basis for proposing to list F032, F033, F034, and F035. The hypothetical ground water concentrations shown are supported by numerical data in the rulemaking record showing that the constituents of concern are capable of migrating in the environment, persisting in ground water, and reaching drinking water wells. Improper management of these wastes by wood preservers has repeatedly resulted in substantial present or potential harm to human health and the environment (see RCRA section 1004(5)). As stated previously, the dilution and attenuation factors and the resulting hypothetical ground water concentrations were not selected to represent any particular environmental conditions or range of environmental conditions. Any comparison to actual ground water concentrations measured in the environment at wood preserving or surface protection facilities is therefore inappropriate. Actual ground water measurements do, however, support EPA's conclusion that the constituents of concern are capable of posing a threat to human health and the environment.

Damage cases described in the preamble to the proposed rule (see 53 FR 53323) demonstrate that the constituents of concern in the wastes proposed for listing are sufficiently mobile and persistent for past mismanagement to have resulted in contamination of ground water, surface water, and soils. Commenters contended that the damage cases are irrelevant to the listing because they reflect practices that are no longer in use. EPA agrees that waste management practices in the industry have changed. The damage cases remain relevant, however, not because they demonstrate that the wastes are mismanaged, but because they show that, upon release to the environment, the constituents of concern in F032, F034, and F035 are sufficiently mobile and persistent to reach human receptors (see RCRA section 1004(5)).

As discussed in the proposal, wastes associated with pentachlorophenol have been listed by EPA as acutely hazardous in the past. Pentachlorophenol wastes were designated as acutely hazardous wastes in 1985 based on toxicity data for hexachlorodibenzodioxin (HxCDD) provided by a bioassay conducted by the National Cancer Institute (NCI) in 1983. Existing 'F' listings (F020–F023, F025–F028) considered acutely hazardous as a basis for the existing listing, however, such characteristic is not the basis, nor should it be, for determining the status of F032 and F033 in today's rulemaking.

Since 1983, additional data have been generated in a study performed by the National Toxicology Program (NTP), which was published in 1988. This new information regarding the toxicity of commercial pentachlorophenol products contaminated with HxCDD may affect the Agency's basis for designating F021 and F027 as acutely hazardous wastes. Any changes in previous listings would be the subject of a separate rulemaking. More important to today's rulemaking is the significance the NTP data has for the status of F032. Today's final rule, therefore, designates F032 as toxic rather than acutely hazardous based on the Agency's most current data (NTP, 1988) rather than precedence set by previous listings.

The most significant aspects of the NTP study results were discussed in the proposal. Several commenters expressed concern regarding the NTP study data which indicated that HxCDD is not a good predictor of the risk associated with pentachlorophenol wastes.

Although HxCDD is far more carcinogenic than pentachlorophenol, the tumor activity in the B6C3F1 mice used in the NTP study indicate that the HxCDD is not of the same magnitude when HxCDD and pentachlorophenol are together in the relative concentrations existing in the 1988 NTP study scenario. It should be noted that the NCI 1983 HxCDD study was previously used to serve as surrogate data to indicate the relative toxicity of pentachlorophenol wastes. Now that the pentachlorophenol data are available, it is more appropriate to use the NTP 1988 data as the primary source, thereby referring to the HxCDD study as supporting evidence of toxicity for that constituent of concern.

Nine commenters expressed their opposition to the Agency's proposal to list pentachlorophenol wood preserving wastes as toxic rather than acutely hazardous. A number of commenters stated that since pentachlorophenol wastes contain dioxins and other carcinogens, they should be listed as acutely hazardous waste in all cases. The Agency disagrees with this logic. Previous listing activity on EPA's part does not itself constitute a basis for new listings. Because EPA has new data that show the threat of dioxins is variable and not absolute, the Agency believes that F032 waste warrants the designation of toxic. EPA notes that several commenters agreed with the toxic designation.

One commenter was concerned that the mixture of various carcinogens results in an even more potent waste that would be a "super" acutely hazardous waste; that the sum of the parts is greater than the parts themselves. Another commenter believes that not enough is known about the synergistic effects of the various contaminants in the waste to conclude that the toxic listing is appropriate. EPA is in agreement with this, in part. There are very little data available for use in determining the interactive effect of the contaminants. In assessing the various sets of data, it is clear that HxCDD contributes to liver tumor formation. However, the studies with pentachlorophenol (NTP, 1988) reveal the formation of not only liver tumors but also adrenal medulla pheochromocytomas and malignant pheochromocytomas and/or hemangiosarcomas and hemangiomas in one or both sexes of mice using two different preparation of pentachlorophenol. The presence of HxCDD in the pentachlorophenol preparations may play a role in the tumor response, but obviously, other ingredients in the preparations (including pentachlorophenol) are significantly influencing the tumor response. In any case, the fact that data accurately and completely describing any synergistic or antagonistic effects are not available does not constitute a basis for designating F032 as acutely hazardous.

The basis for listing pentachlorophenol wastes as acutely hazardous in the past was because of

the presence of HxCDD in significant concentrations and the selection of HxCDD as an indicator of hazard due to its extreme carcinogenic potency value. In light of the NTP study results, EPA can no longer use HxCDD as a reasonable surrogate to indicate the toxicity of pentachlorophenol, as stated in the proposal. The NTP study provides carcinogenic potency values for pentachlorophenol products such as "purified" pentachlorophenol, 0.245 (mg/kg/day)-1, and technical grade pentachlorophenol, 0.788 (mg/kg/day)-1, which are within the range of values associated with other wastes listed as toxic. The pentachlorophenol tested in the NTP study was contaminated with other dioxin compounds which were specifically identified in the proposal. The potency value determined from the NTP study accounted for the other contaminants simply because the substances tested in the assay were pentachlorophenol products that were contaminated with ppm concentrations of these constituents.

One commenter asked EPA to clarify the statement that the pentachlorophenol products tested in the NTP study "* * * exhibit significantly lower carcinogenic potency than EPA had anticipated when listing F021 and F027." The commenter felt that this statement implied that the carcinogenic potency value for HxCDD was being confused with the potency assigned to F021 and F027 where HxCDD is present in the ppm range. In all cases, F021 and F027 as well as F032, HxCDD is present in the ppm range. The distinction being made is not between previous waste listings and the proposed F032 and F033 listings, but between data from the NCI 1983 report and more current data generated by the NTP 1988 report.

Several commenters cited the language provided in 40 CFR part 261.11 Criteria for Listing Hazardous Waste, that defines the criteria for designation as Acute Hazardous Waste. It states that wastes which are "* * * capable of causing or significantly contributing to an increase in serious irreversible * * * illness." should be listed as acute hazardous. The commenters believe it applies to the proposed listings. As stated previously in this section and discussed at length in the proposal, the carcinogenic potency value for the constituents of concern designated in the F032 listing is well within the range of potency values of other toxic wastes regulated under RCRA.

The Agency would like to expand on this point in response to another comment received pertaining to the designation of proposed wastes F032 and F033 as toxic rather than acutely hazardous. Commenters were concerned that the toxic status would be inappropriate because of the more lenient standards applied to these wastes. The comments seem to convey the belief that only through the designation as an acute hazardous waste is a waste adequately regulated. The Agency strongly disagrees with this implication, and believes that its existing regulations are adequate to regulate wastes designated as toxic, that F032, F034, and F035 do not qualify as acutely hazardous, and that the additional regulation is therefore unnecessary.

EPA also notes that the significance of designating a waste as acute hazardous is now greatly diminished, if necessary at all. EPA adopted such a designation in the original dioxin listings. The designation carried with it special management standards for the wastes, in particular, more stringent standards for tanks and containers, no land disposal without a special waste management plan, and a more stringent standard for incineration. The rules, however, were proposed before the 1984 amendments to RCRA and adopted only months after the 1984 amendments became law and before EPA fully understood the implications of those amendments, particularly the pretreatment requirements imposed pursuant to the land disposal restrictions program, the minimum technological requirements for many types of units, and the omnibus permitting authority, all of which provide the same types of controls the Agency envisioned in the initial dioxin listing rule.

EPA is now fully exercising the authority provided by the 1984 amendments and finds that these authorities provide the types of controls that would be provided if any of these wastes were listed as acute hazardous (even assuming that the facts warranted such a listing). Thus, such a listing does not result in superior environmental protection.

The Agency also received comments expressing concern over the use of a summary report presented to EPA by Vulcan Materials Company. As is stated clearly in the proposed rule, EPA has reviewed the NTP report, found the study valid, and concluded that the data from the study are appropriate for use in calculating carcinogenic potency values for the products studied. Although Vulcan Materials Co. has submitted a summary report of the NTP report to EPA, this summary report was provided to support a petition for rulemaking made by Vulcan, is not relevant to the F032 listing, and is not included in the record supporting today's rule. EPA has not relied on the Vulcan summary report in making its evaluation of the relative hazards posed by F032 waste. Rather, the Agency has conducted its own review of the NTP 1988 report.

One commenter disagreed with the Agency's statement that other (non-HxCDD) dioxin homologues were found to be present in F032 and F033 wastestreams at concentrations one to two orders of magnitude lower than those observed in the two pentachlorophenol products studied in the NTP report. EPA disagrees with this comment. The waste characterization data can be found in the docket and is available for public viewing. Using the waste characterization data, one can verify the similarity between the mixtures studied in the NTP report and the F032 wastes.

E. Listing Wastes from Surface Protection Processes

EPA received several comments from industry which stated that the information presented in the docket for the proposed rule did not sufficiently demonstrate that wastes from wood surface protection processes that use or previously used chlorophenolic formulations warrant listing under RCRA. These commenters noted that EPA had information from only a few surface protection plants, all located in one region of the country and that EPA was able to collect only very limited waste characterization data. Consequently, they concluded that the Agency had not adequately characterized the industry or the wastes generated by the industry and, therefore, had failed to establish sufficient basis for listing F033.

As stated earlier, after considering the comments received and evaluating the data which provided the basis for the proposed F033 listing, EPA has concluded that it has insufficient information at this time on which to base a final listing decision for F033. The Agency has, therefore, decided to defer the F033 listing until such time as further information concerning waste quantities and waste characterization can be collected and evaluated. EPA will conduct a program of site visits in order to collect additional information and better characterize the surface protection industry and the wastes generated by surface protection processes The Agency will take action on the proposal to list F033 after

completing this additional data collection.

F. Equipment Cleaning and Replacement Standards

EPA received many comments concerning the equipment cleaning and replacement standards that were included in the proposed rule. Representatives from industry contended that the standards were impractical, technically infeasible, and cumbersome. Others noted potential interpretational problems and anticipated implementation difficulties. Commenters disagreed on the appropriate level of specificity for the equipment cleaning standards with respect to the type of solvent to be used for cleaning and the appropriate test to determine the effectiveness of cleaning. They also disagreed on the potential benefits to be derived from the standards and many challenged the need for such provisions in the listing.

Today's listing for F032 includes similar provisions for cross-contaminated waste (i.e., wastes generated from equipment previously used with chlorophenolic formulations) as were included in the proposed rule. EPA has retained this aspect of the rule because it results in isolating all wood preserving wastes that are potentially contaminated with the constituents of concern in F032 in one listing. Hence, wastes that are generated from processes that use creosote and/or inorganic preservatives at wood preserving plants that previously used chlorophenolic formulations and wastes generated by creosote or inorganic processes located at plants where chlorophenolic preservatives are also used will be F032 waste, as well as F034 or F035.

The most important benefit provided by the equipment cleaning and replacement standards was that they allowed a mechanism by which operators of wood surface protection processes that previously used chlorophenolic formulations but have switched to other formulations not addressed by the listing could have their wastes removed from subtitle C control (provided that they also did not exhibit one of the characteristics of hazardous waste and that use of a chlorophenolic formulation was not resumed). Because today's listings do not include F033 wastes (i.e., those generated by surface protection processes), this benefit is no longer of any consequence.

EPA believes, however, that provisions for equipment cleaning and replacement to allow the deletion of the F032 waste code from cross-contaminated creosote or inorganic wastes are still of potential benefit to many generators. Consequently, today's rule retains substantially similar equipment cleaning and replacement standards and the provision for deleting the F032 waste code (see § 261.35). Under the rule, generators who have cleaned or replaced or who plan to clean or replace equipment previously used for pentachlorophenol processes may comply with a self-implementing process for reclassifying their cross-contaminated F032 waste as F034 or F035. Generators choosing to reclassify are required to clean or replace equipment in accordance with a written plan, as specified in the proposed rule, and to maintain records and certifications to document that the cleaning and replacement activities are conducted in accordance with the plan and that use of chlorophenolic preservatives is not resumed. Today's rule is different from the proposed rule in that the cleaning and replacement plan and documentation of cleaning and replacement activities need not be submitted to the Regional Administrator for review and approval as a condition for deleting the F032 code. Today's rule allows generators to conduct cleaning and replacement, collect appropriate records, certify that cleaning and replacement has been conducted in accordance with a written plan, and delete the F032 code.

Although some commenters asserted that EPA should develop specific technical standards for cleaning equipment, we have maintained the general performance standards that were included in the proposed rule. EPA believes that appropriate and effective cleaning procedures should be selected on the basis of many site-specific factors, including the type and size of the equipment to be cleaned, the construction materials of the equipment, the extent of the contamination, the type of solvent used in the wood preserving process, and other factors. Consequently, the standards must provide sufficient flexibility to accommodate the wide range of appropriate cleaning techniques. While EPA acknowledges that very specific standards facilitate enforcement and relieve the owner/operator of the burden of making engineering judgments or seeking professional advice, we believe that to rely on very specific standards in this case may hamper the effectiveness of equipment cleaning and/or impose unnecessary or impractical burdens on generators.

V. Interaction With Other Regulations

A. Toxicity Characteristic

As stated previously, in developing today's listing rule, EPA evaluated the potential for other environmental regulations to provide protection to human health and the environment from the hazards posed by wastes from wood preserving as an alternative to listing under RCRA. As part of this analysis, EPA considered relying on the Toxicity Characteristic (see 55 FR 11798 and 40 CFR 261.24) to capture wood preserving wastes. Commenters responding to the December 1988 proposed rule suggested that the rules for hazardous waste characteristics would provide adequate coverage and that, consequently, new listings are unnecessary.

EPA has decided, however, that the Toxicity Characteristic (TC) will not provide the same level of protection for wood preserving wastes as is provided by listing for several reasons. Most importantly, the Toxicity Characteristic does not address several of the hazardous constituents of concern in wood preserving wastes, including chlorinated dibenzodioxins and dibenzofurans and benzo(a)pyrene. Moreover, because most F032 and F034 wastes are oily waste and the current Toxicity Characteristic Leaching Procedure is limited in its ability to accurately characterize wastes having oily matrices, reliance on the Toxicity Characteristic as an alternative to listing is not appropriate in this case. That is, a given waste could have high levels of toxic constitutents but, due to the oily nature of the waste, the Toxicity Characteristic constituents, as measured by the Toxicity Characteristic Leaching Procedure, might not exceed the regulated levels.

Listings provide several other advantages also. For example, listed wastes can only be removed from subtitle C control through the delisting process which involves a thorough review of waste analysis data and waste management practices and a formal public notice and comment procedure. Characteristic wastes are no longer hazardous when they cease to exhibit the characteristic (in this case the Toxicity Characteristic). This difference is especially important in this case because several of the constituents of concern in wood preserving wastes are not considered by the Toxicity Characteristic and will be found in residues derived from treatment, storage, or disposal of the listed wastes. Thus, listing continues to account for the fate of toxic constituents in residues not specifically listed and helps ensure

proper handling of such residues as well. This is consistent with RCRA's cradle to grave mandate (see *API* v. *EPA*, 906 F.2d 729, 741–42, DC Cir. 1990). Furthermore, enforcement of the listings has proven to be more straightforward than enforcement of the rules for hazardous waste characteristics.

Some of the Extraction Procedure (EP) toxic metals and several of the new constituents added to the TC rule are likely to be found in the wastes listed today. Some of the wastes listed today may fail the EP or the TC and, therefore, may already be regulated as characteristic hazardous wastes. Until today's rule becomes effective in a generator's State, as discussed below, these wastes must be designated as characteristic wastes. After the rule becomes effective, the wastes must be designated as listed wastes rather than as characteristic wastes for purposes of complying with the land disposal restrictions rules. Wastes that were already hazardous by virtue of exhibiting any of the characteristics of hazardous waste, including the TC, may still have to be treated to meet standards promulgated for characteristic wastes after the effective date of this listing. Generators of drippage that exhibits the Toxicity Characteristic should note that the subpart W standards for drip pads may be applied to units used in management of such drippage prior to the effective date of today's rule in their State.

B. Land Disposal Restrictions

HSWA mandated that the Agency promulgate land disposal prohibition determinations under a specific schedule for wastes identified and listed prior to the enactment of HSWA (RCRA section 3004(d), 3004(e), and 3004(g)(4), 42 U.S.C. 6924 (d), (e) and (g)(4)). If the Agency failed to promulgate land disposal restrictions by the dates specified in section 3004(g)(4), the wastes are absolutely prohibited from land disposal after May 8, 1990 (or in some cases November 8, 1986, or July 8, 1987). HSWA also requires the Agency to make a land disposal prohibition determination for any hazardous waste that is newly identified or listed in 40 CFR 261 after November 8, 1984, within six months of the date the new listing is promulgated (RCRA section 3004(g)(4), 42 U.S.C. 6924(g)(4)). However, the statute does not provide for automatic restriction or prohibition of the land disposal of such wastes if EPA fails to meet this deadline.

Although some of the wastes covered by today's notice are being listed in part because of the presence of hazardous constituents at levels similar to those found in K001, they are newly listed wastes, and therefore, the treatment standards for K001 do not apply to today's newly listed wastes. The Agency has not yet completed treatability and capacity analyses for these newly listed wastes. For this reason, the Agency will address land disposal restrictions for the wastes listed today at a later date. It should be noted that because the statute does not provide for automatic restriction or prohibition of land disposal for newly identified wastes until such restrictions are promulgated, land disposal of these wastes will not be restricted or prohibited until the Agency promulgates land disposal restrictions (unless the wastes exhibit one of the restricted hazardous characteristics or are subject to other land disposal restrictions such as the prohibition on disposing of liquids in landfills). Wastes that exhibit the newly promulgated Toxicity Characteristic are considered newly identified as hazardous and are not covered by the LDR, unless also EP Toxic (see the Third Third Land Disposal Restrictions Rule, June 1, 1990, 55 FR 22520).

Wastes that exhibit the Extraction Procedure (EP) Toxicity Characteristic were evaluated as part of the Third Third land disposal prohibition determination, and treatment standards were promulgated for these wastes on May 8, 1990 (see 55 FR 22520). Most wastes generated from the use of inorganic wood preservatives (identified as F035 in today's rule) are expected to exhibit the EP characteristic for arsenic and chromium and thus are already subject to the land disposal restrictions standards which include reporting, recordkeeping, and tracking requirements, dilution and storage prohibitions, and treatment standards, for arsenic and chromium (see 55 FR 22659). These wastes also may be subject to certain California List treatment standards (see 55 FR 22674).

VI. State Authority

A. Applicability of Final Rule in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified states to administer and enforce the RCRA program within the state (see 40 CFR part 271 for the standards and requirements for authorization). Following authorization, EPA retains enforcement authority under sections 3008, 7003, and 3013 of RCRA, although authorized states have primary enforcement responsibility.

Prior to enactment of the Hazardous and Solid Waste Amendments (HSWA) of 1984, a State with final authorization administered its hazardous waste program entirely in lieu of the federal program. The federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in a State that was authorized to issue permits. When new, more stringent federal requirements were promulgated or enacted, the state was obligated to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, HSWA amended RCRA to add section 3006(g) (42 U.S.C. 6926(g)). Under section 3006(g), new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to implement those requirements and prohibitions in an authorized State, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the HSWA requirements are implemented by EPA in authorized States in the interim.

Certain portions of today's rule are being promulgated pursuant to RCRA section 3001(e)(1), a provision added by HSWA. These portions include the listing of F032. Therefore, the Agency is adding the requirements to Table 1 in § 271.1(j), which identifies the Federal program requirements that are promulgated pursuant to HSWA and that take effect in all States, regardless of their authorization status. States may apply for either interim or final authorization for the HSWA provisions identified in Table 1, as discussed in the following section of this preamble. The remaining portions of today's rule, in particular the listing of F034 and F035 and the addition of a test method to appendix III of part 261, are being promulgated pursuant to pre-HSWA authority. These provisions, therefore, will become effective only in those States without final authorization, and will become effective in States with final authorization once the State has amended its regulations and the amended regulations are authorized by EPA.

B. Effect on State Authorization

As noted above, EPA will implement certain portions of today's rule in authorized States until they modify their programs to adopt these rules and the modifications are approved by EPA.

Pursuant to section 3001(e) of RCRA, a provision added by HSWA, EPA is

adding F032 to the list of hazardous wastes from non-specific sources. Thus, these standards will take effect in all States (authorized and non-authorized) on the effective date. Certain other portions of today's rule are necessary to effectively implement the previously mentioned HSWA provisions. In particular, the permitting and interim status drip pad standards (subpart W) are necessary to provide regulatory standards applicable to F032 drippage listed today pursuant to HSWA authority. Under the Federal rules, the regulatory status of the pads (but not the collection system) is somewhat unclear (the collection system would be subject to hazardous waste tank requirements). Because these units do not appear to have any applicable standards under the base RCRA program, but have regulatory standards in connection with, and as necessary to implement, a HSWA listing, EPA considers these standards to be HSWA requirements under section 3006(g) when used in connection with the F032 listing. Thus, these provisions will also be effective on the effective date and administered by EPA pursuant to RCRA section 3006(g) and 40 CFR 264.1(f)(2) (see discussion of proposed § 265.1(c)(4)(iii) in paragraph 3 below). The addition of F034 and F035 to the list of hazardous wastes from non-specific sources and the addition of the test method to appendix III of part 261 are not immediately effective in authorized States since the requirements are not imposed pursuant to the HSWA. The permitting and interim status standards for drip pads associated with F034 and F035 wastes will therefore only become effective in authorized States when F034 and F035 become hazardous waste in each authorized State and when the State is authorized for the drip pad standards. However, should such wastes be designated as exhibiting the Toxicity Characteristic, which was promulgated under HSWA authority and is effective in authorized States, then such wastes may be managed on drip pads meeting the subpart W standards.

1. HSWA Provisions

As noted above, EPA will implement the addition of F032 to the list of hazardous wastes from non-specific sources in authorized States until the States modify their programs to adopt these rules and the modification is approved by EPA. Because portions of this rule are promulgated pursuant to HSWA, a State submitting a program modification may apply to receive either interim or final authorization under section 3006(g)(2) or 3006(b), respectively, on the basis of requirements that are substantially equivalent or equivalent to EPA's. The procedures and schedule for State program modifications for either interim or final authorization are described in 40 CFR 271.21. It should be noted that all HSWA interim authorizations will expire January 1, 1993 (see 40 CFR 271.24(c)).

40 CFR 271.21(e)(2) requires that States with final authorization must modify their programs to reflect Federal program changes, and they must subsequently submit the modifications to EPA for approval. The deadline for State program modifications for this rule is July 1, 1992 (or July 1, 1993, if a State statutory change is needed). These deadlines can be extended in certain cases (40 CFR 271.21(e)(3)). Once EPA approves the modification, the State requirements become RCRA subtitle C requirements. States with authorized RCRA programs may already have requirements similar to those in today's rule. These State regulations have not been assessed against the Federal regulations being promulgated today to determine whether they meet the tests for authorization. Thus, a State is not authorized to implement these requirements in lieu of EPA until the State program modification is approved. Of course, States with existing standards may continue to administer and enforce their standards as a matter of State law. In addition, because some of the wastes delisted today are likely already to be hazardous under authorized state law (i.e., through implementation of the EP), States may, of course, continue to regulate such wastes as part of the authorized program. In many cases, EPA will be able to defer to the States in their program implementaiton efforts, rather than take separate actions under Federal authority.

States that submit their official applications for final authorization less than 12 months after the effective date of these standards are not required to include standards equivalent to these standards in their application. However, the State must modify its program by the deadline set forth in § 271.21(e). States that submit official applications for final authorization 12 months after the effective date of these standards must include standards equivalent to these standards in their application. The process and schedule for final State authorization applications is described in 40 CFR 271.3.

2. Non-HSWA Provisions

Other portions of todays's rule are not effective in authorized States since the requirements will not be imposed pursuant to the Hazardous and Solid Waste Amendments of 1984. These portions include the addition of F034 and F035 to the list of wastes from non-specific sources, the permitting and interim standards for drip pads that handle F034 and F035 wastes, and the addition of test methods to 40 CFR part 261 appendix III. These requirements will be applicable only in those States that do not have final authorization. In authorized States, these requirements will not be applicable until the States revise their programs to adopt equivalent requirements under State law, unless the wastes are designated as hazardous due to the Toxicity Characteristic, which would allow an owner or operator to comply with the drip pad standards administered under Federal law.

40 CFR 271.21(e)(2) requires that States that have final authorization must modify their programs to reflect Federal program changes and must subsequently submit the modifications to EPA for approval. The deadline by which the States must modify their programs to adopt this regulation will be July 1, 1992 (or July 1, 1993 if a State statutory change is needed), in accordance with 40 CFR 271.21(e). These deadlines can be extended in certain cases (40 CFR 271.21(e)(3)). Once EPA approves the modification, the State requirements become subtitle C RCRA requirements.

States with authorized RCRA programs may already have requirements similar to those finalized in today's rule. These State regulations have not been assessed against the Federal regulations being finalized today to determine whether they meet the tests for authorization. Thus, States are not authorized to carry out their regulations as RCRA requirements until State program modifications are submitted to EPA and approved. Of course, States with existing standards may continue to administer and enforce their standards as a matter of State law. In addition, because some of the wastes listed today are likely already to be hazardous under authorized state law (i.e., through implementation of the EP), States may, of course, continue to regulate such wastes as part of the authorized program.

States that submit their official application for final authorization less than 12 months after the effective date of these standards are not required to include standards equivalent to these standards in their application. However, States must modify their programs by the deadlines set forth in 40 CFR 271.21(e). States that submit official applications for final authorization 12 months after the effective date of these

standards must include standards equivalent to these standards in their applications. 40 CFR 271.3 sets forth the requirements that States must meet when submitting final authorization applications.

It should be noted that authorized States are only required to modify their programs when EPA promulgates Federal standards that are more stringent or broader in scope than existing Federal standards. Section 3009 of RCRA allows States to impose standards more stringent than those in the Federal program. For those Federal program changes that are less stringent or reduce the scope of the Federal program, States are not required to modify their programs. See 40 CFR 271.1(i). Some of the standards promulgated today are less stringent than or reduce the scope of the existing Federal requirements. Those provisions appear in 40 CFR 262.34(a)(2). (As noted above, EPA does not believe that drip pads were regulated units prior to today's rule and thus, such standards are more stringent requirements for drip pads.) Therefore, authorized States are not required to modify their programs to adopt requirements equivalent or substantially equivalent to the provisions listed above.

3. Special Provisions for Drip Pad Standards

Under 40 CFR 264.1(f)(3), EPA may issue permits in authorized States if the treatment, storage, or disposal unit is subject to requirements of HSWA and the State has not yet received authorization for the particular HSWA requirements. EPA will therefore issue permits for drip pads that are subject to permitting (i.e., do not qualify for the § 262.34 accumulation provision or other permit exemption) and are managing F032 (or Toxicity Characteristic) wastes in authorized States. The standards for drip pads in 40 CFR part 264 subpart W will be used for these permits.

For F034 and F035 wastes, EPA will implement the standards for permitting drip pads in unauthorized States pursuant to 40 CFR 264.1(b). For F034 and F035 wastes in authorized States, the standards will generally apply when the State modifies its program in accordance with 40 CFR 271.21(e). However, should wastes that meet the listing descriptions of F034 and F035 exhibit the toxicity characteristic, a HSWA requirement, then these TC wastes can be managed in subpart W drip pads which would be implemented by EPA (under 40 CFR 264.1(f)(3), as described above) until the States modify their programs.

Furthermore, for wastes that meet the listing descriptions of F034 and F035 that also exhibit the EP characteristic under authorized state law, EPA has authority to issue a permit under 40 CFR 264.1(f)(2). This authority is available in authorized States if the subject regulated unit was not regulated under RCRA at the time of the State's authorization and if the standards for permitting the unit were promulgated after the State received final authorization. EPA may therefore, under 40 CFR 264.1(f)(2), issue permits for drip pads that are subject to permitting (i.e., do not qualify for the § 262.34 accumulation provision or other permit exemption) and are managing these EP wastes in authorized States. However, wherever possible the Agency expects to defer such permitting actions until authorized states are able to adopt the new listings and process these permitting actions. Of course, facilities that have handled or are handling EP toxic wastes in units that are not subpart W drip pads have pre-existing permit and interim status requirements which continue to apply under State law.

VII. CERCLA Designation and Reportable Quantities

All hazardous wastes listed pursuant to 40 CFR 261.31 through 261.33, as well as any solid waste that meets one or more of the characteristics of a RCRA hazardous waste (as defined at 40 CFR 261.21 through 261.24), are hazardous substances as defined at section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. Therefore, the wastes listed as hazardous in today's notice will, on the effective date of today's rule, automatically become hazardous substances under section 101(14) of CERCLA by virtue of their listing under RCRA. The CERCLA hazardous substances are listed in Table 302.4 at 40 CFR 302.4 along with their reportable quantities (RQs). CERCLA section 103(a) requires that persons in charge of vessels or facilities from which a hazardous substance has been released in a quantity that is equal to or greater than its RQ immediately notify the National Response Center (NRC) of the release at (800) 424-8802 or at (202) 426-2675. In addition, section 304 of the Superfund Amendments and Reauthorization Act of 1986 (SARA) requires the owner of operator of a facility to report the release of a CERCLA hazardous substance or an extremely hazardous substance to the appropriate state emergency response commission (SERC) and to the local emergency planning committee (LEPC) when the amount released equals or exceeds the RQ for the substance or one pound where no RQ has been set.

The release of a hazardous waste to the environment must be reported when the amount released equals or exceeds the RQ for the waste, unless the concentrations of the constituents of the waste are known (48 FR 23566, May 25, 1983). If the concentrations of the constituents of the waste are known, then the mixture rule may be applied. According to the "mixture rule" developed in connection with the Clean Water Act section 311 regulations and also used for notification under CERCLA and SARA (50 FR 13463, April 4, 1985), the release of mixtures and solutions containing hazardous waste would need to be reported to the NRC, and to the appropriate LEPC and SERC, when the RQ of any of its component hazardous substances is equalled or exceeded. The mixture rule provides that "[d]ischarges of mixtures and solutions are subject to these regulations only where a component hazardous substance of the mixture or solution is discharged in a quantity equal to or greater than its RQ" (44 FR 50767, August 29, 1979). RQs of different hazardous substances are not additive under the mixture rule, so that spilling a mixture containing half an RQ of one hazardous substance and half an RQ of another hazardous substance does not require a report.

On December 30, 1988, the Agency proposed RQs of one pound for each of today's wastes; later, EPA issued a supplemental correction notice (54 FR 7214, February 17, 1989) providing updated RQs for the constituents of the wastes. (EPA did not alter the proposed RQs for any of today's wastes.) Under section 102(b) of CERCLA, all hazardous wastes newly designated under RCRA will have a statutorily imposed RQ of one pound unless and until adjusted by regulation under CERCLA. In order to coordinate the RCRA and CERCLA rulemakings with respect to new waste listings, the Agency today is adding wastes F032, F034, and F035 to 40 CFR 302.4, the codified list of CERCLA hazardous substances, and adjusting their final RQs to one pound.

VIII. Regulatory Impact Analysis

A. Executive Order Requirements

Executive Order 12291 requires EPA to conduct a Regulatory Impact Analysis (RIA) for all rules that meet the definition of a "major rule." A major rule is one likely to result in (1) an annual impact 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 impacts on competition, unemployment, investment, productivity, innovation, or the ability of United States-based enterprises to compete in domestic or export markets. Although EPA has determined that the final rule will not be a major rule, the Agency was concerned about the potential for significant impacts on the wood preserving industry. Accordingly, the Agency prepared an RIA to measure the costs and benefits of regulatory options considered during development of the final rule and to assess tradeoffs among these options. The RIA is in the public docket for this rulemaking.

B. Description of Baseline and Final Rule

EPA considered a wide range of regulatory alternatives during the development of the final rule. Alternatives were considered for resolving three key policy issues: Waste management in the process area, waste management in the storage yard, and permitting requirements. From these alternatives, EPA selected four regulatory options for detailed analysis and determined an appropriate pre-regulatory baseling from which to analyze the incremental costs and benefits of each regulatory option. The costs and benefits of the regulatory options are discussed in detail in the RIA. This preamble presents results only for the pre-regulatory baseline and the final rule.

Baseline: The baseline defines the current condition of wood preserving facilities, their waste management practices, and their compliance with other requirements under RCRA or other statutes relevant to the wood preserving listing rule. Evidence from comparison of the Micklewright list of wood preserving facilities, discussed in section III.C, with data from EPA's Hazardous Waste Data Mangement System (HWDMS) suggested that, despite the fact that many wood preserving wastes are characteristically hazardous (under the Extraction Procedure or EP [6]), many wood preserving facilities have not notified EPA that they generate a hazardous waste. This indicates that many facilities are not in full compliance with existing regulations. For this analysis, current waste management practices and actual compliance with existing regulations were used as baseline conditions; full compliance with existing RCRA requirements was not assumed in the baseline.

Final rule: Under the final rule, drippage in the process area, wastewaters, process residuals, and discarded spent formulation are listed as hazardous waste and must be managed according to subtitle C regulations. All facilities must build a pad in the process area conforming to subpart W standards. Facilities are also required to take any measures necessary to prevent drippage in areas not covered by the drip pad. Facilities that already have a drip pad and that obtain annual certification from a professional engineer as to the integrity of the pad may delay replacement of the pad for up to 15 years according to a specified replacement schedule. Facilities accumulating waste for less than 90 days are not required to obtain a RCRA permit.

C. Costs and Economic Impacts

1. Methodology

a. *Overview.* The cost and economic impact analysis involved estimating the costs of the final rule to wood preserving facilities and then determining the number of facilities likely to close because they would be unable to pay those costs out of current profits.

Costs of compliance were determined using a two-step process. First, 18 model facilities were developed to represent the 583 actual facilities. Second, average incremental compliance costs were estimated for each model for all activities required under the final rule.

Facility closures were projected in the baseline and due to the rule using a three step process. First, the profitability of facilities in the short-run was determined based on average revenues and short-run operating costs. Next, baseline closures were estimated by determining the number of facilities in each model that would be unable to pay long-run operating costs out of short-run profits. Finally, the number of closures due to the rule was estimated by determining the number of facilities unable to pay compliance costs out of profits remaining after payment of short-run and long-run operating costs.

The costs and economic impacts of the rule were estimated under two scenarios: (1) Assuming facilities would be unable to pass any costs on to consumers in the form of higher prices and (2) assuming facilities could pass through all costs. Under the first scenario, costs and economic impacts were estimated as both costs paid by facilities remaining open and the number of facilities that close. Under the second scenario, costs and economic impacts were estimated as the total cost assuming all facilities remain open.

b. *Model facility development.* Eighteen model facilities were developed to represent the 583 active facilities in the industry (see section III.C for industry characterization). Facilities represented by each model had similar production characteristics and operating costs and revenues. Each of the 583 facilities was assigned to one of the 18 models according to three parameters: Preservative type used, geographic location, and annual production.

(1) *Preservative.* Although 14 percent of facilities use more than one type of preservative, most of these facilities treat primarily with one type of preservative. For this reason, multiple preservative facilities were classified into single preservative groups. Because each preservative type is closely associated with a particular treated wood product, each preservative type group was also assigned a single treated wood product; model inorganic facilities were assumed to treat lumber and timber, model creosote facilities were assumed to treat railroad ties, and model PCP facilities were assumed to treat utility poles.

(2) *Location.* Facilities were assigned to regions that correspond to the regional markets for preserved wood products and the regional availability of different species of trees. The definition of the regions varied by preservative type.

(3) *Production.* Data on actual per-facility annual production were not available; therefore, EPA estimated production based on the number and size of cylinders at each facility. The facilities were then divided into size categories based on production volume. The number of size categories varied by preservative type and region.

c. *Incremental compliance costs.* Incremental compliance costs were estimated for each model facility for all activities required under the final rule, including building a drip pad in the process area, managing process residuals as hazardous waste, and complying with the requirements of 40 CFR part 262 for hazardous waste generators. All facilities that currently have a drip pad were assumed to remove it immediately and install a new drip pad meeting subpart W standards. For some compliance activities, EPA

[6] At the time that data were retrieved from HWDMS, the EP was the test for determining if a waste was characteristically hazardous. The EP has since been replaced by the Toxicity Characteristic (TC) Leaching Procedure which changed the testing protocol and expanded the list of constituents used to define a waste as hazardous.

was uncertain of the exact response of facilities to the regulation. For example, although a drip pad in the process area is required, EPA did not know exactly how large a pad facilities would build. To account for this uncertainty, EPA estimated lower and upper bound costs to cover the range of possible compliance responses.

All costs were estimated as the present value of the initial and recurring pre-tax costs incurred by facilities over an assumed 20-year operating life. The present value cost was then annualized over 20 years to arrive at equal annual payments. The annualized cost represents the annual compliance cost to facilities that smooth out anticipated compliance costs with some form of financing over a 20-year period. An eight percent real rate of interest was used as both the discount and annualization rates.

d. *Baseline operating costs.* Among the critical inputs for the cost and economic impact analysis were the average operating costs for each model. These costs were estimated for each model by identifying all of the production inputs and process activities used at wood preserving facilities and estimating the costs associated with these inputs and activities. All costs were estimated on a pre-tax basis.

Costs were divided into direct and indirect operating costs. Direct operating costs were defined as those costs that facilities must pay to remain in business in the short run, such as expenditures for raw materials, labor, utilities, maintenance and repair, property taxes, insurance, and current environmental compliance practices. Indirect operating costs were defined as the sustaining capital needed to replace capital equipment, such as treatment cylinders, buildings, and equipment. Facilities must pay both direct and indirect costs to remain in business in the long run.

Many wood preserving facilities already undertake some environmental compliance activities, such as complying with 40 CFR part 262 hazardous waste generator requirements; operating as an interim status hazardous waste management facility under 40 CFR part 265; obtaining a RCRA treatment, storage, or disposal (TSD) permit under 40 CFR part 264; and/or installing a drip pad in the process and/or storage areas. The cost of these activities was included in the baseline as a direct operating cost of the model facilities.

Facilities that currently have interim status or a permit to operate as a hazardous waste TSDF may also be undergoing corrective action. Corrective action was assumed to be necessary at 31 percent of current TSDFs, based on estimates from the RIA for the proposed subpart S corrective action rule.[7] The cost of soil and ground-water remediation at wood preserving facilities requiring corrective action was estimated based on cleanup costs at seven wood preserving facilities undergoing cleanup under CERCLA. The cost of corrective action was treated in the baseline in the same manner as an indirect operating cost.

The percentage of facilities that are currently generators and/or TSDFs was determined form EPA's Hazardous Waste Data Management System (HWDMS). The percentage of facilities that have some form of drip pad in the process and/or storage area was determined from a 1987 survey of wood preservers conducted by the American Wood Preserving Institute (AWPI) submitted as part of the comments to the proposed rule (F-88-WPWP-00128.A).

e. *Facility closures and national costs.* To estimate the number of facility closures, the Agency developed an economic model that estimated the profitability of wood preserving facilities before and after compliance with the listing rule. Based on the number of closures, EPA also estimated losses of production and jobs. The economic model provided the Agency with greater resolution in predicting facility closures than the methodology used for the analysis of the proposed rule. This methodology differed from that used for the proposed rule in that it allowed the Agency to predict impacts on a percentage of facilities within a model, rather than on the entire model only.

Facility closures were determined using a three step process. First, a supply curve was estimated for each model to represent the range of pre-regulatory short-run operating costs of facilities within the model. The supply curves were estimated based on the assumption that short-run operating costs are less than or equal to revenues for all facilities represented by each model. Second, long-run operating costs were added to short-run operating costs and total costs were compared to revenues. With the addition of long-run operating costs, total costs for some marginal facilities were pushed above revenues, and the facilities were projected to close. These facilities were considered to be non-viable in the long run even without the new regulations and their closure was not considered an impact of the rule. Finally, compliance costs were added to total operating costs; if this pushed total costs above revenues, then a percentage of facilities were projected to close due to the rule.

Under the first cost pass-through scenario, it was assumed that no compliance costs would be passed on to consumers through price increases. For this scenario, costs and economic impacts were estimated jointly; i.e., the results were presented as both costs paid by facilities remaining open and the number of facilities that close. Second order effects, such as jobs lost and production lost, were also estimated.

It may be somewhat unrealistic to assume that facilities would be unable to recoup any of the compliance costs by raising prices, as assumed in the first cost pass-through scenario above. To the extent that prices were raised, additional facilities would likely find it profitable to remain in business. The Agency accordingly considered in the second cost pass-through scenario the effect of assuming full cost pass-through, whereby facilities raise prices to cover all compliance costs. Under such an assumption, there would be no closures of wood preserving facilities as a result of the rule; however, national costs would be higher because compliance costs would be paid by more facilities. (Scenario 2, which assumes no facility closures, could also be used to represent impacts on facilities that pay compliance costs out of savings or land sales rather than current profits.) In the event of full cost pass-through there may be some impacts on the purchasers of treated wood products due to the higher prices for these products. However, assessing such impacts was beyond the scope of this analysis.

2. Results

Of the initial population of approximately 580 wood preserving facilities, about 150 facilities, or almost 25 percent, were projected to close in the baseline due to indirect costs and the cost of existing corrective action requirements. The nearly 440 facilities remaining open represent the population of facilities potentially impacted by the regulation.

Under the assumption that facilities would not be able to pass compliance costs on to consumers in the form of higher prices, the rule was estimated to close less than 20 facilities. At the remaining 420 facilities, total national costs were estimated at between $11 million and $14 million per year, in 1990 dollars. The majority of the cost was for drip pad construction. Small inorganic

[7] U.S. Environmental Protection Agency (USEPA). June 25, 1990. Regulatory Impact Analysis for the Proposed Rulemaking on Corrective Action for Solid Waste Management Units. Washington, DC: Office of Solid Waste.

facilities were estimated to incur a larger share of the compliance costs and closures than any other category of facility, approximately $4.5 million and 15 closures. This was due to the fact that most wood preserving facilities are of this type and that these facilities have the lowest profit margins of any type of wood preserving facility. Production of treated lumber and timber was estimated to decrease by three percent, while utility pole production was estimated to decrease by six percent (from closure of one large PCP facility). Railroad tie production was not estimated to change because no creosote facilities were projected to close. Approximately 250 jobs were projected to be lost.

Under the assumption that facilities can pass on all compliance costs through higher prices, the rule was also estimated to cost between $11 million and $14 million per year. No facilities were projected to close under this scenario. The costs are the same under the two cost pass-through scenarios because the compliance cost to the facilities projected to close were small.

3. Limitations

Some important limitations of the analysis tend to underestimate, overestimate, or create uncertainty in the results of the costs and economic impacts of the rule. The following factors tend to underestimate the costs and economic impacts:

• As discussed in section III.C, EPA did not have sufficient information on non-pressure treaters to include them in the analysis. However, one commenter asserted that there are approximately 100 non-pressure treaters in the Northwest. If these facilities generate more than 100 kg of hazardous waste per month, they would be subject to RCRA regulation and could be impacted by this rule.

• When closing their existing drip pads, facilities could be required to clean up contamination underlying the pads. Since the cost of this clean-up was not included in the cost analysis, estimates of costs and impacts are likely to be understated.

• The method of annualizing costs assumes that facilities have unlimited access to borrowing at a real rate of interest of 8 percent for 20 years. To the degree that this type of borrowing is not available, annual costs and/or closures would be higher.

• Facilities may need to halt production during construction of a new drip pad or repair of an existing drip pad. In addition, facilities that are unable to construct a drip pad before the effective date of the rule may need to halt production for a longer period of time until they are able to comply with the rule. The cost of this lost production was not included in the analysis.

The following factors tend to overestimate the cost and economic impacts:

• It was assumed that all facilities with existing pads would need to replace them immediately with new pads meeting subpart W standards. To the degree that facilities with existing pads are able to annually certify that the pad will not cause releases, they will be able to delay replacement of the pad. Thus, this assumption leads to an overestimate of the true costs and impacts of the rule.

• In the analysis, it was assumed that all jobs and production of treated wood products would be lost at closing facilities. To the degree that jobs and production are tranferred to other facilities, this assumption leads to an overestimate of the true economic impacts.

• Under the subpart W requirements, if facilities build a roof over their drip pad, they may build a smaller sump that is not designed to contain a 25-year/24-hour storm event. To the degree that this option represents a cost savings to facilities, the costs and economic impacts have been overestimated.

The following factors tend to create uncertainty that could over- or underestimate the cost and economic impacts:

• The corrective action costs estimated for the baseline were based on examination of seven Superfund sites that are not necessarily representative of the universe of active wood preserving facilities. Also, the number of facilities assumed to incur corrective action costs in the baseline was based on estimates in the RIA for the proposed subpart S corrective action rule. Estimates from the corrective action RIA may, however, not be representative of wood preserving facilities. These assumptions could lead to an over- or underestimate of the number of facilities projected to close in the baseline and, therefore, the number of facilities remaining open to incur the cost of the rule.

• Several potential costs were not included in the baseline operating costs, such as costs for surface impoundment closure, wastewater treatment, and management of K001 wastes. Had these costs been included, more facilities would have closed in the baseline leaving fewer facilities open to pay the costs of compliance, in turn leading to lower costs and impacts due to the rule. However, facilities remaining open after baseline closures would have appeared financially weaker, with lower profits, due to the additional baseline costs, leading to higher impacts due to the rule.

D. Benefits

EPA analyzed the benefits of this rule using modeling, case studies, and screening analyses. The modeling analysis estimated risks posed to human health and the environment from drippage wastes using a multi-media exposure and risk estimation model. The case studies provide evidence of contamination at actual wood preserving facilities, complementing the modeling results. In addition, EPA conducted two benefits screening analyses on potential resource damage and food chain bioaccumulation. These analyses are summarized briefly below; complete documentation is provided in the RIA.

1. Modeling

a. Methodology. EPA used a computerized multi-media exposure and risk estimation model (the MMSOILS model) to simulate human health and environmental impacts from wood preserving drippage in the baseline (pre-regulatory case) and then again under the final rule. The Agency used MMSOILS to simulate releases of contaminants from wood preserving facilities and resulting concentrations in ground water and surface water.

The ground-water pathway examines leaching of pollutants from contaminated soils by infiltrating rainwater. EPA used the predicted pollutant concentrations in ground water as a basis for estimating cancer and non-cancer risks to humans drinking the contaminated water. The surface water pathway simulates concentrations of contaminants in streams as a result of (1) discharge of contaminated ground water into the stream and (2) erosion of contaminated soils which are then carried to the stream over the land surface. EPA examined two types of effects associated with contaminated surface water: human health risk from consumption of contaminated fish and stream water, and adverse effects on aquatic life.

(1) *Selection and characterization of sample facilities.* Modeling was conducted for a random sample of 55 actual wood preserving facilities. The sample was stratified by preservative type and was comprised of 44 facilities using inorganics, five using creosote, and six using PCP. To extrapolate the modeling results from the sample to the national population of wood preserving facilities, a weighting system was developed. The weights reflect the

frequency of occurrence of preservative types in the population compared to the frequency within the sample.

Running the MMSOILS model required a wide variety of data inputs for each of the 55 sample facilities. Facility-specific information relating to climate, soil characteristics, and hydrogeology was obtained from a variety of sources, including the U.S. Department of Agriculture Soil Conservation Service (county soil surveys); the U.S. Geological Survey (topographic maps, water supply papers, computerized stream reach data); well logs kept by state departments responsible for ground-water management; documents used in the Superfund program; the on-line "Graphical Exposure Modeling System" or GEMS; and the scientific literature. U.S. Geological Survey topographic maps provided site-specific information on the location of private drinking water wells within one mile downgradient of the site. Information on the distance to the nearest public well and the number of people served was obtained from U.S. Geological Survey topographic maps and the on-line Federal Reporting Data System (FRDS).

(2) *Facility size and waste characterization.* Information on facility size and the amount of drippage generated by each sample facility were unavailable. EPA estimated the surface area of each facility by assuming that there is a direct correlation between facility size and wood production rate; wood production rates were calculated as described above in section VIII.C.1.b(3). EPA then calculated an annual drippage volume for each sample facility by multiplying the production rates by an estimated drippage rate per volume of treated wood. A limited amount of data on drippage rates per volume of treated wood were provided by commenters to the proposed wood preserving rule, which EPA used as a basis for estimating an average rate for each preservative type.

Pollutant concentrations in drippage were assumed to be the same across all facilities using each preservative type. Data on the chemical composition of inorganic, creosote, and PCP drippage were reported in the background document supporting the proposed rule.

(3) *Constituents of concern.* The Agency selected a subset of the constituents in the background document for risk modeling, referred to as constituents of concern (COCs). Only those constituents with EPA-approved toxicological parameters were considered. From the list of constituents with EPA-approved values, the Agency identified those with the highest potential for posing risk to humans or aquatic life based on their concentrations in drippage, mobility in the environment, and toxicity. The COCs selected for modeling were: arsenic, hexavalent chromium, and copper for inorganic facilities; acenaphthene, benzo(a)pyrene, fluoranthene, and naphthalene for creosote facilities; and naphthalene, pentachlorophenol, polychlorinated dibenzo-p-dioxins (referred to in this section as "dioxins"), and polychlorinated dibenzofurans (referred to in this section as "furans") for PCP facilities.

To assess human health risks from exposure to these contaminants in ground water, EPA used cancer potencies for carcinogenic COCs and reference doses (RfDs) for non-carcinogenic COCs. Cancer potencies and RfDs were taken from two sources: the Integrated Risk Information System or IRIS, and Health Effects Assessment (HEA) Summary Tables. The only exceptions were for pentachlorophenol (PCP), dioxins, and furans. The cancer potency for PCP was recently verified by the Agency; the cancer potencies for dioxins and furans were derived using procedures recommended by EPA's Risk Assessment Forum.[8]

To assess human health and environmental risk from exposure to contaminated surface water, EPA generally used Ambient Water Quality Criteria (AWQC) from EPA's Office of Water Regulations and Standards "Quality Criteria for Water" (May 1986). AWQCs for the protection of human health are the concentrations in surface water that would pose a cancer risk of 10^{-6}, or doses above the RfD, for humans that both drink the surface water and ingest fish living in the stream. AWQCs for aquatic life are the concentrations in surface water considered by EPA to be protective of aquatic life.

(4) *Estimation of baseline and post-regulatory risk.* For each facility, MMSOILS provided the annual concentration of each COC in ground water over a 300-year time frame, and the concentration of each COC in the nearest stream. For the ground-water pathway, EPA calculated risks to the most exposed individual at each site (i.e., to an individual exposed at the actual nearest well) and population risk (i.e., the number of cancer cases expected in the population and number of people at risk for non-cancer effects) across all wells at each site. To measure potential adverse effects on aquatic organisms in nearby streams, EPA calculated the ratio of the annual concentration of each pollutant in the stream to the AWQC for the protection of aquatic life. Human health risks from exposure to contaminated surface water were calculated in a similar fashion, using AWQC for the protection of human health.

To simulate the benefits of the rule, EPA focused on facilities already in existence on the effective date of the wood preserving listing. To determine how long each facility had been in operation prior to the rule, the Agency calculated the average current age of wood preserving facilities, by preservative type, based on information provided by the American Wood Preserving Institute and the Society of American Wood Preservers, Inc. To be consistent with the cost and economic impacts analyses, EPA assumed that all facilities would be in operation for an additional 20 years after the effective date of the rule. EPA modeled risks for a period equal to the current average age of the facility plus an additional 300 years.

To simulate risks in the baseline, EPA assumed for modeling purposes that the drippage is uniformly distributed across the process and storage areas. An average drippage rate for both the process and storage areas was developed for each preservative type based on limited data provided by commenters to the proposed wood preserving rule. EPA multiplied the average drippage rates derived from commenter data by 10 to account for uncertainty in the data and the likelihood that actual drippage rates would be higher than indicated by the available data.

EPA also assumed that drip pads currently in place at wood preserving facilities do not effectively prevent contaminants from being released to or from soil. Examination of one of the wood preserving case study sites indicates that even where drip pads have been installed, cracking in the pad or inadequate berms may result in significant soil and ground water contamination. (See the discussion of case study #4 in chapter 8 and appendix F of the RIA background document.)

Consistent with the cost analysis, EPA assumed that 31 percent of the TSDFs would trigger corrective action in the baseline. Human health and environmental risks for facilities that trigger corrective action in the baseline were assumed to be negligible.

[8] *Interim Procedures for Estimating Risks Associated with Exposures to Mixtures of Chlorinated Dibenzo-p-Dioxins and –Dibenzofurans (CDDs and CDFs) and 1989 Update* (USEPA, 1989)

EPA assumed that all facilities would install drip pads on the effective date of the rule. Thus, the facilities were assumed to operate without pads for a period of time equal to their current age and then for 20 years with the pads in place. Becuase MMSOILS does not have the capability to simulate drip pads that cover only a portion of the facility, EPA assumed that the drip pads would cover both the process area and storage yard. EPA assumed that the pads are 100 percent effective in preventing both drippage and rainwater from entering the soil throughout the entire facility and that they remain 100 percent effective throughout the remainder of the modeling period. For facilities with significant existing storage yard contamination, or that allow preservatives to drip to storage yard soils in the future, this assumption overestimates the effectiveness of the rule.

b. *Results*—(1) *Baseline risk/hazard.* The results indicated that, in the baseline, exposure to contaminated ground water poses 300-year average individual risks exceeding 10^{-6} at about 23 percent of wood preserving facilities. About 5.3 percent of facilities had risks in excess of 10^{-3}. All of the facilities that pose cancer risk via ground water were inorganic plants, for which the cancer-causing pollutant is arsenic. Facilities using only creosote or PCP preservatives posed no ground-water risk within the modeling period because the contaminants of concern move very slowly in the subsurface environment. The Agency estimated that, across all facilities, exposure to contaminated ground water could lead to 300 cancer cases over 300 years in the baseline, virtually all of which (296 cases) would be attributable to arsenic exposure at public water supply wells near inorganic facilities.

The predominance of arsenic-related risk at public wells raised two issues. First, arsenic is a Safe Drinking Water Act pollutant monitored by public water supply systems; presumably, municipal water supply systems would treat arsenic-contaminated drinking water to reduce levels below the MCL. It is also noteworthy that arsenic poses a lifetime risk of 3×10^{-3} at its MCL of 0.05 mg/l; nearly all the baseline population risk and most of the MEI risk is due to arsenic concentrations below the MCL. Second, pollutant concentrations were simulated at the top of the aquifer, where concentrations are highest. This is a conservative assumption for all drinking water wells, but is particularly conservative for public water supply systems which tend to draw ground water from deep within the aquifer, where pollutant concentrations are likely to be lower.

Soil erosion from PCP plants is of concern for its potential adverse effects on aquatic life in nearby streams. The model results indicated that, in the baseline, erosion of soils contaminated with dioxins and furans led to surface water concentrations that threaten aquatic life at 83 percent of the PCP plants. Predicted concentrations of dioxins in streams near PCP plants were also high enough to threaten human health if people drink the water or eat the fish; simulated risks to hypothetically exposed individuals exceeded 10^{-5} at 83 percent of the PCP plants and 10^{-3} at one-third of the PCP facilities. Contaminated surface water was also potentially of concern for human health at the inorganic and creosote facilities, but the simulated risks to hypothetically exposed individuals rarely exceeded 10^{-5}. The Agency did not examine whether people actually use these streams as a drinking water supply or for fishing. Most of the affected streams are too small to support public water systems, suggesting that few people are likely to be exposed on a continuing basis via the drinking water route; however, consumption of contaminated fish could still threaten human health.

(2) *Risk/hazard reduction due to the rule.* EPA estimates that requiring drip pads (and the associated inspection and response requirements) will eliminate all of the risk from on-going operations at the affected wood preserving facilities that meet the new pad standards. The pads should prevent releases to ground water or surface water. If there is failure of the pads, the leak detection and response provisions, along with the closure provisions, should assure that there is no release from on-going operations at new pads.

The modeling done for this rule did show that there are facilities where past contamination poses cancer risks above 10–4. If those facilities are reviewed in a permit context or in the context of remediation under CERCLA, EPA policy (as articulated in the proposed RCRA corrective action regulation and the NCP for CERCLA) will be to seek to reduce the risk at such sites.

In deciding in this regulation that compliance with the drip pad standards could be accomplished with a provision similar to the 90-day generator requirements for tanks, EPA is making a decision regarding what procedure is appropriate for addressing waste it is deciding to list in this regulation. It is not implying that it finds risks from past contamination at these facilities to be acceptable.

c. *Limitations.* There is considerable uncertainty in the modeling results. The following factors tend to bias the Agency's results in the direction of understating risks from wood preserving facilities:

- Contaminant sources other than drippage (e.g., routine preservative spills, on-site disposal of process residuals) were not considered.
- The ground-water modeling was limited to a time frame of 300 years and a distance of one mile. An extended time horizon and additional well distance could have resulted in some additional risk. For example, a longer modeling period would eventually have resulted in constituent breakthrough at wells down-gradient from PCP and creosote facilities.
- Only pollutants with EPA-approved risk values (human health or aquatic) were simulated. This could underestimate risk for creosote and PCP plants, as the preservative solutions contain many potentially high-risk pollutants for which EPA has not yet derived dose-response information.
- Population growth over time was not considered when calculating the number of cancer cases. If larger populations are exposed, then a greater number of cases would be predicted.
- Health risks through several potential pathways of exposure, including inhalation of contaminated particulate matter, incidental ingestion of contaminated soils, and dermal contact with contaminated soils were not examined.

The following factors tend to bias the Agency's results in the direction of overstating risks from wood preserving facilities:

- Very little information on drippage rates was available; conservative assumptions for drippage rates (10 times the values provided by commenters) could overstate risks.
- Assuming that drip pads currently in place are totally ineffective, while those installed in response to the rule are 100 percent effective over the duration of the modeling period, tends to overstate the benefits of the regulation.
- Pollutant concentrations in ground water were modeled at the top of the aquifer, where pollutant concentrations are highest. This overstates baseline risks, particularly for facilities with public drinking water wells.
- The potential for decline in the population utilizing ground water was not considered; if fewer persons are exposed, then the number of cancer cases would be lower than predicted.

Some of the major factors that contribute to uncertainty in risk results are as follows:

• The algorithms used in MMSOILS to represent different environmental transport mechanisms are simple models that can only approximate the detailed heterogeneity and complex environmental influences affecting the fate and transport of chemicals at specific sites.

• MMSOILS, like most currently available fate and transport models, does not simulate contaminant flow through fractures or discrete zones of high permeability. This type of flow could act to channel contaminants toward, or away from, exposure points, potentially resulting in significantly higher or lower risks than estimated.

• EPA did not attempt to simulate two-phase flow. This is a potentially significant source of uncertainty for creosote and PCP facilities, which apply preservatives to wood in oil-based solutions.

• The analysis was based on limited information on pollutant concentrations in drippage, process and storage area sizes, and annual drippage volumes

• EPA assumed that drippage is uniformly distributed across the process and storage areas, as very little information was available to quantify the difference in drippage rates between these two areas. Assuming that drippage is concentrated in the process area could potentially have resulted in higher risk than estimated.

2. Case Studies

a. *Purpose of the case studies.* There is strong evidence that significant environmental contamination has resulted from both routine operations and waste mismanagement at wood preserving facilities. For example, as of June 1990, 54 wood preserving facilities had been listed on the Superfund National Priorities List (NPL), while RCRA corrective action measures had been mandated for numerous other facilities. At many facilities where Superfund Remedial Investigations/Feasibility Studies (RI/FSs) and RCRA Facility Assessments (RFAs) have been performed, extensive groundwater and soil contamination has been found.

Although many of these sites involve contamination resulting from management practices that are no longer permitted under current regulations, such as the use of unlined surface impoundments, environmental contamination can also be attributed to routine operating practices that would be affected by the listing of wood preserving wastes. These practices include allowing freshly treated wood to drip preservatives onto the soil and the on-site disposal of process residuals.

The Agency developed seven case studies to document examples of contamination resulting from operating practices addressed by the listing rule. The case studies also serve to provide "real world" evidence to complement the modeling analysis performed for the listing. Complete versions of the case studies are included in appendix G of the RIA.

b. *Selection of the case studies.* EPA selected seven case studies after screening the available information on contamination at wood preserving facilities. This information included the case studies from the public docket for the proposed rule; Superfund RODs, fact sheets, and RI/FSs; and RCRA RFAs. EPA focused its research efforts on those facilities where evidence of contamination was substantially documented and where contamination could be directly attributable to wastes and management practices addressed by the listing. Facilities were not used as case studies if contamination resulted primarily from surface impoundment releases, or if such contamination could not be distinguished from other types of contamination.

Of the seven case studies selected, four were based on information from RI/FSs, two were based on RCRA RFA data, and one was developed using a Superfund Endangerment Assessment.

c. *Results of the case study analysis.* Soil contamination with wood preservatives was detected in the process and drip track areas at all seven case study facility sites, and was above health-based levels at five of them. Of the five sites showing soil contamination above health-based levels, derivatives of creosote and PCP were the primary contaminants at three sites and inorganic constituents from CCA were the primary contaminants at the other two sites. At the sixth site, no soil samples were taken, but the RFA noted that creosote stains could be seen in soil samples as deep as 33 feet. At the seventh site, contamination was found, but at concentrations below health-based levels.

Ground water underlying or downgradient of the process area and drip track area was contaminated above health-based levels in all seven case studies. Three of the cases involved inorganic contaminants from CCA and four involved contamination from creosote and/or PCP.

Soil and ground-water contamination in the drip track area is most likely the result of excessive drippage of preservatives from freshly treated wood. For example, at several of the case study facilities, soil samples were taken directly under the drip track and contamination can, therefore, be unambiguously attributed to drippage. At another case study facility, soil samples were taken in a natural drainage area where storm water runoff is believed to have carried contamination from the drip track.

The exact cause of some of the soil contamination in process areas is not clear. Contamination in the work tank area at most of the facilities, for example, likely resulted from a combination of factors including product spills, leaking tanks, and poor housekeeping practices. These practices are not covered by the listing. They are, however, covered by other EPA regulations. To the extent that contamination results from releases of a CERCLA hazardous substance in excess of the Reportable Quantity, the facility must notify EPA and the State, and could be liable for cleanup under CERCLA section 107. Such contamination may also result from substances deemed to be RCRA hazardous waste, either as a characteristic waste under the toxicity characteristic, or as a U or P waste, such as U051 (creosote), or another listed waste. Release of these materials could constitute land disposal of a RCRA hazardous waste which would require interim status of a part B permit and, therefore, subject the facility to RCRA corrective action requirements.

Soil contamination was also found in the storage yard at case study facilities, but less frequently and at lower levels than in the process area. Soil contamination above health-based levels was found at two sites and creosote stains were observed at one other facility. Ground water underlying the storage area was contaminated above health-based levels at three sites. Detailed descriptions of the production process at case study facilities were usually not provided in the RI/FS, therefore, the observed storage yard contamination could not be linked to specific management practices. Storage yard contamination could have resulted from continuing drippage in the storage yard, precipitation runoff carrying excess preservative from the treated wood, or from management of other wastes in the storage yard.

Off-site contamination was found at one case study site. At this site, surface water runoff contaminated with preservative from the drip track and storage areas formed ponds on an area entirely off-site. Soil samples taken from this area revealed high levels of chromium and arsenic. Ground-water

monitoring in this area also revealed high levels of contamination. Because this ponding area was downgradient of the rest of the facility, some of the ground-water contamination may have resulted from other parts of the facility upgradient of this area.

The primary benefit of the rule will be to eliminate contamination from drippage of excess preservative in the drip track area, a significant source of contamination at the case study wood preserving facilities. Because contamination from the drip track can migrate through ground water, contamination of other areas both on-site and off-site will also be curtailed.

d. *Limitations of the case study analysis.* The seven case studies provide substantial evidence that soil and ground-water contamination can result from routine operational practices. There are, however, limitations on the degree to which these findings can be generalized to the universe of wood preserving facilities. First, the analysis is based on only seven facilities, two of which are closed and are, therefore, not on the list of 583 active wood preserving faciltiies. Second, the seven case study sites were specifically selected because they were contaminated and detailed data were available. Hence, they are more likely to represent the most severely contamination facilities rather than the typical facility. In addition, the quality and quantity of data contained in available documents varied greatly. In some cases, documents explicitly identified sources of contamination, while in other cases, the source of contamination was inferred from the location of the samples and information on ground-water flow.

3. Resource Damage Screening Analysis

The impact of ground-water contamination can be measured in terms of the loss of ground water as a resource, as well as the threat posed to human health. EPA performed a screening analysis of the 55 sample wood preserving facilities discussed in section VIII.D.1.a to determine whether resource damage is potentially of concern at wood preserving sites. For this analysis, resource damage was considered to occur whenever ground water is rendered unfit for use as a drinking water supply (i.e., when contaminant concentrations in ground water exceed Maximum Contaminant Levels (MCLs) or taste and odor thresholds). EPA's basic approach was to identify facilities at which estimated constituent concentrations in ground water at the downgradient facility boundary were above these thresholds.

EPA estimated that over a 300-year time frame, pollutant concentrations in ground water at the downgradient facility boundary would exceed resource damage thresholds at 68 percent of wood preserving facilities (70 percent of the inorganic facilities, 60 percent of the creosote facilities, and 67 percent of the PCP facilities). The magnitude of the resource damage at each site would depend on several factors that were not considered in this simple screening approach, such as the extent of plume growth over time, the number of people whose water supply would be affected, the proximity of the site to alternate drinking water supplies, and the cost of utilizing those supplies. However, the analysis does indicate that, when the resource value of ground water is considered, the number of facilities with potentially significant environmental contamination can be higher than indicated based on human health risks alone. The analysis also indicates that compliance with the rule would reduce but not eliminate ground-water contamination and resource damage.

4. Food Chain Contamination Screening Analysis

a. *Methodology.* EPA conducted a screening analysis of potential human health risks from exposure through the food chain to contaminants released to soil from wood preserving drippage. The Agency used the MMSOILS model to simulate releases of contaminants to soil at 4 of the 55 sample wood preserving facilities (see section VIII.D.1.a.), resulting concentrations in crops grown in contaminated soils and in food products derived from cattle consuming the crops, and potential health risks to humans ingesting the crops and food products. Human health risks from incidental ingestion of soil and dermal contact with soil were examined as well. The results were used to identify which exposure pathways are potentially of concern under the assumption that wood preserving operations cease 20 years after the effective date of the rule and the land is converted to food and feed production.

The Agency selected two inorganic and two PCP facilities for the screening analysis; each pair of facilities includes a "typical" and a "worst-case" facility (based on average soil concentration of constituents) to represent "typical" and "worst-case" potential human health risks. The Agency used the same information on facility size and drippage rates as those used for the ground-water and surface water risk modeling (see section VIII.D.1.a.). Facility-specific information relating to feed (i.e., pasture) and food (i.e., vegetable) production and factors affecting the deposition of contaminated soil particulates was obtained from a variety of sources, including the U.S. Department of Agriculture (county soil surveys); the on-line GEMS: and the scientific literature. Information on the typical consumption rates of crops and food products by humans and/or cattle was obtained from EPA documents on exposure assessment and the scientific literature.

From the set of constituents of concern (COCs) developed for ground-water risk modeling (see section VIII.D.1.a.), the Agency selected only those constituents that are known to translocate in food and feed crops. The COCs selected for food chain modeling were arsenic and hexavalent chromium for the inorganic facilities; and pentachlorophenol, polychlorinated dibenzo-p-dioxins (referred to in this section as "dioxins"), and polychlorinated dibenzofurans (referred to in this section as "furans") for the PCP facilities. To evaluate the mobility of COCs in the food chain pathways, the Agency used transfer factors obtained from the scientific literature. To assess human health risks from exposure to these contaminants in soil and the food chain, EPA used the same cancer potencies for carcinogenic COCs and reference doses for non-carcinogenic COCs as those used for ground-water risk modeling.

b. *Results.* The modeling results indicated that several of the food chain pathways analyzed are potentially of concern (i.e., may present high MEI risk) under the hypothetical scenario where wood preserving sites are converted to food production. At both the typical and worst-case inorganic facilities, the greatest potential for cancer risk is through exposure to arsenic in vegetables; potential exposure to chromium, a non-carcinogen, in any of the food chain and soil pathways is limited and would not result in chronic health effects. At the typical PCP facility, the greatest potential for cancer risk is through exposure to dioxins in vegetables and to furans in beef and milk. At the worst-case PCP facility, the greatest potential for cancer risk is through exposure to both dioxins and furans in vegetables, beef, and milk. At the worst-case PCP facility, potential exposure to pentachlorophenol in vegetables is significant and would result in chronic (i.e., non-cancer) health effects. The analysis also indicated that the final rule, by requiring process area drip pads and preventing further soil contamination, would reduce the

potential for adverse health effects caused by ingestion of contaminated foods.

c. *Limitations.* The food chain pathway and soil exposure modeling was undertaken as a screening analysis and, therefore, the Agency made many simplifying assumptions. The most important of these assumptions include the following:

- The potential health risks correspond to a hypothetical maximum exposed individual (MEI) who lives in a nearby farm household (i.e., a subsistence farmer) and whose diet consists, in part, of foods which are grown directly on the former wood preserving site and food products derived from cattle grazing at the site.
- Constituent levels in soil and feed that would cause plant or animal mortality, thereby eliminating the possibility of human exposure to the foods, were not considered.
- Neither chemical decay in soils nor erosion of soils from the site were considered.
- Potential institutional restrictions prohibiting food production on former wood preserving sites were ignored.

Other limitations of the MMSOILS model are identified in section VIII.D.1.c.

5. Summary of Benefits

The primary focus of the wood preserving listing rule is to prevent drippage in the process area from being released to the surrounding environment. The results of the benefits modeling analysis unambiguously indicate that uncontrolled drippage at wood preserving facilities poses a risk to human health and the environment via transport through the soil to the ground water and surface water. These results are substantiated by "real world" evidence from case studies of actual facilities which indicates that uncontrolled drippage in the process area has resulted in contamination of soil and ground water. EPA's actions to require drip pads in the process area at wood preserving facilities will prevent such contamination from occurring in the future.

IX. Regulatory Flexibility Analysis

A. Approach

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that whenever an agency publishes a notice of rulemaking, it must prepare a Regulatory Flexibility Analysis (RFA) that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). An RFA is unnecessary, however, if the Agency's administrator certifies that the rule will not have a significant economic effect on a substantial number of small entities.

EPA examined the final rule's potential effects on small entities as required by the Regulatory Flexibility Act. Two measures, based on EPA guidelines for conducting an RFA, were used to determine whether the rule would have a "significant economic effect" on small entities. The first measure was the ratio of compliance cost to cost of production (the "COP ratio"). A COP ratio exceeding five percent was assumed to represent a significant impact because it indicated that facilities would need to raise their prices by more than five percent, assuming costs could be passed through to customers, in order to maintain the same level of profits. The second measure was the potential number of facility closures, estimated assuming no costs could be passed through to customers. The methodology used to estimate the costs of production, compliance costs, and potential closures is discussed in section VIII.C.1.

A "substantial number" of small entities was assumed to be 20 percent or more of the population of small businesses, small organizations, or small government jurisdictions within the universe of facilities affected by the rule. The only entities found to be affected by the final rule were small businesses; no small organizations or small government jurisdictions would likely be affected. "Small" businesses were defined based on the volume of production. This production-based definition varied by preservative type and geographic region. Production volume was used to define a small business instead of the number of employees (which was used in the Economic Impact Analysis conducted for the proposed rule) because the ratio of labor to final output varies widely among wood preserving operations; two firms with the same number of employees may have significantly different production volumes, revenues, and profits.

B. Results

The cost and economic impact model calculated average COP ratios for facilities in each model. The average COP ratio did not exceed five percent for any of the models representing small facilities. The model with the highest average COP ratio had a COP ratio of 1.8 percent. The average COP ratio for most models was below one percent. The percent of small facilities projected to close was also very low. Closures of small facilities were projected only for inorganic facilities, with four percent of these facilities estimated to close.

EPA has concluded that today's final rule will not have a significant effect on a substantial number of small entities. As a result of this finding, EPA has not prepared a formal RFA in support of the rule. More detailed information on small business impacts is available in the RIA for this rule.

X. Paperwork Reduction Act

The information collection requirements in this rule will be submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* These requirements are not effective until OMB approves them and a technical amendment to that effect is published in the **Federal Register.**

Public reporting burden for this collection of information is estimated to average 230 hours per facility per year, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

XI. Compliance Procedures and Deadlines

This section is intended to assist the regulated community in understanding their regulatory obligations for managing today's listed wastes. As discussed in section VI of this preamble, the F032 listing is promulgated pursuant to HSWA and is therefore effective in all states. The F034 and F035 listings are promulgated pursuant to pre-HSWA authority and will take effect only in unauthorized States; the effective date in authorized States for these two listings will be established when each State adopts the rule. The compliance discussion in this section first discusses notification requirements for all facilities, then generator and transportation requirements in all States, and finally the requirements for treatment, storage and disposal facilities in authorized and in unauthorized States, where some of the rule will not

take effect until States adopt the non-HSWA listings.

A. Notification

Pursuant to RCRA section 3010, the Administrator may require all persons who handle hazardous wastes to notify EPA of their hazardous waste management activities within 90 days after the wastes are identified or listed as hazardous. This requirement may be applied even to those generators, transporters, and TSDF's who have previously notified EPA with respect to the management of other hazardous wastes.

In the December 30, 1988, **Federal Register** notice, EPA proposed to waive the notification requirement for persons who manage F032, F034, or F035 wastes and have already (1) notified the Agency that they manage other hazardous wastes and (2) received an EPA identification number under RCRA section 3010. EPA has decided to waive the notification requirement for these persons as proposed. The Agency believes that a notification requirement for persons already identified within the hazardous waste management universe is unnecessary.

EPA is not waiving the notification requirement for handlers of F032, F034, or F035 that have not notified the Agency that they manage hazardous wastes under RCRA section 3010. Thus, by March 6, 1991, all generators, transporters, and owners or operators of treatment, storage, and disposal facilities who are managing F032 hazardous waste must notify EPA. Similarly, by March 6, 1991, all generators, transporters, and owners or operators of treatment, storage, and disposal facilities who are managing F034 and F035 hazardous waste in an unauthorized State must notify EPA. This is done by completing a section 3010 notification form and sending it to the appropriate EPA Regional Office. (See EPA Form 8700–12, dated 7/90. See 55 FR 31389, August 2, 1990 for a copy of the form. Notification instructions are set forth in 45 FR 12746.)

Persons in authorized States that are handling F034 and F035 wastes subject to today's final rule are not required to notify EPA of such activity. Notification will be required of these facilities after the State receives authorization or otherwise amends its program to regulate these wastes or require such notification. EPA has concluded that it is appropriate to waive the notification requirement at this time in authorized States because (1) the universe of newly regulated activities will be identified when State regulations are revised, as they must be for the States to retain authorization; and (2) RCRA identification numbers provided to notifiers in authorized States are obtained by the State from EPA, so in this way EPA is informed of the notification that authorized States receive.

B. Generators and Transporters

Generators of F032 wastes in authorized States and generators of any of the wastes listed today in unauthorized States will be subject to the generator requirements set forth in 40 CFR part 262. These requirements include standards for hazardous waste determination (40 CFR 262.11), compliance with the manifest (40 CFR 262.20 to 262.23), pretransport procedures (40 CFR 262.30 to 262.34), generator accumulation (40 CFR 262.34), recordkeeping and reporting (40 CFR 262.40 to 262.44), and import/export procedures (40 CFR 262.50 to 262.60). Persons who transport these wastes will be required to obtain an EPA identification number by submitting Form 8700–12 as described above and will be subject to the transporter requirements set forth in 40 CFR part 263.

Until the authorized State adopts today's F034 and F035 listings, these wastes are not considered to be hazardous (unless they are hazardous due to other listings or characteristics under the State program or the Federal HSWA program). Therefore, generators, transporters, and treatment, storage, and disposal facilities managing wastes that are hazardous solely due to the F034 and F035 listing are not subject to today's rule until the State adopts the rule.

EPA expects that most generators of today's wood preserving wastes will choose to manage these wastes in units that are not subject to the permitting requirements of parts 264 to 270. The following discussion identifies the most likely compliance options that will be followed by generators of wood preserving wastes.

EPA anticipates that most generators will use drip pads and comply with the 90 day accumulation provision in § 262.34(a)(2) of today's rule. This provision requires the drip pad to comply with the management standards of part 265, subpart W, as well as other specific standards of part 265. The generators' drip pad units that are used to treat or store F032, F034, and F035 are not subject to RCRA permitting provided the specific conditions of § 262.34(a)(2) are met.

Similarly, F032, F034, F035, or Toxicity Characteristic wastes may be treated or stored by generators in tanks or containers for 90 days or less under the generator accumulation provisions of 40 CFR 262.34. (Small quantity generators have more than 90 days for accumulation. See § 262.34) These tank and container accumulation units are not subject to permitting, but must comply with specified part 265 standards.

In addition, because some of the wastes listed today are wastewaters, they may be managed in tanks that are part of wastewater treatment systems. Drip pads are not tanks nor are they ancillary equipment to tanks. Under 40 CFR 264.1(g)(6) and 265.1(c)(10), tanks and tank systems that meet the definition of wastewater treatment unit in 40 CFR 260.10 are not subject to the permitting and interim status requirements of 40 CFR parts 264 and 265. The wastewater treatment unit definition includes devices that (1) are part of a wastewater treatment facility that is subject to section 402 or 307(b) of the Clean Water Act; (2) treat or store an influent wastewater that is a hazardous waste, or that generate and accumulate a wastewater treatment sludge that is a hazardous waste, or that treat or store a wastewater treatment sludge which is a hazardous waste; and (3) meet the definition of tank or tank system in 40 CFR 260.10 (see 53 FR 34079). Therefore, all tanks and tank systems that meet the wastewater treatment unit definition, and in which the newly listed wastes are generated, accumulated, treated, or stored, are exempt from the regulatory requirements of 40 CFR parts 264 and 265. Because the definition of tank system includes all connected ancillary equipment as defined in 40 CFR 260.10, which includes piping, fittings, flanges, valves, and pumps, any such equipment that is part of an exempt wastewater treatment unit in which the newly listed wastes are generated, accumulated, treated, or stored is also excluded from the requirements of parts 264 and 265. (See 53 FR 34079 for further discussion of the scope of the exemption.) The listed sludges, once removed from the excluded units in which they are generated, are subject to all applicable RCRA subtitle C regulations. Wastes left in inactive units also are subject to RCRA subtitle C.

C. Treatment, Storage, and Disposal Facilities in Unauthorized States

There are three types of treatment, storage, and disposal facilities (TSDF's) in unauthorized States which may be affected by today's rule: (1) Facilities which are subject to RCRA permit requirements for the first time as a result of today's rule, (2) facilities which are

already operating under interim status, and (3) facilities that have been issued a RCRA permit.

Permitted and interim status facilities can also be affected by today's rule in two distinct ways: (1) The facility may already be managing wastes that are hazardous under the existing EP or TC rules and which also are wastes newly listed under today's rule (and thus the waste would have a new waste code), or (2) the facility may be managing a solid waste which is newly subject to regulation as a result of today's listing.

Of course, generators that qualify for the accumulation provisions of § 262.34 are not considered to be TSDF's with respect to wastes managed under that provision and are not subject to permitting for those activities. The following sections describe the compliance obligations for facilities that have units subject to permitting due to today's listings.

1. Newly Regulated Facilities

Newly regulated facilities (i.e., facilities at which the only hazardous wastes that are treated, stored, or disposed are wastes newly regulated by today's final rule) must qualify for interim status by the effective date of the rule in order to continue managing wastes listed by today's rule prior to receiving a permit. To obtain interim status, an eligible facility must submit a section 3010 notification form to EPA by March 6, 1991 and submit a part A permit application to EPA by June 6, 1991. (See 270.70(a).) Interim status facilities are subject to regulation under 40 CFR part 265 (including the drip pad standards in subpart W) until a permit is issued by EPA or an authorized state. To retain interim status, a newly-regulated land disposal facility must submit a RCRA permit application within one year after the effective date of the rule and certify that the facility is in compliance with all applicable ground water monitoring and financial responsibility requirements (see RCRA section 3005(e)(3) and 40 CFR 270.73(d)).

2. Permitted and Interim Status Facilities

Facilities which have been managing EP or TC wastes which now also meet the listing description for the wastes listed today must notify EPA of the waste code changes for these wastes. Permitted facilities must submit permit modifications to EPA as required under 40 CFR 270.42 that reflect the new waste codes. Interim status facilities must submit revised part A permit applications in accordance with 40 CFR 270.72. These facilities must continue to comply with the applicable federal standards for hazardous waste management.

Permitted and interim status facilities which manage a solid waste that is newly defined as hazardous waste as a result of today's rule must also submit Class 1 permit modification requests or part A permit application revisions to EPA. Facilities must manage these wastes in accordance with 40 CFR part 265 or 40 CFR part 264 until permit modification or issuance, depending on whether the waste is managed in a newly regulated or previously regulated unit.

For permitted facilities, the Class 1 modification must be submitted to EPA by June 6, 1991, and should include a revised part A form clearly indicating all activities that are newly regulated as a result of today's listings, and any other description that will clarify which units at the facility are managing the new wastes. Also as part of the § 270.42(g) procedure for identifying newly listed wastes at permitted facilities, the permittee must notify the public within 90 days of the Class 1 submittal to the Agency.

A subsequent Class 2 or 3 permit modification (if necessary) must be submitted 180 days after the effective date of today's listings, and it is at this time that detailed part B information must be submitted. If a new land disposal unit is newly-regulated due to today's rule, the permittee must certify that the facility is in compliance with all applicable ground water monitoring and financial responsibility requirements within one year after the effective date of the rule (see 40 CFR 270.42(g)(1)(v)).

D. Treatment, Storage, and Disposal Facilities in Authorized States

There are also three types of facilities located in authorized states which are affected by today's rule; already permitted facilities managing F032 wastes, facilities operating under interim status managing F032 wastes, and facilities newly subject to RCRA permit requirement under today's rule because they manage F032 wastes. As in unauthorized states, some of the permitted and interim status facilities have been managing EP or TC wastes that meet today's listing descriptions.

For facilities which have been managing EP wastes under an authorized State program which are also F032 wastes, the facility will need to change the waste code (and possibly also change the unit type, if a drip pad is used) assigned to its wastes. Permitted facilities must submit permit modifications to EPA reflecting the new waste codes (and unit types, if applicable). Because EPA must implement this rule until the state is authorized to do so, the permittee must comply with Federal permit modification procedures under 40 CFR 270.42 rather than state permit modification procedures. However, because the permit undergoing modification is most likely a joint EPA-State RCRA permit, a copy of the modification request should also be submitted to the authorized State. Similarly, interim status facilities managing F032 wastes must submit a revised part A permit application to EPA pursuant to 40 CFR 270.72, with a copy to state permitting authorities. Although these facilities must make appropriate waste code (and unit type, if applicable) modifications to reflect the new listing, the wastes are already regulated as EP wastes under the authorized state program. Accordingly, such wastes may not be subject to any new management requirements as a result of this rule if they are managed in tanks, land disposal units, or other units described in 40 CFR parts 264/265, subparts I through Q.

Some permitted and interim status facilities in authorized states will be managing F032 wastes which are hazardous as a result of the toxicity characteristic, which became effective on September 25, 1990, but were not regulated as EP wastes under the authorized state program. See discussion of relationship between EPTC and revised TC at 55 FR 11847–11849 (March 29, 1990). Since no state is authorized for TC wastes, facilities managing TC wastes which are also hazardous as F032 under today's rule must comply with EPA procedures for permit modifications or interim status changes in order to continue management of these wastes after the effective date of today's rule.

Some permitted and interim status facilities in authorized States may be managing F032 wastes which will become hazardous as a result of today's rule, rather than the TC or EP. These facilities must also submit permit modifications or part A permit application revisions to EPA. However, because these wastes were previously unregulated under RCRA, they also were not regulated under the authorized state program. As a result, if these wastes are in a previously unregulated unit, they will be subject to the self-implementing Federal standards for hazardous waste management at 40 CFR part 265 until permit issuance (for interim status facilities) or modification (for permitted facilities). After permit issuance or modification, the Federal permitting standards at 40 CFR part 264 will apply to these wastes (or the state

permitting standards if the permit is ultimately issued or modified by a state authorized for F032). However, if the wastes are at a permitted facility in a unit that is already regulated by the State, that unit will continue to comply with the applicable permit conditions based on 40 CFR part 264 (or State equivalent) standards.

Facilities in authorized States which are newly subject to RCRA permit requirements as a result of today's rule for F032 must obtain an EPA identification number and submit their part A permit application and section 3010 notification to EPA in order to obtain interim status (see 40 CFR 270.70). Such facilities are subject to regulation under 40 CFR part 265 until a permit is issued by EPA or a State authorized for F032.

List of Subjects

40 CFR Part 260

Administrative practice and procedure, Confidential business information, Hazardous materials, Recycling, Reporting and recordkeeping, Waste treatment or disposal.

40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

40 CFR Part 262

Administrative practice and procedure, Hazardous materials, Reporting and recordkeeping.

40 CFR Part 264

Hazardous materials, Packaging and containers, Reporting requirements, Security measures, Surety bonds, Waste treatment and disposal.

40 CFR Part 265

Air pollution control, Hazardous materials, Packaging and containers, Reporting requirements, Security measures, Surety bonds, Waste treatment and disposal, Water supply.

40 CFR Part 270

Administrative practice and procedures, Air pollution control, Hazardous materials, Reporting requirements, Waste treatment and disposal, Water pollution control, Water supply, Confidential business information.

40 CFR Part 271

Administrative practice and procedures, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

40 CFR Part 302

Air pollution control, Chemicals, Hazardous materials transportation, Hazardous substances, Intergovernmental relations, Natural resources, Nuclear materials, Pesticides and pests, Radioactive materials, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control.

Dated: November 15, 1990.

William K. Reilly,

Administrator.

For the reasons set out in the preamble, 40 CFR parts 260, 261, 262, 264, 265, 270, 271, and 302 are amended as follows:

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

1. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921 through 6927, 6930, 6934, 6935, 6937, 6938, and 6939.

2. Section 260.10 is amended by adding the definition of "Drip Pad", in alphabetical order, as follows:

§ 260.10 Definitions.

* * * * *

Drip pad is an engineered structure consisting of a curbed, free-draining base, constructed of non-earthen materials and designed to convey preservative kick-back or drippage from treated wood, precipitation, and surface water run-on to an associated collection system at wood preserving plants.

* * * * *

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

3. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

4. Section 261.4 is amended by adding paragraph (a)(9) to read as follows:

§ 261.4 Exclusions.

* * * * *

(a) * * *

(9) Spent wood preserving solutions that have been used and are reclaimed and reused for their original intended purpose.

* * * * *

5. Section 261.31(a) is amended by adding the following hazardous waste listings in alphanumeric order to read as follows:

§ 261.31 Hazardous wastes from non-specific sources.

(a) * * *

Industry and EPA hazardous waste No.	Hazardous waste	Hazard code
*	* * * *	*
F032	Wastewaters, process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that currently use or have previously used chlorophenolic formulations (except potentially cross-contaminated wastes that have had the F032 waste code deleted in accordance with § 261.35 of this chapter and where the generator does not resume or initiate use of chlorophenolic formulations). This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol.	(T)
F034	Wastewaters, process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that use creosote formulations. This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol.	(T)
F035	Wastewaters, process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that use inorganic preservatives containing arsenic or chromium. This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol.	(T)

6. Section 261.35 is added to read as follows:

§ 261.35 Deletion of Certain Hazardous Waste Codes Following Equipment Cleaning and Replacement.

(a) Wastes from wood preserving processes at plants that do not resume or initiate use of chlorophenolic preservatives will not meet the listing definition of F032 once the generator has

met all of the requirements of paragraphs (b) and (c) of this section. These wastes may, however, continue to meet another hazardous waste listing description or may exhibit one or more of the hazardous waste characteristics.

(b) Generators must either clean or replace all process equipment that may have come into contact with chlorophenolic formulations or constituents thereof, including, but not limited to, treatment cylinders, sumps, tanks, piping systems, drip pads, fork lifts, and trams, in a manner which minimizes or eliminates the escape of hazardous waste or waste constituents, leachate, contaminated drippage, or hazardous waste decomposition products to the ground and surface waters and to the atmosphere. Generators must either:

(1) Prepare and sign a written equipment cleaning or replacement plan that describes the equipment to be cleaned or replaced, how the equipment will be cleaned or replaced, and the appropriate solvent chosen to use in cleaning and conduct cleaning and/or replacement in accordance with the plan by replacing the equipment and managing the discarded equipment as F032 waste; or

(2) Removing all visible residues from process equipment; and rinsing process equipment with an appropriate solvent until dioxins and dibenzofurans are not detected in the final solvent rinse at or below the lower method calibration limit (MCL) in Table 1 when tested in accordance with SW-846 Method 8290; and managing all residues from the cleaning process as F032 waste; or

(3) Document that previous equipment cleaning or replacement was performed in accordance with the requirements of this section and occurred after a change in preservative.

(c) The generator must maintain the following records documenting the cleaning and replacement as part of the facility's operating record:

(1) The name and address of the facility;

(2) Formulations previously used and the date on which their use ceased in each process at the plant;

(3) Formulations currently used in each process at the plant;

(4) The equipment cleaning or replacement plan;

(5) The name and address of any persons who conducted the cleaning and replacement;

(6) The dates on which cleaning and replacement were accomplished;

(7) The dates of sampling and testing;

(8) A description of the sample handling and preparation techniques, including techniques used for extraction, containerization, preservation, and chain-of-custody of the samples;

(9) A description of the tests performed, the date the tests were performed, and the results of the tests;

(10) The name and model numbers of the instrument(s) used in performing the tests;

(11) QA/QC documentation; and

(12) The following statement signed by the generator or his authorized representative:

I certify under penalty of law that all process equipment required to be cleaned or replaced under 40 CFR 261.35 was cleaned or replaced as represented in the equipment cleaning and replacement plan and accompanying documentation. I am aware that there are significant penalties for providing false information, including the possibility of fine or imprisonment.

7. Table 1 in appendix III to part 261 is amended to add the following compound in alphabetical order as follows:

Appendix III—Chemical Analysis Test Methods

TABLE 1.—ANALYSIS METHODS FOR ORGANIC CHEMICALS CONTAINED IN SW-846

Compound	Method Nos.
* * * * *	
Benzo(k) fluoranthene	8100,8250, 8270, 8310
* * * * *	

* * * * *

8. Appendix VII to part 261 is amended to add the following waste streams in alphanumeric order as follows:

Appendix VII—Basis for Listing Hazardous Waste

EPA hazardous waste No.	Hazardous constituents for which listed
* * * * *	
F032	Benz(a)anthracene, benzo(a)pyrene, dibenz(a,h)-anthracene, indeno(1,2,3-cd)pyrene, pentachlorophenol, arsenic, chromium, tetra-, penta-, hexa-, heptachlorodibenzo-p-dioxins, tetra-, penta-, hexa-, heptachlorodibenzofurans.
F034	Benz(a)anthracene, benzo(k)fluoranthene, benzo(a)pyrene, dibenz(a,h)anthracene, indeno(1,2,3-cd)pyrene, naphthalene, arsenic, chromium.
F035	Arsenic, chromium, lead.
* * * * *	

9. Appendix VIII to part 261 is amended to add the following hazardous constituents in alphabetical order as follows:

Appendix VIII—Hazardous Constituents

Common name	Chemical abstracts name	Chemical abstracts No.	Hazardous waste No.
* * * * *	*	*	
Benzo(k)fluoranthene	Same	207-08-9	
* * * * *	*	*	
Heptachlorodibenzofurans			
Heptachlorodibenzo-p-dioxins			
* * * * *	*	*	

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

10. The authority citation for part 262 continues to read as follows:

Authority: 42 U.S.C. 6906, 6912, 6922, 6923, 6924, 6925, and 6937.

11. Section 262.34 is amended by redesignating paragraphs (a)(2) through (a)(4) as (a)(3) through (a)(5) and by adding a new paragraph (a)(2) to read as follows:

§ 262.34 Accumulation time.

(a) * * *

(2) The waste is placed on drip pads and the generator complies with subpart

W of 40 CFR part 265 and maintains the following records at the facility:

(i) A description of procedures that will be followed to ensure that all wastes are removed from the drip pad and associated collection system at least once every 90 days; and

(ii) Documentation of each waste removal, including the quantity of waste removed from the drip pad and the sump or collection system and the date and time of removal.

In addition, such a generator is exempt from all the requirements in subparts G and H of 40 CFR part 265, except for § 265.111 and § 165.114.

* * * * *

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

12. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

13.–14. Section 264.190 is amended by revising the introductory text and by adding paragraph (c) to read as follows:

§ 264.190 Applicability.

The requirements of this subpart apply to owners and operators of facilities that use tank systems for storing or treating hazardous waste except as otherwise provided in paragraphs (a), (b), and (c) of this section or in § 264.1 of this part.

* * * * *

(c) Tanks, sumps, and other such collection devices or systems used in conjunction with drip pads, as defined in § 260.10 of this chapter and regulated under 40 CFR part 264 subpart W, must meet the requirements of this subpart.

* * * * *

15. Part 264 is amended by adding subpart W as follows:

Subpart W—Drip Pads

264.570 Applicability.
264.571 Assessment of existing drip pad integrity.
264.572 Design and operating requirements.
264.573 Inspections.
264.574 Closure.
264.575 Design and installation of new drip pads.

Subpart W—Drip Pads

§ 264.570 Applicability.

(a) The requirements of this subpart apply to owners and operators of facilities that use new or existing drip pads to convey treated wood drippage to an associated collection system. Existing drip pads are those constructed before December 6, 1990 and those for which the owner or operator has a design and has entered into binding financial or other agreements for construction prior to December 6, 1990. All other drip pads are new drip pads.

(b) The owner or operator of any drip pad that is inside or under a structure that provides protection from precipitation so that neither run-off nor run-on is generated is not subject to regulation under § 264.572(e) or § 264.572(f), as appropriate.

§ 264.571 Assessment of existing drip pad integrity.

(a) For each existing drip pad as defined in § 264.570 of this subpart, the owner or operator must evaluate the drip pad and determine that it meets all of the requirements of this subpart, except the requirements for liners and leak detection systems of § 264.572(b). No later than the effective date of this rule, the owner or operator must obtain and keep on file at the facility a written assessment of the drip pad, reviewed and certified by an independent, qualified registered professional engineer that attests to the results of the evaluation. The assessment must be reviewed, updated and re-certified annually until all upgrades, repairs, or modifications necessary to achieve compliance with all of the standards of § 264.572 of this subpart are complete. The evaluation must document the extent to which the drip pad meets each of the design and operating standards of § 264.572 of this subpart, except the standards for liners and leak detection systems, specified in § 264.572(b) of this subpart, and must document the age of the drip pad to the extent possible, to document compliance with paragraph (b) of this section.

(b) The owner or operator must develop a written plan for upgrading, repairing, and modifying the drip pad to meet the requirements of § 264.572(b) of this subpart and submit the plan to the Regional Administrator no later than 2 years before the date that all repairs, upgrades, and modifications will be complete. This written plan must describe all changes to be made to the drip pad in sufficient detail to document compliance with all the requirements of § 264.572 of this subpart and must document the age of the drip pad to the extent possible. The plan must be reviewed and certified by an independent qualified, registered professional engineer. All upgrades, repairs, and modifications must be completed in accordance with the following:

(1) For existing drip pads of known and documentable age, all upgrades, repairs, and modifications must be completed within two years of the effective date of this rule, or when the drip pad has reached 15 years of age, whichever comes later.

(2) For existing drip pads for which the age cannot be documented, within 8 years of the effective date of this rule, but if the age of the facility is greater than 7 years, all upgrades, repairs and modifications must be completed by the time the facility reaches 15 years of age or by two years after the effective date of this rule, whichever comes later.

(3) If the owner or operator believes that the drip pad will continue to meet all of the requirements of § 264.572 of this subpart after the date upon which all upgrades, repairs and modifications must be completed as established under paragraphs (b) (1) and (2) of this section, the owner or operator may petition the Regional Administrator for an extension of the deadline as specified in paragraph (b) (1) or (2) of this section. The Regional Administrator will grant the petition for extension based on a finding that the drip pad meets all of the requirements of § 264.572, except those for liners and leak detection systems specified in § 264.572(b), and that it will continue to be protective of human health and the environment.

(c) Upon completion of all, repairs, and modifications, the owner or operator must submit to the Regional Administrator or State Director, the as-built drawings for the drip pad together with a certification by an independent, qualified registered professional engineer attesting that the drip pad conforms to the drawings.

(d) If the drip pad is found to be leaking or unfit for use, the owner or operator must comply with the provisions of § 264.572(m) of this subpart or close the drip pad in accordance with § 264.574 of this subpart.

§ 264.572 Design and operating requirements.

(a) Drip pads must:

(1) Be constructed of non-earthen materials, excluding wood and non-structurally supported asphalt;

(2) Be sloped to free-drain treated wood drippage, rain and other waters, or solutions of drippage and water or other wastes to the associated collection system;

(3) Have a curb or berm around the perimeter;

(4) Be impermeable, e.g., concrete pads must be sealed, coated, or covered with an impermeable material such that the entire surface where drippage occurs or may run across is capable of

containing such drippage and mixtures of drippage and precipitation, materials, or other wastes while being routed to an associated collection system; and

(5) Be of sufficient structural strength and thickness to prevent failure due to physical contact, climatic conditions, the stress of installation, and the stress of daily operations, e.g., variable and moving loads such as vehicle traffic, movement of wood, etc.

Note: EPA will generally consider applicable standards established by professional organizations generally recognized by the industry such as the American Concrete Institute (ACI) or the American Society of Testing Materials (ASTM) in judging the structural integrity requirement of this paragraph.

(b) A drip pad must have:

(1) A synthetic liner installed below the drip pad that is designed, constructed, and installed to prevent leakage from the drip pad into the adjacent subsurface soil or groundwater or surface water at any time during the active life (including the closure period) of the drip pad. The liner must be constructed of materials that will prevent waste from being absorbed into the liner and to prevent releases into the adjacent subsurface soil or ground water or surface water during the active life of the facility. The liner must be:

(i) Constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrogeologic forces), physical contact with the waste or drip pad leakage to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation (including stresses from vehicular traffic on the drip pad);

(ii) Placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression or uplift; and

(iii) Installed to cover all surrounding earth that could come in contact with the waste or leakage; and

(2) A leakage detection system immediately above the liner that is designed, constructed, maintained and operated to detect leakage from the drip pad. The leakage detection system must be:

(i) Constructed of materials that are:

(A) Chemically resistant to the waste managed in the drip pad and the leakage that might be generated; and

(B) Of sufficient strength and thickness to prevent collapse under the pressures exerted by overlaying materials and by any equipment used at the drip pad; and

(ii) Designed and operated to function without clogging through the scheduled closure of the drip pad.

(iii) Designed so that it will detect the failure of the drip pad or the presence of a release of hazardous waste or accumulated liquid at the earliest practicable time.

(c) Drip pads must be maintained such that they remain free of cracks, gaps, corrosion, or other deterioration that could cause hazardous waste to be released from the drip pad.

Note: See § 264.572(m) for remedial action required if deterioration or leakage is detected.

(d) The drip pad and associated collection system must be designed and operated to convey, drain, and collect liquid resulting from drippage or precipitation in order to prevent run-off.

(e) Unless protected by a structure, as described in § 264.570(b) of this subpart, the owner or operator must design, construct, operate and maintain a run-on control system capable of preventing flow onto the drip pad during peak discharge from at least a 24-hour, 25-year storm, unless the system has sufficient excess capacity to contain any run-on that might enter the system, or the drip pad is protected by a structure or cover, as described in § 264.570(b) of this subpart.

(f) Unless protected by a structure or cover, as described in § 264.570(b) of this subpart, the owner or operator must design, construct, operate and maintain a run-off management system to collect and control at least the water volume resulting from a 24-hour, 25-year storm.

(g) The drip pad must be evaluated to determine that it meets the requirements of paragraphs (a) through (f) of this section and the owner or operator must obtain a statement from an independent, qualified registered professional engineer certifying that the drip pad design meets the requirements of this section.

(h) Drippage and accumulated precipitation must be removed from the associated collection system as necessary to prevent overflow onto the drip pad.

(i) The drip pad surface must be cleaned thoroughly at least once every seven days such that accumulated residues of hazardous waste or other materials are removed, using an appropriate and effective cleaning technique, including but not limited to, rinsing, washing with detergents or other appropriate solvents, or steam cleaning. The owner or operator must document the date and time of each cleaning and the cleaning procedure used in the facility's operating log.

(j) Drip pads must be operated and maintained in a manner to minimize tracking of hazardous waste or hazardous waste constituents off the drip pad as a result of activities by personnel or equipment.

(k) After being removed from the treatment vessel, treated wood from pressure and non-pressure processes must be held on the drip pad until drippage has ceased. The owner or operator must maintain records sufficient to document that all treated wood is held on the pad following treatment in accordance with this requirement.

(l) Collection and holding units associated with run-on and run-off control systems must be emptied or otherwise managed as soon as possible after storms to maintain design capacity of the system.

(m) Throughout the active life of the drip pad and as specified in the permit, if the owner or operator detects a condition that could lead to or has caused a release of hazardous waste, the condition must be repaired within a reasonably prompt period of time following discovery, in accordance with the following procedures:

(1) Upon detection of a condition that has led or could lead to a release of hazardous waste (e.g., upon detection of leakage in the leak detection system), the owner or operator must:

(i) Enter a record of the discovery in the facility operating log;

(ii) Immediately remove the portion of the drip pad affected by the condition from service;

(iii) Determine what steps must be taken to repair the drip pad and clean up any leakage from below the drip pad, and establish a schedule for accomplishing the repairs;

(iv) Within 24 hours after discovery of the condition, notify the Regional Administrator of the condition and, within 10 working days, provide written notice to the Regional Administrator with a description of the steps that will be taken to repair the drip pad and clean up any leakage, and the schedule for accomplishing this work.

(2) The Regional Administrator will review the information submitted, make a determination regarding whether the pad must be removed from service completely or partially until repairs and clean up are complete, and notify the owner or operator of the determination and the underlying rationale in writing.

(3) Upon completing all repairs and clean up, the owner or operator must notify the Regional Administrator in writing and provide a certification, signed by an independent, qualified registered professional engineer, that the repairs and clean up have been completed according to the written plan submitted in accordance with paragraph (m)(3) of this section.

(n) Should a permit be necessary, the Regional Administrator will specify in the permit all design and operating practices that are necessary to ensure that the requirements of this section are satisfied.

(o) The owner or operator must maintain, as part of the facility operating log, documentation of past operating and waste handling practices. This must include identification of preservative formulations used in the past, a description of drippage management practices, and a description of treated wood storage and handling practices.

§ 264.573 Inspections.

(a) During construction or installation, liners and cover systems (e.g., membranes, sheets, or coatings) must be inspected for uniformity, damage, and imperfections (e.g., holes, cracks, thin spots, or foreign materials). Immediately after construction or installation, liners must be inspected and certified as meeting the requirements of § 264.572 of this subpart by an independent qualified, registered professional engineer. The certification must be maintained at the facility as part of the facility operating record. After installation liners and covers must be inspected to ensure tight seams and joints and the absence of tears, punctures, or blisters.

(b) While a drip pad is in operation, it must be inspected weekly and after storms to detect evidence of any of the following:

(1) Deterioration, malfunctions or improper operation of run-on and run-off control systems;

(2) The presence of leakage in and proper functioning of leak detection system.

(3) Deterioration or cracking of the drip pad surface.

Note: See § 264.572(m) for remedial action required if deterioration or leakage is detected.

§ 264.574 Closure.

(a) At closure, the owner or operator must remove or decontaminate all waste residues, contaminated containment system components (pad, liners, etc.), contaminated subsoils, and structures and equipment contaminated with waste and leakage, and manage them as hazardous waste.

(b) If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment as required in paragraph (a) of this section, the owner or operator finds that not all contaminated subsoils can be practically removed or decontaminated, he must close the facility and perform post-closure care in accordance with closure and post-closure care requirements that apply to landfills (§ 264.310). For permitted units, the requirement to have a permit continues throughout the post-closure period. In addition, for the purposes of closure, post-closure, and financial responsibility, such a drip pad is then considered to be a landfill, and the owner or operator must meet all of the requirements for landfills specified in subparts G and H of this part.

(c)(1) The owner or operator of an existing drip pad, as defined in § 264.570 of this subpart, that does not comply with the liner requirements of § 264.572(b)(1) must:

(i) Include in the closure plan for the drip pad under § 264.112 both a plan for complying with paragraph (a) of this section and a contingent plan for complying with paragraph (b) of this section in case not all contaminated subsoils can be practicably removed at closure; and

(ii) Prepare a contingent post-closure plan under § 264.118 of this part for complying with paragraph (b) of this section in case not all contaminated subsoils can be practicably removed at closure.

(2) The cost estimates calculated under §§ 264.112 and 264.144 of this part for closure and post-closure care of a drip pad subject to this Paragraph must include the cost of complying with the contingent closure plan and the contingent post-closure plan, but are not required to include the cost of expected closure under paragraph (a) of this section.

§ 264.575 Design and installation of new drip pads.

Owners and operators of drip pads must ensure that the pads are designed, installed and operated in accordance with all of the applicable requirements of §§ 264.572, 264.573 and 264.574 of this subpart.

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

16. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, 6925, and 6935.

17.–18. Section 265.190 is amended by revising the introductory text and by adding paragraph (c) to read as follows:

§ 265.190 Applicability.

The requirements of this subpart apply to owners and operators of facilities that use tank systems for storing or treating hazardous waste except as otherwise provided in paragraphs (a), (b), and (c) of this section or in § 265.1 of this part.

* * * * *

(c) Tanks, sumps, and other collection devices used in conjunction with drip pads, as defined in § 260.10 of this chapter and regulated under 40 CFR part 265 subpart W, must meet the requirements of this subpart.

* * * * *

19. Part 265 is amended by adding subpart W as follows:

Subpart W—Drip Pads

265.440 Applicability.
265.441 Assessment of existing drip pad integrity.
265.442 Design and installation of new drip pads.
265.443 Design and operating requirements.
265.444 Inspections.
265.445 Closure.

Subpart W—Drip Pads

§ 265.440 Applicability.

(a) The requirements of this subpart apply to owners and operators of facilities that use new or existing drip pads to convey treated wood drippage to an associated collection system. Existing drip pads are those constructed before December 6, 1990, and those for which the owner or operator has generated a design and has entered into binding financial or other agreements for construction prior to December 6, 1990. All other drip pads are new drip pads.

(b) The owner or operator of any drip pad that is inside or under a structure that provides protection from precipitation so that neither run-off nor run-on is generated is not subject to regulation under § 265.443(e) or § 265.443(f), as appropriate.

§ 265.441 Assessment of existing drip pad integrity.

(a) For each existing drip pad as defined in § 265.440 of this subpart, the owner or operator must evaluate the drip pad and determine that it meets all of the requirements of this subpart, except the requirements for liners and leak detection systems of § 265.443(b). No later than the effective date of this rule, the owner or operator must obtain and keep on file at the facility a written assessment of the drip pad, reviewed and certified by an independent, qualified registered professional engineer that attests to the results of the evaluation. The assessment must be reviewed, updated and re-certified annually until all upgrades, repairs, or modifications necessary to achieve compliance with all of the standards of § 265.443 of this subpart are complete. The evaluation must justify and document the extent to which the drip pad meets each of the design and operating standards of § 265.443 of this subpart, except the standards for liners and leak detection systems, specified in § 265.443(b) of this subpart, and must document the age of the drip pad to the extent possible, to document compliance with paragraph (b) of this section.

(b) The owner or operator must develop a written plan for upgrading, repairing, and modifying the drip pad to meet the requirements of § 265.443(b) of this subpart and submit the plan to the Regional Administrator no later than 2 years before the date that all repairs, upgrades, and modifications will be complete. This written plan must describe all changes to be made to the drip pad in sufficient detail to document compliance with all the requirements of § 265.443 of this subpart and must document the age of the drip pad to the extent possible. The plan must be reviewed and certified by an independent qualified, registered professional engineer. All upgrades, repairs, and modifications must be completed in accordance with the following:

(1) For existing drip pads of known and documentable age, all upgrades, repairs, and modifications must be completed within two years of the effective date of this rule, or when the drip pad has reached 15 years of age, whichever comes later.

(2) For existing drip pads for which the age cannot be documented, within 8 years of the effective date of this rule, but if the age of the facility is greater than 7 years, all upgrades, repairs and modifications must be completed by the time the facility reaches 15 years of age or by two years after the effective date of this rule, whichever comes later.

(3) If the owner or operator believes that the drip pad will continue to meet all of the requirements of § 265.443 of this subpart after the date upon which all upgrades, repairs and modifications must be completed as established under paragraphs (b) (1) and (2) of this section, the owner or operator may petition the Regional Administrator for an extension of the deadline as specified in paragraph (b) (1) or (2) of this section. The Regional Administrator will grant the petition for extension based on a finding that the drip pad meets all of the requirements of § 265.443, except those for liners and leak detection systems specified in § 265.443(b), and that it will continue to be protective of human health and the environment.

(c) Upon completion of all, repairs, and modifications, the owner or operator must submit to the Regional Administrator or State Director, the as-built drawings for the drip pad together with a certification by an independent, qualified registered professional engineer attesting that the drip pad conforms to the drawings.

(d) If the drip pad is found to be leaking or unfit for use, the owner or operator must comply with the provisions of § 265.443(m) of this subpart or close the drip pad in accordance with § 265.445 of this subpart.

§ 265.442 Design and installation of new drip pads.

Owners and operators of new drip pads must ensure that the pads are designed, installed and operated in accordance with all of the applicable requirements of §§ 265.443, 265.444 and 265.445 of this subpart.

§ 265.443 Design and operating requirements.

(a) Drip pads must:

(1) Be constructed of non-earthen materials, excluding wood and non-structurally supported asphalt;

(2) Be sloped to free-drain treated wood drippage, rain and other waters, or solutions of drippage and water or other wastes to the associated collection system;

(3) Have a curb or berm around the perimeter;

(4) Be impermeable, e.g., concrete pads must be sealed, coated, or covered with an impermeable material such that the entire surface where drippage occurs or may run across is capable of containing such drippage and mixtures of drippage and precipitation, materials and other wastes, while being routed to an associated collection system; and

(5) Be of sufficient structural strength and thickness to prevent failure due to physical contact, climatic conditions, the stress of installation, and the stress of daily operations, e.g., variable and moving loads such as vehicle traffic, movement of wood, etc.

Note: EPA will generally consider applicable standards established by professional organizations generally recognized by industry such as the American Concrete Institute (ACI) and the American Society of Testing Materials (ASTM) in judging the structural integrity requirement of this paragraph.

(b) A new drip pad or an existing drip pad, after the deadline established in § 265.441(b) of this subpart, must have:

(1) A synthetic liner installed below the drip pad that is designed, constructed, and installed to prevent leakage from the drip pad into the adjacent subsurface soil or groundwater or surface water at any time during the active life (including the closure period) of the drip pad. The liner must be constructed of materials that will prevent waste from being absorbed into the liner and prevent releases into the adjacent subsurface soil or ground water or surface water during the active life of the facility. The liner must be:

(i) Constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrogeologic forces), physical contact with the waste or drip pad leakage to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation (including stresses from vehicular traffic on the drip pad);

(ii) Placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression or uplift; and

(iii) Installed to cover all surrounding earth that could come in contact with the waste or leakage; and

(2) A leakage detection system immediately above the liner that is designed, constructed, maintained and operated to detect leakage from the drip pad. The leakage detection system must be:

(i) Constructed of materials that are:

(A) Chemically resistant to the waste managed in the drip pad and the leakage that might be generated; and

(B) Of sufficient strength and thickness to prevent collapse under the pressures exerted by overlaying materials and by any equipment used at the drip pad; and

(ii) Designed so that it will detect the failure of the drip pad or the presence of

a release of hazardous waste or accumulated liquid at the earliest practicable time.

(c) Drip pads must be maintained such that they remain free of cracks, gaps, corrosion, or other deterioration that could cause hazardous waste to be released from the drip pad.

Note: See § 265.443(m) for remedial action required if deterioration or leakage is detected.

(d) The drip pad and associated collection system must be designed and operated to convey, drain, and collect liquid resulting from drippage or precipitation in order to prevent run-off.

(e) Unless protected by a structure, as described in § 265.440(b) of this subpart, the owner or operator must design, construct, operate and maintain a run-on control system capable of preventing flow onto the drip pad during peak discharge from at least a 24-hour, 25-year storm unless the system has sufficient excess capacity to contain any run-on that might enter the system, or the drip pad is protected by a structure or cover, as described in § 265.440(b) of this subpart.

(f) Unless protected by a structure or cover, as described in § 265.440(b) of this subpart, the owner or operator must design, construct, operate and maintain a run-off management system to collect and control at least the water volume resulting from a 24-hour, 25-year storm.

(g) The drip pad must be evaluated to determine that it meets the requirements of paragraphs (a) through (f) of this section and the owner or operator must obtain a statement from an independent, qualified registered professional engineer certifying that the drip pad design meets the requirements of this section.

(h) Drippage and accumulated precipitation must be removed from the associated collection system as necessary to prevent overflow onto the drip pad.

(i) The drip pad surface must be cleaned thoroughly at least once every seven days such that accumulated residues of hazardous waste or other materials are removed, using an appropriate and effective cleaning technique, including but not limited to, rinsing, washing with detergents or other appropriate solvents, or steam cleaning. The owner or operator must document the date and time of each cleaning and the cleaning procedure used in the facility's operating log.

(j) Drip pads must be operated and maintained in a manner to minimize tracking of hazardous waste or hazardous waste constituents off the drip pad as a result of activities by personnel or equipment.

(k) After being removed from the treatment vessel, treated wood from pressure and non-pressure processes must be held on the drip pad until drippage has ceased. The owner or operator must maintain records sufficient to document that all treated wood is held on the pad following treatment in accordance with this requirement.

(l) Collection and holding units associated with run-on and run-off control systems must be emptied or otherwise managed as soon as possible after storms to maintain design capacity of the system.

(m) Throughout the active life of the drip pad, if the owner or operator detects a condition that could lead to or has caused a release of hazardous waste, the condition must be repaired within a reasonably prompt period of time following discovery, in accordance with the following procedures:

(1) Upon detection of a condition that has led or could lead to a release of hazardous waste (e.g., upon detection of leakage by the leak detection system), the owner or operator must:

(i) Enter a record of the discovery in the facility operating log;

(ii) Immediately remove the portion of the drip pad affected by the condition from service;

(iii) Determine what steps must be taken to repair the drip pad, remove any leakage from below the drip pad, and establish a schedule for accomplishing the clean up and repairs;

(iv) Within 24 hours after discovery of the condition, notify the Regional Administrator of the condition and, within 10 working days, provide a written notice to the Regional Administrator with a description of the steps that will be taken to repair the drip pad, and clean up any leakage, and the schedule for accomplishing this work.

(2) The Regional Administrator will review the information submitted, make a determination regarding whether the pad must be removed from service completely or partially until repairs and clean up are complete, and notify the owner or operator of the determination and the underlying rationale in writing.

(3) Upon completing all repairs and clean up, the owner or operator must notify the Regional Administrator in writing and provide a certification, signed by an independent qualified, registered professional engineer, that the repairs and clean up have been completed according to the written plan submitted in accordance with paragraph (m)(3) of this section.

(n) The owner or operator must maintain, as part of the facility operating log, documentation of past operating and waste handling practices. This must include identification of preservative formulations used in the past, a description of drippage management practices, and a description of treated wood storage and handling practices.

§ 265.444 Inspections.

(a) During construction or installation, liners and cover systems (e.g., membranes, sheets, or coatings) must be inspected for uniformity, damage, and imperfections (e.g., holes, cracks, thin spots, or foreign materials). Immediately after construction or installation, liners must be inspected and certified as meeting the requirements of § 265.443 of this Subpart by an independent qualified, registered professional engineer. The certification must be maintained at the facility as part of the facility operating record. After installation liners and covers must be inspected to ensure tight seams and joints and the absence of tears, punctures, or blisters.

(b) While a drip pad is in operation, it must be inspected weekly and after storms to detect evidence of any of the following:

(1) Deterioration, malfunctions or improper operation of run-on and run-off control systems;

(2) The presence of leakage in and proper functioning of leakage detection system.

(3) Deterioration or cracking of the drip pad surface.

Note: See § 265.443(m) for remedial action required if deterioration or leakage is detected.

§ 265.445 Closure.

(a) At closure, the owner or operator must remove or decontaminate all waste residues, contaminated containment system components (pad, liners, etc.), contaminated subsoils, and structures and equipment contaminated with waste and leakage, and manage them as hazardous waste.

(b) If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment as required in paragraph (a) of this section, the owner or operator finds that not all contaminated subsoils can be practically removed or decontaminated, he must close the facility and perform post/closure care in accordance with closure and post-closure care

requirements that apply to landfills (§ 265.310). For permitted units, the requirement to have a permit continues throughout the post-closure period.

(c)(1) The owner or operator of an existing drip pad, as defined in § 265.440 of this subpart, that does not comply with the liner requirements of § 265.443(b)(1) must:

(i) Include in the closure plan for the drip pad under § 265.112 both a plan for complying with paragraph (a) of this section and a contingent plan for complying with paragraph (b) of this section in case not all contaminated subsoils can be practicably removed at closure; and

(ii) Prepare a contingent post-closure plan under § 265.118 of this part for complying with paragraph (b) of this section in case not all contaminated subsoils can be practicably removed at closure.

(2) The cost estimates calculated under §§ 265.112 and 265.144 of this part for closure and post-closure care of a drip pad subject to this paragraph must include the cost of complying with the contingent closure plan and the contingent post-closure plan, but are not required to include the cost of expected closure under paragraph (a) of this section.

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

20. The authority citation for part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6925, 6927, 6939, and 6974.

21.—22. Subpart B of part 270 is amended by adding § 270.22 as follows:

§ 270.22 Special part B information requirements for drip pads.

Except as otherwise provided by § 264.1 of this chapter, owners and operators of hazardous waste treatment, storage, or disposal facilities that collect, store, or treat hazardous waste on drip pads must provide the following additional information:

(a) A list of hazardous wastes placed or to be placed on each drip pad.

(b) If an exemption is sought to subpart F of part 264 of this chapter, as provided by § 264.90 of this chapter, detailed plans and an engineering report describing how the requirements of § 264.90(b)(2) of this chapter will be met.

(c) Detailed plans and an engineering report describing how the drip pad is or will be designed, constructed, operated and maintained to meet the requirements of § 264.572 of this chapter, including the as-built drawings and specifications. This submission must address the following items as specified in § 264.571 of this chapter:

(1) The design characteristics of the drip pad;

(2) The liner system;

(3) The leakage detection system, including the leak detection system and how it is designed to detect the failure of the drip pad or the presence of any releases of hazardous waste or accumulated liquid at the earliest practicable time;

(4) Practices designed to maintain drip pads;

(5) The associated collection system;

(6) Control of run-on to the drip pad;

(7) Control of run-off from the drip pad;

(8) The interval at which drippage and other materials will be removed from the associated collection system and a statement demonstrating that the interval will be sufficient to prevent overflow onto the drip pad;

(9) Procedures for cleaning the drip pad at least once every seven days to ensure the removal of any accumulated residues of waste or other materials, including but not limited to rinsing, washing with detergents or other appropriate solvents, or steam cleaning and provisions for documenting the date, time, and cleaning procedure used each time the pad is cleaned.

(10) Operating practices and procedures that will be followed to ensure that tracking of hazardous waste or waste constituents off the drip pad due to activities by personnel or equipment is minimized;

(11) Procedures for ensuring that, after removal from the treatment vessel, treated wood from pressure and non-pressure processes is held on the drip pad until drippage has ceased, including recordkeeping practices;

(12) Provisions for ensuring that collection and holding units associated with the run-on and run-off control systems are emptied or otherwise managed as soon as possible after storms to maintain design capacity of the system;

(13) If treatment is carried out on the drip pad, details of the process equipment used, and the nature and quality of the residuals.

(14) A description of how each drip pad, including appurtenances for control of run-on and run-off, will be inspected in order to meet the requirements of § 264.572 of this chapter. This information should be included in the inspection plan submitted under § 270.14(b)(5) of this part.

(15) A certification signed by an independent qualified, registered professional engineer, stating that the drip pad design meets the requirements of paragraphs (a) through (f) of § 264.571 of this chapter.

(16) A description of how hazardous waste residues and contaminated materials will be removed from the drip pad at closure, as required under § 264.573(a) of this chapter. For any waste not to be removed from the drip pad upon closure, the owner or operator must submit detailed plans and an engineering report describing how § 264.310 (a) and (b) of this chapter will be complied with. This information should be included in the closure plan and, where applicable, the post-closure plan submitted under § 270.14(b)(13).

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

23. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

24. Section 271.1(j) is amended by adding the following entry to Table 1 in chronological order by date of publication and a new footnote 2 to read as follows:

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

TABLE 1—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	Federal Register reference	Effective date
*	*	*	*
December 6, 1990	The listing of wastes from wood preserving processes.[2]	[Insert FR publication citation]	June 6, 1991.
*	*	*	*

[2] These regulations implement HSWA only to the extent that they apply to the listing of Hazardous Waste No. F032. Listings of Hazardous Waste Nos. F034 and F035, test methods for benzo(k)fluoranthene, and technical standards for drip pads do not implement HSWA.

* * * * *

PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

25. The authority citation for part 302 continues to read as follows:

Authority: 42 U.S.C. 9602; 33 U.S.C. 1321 and 1361.

26. Section 302.4(a) is amended by adding the waste streams F032, F034, and F035 to Table 302.4 in alphanumeric order. The appropriate footnotes in Table 302.4 are republished without change.

§ 302.4 Designation of hazardous substances.

(a) * * *

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds (Kg)
* * * *		*		*		*	
F032			1 *	4	F032	X	1(0.454)
Wastewaters, process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that currently use or have previously used chlorophenolic formulations (except wastes from processes that have had the F032 waste code deleted in accordance with § 261.35 and do not resume or initiate use of chlorophenolic formulations). This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol..							
F034			1 *		F034	X	1(0.454)
Wastewaters, process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that use creosote formulations. This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol..							
F035			1 *	4	F035	X	1(0.454)
Wastewaters, process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that use inorganic preservatives containing arsenic or chromium. This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol..							
* * * *		*		*		*	

† indicates the statutory source as defined by 4 below.
1* indicates that the 1-pound RQ is a CERCLA statutory RQ.
4 indicates that the statutory source for designation of this hazardous substance under CERCLA is RCRA section 3001

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Part III

Environmental Protection Agency

40 CFR Parts 195 and 700

Fees for Radon Proficiency Programs and Training Courses; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 195 and 700

[FRL-3745-2]

Fees for Radon Proficiency Programs and Training Courses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to amend title 40 of the Code of Federal Regulations chapter I, subchapter F by adding a new part 195 which authorizes the Agency to collect fees in advance for certain voluntary radon proficiency programs and training courses. This rule is proposed under the authority of the Indoor Radon Abatement Act (Title III, Toxic Substances Control Act). Fees for other authorized training courses and proficiency programs may be proposed at a later date.

DATES: Comments must be received on or before February 4, 1991.

ADDRESSES: All written comments must be identified with the document control number "A-90-09" and be submitted in duplicate to: EPA Air Docket (LE-131), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Comments received on this proposed rule will be available for reviewing and copying from 8:30 a.m. to 12 p.m. and 1:30 p.m. to 3:30 p.m., Monday through Friday, excluding legal holidays, in room M-1500, first floor Waterside Mall, at the address given above.

FOR FURTHER INFORMATION CONTACT: Jamie Burnett, Radon User Fee Information Line, 9300 Lee Highway, room 434, Fairfax, VA 22031, Telephone: (703) 934-3485.

SUPPLEMENTARY INFORMATION:

I. Authority

Section 305 of the Indoor Radon Abatement Act (IRAA) of 1988, 15 U.S.C. 2665, authorizes the Administrator of EPA to impose fees for radon proficiency programs and training courses to recover costs associated with developing and operating these programs. In this document EPA is proposing a fee for two proficiency programs, the National Radon Measurement Proficiency (RMP) Program and the National Radon Contractor Proficiency (RCP) Program Examination, and a daily fee for each of three radon training courses — a Classroom, a Field, and an Instructor course. Fees for other training courses and proficiency programs may be proposed at a later date.

For the first year of fee collection, the EPA is proposing a fee of $1,000 for each application to the RMP Program by a primary company and $200 for each secondary company included on the primary company RMP application, a fee of $200 for the RCP examination, a fee of $135 per day for the Classroom training course, a fee of $160 per day for the Field training course, and a fee of $300 per day for the Instructor training course. Beginning in the second year, EPA is proposing to adjust the fees each year to a level expected to recover full annual costs of each program and course. Fees are authorized to be deposited into a special account in the United States treasury with amounts in the account to be appropriated for establishing and administering these programs and courses. State and local governments are exempt from paying a fee to participate in the programs or courses covered by this proposed rule. The EPA is interested in receiving comments on these proposed fees.

This amendment is being cross-referenced to title 40 of the Code of Federal Regulations (CFR) chapter I, subchapter R, part 700 which lists regulations promulgated under the Toxic Substances Control Act (TSCA). Although IRAA was enacted as Title III of TSCA, this regulation is listed under subchapter F of the CFR because it deals solely with a radiation program.

II. Background

Radon is a naturally occurring odorless, invisible radioactive gas. Radon comes from the radioactive decay of uranium. Radon can be found in high concentrations in soils and rocks containing uranium, granite, shale, phosphate, and pitchblende.

The EPA, the American Lung Association, and the American Medical Association have identified radon as the second leading cause of lung cancer in the United States. The EPA estimates that 20,000 lung cancer deaths a year in the United States may be attributed to radon. Homes with radon problems occur in every State. The EPA estimates that 1 out of 10 homes will have elevated radon levels.

The EPA has developed proficiency programs and training courses to assist States address the radon problem. These proficiency programs and training courses are part of a comprehensive Agency program to address the radon problem nationwide. In 1988, Congress enacted the IRAA which directs EPA to continue these training courses and proficiency programs and develop an additional proficiency program for radon mitigation contractors. The statute also authorizes the collection of a user fee from applicants to each of these programs. The programs are described below.

A. National Radon Measurement Proficiency (RMP) Program

1. *Overview of the RMP.* The EPA established the RMP Program in 1986 to assist States and the public in selecting companies to measure indoor radon and radon progeny. Radon progeny are the radioactive isotopes which follow radon 222 in the decay chain, primarily polonium-218, lead-214, bismuth-214, and polonium-214. The measurement companies and each of their radon measurement methods are tested. The names of those applicants who meet program requirements are listed in the RMP proficiency report "The National Radon Measurement Proficiency Program Cumulative Proficiency Report" (EPA 520/1-90-001, January 1990). The RMP program is a voluntary proficiency program, not a Federal certification program.

The purposes of the program are to provide information to the public about radon measurement company capabilities and to promote standard measurement and quality assurance procedures for all radon measurement companies. The program is performed in "rounds" which are testing cycles.

Any individual or company that provides indoor radon measurement services to the public and has radon analysis capability may apply to the RMP Program. Companies are categorized as primary or secondary. Primary companies provide radon measurement services to the public, including calibration services, and have analysis capability, either from the instrument (for example, continuous working level monitor) or from their own laboratory. These companies apply to the RMP, are evaluated by EPA and if successful, are listed in the RMP Proficiency Report.

Secondary companies provide indoor radon measurement services to the public, have no analysis capability and use the laboratory analysis of a primary company. Secondary companies do not apply to the RMP. Their names are submitted to EPA by the primary company applying to the program. If the primary company is listed in the RMP Proficiency Report, the secondary company is also listed.

The program is performed in "rounds" or testing cycles. As of December 1989 there have been six rounds, two in 1986, two in 1987, one in 1988, and one in 1989. Round 6 of the RMP was performed from March 1989 through December 1989.

2. *Round 6 of the RMP.* Data from Round 6 is the basis for the economic analysis for this proposed rule. In Round 6, a primary company had to meet the following requirements to participate successfully in the National RMP Program: (1) Follow EPA measurement protocols described in EPA documents "Indoor Radon and Radon Decay Product Measurement Protocols" (EPA 520-1/89-009, March 1989) and "Interim Protocols for Screening and Followup Radon and Radon Decay Product Measurements" (EPA 520-1/86-014-1, February 1987); (2) demonstrate management tracking capability, i.e., the ability to transmit correct measurement results to the proper homeowner; and (3) demonstrate the ability to measure radon and radon progeny within the established program measurement criteria.

Each primary company submitted one application for each device type within a radon measurement method to be tested.There are currently nine radon measurement methods tested in the RMP: alpha track detection, activated charcoal adsorption, charcoal liquid scintillation, electret ion chamber/EIC, continuous radon monitoring, grab radon sampling, continuous working-level monitoring, grab working-level sampling, and radon progeny integrated sampling/RPISU. Additional methods may be tested in future rounds as methods and protocols are developed.

Secondary companies did not submit applications. Names of secondary companies were provided by the primary companies.

B. National Radon Contractor Proficiency (RCP) Program

The EPA established the RCP Program in the fall of 1989 as required under IRRA. The purpose of the program is to provide information to the public about indoor radon mitigation contractor capabilities and to promote quality radon mitigation. It is a voluntary proficiency program, not a Federal certification program.

Radon mitigation contractors are typically construction and residential services contractors who provide radon mitigation services to the public. To participate successfully in the program, a radon mitigation contractor must meet the following requirements: (1) Pass a written examination; (2) conduct business according to the EPA mitigation guidance; (3) successfully complete continuing education requirements, and (4) agree to be re-examined every 2 years. The names of those applicants who meet program requirements are listed in the EPA National Radon Contractor Proficiency Report.

The fee proposed in this document is for the examination only. Additional fees for other costs of the program may be proposed in the future.

The structure and management of the RCP are subject to change as requirements and experience dictate.

C. Radon Training Courses

In 1986 EPA established a training course to provide initial training on radon measurement, diagnosis, mitigation, and prevention to the States and private sector personnel. This course has been expanded to three separate courses, Classroom, Field, and Instructor. The Classroom course consists of intensive classroom training and includes slides, visual aids, demonstrations, and video presentations. The course manual can be used as a reference after the course is completed.

The Field course consists of diagnosis and mitigation work on a building (house, school, etc.). This course may include some classroom training but consists mostly of field demonstrations and mitigation installation. The Instructor course is a classroom course which prepares individuals to teach radon diagnosis, mitigation, and prevention in the classroom and field courses.

III. Proposed Fee System

A. Activities Proposed for Cost Recovery

EPA proposes to recover both direct and indirect costs for the various activities conducted under each program and course. Direct costs include personnel salaries, benefits, and travel, as well as equipment costs and contractor expenses. Indirect costs are those resources, outside of direct program costs, that are expended to manage, oversee, and provide counsel to program offices. They include costs such as those incurred by EPA's administrative, policy, research, legal, investigative, and international offices. Indirect costs also include such things as overhead costs, including utilities and rents.

In this document EPA proposes to set fees to recover as much as possible the full costs of the RMP and the Instructor training course, beginning in the first year of fee collection, and continued subsequently each year through annual fee adjustments. The basis for setting fees for each of these programs and courses is to calculate the average full costs, which are defined as the total cost of all the activities of the program or course divided by the expected participation in the program. EPA also proposes to charge fees that are lower than the average full cost to the EPA for the RCP Examination and the Classroom and Field radon training courses for the first year of fee collection. Beginning in the second year, all fees will be adjusted to a level expected to recover full annual costs for each program and course. A description of these programs and courses can be found in Unit II of this preamble. Specific activities proposed for cost recovery for each program and course are described below. Further information on activities and a detailed description of costs and how they were calculated is presented in Unit IV of this preamble and in the Economic Impact Analysis of Radon User Fees, February 1990, EPA, Office of Radiation Programs.

The time period over which costs are averaged is important for each analysis. Because of the anticipated changes to the RMP Program, the costs are averaged for a particular single test round. For the RCP Examination and training courses, costs and participation were estimated over a 1-year period, and the full average costs were computed for that time period.

1. *National Radon Measurement Proficiency (RMP) Program.* The costs for this program include both direct costs, such as salaries and equipment, and a proportion of indirect costs. Direct costs cover application revision, printing, mailing and processing; calibration, exposure of detectors and measurement analysis; notification of results; update and maintenance of data base; and preparation of the proficiency report. Indirect costs include management and supervisory costs.

2. *National Radon Contractor Proficiency (RCP) Program Examination.* The costs for this program include both direct costs, such as salaries, and a proportion of indirect costs. Direct costs cover such activities as: periodic updates, a proficiency report, and data base management. Indirect costs include management and supervisory costs.

3. *Radon training courses.* The costs of each course include both direct costs, such as salaries, and a proportion of indirect costs. Direct costs include travel, conference facilities, equipment, and development and printing of a manual. Indirect costs include management and supervisory costs.

B. Fees for Training Courses

EPA proposes to establish a different fee for each of the radon training courses. The course fees are based on

the operating costs of the particular course and therefore vary for each course.

All fees for the training courses will be charged on a daily basis. For example, the fee for 2 days of the Classroom course would be twice the proposed daily Classroom course fee.

These daily fees will not change if the course is adjusted to accommodate a different audience. The operating costs will be very similar for each course type even though the audience may change because the basic material used will not change.

This fee structure is consistent with the statutory requirement that fees reflect the costs of operating the courses. This structure also provides EPA flexibility to continue to charge a user fee for training courses as program needs change and new courses evolve. This provision, however, does not allow course participants to attend and pay for less than a full course. For example, a participant in a 3-day training course may not elect to attend and pay for only 2 days of the course.

EPA projects that some of its courses will have higher costs than existing training courses. These higher costs will result in higher course fees. To encourage attendance at these courses, EPA will offer their training courses at a subsidized competively priced level the first year. The fee the second year will be adjusted to reflect the full cost of the training course.

C. Proposed Fee Schedule

The proposed fees for each program and course are as follows:

Program	Amount[3]
Radon Measurement Proficiency Program	
a. Primary Company[1]	$1,000
b. Secondary Company[2]	200
Radon Contractor Proficiency Program	
a. Exam	200
Radon Training Courses (Per Day)	
a. Classroom	135
b. Field	160
c. Instructor	300

[1] This amount is for each application by a primary company per device type within a radon measurement method. A separate application must be submitted every round by a primary company for each device type within a radon measurement method.

[2] This amount is for each secondary company included on an application by a primary company.

[3] Full cost recovery fees will be published in the FEDERAL REGISTER each year, based on annual adjustments accounting for changes in participation and operating costs.

D. Payment, Refund, and Deferral Procedures

Payment must be in United States currency in the form of a certified check payable to the U.S. Environmental Protection Agency and sent to EPA. The fee must be submitted with the completed application form for the appropriate program or course. Payment of applicable fees must be remitted before EPA will process or review an application for the programs or courses discussed in this proposed rule.

Refunds will be available for all the fees if requested within the time limits set out below. No refund will be issued for requests received after these limits. All refund requests must be submitted in writing to EPA.

Refunds will be the amount of the fee paid less the amounts listed below. The cost of processing a refund request for each program and course is $55, and is incurred in each program or course every time a refund is requested. This amount covers financial processing and program tracking costs.

Refunds for the RCP Exam and the training courses will be the amount of the fee paid less the cost of processing the refund request — $55. The $55 will be withheld for each application to a training course, regardless of the length of the course.

Refunds for the RMP will be the amount of the fee paid less the $55 cost of processing the refund request, and the $335 average variable costs per application incurred prior to a refund request. These variable costs are withheld from the $1,000 primary applicant fee because the RMP includes significant initial processing costs for applications and scheduling of tests. The $200 fee for each secondary company will be refunded in full.

Program	Deadline for EPA Receipt of Refund Request	Amount Withheld from Fee Paid
Radon Measurement Proficiency Program	30 calendar days after EPA receives application	$ 390
Radon Contractor Proficiency Program	14 calendar days prior to exam date	
a. Examination		55
Radon Training Courses (Per Course)	14 calendar days prior to scheduled course	
a. Classroom		55
b. Field		55
c. Instructor		55

If an applicant has paid a fee and is unable to participate in the scheduled RMP, RCP exam, or training course, the fee may be deferred to the next available offering of the program or course for which the fee was paid. The deferral must be requested in writing and sent to EPA. The deferral request must be made within the time limits given above. One deferral per fee paid is permitted. No refund is available after a deferral request has been processed. If the applicant is still unable to participate in or attend the deferred program or course, the fee is forfeited.

E. Adjusting the Fees for Full Cost Recovery Level, Inflation, and Other Factors

EPA's intent is to charge fees which continue to reasonably reflect full cost recovery, beginning in the second year of fee collection. For the RMP program and the Instructor training course, the fees proposed in this rule are already set at levels expected to recover full costs, beginning in the first year of fee collection. For the RCP exam and the Classroom and Field training courses, the fees proposed in this rule are set at a subsidized level for the first year of fee collection, in order to encourage participation. Beginning in the second year of fee collection, EPA intends to announce annual adjustments to the fees for each program and course so that the fee level accurately reflects annual participation and operating cost changes in order to attain full cost recovery each year. Specifically, EPA intends, through a three-step process, to charge fees that will reasonably recover its full costs for each program and course, beginning in the second year. First, EPA will estimate for the upcoming year, the costs of providing each of the programs and courses discussed above. The Agency will account for future additional fixed costs (e.g. updating training materials) and increases in variable expenses due to inflation and other factors. In order to calculate increases in costs due to inflation, EPA will use one of three indexes: the Federal General Schedule

(GS) pay-scale, the Consumer Price Index (CPI), or a component of the CPI, such as services. EPA requests comments in particular on the appropriateness of these indexes for calculating increases expenses due to inflation, as part of the first step for adjusting fees. Second, EPA will estimate the number of participants for each program and course. To do this, EPA will initially estimate the potential number of participants for each program and course, and then develop individual participation rates for each program and course. These participation rates will at least be based on the past participation rates, potential costs, and estimated future participation rates. Third, EPA will calculate the per capita costs individuals or firms should pay to enable the Agency to fully recover both its fixed and variable expenses each year. EPA requests comments on the appropriateness of this three-step process for adjusting the fees to reasonably achieve full cost recovery. EPA will announce the annual fee adjustment in the **Federal Register** as a final rule to become effective 30 days or more after promulgation, as specified in the final rule.

IV. Economic Impacts

A. Introduction

The EPA's analysis for the proposed fees is based on an analysis of the estimated costs of each of the programs or courses, estimates of participation, and the impacts on the participation in response to fees. The analysis is contained in Economic Impact Analysis of Radon User Fees, February 1990, EPA, Office of Radiation Programs.

B. Methodology

Two different methodologies were employed for estimating participation in response to the imposition of fees, one for the RMP Program, and one for the RCP Program Examination and Radon Training Program. The RMP methodology employed a framework based on selected interviews with industry representatives to determine the impact of several levels of fees, and estimating the potential reduction in participation as the fee level increased. The second methodology employed a framework of examining fees charged for similar programs or courses, both those of Government agencies and those of private business. If full cost fees appeared to greatly exceed fees charged elsewhere in the market, EPA assumed that participation in EPA programs or courses would be significantly affected.

C. Impacts

1. *Total costs.* The total cost of the RMP, the RCP Examination, and the three training courses, is estimated at $3.4 million annually. EPA is proposing fees of about $2.5 million annually, which represents 72 percent of EPA's operating costs for the programs and courses.

2. *RMP Program.* EPA's analysis shows an average full cost recovery fee of $1,000 for each primary applicant, and $200 for each secondary company included on the primary company application is reasonable for the first year. Although the imposition of a fee may result in a decrease in participation, factors other than the fee will cause much of the drop-out. The total estimated cost of the RMP program for a single round (testing cycle) is $2.1 million, and the recovered fees are expected to equal this cost, during the first year. Full cost recovery fees will be published in the **Federal Register** each year, based on annual adjustments accounting for changes in participation and operating costs.

3. *RCP Program Examination.* The EPA's analysis shows that the first year average full cost recovery fee of $1,394 would be significantly higher than fees charged for similar kinds of exams. However, EPA anticipates that the average full cost recovery fee for the second year will be significantly lower than $1,394, due to an increase in participation by the second year of fee collection. Therefore, the proposed fee for the first year is $200. This is somewhat higher than the fee charged for comparable exams provided by States and the private sector and will allow EPA to recover some of its costs for operating the program, during the first year of fee collection. EPA believes the subsidized first year will boost participation. The total estimated cost of the program and recovered fees are expected to total $761,000 and $109,000, respectively, during the first year. Full cost recovery fees will be published in the **Federal Register** each year, based on annual adjustments accounting for changes in participation and operating costs.

4. *Radon training courses* —a. *Classroom.* EPA's analysis shows that the first year average full cost recovery daily fee of $494 would be significantly higher than fees charged for similar radon training courses by States and the private sector. Therefore, the proposed daily fee is $135 for the first year, which is comparable to fees charged for radon classes by States and the private sector. The total annual estimated cost of the course and recovered fees are expected to total $163,000 and $45,000, respectively, during the first year. Full cost recovery fees will be published in the **Federal Register** each year, based on annual adjustments accounting for changes in participation and operating costs.

b. *Field.* EPA's analysis shows that the first year average full cost recovery daily fee of $549 would be significantly higher than fees charged for similar radon training courses by States and the private sector. Therefore, the proposed daily fee is $160 for the first year which is comparable to the fees charged for radon classes provided by States and the private sector. The total annual estimated cost of the course and recovered fees are expected to total $261,000 and $76,000, respectively, during the first year. Full cost recovery fees will be published in the **Federal Register** each year, based on annual adjustments accounting for changes in participation and operating costs.

c. *Instructor.* EPA's analysis shows that an average full cost recovery daily fee of $300 would be reasonable. No comparable training is currently available. Applicants successfully completing this course will be able to offer their instruction services for payment. Therefore, the proposed daily fee is $300 for the first year. The total annual estimated cost of the course and recovered fees are expected to total $130,000 and $128,000 respectively, during the first year. Full cost recovery fees will be published in the **Federal Register** each year, based on annual adjustments accounting for changes in participation and operating costs.

V. Other Statutory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement to conduct a regulatory impact analysis. This proposed rule is not major as that term is defined in section 1(b) of E.O. 12291 because: the annual effect of the rule on the economy will be less than $100 million; it will not cause any significant increase in costs or prices for any sector of the economy or for any geographic region; and it will not result in any significant adverse effects on competition, investment, productivity, or innovation or on the ability of United States enterprises to compete with foreign enterprises in domestic or foreign markets.

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

B. Regulatory Flexibility Act

This proposed rule has been reviewed under the Regulatory Flexibility Act of 1980 (5 U.S.C. 60 *et seq.*). The EPA has determined that a significant number of small businesses are covered by this regulation, in particular by the fees charged for the RMP program and the RCP Examination. For the purposes of this analysis, EPA is defining small businesses as those with less than 10 employees. This definition was reviewed by the Small Business Administration.

Approximately 23 percent of the primary company applicants and 50 percent of the secondary companies included on primary company applications are estimated to drop out of the program as a result of the imposition of fees. This drop-out from the program is not considered a problem for several reasons. First, the RMP is a voluntary proficiency program developed to test the ability of firms to provide adequate measurement capability to the public. Firms do not have to participate in EPA's program except in selected States where certification programs require participation. Second, the estimate of drop-out participation also accounts for firms which will go out of business for reasons separate from the imposition of the fee, such as volatility of the radon measurement market. Third, the overall purpose of the program is to ensure the availability of proficient measurement firms to the public. EPA's determination is that even if the estimated drop-out rates do occur, an adequate number of proficient radon measurement firms will be available to the public.

For the RCP Examination and the training courses, estimates of drop-out cannot be quantified but a number of small businesses may be affected. However, EPA does not believe that a substantial adverse impact will result because all of these programs are voluntary. The training programs offered by EPA will only expand training opportunities available to the public. For the RCP exam (also voluntary), EPA cannot determine participation very accurately because the program is being initiated and implemented at the same time as this fee is being proposed. EPA has decided to charge prevailing market fees in the first year for the Classroom course and the Field course. When the fees for these programs are adjusted in the second year to full recovery costs, the programs will be well established and should be better able to absorb these fees. For the Instructor course, no comparable training is available, and EPA believes that no significant impact will occur.

The Agency is requesting comment on the size and effects of the fee proposed today.

C. Paperwork Reduction Act

This proposed rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq*).

List of Subjects in 40 CFR Parts 195 and 700

Environmental protection, Radon, User fees.

Dated: November 16, 1990.

William K. Reilly,

Administrator.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

1. In subchapter F, by adding a new part 195 to read as follows:

PART 195—RADON PROFICIENCY AND TRAINING PROGRAMS

Subpart A—General Provisions

Sec.

195.1 Purpose and applicability.
195.3 Definitions.

Subpart B—Fees

195.20 Fee payments.
195.22 Submission of fee.
195.25 Refund and deferral of fees paid.
195.30 Failure to remit fee.

Authority: 15 U.S.C. 2665.

Subpart A—General Provisions

§ 195.1 Purpose and applicability.

(a) *Purpose.* The purpose of this part is to collect fees from applicants for the following EPA programs and courses: the National Radon Measurement Proficiency (RMP) Program, the National Radon Contractor Proficiency (RCP) Program Examination, and the EPA radon training courses.

(b) *Applicability.* This part applies to all non-exempt applicants to the following EPA programs and courses: the RMP, the RCP Examination, and the EPA radon training courses.

§ 195.3 Definitions.

Definitions in 15 U.S.C. 2601 *et seq.* apply to this part unless otherwise specified in this section. In addition, the following definitions apply:

Applicant means a person or company which submits an application to the RMP, RCP Examination, or one of the radon training courses.

Application means the document submitted to EPA by applicants to the RMP, RCP Examination, or one of the radon training courses, which requests participation in a program or course. In the RMP, an application is submitted every round for each device type within a method to be evaluated by EPA.

Deferral of a fee means an applicant has paid a fee but is unable to participate in the scheduled RMP, RCP exam, or radon training course. Upon timely request, EPA will apply the fee to the next available program or course for which the fee was paid.

Primary company means a company which provides indoor radon measurement services to the public, including calibration services, and has radon analysis capability.

Radon measurement device means a device used to measure the concentration of radon or radon decay products.

Radon measurement method means a uniform process or operation for measuring radon or radon progeny which is uniquely associated with a specific type of measurement device or instrument.

Radon mitigation contractor means a construction or residential services contractor who provides radon mitigation services to the public.

Round of the RMP means a testing cycle.

Secondary company means a company which provides indoor radon measurement services to the public, has no analysis capability, and uses the laboratory analysis of a primary company.

Subpart B—Fees

§ 195.20 Fee payments.

(a) *Persons who must pay fees.* All non-exempt applicants to the National Radon Measurement Proficiency (RMP) Program, the National Radon Contractor Proficiency (RCP) Program Examination, and the EPA radon training courses shall remit an appropriate fee identified in paragraph (c) of this section in accordance with the procedures in paragraph (d) of this section.

(b) *Exemption.* State and local governments are exempt from paying a fee to participate in the programs and courses covered by this rule.

(c) *Fees.* Applicants shall remit fee payments in advance to EPA as follows:

Program	Amount[3]
National Radon Measurement Proficiency Program	
a. Primary Company[1]	$1,000
b. Secondary Company[2]	200
Radon Contractor Proficiency Program	
a. Examination	200
Radon Training Courses (Per Day)	
a. Classroom	135
b. Field	160

Program	Amount[3]
c. Instructor	300

[1] This amount is for each application by a primary company per device type within a radon measurement method. A separate application must be submitted every round by a primary company for each device type within a radon measurement method.
[2] This amount is for each secondary company included on an application by a primary company.
[3] Full cost recovery fees will be announced in the FEDERAL REGISTER, beginning in the second year, based on annual adjustments accounting for changes in participation and operating costs.

(d) *Adjustment of fees.* This fee schedule will be adjusted annually, through a three-step process, to charge fees that will reasonably recover its full costs for each program and course, beginning in the second year. First, EPA will account for future additional fixed costs (e.g. updating training materials) and increases in variable expenses due to inflation and other factors. In order to calculate increases in costs due to inflation, EPA will use one of three indexes: the Federal General Schedule (GS) pay-scale, the Consumer Price Index (CPI), or a component of the CPI, such as services. Second, EPA will estimate the number of participants for each program and course, using individual participation rates, based on at least the past participation rates, potential costs, and estimated future participation rates. Third, EPA will calculate the per capita costs individuals or firms should pay to enable the Agency to fully recover both its fixed and variable expenses each year. The new fee schedule will be published in the **Federal Register** as a final rule to become effective 30 days or more after publication, as specified in the rule.

§ 195.22 Submission of fee.

(a) Each remittance under this rule shall be in United States currency and shall be paid by certified check payable to the order of the U.S. Environmental Protection Agency. The fee must be submitted with the completed application form for the appropriate program.

(b) All fees shall be sent to: EPA Radon User Fees, P.O. Box 953723, St. Louis, MO 63195–3723.

§ 195.25 Refund and deferral of fees paid.

(a) *Refund procedures.* Requests for a refund of a fee shall be submitted in writing by the applicant to EPA. All refund requests must be received by EPA within the time limits set out in this paragraph. No requests received by EPA after the time limits set out below will be processed or issued. No refund is available after an applicant has requested a deferral under paragraph (b) of this section. Refunds will be the amount of the fee paid less the amounts listed in the table below.

Program	Deadline for EPA Receipt of Refund Request	Amount Withheld from Fee Paid
Radon Measurement Proficiency Program	30 calendar days after EPA receives application	$ 390
Radon Contractor Proficiency Program	14 calendar days prior to exam date	
a. Examination		55
Radon Training Courses (Per Course)	14 calendar days prior to scheduled course	
a. Classroom		55
b. Field		55
c. Instructor		55

(b) *Deferral procedures.* A request for deferral of a fee shall be submitted in writing by the applicant to EPA. A deferral is available if an applicant has paid a fee and is unable to participate in the scheduled RMP, RCP exam, or training course. The deferral may be only to the next available program or course for which the fee was paid. One deferral per fee paid is permitted. The request must be received by EPA within the time limits set out in paragraph (a) of this section. No request received by EPA after the time limits set out in paragraph (a) of this section will be processed or issued. No refund is available after a deferral request has been processed.

§ 195.30 Failure to remit fee.

The EPA will not consider an application to the National Radon Measurement Proficiency (RMP) Program, the Contractor Proficiency (RCP) Program Examination, or the EPA radon training courses to be complete, and will not process or review the application, until appropriate remittance under § 195.22 has been received by EPA.

PART 700—[AMENDED]

2. In part 700:

a. By revising the authority citation for part 700 to read as follows:

Authority: 15 U.S.C. 2625 and 2665.

b. By adding a new § 700.51 to read as follows:

§ 700.51 Radon fees.

Fees relating to radon proficiency programs and training courses authorized under the Toxic Substances Control Act appear at 40 CFR part 195.

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Thursday
December 6, 1990

Part IV

Department of Labor

Employment and Training Administration
Wage and Hour Division

20 CFR Parts 621 and 655
29 CFR Part 504

Attestations by Facilities Using Nonimmigrant Aliens as Registered Nurses; Interim Final Rule

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Parts 621 and 655

[RIN 1205-AA84]

Wage and Hour Division

29 CFR Part 504

[RIN 1215-AA55]

Attestations by Facilities Using Nonimmigrant Aliens as Registered Nurses

AGENCIES: Employment and Training Administration and Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Interim final rule; request for comments.

SUMMARY: The Employment and Training Administration (ETA) and the Employment Standards Administration (ESA) of the Department of Labor (DOL or Department) are promulgating regulations governing the filing and enforcement of attestations by facilities seeking to use nonimmigrant aliens as registered nurses under H-1A visas.

The attestations, required under the Immigration and Nationality Act, as amended by the Immigration Nursing Relief Act of 1989 (INRA), pertain to substantial disruption in the delivery of health care services, absence of adverse effect on wages and working conditions of similarly employed registered nurses, payment to nonimmigrant alien nurses employed by the facility at wage rates paid to other registered nurses similarly employed by the facility, taking timely and significant steps designed to recruit and retain U.S. nurses in order to reduce dependence on nonimmigrant alien nurses, absence of a strike or lockout, and giving appropriate notice of filing.

Facilities are required to submit these attestations to DOL as a condition for being able to petition the Immigration and Naturalization Service (INS) for H-1A nurses. The attestation process is to be administered by ETA, while complaints and investigations regarding the attestations are to be handled by ESA.

DATES:

Effective Date: The interim final rule is effective on December 6, 1990.

Comments: The comment period on this rulemaking is being reopened through February 4, 1991. Written comments on the July 6, 1990, proposed rule will be considered as part of this rulemaking. Comments on the interim final rule shall be submitted by mail and be received by February 4, 1991.

ADDRESSES: Send comments on 20 CFR parts 621 and 655, subpart D, and 29 CFR part 504, subpart D, to the Assistant Secretary for Employment and Training, Department of Labor, room N-4456, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Director, U.S. Employment Service.

Send comments on 20 CFR part 655, subpart E, and 29 CFR part 504, subpart E, to the Administrator, Wage and Hour Division, Employment Standards Administration, Department of Labor, room S-3502, 200 Constitution Avenue, NW., Washington, DC 20210.

Written comments on the collection of information requirements also should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Employment and Training Administration, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: On 20 CFR parts 621 and 655, subpart D, and 29 CFR part 504, subpart D, contact Mr. Thomas M. Bruening, Chief, Division of Foreign Labor Certifications, U.S. Employment Service, Employment and Training Administration, Department of Labor, room N-4456, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: 202-535-0163 (this is not a toll-free number).

On 20 CFR part 655, subpart E, and 29 CFR part 504, subpart E, contact Mr. Solomon Sugarman, Chief, Farm Labor Programs, Wage and Hour Division, Employment Standards Administration, Department of Labor, room S-3502, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: 202-523-7605 (this is not a toll-free number).

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I. Paperwork Reduction Act

The information collection requirements contained in the rule were submitted to the Office of Management and Budget (OMB) for clearance under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). See also 5 CFR part 1320.

OMB has cleared the requirements and assigned them OMB Control No. 1205-_____. Comments on the paperwork requirements also were requested from the public.

A number of employers and OMB commented that the estimate of 2-4 hours per response in connection with preparing and submitting the attestation and associated documentation is unrealistically low. See 55 FR at 27997. DOL has re-evaluated this estimate and, in consideration of the substantial changes incorporated in the interim final rule, now estimates up to 2 hours for completing and submitting the attestation form and accompanying explanations, and 8-10 hours for compiling the documentation required to be maintained at the facility.

Also, in response to an OMB comment, the attestation filing requirement contained at § _____.310(c)(1)(i) has been changed to require the chief executive officer's original signature on only one Form ETA 9029 submitted to the Department. Two copies of the completed (and signed/dated) Form ETA 9029 also must be submitted with the original, but do not require original signatures. (The proposed rule had required the submission of signed triplicate original Form ETA 9029's.)

ETA estimates that approximately 1,000 facilities per year will be submitting attestations. The public reporting burden for this collection of information is estimated to average up to 2 hours for completing and submitting the attestation form and any accompanying explanations, and 8-10 hours for searching existing information/data sources and gathering, compiling and maintaining the information/data needed at the facility. It is likely that the burden will be considerably less in the second and subsequent years in which a facility submits an attestation.

ETA estimates that approximately 10 facilities per year will be submitting notices of strikes or lockouts. The public reporting burden for this collection of information is estimated to average less than 1 hour per response, including the time for reviewing instructions, searching existing information/data sources, gathering and maintaining the information/data needed, and completing and reviewing the notice of strike or lockout.

ETA estimates that approximately less than 10 States per year will be submitting annual State plans. Fewer than that number of States currently have a significant number of H-1 nurses working at facilities in the State. The public reporting burden for this collection of information is estimated to average less than 40 hours per response, including the time for reviewing instructions, searching existing information/data sources, gathering and maintaining the information/data needed, and completing and reviewing the annual State plan.

Written comments on the collection of information requirements should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Employment and Training Administration, Washington, DC 20503.

II. Background

A. Introduction

The Immigration Nursing Relief Act of 1989 (INRA), Public Law 101-238, 103 Stat. 2099 (December 18, 1989), amended the Immigration and Nationality Act (INA) to add new sections 101(a)(15)(H)(i)(a) and 212(m) governing the admission to the United States of nonimmigrant aliens for employment as registered nurses (RNs) during a five-year "pilot" period. 8 U.S.C. 1101(a)(15)(H)(i)(a) and 1182(m). The INRA amendments to the INA recently were further amended by section 162(f) of the Immigration Act of 1990, Public Law 101-649, 104 Stat. 4978 (November 29, 1990).

(Note: The provisions of INRA do not apply to nurses admitted under the Free Trade Agreement with Canada, whose admission is authorized under section 214(e) of the INA.)

Congress enacted this legislation based on its finding of a shortage of RNs in the United States. See, *e.g.*, H.R. Rep. No. 101-288, 101st Cong., 1st Sess. 1-4 (October 16, 1989). Some health facilities have been relying on nonimmigrant RNs admitted under H-1 visas to meet this need. However, the numbers of visas available for such aliens to adjust their immigration status to permanent residency have been limited. *Id.* at 2 and 3.

At the time of enactment, many such RNs were facing the end of their periods of admission to the United States and faced return to their home countries. Many H-1 RNs potentially affected by the INRA were thought to be employed in critical care and emergency service units. *Id.* at 2. The House Judiciary Committee found that departure of these H-1 RNs would have a detrimental impact on the care provided to critically ill patients. *Id.*

The INRA addresses this situation by permitting certain RNs who had H-1 status to become permanent residents. Public Law 101-238, sec. 2, 8 U.S.C. 1255 note.

At the same time, Congress was concerned about the perceived increased dependence of health care providers on foreign RNs. As a result, INA, as amended by the INRA, links future access to nonimmigrant RNs to the taking of significant steps by the facility to develop, recruit and retain U.S. workers in the registered nursing profession while ensuring that the temporary foreign nurses admitted are protected in their employment and that their employment does not adversely affect the employment of U.S. nurses. 8 U.S.C. 1182(m). The regulations in this document effectuate that purpose.

B. Comment on Proposed Rule

On July 6, 1990, a proposed rule was published in the **Federal Register** to implement the Department's responsibilities relating to attestations by facilities seeking to use nonimmigrants as registered nurses, with a comment period ending July 23, 1990. 55 FR 27992. The comment period was subsequently extended through August 6 by notice in the **Federal Register** on July 27. 55 FR 30720.

Comments were received from 41 entities and individuals, as well as comments from the Office of Management and Budget under the Paperwork Reduction Act and 5 CFR part 1320. Sixteen commenters are employers or employer organizations (hospitals, nursing homes, homes for the aging). These commenters generally assert that the proposed regulations go beyond the statute and Congressional intent; that the proposed requirements would be extremely difficult for most facilities to meet; and that the documentation requirements are too heavy. These views were expressed also by the American Immigration Lawyers Association and the Office of Management and Budget (OMB)

Seven commenters were unions, nurses associations and the Commission on Graduates of Foreign Nursing Schools (CGFNS). These commenters generally view the proposed regulations favorably, believing they are consistent with the statute and Congressional intent; that they provide necessary protections for U.S. nurses; and that the proposed administrative processes and requirements are appropriate and not unduly burdensome to facilities.

Twelve commenters were the National Council of State Boards of Nursing, Inc., and eleven individual State Boards of Nursing. All of these recommended a modification to the definition of "nurse".

Two Federal agencies, the Department of Veterans Affairs (VA) and OMB

submitted comments. The VA's comments dealt with the administrative structure peculiar to that organization in relation to the proposed regulations. OMB's comments were noted above.

Comments were also received from four members of Congress: Senator Kennedy, Chairman of the Senate Judiciary Committee's Subcommittee on Immigration and Refugee Affairs; Senator Hatch, ranking minority member of the Senate Committee on Labor and Human Resources; Congressman Hawkins, Chairman of the House Committee on Education and Labor; and Congressman Morrison, Chairman of the House Judiciary Committee's Subcommittee on Immigration, Refugees and International Law. Senators Kennedy and Hatch and Congressman Morrison opposed some basic features of the proposed regulations; Congressman Hawkins was generally supportive of the regulations.

To the extent feasible, all of these comments, as well as the INA amendments in the Immigration Act of 1990, have been considered in preparing this interim final rule. A number of changes to the proposed regulations, discussed below, have been made as a result of this review. Other comments received remain under the review.

While the comments received during the comment period on the proposed rule continue to be considered, DOL is publishing this final rule on an interim basis. The comment period is being reopened through February 4, 1991, with comments invited on the interim final rule. A final rule will be published at a later date. The preamble to that final rule will discuss fully the comments received on the proposed rule and the interim final rule, and, where appropriate, the interim final rule will be amended.

C. Changes in Interim Final Rule

1. Modification of DOL Attestation Review Function

This interim final rule eliminates much of the DOL function, contained in the proposed regulation, of reviewing attestations when submitted and deciding whether to accept or reject them for filing based on conformance with the regulations. Both Senator Kennedy, Chairman of the Senate Judiciary Committee's Subcommittee on Immigration and Refugee Affairs, and Congressman Morrison, Chairman of the House Judiciary Committee's Subcommittee on Immigration, Refugees, and International Law and one of the principal authors of the legislation, commented that, in their view, this function as described in the proposed regulation was not intended by the legislation. This was also the view expressed by many facility commenters and OMB.

In response to these comments, the interim final rule substantially restricts this function—DOL will review only those elements of attestations where facilities choose to utilize the "other" categories under Attestation Elements One (substantial disruption) and Four (timely and significant steps), the bases advanced by facilities claiming the unreasonableness of taking a second step under the fourth attestation element, and the bases advanced by facilities for demonstrating a bona fide medical emergency (for the purpose of securing a waiver of Element Four (timely and significant steps or State plan), where a facility uses H-1A nurses only through a nursing contractor). See also Item II.C.8 of this preamble, below, for a discussion of nursing contractors and worksite facilities using contract nurses. For all other attestation elements and parts thereof, DOL's function when receiving the attestation will be limited to simply checking that the facility has attested to compliance with the regulatory standards. Thus, any facility's attestation which is complete and does not select either of the "other" categories included in Attestation Elements One and Four, does not claim the unreasonableness of taking a second step under Element Four, and does not claim a bona fide medical emergency with respect to Element Four, is not subject to DOL review and will simply be "accepted for filing." However, the interim final rule specifically recognizes as a basis for filing a complaint of "misrepresentation" that the attestation as submitted (including any required supporting information *e.g.*, submitted explanations and retained documentation) does not meet the regulatory standards.

2. Kind and Location of Supporting Documentation

The proposed documentation requirements have basically been retained in the interim final rule as far as content is concerned, but the requirements as to submission and location of the documentation have been substantially changed. Congressman Morrison, while supporting the kinds of documentation specified in the proposed rule, indicated that the intent of a streamlined attestation process would best be served by keeping the amount of documentation filed with the attestation to a minimum, and requiring the bulk of it to be retained at the facility. (OMB, in its official comments to the Department on the paperwork burden, also stated that there should be a streamlined attestation process.) The interim final rule requires submission, with certain exceptions, of only a brief explanation of what documentation is available at the facility for each attestation element and how it indicates compliance with the regulatory standard for the element. This is consistent with Congressman Morrison's comment that "an attempt should be made to limit the documentation being filed to that which will assist a party in interest in determining whether to challenge a petition." The exceptions as to documentation relate to the "other" categories under Attestation Elements One (substantial disruption) and Four (timely and significant steps), to the unreasonableness of taking a second step under the fourth attestation element, and to a bona fide medical emergency with respect to Element Four. In these specific cases, sufficient explanation must be submitted for DOL to determine whether the standards of "substantial", "significant", "unreasonable", and "bona fide medical emergency" have been met. DOL may request additional explanation and/or documentation from the facility in making this determination. In addition, the full documentation specified in the regulations for all attestation elements must be retained at the facility for the duration of the attestation period, and for as long thereafter as the facility continues to employ an H-1A nurse hired under the attestation. Further, the facility shall attest that the documentation will be available for public examination on a timely basis. Failure to provide such timely access may be the basis for a complaint as a "failure to perform."

A definition of "bona fide medical emergency" is included in the final rule, for the purpose of justifying a 60-workday or more use of H-1A contract nurses, by a worksite facility seeking a waiver of Attestation Element Four (timely and significant steps or State plan). It means a situation in which the services of one or more H-1A contract nurses are necessary at a worksite facility (which itself does not employ an H-1A nurse) to prevent death or serious impairment of health, and, because of the danger to life or health, nursing services for such situation are not elsewhere available in the geographic area. See discussion on computation of "workdays", below.

It is the Department's intention to construe the term "bona fide medical emergency" narrowly. For example, threat of death or serious impairment of health due to a natural disaster or

epidemic, using up the capacity of facilities in the geographic area (as defined), could be a basis for the 60-workday waiver.

3. Other Documentation Requirements

OMB and a number of employer commenters noted that certain documentation may be fairly readily available, but not for the time periods specified in the proposed rule (*i.e.*, the 12-month period prior to the filing of the attestation). For example, it may be available on a calendar year basis, and recompiling the information was asserted to be an additional and unnecessary paperwork burden. DOL weighed this paperwork concern against the need to have fairly current information. The interim final rule has been changed to require documentation relating to any twelve month period ending within three months prior to the submission date of the attestation. Many employer commenters also indicated that they would not be in a position to provide the required documentation immediately, but nevertheless have an urgent need to have access to H-1A nurses. The interim final regulation permits a first-time filing of an attestation without supporting documentation required to be maintained and immediately available at the facility, on the condition that such documentation be available in the prescribed form at the facility within 90 days after filing. This provision may be invoked only on a claim of business exigency by the facility, which shall be able to provide a full explanation and support for its claim if requested or challenged. This provision is available only for attestations filed prior to April 1, 1991.

4. Training Requirements

The proposed rule required that the facility cover the total cost of the training for nurses (for facilities electing step one of the fourth attestation element) and that the nurses must be allowed to attend such training on paid duty time. Many employers commented that these requirements far exceed the financial ability of virtually all facilities to meet. They also maintained that the paid-duty-time requirement would only exacerbate the nursing shortage by taking nurses away from their nursing duties. While DOL believes that Congressional intent is that the timely and significant steps should go beyond normal existing practice, DOL does not believe they should be unreachable standards. Nor does DOL believe Congress intended any of these steps to exacerbate the nursing shortage by reducing the availability of U.S. nurses. Accordingly, the interim final rule eliminates the paid-duty-time requirement and requires that the facility cover only tuition costs, whether through direct financing by the facility or by arranging for such financing by a third party. (Note, however, that the Wage and Hour requirement in 29 CFR 785.27 *et seq.* relating to hours worked for the purposes of the Fair Labor Standards Act nevertheless still must be observed.)

5. Definition of "Nurse"

The National Council of State Boards of Nursing, individual State Boards, the CGFNS and the American Nurses Association have all recommended changes to the definition of "nurse" which would recognize State differences in defining nursing duties and practices, and clarify that those foreign nurses who have not yet been licensed by State Boards must have passed the CGFNS examination. The interim final rule makes such changes, as they are consistent with and clarify DOL's original intent.

6. Eliminate Private Household Exemptions

The proposed regulation provided an exemption from the applicability of certain attestation elements for private households. Congressman Hawkins and other commenters questioned DOL's authority for permitting such exemptions, since the statute, prior to the Immigration Act of 1990, made no such provision. More recently, however, section 162(f)(2)(A) of the Immigration Act of 1990 amended section 101(a)(15)(H)(i)(a) of the INA to exclude specifically private households from having to file attestations where their use of H-1A nurses is solely through a nursing contractor. See also Item II.C.8 of this preamble, below, for a discussion of nursing contractors and facilities using contract nurses. In consideration of the recent statutory amendments and the comments received, DOL has decided to eliminate such exemptions, except in the circumstances provided for in the INA amendments made by section 162(f)(2)(A) of the Immigration Act of 1990.

7. Definition of "geographic area"

Upon further consideration by DOL, the phrase "any place within the MSA *is* deemed to be within normal commuting distance [Emphasis added]" from the proposed rule has been revised in the interim final rule to read "any place within the MSA *may be* deemed to be within normal commuting distance [Emphasis added]". This change is intended to permit greater flexibility in making prevailing wage determinations where anomalies could otherwise exist.

8. Nursing Contractors and Facilities Using Nursing Contractors

Nursing contractors are entities that employ registered nurses and supply these nurses, on a temporary basis and for a fee, to health care facilities or private homes.

The proposed rule required that nursing contractors refer H-1A nurses only to facilities which had attestations in effect in their own right. A number of commenters, particularly homes for the aging, commented that this requirement was unreasonable where facilities use only contract nurses on an emergency basis, for extremely limited periods of time. OMB also expressed concerns about this provision.

Section 162(f) of the Immigration Act of 1990 recently amended the INA to make clear that, where nursing contractors are involved, both the contractor and the worksite facility (other than private households (see Item II.C.6 of this preamble, above)) must file attestations. However, section 212(m)(2)(A) of the INA, as amended by section 162(f)(2)(B)(iii) of the Immigration Act of 1990, also grants to the Secretary discretion in determining the requirements of the worksite facility attestation:

(A) * * *

In the case of an alien for whom the employer has filed an attestation under this subparagraph and who is performing services at a worksite other than the employer's or other than a worksite controlled by the employer, the Secretary may waive such requirements for the attestation for the worksite as may be appropriate in order to avoid duplicative attestations, in cases of temporary, emergency circumstances, with respect to information not within the knowledge of the attestor, or for other good cause.

(8 U.S.C. 1182(m)(2)(A).)

Section 162(f)(2)(B)(ii) of the Immigration Act of 1990 amended section 212(m)(2)(A)(iii) of the INA, clarifying that the third attestation element (relating to facility wage) is inapplicable to a worksite facility which uses the services of an H-1A nurse only through a nursing contractor. 8 U.S.C. 1182(m)(2)(A)(iii).

Accordingly, the interim final rule permits a worksite facility using the services of H-1A contract nurses, but which worksite facility itself does not employ, seek to employ, or file a visa petition on behalf of an H-1A nurse, to request and be granted waivers of:

(a) All but the fifth attestation element (strike, lockout, intent to influence

bargaining representative election) and the sixth attestation element (notice), if the worksite facility will use no more than 15 workdays of H-1A contract nursing services in any three-month period of the attestation's one-year period of validity, to meet emergency needs on a temporary basis;

(b) Only the substantial disruption aspect of the first attestation element (but not the no-layoff aspect of that element) and the fourth attestation element (timely and significant steps), if the worksite facility will use more than 15, but not more than 60, workdays of H-1A contract nursing services in any three-month period of the attestation's one-year period of validity; or

(c) Only the fourth attestation element (timely and significant steps), in the case of a bona fide medical emergency, regardless of the number of H-1A contract nurse workdays anticipated during the one-year period of the attestation's validity.

The worksite attestations described above, unless invalidated, shall remain valid and on file for one year, as do all attestations covered by the interim final rule. Worksite facilities which themselves employ one or more H-1A nurses are not eligible for waivers.

A workday of H-1A contract nursing services is a workday of services performed by one H-1A contract nurse. Thus, for example, fifteen H-1A contract nurses working on the same day provide 15 workdays of H-1A contract nursing services on that one day; as does one H-1A contract nurse working for 15 days.

Comments specifically are invited on the waiver provisions for worksite facilities using H-1A contract nursing services, particularly the aspects dealing with numbers of workdays.

The interim final rule also specifically permits a nursing contractor to act as the authorized agent for its worksite facilities in preparing the attestations. Each worksite facility, however, retains liability for its attestation.

D. Changes Considered But Not Made

Two issues raised by a number of commenters appeared to merit special consideration for possible changes in the interim final rule, but after careful deliberation the proposed rule was left unchanged with respect to these issues.

1. Multi-site Entities

The VA and other entities having multiple sites, as well as OMB, commented that such entities should be permitted to file one attestation on behalf of all of their sites, on the basis that such entities are the single employer for all the employees at the various sites they represent, and have a number of centralized functions, such as recruitment, training and the like. While this position has some merit and was carefully considered prior to the proposed rule and in context of comments received, on closer examination it does not seem to offer any real advantage for these entities. Also, area prevailing wage rates would be different for sites in different metropolitan or rural areas. DOL also believes these entities would be significantly increasing the vulnerability of their entire systems to suspension from the program, should but one of their sites incur a violation or should a lay-off of nurses occur at only one of their sites. DOL believes these entities could simplify the process for their individual sites by developing materials which could be used by all sites, with perhaps some minor modifications, and providing other assistance.

However, it should be noted that the interim final rule states that separate buildings or areas which are not physically connected or in immediate proximity are a single health care facility if they are in reasonable geographic proximity, used for the same purpose, and share the same nursing staff and equipment. An example is an employer who manages a nursing home and a hospital in the same area and who regularly shifts or rotates the nurses between the two. Non-contiguous sites, even within the same geographic area, which do not share the same nursing staff and operational purpose are not a single facility. For example, hospitals which are located on opposite sides of a municipality, but which are managed or owned by a single entity, are separate facilities if they do not regularly share nursing staff and operational purpose.

2. Prevailing Wage

Senator Hatch and several employer commenters questioned DOL's interpretation of the statutory phrase "not adversely affect the wages" as requiring the prevailing wage in the geographic area. Senator Hatch maintains that this interpretation was specifically considered and purposefully rejected by the Congress in removing the term "prevailing wage rate" from the third attestation element (relating to facility wage rates) in the version of the bill originally passed by the House, and from Step Three of the fourth attestation element (relating to payment of wages higher than currently being paid in the geographic area). He also maintains that because INRA has instituted a new attestation process, rather than a traditional labor certification process, any terms having an established interpretation under a labor certification process should not be interpreted in the same way under the new attestation process. DOL has again carefully reviewed this issue and concluded that the statutory construction requires the interpretation that DOL has adopted, for the reasons discussed in Item II.D.3.b of this preamble, below. While the attestation process for H-1A nurses is clearly not the same as the labor certification process for other visa categories, the "not adversely affect" language is the same as used elsewhere in the same statute, the INA. Therefore, DOL is constrained to interpret duplicate language in the same statute consistently. In addition, the alternative interpretation offered by commenters would render the language of Attestation Element Two surplusage, as it would duplicate the effect of the third attestation element.

E. Attestation Process

The INRA requires a health care facility seeking access to temporary foreign RNs (under the newly created H-1A visa category) to file an "attestation" with the Department of Labor (DOL or Department) on an annual basis. 8 U.S.C. 1101(a)(15)(H)(i)(a) and 1182(m)(2) (A) and (C). This includes worksites (except private households) seeking to use the services of an H-1A nurse through a nursing contractor. See Immigration Act of 1990, section 162(f). The attestation must assure that the following six statutory criteria are met:

(1) There would be a substantial disruption through no fault of the facility in the delivery of health care services of the facility without the services of such alien(s). A facility is not considered to meet this clause if, within the previous year, it laid off RNs.

(2) The employment of the alien(s) will not adversely affect the wages and working conditions of RNs similarly employed.

(3) The alien(s) employed by the facility will be paid the wage rate for RNs similarly employed by the facility.

(4) Either:

(a) The facility has taken and is taking timely and significant steps designed to recruit and retain sufficient RNs who are United States citizens or immigrants who are authorized to perform nursing services, in order to remove as quickly as reasonably possible the dependence of the facility on nonimmigrant RNs, or

(b) The facility is subject to an approved State plan for the recruitment and retention of nurses (see 8 U.S.C. 1182(m)(3)).

(5) There is not a strike or lockout in the course of a labor dispute, and the employment of such alien(s) is not intended or designed to influence an election for a bargaining representative for RNs of the facility.

(6) At the time of the filing of the petition for RNs, notice of the filing has been provided

by the facility to the bargaining representative of the RNs at the facility or, where there is none, notice of the filing has been provided to RNs employed at the facility through posting in conspicuous locations.

8 U.S.C. 1182(m)(2)(A) (i) through (vi).

Each of the following is a "significant step" reasonably designed to recruit and retain RNs (see Item (4)(a) above):

(i) Operating a training program for RNs at the facility or financing (or providing participation in) a training program for RNs elsewhere;

(ii) Providing career development programs and other methods of facilitating health care workers to become RNs;

(iii) Paying RNs wages at a rate higher than currently being paid to RNs similarly employed in the geographic area;

(iv) Providing adequate support services to free RNs from administrative and other non-nursing duties;

(v) Providing reasonable opportunities for meaningful salary advancement by RNs.

8 U.S.C. 1182(m)(2)(B) (i) through (v); see 8 U.S.C. 1182(m)(2)(A)(iv)(I).

Items (i) through (v) above are not an exclusive list of the significant steps that may be taken to meet the requirements of the fourth attestation element, and a facility is not required to take more than one step if the facility can demonstrate that taking a second step is not reasonable. 8 U.S.C. 1182(m)(2)(B).

In the case of an alien for whom an employer has filed an attestation and who is performing services at a worksite other than the employer's worksite or other than a worksite controlled by the employer, the Secretary may waive such requirements for the attestation for the worksite as the Secretary may determine are appropriate in order to avoid duplicative attestations, in cases of temporary, emergency circumstances, with respect to information not within the knowledge of the attestor, or for other good cause. 8 U.S.C. 1182(m)(2)(A) (as amended by section 162(f)(2)(B)(iii) of the Immigration Act of 1990).

These attestations are to be available for public examination in the Employment and Training Administration (ETA) National Office in Washington, D.C. 8 U.S.C. 1182(m)(2)(E)(i). The Department must also inform the Immigration and Naturalization Service (INS) that such attestation is on file as a prerequisite for INS approving a petition to bring in foreign RNs under H-1A visas (which visas are issued by the U.S. Department of State (DOS)). 8 U.S.C. 1101(a)(15)(H)(i)(a).

In summary, DOL's administrative functions under the INRA basically consist of receiving and accepting for filing attestations (in some limited cases, reviewing the attestations prior to acceptance or rejection); making the accepted attestations available for public inspection; and notifying INS of those attestations that DOL has on file. These administrative functions are delegated, by regulation, to ETA.

F. Complaints, Investigations and Enforcement

The Department also is authorized to investigate allegations that a facility has failed to meet the conditions attested to or that a facility has misrepresented a material fact in an attestation. 8 U.S.C. 1182(m)(2)(E) (ii) through (v). If violations are found, DOL may impoise administrative remedies, including civil money penalties (CMPs); shall notify the Attorney General, who shall not approve petitions for a period of at least one year for the facility; shall obtain back wages; and may impose other remedies. These activities constitute the Department's enforcement functions under the INRA. Under the regulations, the enforcement functions are delegated, by regulation, to the Department's Employment Standards Administration (ESA), Wage and Hour Division.

G. Advisory Group

Finally, the INRA requires the Secretary of Labor (Secretary) to provide for the appointment, by January 1991, of an advisory group which will include representatives of DOL, the Department of Health and Human Services, the Attorney General, hospitals, and labor organizations representing RNs. Public Law 101-238, sec. 3(c)(2), 103 Stat. at 2103.

The INRA calls for this advisory group to advise the Secretary on:

(1) The impact of this legislation on the nursing shortage,

(2) Programs that health care facilities may implement to recruit and retain U.S. RNs,

(3) State recruitment and retention plans, and

(4) The advisability of extending the law beyond the current five-year duration of this pilot program.

The advisory group will be coordinated by the DOL Office of the Assistant Secretary for Policy.

II. Contents of Regulations

The following is a section-by-section summary of the primary components of the regulations. In particular, where one or more options were considered, these options are discussed briefly. Commenters are encouraged to comment, whether pro or con, on all options. Commenters are also invited to suggest additional options. This will provide the fullest possible administrative record as a basis for promulgating a final rule.

A. Section—.300 Purpose and Scope

This section describes the overall purpose of the INRA, and delimits the scope of these regulations (Subparts D and E).

B. Section—.301 Overall Process for Utilizing H-1A Nurses

This section describes briefly the overall process a facility must follow in order to secure an H-1A nurse, including the roles of individual DOL components and the INS and DOS. This section is intended to provide health care facilities with an understanding of where these regulations (Subparts D and E) fit within the overall H-1A visa process.

C. Section—.302 Definitions

This section provides definitions for terms used in the regulations, including the following:

1. "Date of Filing"; and "Accepted for Filing"

The terms "date of filing" and "accepted for filing" together determine the beginning date of the period for which an attestation will be valid. The INRA states that an attestation shall "expire at the end of the 1-year period beginning on the date of its filing with the Secretary of Labor." 8 U.S.C. 1182(m)(2)(C)(i). In order not to penalize a facility for the time it takes DOL to process the attestation, "date of filing" has been defined to be the date the attestation is accepted for filing by DOL.

2. "Board of Alien Labor Certification Appeals (BALCA)"

The "Board of Alien Labor Certification Appeals" has been designated as the entity within the Office of Administrative Law Judges to review appeals from any rejections of attestations and annual State plans and certain attestation acceptances, because this mechanism has been found to be effective in achieving uniformity and consistency in reviewing appeals under the alien labor certification programs. See 20 CFR 655.112(a)(1), 656.26, 656.27, and 656.50.

3. "Employer"; "Nursing Contractor"; and "Facility"

The terms "employer," "nursing contractor," and "facility," taken together, identify the kinds of entities which are eligible to submit attestations for H-1A nurses under the INRA. Consideration was given to whether nursing contractors and private

households were intended to be covered. The regulations permit all employers who were eligible to apply for H-1 nurses in full-time employment in the past to continue to be eligible to apply for H-1A nurses.

In the case of nursing contractors, both the contractor and the using worksite (other than private households) are required to file complete attestations, with limited exceptions, discussed above. Comments specifically are invited on the interim final rule's implementation of those exceptions.

Specifically excluded are facilities which are not involved in the direct provision of health care services. Comments are invited whether such facilities should be included.

4. "Layoff"

The term "layoff" is defined specifically to exclude a situation where a separated nurse is offered retraining and retention at the same facility in another activity but refuses. Occupations other than nursing are excluded from the no-layoff attestation.

5. "Nurse"

The term "nurse" includes all persons who are or will be authorized by a State Board of Nursing to practice as registered nurses.

6. "Prevailing Wage"; "Geographic Area"; and "Similarly Employed"

The terms "prevailing wage," "geographic area," and "similarly employed" together serve to define the wage which must be paid in order to prevent adverse effect on the wages of registered nurses similarly employed (see the second attestation element). Consideration was given to whether a single rate for nurses in an area should be the standard or whether a series of rates, recognizing various factors as legitimate bases for differentials, should be permitted.

These definitions permit a series of rates, with various bases for differentials permitted at the discretion of the State Employment Security Agency (SESA) conducting the survey.

D. Section—.310 Attestations

1. General

This section describes the basic process for submitting an attestation, prescribes what information should be submitted with the attestation and what supporting documentation should be maintained at the facility. In developing the requirements for attestations, DOL is cognizant of Congressional intent that the process not be unduly burdensome and not involve lengthy processing by DOL. DOL also recognizes the need to establish criteria which meet the statutory terms regarding "substantial disruption", "significant" steps, and the like, indicating that Congress intended this to be more than a paper exercise. In addition, DOL is very cognizant of the need to have criteria and standards in the process which could serve as a basis for complaints and subsequent investigation by DOL. The criteria strike an appropriate balance of these several considerations.

2. Nursing Contractors

For a nursing contractor, the attestation must include an additional special element. The nursing contractor must attest that it will refer H-1A nurses to perform nursing services only at worksite facilities which themselves (other than private households) have valid attestations on file with ETA/DOL. The nursing contractor will keep in its file and make available for inspection a copy of each worksite facility's attestation, on Form ETA 9029, accepted for filing by ETA (the supporting documentation for the worksite facility's attestation need not be retained by the nursing contractor in its files; that documentation will be retained by the worksite facility for inspection). While this special element imposes additional responsibilities on nursing contractors, it is a necessary responsibility to ensure that the intent of the INRA is carried out. A nursing contractor may serve as an authorized agent, develop model attestation forms, and provide other technical assistance in preparing attestations for facilities to which it may refer nurses.

3. Attestation Elements

The attestation filed by a health care facility contains six elements, with certain exceptions for facilities using H-1A nurses only through a nursing contractor. Complete supporting documentation relating to each of these elements must be maintained at the facility and be open to public examination. With the attestation it will be sufficient, with certain exceptions, to provide a brief explanation of what supporting documentation is available and maintained at the facility for each attestation element, and how such documentation indicates compliance with the regulatory standard. The documentation exceptions relate to facilities which utilize the "other" categories under the first and fourth attestation elements, assert the unreasonableness of taking a second step under the fourth attestation element, or claim a bona fide medical emergency with respect to the fourth attestation element. In these cases, fuller explanations are required to permit DOL to make the appropriate determinations. Where a facility can make a showing of business exigency, the supporting documentation may be compiled and maintained within 90 days after filing the attestation, provided such filing is made prior to April 1, 1991.

a. *Element I: substantial disruption.* Four alternative indicators, in addition to the no-layoff requirement, are in the regulations. The first relates to the vacancy rate for nurses; the second to unutilized beds at a facility; the third to the elimination or curtailment of essential health care services; and the fourth to the inability to effect plans to provide needed new services. These are intended as simple, objective proxy indicators of substantial disruption, which should be suitable for most institutions using H-1A nurses. However, it is also recognized there may be situations where these indicators are not appropriate. The regulations provide an alternate approach in these instances, but do require that the facility explain why the four primary measures are not appropriate for that facility and how the alternate measures chosen meet the statutory standard of "substantial disruption".

b. *Element II: no adverse effect.* In proscribing "adverse effect" on nurses similarly employed, the INRA uses language used in the alien labor certification process for many years. With respect to wages, this has been interpreted in this document as requiring at least the prevailing wage in the geographic area. The phrase "not adversely affect the wages" is a well-established legal term of art that has been used for decades in alien labor certification programs, with a very specific meaning of at least the area prevailing wage for the occupation. See, *e.g.*, 8 U.S.C. 1182(a)(14) and 1188; 8 CFR 214.2(h); and 20 CFR 656.40. Presumably Congress was aware of this meaning in incorporating this language in the INRA. Nevertheless, there may be some confusion on this issue, related to the Senate amendment which specifically struck the word "prevailing" from the *facility* wage requirement, which is the third element to which the facility must attest. However, that third element, which relates to the going rate for the occupation at the facility, is separate and distinct from the phrase "not adversely affect the wages" in the second attestation element. The construction of the legislation supports this interpretation by DOL. This use of a prevailing wage standard is specific to this program, in light of the statutory language ("not adversely affect the

wages"), and does not mandate the application of such a standard under future legislation.

Commenters are invited to provide information on the potential impact on wages and health care costs which may result from this area prevailing wage requirement.

The facility does not independently determine the prevailing wage. Instead, the facility, prior to submitting its attestation to ETA, shall request, from the State employment service in whose State the worksite for H-1A nurses will be located, a determination of the prevailing wage for nurses in the worksite's geographic area.

The facility may not know, at the time it submits the attestation, the number of H-1A nurses for whom it will submit visa petitions during the year, or in what specific jobs (*e.g.*, specialties or shifts) such nurses will be employed. For that reason, the regulations provide that the facility's supporting documentation summarize its entire pay and other compensation package for nurses employed by it in categories of positions for which H-1A nurses are being or will be hired or promoted into, and positions for which H-1 or H-1A nurses have been promoted into. Categories of positions not covered by the supporting documentation are not covered by the attestation and, therefore, H-1A nurses may not occupy those positions.

Regarding working conditions, the regulations apply an adverse effect standard on a facility basis, due to the administrative infeasibility of making prevailing practice determinations on an area-wide basis at this time.

c. *Element III: facility wage.* Facilities must have as supporting documentation a summary of their pay schedule for nurses, including an explanation of the factors accounting for differentials. This is needed to serve as a basis for comparison with the wages paid any H-1A nurses. The summary must cover all categories of positions in which H-1A nurses are or will be hired or promoted into. Categories of positions not covered by the documentation are not covered by the attestation and, therefore, H-1A nurses may not occupy those positions.

d. *Element IV: Timely and significant steps; or State plan*—(1) *Timely and significant steps.* The objective of these timely and significiant steps, as stated in the INRA, is to "remove as quickly as reasonably possible the dependence of the facility on nonimmigrant registered nurses." 8 U.S.C. 1182(m)(2)(A)(iv)(I). The criteria have been developed with this objective in mind; they also attempt to meet the statutory requirement that the steps be both "timely" and "significant." This is interpreted to mean that such steps should represent efforts which go beyond the normal practices for the industry.

Where possible, both qualitative and quantitative criteria are established for these steps. A facility is required to take at least two of these steps, unless the facility can demonstrate that taking a second step is unreasonable.

The regulations specify how a facility which claims that taking a second step is not reasonable shall make the required showing. The taking of a second step may be considered unreasonable if it would result in the facility's financial inability to continue providing the same quality and quantity of health care services, or if the provision of nursing services would otherwise be jeopardized by the taking of such a step. An alternative definition considered, on which public comment is invited, is a showing that the costs of an additional step would outweigh the benefits.

The regulations describe each of the five steps specified in the legislation and several additional steps which might be considered as alternatives. The legislation specifically states that the statutory list is not intended to be all-inclusive, and still other steps may be taken. However, a facility taking steps other than those identified in the regulation must submit a description of the steps it is taking and an explanation of how and why these steps are of comparable "timeliness" and "significance" to those specified in the statute. An alternative to meeting the specific criteria for the steps also is provided for facilities which meet certain goals for reducing their reliance on nonimmigrant nurses. This alternative may be characterized as a results-driven approach, which could apply to the second and subsequent years a facility submits attestations for filing.

(i) Significant step I: Operating a training program for nurses. The regulations interpret this as applying to training programs for persons who are already RNs, rather than for persons to become RNs, although consideration was given to the latter interpretation as well. The latter is provided for in the second significant step, for those who are U.S. health care workers and want to become registered nurses, and in the "other" significant steps for other U.S. workers who want to become registered nurses.

The training of RNs may be continuing education endeavors that are approved by a professional association/organization, a State-approved institution of higher learning, or a State Board of Nursing. The training of RNs also may be courses which lead to an academic degree in nursing and which are accredited by the appropriate State authority.

Regarding the number of U.S. nurses who should participate in such training, since the presumed objective of this step is to retain U.S. nurses, the number relates to those leaving during the past year. The statutory requirement that the facility "provide" or "finance" such training is interpreted to mean covering the total tuition costs of such training, either directly or through arrangements with a third party.

(ii) Significant step II: Facilitating health care workers to become nurses. The regulations include programs which lead both directly and indirectly to becoming an RN, and are limited to U.S. workers who are working or have worked in health care occupations. Since the presumed objective of this step is to recruit U.S. workers as nurses, the number required to participate relates to the number of vacancies at the facility. Financing by the facility, etiher directly or arranged through a third party, shall cover the total costs of such programs.

(iii) Significant step III: Paying wage higher than that in geographic area. The regulations set this standard at five percent above the prevailing wage. This is thought to be a "significant" differential, but not an unreasonable one.

(iv) Significant step IV: Free nurses from non-nursing duties. The regulations call for non-nursing duties to be excluded from nurses' duties at a facility, except under extraordinary circumstances.

Alternative standards considered include establishing a ratio of support staff to nurses. However, there could be legitimately wide variations in such ratios between different types of institutions. Another alternative considered was to establish a percent limit on the proportion of nurses' time which could be spent on non-nursing duties. However, this would appear to sanction performance by nurses of non-nursing duties.

(v) Significnat step V: Opportunities for salary advancement. This step addresses the concern that nurses' starting wages are reasonably adequate and some salary advancement in the first few years generally occurs, but thereafter a salary plateau is reached which creates a disincentive for nurses to remain in the field. The standard calls for continuing salary increases over a ten-year period.

(vi) Other steps. The regulations provide examples of other steps which

could be taken and, depending on their scope and other factors, may meet the statutory requirement to be "timely and significant." However, commenters are invited to suggest other possible steps of comparable timeliness and significance to those defined in the statute.

(vii) Alternative to criteria for each step. This alternative is designed to permit facilities to achieve the objective of the INRA, without continuing to subject them to the detailed requirements as to the specific means of achieving that objective. It is not applicable in the first year a facility submits an attestation for filing, but is an alternative in the second and subsequent years, provided certain goals for reducing reliance on temporary foreign nurses are achieved.

(2) *Subject to State plan.* As an alternative to attesting to and documenting the timely and significant steps described above, the facility may attest that it is subject to an approved State plan. The State plan is described in the discussion of §_____.315 below.

e. *Element V: No strike; lockout; or intent or design to influence bargaining representative election.* The regulations make this provision apply only to nurses. While the legislation speaks to the absence of a strike or lockout at the time the attestation is submitted, the regulations also require that the facility notify DOL should a strike or lockout occur during the time the attestation is in effect. This will permit DOL to certify such strike or lockout to INS, which may result in INS discontinuing H-1A visa petition approvals under the INS regulations. See 8 CFR 214.2(h)(16), 55 FR 2606 (January 26, 1990). This approach is consistent with the INRA.

f. *Element VI: Notice of filing.* While the INRA calls for notice of filing when the visa petition is filed, the regulations also require such notice when the attestation is submitted. This approach is consistent with the intent of Congress that all aspects of the process be open to public review. This is also necessitated to facilitate the complaint and investigation process called for in the INRA.

4. Acceptance, Rejection, and Appeals

If a facility attests to compliance and provides the information required under Elements II, III, V, and VI; and attests that it meets the no-layoff requirement as well as the criteria relating to the vacancy rate, the unutilized bed rate, the elimination/curtailment of services, and/or the inability to provide planned and needed new services under Element I; and attests that it is taking two or more of the timely and significant steps specified in INRA under Element IV; and is not a facility intending to use H-1A nurses only through a nursing contractor and does not claim a bona fide medical emergency exemption from Element IV; DOL will accept, without review, the attestation for filing. If a facility chooses to use an alternative measure of substantial disruption under Element I; or asserts that taking more than one of the timely and significant steps specified in INRA under Element IV is unreasonable; or proposes to take as one or more timely and significant step (under Element IV) one or more steps of the facility's own devise; or claims a bona fide medical emergency exemption from Element IV as a worksite using H-1A nurses through a nursing contractor only; DOL will review the facility's explanation for doing so and determine whether the attestation meets the statutory and regulatory standards, and DOL will accept or reject the attestation for filing. Where DOL reviews the attestation and determines whether to accept or reject it for filing, the regulations provide appeal rights to the Board of Alien Labor Certification Appeals (BALCA) in the DOL Office of Administrative Law Judges for parties affected by the acceptance/rejection decision.

5. Effective Date and Validity of Attestation

The regulations make the attestation effective as of the date it is accepted for filing by DOL. The attestation may be suspended, for purposes of securing additional H-1A nurses:

(1) Where the Wage and Hour Division, ESA, determines that a violation has been committed and no timely request for a hearing is filed;

(2) Where an administrative law judge, after a hearing, finds that a violation has been committed; or

(3) Where an administrative law judge finds no violation, but the Secretary, on a discretionary review, determines that a violation has been committed.

Such suspension, however, does not relieve the facility from having to continue to comply with the attestation during the remainder of the attestation's one-year period, where the facility has one or more H-1 or H-1A nurses. Further, the facility shall comply with the terms of the attestation, even if suspended, invalidated, or expired, and may be subject to remedies, as appropriate for violations, as long as H-1A nurses admitted under the attestation are used by the facility, unless the attestation is superseded by a subsequent attestation accepted for filing by ETA. The regulations state that the suspension will be for a period of at least one year, as stated in the statute. No new attestation will be accepted by ETA from a facility that fails to pay civil money penalties and/or fails to satisfy a remedy assessed by the Wage and Hour Administrator, where that penalty assessment or remedy has become the final agency action.

E. Section _____.315 State plan

This section describes the process for submitting the State plan, the contents of the plan, and the approval/disapproval and appeal processes.

The State plan is clearly intended to be broader in scope and coverage than the attestations of individual health care facilities. Therefore, the regulations require that all of the timely and significant steps specifically mentioned in the INRA be addressed in the State plan. See 8 U.S.C. 1182(m)(2)(b) (i) through (v). However, this does not change the more limited requirements for individual facilities covered by the State plan.

In addition, States are encouraged to develop and pursue efforts which go well beyond the steps specified in the INRA. The INRA clearly requires that where an individual facility is covered by a State plan, the specific criteria required for each step which might be chosen for that facility shall be addressed, just as if an individual facility attestation were being submitted. The facility must also maintain appropriate documentation for these steps.

The State may appeal to the BALCA from ETA/DOL's disapproval of a State plan. Further appeal of a BALCA decision on a State plan may be made by the Director of the U.S. Employment Service or by the State to the Secretary, whose consideration of the appeal is discretionary.

F. Section _____.350 Public access

This section describes the specific documents which shall be available for public review in the National Office of the Employment and Training Administration in Washington, D.C. and at the facility. The regulations require that all documents maintained at the facility pertaining to the process of apply for H-1A nurses by a facility be available to the public.

G. Section _____.400 Enforcement authority of Administrator, Wage and Hour Division

This section describes the scope of the investigative authority of the Administrator of the ESA Wage and Hour Division (Administrator), through which appropriate investigations are conducted. The Administrator (or

designees) may enter and inspect places and records (and make transcriptions thereof), question persons, and gather information as deemed necessary by the Administrator to determine compliance regarding the matters to which a health care facility has attested under 8 U.S.C. 1182(m) and these regulations (Subparts D and E).

In order to assure effective enforcement, this section states the Administrator's intention to maintain confidentiality for complainants and informants; prohibits interference in the investigation and discrimination against any person cooperating in an investigation or exercising that person's rights under 8 U.S.C. 1182(m); requires compliance with the public access provisions regarding documentation; and prohibits waivers of rights under the regulations and 8 U.S.C. 1182(m).

H. Section _____.405 Complaints and investigative procedures

This section states that, within 180 days of the receipt of a complaint sufficient to warrant an investigation, the Administrator will conduct an investigation and issue a written determination stating whether there is a basis to make a finding that the facility misrepresented a material fact, or failed to meet a condition in its attestation, or otherwise violated 8 U.S.C. 1182(m) or these regulations (Subparts D and E). Where the Administrator determines that an investigation is not warranted, the complainant shall be so notified and may submit a new complaint with such additional information as may be necessary.

I. Section _____.410 Civil money penalties and other remedies

Under this section, the Administrator may assess a civil money penalty up to $1,000 for each affected person with respect to whom there has been a violation and with respect to each instance in which such violation occurred. See 8 U.S.C. 1182(m)(2)(E)(iv). The assessment will be based on numerous relevant factors; an indicative list is presented in this section. The Administrator may also assess remedies, such as payment of back wages. All penalties and remedies shall be promptly paid or performed when the agency action becomes final. A facility that fails to comply with any penalty or remedy will be ineligible to participate in the H-1A program through any future attestation, until the penalty or remedy is satisfied.

J. Section _____.415 Written notice and service of Administrator's determination

This section provides that the Administrator's decision shall set out the determination as to violations, penalties, and remedies, and shall be served on all interested parties. Further, the decision shall inform the interested parties that they may request an administrative law judge hearing through the prescribed proceeding. Finally, the notice shall inform the interested parties that the Administrator shall notify ETA and INS of such violation, in the event that:

(1) A violation has been found and no timely request for a hearing is made;

(2) A hearing is requested and the administrative law judge finds a violation has been committed; or

(3) The administrative law judge finds no violation, but the Secretary, on discretionary review, determines that a violation has been committed.

Upon receipt of the Administrator's notice, ETA shall suspend the violator's attestation and notify INS, which agency is required to deny all H-1V visa petitions from the violator for a period of at least one year.

K. Section _____.420 Request for hearing

This section sets out the procedure and deadline by which an administrative law judge hearing may be requested. Any interested party may request a hearing. If the Administrator found no violation and the complainant or other interested party requests a hearing, the requestor shall be the prosecuting party, the facility shall be the respondent, and the Administrator shall have the option to participate as an intervenor or *amicus curiae*. If the Administrator found a violation and the facility or other interested party requests a hearing, the Administrator shall be the prosecuting party and the facility shall be the respondent.

L. Sections _____.425 through _____.440 Administrative law judge proceedings

These sections specify the procedural and evidentiary rules, the methods of service of documents, the rules for computation of time, and the deadlines for the administrative law judge hearing and decision.

M. Section _____.445 Secretary's review of administrative law judge decision

This section provides for discretionary review by the Secretary, at the request of the Administrator or an interested party. The deadlines and procedures for the review are prescribed.

N. Section _____.450 Administrative record

This section provides that the DOL Chief Administrative Law Judge maintain custody of the official record of the administrative proceedings and, in the event of a U.S. District Court action, certify and file that record with the clerk of the court.

O. Section _____.455 Non-applicability of the Equal Access to Justice Act

This section provides that attorney fees and costs under the Equal Access to Justice Act are not available in proceedings under this rule.

P. Technical and clarifying amendments

Other technical and clarifying amendments also are made, primarily by redesignating the temporary alien nonagricultural/nonlogging labor certification (H-2B) regulations from 20 CFR part 621 to 20 CFR part 655, subpart A.

Regulatory Impact and Administrative Procedure

E.O. 12291: The rule does not have the financial or other impact to make it a major rule and, therefore, the preparation of a regulatory impact analysis is not necessary. See Executive Order 12291, 3 CFR, 1981 Comp., Page 127, 5 U.S.C. 601 note.

Regulatory Flexibility Act: At the time the proposed rule was published, the Department of Labor notified the Chief Counsel for Advocacy, Small Business Administration, and made the certification pursuant to the Regulatory Flexibility Act at 5 U.S.C. 605(b), that the rule does not have a significant economic impact on a substantial number of small entities.

Nevertheless, interested parties are requested to submit, as part of their comments on this rule, information on the potential economic impact of the rule.

Effective Date: The interim final rule is effective without a 30-day delay in the effective date. Section 3(c)(1) of Public Law 101-238, 103 Stat. 2099, 2103 (December 18, 1989), had required regulations to be published by August 1, 1990. The attestation process applies to classification petitions filed with INS for nonimmigrant status beginning on September 1, 1990. See section 3(d) of Public Law 101-238, 103 Stat. 2099, 2103 (December 18, 1989). Absent this rule, no standards for attestations would exist

and attestations and classification petitions could not be accepted. Given these facts and the Congressional finding of a shortage of nurses in the United States, the Department of Labor finds that good cause exists to publish the interim final rule effective immediately, with a request for comments, and that a delay in the effective date, for those reasons, would be contrary to the public interest. See 5 U.S.C. 553(d)(3).

Catalog of Federal Domestic Assistance Number

This program is not yet listed in the Catalog of Federal Domestic Assistance.

List of Subjects

20 CFR Part 621

Administrative practice and procedure, Aliens, Employment, Guam, Labor, Wages.

20 CFR Part 655

Administrative practice and procedure, Agriculture, Aliens, Employment, Enforcement, Forest and forest products, Guam, Health professions, Immigration, Labor, Migrant labor, Nurse, Penalties, Registered nurse, Reporting and recordkeeping requirements, Wages.

29 CFR Part 504

Administrative practice and procedures, Aliens, Employment, Enforcement, Health professions, Immigration, Labor, Nurse, Penalties, Registered nurse, Reporting and recordkeeping requirements, Wages.

Title 20—Employees' Benefits

CHAPTER V—EMPLOYMENT AND TRAINING ADMINISTRATION, DEPARTMENT OF LABOR

Accordingly, chapter V of title 20, Code of Federal Regulations, is amended as follows:

PART 655—[AMENDED]

1. The authority citation for part 655 is revised to read as follows:

Authority: 8 U.S.C. 1101(a)(15)(H) and 1184; 29 U.S.C. 49 *et seq.*; §§ 655.0, 655.00, and 655.000 also issued under 8 U.S.C. 1101(a)(15)(H)(i)(a), 1182(m), and 1188, and 8 CFR 214.2(h)(4)(i); subparts A and C also issued under 8 CFR 214.2(h)(4)(i); subpart B also issued under 8 U.S.C. 1188; subparts D and E also issued under 8 U.S.C. 1101(a)(15)(H)(i)(a) and 1182(m) and Pub. L. 101-238, sec. 3(c)(1), 103 Stat. 2099, 2103.

PART 655—TEMPORARY EMPLOYMENT OF ALIENS IN THE UNITED STATES

2. The heading for part 655 is revised to read as set forth above.

Subpart A—Labor Certification Process for Temporary Employment in Occupations Other Than Agriculture, Logging, or Registered Nursing in the United States (H-2B Workers)

3. The heading for subpart A of part 655 is revised to read as set forth above.

§ 655.1 [Removed]

4. Section 655.1 of part 655 is removed.

PART 621—[REMOVED AND RESERVED]

§§ 621.1, 621.2, 621.3 [Redesignated as §§ 655.1, 655.2, 655.3]

5. Sections 621.1, 621.2, and 621.3 of part 621 are redesignated as §§ 655.1, 655.2, and 655.3 of subpart A of part 655, respectively.

6. Part 621 is removed and reserved.

PART 655—[AMENDED]

§ 655.0 [Amended]

7. Section 655.0 is amended as follows:

a. In paragraph (a), (1) and (2) are redesignated as (i) and (ii);

b. Paragraph (a) is redesignated as paragraph (a)(1);

c. Paragraph (b), including the concluding text, is redesignated as paragraph (a)(2);

d. A heading is added for paragraph (a), reading "*Subparts A, B, and C.*";

e. The heading for newly designated paragraph (a)(1) continues to read "*General.*";

f. In paragraph (a), the phrase "This part sets" is removed from the first sentence and the phrase "Subparts A, B, and C of this part set" is added in lieu thereof;

g. A new paragraph (b) is added, to read as follows:

§ 655.0 Scope and purpose of part.

* * * * *

(b) *Subparts D and E.* Subparts D and E of this part set forth the process by which health care facilities can file attestations with the Department of Labor for the purpose of employing or otherwise using nonimmigrant registered nurses under H-1A visas.

* * * * *

§ 655.00 [Amended]

8. Section 655.00 is amended as follows:

a. The section heading is revised to read as follows:

§ 655.00 Authority of the Regional Administrator Under Subparts A, B, and C.

b. The first sentence in § 655.00 is amended by adding between the words "determinations" and "are" the phrase "under Subparts A, B, and C of this part".

§ 655.000 [Amended]

9. Section 655.000 is amended as follows:

a. In the first sentence, the phrase "and part 621 of this chapter do" is removed and the word "does" is added in lieu thereof;

b. In the first sentence, the period at the end of the sentence is removed and added in lieu thereof are the words ", and with respect to temporary employment or use of nonimmigrant (H-1A) registered nurses under Subpart D of this part."

§ 655.1 [Revised]

10. Newly designated § 655.1 is revised to read as follows:

§ 655.1 Scope and purpose of Subpart A.

This subpart sets forth the procedures governing the labor certification process for the temporary employment of nonimmigrant aliens in the United States in occupations other than agriculture, logging, or registered nursing.

§ 655.2 [Amended]

11. Newly designated § 655.2 is amended by removing the phrase "(Form ETA-575-B) for certification for temporary nonagricultural foreign labor" and by adding in lieu thereof the phrase "for certification of temporary employment of nonimmigrant aliens".

§ 655.3 [Amended]

12. Newly designated § 655.3 is amended as follows:

a. In paragraph (a), the acronym "RAETA" is removed and the phrase "Regional Administrator, Employment and Training Administration," is added in lieu thereof; and the word "he" is removed and the phrase "he or she" added in lieu thereof;

b. In paragraph (b), the phrase "parts 655 and 604 of this chapter" is removed and the phrase "part 652 of this chapter and subparts B and C of this part" is inserted in lieu thereof;

c. In paragraph (c), the words "RAETA", "he", and "him" are removed and the phrases "Regional Administrator, Employment and Training Administration,", "he or she", and "him or her" added in lieu thereof, respectively;

d. In paragraph (d), the phrase "his petition Form I-129B," is removed and the phrase "its visa petition," is added in lieu thereof.

Subparts D and E [Added]

12. Part 655 is amended by adding new subparts D and E, as set forth at the end of this document.

Subpart D—Attestations by Facilities Using Nonimmigrant Aliens As Registered Nurses

Sec.
655.300 Purpose and scope of subparts D and E.
655.301 Overview of process.
655.302 Definitions.
655.310 Attestations.
655.315 State plans.
655.320 Appeals of acceptance and rejection of attestations submitted for filing and of State plans.
655.350 Public access.

Subpart E—Enforcement of H-1A Attestations

655.400 Enforcement authority of Administrator, Wage and Hour Division.
655.405 Complaints and investigative procedures.
655.410 Civil money penalties and other remedies.
655.415 Written notice and service of Administrator's determination.
655.420 Request for hearing.
655.425 Rules of practice for administrative law judge proceedings.
655.430 Service and computation of time.
655.435 Administrative law judge proceedings.
655.440 Decision and order of administrative law judge.
655.445 Secretary's review of administrative law judge's decision.
655.450 Administrative record.
655.455 Non-applicability of the Equal Access to Justice Act.

Authority: 8 U.S.C. 1101(a)(15)(H) and 1184; 29 U.S.C. 49 *et seq.*; §§ 655.0, 655.00, and 655.000 also issued under 8 U.S.C. 1101(a)(15)(H)(i)(a), 1182(m), and 1188, and 8 CFR 214.2(h)(4)(i); subparts A and C also issued under 8 CFR 214.2(h)(4)(i); subpart B also issued under 8 U.S.C. 1188; subparts D and E also issued under 8 U.S.C. 1101(a)(15)(H)(i)(a) and 1182(m) and Public Law 101-238, sec. 3(c)(1), 103 Stat. 2099, 2103.

Signed at Washington, DC, this 30th day of November, 1990.

Roberts T. Jones,

Assistant Secretary for Employment and Training.

William C. Brooks,

Assistant Secretary for Employment Standards.

Roderick A. DeArment,

Acting Secretary of Labor.

Title 29—Labor

CHAPTER V—WAGE AND HOUR DIVISION, DEPARTMENT OF LABOR

Accordingly, title 29, Code of Federal Regulations, is amended by adding a new part 504 to read as follows, and subparts D and E are added to new part 504 as set forth at the end of this document:

PART 504—ATTESTATIONS BY FACILITIES USING NONIMMIGRANT ALIENS AS REGISTERED NURSES

Subparts A, B, and C [Reserved]

Subpart D—Attestations by Facilities Using Nonimmigrant Aliens as Registered Nurses

Sec.
504.300 Purpose and scope of subparts D and E.
504.301 Overview of process.
504.302 Definitions.
504.310 Attestations.
504.315 State plans.
504.320 Appeals of acceptance and rejection of attestations submitted for filing and of State plans.
504.350 Public access.

Subpart E—Enforcement of H-1A Attestations

504.400 Enforcement authority of Administrator, Wage and Hour Division.
504.405 Complaints and investigative procedures.
504.410 Civil money penalties and other remedies.
504.415 Written notice and service of Administrator's determination.
504.420 Request for hearing.
504.425 Rules of practice for administrative law judge proceedings.
504.430 Service and computation of time.
504.435 Administrative law judge proceedings.
504.440 Decision and order of administrative law judge.
504.445 Secretary's review of administrative law judge's decision.
504.450 Administrative record.
504.455 Non-applicability of the Equal Access to Justice Act.

Authority: 8 U.S.C. 1101(a)(15)(H)(i)(a) and 1182(m) and Pub. L. 101-238, sec. 3(c)(1), 103 Stat. 2099, 2103.

Signed at Washington, DC, this 30th day of November, 1990.

Roberts T. Jones,

Assistant Secretary for Employment and Training.

William C. Brooks,

Assistant Secretary for Employment Standards.

Roderick A. DeArmant,

Acting Secretary of Labor.

Text of the Interim Final Joint Rule

The text of the interim final joint rule as adopted by ETA and the Wage and Hour Division, ESA, in this document appears below:

Subpart D—Attestations by Facilities Using Nonimmigrant Aliens as Registered Nurses

Sec.
_____.300 Purpose and scope of subparts D and E.
_____.301 Overview of process.
_____.302 Definitions.
_____.310 Attestations.
_____.315 State plans.
_____.320 Appeals of acceptance and rejection of attestations submitted for filing and of State plans.
_____.350 Public access.

Subpart E—Enforcement of H-1A Attestations

_____.400 Enforcement authority of Administrator, Wage and Hour Division.
_____.405 Complaints and investigative procedures.
_____.410 Civil money penalties and other remedies.
_____.415 Written notice and service of Administrator's determination.
_____.420 Request for hearing.
_____.425 Rules of practice for administrative law judge proceedings.
_____.430 Service and computation of time.
_____.435 Administrative law judge proceedings.
_____.440 Decision and order of administrative law judge.
_____.445 Secretary's review of administrative law judge's decision.
_____.450 Administrative record.
_____.455 Non-applicability of the Equal Access to Justice Act.

Subpart D—Attestations by Facilities Using Nonimmigrant Aliens as Registered Nurses

§ _____.300 Purpose and scope of subparts D and E.

(a) *Purpose.* The Immigration Nursing Relief Act of 1989 (INRA) was enacted to provide relief for the nursing shortage crisis. Subpart D of this part sets forth the procedure by which health care facilities seeking to use nonimmigrant registered nurses may submit attestations to the Department of Labor relating to the effects of the nursing shortage on their operations, their efforts to recruit and retain United States workers as registered nurses and certain information on wages and working conditions for nurses at the facility. Subpart E of this part sets forth complaint, investigation, and penalty provisions with respect to such attestations.

(b) *Procedure.* The INRA establishes a procedure for health care facilities to follow in seeking admission to the United States for, or use of, nonimmigrant nurses under H-1A visas. The procedure is designed to reduce reliance on nonimmigrant nurses in the future, and calls for the health care facility to attest, and be able to demonstrate, that, *e.g.*, there would be substantial disruption to health services without the nonimmigrant nurses and that it is taking timely and significant steps to develop, recruit, and retain U.S. nurses. Subparts D and E of this part set forth the specific requirements for those procedures.

(c) *Applicability.* Subparts D and E of this part apply to all facilities that seek the temporary admission or use of, nonimmigrants as registered nurses.

§ _____.301 Overview of process.

This section provides a context for the attestation process, to facilitate understanding by health care facilities that may seek nonimmigrant nurses under H-1A visas.

(a) *Federal agencies' responsibilities.* The United States Department of Labor (DOL), Department of Justice, Department of State, and Department of Health and Human Services are involved in the H-1A visa process. Within DOL, the Employment and Training Administration (ETA) and the Employment Standards Administration (ESA) have responsibility for different aspects of the process.

(b) *Health care facility's attestation responsibilities.* Each health care facility seeking one or more H-1A nurses shall, as the first step, submit an attestation on *Form ETA 9029,* as described in § _____.310 of this part, to the national office of the Employment and Training Administration (ETA) of DOL at the address set forth at § _____.310(b) of this part. If the attestation is found to meet the requirements set forth at § _____.310 (a) through (k) of this part, ETA shall accept the attestation for filing, shall return the cover form of the accepted attestation to the health care facility, and, at the same time, in the case of a facility seeking to employ one or more H-1A nurses and to petition for her/his/their admission, shall notify the Immigration and Naturalization Service (INS) of the Department of Justice of the filing. As discussed in § _____.310 of this part, if the facility proposes to utilize alternative methods to comply with Attestation Elements I and/or IV or asserts that taking a second timely and significant step under Element IV would be unreasonable, or claims a bona fide medical emergency exemption from Element IV as a worksite using one or more H-1A nurses through a nursing contractor only, additional supporting information and ETA review shall be required.

(c) *Visa petitions and supporting letters.* Upon ETA's acceptance of the filing, the health care facility intending to employ the H-1A nurses may then file, with INS, H-1A visa petitions and supporting letters which accompany applications for extensions of stays filed by H-1A nurses, attaching a copy of the accepted attestation form (*Form ETA 9029*). At the same time that the facility files any such visa petition or supporting letter with INS, it shall also send a copy of that visa petition or supporting letter to the ETA national office, at the address set forth at § _____.310(b) of this part.

(d) *Visa issuance.* The usual visa issuance process, including the Department of State role, shall then be followed. INS shall assure that the nonimmigrants possess the required qualifications and credentials to be employed as nurses (see 8 U.S.C. 1182(m)(1)).

(e) *Board of Alien Labor Certification Appeals (BALCA) review of attestations accepted and not accepted for filing.* If an attestation is not accepted by ETA for filing, the health care facility may request review by the DOL Board of Alien Labor Certification Appeals (BALCA). If the attestation is accepted by ETA for filing in those cases where ETA performs a review function, *i.e.,* accepts alternative methods of compliance with Attestation Elements I and IV and/or accepts that taking a second timely and significant step under Element IV would be unreasonable, any interested party may request review by BALCA.

(f) *Complaints.* Complaints concerning misrepresentation in the attestation or failure of the health care facility to carry out the terms of the attestation may be filed with the Wage and Hour Division (Division), Employment Standards Administration (ESA) of DOL, according to the procedures set forth in subpart E of this part. Complaints of "misrepresentation" may include assertions that a facility's attestations of compliance failed to meet the regulatory standards for attestation elements under which the attestation was accepted by ETA for filing without ETA review. The Division shall then investigate, and, where appropriate, after an opportunity for a hearing, assess sanctions and penalties. Subpart E of this part also provides that interested parties may obtain an administrative law judge hearing and may seek the Secretary's review of the administrative law judge's decision.

§ _____.302 Definitions.

For the purposes of subparts D and E of this part:

Accepted for filing means that the attestation and supporting documentation submitted by the health care facility have been received by the Employment and Training Administration of the Department of Labor (DOL) and have been found to be in compliance with the attestation requirements in § _____.310 of this part.

Act and *INA* mean the Immigration and Nationality Act, as amended, 8 U.S.C. 1101 *et seq.*

Administrative law judge means an official appointed pursuant to 5 U.S.C. 3105.

Administrator means the Administrator of the Wage and Hour Division, Employment Standards Administration, Department of Labor, and such authorized representatives as may be designated to perform any of the functions of the Administrator under subparts D and E of this part.

Attorney General means the chief official of the U.S. Department of Justice or the Attorney General's designee.

Board of Alien Labor Certification Appeals (BALCA) means a panel of one or more administrative law judges who serve on the permanent Board of Alien Labor Certification Appeals established by 20 CFR part 656. BALCA consists of administrative law judges assigned to the Department of Labor and designated by the Chief Administrative Law Judge to be members of the Board of Alien Labor Certification Appeals.

Bona fide medical emergency means a situation in which the services of one or more H-1A contract nurses are necessary at a worksite facility (which itself does not employ an H-1A nurse) to prevent death or serious impairment of health, and, because of the danger to life or health, nursing services for such situation are not elsewhere available in the geographic area.

Chief Administrative Law Judge means the chief official of the Office of the Administrative Law Judges of the Department of Labor or the Chief Administrative Law Judge's designee.

Chief, Division of Foreign Labor Certifications, USES means the chief official of the Division of Foreign Labor Certifications within the United States Employment Service, Employment and Training Administration, Department of Labor, or the designee of the Chief, Division of Foreign Labor Certifications, USES.

Date of filing means the date an attestation is "accepted for filing" by ETA.

Department and *DOL* mean the United States Department of Labor.

Director means the chief official of the United States Employment Service (USES), Employment and Training Administration, Department of Labor, or the Director's designee.

Division means the Wage and Hour Division of the Employment Standards Administration, DOL.

Employer means a person, firm, corporation, or other association or organization involved in the direct provision of health care services, which:

(1) Suffers or permits a person to work;

(2) Has a location within the United States to which U.S. workers may be referred for employment;

(3) Proposes to employ workers at a place within the United States; and

(4) Has an employer-employee relationship with respect to employees under subparts D and E of this part, as indicated by the fact that it may hire, pay, fire, supervise or otherwise control the work of such employee.

Employment means full-time work by an employee for an employer/health care facility other than oneself. "Full-time work" means work where the nurse is regularly scheduled to work 40 hours or more per week, unless the facility documents as part of its attestation that it is common practice for the occupation at the facility or for the occupation in the geographic area for nurses to work fewer hours per week.

Employment and Training Administration (ETA) means the agency within the Department of Labor (DOL) which includes the United States Employment Service (USES).

Employment Standards Administration (ESA) means the agency within the Department of Labor (DOL) which includes the Wage and Hour Division.

Facility means a user of nursing services with either a single site or a group of contiguous locations at which it provides health care services. "Facility" includes an employer of registered nurses which provides health care services in a home or other setting, such as a hospital, nursing home, or other site of employment, not owned or operated by the employer (*e.g.*, a visiting nurse association or a nursing contractor). "Facility" also includes a private household which employs or seeks to employ one or more H-1A nurses, but does not include a private household which uses H-1A nurses only through a nursing contractor. Groups of structures which form a campus or separate buildings across the street from one another are a single facility. However, separate buildings or areas which are not physically connected or in immediate proximity are a single health care facility if they are in reasonable geographic proximity, used for the same purpose, and share the same nursing staff and equipment. An example is an entity which manages a nursing home and a hospital in the same area and which regularly shifts or rotates the nurses between the two. Non-contiguous sites, even within the same geographic area, which do not share the same nursing staff and operational purpose are not a single facility. For example, hospitals which are located on opposite sides of a municipality, but which are managed or owned by a single entity, are separate facilities if they do not regularly share nursing staff and operational purpose.

Geographic area means the area within normal commuting distance of the place (address) of the intended worksite. If the geographic area does not include a sufficient number of facilities to make a prevailing wage determination, the term "geographic area" shall be expanded (by the State employment service, unless directed not to do so by the Director) with respect to the attesting facility to include a sufficient number of facilities to permit a prevailing wage determination to be made. If the place of the intended worksite is within a Metropolitan Statistical Area (MSA), any place within the MSA may be deemed to be within normal commuting distance of the place of intended employment.

Governor means the chief elected official of a State or the Governor's designee.

H-1A nurse means any nonimmigrant alien admitted to the United States to perform services as a nurse under section 101(a)(15)(H)(i)(a) of the Act (8 U.S.C. 1101(a)(15)(H)(i)(a)).

Immigration and Naturalization Service (INS) means the component of the Department of Justice which makes the determination under the Act on whether to grant visa petitions to petitioners seeking the admission of nonimmigrant nurses under H-1A visas.

Layoff means an involuntary separation of nurses without cause/prejudice. If nurses are separated from one specialized activity and are offered retraining and retention at the same facility in another activity at the same wage and status, but refuse, this shall not constitute a layoff. The layoff provision applies to nurses only, not to other health occupations. If the position is covered by a collective bargaining agreement, the collective bargaining agreement definition of "layoff" (if any) shall apply to that position.

Lockout means a labor dispute involving a work stoppage, wherein an employer withholds work from its employees in order to gain a concession from them.

Nurse means a person who is or will be authorized by a State Board of Nursing to engage in registered nursing practice in a State or U.S. territory or possession at a facility which provides health care services. In order to qualify under this definition of "nurse" the alien shall:

(1) Have obtained a full and unrestricted license to practice nursing in the country where the alien obtained nursing education, or have received nursing education in the United States or Canada;

(2) Have passed the examination given by the Commission on Graduates of Foreign Nursing Schools (CGFNS), or have obtained a full and unrestricted (permanent) license to practice as a registered nurse in the state of intended employment, or have obtained a full and unrestricted (permanent) license in any state or territory of the United States and received temporary authorization to practice as a registered nurse in the state of intended employment; and,

(3) Be fully qualified and eligible under the laws (including such temporary or interim licensing requirements which authorize the nurse to be employed) governing the place of intended employment to practice as a registered nurse immediately upon admission to the United States, and be authorized under such laws to be employed by the employer. For purposes of this paragraph, the temporary or interim licensing may be obtained immediately after the alien enters the United States and registers to take the first available examination for permanent licensure.

Nursing contractor means an entity that employs registered nurses and supplies these nurses, on a temporary basis and for a fee, to health care facilities or private homes.

Prevailing wage means the average wage paid to similarly employed registered nurses within the geographic area.

Secretary means the Secretary of Labor or the Secretary's designee.

Similarly employed means employed by the same type of facility (acute care or long-term care) and working under like conditions, such as the same shift, on the same days of the week, and in the same specialty area.

State means one of the 50 States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, and Guam.

State employment security agency (SESA) means the State agency designated under section 4 of the Wagner-Peyser Act to cooperate with USES in the operation of the national system of public employment offices.

Strike means a labor dispute wherein employees engage in a concerted stoppage of work (including stoppage by reason of the expiration of a collective-bargaining agreement) or engage in any concerted slowdown or other concerted interruption of operations.

United States Employment Service (USES) means the agency of the Department of Labor, established under the Wagner-Peyser Act, which is

charged with administering the national system of public employment offices.

United States (U.S.) nurse means a nurse who is a U.S. citizen, a U.S. national, a permanent resident alien, or a temporary resident alien.

United States (U.S.) worker means a worker who is a U.S. citizen, a U.S. national, a permanent resident alien, or a temporary resident alien.

United States is defined at 8 U.S.C. 1101(a)(38).

Worksite means the health care facility or home where the nurse is involved in the practice of nursing. It is possible, in the case of nursing contractors, that the employer's physical location and the worksite facility's physical location will differ.

§ _____.310 Attestations.

(a) *Who may submit attestations?* Any entity meeting the definition of "facility" in § _____.302 of this part may submit an attestation. The attestation shall include: a completed *Form ETA 9029,* which shall be signed by the chief executive officer of the facility (or the chief executive officer's designee); and the supporting information prescribed in paragraphs (c) through (k) of this section. A nursing contractor that seeks to employ nonimmigrant nurses shall file its own attestation (including *Form ETA 9029* and supporting information) as prescribed by this section, and, as part of its own attestation, shall attest that it shall refer H-1A nurses only to facilities that, with the exception of private households which themselves do not employ H-1A nurses, have current and valid attestations on file with ETA. Subparts D and E of this part shall apply both to the nursing contractor and to the worksite facility.

(b) *Where should attestations be submitted?* Attestations shall be submitted, by U.S. mail or private carrier, to ETA at the following address:

Chief, Division of Foreign Labor Certifications, U.S. Employment Service, Employment and Training Administration, Department of Labor, 200 Constitution Avenue, NW., Room N-4456, Washington, DC 20210

(c) *What should be submitted?*— (1) *Form ETA 9029 and supporting information.* (i) A completed and dated original *Form ETA 9029,* containing the required attestation elements and the original signature of the chief executive officer of the facility, shall be submitted, along with two copies of the completed, signed, and dated) *Form ETA 9029.* (Copies of *Form ETA 9029* are available at the address listed in paragraph (b) of this section.) In addition, explanations for each of the required attestation elements as to what documentation is available at the facility and how such documentation indicates compliance with the regulatory standards as prescribed in paragraphs (d) through (i) of this section and,

(A) If the facility is a nursing contractor, the special attestation element in paragraph (j) of this section; or

(B) If the facility is a worksite (other than a private household which itself does not employ, seek to employ, or file a visa petition on behalf of an H-1A nurse) which will use H-1A nurses only through a nursing contractor, the special attestation element in paragraph (k) of this section,

shall be submitted in triplicate with the *Form ETA 9029.*

(ii) If the facility is proposing to meet alternative standards for substantial disruption (Element I) and/or the taking of timely and significant steps (Element IV), an explanation of the standards being proposed and an explanation of how these proposed standards are of comparable significance to those set forth in the statute shall be submitted in triplicate. If the facility is attesting that it can only take one timely and significant step (Element IV), it shall submit an explanation, in triplicate, demonstrating that taking a second step is unreasonable. If the facility uses H-1A nurses only through a nursing contractor, but claims a bona fide medical emergency exemption from Element IV, it shall submit a written explanation, in triplicate, demonstrating the existence of such an emergency. DOL may request additional explanation and/or documentation from a facility in the process of determining acceptability in cases described in this paragraph (c)(1)(ii).

(iii) A facility may claim business exigency as a basis for delaying the compilation of documentation supporting its attestation for up to 90 days following submittal of the completed attestation, provided that such submittal is made prior to April 1, 1991. The facility shall provide a full explanation of and support for this claim of business exigency if requested or challenged. Complete supporting documentation relating to all elements shall be maintained at the facility and be open to public examination.

(2) *Attestation elements.* The attestation elements referenced in paragraph (c)(1) of this section are mandated by section 212(m)(2)(A) of the Act (8 U.S.C. 1182(m)(2)(A)). Section 212(m)(2)(A) of the Act requires covered facilities to attest as follows:

(i) The attestation referred to in section 101(a)(15)(H)(i)(a) of the Act, with respect to a facility for which an alien will perform services, is an attestation as to the following:

(A) There would be a substantial disruption through no fault of the facility in the delivery of health care services of the facility without the services of such an alien or aliens.

(B) The employment of the aliens will not adversely affect the wages and working conditions of registered nurses similarly employed.

(C) The aliens employed by the facility will be paid the wage rate for registered nurses similarly employed by the facility.

(D) Either—(*1*) The facility has taken and is taking timely and significant steps designed to recruit and retain sufficient registered nurses who are United States citizens or immigrants who are authorized to perform nursing services, in order to remove as quickly as reasonably possible the dependence of the facility on nonimmigrant registered nurses, or

(*2*) The facility is subject to an approved State plan for the recruitment and retention of nurses (described in section 212(m)(3) of the Act; 8 U.S.C. 1182(m)(3)).

(E) There is not a strike or lockout in the course of a labor dispute, and the employment of such an alien is not intended or designed to influence an election for a bargaining representative for registered nurses of the facility.

(F) At the time of the filing of the petition for registered nurses under section 101(a)(15)(H)(i)(a) of the Act, notice of the filing has been provided by the facility to the bargaining representative of the registered nurses at the facility or, where there is no such bargaining representative, notice of the filing has been provided to registered nurses at the facility through posting in conspicuous locations.

(ii) A facility is considered not to meet paragraph (c)(2)(i)(A) of this section (relating to an attestation of a substantial disruption in delivery of health care services) if the facility, within the previous year, laid off registered nurses. Nothing in paragraph (c)(2)(i)(D) of this section shall be construed as requiring a facility to have taken significant steps described in such paragraph before December 18, 1989 (*i.e.,* the date of enactment of the Immigration Nursing Relief Act of 1989).

(d) *The first attestation element: substantial disruption.* The facility shall attest that "there would be substantial disruption through no fault of the facility in the delivery of health care services of

the facility without the services of such an alien or aliens." This element shall be met if the facility provides the following information:

(1) *Layoffs.* The facility shall attest that it has not laid off nurses during the 12-month period prior to submitting the attestation.

(2) *Nursing shortage.* (i) The facility shall attest that:

(A) It has a current nurse vacancy rate of seven percent or more, and provide brief explanatory information on the actual current nurse vacancy rate for the facility, what documentation is available at the facility to substantiate this attestation, where this documentation is located and can be reviewed, and the applicable time period of the documentation; or

(B) It is unable to utilize seven percent or more of its total beds due to a shortage of nurses, and provide brief explanatory information on the actual current rate of underutilization of beds at the facility due to a nursing shortage, what documentation is available at the facility to substantiate this attestation, where this documentation is located and can be reviewed, and the applicable time period of the documentation; or

(C) It has had to eliminate or curtail the delivery of essential health care services that are otherwise not available in the community due to a shortage of nurses, and provide brief explanatory information about the essential services eliminated or curtailed by the facility due to a nursing shortage, what documentation is available at the facility to substantiate this attestation, where this documentation is located and can be reviewed, and the applicable time period of the documentation; or

(D) It has been unable to effect established plans to provide needed new health care services in the community due to a shortage of nurses, and provide brief explanatory information about needed new services that have not been implemented by the facility due to a nursing shortage and which will be implemented with the availability of H-1A nurses, what documentation is available at the facility to substantiate this attestation, where this documentation is located and can be reviewed, and the applicable time period of the documentation.

(ii) *Other substantial disruption.* When an attesting facility finds that the indicators in paragraphs (d)(2)(i) (A) through (D) of this section cannot be demonstrated, or that such indicators are inappropriate to that facility, but that without the services of H-1A nurses, substantial disruption in the delivery of health care services of the facility still would occur due to a shortage of nurses, the facility shall provide an explanation of how a shortage of nurses has caused a "substantial disruption" in the delivery of its health care services. Such explanation shall be sufficient to provide a clear showing of "substantial disruption" in the delivery of specific health care services due to a shortage of nurses, and shall clearly explain why the indicators in paragraphs (d)(2)(i) (A) through (D) of this section cannot be met by or are inappropriate to that facility. In addition to the documentation required to be maintained by attesting facilities described in paragraph (d)(3) below, facilities attesting under this paragraph also shall maintain and make available for inspection (as described elsewhere in this section) such additional documentation as is necessary to substantiate such claim of substantial disruption.

(3) *Documentation of facility's nursing positions.* The attesting facility shall maintain and make available for inspection (as described in § _____.350(b)) documentation substantiating:

(i) The total number of nursing positions at the facility;

(ii) The number of nursing vacancies at the facility during a twelve-month period ending no later than three months prior to submittal of the attestation;

(iii) The number of nurses who left the facility during the same twelve-month period;

(iv) The number of nurses hired by the facility during the same twelve-month period;

(v) The overall staffing pattern for nursing positions at the facility; and

(vi) A description of the facility's efforts to recruit U.S. nurses during the same twelve-month period. The documentation on numbers of nurses, maintained for the purposes of this paragraph (d)(3), shall be broken out by numbers of U.S. nurses, nurses admitted under H-1 visas, nurses admitted under H-1A visas, nurses admitted under other nonimmigrant visas, and other nurses.

(e) *The second attestation element: no adverse effect.* The facility shall attest that "the employment of the alien will not adversely affect the wages and working conditions of registered nurses similarly employed."

(1) *Wages.* To meet the requirement of no adverse effect on wages, the facility shall attest that it shall pay each nurse at the facility at least the prevailing wage for the occupation in the geographic area. The facility shall pay the higher of the wage required pursuant to this paragraph (e) or the wage required pursuant to paragraph (f) of this section (*i.e.*, the third attestation element: facility wage).

(i) *State employment security agency determination.* The facility does not independently determine the prevailing wage. The State employment security agency (SESA) shall determine the prevailing wage for similarly employed nurses in the geographic area.

(ii) *Collectively bargained wage rates.* Where wage rates for nurses at a facility are the result of arms-length collective bargaining, those rates shall be considered "prevailing" for that facility for the purposes of this subpart.

(iii) *Total compensation package.* The prevailing wage finding under this paragraph (e)(1) relates to wages only. However, each item in the total compensation package for U.S., H-1A, and other nurses employed by the facility shall be the same within a given facility, including such items as housing assistance and other perquisites.

(iv) *Documentation of pay and total compensation.* The facility shall maintain documentation summarizing its pay schedule and compensation package for nurses. See § _____.350(b) of this part. The summary shall cover each category of nursing position in which H-1A nurses are or will be hired or promoted into and each category of nursing position in which H-1A nurses (or nurses admitted on H-1 visas) have been hired or promoted into. Categories of nursing positions not covered by the documentation shall not be covered by the attestation, and, therefore, such position shall not be filled or held by H-1A nurses.

(2) *Working conditions.* To meet the requirement of no adverse effect on working conditions, the facility shall attest that it shall afford equal treatment to U.S. and H-1A nurses with the same seniority, with respect to such working conditions as the number and scheduling of hours worked (including shifts, straight days, weekends); vacations; wards and clinical rotations; and overall staffing-patient patterns.

(f) *The third attestation element: facility/employer wage.* The facility employing or to employ the alien shall attest that "the alien employed by the facility will be paid the wage rate for registered nurses similarly employed by the facility." The facility shall maintain documentation substantiating compliance with this attestation which shall include a description of the factors taken into consideration by the facility in making compensation decisions for nurses and the facility pay schedule for nurses maintained pursuant to paragraph (e)(1) of this section. See § _____.350(b) of this part. The facility

shall pay the higher of the wage required pursuant to this paragraph (f) or the wage required pursuant to paragraph (e) of this section (*i.e.*, the second attestation element: no adverse effect).

(g) *The fourth attestation element: timely and significant steps; or State plan.* The facility may satisfy the fourth attestation element by satisfying Alternative I in paragraph (g)(1) of this section or by satisfying Alternative II in paragraph (g)(2) of this section.

(1) *Alternative I: Timely and significant steps.* The facility shall attest that it "has taken and is taking timely and significant steps designed to recruit and retain sufficient registered nurses who are United States citizens or immigrants who are authorized to perform nursing services, in order to remove as quickly as reasonably possible the dependence of the facility on nonimmigrant registered nurses." The facility shall take at least two such steps, unless it demonstrates that taking a second step is not reasonable. The steps described in this paragraph (g)(1) shall not be considered to be an exclusive list of the significant steps that may be taken to meet the conditions of this paragraph (g)(1). Nothing in this subpart or subpart E of this part shall require a facility to take more than one step, if the facility can demonstrate that taking a second step is not reasonable. The facility is not required to have taken any of these steps prior to December 18, 1989. A facility choosing to take timely and significant steps other than those specifically described in paragraph (g)(1)(i)(A) of this section shall submit with its attestation a description of the steps it is proposing to take and an explanation of how the proposed steps are of comparable timeliness and significance to those described in paragraph (g)(1)(i)(A) of this section. A facility claiming that a second step is unreasonable shall submit an explanation of why such second step would be unreasonable.

(i) *Descriptions of steps*—(A) *Statutory steps.* Each of the actions described in this paragraph (g)(1)(i)(A) shall be considered a significant step reasonably designed to recruit and retain U.S. nurses. A facility choosing any one of the following steps shall attest that its program(s) meets the regulatory requirements set forth for each and provide an explanation of how the requirements are satisfied by the program(s). In addition, the attesting facility shall maintain and make available for inspection (as described in § ____.350(b) of this part) documentation specified in the particular step selected and/or documentation which provides a complete description of the nature and operation of its program(s) sufficient to substantiate its attestation and full compliance with the requirements for the particular step selected.

(*1*) *Step One: "Operating a training program for registered nurses at the facility or financing (or providing participation in) a training program for registered nurses elsewhere."* Training programs may include either courses leading to a higher degree (*i.e.*, beyond an associate or a baccalaureate degree), or continuing education courses. If the program includes courses leading to a higher degree, they shall be courses which are part of a program accepted for degree credit by a college or university and accredited by a State Board of Nursing or a State Board of Higher Education (or its equivalent), as appropriate. If the program includes continuing education courses, they shall be courses which meet criteria established to qualify the nurses taking the courses to earn continuing education units accepted by a State Board of Nursing (or its equivalent). In either type of program, financing by the facility, either directly or arranged through a third party, shall cover the total tuition costs of such training. The number of U.S. nurses for whom such training actually is provided shall be no less than half of the number of nurses who left the facility during the twelve-month period prior to submission of the attestation. (U.S. nurses to whom such training was offered, but who rejected such training, may be counted towards those provided training, but the facility, in such case, shall maintain documentation of such offer and rejection). See § ____.350(b) of this part.

(*2*) *Step Two: "Providing career development programs and other methods of facilitating health care workers to become registered nurses."* This may include programs leading directly to a degree in nursing, or career ladder/career path programs which could ultimately lead to a degree in nursing. A facility choosing this step shall maintain as documentation a description of the content and eligibility requirements for both types of programs and an explanation of how the requirements of this paragraph (g)(1)(i)(A)(*2*) are satisfied by each program. Any such degree program shall be, at a minimum, either through an accredited community college (leading to an associate's degree), four-year college (a bachelor's degree), or diploma school, and the course of study shall be one accredited by a State Board of Nursing (or its equivalent). For career ladder or career path programs, the facility shall maintain documentation that the programs are normally part of a course of study or training which prepares a U.S. worker for enrolling in formal direct training leading to a degree in nursing, either through an accredited community college, a four-year college, or a diploma school. See § ____.350(b) of this part. Financing by the facility, either directly or arranged through a third party, shall cover the total costs of such programs. U.S. workers participating in such programs shall be working or have worked in health care occupations or health care facilities. The number of U.S. workers for whom such training is provided shall be equal to no less than half the average number of vacancies for nurses during the twelve-month period prior to the submission of the attestation.

(*3*) *Step Three: "Paying registered nurses wages at a rate higher than currently being paid to registered nurses similarly employed in the geographic area."* A facility choosing this step shall maintain documentation showing that its entire schedule of wages for nurses is at least five percent higher than the prevailing wages as determined pursuant to paragraph (e)(1) of this section, and it shall attest that such differentials shall be maintained throughout the period of the attestation's effectiveness. See § ____.350(b) of this part.

(*4*) *Step Four: "Providing adequate support services to free registered nurses from administrative and other non-nursing duties."* Non-nursing duties include such activities as housekeeping duties; food preparation and delivery; transporting patients; providing occupational and respiratory therapy; answering telephones; running errands for patients; and clerical tasks. A facility choosing this step shall not require nurses at the facility to perform non-nursing duties. However, it is understood that on an infrequent non-recurring basis, nurses at the facility may perform one or more of the tasks encompassed by the duties listed above in this paragraph (g)(1)(i)(A)(*4*) or other non-nursing duties. Facilities choosing this step shall maintain documentation showing what steps they have taken to ensure that nursing jobs do not include any of these duties and that such activity by nurses at the facility occurs without regularity and infrequently. Such a facility also shall maintain documentation with respect to any other steps being taken to relieve nurses from non-nursing duties, or to enhance the nursing function, such as computerizing

certain writing and routine functions performed by nurses.

(5) *Step Five: "Providing reasonable opportunities for meaningful salary advancement by registered nurses."* Documentation for this step shall include documentation of systems for salary advancement based on factors such as merit, education, and specialty, and/or salary advancement based on length of service with other bases for wage differentials remaining constant.

(*i*) *Merit, education, and specialty.* For salary advancement based on factors such as merit, education, and specialty, the facility shall maintain and make available for inspection documentation that it provides opportunities for professional development of its nurses which lead to salary advancement, *e.g.*, opportunities for continuing education; in-house educational instruction; special committees, task forces, or projects considered of a professional development nature; participation in professional organizations; and writing for professional publications. Such opportunities shall be available to all the facility's nurses.

(*ii*) *Length of service.* For salary advancement based on length of service, the facility shall maintain and make available for inspection documentation that it has clinical ladders in place which provide, annually, salary increases of three percent or more for a period of no less than ten years, over and above the cost of living and merit, education, and specialty increases and differentials.

(B) *Other possible steps.* The Act indicates that the five steps described in paragraphs (g)(1)(i)(A) (1) through (5) of this section are not an exclusive list of timely and significant steps which might qualify. Facilities are encouraged to be innovative in devising other timely and significant steps, but these shall be of timeliness and significance comparable to those in paragraphs (g)(1)(i)(A) (1) through (5) to qualify. A facility may attest that it has taken and is taking other such steps and explain in its attestation what these steps are, their nature and scope, how they are effected and how they meet the statutory test of timeliness and significance comparable to those Steps One through Five described above. A facility choosing alternative steps shall attest that its program(s) meet(s) the statutory requirements of timeliness and significance in promoting the development, recruitment and retention of U.S. nurses, explaining how these requirements are satisfied by such program(s). In addition, the attesting facility shall maintain and make available for inspection (as described in § ____.350(b) of this part) documentation which provides a complete description of the nature and operation of its program(s) sufficient to substantiate its attestation and full compliance with the requirements of this paragraph (g)(1)(i)(B). Examples of such steps which—depending on the circumstances, the size and nature of the attesting facility, the nature and scope of the step(s) described, the number of persons affected, and other such factors—may meet these requirements are:

(*1*) *Monetary Incentives*—providing monetary incentives to nurses, through bonuses and merit pay plans not included in the base compensation package, for additional education, and for efforts leading to increased recruitment and retention of U.S. nurses. Such monetary incentives can be based on actions by nurses such as: Innovations to achieve better patient care, increased productivity, reduced waste, better safety; obtaining additional certification in a nursing specialty; unused sick leave; recruiting other U.S. nurses; staying with the facility for a given number of years; taking less desirable assignments (other than shift differential); participating in professional organizations, on task forces and on special committees; or contributing to professional publications. Facilities attesting to this step shall have a documented system for providing significant financial rewards in the form of bonuses or salary advancement to nurses participating in the activities described in this paragraph.

(*2*) *Special Perquisites*—providing nurses with special perquisites for dependent care or housing assistance of a nature and/or extent that constitute a "significant" factor in inducing employment and retention of U.S. nurses.

(*3*) *Work schedule options*—providing nurses with non-mandatory work schedule options for part-time work, job-sharing, compressed work week or non-rotating shifts (provided, however, that H-1A nurses are employed only in full-time work) of a nature and/or extent that constitute a "significant" factor in inducing employment and retention of U.S. nurses.

(*4*) *Other training options*—providing training opportunities to become registered nurses to U.S. workers not currently in health care occupations by means of financial assistance (*e.g.*, scholarship, loan or pay-back programs) to such persons.

(ii) *Unreasonableness of second step.* The steps described in this paragraph (g)(1) shall not be considered to be an exclusive list of the significant steps that may be taken to meet the conditions of this paragraph (g)(1). Nothing in this subpart or subpart E of this part shall require a facility to take more than one step, if the facility can demonstrate that taking a second step is not reasonable. However, a facility shall make every effort to take at least two steps. A facility taking only one step shall provide an explanation with its attestation, and maintain documentation at the facility, relating to why taking a second step is not reasonable. The taking of a second step may be considered unreasonable if it would result in the facility's financial inability to continue providing the same quality and quantity of health care or if the provision of nursing services would otherwise be jeopardized by the taking of such a step. If the single step which is taken is one of the statutorily defined steps described in paragraphs (g)(1)(i)(A)(*1*) through (g)(1)(i)(A)(*5*) of this section, the facility shall explain with its attestation, and maintain documentation at the facility, with respect to each of the four statutory steps (described in paragraphs (g)(1)(i)(A)(*1*) through (g)(1)(i)(A)(*5*) of this section) not taken, relating to why it would be unreasonable for the facility to take such step and also shall explain with its attestation, and shall maintain and make available for inspection (as described in § ____.350(b) of this part) documentation demonstrating why it would be unreasonable for the facility to take any other steps designed to recruit, develop and retain sufficient U.S. nurses to meet its staffing needs. If the single step which is taken is not one of the five statutory steps described in paragraphs (g)(1)(i)(A)(*1*) through (g)(1)(i)(A)(*5*) of this section, the facility shall, with respect to each of the five statutory steps not taken, explain with its attestation, and maintain documentation and make available for inspection (as described in § ____.350(b) of this part) documentation, demonstrating why it would be unreasonable for the facility to take such step; the facility also shall explain with its attestation, and make available for inspection (as described in § ____.350(b) of this part) documentation demonstrating why it would be unreasonable for the facility to take any other steps designed to recruit and retain sufficient U.S. nurses to meet its staffing needs. On the basis of the explanation submitted by the facility, the Chief, Division of Foreign Labor Certifications, USES, shall determine whether the requirements of this paragraph (g)(1)(ii) have been met. See

paragraph (m) of this section regarding such determinations and administrative appeals therefrom.

(iii) *Alternative to criteria for each specific step.* Instead of complying with the specific criteria for each of the steps in the second and succeeding years, a facility may include in its prior year's attestation, in addition to the actions taken under Steps One through Five, that it shall reduce the number of alien (H-1 and H-1A visaholders) nurses it utilizes one year from the date of attestation by at least 10 percent, without reducing the quality or quantity of services provided. If this goal is achieved (as demonstrated by documentation maintained by the facility and made available for inspection, and indicated in its subsequent year's attestation), the facility's subsequent year's attestation may simply include the *Form ETA 9029,* an explanation demonstrating that this goal has been achieved and an attestation that it shall again reduce the number of alien nurses it utilizes one year from the date of attestation by at least 10 percent. This alternative is designed to permit a facility to achieve the objectives of the Act, without subjecting the facility to detailed requirements and criteria as to the specific means of achieving that objective. The first, second and succeeding years shall be consecutive.

(2) *Alternative II: subject to approved annual State plan.* As an alternative to attesting to the timely and significant steps set forth in paragraph (g)(1) of this section, the facility may attest that it "is subject to an approved State plan for the recruitment and retention of nurses." The contents of the annual State plan are described in more detail in § _____.315 of this part. For an individual facility to meet the requirements of this paragraph (g)(2), the annual State plan shall provide for the taking of timely and significant steps by that facility, and the facility shall maintain appropriate documentation with respect to those steps. See § _____.350(b) of this part. To qualify for this Alternative II, the annual State plan shall have been approved prior to the date the facility submits its attestation to ETA for filing.

(h) *The fifth attestation element: No strike or lockout; no intention or design to influence bargaining representative election.* The facility shall attest that "there is not a strike or lockout in the course of a labor dispute, and the employment of such an alien is not intended or designed to influence an election for a bargaining representative for registered nurses of the facility." Labor disputes for purposes of this attestation element relate only to those involving nurses providing nursing services; other health service occupations are not included. This attestation element applies to strikes and lockouts and elections of bargaining representatives at both the facility employing the nurse and, in the case of nursing contractors, at the worksite facility.

(1) *Notice of strike or lockout.* In order to remain in compliance with the no strike or lockout portion of this attestation element, if a strike or lockout of nurses at the facility occurs during the one year's validity of the attestation, the facility, within three days of the occurrence of the strike or lockout, shall submit to ETA, by U.S. mail or private carrier, written notice of the strike or lockout.

(2) *ETA notice to INS.* Upon receiving from a facility a notice described in paragraph (h)(1) of this section, ETA shall examine the documentation, and may consult with the union at the facility or other appropriate entities. If ETA determines that the strike or lockout is covered under INS's "*Effect of strike*" regulation for "H" visaholders, ETA shall certify to INS, in the manner set forth in that regulation, that a strike or other labor dispute involving a work stoppage of nurses is in progress at the facility.

(i) *The sixth attestation element: notice of filing.* The facility shall attest that at the time of filing of the petition for registered nurses under section 101(a)(15)(H)(i)(a) of the Act, notice of filing has been provided by the facility to the bargaining representative of the registered nurses at the facility or, where there is no such bargaining representative, notice of the filing has been provided to registered nurses at the facility through posting in conspicuous locations. This requirement applies to providing notice of filing both for attestations submitted to ETA and for visa petitions filed with INS.

(1) *Notification of bargaining representative.* No later than the date the attestation is mailed to DOL to be considered for filing, the facility shall notify the bargaining representative (if any) for nurses at the facility that the attestation is being submitted to DOL, and shall state in that notice that the attestation is available at the facility (explaining how it can be inspected or obtained) and at the national office of ETA for review by interested parties. No later than the date the facility transmits a visa petition for H-1A nurses to INS, the facility shall notify the bargaining representative (if any) for nurses at the facility that the visa petition is being submitted to INS, and shall state in that notice that the attestation and visa petition are available at the facility (explaining how they can be inspected or obtained) and at the national office of ETA for review by interested parties. Notices under this paragraph (i)(1) shall include the following statement: "Complaints alleging misrepresentation of material facts in the attestation or failure to comply with the terms of the attestation may be filed with any office of the Wage and Hour Division of the United States Department of Labor."

(2) *Posting notice.* If there is no bargaining representative for nurses at the facility, when the facility submits an attestation to ETA, and each time the facility files an H-1A visa petition with INS, the facility shall post a written notice at the facility (and, in addition, at the worksite facility, if at a different location, such as in the case of nursing contractors), stating that the attestation and/or visa petition(s) have been filed and are available at the facility (explaining how these documents can be inspected or obtained) and at the national office of ETA for review by interested parties. In order for the facility to remain in compliance with this paragraph (i)(2), all such notices shall remain posted during the validity period of the attestation and the attestations and petitions shall be available for examination at the facility throughout this period of time. The notice of posting shall provide information concerning the availability of these documents for examination at the facility and at the national office of ETA, and shall include the following statement: "Complaints alleging misrepresentation of material facts in the attestation or failure to comply with the terms of the attestation may be filed with any office of the Wage and Hour Division of the United States Department of Labor." Such posted notices shall be clearly visible and unobstructed while posted, shall be posted in conspicuous places, where the facility's U.S. nurses readily can read the posted notice on the way to or from their duties. Appropriate locations for posting such notices include locations in the immediate proximity of mandatory Fair Labor Standards Act wage and hour notices and Occupational Safety and Health Act occupational safety and health notices.

(j) *Special provisions for nursing contractors.* A nursing contractor submitting an attestation for filing as a facility shall attest, in addition to the first through sixth attestation elements, that it will refer H-1A nurses only to

facilities that (with the exception of private households which themselves do not employ H-1A nurses) have valid attestations on file with ETA. The nursing contractor shall obtain from each such worksite facility a copy of that facility's *Form ETA 9029*, accepted for filing by ETA and then currently on file with ETA. The nursing contractor shall maintain a copy of such worksite facility's accepted attestation on file at the nursing contractor's principal office during the validity period of the nursing contractor's attestation or the period of time that any H-1A nurse in its employ is providing nursing services at the worksite facility, whichever is longer.

(k) *Special provisions for worksite facilities which are not employers of H-1A nurses and are not controlled by employers of H-1A nurses.* A facility (other than a private household) which obtains the services of an H-1A nurse by contracting with a nursing contractor, but which is itself neither the employer of any H-1A nurse nor controlled by the employer of any H-1A nurse (see paragraph (k)(1) of this section), shall file an attestation with ETA pursuant to this subpart. Such a worksite facility may request from ETA a waiver of specific elements of the attestation to avoid duplicative attestations, in cases of temporary, emergency circumstances, with respect to information not within the knowledge of the attestor, or for other good cause. The attesting worksite facility shall be able to demonstrate the existence of the circumstances or good cause which are asserted as the basis(es) for the request for a waiver are of a particular element of the attestation, but need not submit such evidence with its request for waiver, except evidence with respect to a bona fide medical emergency (see paragraph (k)(3)(iii) of this secton).

(1) *Worksites employing, seeking to employ, or filing visa petitions on behalf of H-1A nurses.* An attestation with respect to which waiver is requested or granted pursuant to this paragraph (k) is not valid (*i.e.*, is not "on file and in effect") for a worksite facility employing, seeking to employ, or filing a visa petition on behalf of H-1A nurses. Only an attestation meeting the requirements of paragraphs (a) through (j) of this part (and paragraph (k) of this part, in the case of a nursing contractor) can serve as the basis for a petition for an H-1A visa. A worksite facility which uses H-1A nurses only through a nursing contractor and, as part of its attestation, requests waiver of one or more attestation elements nevertheless shall file a complete attestation in order to be able to use such attestation as a basis for itself filing a visa petition for an H-1A nurse. Thus, a worksite facility should consider its future needs for H-1A nurses in filing attestations and requests for waiver pursuant to this paragraph (k).

(2) *Inapplicability of third attestation element: facility/employer wage.* If a worksite facility uses H-1A nurses only through a nursing contractor, the third attestation element (facility/employer wage; see paragraph (f) of this section) is not applicable to that facility, since the worksite facility is not the employer of the H-1A nurse and does not guarantee the H-1A nurse's wage.

The third attestation element is required only for the employer of the H-1A nurse(s), *i.e.*, the third attestation element shall be included in the attestation of and met by the H-1A nurse's employer (*i.e.*, the nursing contractor).

(3) *Waiver of attestation elements.* ETA may consider, pursuant to this paragraph (k)(3) requests for waiver of certain attestation elements by a worksite facility which uses or will use an H-1A nurse provided by a nursing contractor (*i.e.*, an "H-1A contract nurse"), but which worksite facility itself does not employ, seek to employ, or file a visa petition on behalf of an H-1A nurse. Paragraphs (k)(3) (i) through (iii) of this section set forth different conditions for waiver depending on the number of workdays of H-1A contract nurse services the worksite facility will use. For the purposes of this paragraph (k)(3), a "workday" shall consist of one H-1A contract nurse working for one normal shift in a day. Thus, for example, three normal shifts worked by each of a group of five H-1A contract nurses totals 15 workdays.

(i) *Minimal use of H-1A contract nurses by a worksite.* Where the attesting worksite facility attests in its request for waiver pursuant to this paragraph (k)(3) that it will use no more than a total of 15 workdays of H-1A contract nurse services in any 3-month period of the attestation's one-year period of validity to meet emergency needs on a temporary basis, ETA may waive the first (substantial disruption), second (adverse effect), and fourth (timely and significant steps or State plan) elements of the attesting worksite facility's attestation. See paragraphs (d), (e), and (g) of this section; see also paragraphs (f) and (k)(2) of this section, with respect to the inapplicability of third attestation element (facility/employer wage). ETA shall not waive pursuant to this paragraph (k)(3)(i) the fifth attestation element (strike, lockout, or intent or design to influence bargaining representative election) or the sixth attestation element (notice). See paragraphs (h) and (i) of this section.

(ii) *Short-term use of H-1A contract nurses.* Where the attesting worksite facility attests in its request for waiver pursuant to this paragraph (k)(3) that it will use no more than a total of 60 workdays of H-1A contract nurse services in any 3-month period of the attestation's one-year period of validity to meet temporary needs, ETA may waive the nursing shortage component of the first element (substantial disruption; see paragraphs (d)(2) and (d)(3) of this section) and may waive the fourth (timely and significant steps or State plan; see paragraph (g) of this section) element of the attesting worksite facility's attestation. See also paragraphs (f) and (k)(2) of this section, with respect to the inapplicability of third attestation element (facility/employer wage). ETA shall not waive pursuant to this paragraph (k)(3)(ii) the no-layoff component of the first attestation element (substantial disruption; see paragraph (d)(1) of this section); the second attestation element (adverse effect); the fifth attestation element (strike, lockout, or intent to influence a bargaining representative election); or the sixth attestation element (notice). See paragraphs (d), (e), (h), and (i) of this section.

(iii) *Long-term use of H-1A contract nurse services.* Where the attesting worksite facility attests in its request for waiver pursuant to this paragraph (k)(3) that it will use more than 60 workdays of H-1A contract nurse services in any 3-month period of the attestation's one-year period of validity, ETA shall not waive any attestation element, except that, if the attestor documents a bona fide medical emergency warranting a waiver of the fourth attestation element (timely and significant steps or State plan) ETA may waive such element. See paragraph (g) of this section.

(l) *Agents of worksite facilities.* A worksite facility (including a worksite facility which itself employs or seeks to employ an H-1A nurse) may authorize a nursing contractor to act as its agent in preparing and filing the worksite facility's attestation; however, a worksite facility using an agent for preparation and filing of the attestation is responsible for the contents of such attestation and remains liable for any violations which may be disclosed in any investigation under Subpart E of this Part, and the chief executive officer of the worksite facility shall sign the original attestation, as required by paragraph (c)(1)(i) of this section.

(m) *Actions on attestations submitted for filing.* An attestation which meets the established criteria set forth in this § ____.310 shall be accepted for filing by ETA on the date it is signed by the Chief, Division of Foreign Labor Certifications. ETA shall then follow the procedures set forth in paragraph (m)(1) of this section. An attestation submitted by a facility proposing alternative criteria or steps for the first and/or the fourth attestation elements, and/or proposing to take only one timely and significant step, and/or claiming a bona fide medical emergency exemption from the fourth attestation element shall be reviewed by ETA, and a determination shall be made by the Chief, Division of Foreign Labor Certifications, USES, whether to accept or reject the attestation for filing. See paragraphs (d)(2)(ii), (g)(1)(i)(B), (g)(1)(ii), and (k)(3)(iii) of this section. The Chief may request additional explanation and/or documentation from the facility in making this determination. If the Chief does not contact the facility for such information or make any determination within 30 days of receiving the attestation, the attestation shall become accepted for filing. Upon the facility's submitting the attestation to ETA and providing the notice required by the sixth attestation element (see § ____.310(i) of this part), the attestation shall be available for public examination at the health care facility itself and at the ETA national office. Information contesting an attestation received by ETA prior to the determination to accept or reject the attestation for filing shall not be made part of ETA's administrative record on the attestation, but shall be referred to ESA to be processed as a complaint pursuant to Subpart E of this part, and, if such attestation nevertheless is accepted by ETA for filing, the complaint will be handled by ESA under that subpart.

(1) *Acceptance.* (i) If the attestation (and any supporting documentation that may be required) meet the requirements of this subpart, ETA shall accept the attestation for filing, shall, in the case of a facility intending to file a visa petition as the employer of an H-1A nurse, notify INS in writing of the filing, and shall return to the facility one copy of the attestation form submitted by the facility, with ETA's acceptance indicated thereon. The facility may then file a visa petition with INS for alien nurses in accordance with INS regulations.

(ii) DOL is not the guarantor of the accuracy, truthfulness or adequacy of an attestation accepted for filing.

(2) *Appeals of acceptances.* If an attestation which is subject to a determination under paragraph (d)(2)(ii), (g)(1)(i)(B), (g)(1)(ii), or (k)(3)(iii) of this section is accepted for filing, any interested party may appeal ETA's determination(s) on the element(s) that have been reviewed. Appeals of acceptances shall be filed with the BALCA, no later than 30 days after the date of acceptance, and will be considered under the procedures set forth at § ____.320 of this part.

(3) *Appeals of rejections.* If the attestation is not accepted for filing, which may occur as a result of a determination under paragraph (d)(2)(ii), (g)(1)(i)(B), (g)(1)(ii), or (k)(3)(iii) of this section, ETA shall notify the facility in writing, specifying the reasons for rejection and quoting the language of § ____.320(a)(1) of this part. Any interested party may appeal such rejection to the BALCA, no later than 30 days after the date of rejection. Appeals of rejections shall be filed and considered under the procedures set forth at § ____.320 of this part.

(n) *Effective date and validity of filed attestations.* An attestation becomes filed and effective as of the date it is accepted and signed by the Chief, Division of Foreign Labor Certifications, USES/ETA, and accepted thereby for filing. Such attestation is valid for the 12-month period beginning on the date of acceptance for filing, unless suspended or invalidated pursuant to § ____.320 of this part or subpart E of this part. The filed attestation expires at the end of the 12-month period of validity.

(o) *Suspension or invalidation of filed attestation.* Suspension or invalidation of an attestation may result from a BALCA decision reversing an ETA acceptance for filing; from investigations by the Administrator, Wage and Hour Division, of the facility's misrepresentation in or failure to carry out its attestation; or from a discovery by ETA that it made an error in its review of the attestation (in those cases where ETA performs such review pursuant to paragraph (d)(2)(ii), (g)(1)(i)(B), (g)(1)(ii), (k)(3)(iii) of this section) and that the explanation and documentation provided and maintained by the facility does not or did not meet the criteria set forth at § ____.310 (a) through (k) of this part. If an attestation is suspended or invalidated, DOL shall notify INS.

(1) *Result of BALCA or Wage and Hour Division action.* If an attestation is suspended or invalidated as a result of a BALCA decision overruling an acceptance of the attestation for filing, or is suspended or invalidated as a result of a Wage and Hour Division action pursuant to subpart E of this part, such suspension or invalidation may not be separately appealed, but shall be merged with appeals of BALCA's or the Wage and Hour Division's determination on the underlying violation.

(2) *Result of ETA action.* If, after accepting an attestation for filing, ETA discovers that it erroneously accepted that attestation for filing, and, as a result, ETA suspends or invalidates that acceptance, the facility may appeal such suspension or invalidation pursuant to § ____.320 of this part as if that suspension or invalidation were a decision to reject the attestation for filing.

(p) *Facility's responsibilities during suspension and after invalidation or expiration of filed attestation.* A facility shall comply with the terms of its attestation, even if such attestation is suspended, invalidated, or expired, as long as any H-1A nurse is at the facility, unless the attestation is superseded by a subsequent attestation accepted for filing by ETA.

(q) *Facilities subject to penalties.* No attestation shall be accepted for filing from a nursing contractor or other facility which has failed to comply with any penalty, sanction, or other remedy assessed in a final agency action following an investigation by the Wage and Hour Division pursuant to subpart E of this part.

(Approved by the Office of Management and Budget under Control No. 1205-0305.)

§ ____.315 State plans.

A State may submit an annual plan for the recruitment and retention of U.S. citizens and permanent resident aliens who are authorized to perform nursing services in the State.

(a) *Who should prepare and file the annual plan?* The Governor of each State that chooses to submit an annual State plan shall be responsible for the preparation and filing of the annual plan. The Governor may designate any public and/or private organization(s) to assist the Governor in the development of the annual plan.

(b) *When and where should the annual plan be filed?* If a State determines to file an annual State plan, the Governor shall submit the original plan, signed by the Governor, by U.S. mail or private carrier, to ETA at the following address: Director, U.S. Employment Service, Employment and Training Administration, Department of Labor, 200 Constitution Avenue NW., Room N-4456, Washington, DC 20210.

An annual State plan may be filed with ETA at any time. However, for an individual facility legitimately to attest to being subject to an annual State plan for the purposes of the fourth attestation element, Alternative II (see § ____.310(g)(2) of this part), such annual State plan shall have been approved prior to the date the attestation was submitted to ETA for filing and be in current effect. Therefore, if the Governor is aware that a facility within the State plans to submit an attestation for filing with ETA, the annual State plan should be mailed to ETA at least 35 days prior to the facility's submission of its attestation to ETA.

(c) *What overall issues should the annual State plan address?* The annual State plan shall address the overall issue of supply of and demand for nurses within the State, with particular emphasis on measures to develop a sufficient supply of U.S. nurses to meet projected demand. The State, as opposed to individual facilities, is in a position—and may be expected to—address broad issues and perform such functions as conducting a Statewide needs assessment; overall management, facilitation and coordination among various interested entities within the State; and undertaking more regionally based approaches. The State is also in a position to devote resources which individual facilities may be lacking.

(d) *How should the annual State plan address the timely and significant steps?* The annual State plan shall address all of the timely and significant steps in §§ ____.310 (g)(1)(i)(A)(*1*) through (g)(1)(i)(A)(*5*) of this part generically, without regard to the specific criteria therein, on a Statewide basis. However, for the annual State plan to satisfy Alternative II of the fourth attestation requirement for an individual facility (see § ____.310(g)(2) of this part), the annual State plan shall indicate which of those timely and significant steps relate to individual facilities, and that each individual facility shall take such a step (either one step or more, as appropriate) to meet the appropriate specific criteria as set forth in § ____.310(g)(1).

(e) *What other components may the annual State plan include?* An annual State plan may include the following components:

(1) The cooperation of high schools and colleges may be enlisted in counseling health workers and other individuals to enter the nursing profession.

(2) Geographic and salary data may be made available to assist in linking nurses to facilities.

(3) Publications of vacancies and programs may be made in industry and State newsletters.

(4) Training films and videotapes, as well as information on housing and relocation services, may be developed and distributed.

(5) Measures may be taken to encourage other health professionals to become nurses, such as: setting up home study programs with State licensing boards to allow work credits for purposes of meeting educational or State clinical requirements; entering into cooperative agreements for providing health care insurance and other job-related elements which would allow greater flexibility for those attempting to combine careers and school; providing monetary grants or long-term loans to persons preparing to become nurses.

(6) Steps may be taken to encourage nurses who have left the nursing field to return to nursing, by providing such inducements as child care, holiday schedule adjustments, and substantial salary increases.

(7) The State may profile and publicize those facilities with special model programs.

(8) The annual State plan may place demands on facilities for comprehensive plans to reduce reliance on foreign nurses.

(f) *Approval and disapproval of annual State plans.* Determinations of approval and disapproval of annual State plans shall be made by the Director, USES. The annual State plan shall be reviewed by ETA, in consultation with the Department of Health and Human Services, and a determination to approve or disapprove the annual State plan made within 30 calendar days of ETA's receipt of the plan.

(1) If the annual State plan is approved, the Director shall notify the Governor in writing.

(2) If the annual State plan is disapproved, the Director shall notify the Governor in writing, specifying the reason(s) for disapproval. The notice shall state that within 30 calendar days of the date of the notice of disapproval, the Governor may correct the deficiencies noted in the disapproval and resubmit the annual State plan to ETA; and shall inform the state of its right to an appeal, by quoting the language of § ____.320(a) of this part.

(g) An approved annual State plan shall be valid for 12-month period beginning on the date of its approval by DOL.

(Approved by the Office of Management and Budget under Control No. 1205-0305)

§ ____.320 Appeals of acceptance and rejection of attestations submitted for filing and of State plans.

(a) *Appeal rights*—(1) *Attestations; when to file appeals from acceptances and rejections.* On the basis that the explanation and documentation provided and maintained by the facility does not or did not meet the criteria set forth at § ____.310(d)(2)(ii), (g)(1)(i)(B)(*5*), or (g)(1)(ii) of this part, an interested party may appeal an acceptance or rejection by ETA of an attestation submitted by a facility for filing in those cases where DOL performed an attestation review function under those provisions. The appeal shall be limited to ETA's determinations on the element(s) reviewed and shall not be an appeal as to any other element(s) in the attestation. An interested party may also appeal ETA's invalidation or suspension of a filed attestation due to a discovery by ETA that it made an error in its reviewing of the attestation (see § ____.310(o) of this part). In the case of an appeal of an acceptance, the facility shall be a party to the appeal; in the case of the appeal of a rejection, invalidation, or suspension, the collective bargaining representative (if any) representing nurses at the facility shall be a party to the appeal. Appeals shall be in writing; shall set forth the grounds for the appeal; shall state if *de novo* consideration by BALCA is requested; and shall be mailed by certified mail within 30 calendar days of the date of the action from which the appeal is taken (*i.e.*, the acceptance, rejection, suspension or invalidation of the attestation).

(2) *Annual State plans; when to file appeals from disapprovals.* A Governor of a State may appeal from ETA's disapproval of an annual State plan. Individual facilities in the State may file briefs as *amici curiae*. Appeals shall be in writing and shall be mailed by certified mail within 30 calendar days of the disapproval of the annual State plan.

(3) *Where to file appeals.* Appeals made pursuant to this section shall be in writing and shall be mailed by certified mail to: Director, U.S. Employment Service, Employment and Training Administration, Department of Labor, 200 Constitution Avenue, NW., Room N-4456, Washington, DC 20210

(4) *Complaints.* Appeals under this paragraph (a) shall not encompass questions of misrepresentation by a health care facility or nonperformance by such a facility of its attestation. Such complaints shall be filed with an office of the Wage and Hour Division, United States Department of Labor.

(b) *Transmittal to BALCA; case file.* Upon receipt of an appeal pursuant to this section, the Director, USES, shall send to BALCA a certified copy of the ETA case file, containing the attestation and supporting documentation and any other information or data considered by ETA in taking the action being appealed. The administrative law judge chairing BALCA shall assign a panel of one or more administrative law judges who serve on BALCA to review the record for legal sufficiency and to consider and rule on the appeal.

(c) *Consideration on the record; de novo hearings*—(1) *General.* BALCA shall not remand, dismiss, or stay the case, except as provided in paragraph (c)(2) of this section, but may otherwise consider the appeal on the record or in a *de novo* hearing (on its own motion or on a party's request). Interested parties and *amici curiae* may submit briefs in accordance with a schedule set by BALCA. The ETA official making the determination from which the appeal was taken shall be represented by the Associate Solicitor for Employment and Training Legal Services, Office of the Solicitor, Department of Labor, or the Associate Solicitor's designee. If BALCA determines to hear the appeal on the record without a *de novo* hearing, BALCA shall render a decision within 30 calendar days after BALCA's receipt of the case file. If BALCA determines to hear the appeal through a *de novo* hearing, the procedures contained in 29 CFR part 18 shall apply to such hearings, except that:

(i) The appeal shall not be considered to be a complaint to which an answer is required;

(ii) BALCA shall ensure that, at the request of the appellant, the hearing is scheduled to take place within a reasonable period after BALCA's receipt of the case file (see also the time period described in paragraph (c)(1)(iv) of this section);

(iii) Technical rules of evidence, such as the Federal Rules of Evidence and subpart B of the Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges (29 CFR part 18, subpart B), shall not apply to any hearing conducted pursuant to this subpart, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by BALCA conducting the hearing; BALCA may exclude irrelevant, immaterial, or unduly repetitious evidence; the certified copy of the case file transmitted to BALCA by the Director, USES, shall be part of the evidentiary record of the case and need not be moved into evidence; and

(iv) BALCA's decision shall be rendered within 120 calendar days after BALCA's receipt of the case file.

(2) *Dismissals and stays.* If the BALCA determines that the appeal is solely a question of misrepresentation by the facility or is solely a complaint of the facility's nonperformance of the attestation, BALCA shall dismiss the case and refer the matter to the Administrator, Wage and Hour Division, for action under subpart E of this part. If the BALCA determines that the appeal is partially a question of misrepresentation by the facility or is partially a complaint of the facility's nonperformance of the attestation, BALCA shall refer the matter to the Administrator, Wage and Hour Division, for action under subpart E of this part and shall stay BALCA consideration of the case pending final agency action on such referral. During such stay, the 120-day period described in paragraph (c)(1)(iv) of this section shall be suspended.

(d) *BALCA's decision.* After consideration on the record or a *de novo* hearing, BALCA shall either affirm or reverse ETA's decision, and shall so notify the appellant, the Director, and any other parties. See § _____.450 of this part regarding custody of the record of the appeal.

(e) *Decisions on attestations.* With respect to an appeal of the acceptance, rejection, suspension or invalidation of an attestation, the decision of BALCA shall be the final decision of the Secretary, and no further review shall be given to the matter by any DOL official.

(f) *Decisions on annual State plans.* With respect to an appeal of the disapproval of an annual State plan, the decision of the BALCA shall be the final decision by the Secretary, unless a petition for review of the BALCA decision is filed with the Secretary and the Secretary determines to review the decision.

(1) *Filing of petition for review.* The Director or the State desiring review of the decision and order of BALCA shall petition the Secretary to review the decision and order. To be effective, such petition shall be received by the Secretary within 30 days of the date of the decision and order. Copies of the petition shall be served on all parties and on BALCA.

(2) *Form of petition for review.* No particular form is prescribed for any petition for Secretary's review permitted by this paragraph (f). However, any such petition shall:

(i) Be dated;

(ii) Be typewritten or legibly written;

(iii) Specify the issue or issues stated in the BALCA decision and order giving rise to such petition;

(iv) State the specific reason or reasons why the party petitioning for review believes such decision and order are in error;

(v) Be signed by the party filing the petition or by an authorized representative of such party;

(vi) Include the address at which such party or authorized representative desires to receive further communications relating thereto; and

(vii) Attach copies of BALCA's decision and order, and any other record documents which would assist the Secretary in determining whether review is warranted.

(3) *Notice of determination to review.* Whenever the Secretary determines to review the decision and order of BALCA on an annual State plan, a notice of the Secretary's determination shall be served upon BALCA and upon all parties to the proceeding within 30 days after the Secretary's receipt of the petition for review.

(4) *Hearing record.* Upon receipt of the Secretary's notice, BALCA shall within fifteen days forward the complete hearing record to the Secretary.

(5) *Contents of Secretary's notice.* The Secretary's notice shall specify:

(i) The issue or issues to be reviewed;

(ii) The form in which submissions shall be made by the parties;

(iii) The time within which such submissions shall be made.

(6) *Filing of documents.* All documents submitted to the Secretary pursuant to this paragraph (f) shall be filed with the Secretary of Labor, U.S. Department of Labor, Washington, DC 20210, Attention: Executive Director, Office of Administrative Appeals, Room S-4309. An original and two copies of all documents shall be filed. Documents are not deemed filed with the Secretary until actually received by the Secretary. All documents, including documents filed by mail, shall be received by the Secretary either on or before the due date.

(7) *Service of documents.* Copies of all documents filed with the Secretary pursuant to this paragraph (f) shall be served upon all other parties involved in the proceeding. Service upon the Director shall be in accordance with paragraph (a)(3) of this section.

(8) *Secretary's decision.* The Secretary's final decision pursuant to this paragraph (f) shall be issued within 180 days from the date of the notice of intent to review. The Secretary's

decision shall be served upon all parties and BALCA.

(9) *Transmittal of record.* Upon issuance of the Secretary's decision under this paragraph (f), the Secretary shall transmit the entire record to the Chief Administrative Law Judge for custody pursuant to § _____.450 of this part.

§ _____.350 Public access.

(a) *Public examination at ETA.* ETA shall make available for public examination in Washington, DC, a list of facilities which have filed attestations, and such facilities' visa petitions (if any) for H-1A nurses, and for each such facility, a copy of the facility's attestation and any supporting documents it has received; the annual State plan (if any) which relates to the facility's attestation; and a copy of each of the facility's H-1A visa petitions (if any) to INS. A copy of the latter shall be transmitted to ETA by the facility at the same time it is submitted to INS. The facility shall also forward to ETA a copy of the INS visa petition approval notice within five days after it is received from INS.

(b) *Public examination at facility.* For the duration of the attestation's validity and thereafter for so long as the facility uses any H-1 or H-1A nurse under the attestation, the facility shall maintain a separate file containing the attestation and required documentation, and shall make this file available to any interested parties within 72 hours upon written or oral request. If a party requests a copy of the file, the facility shall provide it and any change for such copy shall not exceed the cost of reproduction.

(c) *Notice to public.* ETA periodically shall publish a notice in the **Federal Register** announcing the names and addresses of facilities which have submitted attestations; facilities which have attestations on file; facilities which have submitted attestations which have been rejected for filing; facilities which have had attestations suspended; States which have submitted annual State plans; States which have approved annual State plans; and States which have submitted annual State plans which were disapproved.

(Approved by the Office of Management and Budget under Control No. 1205-0305)

Subpart E—Enforcement of H-1A Attestations

§ _____.400 Enforcement authority of Administrator, Wage and Hour Division.

(a) The Administrator shall perform all the Secretary's investigative and enforcement functions under 8 U.S.C. 1182(m) and subparts D and E of this part.

(b) The Administrator, either pursuant to a complaint or otherwise, shall conduct such investigations as may be appropriate and, in connection therewith, enter and inspect such places and such records (and make transcriptions thereof), question such persons and gather such information as deemed necessary by the Administrator to determine compliance regarding the matters to which a health care facility has attested under section 212(m) of the INA (8 U.S.C. 1182(m)) and subparts D and E of this part.

(c) A facility being investigated shall make available to the Administrator such records, information, persons, and places as the Administrator deems appropriate to copy, transcribe, question, or inspect. No facility shall interfere with any official of the Department of Labor performing an investigation, inspection or law enforcement function pursuant to 8 U.S.C. 1182(m) or subparts D or E of this part. In the event of such interference, the Administrator may deem the interference to be a violation and take such further actions as the Administrator considers appropriate.

(Note: Federal criminal statutes prohibit certain interference with a Federal officer in the performance of official duties. 18 U.S.C. 111 and 18 U.S.C. 1114.)

(d) A facility subject to subparts D and E of this part shall at all times cooperate in administrative and enforcement proceedings. No facility shall intimidate, threaten, restrain, coerce, blacklist, discharge, or in any manner discriminate against any person because such person has:

(1) Filed a complaint or appeal under or related to section 212(m) of the INA (8 U.S.C. 1182(m)) or subpart D or E of this part;

(2) Testified or is about to testify in any proceeding under or related to section 212(m) of the INA (8 U.S.C. 1182(m)) or subpart D or E of this part;

(3) Exercised or asserted on behalf of himself or others any right or protection afforded by section 212(m) of the INA (8 U.S.C. 1182(m)) or subpart D or E of this part.

(4) Consulted with an employee of a legal assistance program or an attorney on matters related to the Act or to subparts D or E of this part or any other DOL regulation promulgated pursuant to 8 U.S.C. 1182(m).

In the event of such intimidation or restraint as are described in paragraphs (d)(1), (d)(2), (d)(3), or (d)(4) of this section, the Administrator may deem the conduct to be a violation and take such further actions as the Administrator considers appropriate.

(e) A facility subject to subparts D and E of this part shall maintain a separate file containing its attestation and required documentation, and shall make that file or copies thereof available to interested parties, as required by § _____.350(b) of this part. In the event of a facility's failure to maintain the file, to provide access, or to provide copies, the Administrator may deem the conduct to be a violation and take such further actions as the Administrator considers appropriate.

(f) No health care facility shall seek to have an H-1A nurse, or any other nurse similarly employed by the employer, or any other employee waive rights conferred under the Act or under subparts D or E of this part. In the event of such waiver, the Administrator may deem the conduct to be a violation and take such further actions as the Administrator considers appropriate. Any agreement by an employee purporting to waive or modify any rights inuring to said person under the Act or subpart D or E of this part may be void as contrary to public policy, except that a waiver or modification of rights or obligations hereunder in favor of the Secretary shall be valid for purposes of enforcement of the provisions of the Act or subparts D and E of this part. This prohibition of waivers does not prevent agreements to settle litigation among private parties.

(g) The Administrator shall, to the extent possible under existing law, protect the confidentiality of any complainant or other person who provides information to the Department.

§ _____.405 Complaints and investigative procedures.

(a) The Administrator, through investigation, shall determine whether a facility has failed to perform any attested conditions, misrepresented any material facts in an attestation (including misrepresentation as to compliance with regulatory standards), or otherwise violated the Act or subparts D or E of this part.

(Note: Federal criminal statutes provide penalties of up to $10,000 and/or imprisonment of up to 5 years for knowing and willful submission of false statements to the Federal Government. 18 U.S.C. 1001; see also 18 U.S.C. 1546).

(b) Any aggrieved person or organization may file a complaint of a violation of the provisions of section 212(m) of the INA (8 U.S.C. 1182(m)) or subparts D or E of this part. No particular form of complaint is required, except that the complaint shall be

written or, if oral, shall be reduced to writing by the Wage and Hour Division official who receives the complaint. The complaint shall set forth sufficient facts for the Administrator to determine what part or parts of the attestation or regulations have allegedly been violated. Upon the request of the complainant, the Administrator shall, to the extent possible under existing law, maintain confidentiality regarding the complainant's identity; if the complainant wishes to be a party to the administrative hearing proceedings under this subpart, the complainant shall then waive confidentiality. The complaint may be submitted to any local Wage and Hour Division office; the addresses of such offices are found in local telephone directories. The office or person receiving such a complaint shall refer it to the office of the Wage and Hour Division administering the area in which the reported violation is alleged to have occurred.

(c) The Administrator shall determine whether there is reasonable cause to believe that the complaint warrants investigation and, if so, shall conduct an investigation, within 180 days of the receipt of a complaint. If the Administrator determines that the complaint fails to present reasonable cause for an investigation, the Administrator shall so notify the complainant, who may submit a new complaint, with such additional information as may be necessary.

(d) When an investigation has been conducted, the Administrator shall, within 180 days of the receipt of a complaint, issue a written determination, stating whether a basis exists to make a finding that the facility failed to meet a condition of its attestation, or made a misrepresentation of a material fact therein, or otherwise violated the Act or subparts D or E of this part. The determination shall specify any sanctions imposed due to violations. The Administrator shall provide a notice of such determination to the interested parties and shall inform them of the opportunity for a hearing pursuant to §§ _____.415(d) and _____.420 of this part.

§ _____.410 Civil money penalties and other remedies.

(a) The Administrator may assess a civil money penalty not to exceed $1,000 for each affected person with respect to whom there has been a violation of the attestation or subparts D or E of this part and with respect to each instance in which such violation occurred. The Administrator also shall impose appropriate remedies, including the payment of back wages and the performance of attested obligations such as providing training.

(b) In determining the amount of civil money penalty to be assessed for any violation, the Administrator shall consider the type of violation committed and other relevant factors. The matters which may be considered include, but are not limited to, the following:

(1) Previous history of violation, or violations, by the facility under the Act and subparts D or E of this part;

(2) The number of workers affected by the violation or violations;

(3) The gravity of the violation or violations;

(4) Efforts made by the violator in good faith to comply with the attestation or the State plan as provided in the Act and subparts D and E of this part;

(5) The violator's explanation of the violation or violations;

(6) The violator's commitment to future compliance, taking into account the public health, interest or safety; and

(7) The extent to which the violator achieved a financial gain due to the violation, or the potential financial loss or potential injury or adverse effect upon the workers.

(c) The civil money penalty, back wages, and any other remedy determined by the Administrator to be appropriate, are immediately due for payment or performance upon the assessment by the Administrator, or the decision by an administrative law judge where a hearing is requested, or the decision by the Secretary where review is granted. The facility shall remit the amount of the civil money penalty, by certified check or money order made payable to the order of "Wage and Hour Division, Labor." The remittance shall be delivered or mailed to the Wage and Hour Division Regional Office for the area in which the violations occurred. The payment of back wages, monetary relief, and/or the performance or any other remedy prescribed by the Administrator shall follow procedures established by the Administrator. The facility's failure to pay the civil money penalty, back wages, or other monetary relief, or to perform any other assessed remedy, shall result in the rejection by ETA of any future attestation submitted by the facility, until such payment or performance is accomplished.

§ _____.415 Written notice and service of Administrator's determination.

(a) The Administrator's determination, issued pursuant to § _____.405(d) of this part, shall be served on the complainant, the facility, and other interested parties by personal service or by certified mail at the parties' last known addresses. Where service by certified mail is not accepted by the party, the Administrator may exercise discretion to serve the determination by regular mail. Where the complainant had requested confidentiality, the Administrator shall serve the determination in a manner which will not breach that confidentiality.

(b) The Administrator shall file with the Chief Administrative Law Judge, U.S. Department of Labor, a copy of the complaint and the Administrator's determination.

(c) The Administrator's written determination required by § _____.405(c) of this part shall:

(1) Set forth the determination of the Administrator and the reason or reasons therefor; prescribe any remedies or penalties including the amount of any unpaid wages due, the actions required for compliance with the facility attestation and/or State plan, and the amount of any civil money penalty assessment and the reason or reasons therefor.

(2) Inform the interested parties that they may request a hearing pursuant to § _____.420 of this part.

(3) Inform the interested parties that in the absence of a timely request for a hearing, received by the Chief Administrative Law Judge within 10 days of the date of the determination, the determination of the Administrator shall become final and not appealable.

(4) Set forth the procedure for requesting a hearing, and give the address of the Chief Administrative Law Judge.

(5) Inform the parties that the Administrator shall notify ETA and INS of the occurrence of a violation, upon the earliest of the following events:

(i) Where the Administrator determines that there is a basis for a finding of violation, and no timely request for hearing is made pursuant to § _____.420 of this part;

(ii) Where, after a hearing, the administrative law judge issues a decision and order finding a violation and imposing a civil money penalty and/or other remedy; or

(iii) Where the administrative law judge finds that there was no violation and the Secretary, upon review, issues a decision pursuant to § _____.445(g) of this part, holding that a violation was committed and imposing a civil money penalty and/or other remedy.

(6) Upon receipt of the Administrator's notification, ETA shall suspend the violator's attestation and shall notify INS, which then is required to deny any H-1A visa petitions from the violator for a period of at least 12 months from the

date of receipt of the Administrator's notification.

§ _____.420 Request for hearing.

(a) Any interested party desiring to request an administrative hearing on a determination issued pursuant to §§ _____.405(d) and _____.415(d) of this part shall make such request in writing to the Chief Administrative Law Judge at the address stated in the notice of determination.

(b) Interested parties may request a hearing in the following circumstances:

(1) Where the Administrator determines that there is no basis for a finding of violation, the complainant or other interested party may request a hearing. In such a proceeding, the party requesting the hearing shall be the prosecuting party and the facility shall be the respondent; the Administrator may intervene as a party or appear as *amicus curiae* at any time in the proceeding, at the Administrator's discretion.

(2) Where the Administrator determines that there is a basis for a finding of violation, the facility or other interested party may request a hearing. In such a proceeding, the Administrator shall be the prosecuting party and the facility shall be the respondent.

(c) No particular form is prescribed for any request for hearing permitted by this part. However, any such request shall:

(1) Be dated;

(2) Be typewritten or legibly written;

(3) Specify the issue or issues stated in the notice of determination giving rise to such request;

(4) State the specific reason or reasons why the party requesting the hearing believes such determination is in error;

(5) Be signed by the party making the request or by an authorized representative of such party; and

(6) Include the address at which such party or authorized representative desires to receive further communications relating thereto.

(d) The request for such hearing shall be received by the Chief Administrative Law Judge no later than 10 days after the date of the determination. For the requesting party's protection, if the request is by mail, it should be by certified mail.

(e) Copies of the request for a hearing shall be sent by the requestor to the Administrator and all interested parties.

§ _____.425 Rules of practice for administrative law judge proceedings.

(a) Except as specifically provided in this subpart, and to the extent they do not conflict with the provisions of this subpart, the "Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges" established by the Secretary at 29 CFR part 18 shall apply to administrative proceedings under this subpart.

(b) As provided in the Administrative Procedure Act, 5 U.S.C. 556, any oral or documentary evidence may be received in proceedings under this part. The Federal Rules of Evidence and subpart B of the Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges (29 CFR part 18, subpart B) shall not apply, but principles designed to ensure production of relevant and probative evidence shall guide the admission of evidence. The administrative law judge may exclude evidence which is immaterial, irrelevant, or unduly repetitive.

§ _____.430 Service and computation of time.

(a) Under this subpart, a party may serve any pleading or document by regular mail. Service is complete upon mailing to the last known address. No additional time for filing or response is authorized where service is by mail. In the interest of expeditious proceedings, the administrative law judge may direct the parties to serve pleadings or documents by a method other than regular mail.

(b) Two (2) copies of all pleadings and other documents in any administrative law judge proceeding shall be served on the attorneys for the Administrator. One copy shall be served on the Associate Solicitor, Division of Fair Labor Standards, Office of the Solicitor, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, and one copy on the attorney representing the Administrator in the proceeding.

(c) Time will be computed beginning with the day following the action and includes the last day of the period unless it is a Saturday, Sunday, or federally-observed holiday, in which case the time period includes the next business day.

§ _____.435 Administrative law judge proceedings.

(a) Upon receipt of a timely request for a hearing filed pursuant to and in accordance with § _____.425 of this part, the Chief Administrative Law Judge shall appoint an administrative law judge to hear the case.

(b) Within seven days following the assignment of the case, the administrative law judge shall notify all interested parties of the date, time and place of the hearing. All parties shall be given at least five days notice of such hearing.

(c) The date of the hearing shall be not more than 60 days from the date of the Administrator's determination. Because of the time constraints imposed by the Act, no requests for postponement shall be granted except for compelling reasons and by consent of all the parties to the proceeding.

(d) The administrative law judge may prescribe a schedule by which the parties are permitted to file a prehearing brief or other written statement of fact or law. Any such brief or statement shall be served upon each other party in accordance with § _____.430 of this part. Posthearing briefs will not be permitted except at the request of the administrative law judge. When permitted, any such brief shall be limited to the issue or issues specified by the administrative law judge, shall be due within the time prescribed by the administrative law judge, and shall be served on each other party in accordance with § _____.430 of this part.

§ _____.440 Decision and order of administrative law judge.

(a) Within 90 days after receipt of the transcript of the hearing, the administrative law judge shall issue a decision.

(b) The decision of the administrative law judge shall include a statement of findings and conclusions, with reasons and basis therefor, upon each material issue presented on the record. The decision shall also include an appropriate order which may affirm, deny, reverse, or modify, in whole or in part, the determination of the Administrator; the reason or reasons for such order shall be stated in the decision. The administrative law judge shall not render determinations as to the legality of a regulatory provision or the constitutionality of a statutory provision.

(c) The decision shall be served on all parties in person or by certified or regular mail.

§ _____.445 Secretary's review of administrative law judge's decision.

(a) The Administrator or any interested party desiring review of the decision and order of an administrative law judge shall petition the Secretary to review the decision and order. To be effective, such petition shall be received by the Secretary within 30 days of the date of the decision and order. Copies of the petition shall be served on all parties and on the administrative law judge.

(b) No particular form is prescribed for any petition for Secretary's review permitted by this subpart. However, any such petition shall:

(1) Be dated;

(2) Be typewritten or legibly written;

(3) Specify the issue or issues stated in the administrative law judge decision and order giving rise to such petition;

(4) State the specific reason or reasons why the party petitioning for review believes such decision and order are in error;

(5) Be signed by the party filing the petition or by an authorized representative of such party;

(6) Include the address at which such party or authorized representative desires to receive further communications relating thereto; and

(7) Attach copies of the administrative law judge's decision and order, and any other record documents which would assist the Secretary in determining whether review is warranted.

(c) Whenever the Secretary determines to review the decision and order of an administrative law judge, a notice of the Secretary's determination shall be served upon the administrative law judge and upon all parties to the proceeding within 30 days after the Secretary's receipt of the petition for review.

(d) Upon receipt of the Secretary's notice, the Office of Administrative Law Judges shall within fifteen days forward the complete hearing record to the Secretary.

(e) The Secretary's notice shall specify:

(1) The issue or issues to be reviewed;

(2) The form in which submissions shall be made by the parties (*e.g.*, briefs, oral argument);

(3) The time within which such submissions shall be made.

(f) All documents submitted to the Secretary shall be filed with the Secretary of Labor, U.S. Department of Labor, Washington, DC 20210, Attention: Executive Director, Office of Administrative Appeals, Room S-4309. An original and two copies of all documents shall be filed. Documents are not deemed filed with the Secretary until actually received by the Secretary. All documents, including documents filed by mail, shall be received by the Secretary either on or before the due date.

(g) Copies of all documents filed with the Secretary shall be served upon all other parties involved in the proceeding. Service upon the Administrator shall be in accordance with § _____.430(b) of this part.

(h) The Secretary's final decision shall be issued within 180 days from the date of the notice of intent to review. The Secretary's decision shall be served upon all parties and the administrative law judge.

(i) Upon issuance of the Secretary's decision, the Secretary shall transmit the entire record to the Chief Administrative Law Judge for custody pursuant to § _____.450 of this part.

§ _____.450 Administrative record.

The official record of every completed administrative hearing procedure provided by subparts D and E of this part shall be maintained and filed under the custody and control of the Chief Administrative Law Judge. Upon receipt of a complaint seeking review of the final agency action in a United States District Court, the Chief Administrative Law Judge shall certify the official record and shall transmit such record to the clerk of the court.

§ _____.455 Non-applicability of the Equal Access to Justice Act.

A proceeding under subparts D or E of this part is not subject to the Equal Access to Justice Act, as amended, 5 U.S.C. 504. In such a proceeding, the administrative law judge shall have no authority to award attorney fees and/or other litigation expenses pursuant to the provisions of the Equal Access to Justice Act.

Appendix (Not To Be Codified in the CFR): Form ETA 9029

Printed below is a copy of *Form ETA 9029.*

BILLING CODE 4510-10-M, 4510-27-M

Health Care Facility Attestation (H-1A)

U.S. Department of Labor
Employment and Training Administration
U.S. Employment Service

1. Name of Facility (Full Legal Name of Organization)

2. Address (Number, Street, City or Town, State and Zip Code)

3. Telephone (Area Code and Number)

OMB Approval No.: 1205-0305
Expires: 11/91

4. Facility's Federal Employer I.D. Number

5. Nature of Facility's Business Activity

6. Name of Chief Executive Officer

7. Kind of Facility (check appropriate item)

☐ a Nurse contractor intending to petition for H-1A nurses. (Also complete Item 8.g.)
☐ b. Other Facility intending to petition for H-1A nurses.
☐ c. Facility intending to use H-1A nurses through a contractor only (check appropriate item; waivers of some of the elements in Item 8 may be requested, in writing, if Item 7.c.(i), 7.c.(ii), or 7.c.(iii) is checked; see the instructions for Items 7. and 8.)
- ☐ (i) For no more than 15 workdays in any 3-month period to meet emergency needs on a temporary basis.
- ☐ (ii) For more than 15 but no more than 60 workdays in any 3-month period to meet temporary needs.
- ☐ (iii) For more than 60 workdays in any 3-month period due to a bona fide medical emergency. Describe on an attached sheet; see instructions.
- ☐ (iv) None of the above.

8. FACILITY ATTESTATION: Applicable in its entirety if Item 7.a. or Item 7.b. is checked. Item 8.g. required if Item 7.a. is checked.

☐ a. (i) This facility has not laid off any registered nurses within the past year; and
☐ (ii) Through no fault of this facility, there would be a substantial disruption in the delivery of health care services of the facility without the services of a nonimmigrant nurse(s), as demonstrated by (check one or more appropriate items):
- ☐ Current nurse vacancy rate of seven percent or more.
- ☐ Unutilized bed rate of seven percent or more.
- ☐ Elimination/Curtailment of essential health care services.
- ☐ Inability to implement established plans for needed new health care services.
- ☐ Other (Describe on an attached sheet; see instructions).

☐ b. The employment of the alien(s) will not adversely affect the wages and working conditions of registered nurses similarly employed.
☐ c. Alien(s) employed by the facility will be paid the wage rate for registered nurses similarly employed by this facility.
☐ d. (i) Check appropriate item:
- ☐ This facility has taken and is taking timely and significant steps designed to recruit and retain registered nurses who are United States citizens or immigrants who are authorized to perform nursing services in order to remove as quickly as reasonably possible our dependence on nonimmigrant nurses; or
- ☐ This facility is subject to an approved State plan for the recruitment and retention of nurses. (If checked, skip Item 8.d.(ii).)

(NOTE: 8. FACILITY ATTESTATION CONTINUES ON THE BACK OF THIS FORM.)

9. DECLARATION OF FACILITY:

Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the information provided on this form is true and correct

Signature of Chief Executive Officer

Date

FOR GOVERNMENT AGENCY USE ONLY:

By virtue of my signature below, I acknowledge that this attestation is accepted for filing on _____ (date) and will be valid through _____ (date twelve months from the date it is accepted for filing).

Signature of Authorized Department of Labor Official

The Department of Labor is not the guarantor of the accuracy, truthfulness or adequacy of an attestation accepted for filing.

Public reporting burden for this collection of information is estimated to average ____ minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden, including estimates or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Information Management, Department of Labor, Room N1301, 200 Constitution Avenue, N.W., Washington, D.C. 20210; and to the Office of Management and Budget, Paperwork Reduction Project (1205-0305) Washington, D.C. 20503.

(8. FACILITY ATTESTATION CONTINUATION)

(ii) Timely and significant steps being taken by this facility include (Check two or more unless second step is unreasonable; see Item 8.d.(iii) and instructions).

☐ Operating a training program for registered nurses at the facility or financing (or providing participation in) a training program for registered nurses elsewhere.
☐ Providing career development programs and other methods of facilitating health care workers to become registered nurses.
☐ Paying registered nurses at a rate higher than currently being paid registered nurses similarly employed in the geographic area.
☐ Providing adequate support services to free registered nurses from administrative and other nonnursing duties.
☐ Providing reasonable opportunities for meaningful salary advancement by registered nurses.
☐ Other (Describe on an attached sheet; see instructions.)

(iii) Only one timely and significant step has been and is being taken by this facility. (Check item below and attach explanation; see instructions.)

☐ Taking a second step is unreasonable.

(iv) Alternative to criteria for each step for second and succeding years. (Check item below and attach explanation; see instructions).

☐ This facility does not have a valid attestation on file with the Department of Labor. This facility will, within the next year, reduce the number of nonimmigrant nurses it utilizes by at least 10 percent without reducing the quality or quantity of services provided..

☐ This facility has a valid attestation on file with the Department of Labor. This facility will, within the next year, reduce the number of nonimmigrant nurses it utilizes by at least 10 percent without reducing the quality or quantity of services provided.

☐ Pursuant to its prior attestation, this facility has reduced the number of nonimmigrant nurses it utilizes by 10 percent within one year of the date of such prior attestation, without reducing the quality or quantity of services provided.

e. There is not a strike or lockout in the course of a labor dispute, and the employment of such an alien is not intended or designed to influence an election for a bargaining representative for registered nurses of this facility.

f. A copy of this attestation and supporting documentation are available at this facility for examination by interested parties. Copies of all visa petitions filed by the facility with INS for H-1A nurses will also be available for examination at this facility. The facility will make this attestation, including supporting documentation and other records available to officials of the Department of Labor upon request during any investigation upon this attestation.

CHECK APPROPRIATE ITEM:

☐ (i) Notice of this filing has been provided to the bargaining representative of the registered nurses at this facility; or
☐ (ii) Where there is no such bargaining representative, notice of this filing has been provided to registered nurses employed at this facility through posting in conspicuous locations.

g. For nurse contractors only.

☐ (i) H-1A nurses shall be referred only to facilities which themselves have valid and current attestations.
☐ (ii) This employer maintains copies of the valid attestation (Form ETA 9029) from each facility where its H-1A nurses are working.

INSTRUCTIONS FOR COMPLETING FORM ETA 9029

HEALTH CARE FACILITY ATTESTATION (H-1A)

IMPORTANT: READ CAREFULLY BEFORE COMPLETING FORM

Submit the completed original Form ETA 9029 along with two copies of the form and all attachments to: Chief, Division of Foreign Labor Certifications, U.S. Employment Service, Employment and Training Administration, Department of Labor, 200 Constitution Avenue, N.W., Room N-4456, Washington, D.C. 20210. If this attestation is used to support a visa petition for one or more H-1A nurses, a copy of that petition must be filed at the same address.

To knowingly furnish any false information in the preparation of this form and any supporting documentation thereto, or to aid, abet or counsel another to do so is a felony, punishable by $10,000 fine or five years in the penitentiary, or both (18 U.S.C. 1001). Other penalties apply as well to fraud and misuse of this immigration document (18 U.S.C. 1546) and to perjury with respect to this form (18 U.S.C. 1546 and 1621).

Print legibly in ink or use a typewriter. Sign and date one form in original signature. Citations below to "regulations" are citations to the identical provisions of 20 CFR Part 655, Subparts D and E, and at 29 CFR Part 504, Subparts D and E.

Item 1. Name of Facility. Enter full legal name of business, firm or organization, or, if an individual, enter name used for legal purposes on documents.

Item 2. Address of Facility. Self explanatory.

Item 3. Telephone Number. For private households, enter a business and home telephone number when all adults are employed.

Item 4. Facility's Federal Employer I.D. Number. Enter the facility's federal employer identification number assigned by the Internal Revenue Service.

Item 5. Nature of Facility's Business Activity. Enter a brief, non-technical description, *e.g.*, acute care, long-term care, nursing contractor.

Item 6. Name of Chief Executive Officer. Self explanatory.

Item 7. Kind of Facility. A facility intending to use H-1A nurses through a contractor only must check the applicable box under Item 7.c. and may request, in writing on an attached sheet,a waiver of certain attestation elements (see §__.310(k) of the regulations. See instructions to Item 8. Waiver requests must include an estimate of the maximum number of workdays of H-1A contract nurse services the facility intends to use in any 3-month period. A workday consist of one H-1A contract nurse working for one normal shift in a day. Thus, for example, three normal shifts worked by each of a group of five H-1A contract nurses to total 15 workdays.

A facility intending to use H-1A nurses through a contractor for no more than 15 workdays in any 3-month period to meet emergency needs on a temporary basis may request, in writing, a waiver of Item 8.a (substantial disruption; layoffs), Item 8.b (adverse effect), and Item 8.d (timely and significant steps; or State plan).

A facility intending to use H-1A nurses through a contractor for no more than 60 workdays in any 3-month period to meet temporary needs may request, in writing, a waiver of Item 8.a(ii) (substantial disruption, but not layoff under Item 8.a(i)) and Item 8.d (timely and significant steps; or State plan).

A facility intending to use H-1A nurses through a contractor for more than 60 workdays in any 3-month period may request, in writing, a waiver of Item 8.d (timely and significant steps; or State plan) due to a bona fide medical emergency. As part of the request for waiver, the facility must attach an explanation documenting the bona fide medical emergency. "Bona fide medical emergency" means a situation in which the services of one or more H-1A contract nurses are necessary at a worksite facility (which itself does

not employ an H-1A nurse) to prevent death or serious impairment of health, and, because of the danger to life or health, nursing services for such situation are not elsewhere available in the geographic area.

A worksite facility which uses H-1A nurses only through a nursing contractor and, as part of its attestation, requests waiver of one or more attestation elements nevertheless shall file a complete attestation if it intends to use (or subsequently intends to use) such attestation as a basis for itself filing a visa petition for an H-1A nurse. Thus, a worksite facility should consider its future needs for H-1A nurses in filing attestations and requests for waiver (see §__.310(k) of the regulations).

Item 8. Facility Attestation. In order to be eligible to hire nonimmigrant alien (H-1A) nurses, a facility must attest to the conditions listed in elements (a) through (g). A facility requesting a waiver, in writing, of any attestation element (see §__.310(k) of the regulations) may obtain the services of an H-1A nurse by contracting with a nurse contractor but will not be eligible to itself employ any H-1A nurses under this attestation. The attestation cannot be accepted for filing if the required explanations or information supporting these elements are not attached to the Form ETA 9029. See § ___.310(c) through (k) of the regulations for guidance on the supporting information that must be attached to the Form ETA 9029.

Item 8.a(i). No Layoffs. Layoff means any involuntary separation of nurses without cause or prejudice. If nurses are separated from one specialized activity and offered retraining and retention at the same facility in another activity at the same wage and status, but refuse, it is not a layoff. If the position is covered by a collective bargaining agreement, the agreement's definition of "layoff" (if any) shall apply to that position.

Item 8.a.(ii). (A waiver of this item may be requested, in writing on an attached sheet, if Item 7.c.(i) or Item 7.c.(ii) is checked.) Substantial Disruption. A facility may attest that substantial disruption in the delivery of its health care services without nonimmigrant nurses is demonstrated by one or more of the specific circumstances listed. To make such an attestation, a facility must check the appropriate Item(s) and attach brief explanatory information as to the circumstances and the nature and location of supporting documentation (see §§ __.310(d)(2)(i) and _____.310(d)(3) of the regulations). If a facility finds that the listed circumstances are inapplicable or cannot be demonstrated, the facility may make an attestation of substantial disruption in the delivery of the facility's health care services by checking the "Other" Item and attaching a clear explanation and such documentation as demonstrates the substantial disruption (see §§ __.310(d)(2)(ii) and __.310(d)(3) of the regulations).

Item 8.b. No Adverse Effect. A waiver of this item may be requested, in writing, if Item 7.c.(i) is checked.

Item 8.c. Facility/Employer Wage. This is not applicable if Item 7.c. is checked.

Item 8.d. Timely and Significant Step. A waiver of this item may be requested, in writing, if Item 7.c.(i), Item 7.c.(ii) or Item 7.c.(iii) is requested.

Item 8.d.(ii). Timely and Significant Steps. A facility may attest that it has taken and is taking one or more of the listed timely and significant steps designed to recruit and retain sufficient registered nurses who are United States citizens or immigrants who are authorized to perform nursing services, in order to remove as quickly as reasonably possible the dependence of the facility on nonimmigrant registered nurses. To make such an attestation, a facility must check the appropriate Item(s) and attach a brief explanation of how the facility's program(s) meet the requirements of the step(s) (see § __.310(g)(1)(i)(A) of the regulations). The five steps listed on the form are not an exclusive list of timely and significant steps which might qualify. Facilities are encouraged to be innovative in devising other steps, that are of comparable timeliness and significance. A facility choosing to take step(s) other than the five listed steps must make its attestation by checking the "Other" Item and attaching an explanation of the nature and scope of the step(s) taken, how the step(s) are effected, and how the step(s) meet the statutory test of timeliness and significance comparable to

the listed steps. Examples of such other steps which may be considered to be of comparable timeliness and significance, depending upon all of the circumstances, are monetary incentives, special perquisites, work schedule options, and other training options. See § __.310(g)(1)(i)(B) of the regulations

Item 8.d.(iii). Unreasonableness of second step. The listed steps are not an exclusive list of the significant steps that may be taken to meet the requirements of the Act. Nothing shall require a facility to take more than one step, if the facility can demonstrate that taking a second step is not reasonable. However, a facility shall make every effort to take at least two steps. To make an attestation that taking a second step would be unreasonable, a facility must check the appropriate Item and attach an explanation of why such a step would be unreasonable. The taking of a second step may be considered unreasonable, if it would result in the facility's financial inability to continue providing the same quality and quantity of health care or the provision of nursing services would otherwise be jeopardized by the taking of such a step. For any of the five listed steps not taken, the facility's explanation shall demonstrate, with respect to each of the listed steps not taken, why it would be unreasonable for the facility to take such step. Such facility also shall explain why it would be unreasonable for the facility to take any other steps designed to recruit and retain sufficient U.S. nurses to meet its staffing needs. See § __.310(g)(1)(ii).

Item 8.d.(iv). Alternative to criteria for each specific step after the first year of attestation. In order to avoid the necessity of complying with the specific criteria for each of the steps in the second and succeeding years, a facility may include with its Form ETA 9029, in addition to the actions taken under Items 8.d.(ii) and (iii), an attestation that it shall reduce the number of nonimmigrant alien (H-1 and H-1A visaholders) nurses it uses one year from the date of attestation by at least 10 percent. This shall be achieved without reducing the quality or quantity of services provided. If this goal is achieved (as demonstrated by documentation maintained by the facility and indicated in its subsequent year's Form ETA 9029), the facility's subsequent year's Form ETA 9029 may simply include an explanation demonstrating that this goal has been achieved and an attestation that it shall again reduce the number of nonimmigrant alien (H-1A) nurses it uses one year from the date of attestation by at least 10 percent.

Item 9. Declaration of Facility. One copy of this form must bear the original signature of the chief executive officer of the facility (or the chief executive officer's designee). By signing this form the chief executive officer is attesting to Item 7 and Item 8 on the Form ETA 9029 and to the accuracy of the information provided in the supporting documentation. False statements are subject to Federal criminal penalties, as stated above.

If the attestation bears the necessary entries of information and attached explanations for all items except Item 7.c.(iii) "Bona Fide Medical Emergency", Item 8.a.(ii) "Other," Item 8.d.(ii) "Other," and Item 8.d(iii), and if for those three items the Department of Labor determines after review that the attached explanations are sufficient to demonstrate compliance with the regulatory standards, the Department of Labor shall accept the attestation for filing and shall document such acceptance on the original and two copies of Form ETA 9029's submitted. A copy of the attestation form indicating the Department's acceptance will be returned to the health care facility. The facility may then file a visa petition with INS for temporary nonimmigrant nurses in accordance with INS regulations. The facility shall include a copy of the Form ETA 9029 with each visa petition filed with the Immigration and Naturalization Service.

A copy of this attestation, along with any supporting documentation and visa petitions, will be available for public inspection in the United States Employment Service's Public Disclosure Room in Room N-4456, 200 Constitution Avenue, NW., Washington, D.C. 20210.

[FR Doc. 90-28599 Filed 12-5-90; 8:45 am]
BILLING CODE 4510-10-C, 4510-27-C

federal register

Thursday
December 6, 1990

Part V

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 15

Federal Acquisition Regulation (FAR); Defective Pricing; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 15

Federal Acquisition Regulation (FAR); Defective Pricing

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are proposing to revise the policies affecting defective pricing price reductions. Review of the Defense Federal Acquisition Regulation Supplement indicated that there were policies which had value beyond use solely within the Department of Defense and which should be made applicable Governmentwide.

DATES: Comments should be submitted to the FAR Secretariat at the address shown below on or before February 4, 1991, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th and F Streets NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 90–54 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Olson, Office of Federal Acquisition Policy, Room 4041, GS Building, Washington, DC 20405, (202) 501–3221. Please cite FAR Case 90–54.

SUPPLEMENTARY INFORMATION:

A. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because most contracts awarded to small business are awarded on the basis of sealed bidding and no certified cost or pricing data is required. Comments from small entities concerning the affected FAR subsection will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite section 90–610 (FAR Case 90–54) in correspondence.

B. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed change to the FAR does not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Part 15

Government procurement.

Dated: November 28, 1990.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR part 15 be amended as set forth below:

PART 15—CONTRACTING BY NEGOTIATION

1. The authority citation for 48 CFR part 15 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

2. Section 15.804–7 is amended by revising paragraph (b)(2) to read as follows:

15.804–7 Defective cost or pricing data.

* * * * *

(b) * * *

(2) In arriving at the price adjustment, the contracting officer shall consider:

(i) The time by which the cost or pricing data became reasonably available to the contractor;

(ii) The extent to which the Government relied upon the defective data; and

(iii) The amount by which the price was increased based upon all available information.

* * * * *

[FR Doc. 90–28619 Filed 12–5–90; 8:45 am]

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Note: This completes the listing of public laws enacted during the second session of the 101st Congress. A cumulative list of Public Laws for the second session will be published in Part II of the **Federal Register** on December 10, 1990.

The list will be resumed when bills are enacted into public law during the first session of the 102nd Congress, which convenes on January 3, 1991. 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. 5316/Pub. L. 101-650

Judicial Improvements Act of 1990. (Dec. 1, 1990; 104 Stat. 5089; 49 Pages) Price: $1.50