AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

1-4-84
Vol. 49 No. 2
Pages 341-556

Federal Register

Wednesday
January 4, 1984

Selected Subjects

Administrative Practice and Procedure
Patent and Trademark Office

Agricultural Commodities
Environmental Protection Agency

Air Pollution Control
Environmental Protection Agency

Animal Drugs
Food and Drug Administration

Aviation Safety
Federal Aviation Administration

Chemicals
Environmental Protection Agency

Color Additives
Food and Drug Administration

Environmental Protection
Environmental Protection Agency

Fisheries
National Oceanic and Atmospheric Administration

Hazardous Materials
Environmental Protection Agency

Housing Standards
Housing and Urban Development Department

Imports
Agriculture Department

CONTINUED INSIDE



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

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by Act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $300.00 per year, or $150.00 for six months, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington D.C. 20402.

There are no restrictions on the republication of material appearing in the **Federal Register.**

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

Selected Subjects

Inventions and Patents
Commerce Department

Marketing Agreements
Agricultural Marketing Service

Pesticides and Pests
Environmental Protection Agency

Price Support Program
Agricultural Stabilization and Conservation Service
Commodity Credit Corporation

Quarantine
Animal and Plant Health Inspection Service

Radio Broadcasting
Federal Communications Commission

Railroads
Interstate Commerce Commission

Savings and Loan Associations
Federal Home Loan Bank Board

Surface Mining
Surface Mining Reclamation and Enforcement Office

Television Broadcasting
Federal Communications Commission

Contents

Federal Register
Vol. 49, No. 2
Wednesday, January 4, 1984

The President
EXECUTIVE ORDERS
343 National Security Telecommunications Advisory Committee, President's (EO 12454)
347 Pay and allowances, adjustment of certain rates of (EO 12456)
345 Private Sector Survey on Cost Control in the Federal Government, President's (EO 12455)
PROCLAMATIONS
341 Amending Proclamation 5133, implementing the Caribbean Basin Economic Recovery Act (Proc. 5142)

Executive Agencies

Agricultural Marketing Service
PROPOSED RULES
413 Raisins produced from grapes grown in Calif.

Agricultural Stabilization and Conservation Service
PROPOSED RULES
Special programs:
409 Payment in kind for acreage diversion

Agriculture Department
See also Agricultural Marketing Service; Agricultural Stabilization and Conservation Service; Animal and Plant Health Inspection Service; Commodity Credit Corporation; Farmers Home Administration; Foreign Agricultural Service.
RULES
Import quotas and fees:
361 Sugar to be re-exported in refined form
NOTICES
Import quotas and fees:
470 Sugar; quarterly determinations

Animal and Plant Health Inspection Service
RULES
Livestock and poultry quarantine:
368 Highly pathogenic avian influenza; interim

Army Department
NOTICES
494 Agency information collection activities under OMB review
Meetings:
494 Science Board

Bonneville Power Administration
NOTICES
495 Transmission rate adjustment, proposed

Commerce Department
See also Foreign-Trade Zones Board; International Trade Administration; National Oceanic and Atmospheric Administration; Patent and Trademark Office.
PROPOSED RULES
420 Patent licensing; appeal procedures

Commodity Credit Corporation
RULES
Loan and purchase programs:
361 Milk diversion program

Conservation and Renewable Energy Office
NOTICES
Consumer products, energy conservation program:
496 State notices of petition; correction

Customs Service
NOTICES
Petroleum products, approved public gauger:
543 Ipic, Ltd.

Defense Department
See also Army Department.
NOTICES
Meetings:
494 Electron Devices Advisory Group (2 documents)
494 Women in Services Advisory Committee

Energy Department
See Bonneville Power Administration; Conservation and Renewable Energy Office; Federal Energy Regulatory Commission.

Environmental Protection Agency
RULES
Pesticide chemicals in or on raw agricultural commodities; tolerance and exemptions, etc.:
389 Cross-referencing update
390 Ethalfluralin
388 1-(4-chlorophenoxy)-3,3-dimethyl-1-(1*H*-1,2,4-triazol-1-yl)-2-butanone
Pesticide programs:
380 Registration procedures; revocation of policy statement
PROPOSED RULES
Air pollution control; aircraft and aircraft engines:
421 Smoke emission standard; proposed denial of reconsideration petition
Hazardous waste management system:
427 Identification and listing; lime neutralized waste pickle liquor sludge
Pesticide chemicals in or on raw agricultural commodities; tolerances and exemptions, etc.:
426 Ethyl 3-Methyl-4-(Methylthio) Phenyyl (1-Methyl-ethyl) Phosphoramidate
Pesticide programs:
423 Child-resistant packaging for pesticide products
Toxic substances:
449 Alkyl expoxides; agency response; advance notice
438 Hydroquinone; testing requirements
456 Quinone; testing requirements
430 Propylene oxide; testing requirements
NOTICES
Pesticide, food, and feed additive petitions:
503 ICI Americas, Inc., et al.

Pesticide programs:
511 Ethalfluralin; conditional registration determination; inquiry
Pesticide registration, cancellation, etc.:
508 Griffin Technical Chlorothalonil
Pesticides; emergency exemption applications:
502 3,4,5-trimethoxybenzoyl methyl resperate
Toxic and hazardous substances control:
503 Interagency Testing Committee; responses, etc.; 1,2-butylene oxide

Equal Employment Opportunity Commission
NOTICES
515 Agency information collection activities under OMB review

Farmers Home Administration
NOTICES
470 Farmer program loan accounts, servicing; temporary directives

Federal Aviation Administration
RULES
Airworthiness directives:
369 British Aerospace
370 McDonnell Douglas
371 Control zones
PROPOSED RULES
Airworthiness directives:
416 Airbus Industrie
415 British Aerospace
417 Short Brothers
419 Transition areas

Federal Communications Commission
RULES
Television stations; table of assignments:
391 Alabama
392 California
394 Illinois
392, 393 Kentucky (2 documents)
393, 394 Nebraska (2 documents)
394 Tennessee
395 Texas
396 Washington
PROPOSED RULES
Radio stations; table of assignments:
465 Arizona
465 Colorado
466 North Carolina
Television stations; table of assignments:
467 Wisconsin

Federal Energy Regulatory Commission
NOTICES
Hearings, etc.:
496 Allegheny Power Service Corp.
496 American Electric Power Service Corp.
496 Arizona Public Service Co.
497 Carolina Power & Light Co.
497 Cleveland Electric Illuminating Co. (3 documents)
502 Columbia Gas Transmission Corp.
498 Kentucky Utilities Co. (2 documents)
498 Montana Power Co.
498 Northern States Power Co.
498 Pacific Gas & Electric Co.
499 Portland General Electric Co. (2 documents)
499 Public Service Co. of New Mexico
500 Public Service Co. of Oklahoma (3 documents)
500 Southern California Edison Co.
501 Toledo Edison Co. (2 documents)
501 Virginia Electric & Power Co.

Federal Home Loan Bank Board
PROPOSED RULES
Federal Savings and Loan Insurance Corporation:
415 Sale-of-control conversions; proposed rescission

Federal Railroad Administration
NOTICES
Exemption petitions, etc.:
542 Detroit & Mackinac Railway Co. et al.

Federal Reserve System
NOTICES
Applications, etc.:
515 C&P Bank Corp. of Pensacola et al.
516 Citicorp et al.
546 Meetings; Sunshine Act

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
374 Monensin and virginamycin
374 Tylosin
Color additives:
372 Contact lense coloring
Human and animal drugs:
373 Antibiotic drugs; updating and technical changes; correction
NOTICES
Medical devices; premarket approval:
516 Safeway Products, Inc.

Foreign Agricultural Service
PROPOSED RULES
414 Perishable products; emergency relief from duty-free imports; correction

Foreign-Trade Zones Board
NOTICES
Applications, etc.:
471 Illinois
471 Indiana

Health and Human Services Department
See Food and Drug Administration; Health Care Financing Administration.

Health Care Financing Administration
RULES
Medicare:
408 Impatient hospital Services, prospective payments (Diagnosis Related Groups); correction
NOTICES
Medicaid:
517 State plan amendments, reconsideration; hearings; Idaho

Housing and Urban Development Department
RULES
Minimum property standards:
376 Aluminum and storm windows, and sliding glass and storm doors (Materials Bulletin No. 39a)
377 Plastic bathtub units, etc. (Materials Bulletin No. 73a)

375 Sealing insulating glass units (Materials Bulletin No. 82)

Indian Affairs Bureau
NOTICES
518 Statute of limitations claims list

Interior Department
See Indian Affairs Bureau; Land Management Bureau; Minerals Management Service; Surface Mining Reclamation and Enforcement Office.

International Trade Administration
NOTICES
Antidumping:
472 Lightweight polyester filament fabrics from Japan
Cheese, quota; foreign government subsidies:
488 Annual list
Countervailing duties:
480 Carbon steel wire rod from Tobago and Trinidad
489 Semifinished forged undercarriage components from Italy
Export privileges, actions affecting:
490 Globe Computers AB et al.

Interstate Commerce Commission
RULES
396 Rail lines, out of service; exemption
NOTICES
Railroad operation, acquisition, construction, etc.:
522 Burlington Northern Railroad Co. et al.

Justice Department
See Juvenile Justice and Delinquency Prevention Office.

Juvenile Justice and Delinquency Prevention Office
NOTICES
Grants; availability, etc.:
522 Habitual serious and violent juvenile offender and operation hardcore programs

Labor Department
NOTICES
Meetings:
525 Trade Negotiations and Trade Policy Labor Advisory Committee

Land Management Bureau
NOTICES
Environmental statements; availability, etc.:
520 Coal preference right lease application, Craig District, Colo.

Minerals Management Service
NOTICES
Outer Continental Shelf; oil, gas, and sulphur operations; development and production plans:
520 Chevron U.S.A. Inc.
521 Forest Oil Corp.

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
402 Atlantic Mackeral, squid, and butterfish
396 Bering Sea and Aleutian Islands groundfish
407 Western Pacific Spiny Lobster
NOTICES
491 Civil penalties for U.S. fishermen; policy statement

Nuclear Regulatory Commission
PROPOSED RULES
Special nuclear material; domestic licensing:
414 Hybrid hearing procedures for expansion of onsite spent fuel storage capacity at civilian reactors; extension of time
NOTICES
Applications, etc.:
527 Carolina Power & Light Co.
528 Connecticut Yankee Atomic Power Co.
529, 530 Duke Power Co. (2 documents)
531 Gulf States Utilities Co. et al.
532 Kansas Gas & Electric Co. et al.
532 Portland General Electric Co.
536 Professional Service Industries, Inc.
537 Roof Auditing Services
538 Wisconsin Public Service Commission
Grants; availability, etc.:
526 Technology transfer and dissemination of nuclear energy process and safety information
Meetings:
538 Reactor Safeguards Advisory Committee
Safety analysis and evaluation reports; availability, etc.:
527 Carolina Power & Light Co.
528 Combustion Engineering Inc.

Pacific Northwest Electric Power and Conservation Planning Council
NOTICES
546 Meetings; Sunshine Act

Patent and Trademark Office
RULES
348 Practice rules; revision

Railroad Retirement Board
NOTICES
539 Agency information collection activities under OMB review

Research and Special Programs Adminstration
NOTICES
Hazardous materials; inconsistency rulings:
543 Arizona Department of Transportation; correction

Securities and Exchange Commission
PROPOSED RULES
Securities:
421 Broker-dealer registration; applicability to banks

Science and Technology Policy Office
NOTICES
Meetings:
539 White House Science Council

Small Business Administrative
NOTICES
540 Agency information collection activities under OMB review
Applications, etc.:
540 Bandell Investments, Ltd.

541 Charterway Investment Corp.
541 County Capital Corp.
541 HMS Capital, Ltd.
541 Rocky Mountain Ventures, Ltd.
542 Rust Capital, Ltd.

Surface Mining Reclamation and Enforcement Office
RULES
Permanent program submission; various States:
379 Pennsylvania
NOTICES
Surface coal mining operations; unsuitable lands; petitions, designations, etc.:
521 Wyoming

Textile Agreements Implementation Committee
NOTICES
Cotton, wool, and man-made textiles:
492 Korea
Export visa requirements; certification, etc.:
493 Romania
Textile consultation; review of trade:
491 Hong Kong
492 Korea

Trade Representative, Office of United States
NOTICES
Committees; establishment, renewals, terminations, etc.:
545 Trade Negotiations Advisory Committee

Transportation Department
See also Federal Aviation Administration; Federal Railroad Administration; Research and Special Programs Administration.

Treasury Department
See Customs Service.

United States Information Agency
NOTICES
543 Agency information collection activities under OMB review
President's International Youth Exchange Initiative:
544 Selective assistance through limited grant support to not-for-profit organizations

Separate Parts In This Issue

Part II
348 Department of Commerce, Patent and Trademark Office

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Executive Orders:
12369 (Continued by EO 12455) ... 345
12382 (Continued by EO 12454) ... 343
12387 (Superseded by EO 12456) ... 347
12454 ... 343
12455 ... 345
12456 ... 347
Proclamations:
5133 (Amended by Proc. 5142) ... 341
5142 ... 341

7 CFR
6 ... 361
1430 ... 361
Proposed Rules:
770 ... 409
989 ... 413
1540 ... 414

9 CFR
81 ... 368

10 CFR
Proposed Rules:
2 ... 414
72 ... 414

12 CFR
Proposed Rules:
563b ... 415

14 CFR
39 (2 documents) ... 369, 370
71 ... 371
Proposed Rules:
39 (3 documents) ... 415–417
71 ... 419

15 CFR
Proposed Rules:
17 ... 420

17 CFR
Proposed Rules:
240 ... 421

21 CFR
73 ... 372
452 ... 373
558 (2 documents) ... 374

24 CFR
200 (3 documents) ... 375–377

30 CFR
938 ... 379

37 CFR
1 ... 348

40 CFR
162 ... 380
180 (3 documents) ... 388–390
Proposed Rules:
87 ... 421
162 ... 423
180 ... 426
261 ... 427
799 (4 documents) ... 430–456

42 CFR
405 ... 408

47 CFR
73 (10 documents) ... 391–396
Proposed Rules:
73 (4 documents) ... 465–467

49 CFR
1152 ... 396

50 CFR
611 ... 396
655 ... 402
675 ... 396
681 ... 407

Federal Register
Vol. 49, No. 2
Wednesday, January 4, 1984

Presidential Documents

Title 3—

The President

Proclamation 5142 of December 29, 1983

To Amend Proclamation 5133 Implementing the Caribbean Basin Economic Recovery Act

By the President of the United States of America

A Proclamation

1. Section 212 of the Caribbean Basin Economic Recovery Act (the Act) (19 U.S.C. 2702) authorizes the President to designate certain countries and territories or successor political entities as "beneficiary countries" under the Act. In Proclamation 5133 of November 30, 1983, I designated several countries and territories as "beneficiary countries". I am now adding Antigua and Barbuda, Belize, El Salvador, Grenada, Guatemala, Haiti, Honduras, Montserrat, and the British Virgin Islands to the list of "beneficiary countries". I have notified the House of Representatives and the Senate of my intentions to designate these countries and given the considerations entering into my decision.

2. In order to add these countries to the list of beneficiary countries, I am amending the Annex to Proclamation 5133. I am also making certain technical corrections to the Annex to that proclamation.

NOW THEREFORE, I, RONALD REAGAN, President of the United States of America, acting under the authority vested in me by the Constitution and the statutes of the United States, including but not limited to section 212 of the Act, do proclaim that:

(1) The list of countries in the Annex to Proclamation 5133 of November 30, 1983, is hereby amended by adding, in alphabetical order, "Antigua and Barbuda", "Belize", "El Salvador", "Grenada", "Guatemala", "Haiti", "Honduras", "Montserrat", and "Virgin Islands, British."

(2) The references to "the United States Committee for the Implementation of Textile Agreements" in the Annex to Proclamation 5133 of November 30, 1983, are corrected to read "the United States".

(3) The reference to TSUS items "748.45–478.50" in the Annex to Proclamation 5133 of November 30, 1983, is corrected to read "748.45–748.50".

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of December, in the year of our Lord nineteen hundred and eighty-three, and of the Independence of the United States of America the two hundred and eighth.

Ronald Reagan

[FR Doc. 84-300
Filed 1-3-84; 11:23 am]
Billing code 3195-01-M

Editorial Note: The text of the President's letters to the Speaker of the House of Representatives and the President of the Senate, dated Dec. 29, 1983, on his intention to sign Proclamation 5142, is printed in the *Weekly Compilation of Presidential Documents* (vol. 19, no. 52).

Presidential Documents

Executive Order 12454 of December 29, 1983

President's National Security Telecommunications Advisory Committee

By the authority vested in me as President by the Constitution and statutes of the United States of America, and in accordance with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. App. I), it is hereby ordered that the President's National Security Telecommunications Advisory Committee, established by Executive Order No. 12382, is continued until September 30, 1985.

Ronald Reagan

THE WHITE HOUSE,
December 29, 1983.

[FR Doc. 84-301
Filed 1-3-84; 11:24 am]
Billing code 3195-01-M

Presidential Documents

Executive Order 12455 of December 29, 1983

President's Private Sector Survey on Cost Control in the Federal Government

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Federal Advisory Committee Act, as amended (5 U.S.C. App. I), and in order to extend the life of the President's Private Sector Survey on Cost Control in the Federal Government, it is hereby ordered that Section 4(b) of Executive Order No. 12369 of June 30, 1982, as amended, is further amended to read: "The Committee shall terminate on January 31, 1984, unless sooner extended.".

Ronald Reagan

THE WHITE HOUSE,
December 29, 1983.

[FR Doc. 84-302
Filed 1-3-84; 11:25 am]
Billing code 3195-01-M

Presidential Documents

Executive Order 12456 of December 30, 1983

Adjustments of Certain Rates of Pay and Allowances

By the authority vested in me as President by the Constitution and laws of the United States of America, it is hereby ordered as follows:

Section 1. *Statutory Pay Systems.* Pursuant to the provisions of subchapter I of chapter 53 of title 5 of the United States Code, the rates of basic pay and salaries are adjusted, as set forth at the schedules attached hereto and made a part hereof, for the following statutory pay systems:

(a) The General Schedule (5 U.S.C. 5332(a)) at Schedule 1;

(b) The Foreign Service Schedule (22 U.S.C. 3963) at Schedule 2; and

(c) The schedules for the Department of Medicine and Surgery, Veterans Administration (38 U.S.C. 4107) at Schedule 3.

Sec. 2. *Senior Executive Service.* Pursuant to the provisions of section 5382 of title 5 of the United States Code, the rates of basic pay are adjusted, as set forth at Schedule 4 attached hereto and made a part hereof, for members of the Senior Executive Service.

Sec. 3. *Pay and Allowances for Members of the Uniformed Services.* Pursuant to the provisions of Section 901 of Public Law 98–94 (97 Stat. 634), the rates of monthly basic pay (37 U.S.C. 203(a)), the rates of basic allowances for subsistence (37 U.S.C. 402), and the rates of basic allowances for quarters (37 U.S.C. 403(a)) are adjusted, as set forth at Schedule 5 attached hereto and made a part hereof, for members of the uniformed services.

Sec. 4. *Executive Salaries.* The Executive Salary Cost-of-Living Adjustment Act (Public Law 94–82, 89 Stat. 419) provides for adjustments in rates of pay and salaries as set forth at the schedules attached hereto and made a part hereof, for the following:

(a) The Vice President (3 U.S.C. 104) and the Executive Schedule (5 U.S.C. 5312–5316) at Schedule 6;

(b) Congressional Salaries (2 U.S.C. 31) at Schedule 7; and

(c) Judicial Salaries (28 U.S.C. 5, 44(d), 135, 172(b), 252, and 11 U.S.C. 68(a), and Sections 401(a), 404(a), 404(b), and 404(d) of Public Law 95–598) at Schedule 8.

Sec. 5. *Effective Date.* The adjustments in rates of monthly basic pay and allowances for subsistence and quarters for members of the uniformed services, and all other adjustments of salary or pay, shall be effective on the first day of the first applicable pay period beginning on or after January 1, 1984.

Sec. 6. Executive Order No. 12387 of October 8, 1982, is superseded.

Ronald Reagan

THE WHITE HOUSE,
December 30, 1983.

Billing code 3195-01-M

Schedule 1 - THE GENERAL SCHEDULE

	1	2	3	4	5	6	7	8	9	10
GS-1	$8,980	$9,279	$9,578	$9,876	$10,175	$10,350	$10,646	$10,942	$10,955	$11,232
2	10,097	10,337	10,671	10,955	11,078	11,404	11,730	12,056	12,382	12,708
3	11,017	11,384	11,751	12,118	12,485	12,852	13,219	13,586	13,953	14,320
4	12,367	12,779	13,191	13,603	14,015	14,427	14,839	15,251	15,663	16,075
5	13,837	14,298	14,759	15,220	15,681	16,142	16,603	17,064	17,525	17,986
6	15,423	15,937	16,451	16,965	17,479	17,993	18,507	19,021	19,535	20,049
7	17,138	17,709	18,280	18,851	19,422	19,993	20,564	21,135	21,706	22,277
8	18,981	19,614	20,247	20,880	21,513	22,146	22,779	23,412	24,045	24,678
9	20,965	21,664	22,363	23,062	23,761	24,460	25,159	25,858	26,557	27,256
10	23,088	23,858	24,628	25,398	26,168	26,938	27,708	28,478	29,248	30,018
11	25,366	26,212	27,058	27,904	28,750	29,596	30,442	31,288	32,134	32,980
12	30,402	31,415	32,428	33,441	34,454	35,467	36,480	37,493	38,506	39,519
13	36,152	37,357	38,562	39,767	40,972	42,177	43,382	44,587	45,792	46,997
14	42,722	44,146	45,570	46,994	48,418	49,842	51,266	52,690	54,114	55,538
15	50,252	51,927	53,602	55,277	56,952	58,627	60,302	61,977	63,652	65,327
16	58,938	60,903	62,868	64,833	66,798*	68,763*	70,728*	72,693*	74,658*	
17	69,042*	71,343*	73,644*	75,945*	78,246*					
18	80,920*									

*The rate of basic pay payable to employees at these rates is limited to $66,000, the rate payable for level V of the Executive Schedule.

Schedule 2 - THE FOREIGN SERVICE SCHEDULE

	1	2	3	4	5	6	7
Class 1	$50,252	$51,760	$53,312	$54,912	$56,559	$58,256	$60,004
2	40,719	41,941	43,199	44,495	45,830	47,204	48,621
3	32,995	33,985	35,004	36,055	37,136	38,250	39,398
4	26,736	27,538	28,364	29,215	30,092	30,994	31,924
5	21,664	22,314	22,983	23,673	24,383	25,115	25,868
6	19,367	19,948	20,546	21,163	21,798	22,452	23,125
7	17,314	17,833	18,368	18,919	19,487	20,072	20,674
8	15,478	15,942	16,421	16,913	17,421	17,943	18,482
9	13,837	14,252	14,680	15,120	15,574	16,041	16,522

	8	9	10	11	12	13	14
Class 1	61,804	63,658	65,327	65,327	65,327	65,327	65,327
2	50,079	51,582	53,129	54,723	56,365	58,056	59,797
3	40,580	41,797	43,051	44,343	45,673	47,043	48,454
4	32,882	33,868	34,884	35,931	37,009	38,119	39,263
5	26,644	27,443	28,267	29,115	29,988	30,888	31,814
6	23,819	24,534	25,270	26,028	26,808	27,613	28,441
7	21,294	21,933	22,591	23,269	23,967	24,686	25,426
8	19,036	19,607	20,195	20,801	21,425	22,068	22,730
9	17,018	17,528	18,054	18,596	19,154	19,728	20,320

Schedule 3 - DEPARTMENT OF MEDICINE AND SURGERY SCHEDULES, VETERANS ADMINISTRATION

	Minimum	Maximum
Sec. 4103 schedule:		
Chief Medical Director	(Single rate)	$90,745 1/
Deputy Chief Medical Director	(Single rate)	87,050 2/
Associate Deputy Chief Medical Director	(Single rate)	83,377 3/
Assistant Chief Medical Director	(Single rate)	80,920 3/
Medical Director	$69,042 3/	78,246 3/
Director of Nursing Service	69,042 3/	78,246 3/
Director of Podiatric Service	58,938	74,658 3/
Director of Chaplain Service	58,938	74,658 3/
Director of Pharmacy Service	58,938	74,658 3/
Director of Dietetic Service	58,938	74,658 3/
Director of Optometric Service	58,938	74,658 3/
Physician and dentist schedule:		
Director grade	$58,938	$74,658 3/
Executive grade	54,422	70,748 3/
Chief grade	50,252	65,327
Senior grade	42,722	55,538
Intermediate grade	36,152	46,997
Full grade	30,402	39,519
Associate grade	25,366	32,980

1/ Notwithstanding the rate shown, the maximum rate payable at this level may not exceed $70,800, the rate payable for level III of the Executive Schedule.

2/ Notwithstanding the rate shown, the maximum rate payable at this level may not exceed $69,600, the rate payable for level IV of the Executive Schedule.

3/ Notwithstanding the rates shown, the maximum rate payable at these levels may not exceed $66,000, the rate payable for level V of the Executive Schedule.

Schedule 3 - DEPARTMENT OF MEDICINE AND SURGERY SCHEDULES, VETERANS ADMINISTRATION (continued)

	Minimum	Maximum
Nurse Schedule:		
Director grade	$50,252	$65,327
Assistant Director grade	42,722	55,538
Chief grade	36,152	46,997
Senior grade	30,402	39,519
Intermediate grade	25,366	32,980
Full grade	20,965	27,256
Associate grade	18,041	23,450
Junior grade	15,423	20,049
Clinical podiatrist and optometrist schedule:		
Chief grade	$50,252	$65,327
Senior grade	42,722	55,538
Intermedite grade	36,152	46,997
Full grade	30,402	39,519
Associate grade	25,366	32,980

Schedule 4 - SENIOR EXECUTIVE SERVICE SCHEDULE

ES-1	$58,938
ES-2	61,292
ES-3	63,646
ES-4	66,000
ES-5	67,800
ES-6	69,600

Schedule 5 - PAY AND ALLOWANCES OF THE UNIFORMED SERVICES
Part 1 - Monthly Basic Pay
(Years of service computed under 37 U.S.C. 205)

Pay Grade	Commissioned Officers						
	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10
0-10 1/.....	$4874.40	$5046.00	$5046.00	$5046.00	$5046.00	$5239.50	$5239.50
0-9.....	4320.30	4433.40	4527.60	4527.60	4527.60	4642.80	4642.80
0-8.....	3912.90	4030.20	4125.90	4125.90	4125.90	4433.40	4433.40
0-7.....	3251.40	3472.50	3472.50	3472.50	3627.90	3627.90	3838.50
0-6.....	2409.90	2647.80	2821.20	2821.20	2821.20	2821.20	2821.20
0-5.....	1927.50	2263.50	2419.50	2419.50	2419.50	2419.50	2493.30
0-4.....	1624.50	1978.20	2110.50	2110.50	2149.20	2244.60	2397.30
0-3 2/.....	1509.90	1687.80	1804.20	1996.50	2091.90	2167.50	2284.20
0-2 2/.....	1316.40	1437.60	1727.10	1785.30	1822.80	1822.80	1822.80
0-1 2/.....	1143.00	1189.80	1437.60	1437.60	1437.60	1437.60	1437.60

Pay Grade	Commissioned Officers						
	Over 12	Over 14	Over 16	Over 18	Over 20	Over 22	Over 26
0-10 1/.....	$5640.60*	$5640.60*	$6044.10*	$6044.10*	$6448.50*	$6448.50*	$6850.80*
0-9.....	4836.00	4836.00	5239.50	5239.50	5640.60*	5640.60*	6044.10*
0-8.....	4642.80	4642.80	4836.00	5046.00	5239.50	5449.50	5449.50
0-7.....	3838.50	4030.20	4433.40	4737.90	4737.90	4737.90	4737.90
0-6.....	2821.20	2916.90	3378.30	3551.10	3627.90	3838.50	4163.10
0-5.....	2627.10	2802.90	3012.60	3185.70	3282.00	3396.60	3396.60
0-4.....	2532.30	2647.80	2763.90	2840.40	2840.40	2840.40	2840.40
0-3 2/.....	2397.30	2456.40	2456.40	2456.40	2456.40	2456.40	2456.40
0-2 2/.....	1822.80	1822.80	1822.80	1822.80	1822.80	1822.80	1822.80
0-1 2/.....	1437.60	1437.60	1437.60	1437.60	1437.60	1437.60	1437.60

* Basic pay is limited to the rate of basic pay payable for level V of the Executive Schedule, which is $5,499.90 per month.

1/ While serving as Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, or Commandant of the Marine Corps, basic pay for this grade is $7,558.80* regardless of cumulative years of service computed under sec. 205 of title 37 of the United States Code.

2/ Does not apply to commissioned officers who have been credited with over 4 years' active service as enlisted members and/or as warrant officers.

(Years of service computed under 37 U.S.C. 205)

Pay Grade	Over 4	Over 6	Over 8	Over 10	Over 12		
Commissioned officers who have been credited with over 4 years active duty as an enlisted member and/or as a warrant officer:							
O-3.....	$1996.50	$2091.90	$2167.50	$2284.20	$2397.30		
O-2.....	1785.30	1822.80	1880.40	1978.20	2053.80		
O-1.....	1437.60	1535.70	1592.40	1650.00	1707.30		
	Over 14	Over 16	Over 18	Over 20	Over 22	Over 26	
O-3.....	$2493.30	$2493.30	$2493.30	$2493.30	$2493.30	$2493.30	
O-2.....	2110.50	2110.50	2110.50	2110.50	2110.50	2110.50	
O-1.....	1785.30	1785.30	1785.30	1785.30	1785.30	1785.30	
	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10
Warrant Officers:							
W-4.....	$1538.10	$1650.00	$1650.00	$1687.80	$1764.60	$1842.30	$1919.70
W-3.....	1398.00	1516.50	1516.50	1535.70	1554.00	1667.70	1764.60
W-2.....	1224.60	1324.50	1324.50	1363.20	1437.60	1516.50	1573.80
W-1.....	1020.30	1169.70	1169.70	1267.20	1324.50	1381.50	1437.60
	Over 12	Over 14	Over 16	Over 18	Over 20	Over 22	Over 26
W-4.....	$2053.80	$2149.20	$2224.80	$2284.20	$2358.30	$2437.20	$2627.10
W-3.....	1822.80	1880.40	1936.80	1996.50	2073.90	2149.20	2224.80
W-2.....	1631.40	1687.80	1746.90	1804.20	1861.50	1936.80	1936.80
W-1.....	1497.30	1554.00	1611.30	1667.70	1727.10	1727.10	1727.10

(Years of service computed under 3 U.S.C. 205)

Pay Grade	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10
Enlisted members:							
E-9 1/.....	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$1788.90
E-8.....	0.00	0.00	0.00	0.00	0.00	1500.60	1543.20
E-7.....	1047.60	1130.70	1173.00	1213.80	1255.50	1295.10	1336.80
E-6.....	901.20	982.50	1023.60	1067.10	1106.40	1146.90	1188.90
E-5.....	791.10	861.00	902.70	942.00	1003.80	1044.60	1086.30
E-4.....	738.00	779.10	824.70	888.90	924.00	924.00	924.00
E-3.....	695.10	732.90	762.60	792.90	792.90	792.90	792.90
E-2.....	668.70	668.70	668.70	668.70	668.70	668.70	668.70
E-1>4 2/.....	596.40	596.40	596.40	596.40	596.40	596.40	596.40
E-1<4 3/.....	573.60	573.60	573.60	573.60	573.60	573.60	573.60

	Over 12	Over 14	Over 16	Over 18	Over 20	Over 22	Over 26
E-9 1/.....	$1829.70	1871.10	1914.00	1956.60	1994.70	2099.70	2303.70
E-8.....	1583.70	1625.10	1668.00	1706.40	1748.40	1851.00	2057.70
E-7.....	1378.20	1440.60	1481.40	1523.10	1542.90	1646.40	1851.00
E-6.....	1250.10	1289.40	1331.10	1351.20	1351.20	1351.20	1351.20
E-5.....	1126.20	1146.90	1146.90	1146.90	1146.90	1146.90	1146.90
E-4.....	924.00	924.00	924.00	924.00	924.00	924.00	924.00
E-3.....	792.90	792.90	792.90	792.90	792.90	792.90	792.90
E-2.....	668.70	668.70	668.70	668.70	668.70	668.70	668.70
E-1>4 2/.....	596.40	596.40	596.40	596.40	596.40	596.40	596.40
E-1<4 3/.....	573.60	573.60	573.60	573.60	573.60	573.60	573.60

1/ While serving as Sergeant Major of the Army, Master Chief Petty Officer of the Navy or Coast Guard, Chief Master Sergeant of the Air Force, or Sergeant Major of the Marine Corps, basic pay for this grade is $2,800.20 regardless of cumulative years of service computed under Sec. 205 of title 37 of the United States Code.

2/ Applies to personnel who have served 4 months or more on active duty.

3/ Applies to personnel who have served less than 4 months on active duty.

Part II -- Basic Allowance for Subsistence Rates

Officers (per month).....	$102.10	
Enlisted Members (per day):		
When on leave or authorized to mess separately:.....	E-1 (less than 4 months) 1/ $4.68	All Other Enlisted $4.87
When rations in-kind are not available:.....	$5.29	$5.50
When assigned to duty under emergency conditions where no messing facilities of the United States are available:.....	$7.00	$7.28

1/ Applies to personnel who have served less than 4 months on active duty.

Part III - Monthly
Basic Allowance For Quarters Rates

Pay grade	Without dependents		With dependents
	Full rate 1/	Partial rate 2/	
Commissioned officers:			
0-10	$528.90	$50.70	$661.80
0-9	528.90	50.70	661.80
0-8	528.90	50.70	661.80
0-7	528.90	50.70	661.80
0-6	474.90	39.60	579.00
0-5	437.70	33.00	527.10
0-4	389.70	26.70	470.10
0-3	342.60	22.20	422.70
0-2	297.60	17.70	376.20
0-1	232.50	13.20	302.40
Warrant officers:			
W-4	$375.30	$25.20	$453.30
W-3	334.80	20.70	412.80
W-2	291.00	15.90	370.80
W-1	262.80	13.80	340.50
Enlisted members:			
E-9	$283.20	$18.60	$398.70
E-8	261.00	15.30	368.10
E-7	222.00	12.00	342.60
E-6	201.90	9.90	315.30
E-5	194.10	8.70	289.80
E-4	171.00	8.10	254.70
E-3	153.00	7.80	222.00
E-2	135.00	7.20	222.00
E-1>4 3/	127.50	6.90	222.00
E-1<4 4/	122.70	6.90	213.60

1/ Payment of the full rate of basic allowance for quarters at these rates to members of the uniformed services without dependents is authorized by 37 U.S.C. and part IV of Executive Order 11157, as amended.

2/ Payment of the partial rate of basic allowance for quarters at these rates to members of the uniformed services without dependents who, under 37 U.S.C. 403(b) or 403(c), are not entitled to the full rate of basic allowance for quarters, is authorized by 37 U.S.C. 1009(d) and part IV of Executive Order 11157, as amended.

3/ Applies to personnel who have served 4 months or more on active duty.

4/ Applies to personnel who have served less than 4 months on active duty.

Schedule 6 - VICE PRESIDENT AND THE EXECUTIVE SCHEDULE

Vice President	$94,200
Level I	82,900
Level II	72,200
Level III	70,800
Level IV	69,600
Level V	66,000

Schedule 7 - CONGRESSIONAL SALARIES

Senator	$72,200
Member of the House of Representatives	72,200
Delegate to the House of Representatives	72,200
Resident Commissioner from Puerto Rico	72,200
President pro tempore of the Senate	81,700
Majority leader and minority leader of the Senate.	81,700
Majority leader and minority leader of the House of Representatives	81,700
Speaker of the House of Representatives	94,200

Schedule 8 - JUDICIAL SALARIES

Chief Justice of the United States	$100,700*
Associate Justices of the Supreme Court	96,700*
Circuit Judges	77,300*
District Judges	73,100*
Judges of the Court of International Trade	73,100*
Judges of the United States Claims Court	67,500
Referees in Bankruptcy (full-time) or Bankruptcy Judges	65,800
Referees in Bankruptcy (part-time) (maximum rate).	32,900

*Under section 140 of Public Law 97-92 (95 Stat. 1200), salaries for Federal judges and Justices of the Supreme Court are not increased.

[FR Doc. 84-303
Filed 1-3-84; 11:26 am]
Billing code 3195-01-C

Rules and Regulations

Federal Register
Vol. 49, No. 2
Wednesday, January 4, 1984

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 month.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 6

Regulations Governing Licenses for Importation of Sugar To Be Re-Exported in Refined Form

AGENCY: Office of the Secretary.

ACTION: Amendment to rule; notice of determination.

SUMMARY: This determination permits an increase in the quantitative limit on licenses for the importation of sugar to be re-exported in refined form. After review of the operation of this program to date, it has been determined that the current short ton limit may be too restrictive under certain circumstances. These circumstances often arise because of unforeseen difficulties in determining precise shipping schedules. Accordingly, it has been determined that the quantitative limit of an individual license may be set at 50,000 short tons, under certain circumstances.

EFFECTIVE DATE: December 29, 1983.

ADDRESS: Mail comments to Chief, Sugar Group, Horticultural and Tropical Products Division, Foreign Agricultural Service, USDA, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Carol Brick-Turin, Agricultural Economist, Foreign Agricultural Service, Room 6603–South, Department of Agriculture, Washington, D.C. 20250, Tel: (202) 447–6939.

SUPPLEMENTARY INFORMATION: On June 28, 1983, "Regulations Governing Licenses for Importation of Sugar to be Re-exported in Refined Form", 7 CFR Part 6, were published in the Federal Register (48 FR 29824). These regulations established procedures and conditions for the issuance of licenses which permit the importation of sugar exempt from the import quota on sugar when used for specific purposes. Section 6.101(c) of the regulations limits the size of an individual license to 28,000 short tons. However, § 6.101(e) provides that the Secretary may change this limit through publishing a notice in the **Federal Register** if he or she determines that such a change is appropriate within the purposes of this program.

After a review of the operation of this program to date, it has been determined that the 28,000 short ton limit may be too restrictive under certain circumstances. These circumstances often arise because of unforseen difficulties in determining precise shipping schedules. Accordingly, it has been determined that the quantitative limit of an individual license may be set at 50,000 short tons, raw value, under certain circumstances. This notice, therefore, provides that the Licensing Authority may issue licenses under 7 CFR 6.101 for an amount up to 50,000 short tons, raw value. Those who already hold a license may request in writing an increase in the license amount up to 50,000 short tons, raw value. In the request for a license or for an increase in the size of a license, the applicant or license holder shall provide an explanation of why a license amount over 28,000 short tons is necessary

List of Subjects in 7 CFR Part 6

Imports, sugar.

Accordingly 7 CFR 6.101 is amended by adding the following paragraph (e)(1):

§ 6.101 Issuance of a license.

* * * * *

(e) * * *

(1) Notice is hereby given that effective December 29, 1983, in conformity with the provisions of 7 CFR 6.101(e), the Secretary has determined that it is appropriate within the purposes of this regulation that the quantitative limit in 7 CFR 6.101(c) be increased to 50,000 short tons, raw value. Any request for a license amount in excess of 28,000 short tons may be approvd by the Licensing Authority if the Licensing Authority determines that there is a reasonable basis for such request.

(Presidential Proclamation No. 5002, 47 FR 54269, Dec. 2, 1982; 7 CFR 6.101(e), 48 FR 29827, July 28, 1983)

Signed at Washington, D.C., on December 28, 1983.

Richard E. Lyng,

Acting Secretary of Agriculture.

[FR Doc. 83-33020 Filed 12-29-84; 4:00 pm]
BILLING CODE 3410-10-M

Commodity Credit Corporation

7 CFR Part 1430

Milk Diversion Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This final rule implements the Milk Diversion Program authorized by the Dairy and Tobacco Adjustment Act of 1983. This rule provides that the Commodity Credit Corporation (CCC) will enter into contracts with producers of milk in the forty-eight States of the continental United States who agree to reduce the quantity of milk which they market for commercial use during the period January 1, 1984, through March 31, 1985. Contracts will be made on a unit basis. Producers who enter into a milk diversion contract with CCC must agree to reduce the marketings of milk for commercial use from the contract unit during the contract period by an amount equal to 5 percent to 30 percent of the milk base which is established for the producer's unit. Producers who comply with the terms and conditions of the contract and applicable regulations are eligible to receive a milk diversion payment of $10 per hundredweight for such reductions. A milk base will, subject to adjustment, be established for each unit based upon marketings of milk for commercial use during calendar year 1982 or, at the election of the producer, the average of marketings from calendar years 1981 and 1982. This rule sets forth eligibility requirements, conditions for payment, penalties for noncompliance, and other program requirements.

EFFECTIVE DATE: January 1, 1984.

FOR FURTHER INFORMATION CONTACT: Jerry W. Newcomb, Director, Emergency Operations and Livestock Programs Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013 Telephone: (202) 447–5621.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed in accordance with procedures implementing Executive Order 12291 and Secretary's Memorandum 1512–1 and has been classified as "major" since the program will have an annual effect on the economy exceeding $100 million.

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since CCC is not required by 5 U.S.C. 553 or any other provision of the law to publish a notice of proposed rulemaking with respect to the subject matter of this rule. Section 102(b) of the Dairy and Tobacco adjustment Act of 1983 (the "1983 Act") provides that the Secretary of Agriculture shall implement the Milk Diversion Program and other provisions of Section 201(d) of the Agricultural Act of 1949 (the "1949 Act") without regard to the provisions requiring notice and other procedures for public participation in rulemaking contained in 5 U.S.C. 553 or in any directive of the Secretary.

An Environmental Evaluation with respect to the Milk Diversion Program has been completed. It has been determined that this action is not expected to have a significant impact on the quality of the human environment. In addition, it has been determined that this action will not adversely affect environmental factors such as wildlife habitat, water quality, air quality, and land use and appearance. Accordingly, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

The Department has prepared a Final Regulatory Impact Analysis of this regulation. Copies of the analysis are available to the public by contacting the person named above.

The title and number of the federal assistance program to which this notice applies are: Title—Commodity Loans and Purchases; Number 10.051, as found in the Catalog of Federal Domestic Assistance.

Section 201(d)(3) of the 1949 Act provides that the Secretary shall offer to enter into a contract with any milk producer who: (1) Produces milk in the forty-eight States of the continental United States and markets such milk for commercial use and (2) agrees to reduce the quantity of milk marketed for commercial use during the fifteen-month period beginning January 1, 1984. The reduction must be an amount equal to a percentage specified by the producer, but the percentage may not be less than 5 percent nor more than 30 percent of a milk base which is established for such producer's unit. The milk base is determined based upon the quantity of milk marketed for commercial use during calendar year 1982 or, at the producer's election, the average of such marketings during calendar years 1981 and 1982.

This rule provides a producer will be eligible on a dairy unit basis to enter into milk diversion contracts with CCC if the producer: (1) Was actively engaged in the production of milk as of November 29, 1983; (2) has filed a milk reduction plan with CCC; (3) provides acceptable evidence to CCC of the marketings during the historical base period for the purpose of determining a milk base; and (4) has not violated restrictions applicable to transfers of dairy cows after November 8, 1983. Producers may offer to enter in a milk diversion contract in accordance with the provisions of this rule no later than January 31, 1984.

The producer's milk reduction plan must be filed with CCC before the contract is executed by the producer and must be on a form prescribed by CCC. The plan will describe how the producer intends to reduce milk marketings during the contract period, including the estimated number of dairy cows which will be sold for slaughter during each month of the contract period. With respect to transfers of dairy cows, the producer shall not be eligible to offer to enter into a milk diversion contract if, after November 8, 1983 and through the date of the offer, the producer has sold or otherwise transferred dairy cows that would have or could have been used to produce milk unless: (i) The transfer is a sale for slaughter and the cows were, in fact, slaughtered as a result of such sale; (ii) the transfer is to another producer who executes a milk diversion contract with CCC; or (iii) the transfer is a sale and delivery of dairy cows for export from the United States and the dairy cows do not re-enter the United States. Notwithstanding the foregoing, dairy cows may be transferred during the period November 8, 1983, through January 1, 1984, if it is determined that the transfer does not defeat the goals of the milk diversion program. The transfer restrictions apply to dairy cows leased as of November 8, 1983, including the return of such cows to the lessor.

Each contract unit shall consist of all land, equipment, and dairy cows identified by the producer as such unit for purposes of the contract. A producer may execute a contract for more than one unit. The components of a unit shall be identified by the producer at the time the producer makes a request for the establishment of a milk base.

The milk base will be determined based upon actual marketings of milk for commercial use in the base period. Marketing history may be transferred if a producer's entire interest in the unit has been transferred to another producer claiming the marketing history and such transfer of interest was by reason of the death of the transferring producer, by a gift from such producer, or by a transfer by such producer to such producer's family members. Family members of a producer are defined to be an ancestor, spouse, lineal descendant, spouse of a lineal descendant, or parent of the producer, or a lineal descendant of the producer's spouse.

The milk base established for a producer's unit may be adjusted to correct for abnormally low production due to a natural disaster or other conditions beyond the control of the producer.

In order to make preliminary payments to producers who comply with the contract before the end of the contract period, five quarterly milk bases will be established. If the quantity of milk marketed for commercial use during the calendar year 1982 is used to establish the milk base for the producer's unit, the milk marketings of the four quarters of such year will constitute the first four quarterly milk bases for the contract period. The quarterly milk base for the first quarter of the contract period will also constitute the fifth quarter milk base. If the producer utilizes a 1981/1982 base period, the base period marketings for each quarter for 1981 and 1982 will be averaged to establish a milk base for each of the first four quarters. The first quarter milk base will also constitute the fifth quarter milk base.

The milk base for the entire contract period shall be the amount in pounds of milk which is equal to the sum of the amount of pounds of milk in the five quarterly milk bases.

The amount of reduction over the contract period shall, unless adjusted by CCC, be the quantity in pounds computed by applying the contract percentage specified by the producer to the milk base.

The contract reduction by the producer may be modified if the Secretary determines that there would be an excessive reduction in milk production in the United States or there has been a hardship on producers of beef cattle, dairy cattle, hogs, and poultry sold for slaughter. In the latter case, CCC may not adjust the contract so as to require the producer to make a reduction in excess of 150 percent of the contract reduction percentage for any quarter.

A producer who complies with the terms and conditions of the contract is

eligible to receive a milk diversion payment of $10 per hundredweight for reducing the quantity of milk marketed for commercial use during the contract period. Payments will be made for actual reductions which equal the contract reduction (as adjusted, if applicable) plus or minus 3 percent of the milk base so long as such reductions exceed 5 percent of the established milk base. Payments will not be made for any reduction in milk marketings which exceeds 30 percent of the established milk base.

A producer who fails to reduce marketings during the contract period by the quantity required by the contract or who otherwise fails to comply with the contract shall be ineligible for payments and must refund any payments previously received, together with interest. The contract will prohibit sales of dairy cows after the date the offer to enter the contract is submitted by the producer except under limited circumstances.

The contract will also provide that any production capacity which becomes available because of the producer's compliance with the terms and conditions of the milk diversion contract may not be made available for use by another producer. The contract will further provide that a producer will be ineligible for any payment if the total quantity of milk marketed for commercial use during the contract period from all units in which the producer has an interest and which are not the subject of a contract exceeds the total quantity of marketings during the period December 1, 1982, through November 30, 1983, with the marketings during January through March 1983, being counted twice, from all units in which the producer had an interest as of January 1, 1984, and which are not the subject of a contract.

Milk diversion payments will be adjusted if there is a marked deviation in the composition of the milk marketed by the producer from the unit in comparison to the composition of the milk which comprised the milk marketings used to establish the milk base for the unit. Assignments of the contract are allowed only to the extent that the contract permits such assignments. If the producer dies, the producer's estate may perform the contract or assign the contract to the same extent that an assignment would be permitted if made by the producer.

A producer who fails to make the reduction required by a milk diversion contract will be liable, in addition to being ineligible for any payment under the contract, for a penalty equal to the support price for milk in effect when the failure occurs multiplied by the amount of the reduction not achieved. In addition, a producer is also subject to a penalty of $1,000 for any other program violation. If there is more than one producer on the unit, all such persons are jointly and severally liable for penalties and other assessments which may be asserted by CCC in connection with the contract.

Other miscellaneous provisions in the regulations relate to: (1) The assignment of payments; (2) a prohibition against schemes or devices which are designed to, or which have the effect of, defeating the purposes of the program; (3) and the application of interest and late payment charges with respect to any amounts which become due and owing to CCC under the program.

The information collection requirements of this subpart have been approved by the Office of Management and Budget (OMB) for purposes of the Paperwork Reduction Act and OMB number 0560–0114 has been assigned.

List of Subjects in 7 CFR Part 1430

Milk, Agriculture, Price support programs, Dairy products.

Final Rule

PART 1430—[AMENDED]

Accordingly, a new subpart is added to 7 CFR Part 1430 as follows:

Subpart—Milk Diversion Program

Sec.

1430.400 General statement.
1430.401 Administration.
1430.402 Definitions.
1430.403 Nature of the contract; period of applicability; sign-up; producer eligibility.
1430.404 Milk reduction plan.
1430.405 Establishment of milk base.
1430.406 Transfer of marketing history.
1430.407 Milk base amount.
1430.408 Contract reduction.
1430.409 Contract compliance.
1430.410 Restrictions on transfers of dairy cows.
1430.411 Modification of contracts.
1430.412 Amount of payment.
1430.413 Time of payment; eligibility for payment.
1430.414 Assignment of contracts.
1430.415 Penalties.
1430.416 Interest; late payment charges; setoffs and withholdings.
1430.417 Misrepresentation; scheme or device; fraud.
1430.418 Appeals.
1430.419 Performance based upon advice or action of county or State committee.
1430.420 Miscellaneous provisions.
1430.421 Other regulations.
1430.422 Paperwork Reduction Act assigned numbers.

Authority: Sec. 201(d) of the Agricultural Act of 1949, as amended (7 U.S.C. 1446(d); Sec. 102(b) of the Dairy and Tobacco Adjustment Act of 1983; Commodity Credit Corporation Charter Act (15 U.S.C. 714 *et seq.*).

Subpart—Milk Diversion Program

§ 1430.400 General statement.

This subpart implements the Milk Diversion Program authorized by Section 201(d)(3) of the Agricultural Act of 1949, as amended by the Dairy and Tobacco Adjustment Act of 1983. Producers of milk in the forty-eight continental States of the United States may enter into contracts with the Commodity Credit Corporation under which such producers agree, on a unit basis, to reduce their marketings of milk for commercial use during the period January 1, 1984, through March 31, 1985, from the marketings of milk attributable to the unit during an historical base period. Contracts will be made on a unit basis. The reduction, which is subject to certain adjustment and tolerances, shall be an amount specified by the producer but shall not be less than 5 percent nor more than 30 percent of the milk base established for the producer's unit in accordance with this subpart. The Commodity Credit Corporation will make a milk diversion payment at a rate of $10 per hundredweight to producers who reduce the quantity of milk marketed for commercial use by the required amounts and who also comply with all other terms and conditions of the program. This subpart sets forth eligibility requirements, conditions for payment, penalties for program violations, and other program requirements and provisions.

§ 1430.401 Administration.

(a) The program will be administered under the general supervision of the Administrator, Agricultural Stabilization and Conservation Service (ASCS), and shall be carried out in the field by Agricultural Stabilization and Conservation State and county committees (herein called "State and county committees") and the ASCS Kansas City Management Field Office (KCMO).

(b) State and county committees, the KCMO, and representatives and employees thereof do not have authority to modify or waive any of the provisions of the regulations in this subpart, as amended or supplemented.

(c) The State committee shall take any action required by these regulations which has not been taken by the county committee. The State committee shall also:

(1) Correct, or require a county committee to correct, any action taken

by such county committee which is not in accordance with this subpart, or

(2) Require a county committee to withhold taking any action which is not in accordance with this subpart.

(d) No delegation herein to a State or county committee shall preclude the Administrator, ASCS, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

§ 1430.402 Definitions.

In determining the meanings of the provisions of this subpart, unless the context indicates otherwise, words imparting the singular include and apply to several personsl or things, words imparting the plural include the singular, words imparting the masculine gender include the feminine as well, and words used in the present tense include the past and future as well as the present. The following terms shall have the following meanings and all other words and phrases shall have the meanings assigned to them in the regulations governing reconstitution of farms, Part 719 of this chapter.

(a) *"Actively Engaged in the Production of Milk"* means the producing and marketing of milk for commerical use.

(b) *"ASCS"* means the Department's Agricultural Stabilization and Conservation Service.

(c) *"Base Period"* means calendar year 1982 or calendar years 1981 and 1982, whichever the producer has elected for the purpose of establishing a milk base.

(d) *"CCC"* means the Commodity Credit Corporation.

(e) *"Contract"* means Form CCC–150 when executive by CCC and the producer.

(f) *"Contract Percentage"* means the percentage by which the producer agrees to reduce the marketings of milk for commerical use from the milk base established for the producer's unit.

(g) *"Contract Period"* means the period from January 1, 1984, through March 31, 1985.

(h) *"Contract Reduction"* means the quantity by which the milk marketings for commercial use from the unit during the contract period must be reduced from the milk base amount as determined under § 1430.407 of this subpart.

(i) *"County ASCS Office"* means the office of the county committee in the headquarters county.

(j) *"County Committee"* means an Agricultural Stabilization and Conservation County Committee as established in accordance with Section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h).

(k) *"Dairy Cow"* includes heifers born before April 1, 1983.

(l) *"Department"* means the United States Department of Agriculture.

(m) *"Headquarters County"* means the county a producer elects to be the location of the county ASCS office through which all business related to the producer's participation in the Milk Diversion Program for the unit shall be conducted provided that the unit or a portion of the unit is located in such county.

(n) *"Marketed for Commercial Use"* means the disposition of milk in raw or processed form by voluntary or involuntary sale, barter or exchange, or by gift.

(o) *"Marketed Milk"* means all milk produced in the United States and marketed for commercial use.

(p) *"Milk"* means milk of dairy cows.

(q) *"Milk Base"* means a base established in pounds of milk for a unit as determined in accordance with § 1430.407 of this subpart.

(r) *"Milk Production Facility"* means all buildings and related equipment used for the production or handling of milk.

(s) *"Person"* means an individual, partnership, association, corporation, trust, estate, or other business enterprise or other legal entity and, whenever applicable, a State, a political subdivision of a State, or any agency thereof.

(t) *"Producer"* means any person who is involved in, contributes to, or has any interest in any unit which is used for the production of milk and who shares in the risk and proceeds of the production of milk.

(u) *"Quarter"* means any of the following five three-month periods: January 1–March 31, 1984; April 1–June 30, 1984; July 1–September 30, 1984; October 1–December 31, 1984; and January 1–March 31, 1985.

(v) *"Quarterly Milk Base"* means any of the five quarterly bases determined in accordance with § 1430.407 of this subpart.

(w) *"Unit"* means the dairy cows, milk production facilities, and land used to produce milk which are identified on the form used to establish a milk base for the unit and approved by the county committee.

(x) *"United States"* means the forty-eight contiguous States in the continental United States.

§ 1430.403 Nature of the contract; period of applicability; sign-up; producer eligibility.

(a) *Nature of the contract.* CCC will enter into milk diversion contracts on a unit basis with producers who produce milk in the United States and market such milk for commercial use and who agree to reduce their marketings of milk for commercial use during the period beginning January 1, 1984, through March 31, 1985, by an amount equal to a percentage specified by the producer of the milk base determined under this subpart. The specified percentage reduction shall not be less than 5 percent nor greater than 30 percent of the milk base established for the producer's unit. The unit shall be identified by the producer at the time the producer requests the establishment of a milk base. A producer with an interest in more than one unit may execute a contract to participate in the program for each such unit. All persons who have an interest in the unit must execute the contract. All such persons shall be jointly and severally liable on such unit for a failure to comply with the terms and conditions of the contract and this subpart. The milk base for the unit will be determined using five quarterly milk bases. These bases will be determined in the manner specified in this subpart based upon either the quantity of milk marketed for commercial use from the unit during calendar year 1982 or, at the producer's election, the average of such marketings during calendar years 1981 and 1982. Producers who make the required contract reduction and who otherwise comply with the terms and conditions of the contract and this subpart are eligible to receive a milk diversion payments from CCC in accordance with the provisions of this subpart. Producers who fail to make the required contract reduction or who otherwise fail to comply with the terms and conditions of the contract shall be ineligible for any milk diversion payments and shall be liable for substantial penalties.

(b) *Sign-up.* Eligible producers may offer to enter into a contract with CCC by executing a contract and submitting it to the county ASCS office not later than January 31, 1984.

(c) *Producer eligibility.* In order to be eligible to enter into a contract with CCC, a producer must:

(1) Be a producer of milk in the United States;

(2) Be actively engaged in the production of milk as of November 29, 1983;

(3) Have submitted a milk reduction plan to the county ASCS office in the headquarters county in accordance with the provisions of § 1430.404 of this subpart;

(4) Have established a milk base in accordance with § 1430.405 of this subpart; and

(5) Not have sold, leased or otherwise transferred either directly or indirectly, after November 8, 1983 and through the date an offer to enter into the milk diversion contract is submitted, dairy cows which would or could have been used for the production of milk during the contract period unless:

(i) The transfer is a sale, lease, or other transfer of dairy cows to another producer who executes a milk diversion contract with CCC;

(ii) The transfer is a sale of dairy cows for slaughter and the cattle are, in fact, slaughtered;

(iii) The cows are sold and delivered for export: *Provided,* that the producer is divested of all interest in such cows and the cows do not re-enter the United States; or

(iv) Such sale, lease, or transfer occurs before January 1, 1984, and the Administrator, ASCS, or his designee has determined that such sale, lease, or transfer does not defeat the goals of the Milk Diversion Program provided for in this subpart.

(d) If a unit includes dairy cows which were leased from another person as of November 8, 1983, the provisions of subsection (c) shall apply to such dairy cows and the word "transfer" shall include the return of such cows to the lessor.

(e) A producer may be considered to have been actively engaged in the production of milk as of November 29, 1983, if it is determined by the county committee that the producer was prevented from carrying out normal operations for the production of milk on that date due to conditions beyond the producer's control.

§ 1430.404 Milk reduction plan.

(a) Before executing a contract with CCC, the producer shall provide a milk reduction plan to the county ASCS office. The plan shall:

(1) Describe the manner in which the producer intends to achieve the reduction in milk marketings required under the contract;

(2) Include an estimate of the amount of such reduction which the producer intends to achieve through increased slaughter of dairy cows including the approximate number of dairy cows that will be sold for slaughter during each month of the contract; and,

(3) Contain such additional information as the county committee or CCC may require.

(b) The producer shall submit a revised plan if requested by the county committee and shall file all other reports relating to the disposition of cows which CCC may require in the contract or which may otherwise be required by this subpart.

§ 1430.405 Establishment of milk base.

(a) In order to establish the milk base for a unit, the county committee shall determine the quantity of marketings of milk for commercial use which can be claimed for the unit by the producer on the unit for the base period.

(b) A producer may claim those marketings of milk for commercial use which are attributable to the unit during the base period and for which the producer shared in the risk of production by supplying either the dairy cows from which the milk was produced and/or the production facility used to produce such milk: *Provided, however,* a producer may only claim such marketings to the extent to which the producer was entitled to an individual share in the proceeds of such marketings. In addition, a producer may claim those marketings of milk for commercial use which are attributable to the unit and claimable by the producer as a result of the transfer of marketing history in accordance with § 1430.406.

(c) The milk base for a unit shall be established based upon evidence submitted to the county committee by the producer which, in addition to such other evidence as the county committee or CCC may require, indicates the quantity of milk marketed for commercial use from the unit during the base period and any marketing history which has been transferred to the producer in accordance with § 1430.406. All producers on the unit shall be responsible for the accuracy of all information submitted to establish the milk base for the unit.

(d) A milk base may be adjusted if it is determined that such an adjustment is necessary to correct for abnormally low production in the base period as the result of a natural disaster or other condition beyond the control of the producer.

§ 1430.406 Transfer of marketing history.

Marketing history may be transferred by a producer to another person only if the producer's entire interest in the milk production facility and the producer's entire interest in the entire dairy herd has been transferred directly to the person claiming such history and such transfer of interest was made as a result of: (a) The death of the producer; (b) a gift from the producer; or (c) a transfer to a member or members of the family of the producer. The term "member of the family of the producer" as used in this section shall mean: (a) An ancestor of the producer; (b) the spouse of the producer; (c) a lineal descendant of the producer, or the producer's spouse, or a parent of the producer; or (d) the spouse of any such lineal descendant.

§ 1430.407 Milk base amount.

(a) *Milk Base.* The milk base for the unit shall be the sum of the five quarterly bases for the unit as determined in accordance with paragraph (b) of this section.

(b) *Quarterly base.* Five quarterly milk bases (expressed in pounds) shall be determined for each unit to correspond to the five quarters of the contract period.

(1) *Base period of 1982.* If the producer elects a 1982 base period, the first four quarterly bases of the contract period shall be the quantity of milk marketed for commercial use (as adjusted, if applicable) determined in accordance with § 1430.405 during each corresponding quarter for calendar year 1982. The first quarter base shall also be the fifth quarter base.

(2) *Base period of 1981 and 1982.* If the producer elects to use 1981 and 1982 marketing history as the base for the unit, the first four quarterly bases for the contract period shall be the average of the quantity of milk marketed for commercial use (as adjusted, if applicable) determined in accordance with § 1430.405 for each corresponding quarter of calendar year 1981 and the quantity of milk marketed for commercial use (as adjusted, if applicable) determined in accordance with § 1430.405 for each corresponding quarter of calendar year 1982. The first quarter base shall also be the fifth quarter base.

§ 1430.408 Contract reduction.

(a) The producer shall specify in the contract a percentage, which shall not be less than 5 percent nor more than 30 percent, by which the producer agrees to reduce the quantity of milk marketed for commercial use in the contract period from the milk base established for the unit. The contract reduction (expressed in pounds) shall be the milk base established for the unit multiplied by the percentage specified in the contract. A producer shall be eligible for payment under the contract only if the reduction in the quantity of milk marketed for commercial use from the unit during the contract period equals or exceeds greater of: (1) The contract reduction less an amount equal to 3 percent of the milk base, and (2) 5 percent of the milk base.

(b) If the contract reduction is adjusted by CCC, a producer shall be considered to be eligible for payments if the producer has complied with the terms and conditions of the contract and the reduction in the quantity of milk marketed for commercial use equals or exceeds the greater of: (1) The adjusted contract reduction less an amount equal to 3 percent of the milk base, and (2) 5 percent of the milk base.

§ 1430.409 Contract compliance.

(a) In order to be eligible for diversion payments, the producer must be an eligible producer and must comply with all of the terms and conditions of the contract and this subpart. The contract between the producer and CCC shall provide that:

(1) The producer shall reduce the quantity of milk marketed for commercial use during the contract period by the quantity agreed upon between the producer and CCC (as adjusted, if applicable);

(2) The producer shall not have transferred, at any time after the date on which the offer to enter into the contract was submitted by the producer, any dairy cows that would or could have been used by the producer for the production of milk if the producer had not executed and complied with the contract, except to the extent that such transfer is permitted by § 1430.410 of this subpart.

(3) Any production capacity of a milk production facility that becomes available for use because a producer reduces milk production in order to comply with the terms and conditions of the contract shall not be used by the producer, or made available by the producer for use by any other person, for the production of milk; and

(4) The producer shall refund to CCC any payments received under the contact, together with interest, if the producer fails to comply with the terms and conditions of the contract and this subpart.

§ 1430.410 Restrictions on transfers of dairy cows.

(a) After the date on which the offer to enter into the contract was submitted by the producer, a producer shall not sell, lease, or otherwise transfer, either directly or indirectly, dairy cows which would or could have been used by the producer for the production of milk if the producer had not executed a contract unless:

(1) The producer sells the dairy cows for slaughter and such cows are, in fact, slaughtered;

(2) The transfer is a sale, lease, or other transfer of diary cows to another producer who has executed a milk diversion contract with CCC;

(3) The dairy cows are sold and delivered for export: *Provided,* that the producer is divested of all interest in such cows and the cows do not re-enter the United States.

(b) The transfer restrictions of paragraph (a) shall not apply to transfers of dairy cows in connection with the assignment of the producer's entire interest in the contract to the extent such assignments of the contract are permitted by the contract.

(c) If a unit includes dairy cows which were leased from another person as of November 8, 1983, the provisions of this section shall apply to such dairy cows, and the word "transfer" as used in this section shall include the return of such cows to the lessor.

§ 1430.411 Modification of contracts.

(a) Contracts entered into under this subpart may be modified with respect to the amount of reduction required if it is determined that: (i) There would be an excessive reduction in the level of milk production in the United States, or (ii) there has been a substantial hardship to producers of beef cattle, dairy cattle, hogs, or poultry sold for slaughter: *Provided, however,* that any reduction made in accordance with clause (ii) of this subsection shall not be so great as to require the producer to make a reduction in excess of 150 percent of the contract reduction for any succeeding quarter of the contract period.

(b) In addition to any modification in the contact which may be specifically provided for in this section, CCC may make such other modifications in the terms and conditions of the contract as may be determined to be necessary to further the goals of the Milk Diversion Program.

§ 1430.412 Amount of payment.

A producer who is determined to be eligible for payments under the provisions of the contract and this subpart shall be eligible to receive a payment of $10 per hundredweight for actual reductions from the milk base in the quantity of milk marketed for commercial use during the contract period, subject to any adjustments provided for in the contract and this subpart, up to the lesser of: (a) The contract reduction (as adjusted, if applicable) plus 3 percent of the milk base, or (b) 30 percent of the milkbase.

§ 1403.413 Time of payment; eligibility for payment.

(a) Quarterly payments may be made to each eligible producer by the county committee at the end of each quarter of the contract period and shall be made on such basis as CCC determines will serve to further contract compliance and avoid overpayment.

(b) A producer shall not be eligible for any payments under the contract and shall refund to CCC any payments previously received under the contract if the producer has failed to make the contract reduction for the contract period within the tolerances provided for in this subpart or has otherwise failed to comply with the terms and conditions of the contract and this subpart.

(c) A final payment shall be made following the fifth quarter of the contract period. This payment shall include payment for the fifth quarter and shall be adjusted for any amounts which are determined to be due and owing to CCC by the producer.

(d) The producer shall report the marketings from the unit to the county ASCS office during the contract period and for each individual quarter of the contract period if the producer makes an application for any quarterly payment. The producer is responsible for the accuracy of such information. In order to be eligible for payment, the producer shall certify that any reported reduction is a net decrease in the marketings of milk for commercial use from the milk base established for the unit and has not been offset by expansion of production and marketings in other production facilities in which the producer has an interest, by a transfer of partial interest in any production facility, or by employment of any scheme or device to qualify for a payment for which such producer would otherwise not be eligible.

(e) The contract shall provide that the producer shall be ineligible for any payment under the contract if the total quantity of milk marketed for commercial use by the producer during the contract period from all units in which the producer has an interest and which are not the subject of a milk diversion contract exceeds the total quantity of such marketings during the period December 1, 1982, through November 30, 1983, with the marketings January through March 1983 being counted twice, from any unit in which the producers had an interest as of January 1, 1984, and which is not the subject of a contract.

(f) For purposes of this section a producer shall be considered to have an interest in any unit which consists in whole or in part of any land, equipment, production facility or dairy cows owned, leased or supplied, in whole or in part by: (1) The producer; (2) any partnership

or joint venture other than a corporation of which the producer is a member; (3) any corporation in which the producer holds more than a 20 percent interest; (4) a spouse of the producer, a minor child of the producer, or legal guardian of the such minor child acting on behalf of such minor child; or (5) any trust in which the producer has an interest.

(g) Marketings during the contract period shall be adjusted in such manner as may be specified in the contract to reflect any marked deviation in the composition of milk marketed for commercial use during the contract period from the composition of such marketings during the base period.

§ 1430.414 Assignment of contracts.

Assignments of contracts shall be permitted only upon such terms and conditions as may be specified in the contract. In the event of the death of a producer who has entered into a contract with CCC, the estate may perform the contract and may assign the producer's interest in the contract to the extent that the producer could have made such an assignment.

§ 1430.415 Penalties.

(a) Any producer who fails to make the reduction in the quantity of milk marketed for commercial use as required by the contract shall be liable, in addition to any other amount due under the contract, to a marketing penalty which shall be computed at a rate equal to the support price for milk in effect at the time the failure occurs on the quantity of milk as to which the failure applies. Increased marketings during the contract period from any unit in which the producer has an interest may be counted as marketings from the contract unit for purposes of determining whether there has been compliance with the contract and whether a marketing penalty should be assessed. Any marketing penalty which is assessed in accordance with this subsection may be reduced in such amount as the Administrator, ASCS, or his designee, determines to be equitable if the failure by the producer to make the required reduction in the marketings of milk for commercial use was unintentional or without the producer's knowledge.

(b) Except for a failure to make the contract reduction, any producer or person who knowingly violates any provision of the Milk Diversion Program shall be liable for a civil penalty of not more than $1,000 for each violation.

(c) Any penalty provided for under this section shall be assessed only after notice and opportunity for an informal administrative hearing which shall be conducted in accordance with the administrative appeal regulations found at 7 CFR Part 780.

§ 1430.416 Interest; late payment charges; setoffs and withholding.

(a) Interest shall be charged on any amounts which are determined to be due and owing to CCC from the date of disbursement to the date of refund. The rate of interest shall be the rate of interest which is established in accordance with 7 CFR Part 1403.

(b) Any amounts which are due and owing to CCC under the Milk Diversion Program shall be subject to late payment charges as provided for in 7 CFR Part 1403.

(c) The regulations issued by the Secretary of Agriculture with respect to setoffs and withholdings, 7 CFR Part 13, shall be applicable to the Milk Diversion Program authorized by this subpart.

§ 1430.417 Misrepresentation; scheme or device; fraud.

(a) A producer who is determined by the county committee or the State committee to have erroneously represented any fact affecting a Milk Diversion Program determination shall not be eligible for payments under such program and shall refund to the CCC any payments received by such producer with respect to any unit.

(b) A producer shall refund to the CCC all payments received by such producer with respect to the program if it is determined by the State committee, or the county committee with the approval of the State committee, that the producer knowingly:

(1) Adopted any scheme or device which tends to defeat the purpose of the program;

(2) Made any fraudulent representation in connection with the program; or

(3) Misrepresented any fact affecting a program determination.

(c) The provisions of this section shall be applicable in addition to any liability under criminal and civil fraud statutes.

(d) If the County Committee finds that any person has adopted or participated in any pratice which tends to defeat the purposes of the program, it may withhold, or require to be refunded, all or any part of the payment which otherwise would be due the producer under the program.

§ 1430.418 Appeals.

A producer may obtain reconsideration and review of the determinations made under this subpart in accordance with the Appeal Regulations, 7 CFR Part 780.

§ 1430.419 Performance based upon advice or action of county or State committee.

The provisions of 7 CFR Part 790 relating to performance based upon action or advice of an authorized representative of the Secretary shall be applicable to this subpart.

§ 1430.420 Miscellaneous provisions.

(a) The contract between CCC and the producer shall contain such other provisions as CCC determines appropriate to carry out the program established by this subpart.

(b) Payments which are earned by a producer may be assigned in accordance with the provisions of 7 CFR Part 709. For the purpose of making an assignment of payment under this section, the phrase "to finance the making a crop" in § 709.3 of Part 709 shall be construed to include the production of milk.

(c) Any payment which is due any person shall be allowed without regard to questions of title under State law and without regard to any claim or lien against the contract unit or any milk produced from the unit, and the proceeds thereof, which may be asserted by any creditor except agencies of the United States Government.

(d) All records of the producer which relate to the performance and compliance by the producer with the provisions of the contract and this subpart shall be maintained for three years from the date of final payment by CCC under the contract.

(e) The producer shall execute all certifications specified in the contract or required by CCC or any other representative of the Department in the administration of this subpart.

§ 1430.421 Other regulations.

The following regulations shall also be applicable to this subpart:

(a) 7 CFR Part 13—Setoffs and Witholding;

(b) 7 CFR Part 707—Payments Due Persons Who Have Died, Disappeared or Have Been Declared Incompetent;

(c) 7 CFR Part 780—Appeal Regulations;

(d) 7 CFR Part 790—Incomplete Performance Based Upon Action or Advice of an Authorized Representative of the Secretary;

(e) 7 CFR Part 791—Authority to Make Payments When There Has Been a Failure to Comply Fully With the Program;

(f) 7 CFR Part 796—Harvesting of Marihuana or Other Such Drug-Producing Plants for Illegal Use; and

(g) 7 CFR Part 1403—Interest on Delinquent Debts.

§ 1403.422 Paperwork Reduction Act assigned numbers.

The information collection requirements contained in these regulations (7 CFR Part 1430) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Control Number 0560–0114.

Signed at Washington, D.C. on December 29, 1983.

Richard E. Lyng,

Acting Secretary, U.S. Department of Agriculture.

[FR Doc. 83-34849 Filed 12-30-83; 11:33 am]

BILLING CODE 3410-05-M

Animal and Plant Health Inspection Service

9 CFR Part 81

[Docket No. 83-148]

Highly Pathogenic Avian Influenza

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document amends the "Highly Pathogenic Avian Influenza" interim rule by reducing the area designated as a quarantined area in New Jersey because of highly pathogenic avian influenza. The quarantined area is changed by deleting portions of Atlantic, Cumberland, Gloucester, and Salem Counties from the quarantined area (with this change all of Atlantic County is outside of the quarantined area). The quarantined area was established as part of a mechanism to help prevent the spread of highly pathogenic avian influenza. However, it is no longer necessary to quarantine the deleted area for such purpose.

DATES: Effective date is December 30, 1983. Written comments must be received on or before March 5, 1984.

ADDRESS: Written comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Written comments received may be inspected at Room 728 of the Federal building, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. William W. Buisch, Chief, National Emergency Field Operations Staff, VS, APHIS, USDA, Room 747, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8073.

SUPPLEMENTARY INFORMATION:

Emergency Action

Dr. John K. Atwell, Deputy Administrator of the Animal and Plant Health Inspection Service for Veterinary Services, has determined that an emergency situation exists which warrants publication of this interim rule without prior opportunity for public comment. Immediate action is warranted in order to delete unnecessary restrictions on the movement of live poultry and certain other items from portions of Atlantic, Cumberland, Gloucester, and Salem Counties in New Jersey.

Further, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest; and good cause is found for making this interim rule effective upon signature. Comments are solicited for 60 days after publication of this document. A final document discussing comments received and any amendments required will be published in the **Federal Register.**

Background

The "Highly Pathogenic Avian Influenza" interim rule in 9 CFR Part 81, among other things, regulates the interstate movement of poultry and certain other items from quarantined areas in Pennsylvania and New Jersey because of highly pathogenic avian influenza (48 FR 51422–51423, 52420–52427, 52885–52887, 53678–53679, 53679–53681, 53997, 54574–54575, 55402–55405, 55722, 57474–57475). This document reduces the area designated as a quarantined area in New Jersey.

Highly Pathogenic Avian Influenza

Highly pathogenic avian influenza is a highly contagious and pathogenic viral disease of poultry. It is defined as a disease of poultry caused by any influenza virus Type A that results in not less than 75 percent mortality within 8 days in at least 8 healthy susceptible chickens, 4 to 8 weeks old, inoculated by the intramuscular, intravenous, or caudal airsac route with bacteria-free infectious allantoic or cell culture fluids and using standard laboratory operating procedures to assure specificity. Clinical evidence of the disease includes decreased feed and water consumption, depression, unusual movements or positions, increased mortality, hemorrhage beneath the skin on the lower legs and feet, severe decrease in egg production, post mortem lesions, and history of the disease occurrence in the flock.

Effect of Designation as a Quarantined Area

With certain exceptions, the interim rule provides that the following articles designated as prohibited articles are prohibited from being moved interstate from a quarantined area:

(1) Live poultry,

(2) Manure from poultry, and

(3) Litter that has been used by poultry.

The interim rule also provides, with certain exceptions, that the following articles designated as restricted articles are allowed to be moved interstate from a quarantined area only in accordance with certain conditions:

(1) Poultry carcasses or parts thereof,

(2) Eggs from poultry, and

(3) Coops, containers, troughs or other accessories that have been used in the handling of poultry or poultry eggs.

Reduction of Quarantined Area in New Jersey

Prior to the effective date of this document, the quarantined area in New Jersey consisted of approximately 400 square miles and included portions of Atlantic, Cumberland, Gloucester, and Salem Counties. This document reduces the quarantined area in New Jersey to an area of approximately 12 square miles by deleting portions of Atlantic, Cumberland, Gloucester, and Salem Counties from the quarantined area (with this change all of Atlantic County is outside of the quarantined area). The previously established quarantined area was based on the finding of highly pathogenic avian influenza in live poultry on a premises in Salem County in New Jersey.

The poultry on the infected premises have been depopulated. Also, based on extensive surveys in the previously quarantined area in New Jersey it has been determined that the disease has not spread from that premises to live poultry on other premises. Further, in addition to being within the quarantined area in New Jersey, the infected premises is also subject to a Federal premises quarantine which prohibits the movement from such premises of all of the articles referred to above as prohibited articles or restricted articles.

However, the quarantined area cannot be completely eliminated since reservoirs of the virus remain on the premises where the disease was found in Salem County. It has been determined that it is still necessary to protect

against the spread of highly pathogenic avian influenza from the infected premises by vectors such as small animals or insects. Further, it has been determined that this can be accomplished with a quarantine which has easily understood boundary lines, includes the premises containing highly pathogenic avian influenza virus, and includes at least a one mile buffer zone in every direction from premises containing the virus.

Prior to the effective date of this document, the quarantined area in Atlantic, Cumberland, Gloucester, and Salem Counties in New Jersey was described as:

That portion of New Jersey beginning at the intersection of NJ Highway 45 and NJ Highway 49; then northeasterly along NJ Highway 45 to its intersection with U.S. Highway 322; then southeasterly along U.S. Highway 322 to its intersection with NJ Highway 54; then southwesterly along NJ Highway 54 to its intersection with NJ Secondary Road 557; then southeasterly along NJ Secondary Road 557 to its intersection with NJ Secondary Road 552; then westerly along NJ Secondary Road 552 to its intersection with NJ Highway 47; then southerly along NJ Highway 47 to its intersection with NJ Highway 49; then northwesterly along NJ Highway 49 to its intrersection with NJ Highway 45.

Under the circumstances and criteria explained above, the quarantined area in New Jersey is redescribed as follows:

That portion of Salem, Gloucester, and Cumberland Counties in NJ beginning at the intersection of U.S. Highway 40 with NJ Highway 55; then southerly along New Jersey Highway 55 to its intersection with County Road 690; then westerly along County Road 690 to its intersection with County Road 655; then northerly along County Road 655 to its intersection with County Road 639; then northwesterly along County Road 639 to its intersection with County Road 553; then northerly along County Road 553 to its intersection with U.S. Highway 40; then easterly along U.S. Highway 40 to its intersection with NJ Highway 55.

Executive Order and Regulatory Flexibility Act

The emergency nature of this action makes it impracticable for the Agency to follow the procedures of Executive Order 12291 and Secretary's Memorandum 1512–1 with respect to this interim rule. Immediate action is warranted in order to delete unnecessary restrictions on the movement of live poultry and certain other items from portions of Atlantic, Cumberland, Gloucester, and Salem Counties in New Jersey.

This emergency situation also makes compliance with section 603 and timely compliance with section 604 of the Regulatory Flexibility Act impracticable. Since this action may have a significant economic impact on a substantial number of small entities, the Final Regulatory Impact Analysis, if required, will address the issues required in section 604 of the Regulatory Flexibility Act.

List of Subjects in 9 CFR Part 81

Animal diseases, Poultry and poultry products, Transportation.

PART 81—HIGHLY PATHOGENIC AVIAN INFLUENZA

Under the circumstances referred to above, § 81.4(a) of 9 CFR Part 81 is revised to read as follows:

§ 81.4 Quarantined areas.

(a) The following area in Cumberland, Gloucester, and Salem Counties in New Jersey is designated as a quarantined area: That portion of New Jersey beginning at the intersection of U.S. Highway 40 with NJ Highway 55; then southerly along NJ Highway 55 to its intersection with County Road 690; then westerly along County Road 690 to its intersection with County Road 655; then northerly along County Road 655 to its intersection with County Road 639; then northwesterly along County Road 639 to its intersection with County Road 553; then northerly along County Road 553 to its intersection with U.S. Highway 40; then easterly along U.S. Highway 40 to its intersection with NJ Highway 55.

* * * * *

Authority: Sec. 2, 23 Stat. 31, as amended; secs. 4–8, 23 Stat. 31–33, as amended; secs. 1–3, 32 Stat. 791, 792, as amended; secs. 1–4, 33 Stat. 1264, 1265, as amended; 41, Stat. 699; sec. 2, 65 Stat. 693; Secs. 2–3, 5–6, and 11, 76 Stat. 129–132; 76 Stat. 663, 7 U.S.C. 450, 21 U.S.C. 111–113, 114a–1, 115–117, 119–126, 130, 134a, 134b, 134d, 134e, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done at Washington, D.C. this 30th day of December, 1983.

J. K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 83-34852 Filed 12-30-83; 4:26 pm]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 83-NM-111-AD; Amdt. 39-4791]

Airworthiness Directives; British Aerospace Model HS 748 2A and 2B Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) applicable to British Aerospace Model HS 748 2A and 2B series airplanes which requires installation of new rudder, elevator, and aileron lock levers. A fatal accident occurred during take-off with the elevator gust lock in the locked position. The new levers are necessary to prevent this condition from occurring.

DATE: Effective January 11, 1984.

ADDRESSES: The service bulletin specified in this AD may be obtained upon request to British Aerospace, Inc., Box 17414, Dulles International Airport, Washington, D.C. 20041 or may be examined at the address shown below.

FOR FURTHER INFORMATION CONTACT: Mr. Sulmo Mariano, Foreign Aircraft Certification Branch, ANM-150S, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington, telephone (206) 431–2979. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority of the United Kingdom (CAA) has classified British Aerospace HS 748 Service Bulletin 27/88 as mandatory. There has been a fatal accident during take-off, due to the elevator being locked. It is probable that the elevator gust lock reengaged after the pilot's checks for full and free movement of the rudder and ailerons. Subsequent investigation has shown that the introduction of new cam slots for all three controls will improve the tolerance of these components to in-service defects which could add to the possibility of a lock becoming reengaged. The service bulletin prescribes installation of new gust lock levers for the three controls.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable airworthiness bilateral agreement.

Since this condition is likely to exist or develop on airplanes of this model registered in the United States, the FAA has determined that an AD is necessary which requires installation of new gust lock levers for the three controls.

Further, since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for

making this amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Aviation safety, aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, section 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

British Aerospace: Applies to all Model HS 748 2A and 2B series airplanes certificated in all categories. Compliance is required as indicated. To prevent the gust locks of the control surfaces from reengaging during flight, accomplish the following within the next 60 days after the effective date of this AD, unless previously accomplished:

A. Replace the existing elevator, rudder and aileron lock levers with new parts in accordance with the Accomplishment Instructions of British Aerospace HS 748 Service Bulletin 27/88, Revision 2, dated April 22, 1983.

B. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

This amendment becomes effective January 11, 1984.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89)

Note: The FAA has determined that this regulation is an emergency regulation that is not major under section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

Issued in Seattle, Washington on December 22, 1983.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 84-59 Filed 1-3-84; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 83-NM-75-AD; Amdt. 39-4789]

Airworthiness Directives; McDonnell Douglas Model DC-9-10, -30, -40, and C-9 (Military) series airplanes equipped with ventral aft pressure bulkhead

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: On July 22, 1983, the FAA issued a telegraphic airworthiness directive (AD), T83-15-51, effective upon receipt, to all known operators of McDonnell Douglas Model DC-9-10, -30, -40, and C-9 (Military) series airplanes certificated in all categories. This AD required inspection for cracked ventral aft pressure bulkheads and rework, if necessary. This action was prompted by a report of a 51-inch crack in the right side of the ventral aft pressure bulkhead web. Failure of the bulkhead web will result in loss of cabin pressurization: This AD is hereby published in the **Federal Register** to make it effective to all persons.

DATES: Effective January 9, 1984.

This AD was effective earlier to all recipients of telegraphic AD T83-15-51, dated July 22, 1983.

Compliance schedule as prescribed in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service information may be obtained from: McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). This information also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Michael N. Asahara, Sr., Aerospace Engineer, Airframe Branch, ANM-120L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808, telephone (213) 548-2826.

SUPPLEMENTARY INFORMATION: On July 22, 1983, the FAA issued a telegraphic airworthiness directive (AD), T83-15-51, applicable to McDonnell Douglas Model DC-9-10, -30, -40, and C-9 (Military) series aircraft requiring inspection and rework, if necessary, of the ventral aft pressure bulkhead. There had been one incident reported by an operator of a 51-inch crack in the right-hand side of the ventral aft pressure bulkhead. Subsequent study of the failed pressure bulkhead revealed that the cracking in the web initiated in an area coincident with a crease found on the forward side of the bulkhead. Fractographic analysis revealed that a portion of the crack coincident with the crease failed in shear overload. This indicates that the crack was a through flaw, created approximately the same time as the crease was initiated. Study also revealed that fatigue cracking initiated at the ends of the flaw and propagated in the inboard and outboard directions. The FAA has since concluded that the fatigue cracking was caused by mechanical damage, but is unable to ascertain the probable origin of the damage or the existence or extent of a similar condition on other aircraft. The failure of the ventral aft pressure bulkhead could compromise the structural integrity of the fuselage and result in rapid loss of cabin pressurization. The aircraft involved had approximately 33,000 total flight hours and 34,076 landing cycles.

Since this condition may exist or develop on other aircraft of this same type design, a telegraphic AD was issued which required a visual inspection designed to reveal cracks at a location similar to the one discovered in service, and rework, if necessary.

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

List of Subjects in 14 CFR Part 39

Aviation Safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-9-10, -30, -40, and Military C-9 series airplanes, fuselage numbers 20 through 264, with ventral aft pressure bulkhead not in compliance with McDonnell Douglas DC-9 Alert Service Bulletin A53-144, certificated in

all categories, unless already accomplished:

A. For airplanes with 30,000 or more cycles, accomplish the following within the next 100 additional cycles after the effective date of this AD:

1. Roll back or remove and retain insulation material from aft side of bulkhead web for approximately 15 inches outboard of RH/LH edge or ventral door cutout.

2. Clean as necessary and perform close detail visual check for cracks running along AD4 rivet rows, for attaching RH/LH horizontal stiffeners, P/N 9915558, at Z=14.00, 24.00, 34.00, 48.00 and 63.50. (Reference McDonnell Douglas Service Sketch SK 3110A, Figure 1, Sheet 6). Check for cracks for a distance of 15 inches outboard of RH/LH edge of ventral door cutout. Removal of existing finger doublers along edges of door cutout is not required. Primary areas of interest are the outboard edges of finger doublers.

3. In addition to above, on Group 1 aircraft identified in McDonnell Douglas DC-9 Alert Service Bulletin A53-144, perform a visual check for cracks in the web at the upper and lower ends of the firex support stiffeners. (Refer to McDonnell Douglas Service Sketch 3109.)

B. Rework any cracked bulkhead panels, per McDonnell Douglas Service Sketches SK 3525 (temporary), dated July 19, 1983, or SK 3524A (permanent), dated July 18, 1983.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes unpressurized to a base in order to comply with the requirements of this AD.

D. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). These documents also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

This Admendment becomes effective, January 9, 1984, and was effective earlier to those recipients of telegraphic AD T83-15-51, dated July 22, 1983.

(Sec. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89)

Note.—The FAA has determined that this regulation is an emergency regulation that is not major under section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evalution or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evalution is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

Issued in Seattle, Washington on December 21, 1983.

F. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 84-56 Filed 1-3-84; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 71

[Airspace Docket No. 83-AGL-11]

Alteration of Control Zone; Columbus, Ohio

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this Federal action is to alter the Port Columbus International Airport, Columbus, Ohio, control zone to revise/reduce the airspace currently designated for the control zone.

The intended effect of this action is to insure segregation of the aircraft using approach procedures in instrument weather conditions from other aircraft operating under visual weather conditions in controlled airspace.

EFFECTIVE DATE: March 15, 1983.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Airspace, Procedures, and Automation Branch, Air Traffic Division, AGL-530, FAA, Great Lakes Region, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION: This action revises the Port Columbus International Airport control zone to accommodate existing airspace requirements. A review of designated airspace in the Columbus area prompted a rewrite to better and more accurately describe the airspace in the area. The revised description is presented in the text of this notice.

Aeronautical maps and charts will reflect the defined areas which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

History

On the page 49863 of the **Federal Register** dated October 28, 1983, the FAA proposed to amend § 71.171 of the Federal Aviation Regulations (14 CFR Part 71) so as to alter the Port Columbus International Airport, Columbus, Ohio, control zone. Interested parties were invited to participate in the rulemaking proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the Notice of Proposed Rulemaking.

Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.171 of Part 71 of the Federal Aviation Regulations was published in Advisory Circular AC 70-3A dated January 3, 1983.

List of Subjects in 14 CFR Part 71

Control zones/Aviation safety.

Adoption of the amendment

§ 71.171 [Amended]

Accordingly, pursuant to the authority delegated to me, § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, effective 0901 GMT, March 15, 1984, as follows:

Columbus, Port Columbus International Airport, OH

Within a 5-mile radius of Port Columbus International Airport (latitude 39°59'42" N., longitude 82°53'11" W.); within 1 mile each side of the 100° bearing from the center of the airport, extending from the 5-mile radius zone to 6 miles east of the airport; within 1 mile each side of the 280° bearing from the center of the airport, extending from the 5-mile radius zone to 6 miles west of the airport.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983))

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, it is certified that this—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Des Plaines, Illinois, on December 20, 1983.

Monte R. Belger,

Acting Director,

Great Lakes Region.

[FR Doc. 84-55 Filed 1-3-84; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. 83C-0179]

Listing of Color Additives for Coloring Contact Lenses

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the color additive regulations to provide for the safe use in coloring contact lenses of the color polymeric reaction products formed by chemically bonding certain dyes, used singly or in combination, with poly(hydroxyethyl methacrylate). The reaction products are called "poly(hydroxyethyl methacrylate)-dye copolymers" in the listing regulation. The agency is taking this action in response to a petition filed by Ciba Vision Care.

DATES: Effective February 6, 1984; objections by February 3, 1984.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: John L. Herrman, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5740.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of July 5, 1983 (48 FR 30758), FDA announced that a color additive petition (CAP 3C0174) has been filed by Ciba Vision Care, P.O. Box 105069, Atlanta, GA 30348, proposing "that the color additive regulations be amended to provide for the safe use of the following dyes chemically bonded to the lens polymer, singly or in various combinations, for coloring contact lenses: Reactive Blue 21 (CAS Reg. No. 73049-92-0), Reactive Black 5 (CAS Reg. No. 17095-24-8), Reactive Yellow 15 (CAS Reg. No. 60958-41-0), and Reactive Orange 78 (CAS Reg. No. 68189-39-9)." The petition was filed under section 706 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 376).

The colored polymeric reaction products that are subject of this petition are formed when one or more of the dyes listed in § 73.3121(a) (21 CFR 73.3121(a)) are bonded with poly(hydroxyethyl methacrylate) on the front surface of a contact lens to form a thin layer of colored polymeric material on that surface. This polymeric material colors the contact lens.

Under the Medical Device Amendments of 1976 (Pub. L. 94-295), a color additive for use in a medical device must be listed when the color additive comes in direct contact with the body for a significant period of time (section 706(a) of the act). The polymeric reaction products of the reactive dyes and poly(hydroxyethyl methacrylate), called "poly(hydroxyethyl methacrylate)-dye copolymers" in § 73.3121, are color additives within the meaning of section 201(t) of the act (21 U.S.C. 321(t)) because they are substances made by a process of synthesis or similar artifice, and because they are capable of imparting color to food, drugs, cosmetics, or the human body if added or applied thereto. In the use considered here, the reactive dyes are merely starting materials and not color additives subject to section 706 of the act. In the reaction process that occurs in bonding the reactive dyes to the poly(hydroxyethyl methacrylate), the reactive dyes cease to exist as separate entities.

The use of the poly(hydroxyethyl methacrylate)-dye copolymers as color additives in contact lenses is subject to regulation under section 706(a) of the act. The lenses that have this colored polymeric material on their front surfaces are intended to be placed on the eye for several hours a day, each day, for 1 year or more. These color additives accordingly will come in direct contact with the body for a significant period of time. Consequently, the use of the color additives presented in the petition now before the agency is subject to the statutory listing requirement.

To establish that the color additives are safe for use in contact lenses, the petitioner submitted various toxicity data. In a primary ocular irritation study with extracts of lens material containing the color additives, and in a 21-day ocular irritation study with contact lenses tinted with the color additives, both of which were done in rabbits, neither the lens containing the color additives nor the extracts of the colored lens material caused ocular irritation under the conditions of these tests. The agency has also reviewed data regarding the toxicity of potential impurities, such as unbound reactive dye starting materials, remaining in the lens. The reactive dye starting materials, being of lower molecular weight than the polymeric color additive, would be more readily absorbed into the body than the color additive and would thus be expected to show a greater toxic effect. FDA has concluded that, as a worst case, any material migrating from the color additive in the lens would not pose a greater safety concern than if the reactive dye starting materials were placed in the lens unbound, and all migrated into the eye over a 1-year period. This amount of migration would be equivalent to 5 to 45 micrograms of reactive dye starting material per lens or a total of 27 to 250 nanograms per day for both eyes, depending on the reactive dye used. The petitioner conducted cytotoxicity studies in which serial dilutions of the individual reactive dyes were applied directly to L-929 mouse fibroblast cells. For the reactive dye used in the greatest amounts, no toxic effect was seen at a concentration 1,300 times the concentration that would be in the eyes if 250 nanograms migrated into the eyes per day. All other reactive dyes showed no toxic effect with even greater factors above the worst case eye concentration, ranging up to 61,000 times the concentration that would be in the eyes from 27 nanograms per day.

On the basis of these studies, FDA concludes that the safety margin is sufficiently large that, for any foreseeable formulation, a limitation on the amount of these color additives that may be present on the lens, beyond the limitation that only that amount necessary to accomplish the intended technical effect may be used, is not required.

FDA received an anonymous comment in response to the notice of filing of this petition. The person making the comment claims that the dye-polymer reaction is reversible, resulting in the release of toxic dyes into the eye during the lifetime of the contact lens, but did not provide data to support that claim. Information in the petition shows that the dye-polymer reaction is reversible in alkali, but that the polymeric color additive is highly stable under the physiological conditions of the eye. The agency has also searched the toxicity literature and has found no data supporting the claim regarding the toxicity of the materials that would be released if the binding reaction were reversed. The agency therefore finds no basis for the assertions in the comment.

FDA, having reviewed the anonymous comment, data in the petition, and other

relevant material, concludes that there is a reasonable certainty that no harm will result from the proposed use of the reaction products of poly(hydroxyethyl methacrylate) with Reactive Black 5, Reactive Blue 21, Reactive Orange 78, and Reactive Yellow 15, used singly or in various combinations, for coloring contact lenses. To further assure the safety of the use of these color additives, FDA is establishing a requirement that the manufacturer wash the lens to remove unbound reactive dyes. The agency also concludes that the poly(hydroxyethyl methacrylate)-dye copolymers listed in § 73.3121 are suitable for their intended use. On the basis of factors listed in § 71.20(b) (21 CFR 71.20(b)), the agency concludes that certification of the color additive is not necessary for the protection of the public health.

In accordance with § 71.15(a) (21 CFR 71.15(a)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Bureau of Foods (address above) by appointment with the information contact person listed above. As provided in § 71.15(b), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has previously concluded that this action will not have a significant impact on the human environment and that an environmental impact statement is not required. No new information or comments have been received that would alter the agency's previous determination that there is no significant impact on the human environment, and that an environmental impact statement is not required.

List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Medical devices.

PART 73—LISTING OF COLOR ADDITIVES EXEMPT FROM CERTIFICATION

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 701(e), 706, 70 Stat. 919 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371(e), 376)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 73 is amended by adding new § 73.3121 under Subpart D, to read as follows:

§ 73.3121 Poly(hydroxyethyl methacrylate)-dye copolymers.

(a) *Identity.* The color additives are formed by reacting one or more reactive dyes listed in this paragraph with poly(hydroxyethyl methacrylate), so that the sulfate group (or groups) of the dye is replaced by an ether linkage to the poly(hydroxyethyl methacrylate). The dyes are (1) Reactive Black 5 [2,7-naphthalenedisulfonic acid,4-amino-5-hydroxy-3,6-bis[(4-[(2-(sulfooxy)ethyl)sulfonyl)-phenyl)azo)-, tetrasodium salt] (CAS Reg. No. 17095–24–8); (2) Reactive Blue 21 [copper, (29*H*,31*H*-phthalocyaninato(2-)-*N*(29),*N*(30),*N*(31),*N*(32))-, sulfo[(4-[(2-sulfooxy)ethyl)sulfonyl)phenyl)amino) sulfonyl derivs] (CAS Reg. No. 73049–92–0); (3) Reactive Orange 78 [2-naphthalene-sulfonic acid,7-(acetyl-amino)-4-hydroxy-3-[(4-[(2-(sulfooxy)-ethyl)sulfonyl)phenyl)azo)-] CAS Reg. No. 68189–39–9); and (4) Reactive Yellow 15 [benzensulfonic acid,4-[4,5-dihydro-4-[(2-methoxy-5-methyl-4-[(2-(sulfooxy)ethyl)sulfonyl)phenyl)azo)-3-methyl-5-oxo-1*H*-pyrazol-1-yl)-] (CAS Reg. No. 60958–41–0).

(b) *Uses and restrictions.* (1) The substances listed in paragraph (a) of this section may be used to color contact lenses in amounts not to exceed the minimum reasonably required to accomplish the intended coloring effect.

(2) As part of the manufacturing process, the lenses containing the color additives are thoroughly washed to remove unbound reactive dyes.

(3) Authorization and compliance with this use shall not be construed as waiving any of the requirements of sections 510(k), 515, and 520(g) of the Federal Food, Drug, and Cosmetic Act (the act). A person intending to introduce a device containing a poly(hydroxyethyl methacrylate)-dye copolymers listed under this section into commerce shall submit to the Food and Drug Administration either a premarket notification in accordance with Subpart E of Part 807 of this chapter, if the device is not subject to premarket approval, or submit and receive approval of an original or supplemental premarket approval application if the device is subject to premarket approval.

(c) *Labeling.* The label of the color additive shall conform to the requirements of § 70.25 of this chapter.

(d) *Exemption from certification.* Certification of this color additive is not necessary for the protection of the public health, and therefore the color additive is exempt from the certification requirements of section 706(c) of the act.

Any person who will be adversely affected by the foregoing regulation may at any time on or before February 3, 1984 file with the Dockets Management Branch (address above) written objection thereto. Objections shall show how the person filing will be adversely affected by the regulation., specify with particularity the provisions of the regulation deemed objectionable, and state the grounds for the objections. Objections shall be filed in accordance with the requirements of 21 CFR 71.30. If a hearing is requested, the objections shall state the issue for the hearing, shall be supported by grounds factually and legally sufficient to justify the relief sought, and shall include a detailed description and analysis of the factual information intended to be presented in support of the objections in the event that a hearing is held. Three copies of all documents shall be filed and shall be identified with the docket number found in the brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall become effective February 6, 1984, except as to any provisions that may be stayed by the filing of proper objections. Notice of the filing of objections or lack thereof will be announced by publication in the **Federal Register.**

(Secs. 701(e), 706, 70 Stat. 919 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371(e), 376))

Dated: December 28, 1983.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84–81 Filed 1–3–84; 8:45 am]

BILLING CODE 4160–01–M

---

21 CFR Part 452

[Docket No. 83N–0285]

Antibiotic Drug; Updating and Technical Changes; Correction

AGENCY: Food and Drug Administration.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting the final rule that amended the antibiotic drug regulations by making corrections, updatings, and minor technical changes. This document corrects the amendatory language to clairfy the technical change that was made in § 452.510b(a)(1).

EFFECTIVE DATE: November 8, 1983.

FOR FURTHER INFORMATION CONTACT: Joan M. Eckert, National Center for Drugs and Biologics (HFN–140), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4290.

SUPPLEMENTARY INFORMATION:

§ 452.510b [Corrected]

In FR Doc. 83-30122 in the issue for Tuesday, November 8, 1983 (48 FR 51292), on page 51292 in the right column, amendment 7 is corrected to read "Part 452 is amended in § 452.510b by revising the fifth sentence and deleting the sixth sentence in paragraph (a)(1); by revising paragraph (a)(3)(i)(*b*); and by revising paragraph (b)(2) to read as follows:"

(This correction clarifies that only sentences five and six in §452.510b(a)(1) are affected. Even though sentence four is restated in the amendment, it is not changed. Nor is the last sentence, which is not restated, changed.)

Dated: December 28, 1983.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-30 Filed 1-3-84; 8:45 am]

BILLING CODE 4160-01-M

---

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Tylosin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed for International Nutrition, Inc., providing for manufacturing a 20-gram-per-pound tylosin premix. The premix is used to make finished feeds for swine, beef cattle, and chickens.

EFFECTIVE DATE: January 4, 1984.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Bureau of Veterinary Medicine (HFV-130), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4913.

SUPPLEMENTARY INFORMATION: International Nutrition, Inc., 6664 L St., Omaha, NE 68117, is sponsor of a supplement to NADA 95-551 submitted on its behalf by Elanco Products Co. This supplement provides for the manufacture of 20-gram-per-pound premixes subsequently used to make finished feeds for swine, beef cattle, and chickens for use as in 21 CFR 558.625(f)(1) (i) through (vi). Based on the data and information submitted, the supplement is approved and the regulations are amended to reflect the approval. The basis for approval of this supplement is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Bureau of Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact settlement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Part 558 is amended in § 558.625 by revising paragraph (b)(3), to read as follows:

§ 558.625 Tylosin.

* * * * *

(b) * * *

(3) To 043733: 4 grams per pound, paragraph (f)(1)(vi)(*a*) of this section; 10 grams per pound, paragraph (f)(1) (i), (iii), (iv), and (vi) of this section; 20 grams per pound, paragraph (f)(1) (i) through (vi) of this section.

* * * * *

Effective date. January 4, 1984.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: December 22, 1983.

Robert A. Baldwin,

Associate Director for Selective Evaluation.

[FR Doc. 84-27 Filed 1-3-84; 8:45 am]

BILLING CODE 4160-01-M

---

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Monensin and Virginiamycin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by SmithKline Animal Health Products, providing for safe and effective use of separately approved monensin and virginiamycin premixes in making a combination broiler chicken feed. The feed is used for prevention of coccidiosis and increased rate of weight gain.

EFFECTIVE DATE: January 4, 1984.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Bureau of Veterinary Medicine (HFV-128), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4317.

SUPPLEMENTARY INFORMATION: SmithKline Animal Health Products, Division of SmithKline Beckman Corp., 1600 Paoli Pike, West Chester, PA 19380, filed supplemental NADA 122-481 providing for use of separately approved monensin sodium (Coban®) and virginiamycin (Stafac®) premixes in making a combination broiler feed containing 90 to 110 grams of monensin per ton and 5 to 15 grams of virginiamycin per ton. The feed is intended for use as an aid in the prevention of coccidiosis and for increased rate of weight gain. The original approval provides for a combination broiler feed containing 90 to 110 grams of monensin per ton and 5 grams of virginiamycin per ton for use as an aid in the prevention of coccidiosis and for increased rate of weight gain and improved feed efficiency. The premixes are approved for individual use in broiler feed at the same dosage ranges and for the same claims now provided for in combination. The supplemental NADA is approved and the regulations are amended accordingly. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Bureau of Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(ii) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under

authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Part 558 is amended in § 558.355 by revising paragraph (b)(5) and adding new paragraph (f)(1)(xxi) to read as follows:

§ 558.355 Monensin.

* * * * *

(b) * * *

(5) To 000007: 45 grams per pound, as monensin sodium provided by No. 000986, paragraph (f)(1)(xiii), (xx), and (xxi) of this section.

* * * * *

(f) * * *

(1) * * *

(xxii) *Amount per ton.* Monensin, 90 to 110 grams, plus virginiamycin, 5 to 15 grams.

(*a*) *Indications for use.* For increase in rate of weight gain; as an aid in the prevention of coccidiosis caused by *Eimeria necatrix, E. tenella, E. acervulina, E. maxima, E. brunetti,* and *E. mivati.*

(*b*) *Limitations.* Do not feed to laying chickens; feed continuously as sole ration; withdraw 5 days before slaughter; as monensin sodium provided by No. 000986 in § 510.600 of this chapter; virginiamycin provided by No. 000007 in § 510.600 of this chapter.

* * * * *

Effective date. January 4, 1984.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: December 23, 1983.

Richard A. Carnevale,

Acting Deputy Associate, Director for Scientific Evaluation.

[FR Doc. 84-29 Filed 1-3-83; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 200

[Docket No. R-83-1098; FR-1356]

Use of Materials Bulletin No. 82-HUD Building Product Standards and Certification Program for Sealing Insulating Glass Units

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule adopts as a part of HUD's Minimum Property Standards (MPS), a Use of Materials Bulletin (UM) that incorporates certain standards issued by the American Society for Testing and Materials, Inc. (ASTM) for the manufacture of sealed insulating glass units.

This action is taken after evaluation of technical standards prepared by the ASTM in response to industry requests for such evaluation.

The rule also supplements HUD's building products certification procedures by requiring that certain additional information be included on the label which each manufacturer affixes to the certified product, and by specifying the frequency with which sealed insulating glass units must be tested in order to be acceptable under HUD Programs.

EFFECTIVE DATE: Upon expiration of the first period of 30 calendar days of continuous session of Congress after publication, but not before further notice of the effective date is published in the **Federal Register.** The approval by the Director of the Federal Register of the incorporations by references in this document will become effective on the effective date of this rule.

FOR FURTHER INFORMATION CONTACT: Mr. Leslie H. Breden, Construction Standards Division, Office of Manufactured Housing and Construction Standards, Room 3222, Department of Housing and Urban Development, Washington, D.C. 20410 (202) 755-5929. This is not a toll free number.

SUPPLEMENTARY INFORMATION: On August 8, 1983 at 48 FR 35890, HUD published a proposed rule that would adopt technical standards prepared and issued by the American Society for Testing and Materials, Inc. (ASTM) relating to the design, assembly, and testing of sealed insulating glass units.

HUD received only one public comment. That comment supported HUD's publication of the proposed rule. However, the rule is being published as final with one change.

The requirement for the class designation and the approximate date of manufacture has been deleted because it was determined that these items constituted unnecessary information collection.

The text of UM 82 [1] is not being reproduced in this rule because its substance is embodied in the new § 200.940, which HUD is adopting as set forth below. However, a copy of UM 82 is available for public inspection during regular business hours in the Construction Standards Division, Office of Manufactured Housing and Construction Standards, Room 3222, and in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10278, Department of Housing and Urban Development, Washington, D.C. 20410.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implements Section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, at the above address.

This rule does not constitute a "major rule" as that term is defined in Section 1(b) of Executive Order 12291 on Federal Regulations issued by the President on February 12, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices of consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Pursuant to the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities. UM 82 adopts product standards that are both nationally recognized and generally followed throughout the affected industry.

This rule was listed in the Department's Semiannual Agenda of Regulations published on October 17, 1983 at 48 FR 47415, pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Housing standards, Loan programs, Housing and community development, Mortgage insurance, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Minimum property standards, Incorporation by reference.

PART 200—[AMENDED]

Accordingly, 24 CFR Part 200 is amended by adding a new § 200.940 to read as follows:

[1] Filed with the original.

§ 200.940 Supplementary specific procedural requirements under HUD Building Product Standards and Certification Program for Sealed Insulating Glass Units.

(a) *Applicable standards.* (1) Sealed insulating glass units shall be designed, assembled and tested in compliance with the following American Society of Testing and Materials (ASTM) standards:

ASTM E-546-75—Standard Test Method for Frost Point of Sealed Insulating Glass Units;
ASTM E-773-81—Standard Test Method for Seal Durability of Sealed Insulating Glass Units; and
ASTM E-774-81—Specification for Sealed Insulating Glass Units.

(2) These standards have been approved by the Director of the **Federal Register** for incorporation by reference. They are available from the American Society for Testing Materials (ASTM) 1916 Race St. Philadelphia, PA 19103. The standards are also available for inspection at the Office of the **Federal Register**, 1100 L Street, NW., Room 8401, Washington, D.C. 20408.

(b) *Labeling.* (1) Under the procedures set forth in § 200.935(d)(6) concerning labeling of a product, the administrator's validation mark and the manufacturer's certification of compliance with the applicable standards are required to be on the certification label issued by the administrator to the manufacturer. In the case of sealed insulating glass units, the following additional information shall be included on the certification label:

(i) The manufacturer's statement of conformance to the appropriate referenced ASTM standard.

(ii) The manufacturer's name and code identifying the plant location.

(2) The certification label shall be affixed to each sealed insulating glass unit.

(c) *Periodic tests and quality control inspections.* Under the procedures set forth in § 200.935(d)(8) concerning periodic tests and quality control inspections, the frequency of testing for a product shall be described in the specific building product certification program. In the case of sealed insulating glass units, testing and inspection shall be conducted as follows:

(1) At least every twelve months, beginning with the initial administrator visit, a sample of each certified sealed insulated glass unit shall be selected by the administrator for testing in an approved laboratory, in compliance with the applicable standards.

(2) The administrator shall visit the manufacturer's facility at least once every six months to assure that the initially accepted quality procedures continue to be followed.

(Sec. 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d); Sec. 211 of the National Housing Act, 12 U.S.C. 1715b.)

Dated: December 19, 1983.

W. Calvert Brand,

Acting Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 84-110 Filed 1-3-84; 8:45 am]
BILLING CODE 4210-01-M

---

24 CFR Part 200

[Docket No. R-83-1101; FR-1405]

Use of Materials Bulletin No. 39a-HUD Building Product Standards and Certification Program for Aluminum Windows, Storm Windows, Sliding Glass Doors and Storm Doors

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissoner, HUD.

ACTION: Final rule.

SUMMARY: This rule adopts as a part of HUD's Minimum Property Standards (MPS), a Use of Materials Bulletin that incorporates certain standards issued by the American National Standards Institute, Inc. (ANSI) for the manufacture of aluminum windows, storm windows, sliding glass doors and storm doors. UM 39a revises and supersedes existing UM 39.

This rule also supplements HUD's building products certification program by requiring that certain additional information be included on the label which each manufacturer affixes to the certified product, and by specifying the frequency with which aluminum windows, storm windows, sliding doors and storm doors must be tested in order to be acceptable under HUD programs.

EFFECTIVE DATE: Upon expiration of the first period of 30 calendar days of continuous session of Congress after publication, but not before further notice of the effective date is published in the **Federal Register.** The approval by the director of the **Federal Register** of the incorporations by reference in this document will become effective on the effective date of this rule.

FOR FURTHER INFORMATION CONTACT: Mr. Leslie H. Breden, Construction Standards Division, Office of Manufactured Housing and Construction Standards, Room 3222, Department of Housing and Urban Development, Washington, D.C. 20410 (202) 755-5929. This is not a toll free number.

SUPPLEMENTARY INFORMATION: HUD published a proposed rule on August 5, 1983 at 48 FR 35668 which would adopt technical standards prepared and issued by the American National Standards Institute/Architectural Aluminum Manufacturer's Association (ANSI/AAMA), relating to the design, assembly, and testing of aluminum windows, storm windows, sliding glass doors and storm doors.

HUD received only one public comment on the proposed rule. The commentor suggested that (1) § 200.938(a)(1) be revised to state that ANSI/AAMA 1002.9-1977 is applicable until July 1, 1984, after which it will be superseded by ANSI/AAMA 1002.10-1983; and (2) § 200.938(c)(1) be revised to state that at least every four years a sample aluminum window, storm window, sliding glass door and storm door of the maximum size commercially available *and submitted for certification* shall be selected by the program administrator for testing in accordance with the *performance requirements* of the applicable standard by an approved laboratory. (Corrections recommended in the public comment are underlined.)

Response to Comment No. 1: Upon further review, HUD has determined that the listed references were incorrect, but that the necessary change is not precisely that recommended by the commenter. ANSI/AAMA 1002.9-1977 was superseded by ANSI/AAMA 1002.10-1980, which was then revised in 1983. Therefore, ANSI/AAMA 1002.9-1977 is obsolete and is being deleted from the UM in this final rule.

Response to Comment No. 2: Addition of "and submitted for certification" is incorporated in the Final Rule, as the commenter suggested. Addition of "performance requirements" is not acceptable to HUD. Testing of sample units must be in accordance with *all* provisions of the referenced standards, not just the performance requirements.

In addition, the requirement for the identity and location of the manufacturer, specification designation, and series or model number has been deleted. The Department has determined that these items constitute unnecessary information collection.

The text of UM 39a is not being reproduced in this rule because its substance is embodied in the new § 200.938 which HUD is adopting as set forth below. However, a copy of UM 39a is available for public inspection during regular business hours in the Construction Standards Division, Office of Manufactured Housing and

Construction Standards, Room 3222, and in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10278, Department of Housing and Urban Development, Washington, D.C. 20410.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implements Section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, at the above address.

This rule does not constitute a "major rule" as that term is defined in Section 1(b) of Executive Order 12291. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Pursuant to the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities. UM 39a adopts product standards that are both nationally recognized and generally followed throughout the affected industry.

This rule was listed under the Office of Housing in the Department's Semiannual Agenda of Regulations published on October 17, 1983, 48 FR 47429, pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Housing standards, Loan programs: Housing and community development, Mortgage insurance, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Minimum Property Standards, Incorporation by reference.

PART 200—[AMENDED]

Accordingly, 24 CFR Part 200 is amended by adding a new § 200.938, to read as follows:

§ 200.938 Supplementary specific procedural requirements under HUD Building Product Standards and Certification Program for Aluminum Windows, Storm Windows, Sliding Glass Doors and Storm Doors.

(a) Applicable standards. (1) Aluminum windows, storm windows, sliding glass doors and storm doors certified for this program shall be designed, assembled, and tested in conformance with the following American National Standards Institute/Architectural Aluminum Manufacturer's Association (ANSI/AAMA) standards:

ANSI/AAMA 302.9–1977 Specifications for Aluminum Prime Windows.

ANSI/AAMA 402.9–1977 Specifications for Aluminum Sliding Glass Doors.

ANSI/AAMA 1002.10–1983 Specifications for Aluminum Insulating Storm Products for Windows and Sliding Glass Doors.

ANSI/AAMA 1102.7–1977 Specifications for Aluminum Storm Doors.

(2) These standards have been approved by the Director of the Federal Register for incorporation by reference. They are available from the American National Standards Institute, Inc, 1430 Broadway, New York, NY 10018. The standards are also available for inspection at the Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, D.C. 20406.

(b) *Labeling.* (1) Under the procedures set forth in § 200.935(d)(6), concerning labeling of a product, the administrator's validation mark and the manufacturer's certification of compliance with the applicable standards are required to be on the certification label issued by the administrator to the manufacturer. In the case of aluminum windows, storm windows, sliding glass doors and storm doors, the following additional information shall be included on the certification label:

(i) The manufacturer's statement of conformance to the appropriate referenced ANSI/AAMA standard.

(ii) The manufacturer's name and the code identifying plant location.

(2) The specification label shall be permanently affixed to each aluminum window, storm window, sliding glass door and storm door.

(c) *Periodic tests and quality control inspections.* Under the procedures set forth in § 200.935(d)(8), concerning periodic tests and quality control inspections, the frequency of testing for a product shall be described in the specific building product certification program. In the case of aluminum windows, storm windows, sliding glass doors and storm doors, testing and inspection shall be conducted as follows:

(1) At least every fours years, a sample unit of the maximum size commerically available and submitted for certification, shall be selected by the administrator for testing by an approved laboratory, in accordance with the applicable standard.

(2) The administrator shall visit the manufacturer's facility at least once every six months to assure that the initially accepted quality procedures continue to be followed.

(Sec. 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d); Sec . 211 of the National Housing Act, 12 U.S.C. 1715b)

Dated: December 19, 1983.

W. Calvert Brand,

Acting Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 84–112 Filed 1–3–84; 8:45 am]

BILLING CODE 4210–27–M

---

24 CFR Part 200

[Docket No. R–83–1100; FR–1358]

HUD Building Product Standards and Certification Program for Plastic Bathtub Units, Plastic Shower Receptors and Stalls, Plastic Lavatories, Plastic Water Closet Bowls and Tanks; Adoption of Use of Materials Bulletin No. 73a

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule adopts as a part of HUD's Minimum Property Standards (MPS), a Use of Materials Bulletin (UM) that incorporates certain standards issued by the American National Standards Institute, Inc. for the manufacture of plastic bathtub units, shower receptors and stalls, lavatories, and water closet bowls and tanks. UM 73a revises supersedes existing UM 73.

The rule also supplements HUD's building products certification procedures by requiring, for this particular certification program, that certain additional information be included in the label which each manufacturer affixes to the certified product, and specifies the frequency with which plastic bathroom fixtures must be tested in order to be acceptable to HUD.

EFFECTIVE DATES: Upon expiration of the first period of 30 calendar days of continuous session of Congress after publication, but not before further notice of the effective date is published in the **Federal Register.** The approval by the

Director of the Federal Register of the incorporations by reference in this document will become effective on the effective date of this rule.

FOR FURTHER INFORMATION CONTACT: Mr. Leslie H. Breden, Construction Standards Division, Office of Manufactured Housing and Construction Standards, Room 3222, Department of Housing and Urban Development, Washington, D.C. 20410; telephone (202) 755–5929. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: A proposed rule was published in the **Federal Register** on August 5, 1983 regarding UM 73a—HUD Building Product Standards and Certification Program for Plastic Bathtub Units, Plastic Shower Receptors and Stalls, Plastic Lavatories, Plastic Water Closet Bowls and Tanks. Comments were received from the Cultured Marble Institute and from the Spartan Manufacturing Company, Inc. Responses to resolve these comments are as listed below.

Discussion of Public Comments

1. *Comment:* The requirement in 24 CFR 200.937(b)(2) which states that a certification label shall be permanently affixed to each plastic bathroom fixture duplicates a requirement in the Manufactured Home Construction and Safety Standards which states that the fixtures be marked or labeled with the manufacturer's name and trademark. This requirement is also ambiguous in terms of what is intended by use of the word "permanently."

Response: These standards are promulgated for use with conventional housing built in conformance with the HUD Minimum Property Standards. Manufactured Home Construction and Safety Standards apply only to manufactured (mobile) homes built in conformance with Title VI of the National Manufactured Housing Construction and Safety Standards Act of 1974. (Section 200.937(b)(2) has been revised by the deletion of the word "permanently.")

2. *Comment:* A commenter recommends that a twelve month interval for product testing and inspections be adopted.

Response: Section 200.937(c)(3) has been revised to state that an administrator shall review a manufacturer's compliance with quality control procedures when he tests its plastic bathtub units, plastic shower receptors and stalls, plastic water closet bowls and tanks (every six months) and lavatories (every twelve months).

3. *Comment:* The biannual plant inspection required by 24 CFR 200.937(c)(3) will drastically increase the cost of producing goods for the HUD/FHA market.

Response: This practice already exists and is recommended by the industry.

4. *Comment:* A commenter suggested that a uniform national building standard be created.

Response: UM 73a is a revision to an existing UM, to reference only those standards which have been developed and accepted by the private sector, in accordance with OMB Circular A 119. It eliminates reference to HUD-developed standards, and also separate fire and smoke requirements.

5. *Comment:* Administrators are not qualified to conduct meaningful inspections of manufacturers plants.

Response: These administrators have been effectively monitoring this program for almost five years. HUD has examined their credentials and monitors their program for certification of manufacturers. The administrator's visits are only to determine that plastic bathroom fixtures continue to comply with the appropriate standards and that quality control procedures are maintained.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implements Section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of General Counsel, Rules Docket Clerk, Room 10278, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410.

This rule does not constitute a "major rule" as that term is defined in Section 1(b) of Executive Order 12291 on Federal Regulations issued by the President on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Pursuant to the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities. UM 73a adopts product standards that are nationally recognized throughout the affected industry and will not create a burden on manufacturers currently meeting the standards.

This rule was listed as Item H–22–81 under the Department's Semiannual Agenda of Regulations published on October 17, 1983, 48 FR 47450, pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Housing standards, Loan programs: Housing and community development, Mortgage insurance, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Minimum Property Standards Incorporation by reference.

PART 200—[AMENDED]

Accordingly, 24 CFR Part 200 is amended by adding a new § 200.937, to read as follows:

§ 200.937 Supplementary specific procedural requirements under HUD Building Product Standards and Certification Program for Plastic Bathtub Units, Plastic Shower Receptors and Stalls, Plastic Lavatories, Plastic Water Closet Bowls and Tanks.

(a) *Applicable standards.* (1) Plastic bathtub units, plastic shower receptors and stalls, plastic lavatories, and plastic water closet bowls and tanks shall be designed, assembled and tested in compliance with the following standards, which are incorporated by reference:

ANSI Z124.1—(1980)	Plastic Bathtub Units
ANSI Z124.2—(1980)	Plastic Shower Receptors and Stalls
ANSI Z124.3—(1980)	Plastic Lavatories
ANSI Z124.4—(1983)	Plastic Water Closet Bowls and Tanks

(2) These standards have been approved by the Director of the Federal Register for incorporation by reference. They are available from the American National Standards Institute, Inc., 1430 Broadway, New York, New York 10018. The standards are also available for inspection at the Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, D.C. 20408.

(b) *Labeling.* (1) Under the procedures set forth in paragraph (d)(6) of Sec. 200.935, concerning labeling of a product, the administrator's validation mark and the manufacturer's certification of compliance with the

applicable standards are required to be on the certification label issued by the administrator to the manufacturer. In the case of plastic bathtub units, plastic shower receptors and stalls, plastic lavatories, and plastic water closet bowls and tanks, the following additional information shall be included on the certification label:

(i) Manufacturer's statement of conformance to UM 73a;

(ii) Manufacturer's name and code identifying the plant location.

(2) The certification label shall be affixed to each plastic bathroom fixture.

(c) *Periodic tests and quality control inspections.* Under the procedures set forth in paragraph (d)(8) of § 200.935, concerning periodic tests and quality control inspections, the frequency of testing for a product shall be described in the specific building product certification program. In the case of plastic bathroom fixtures, testing and inspection shall be conducted as follows:

(1) At least every six months, the administrator shall visit the manufacturer's facility to select a sample of each certified plastic bathtub unit, plastic shower receptor and stall, plastic water closet bowl and tank for testing in an approved laboratory, in accordance with applicable standards.

(2) At least every twelve months, the administrator shall visit the manufacturer's facility to select a sample of each certified plastic lavatory for testing in accordance with applicable standards.

(3) The administrator shall also review quality control procedures at each visit to determine that they continue to be followed.

(Sec. 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d); sec. 211 of the National Housing Act, 12 U.S.C. 1715b)

Dated: December 19, 1983.

W. Calvert Brand,

Acting Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 84-113 Filed 1-3-84; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

Approval of Pennsylvania Permanent Regulatory Program Amendments

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

ACTION: Final rule.

SUMMARY: OSM is announcing the approval of certain amendments to the Pennsylvania permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). These amendments relate to Pennsylvania's subsidence control regulations.

By letter dated August 1, 1983, Pennsylvania submitted amendments consisting of a suspension order suspending certain portions of 25 PA Code sections 89.143–89.147 pertaining to subsidence control.

After providing opportunity for public comment and conducting a thorough review of the program amendments, the Secretary has determined that the modifications to the Pennsylvania program meet the requirements of SMCRA and the Federal permanent program regulations. The Federal rules at 30 CFR Part 938 which codify decisions concerning the Pennsylvania permanent regulatory program are being amended to implement these actions.

EFFECTIVE DATE: The approval of the program amendments is effective January 4, 1984.

FOR FURTHER INFORMATION CONTACT: Robert Biggi, Director, Harrisburg Field Office, Office of Surface Mining, 101 South 2nd Street, Harrisburg, Pennsylvania 17101; Telephone: (717) 782–4036.

SUPPLEMENTARY INFORMATION:

I. Background on the Pennsylvania State Program

On July 30, 1982, following a review of the proposed program as outlined in 30 CFR Part 732, the Secretary approved the program subject to the correction of ten minor deficiencies. The approval was effective upon publication of the notice of conditional approval in the July 30, 1982 **Federal Register** (47 FR 33050–33080).

Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Pennsylvania program can be found in the July 30, 1982 **Federal Register.**

II. Submission of Revisions and Program Amendments

By letter dated August 1, 1983, OSM received from the Commonwealth of Pennsylvania, pursuant to the 30 CFR 732.17 procedures, certain revisions to its subsidence control regulations. These revisions are contained in a suspension order published in *13 Pennsylvania Bulletin 2057* dated July 2, 1983, suspending certain portions of 25 PA. Code Sections 89.143–89.147 pertaining to Pennsylvania's subsidence control regulations. The suspension order was not a proposed rulemaking, but a temporary action explicitly authorized in the Administrative Code, that does not amend the Pennsylvania Code, but does suspend certain subsidence regulations. This action was ordered by the Chairman of the Environmental Quality Board (EQB) in an effort to keep the requirements of the Pennsylvania program consistent with the revised Federal requirements published in the June 1, 1983 **Federal Register** (48 FR 24638).

Additionally, the State submitted to OSM a draft copy of revised subsidence control regulations that was to be submitted to the EQB on August 16, 1983, for rulemaking. The EQB did not act on these revised regulations. In a letter dated November 22, 1983, the Department of Environmental Resources (DER) notified OSM that when proposed regulations are approved by the Board and published in the Pennsylvania Bulletin, it will submit such regulations as a program amendment. Therefore, OSM will not take further action on the draft proposed regulations submitted with the program amendment on August 1, 1983.

III. Secretary's Finding

The Secretary finds, in accordance with SMCRA and 30 CFR 732.15 and 732.17, that the program amendment submitted on August 1, 1983, pertaining to the suspension of certain subsidence regulations meets the requirements of SMCRA and 30 CFR Chapter VII as discussed below.

Finding 1

The Secretary finds that the suspension of PA 89.143(2)(iii) (A), (B), (C), and (D); 89.143(4); 89.146(e); and 89.147(a) affects subsidence control provisions pertaining to surface features or structures and not to surface lands, which is no less effective than the revised Federal standards at 30 CFR Part 784 and 817 pertaining to subsidence control.

In making this finding, the Secretary notes that Pennsylvania requires a subsidence control plan to be submitted and approved as part of the permit application for an underground mine consistent with 30 CFR 784.20 and distinguishes between damage to land and damage to structures or facilities in a manner no less effective than the distinction provided in 30 CFR 817.121. Material damage to land must be

remedied and the affected land restored. Material damage to structures and facilities need be remedied or money damages paid *only* if the operator is liable under *State law.*

Finding 2

In Annex B of the order, the full text of the Pennsylvania regulation was printed as suspended, including impoundments. However, Pennsylvania clarified the suspension in Annex B by adding the explanation that "89.145 (a)(4) and (b) are suspended to the extent that these suspended regulations include perennial streams which are not a significant source of a public water supply." Additionally, in the "background" section of Pennsylvania's order announcing the suspension action, the State discusses the fact that revised 30 CFR 817.121(d) provides protection for perennial streams which are a significant source of a public water supply but not for all streams. Therefore, the "no less effective than finding" is based on the explanation to Annex B in the suspension order and the background information pertaining to the provision retaining the provision for impoundments with a storage volume exceeding 20 acre-feet.

The Secretary finds that suspended PA 89.145(4) pertains only to perennial streams and not to impoundments with a storage capacity of 20 acre-feet or more or to bodies of water with a volume of 20 acre-feet or more.

Finding 3

The Secretary found that the suspension of PA 89.144(b)(3), pertaining to a public notice requirement regarding a description of the measures to be taken to prevent or control adverse surface effects, is no less effective than the revised Federal rule at 30 CFR 817.122 that does not require a description of the measures to be taken to prevent or control adverse surface effects.

Public Comment

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(10)(i), of those Federal agencies invited to comment, the United States Fish and Wildlife Service (PA 450) commented that perennial streams, lakes, impoundments and wetland areas should be afforded the same level of protection as surface structures by PA 89.143(a).

Pennsylvania does have a paragraph (a) in PA 89.143. However, Pennsylvania suspended 89.143(2)(iii) (A), (B), (C), and (D) pertaining to specific surface features that were removed from the Federal regulations when revised and published in the **Federal Register** June 1, 1983. (See 48 FR 24638–24652 for a complete discussion of the revised Federal subsidence regulations.) Pennsylvania, however, does provide protection for impoundments with a storage volume exceeding 20 acre-feet and for aquifers which serve as a significant source of water supply to any public system in 89.145(a) (4) and (5). When revising Federal subsidence control regulations, OSM decided that it was unnecessary to extend the subsidence control plan to include general hydrologic impacts. The performance standards of section 516 of SMCRA and the following Pennsylvania statutes: Section 4, Surface Mining Conservation and Reclamation Act; Section 6, Coal Refuse Disposal Control Act; Section 6, The Bituminous Mine Subsidence and Land Conservation Act; and Section 315, The Clean Streams Law and the permitting requirements contain extensive requirements relative to protection of the hydrologic balance. (See 47 FR 16605, April 16, 1982, for discussion of the permitting requirements and performance standards protecting the hydrologic balance.)

Part 817 of 30 CFR was revised to reflect a distinction between surface structures and facilities and land. The surface effects of underground mining are regulated in order to assure the maintenance of the value of the *land* and its reasonably forseeable uses. The Secretary can not require Pennsylvania to protect surface structures or features not protected under the Federal regulations.

Additional Findings

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that exiting requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 938

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: December 29, 1983.

Dean K. Hunt,

Acting Director, Office of Surface Mining.

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

PART 938—PENNSYLVANIA

1. 30 CFR 938.15 is amended by adding paragraph (b).

§ 938.15 Approval of Amendments to State Regulatory Program.

* * * * *

(b) The following amendment is approved effective on Janaury 4, 1984. Order announcing the suspension of 25 PA Code Chapter 89.143(2)(iii) (A), (B), (C), and (D); 89.143(4); 89.144(b)(3); 89.145 (a)(4) and (b); 89.145(d); 89.146(e); and 89.147(a) by publication in the *Pennsylvania Bulletin, Vol. 13, No. 27,* dated July 2, 1983.

[FR Doc. 84–130 Filed 1–3–84; 8:45 am]
BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 162

[OPP–30061A; FRL–2501–5]

Pesticide Programs; Registration Procedures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; revocation of policy statement.

SUMMARY: This rule amends EPA's regulations on registration of pesticides to (1) eliminate the requirement for Agency approval of supplemental registrations; (2) eliminate the requirement for Agency review of final printed labeling of pesticide products; and (3) modify the child-resistant packaging requirements to eliminate mandatory testing requirements by the Consumer Product Safety Commission protocol. These changes will decrease paperwork burdens on pesticide

producers, increase the efficiency of the Agency's registration process, and allow faster introduction of products into commerce. This publication also revokes the March 3, 1981, policy statement explaining certain aspects of EPA's child-resistant packaging requirements.

EFFECTIVE DATE: Under FIFRA sec. 25(a)(4), this rule must be reviewed by Congress before it can become effective. A minimum of 60 days of continuous Congressional session is allowed for this review. Accordingly, this rule will become effective on the date that is 60 calendar days of continuous session of Congress after publication in the **Federal Register.** The Agency will issue a notice in the **Federal Register** announcing the date on which this rule became effective.

FOR FURTHER INFORMATION CONTACT: By mail: Jean M. Frane, Registration Division (TS–767–C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. Office location and telephone number: Rm. 1114, CM 2, 1921 Jefferson Davis Highway, Arlington, Virginia, (703–557–0592).

SUPPLEMENTARY INFORMATION: OMB Control Numbers 2000–0014 and 2000–0407.

In the **Federal Register** of September 15, 1982 (47 FR 40659), the EPA issued a proposal to revise its existing regulations on registration of pesticides in several ways. These final revisions to 40 CFR Part 162, modified as explained in the comments section of this preamble, are hereby adopted.

Twenty written comments were received from interested parties, including Federal agencies, State extension services, State pesticide regulatory agencies, industry and user organizations, and public interest groups. The changes made in the regulation, categorized by topic, are discussed below, together with EPA's response to the more significant comments.

I. Final Printed Labeling

EPA proposed to eliminate the requirement for applicants to submit a copy of a product's final printed labeling before the Agency would issue a registration or amended registration. Instead, EPA proposed to use an applicant's draft labeling as the basis for its approval of the application. If the Agency registered a product based on the draft labeling, it would condition the registration on making necessary revisions in the labeling, and on submission of final printed labeling before the product was released for shipment. EPA stated it would selectively review final printed labeling to assure that required revisions have been made. EPA also indicated that it would discontinue its present practice of stamping a final printed label "Accepted" and returning a copy to the registrant.

Seven comments were received in response to this proposal. The principal concern expressed by most commenters was that eliminating the practice of stamping "Accepted" on final printed labeling would create problems in obtaining registration in individual States and foreign countries, some of which rely on the Agency's approval of the label. Although EPA agrees that some minor difficulties may arise in the short term, EPA believes that States and foreign governments can rely equally well on the earlier approved draft label, together with the Agency's comments on that label, and can adapt their procedures. No comments were received from States that suggested that the approved draft label would not suffice for State registration purposes.

Several commenters suggested that the Agency should agree to stamp final printed labels upon request by a registrant, if he submitted a certification that the submitted label was identical to the draft label as revised. The Agency has not included this provision in the final rule. One of EPA's objectives in eliminating approval of the final printed labeling was to reduce Agency paperwork and resources that have been required to carry out the review of final printed labeling. If the Agency were to adopt the commenters' suggestion, such savings in time would largely be lost.

One commenter suggested that the Agency's requirement for submission of final printed labeling before distribution or sale be explicitly stated in the regulation. EPA agrees, and has revised § 162.6(b) (2) and (3) accordingly.

II. Supplemental Distribution of Registered Products

EPA proposed to eliminate the requirement for Agency approval of "supplemental registration" of distributor products. Supplemental registration is not registration of a separate product under FIFRA sec. 3, but permits an existing registrant to market his registered product, bearing a different name and address, through a distributor. EPA proposed to allow a registrant to permit such marketing simply by notifying the Agency. The distributor would be considered an agent of the registrant for enforcement purposes.

Only one comment was received on this part of the proposal, and that reflected a misunderstanding of the Agency's distributor review process as it existed previously. The commenter believed that EPA reviewed the labels of distributor products and stated that this review should not be relinquished.

EPA reviews the label of a product when it is submitted for registration or amended registration. Once registered, additional distributors may be used to market the product. Under previous procedures the Agency approved the addition of a distributor without reviewing or approving the distributor's product label. The revision being made in this rule will require only that the registrant notify the Agency when he enters into a distributor arrangement. The Agency still will not review the distributor's label. The distributor's label must, however, conform to the provisions of the original label. The Agency has therefore promulgated its proposal without change.

III. Efficacy Data Waiver

EPA proposed on September 15, 1982, to expand the scope of its existing efficacy data waiver. Previously, EPA required applicants to submit efficacy data for certain uses which were often thought to be public health but which are primarily aesthetic or nuisance problems. Data submission would not be required for these uses under the expanded waiver provisions. Similarly, the Agency proposed to waive efficacy data submission for public health uses where a lack of control is readily apparent to the user, and would not result in adverse health effects, such as rodenticides and mosquito control products. Thus, the Agency proposed to normally waive the submission of efficacy data for all products except those bearing claims for controlling microorganisms posing a threat to human health or for control of organisms producing mycotoxins.

The Agency received 12 comments regarding the expansion of the efficacy data waiver. Most of the commenters opposed the Agency's proposal, and gave a variety of reasons for their opposition. With respect to consumer products for non-public-health pests, several commenters argued that homeowners generally lack sufficient knowledge to evaluate product effectiveness. Others argued that there is no mechanism to report ineffective products in areas of public health and consumer products. Other commenters noted the delay and unreliability perceived in the consumer marketplace to remove inefficacious products. Finally, several commenters asserted that society fears unwarranted risks associated with the large amounts of

non-beneficial or ineffective pesticides. In effect, the commenters all argued that an expanded efficacy data waiver would result in more ineffective pesticides on the market.

In addition to the September 15, 1982, proposal, the Agency subsequently included the extension of the efficacy data waiver in two later proposals, one relating to registration data requirements (proposed Part 158), published in the **Federal Register** of November 24, 1982 (47 FR 53192) and the other to conditional registration, published in the **Federal Register** of December 27, 1982 (47 FR 57624). Few comments were received on the efficacy data waiver in the conditional registration proposal, and these were not sufficient to persuade the Agency that it should modify the waiver extension provisions. Because this latter proposal was under a court-ordered deadline that required the Agency to reissue the regulation by September 1, 1983, the Agency expedited its issuance. The efficacy waiver extension was thus promulgated when published in the **Federal Register** of July 26, 1983 (48 FR 34000) when the conditional registration rule was issued, and was recodified at that time as § 162.163(b)(2). Although promulgated, the rule will not become effective until after a 60-day Congressional review period.

In response to the proposal of pesticide data requirements, for which the comment period was extended until May of 1983, a number of comments were received from persons who had not commented on the original proposal of September 15, 1982, or on the conditional registration proposal. These commenters also were unanimously opposed to the extension of the waiver.

In light of the comments received on the two proposals, the Agency intends to modify the efficacy data waiver such that efficacy data would be required for vertebrate control products (such as rodenticides) to the extent it was required previously. The Agency does not intend to modify the waiver with respect to the other products to which it was extended by the conditional registration promulgation.

The Agency's final rule on data requirements (Part 158) currently contains language reinstating a requirement for vertebrate product efficacy data. This requirement will be promulgated together with other Part 158 requirements, but will not be made effective until the Agency can revise the current language in § 162.163(b)(2) to be consistent with Part 158. At the time of promulgation of Part 158, the Agency will issue a proposal to this effect.

Until this revision can be issued as a final rule, the Agency will continue to operate under the waiver provisions of § 162.163(b)(2), but may require efficacy data for vertebrate products on a case-by-case basis, as is allowed by that section.

IV. Child-Resistant Packaging

EPA's proposal contained a number of revisions to the existing child-resistant packaging regulations. EPA proposed revisions to make clear that the entire package in which a pesticide is sold or distributed, and not merely the closure of the package, must meet the packaging standards. The Agency also proposed to exempt products from the requirement to use child-resistant packaging if the product were restricted to "sale to, use and storage only by" servicepersons. Exemptions would also be authorized in cases of economic hardship. Finally, EPA proposed to eliminate its requirement for mandatory testing of each child-resistant package by the CPSC protocol, provided that the registrant could provide satisfactory proof that the package met the packaging standards. Issues raised by commenters are discussed below.

A. Consistency With the Poison Prevention Packaging Act

Several commenters stated that the Agency's child-resistant packaging regulations do not comply with the language in FIFRA sec. 25(c)(3), which authorizes the Administrator "to establish standards (which shall be consistent with those established under the authority of the Poison Prevention Packaging Act (Pub. L. 91–601)) with respect to the package, container, or wrapping in which a pesticide or device is enclosed . . . to protect children . . . ." Specifically, several commenters noted that the Poison Prevention Packaging Act (PPPA) requires child-resistant packaging only when such packaging is "practicable" and "appropriate." See 15 U.S.C. 1472(a)(2). These commenters argued that to be consistent with the PPPA, the Agency must grant exemptions from its child-resistant packaging requirements if a registrant or applicant shows that the use of such packaging would be impracticable or inappropriate.

The Agency does not agree with the commenters that FIFRA sec. 25(c)(3) requires EPA to include these additional grounds for an exemption. Based on research into the legislative history of FIFRA and the PPPA, the Agency has concluded that the Administrator is not required to establish the same grounds for an exemption under FIFRA as exist under the PPPA. The Agency further concludes that this final rule is a proper exercise of the Administrator's discretion under FIFRA sec. 25(c)(3).

However, nothing precludes the Agency from adopting criteria such as those under the PPA, and the Agency has accepted the commenters' suggestion to expand the grounds for granting exemptions, and accordingly has included in § 162.16(f)(1) consideration for exemption if child-resistant packaging would not be "practicable" or "appropriate" for the product. Moreover, EPA has included definitions of these terms (which are the same as those used by the Consumer Product Safety Commission (CPSC) under the PPA) in § 162.16(a). Together with other factors now set out in § 162.16(f)(1), these terms will be used to evaluate requests for exemption from child-resistant packaging requirements based on technical factors. Two commenters, in advocating that the Agency adopt the "practicable" and "appropriate" criteria, expressed the belief that these criteria would encompass the cost to the registrant of having to switch to a different type of container in order to meet the child-resistant packaging requirements. EPA's position is that, in applying these criteria, the Agency is not required to find that child-resistant packaging is readily available, or that it will lend itself conveniently to the existing packaging or packaging equipment of the registrant. In other words, the cost of conversion to child-resistant packaging does not enter into the definitions of these terms. As discussed, however, in the next unit of this preamble, the Agency has included certain cost considerations in its decisionmaking process for granting exemptions.

B. Economic Hardship Exemption

Several commenters questioned the need for the proposed economic hardship exemption, and suggested instead that the Agency consider a registrant's economic circumstances as a factor in granting technical feasibility exemptions. Another commenter was concerned that the trade secret provisions of FIFRA sec. 10 for the financial data used as the basis for the exemption would preclude public scrutiny of such requests.

Based on these comments the Agency has reconsidered the need for the economic hardship exemption, in particular the probability that the proposed exemption will accomplish EPA's objective of introducing greater flexibility into its decisions. The Agency has concluded that the economic exemption as proposed should not be

adopted. EPA believes that certain economic factors may be pertinent in its decision to exempt a product from the requirement of child-resistant packaging, but that these factors relate to the economic costs and incentives to the packaging industry to produce the packaging rather than to the ability of an individual registrant to acquire and use already developed child-resistant packaging. EPA believes that there are few products for which a suitable form of child-resistant packaging is not readily available, even though the use of that packaging may entail certain costs to the pesticide industry. Further, EPA believes it is reasonable to require that a pesticide producer incur the costs of changing from one available packaging type to another in order to obtain child-resistant packaging. This cost of compliance is viewed as not unduly burdensome if a product may pose a hazard to children.

On the other hand, EPA recognizes that there may be situations other than those encompassed in the strict definitions of technically feasible, practicable and appropriate when an exemption may be appropriate. A registrant may genuinely need a special form of packaging, for which child-resistant technology has not been developed. The technology may have been developed, but the packaging is unlikely to be made available because of insufficient producer demand. If the registrant can demonstrate that child-resistant packaging is not reasonably available because of the "minor use" nature of the packaging, an exemption may be granted. Temporary shortages or delays in acquisition of child-resistant packaging may impose hardships, particularly on small producers who may have fewer sources of packaging and whose ability to meet short-term difficulties is more constrained. The Agency believes that a registrant should not be compelled to take extraordinary measures to acquire child-resistant packaging.

In the final rule, EPA has included a partial list of factors that will be considered in determining whether to grant an exemption. First and foremost among these is the potential for hazard to children if the product is allowed to be marketed in non-child resistant packaging. This consideration is analogous to the public interest finding contained in the proposed economic exemption, and will be applied to all exemption requests. The remaining items are those which the Agency believes may be applicable, depending on the product, the producer and the particular packaging situation. The final rule specifies that exemptions based on technical or packaging considerations will be temporary. Exemptions will thus reflect the constantly evolving technology of child-resistant packaging, and permit the Agency to reevaluate these factors on a continuing basis. Exemptions granted for considerations of lack of toxicity will generally be granted on a permanent basis. In both cases, the exemption will apply to products of similar composition and intended uses, and the Agency will issue notice in the **Federal Register** of the granting of an exemption. Additionally, in either case, the Agency reserves the right to withdraw the exemption if the lack of child-resistant packaging creates a hazard to children.

C. Serviceperson Exemption

The Agency had proposed to incorporate into its regulation the provision of the policy notice of March 3, 1981, that products restricted to sale to, and use and storage by, servicepersons, be exempt from the requirements of child-resistant packaging. The majority of commenters were strongly opposed to this provision. Comments from the States stated that the serviceperson exemption would be unenforceable because neither State or Federal law provided any mechanism to regulate servicepersons. A serviceperson, they pointed out, is not a category of certified applicator under FIFRA sec. 3(d)(1)(C)(i). They suggested that, if a form of restricted use was considered necessary, that it should not be "servicepersons" under FIFRA sec. 3(d)(1)(C)(ii), but certified applicators under FIFRA sec. 3(d)(1)(C)(i).

Other commenters were concerned about the implications of restricting products for serviceperson use under either provision of FIFRA sec. 3(d)(1)(C). One pointed out that Japan will not register restricted use products if alternative pesticides are available. Others clearly were apprehensive about a perceived stigma attached to the Restricted Use designation, arguing that such products would suffer unduly in the marketplace by comparison with products not so restricted.

The Agency has considered carefully the objectives of the serviceperson exemption, and the available regulatory alternatives for accomplishing that objective. EPA has concluded that the serviceperson exemption may not be the most desirable choice. Consequently, EPA has not adopted the serviceperson exemption in the final rule. Instead, EPA intends to issue a proposal that would generally exempt packages of certain sizes from the requirement for child-resistant packaging. This proposal is being issued today, elsehwere in this issue of the **Federal Register.**

Because the serviceperson exemption was introduced by a policy notice in 1981, and has been in use by a number of registrants since that time, the Agency will continue to permit its use until a final rule on package size as a criterion can be promulgated. Products whose labels currently bear the serviceperson statement and comply with the requirements of the Agency's March 3, 1981, notice, will not be considered in violation of FIFRA sec. 12(a)(1)(E). Products may continue to be registered bearing the serviceperson statement as an interim measure. At the time that the final rule on package size is promulgated, the Agency will announce the further disposition of products bearing serviceperson labeling.

D. Basis for Certification to the Agency

The Agency proposed to eliminate mandatory testing by the CPSC protocol. The proposal stated that the Agency would be willing to accept alternate methods of determining that a package was child-resistant. The Agency gave several examples of acceptable alternate documentation that could be used by the registrant as evidence that his packaging met the standards. The registrant would be required to keep documentation showing the basis for his certification of child-resistance, and to make it available to the Agency.

A certain amount of confusion arose because the Agency stated in the preamble that other relevant information, such as extrapolation from existing testing, scientific judgment, or inclusion on a list of "CPSC approved" packaging would suffice in lieu of the CPSC testing. At the same time, in the rule, the Agency stated that the registrant must retain in his files a copy of the "test data or other scientific evidence" on which he based his certification.

A number of comments were received on this proposal. Most pointed out that the preamble and the rule were not consistent in stating what types of "other scientific evidence" would be acceptable as alternatives to the CPSC test method. Others argued that the alternatives offered were not broad enough. Some believed that the Agency was increasing the stringency of the requirement, others that the Agency was relinquishing control and decreasing public protection without justification.

EPA intends to ensure that products hazardous to children are marketed in packaging that will minimize the possibility of accidental illness or injury. EPA believes that packaging meeting the

standards in the regulation will accomplish this objective.

However, EPA intends to be flexible about how companies determine that packaging is in fact child-resistant under the standards set out in the rule. The comments on the proposal indicated that companies believed that they had sufficient expertise or other means at their disposal to determine whether packaging is child-resistant, without recourse to the CPSC protocol. The ultimate test of child-resistance is the CPSC protocol, which the Agency will require if necessary to demonstrate that a package is child-resistant, and thus not in violation of the Act. As long as the packaging meets the stated standards for effectiveness, chemical and physical compatibility and durability, and the registrant is willing to certify to that effect, EPA sees no reason to require that the registrant use the CPSC protocol as the basis for that certification.

EPA has revised the recordkeeping requirements such that a wide variety of types of documentation will suffice to support certification. The registrant may retain data per the CPSC protocol on the exact package being used.

Alternatively, he may keep other types of scientific testing on the exact package from which determinations of child-resistance can be demonstrated or extrapolated, or testing on a different package which supports a determination that the package being used is child-resistant. Moreover, rather than keeping actual test data, he may retain written evidence from a supplier or testing facility that the package has passed the CPSC protocol. Finally, in the special case where the container and closure are purchased separately, he may retain a combination of test data for the closure and written rationales explaining why the container and the total package are child-resistant.

If, based on enforcement inspection, consumer complaints, or a child poisoning occurrence related to the child-resistant package, EPA has reason to believe that a package that should be child-resistant does not in fact meet the standards, the Agency will, under the authority of FIFRA sec. 3(c)(2)(B), require that a registrant submit test data to document the basis for his certification. Under that section, the Agency may require that the registrant conduct testing according to the CPSC protocol to determine if the package is child-resistant. The burden of proving that a package is child-resistant rests with the registrant in all cases.

If the Agency determines that a product subject to the requirements of this section is being distributed in packaging that is not child-resistant, the product may be deemed to be misbranded under FIFRA sec. 2(q), regardless of the type of test data or other documentation of child-resistance the registrant may have.

Several commenters noted that there is no list of CPSC "approved" packaging. CPSC does maintain a listing of companies which state that their packaging has been tested according to the CPSC protocol and meets the CPSC standards, but the CPSC does not verify or approve these packaging types in any way.

E. Certification to the Agency

In its proposal, EPA clarified that the terms "package" and "packaging" were intended to include the entire package, container and closure. Some commenters claimed that defining the term in this inclusive manner, coupled with the requirement to certify to the Agency the child-resistance of the package, would impose significant economic burdens on registrants, many of whom have tested and certified only the closure of the package. The commenters cited the Agency's testing estimates given in the proposal as proof that EPA acknowledged this increased testing cost. Further, they opposed the Agency's proposal that previously submitted certifications for closures only would be deemed to be certifications for the package unless the registrant chose to resubmit.

With respect to the question of "closure" versus "package" certification, the Agency's position is, and has always been, that the entire package must be child-resistant. This was stated in the preamble when the original rule was issued in 1979, and clarified in the Agency's policy document published in the **Federal Register** on March 3, 1981 (46 FR 15104). The final rule thus defines the term "package" to include the closure and container together.

EPA estimated in its proposal that the cost of mandatory testing of each package design under the existing regulation would be about $16 million. This estimate was based on the fact that most registrants had tested only the closures and not the entire package, and that under the existing regulations a considerable amount of retesting would be required to certify as to the child-resistance of the entire package. However, under the proposal, EPA estimated that 50 percent of this cost would be eliminated, since existing testing or other substantiating evidence would suffice in many cases to permit certification to the Agency of child-resistance of several packages. Since the provisions of the proposal eliminating specific testing by the CPSC protocol are being adopted, this assumption of the amount of testing still needed and its cost are unchanged.

The Agency agrees with the comments concerning the need for new certification statements from registrants. A product would be misbranded if the packaging were not child-resistant. The registrant, however, could not be held in violation of the Act for falsification of his certification, if the certification on file with the Agency pertained solely to the closure (unless the closure itself were shown not to be child-resistant). The Agency has concluded, therefore, that new certifications must be submitted for all products currently required to be in child-resistant packages in order to complete its records, and to provide an adequate basis for enforcement. Moreover, the registrant must retain in his records a copy of the certification statement submitted to the Agency.

Manufacturers whose certifications currently cover only their closures may wish to assure themselves of the child-resistance of their entire package. They may want to undertake testing or other confirmatory activities. To provide for such investigation, the Agency will permit a period of six months from the effective date of this rule for new certifications to be submitted. Submission of a new certification statement is not an application, and the provisions of FIFRA sec. 3(c)(1)(D) do not apply.

F. Form of the Certification

EPA had proposed, for the convenience of registrants, to allow the certification to be submitted by merely signing the form submitted at the time of application, rather than by filing a separate and specifically worded certification. Some commenters argued that this was too cursory a form for such a serious commitment. Although the Agency believes that signing the form would be legally sufficient to sustain an allegation of falsification of an application, it also notes that the majority of certifications previously submitted are limited to certification of the closure, rather than the package. The Agency agrees that a more carefully delineated certification is desirable, and would impose a negligible additional paperwork burden on registrants. Accordingly, the final rule requires that a certification of child-resistant packaging be a separate recitation of the statement given in the regulation, identifying the product and registrant, and signed by a company official. Language in the regulation permitting

the use of the application form has been deleted.

G. Additional Changes From Agency Policy Statement

In the **Federal Register** of March 3, 1981 (46 FR 15104), the Agency issued a notice clarifying its child-resistant packaging regulations. That notice is superseded by the final rule being issued today and is hereby revoked. Certain of its provisions are being incorporated into the regulation. Others will continue in effect, but need not be promulgated in the regulation as they merely reflect existing policies or procedures contained in other regulations or written elsewhere. The contents of that notice and their disposition are summarized below.

1. *Unit A—Eye and skin irritation criteria.* The notice stated that eye and skin irritation testing should be conducted according to National Academy of Science protocols. The Agency has since incorporated its recommended testing procedures in Subdivision F of the Registration Guidelines, available through the National Technical Information Service. Thus, they are not incorporated here.

2. *Unit B—"Inherently child-resistant" products.* The notice stated that products that registrants believed to be inherently child-resistant should be tested according to the CPSC protocol. Since mandatory testing by the CPSC protocol has been eliminated, this question becomes moot. The registrant may base his certification on other evidence of child-resistance than actual CPSC testing, as provided in § 162.16(i)(3).

3. *Unit C—Distinction between "Exempt from child-resistant packaging" and "Not being subject to child-resistant packaging."* This part of the policy notice is unchanged. If a product does not meet the criteria for child-resistant packaging in § 162.16, for whatever reason, the product is not subject to the requirement for such packaging. A product that meets the criteria for child-resistant packaging may, however, be eligible for an exemption based on one of the factors stated in the rule.

4. *Unit D—"Dormant" pesticide registrations.* The notice stated the Agency's policy for products not in production, i.e., not being distributed or sold at the time the notice was issued. This policy is unchanged, but does not need to be stated in regulatory form.

5. *Unit E—Voluntary child-resistant packaging.* The provisions of this section have been incorporated as § 162.16(c) of the rule.

6. *Unit F—Product toxicity and child-resistant packaging.* The notice stated that, if existing toxicity data were not precise enough to demonstrate that the product did not meet the toxicity criteria for child-resistant packaging, the Agency would assume that child-resistant packaging was required. The policy is unchanged. The criteria for determining the need for child-resistant packaging do not correspond directly to those for establishing toxicity categories under § 162.10. Therefore, data developed for the purpose of assigning a product to a Toxicity Category may not be precise enough to determine whether the product is subject to the requirement for child-resistant packaging. In this case a registrant may wish to do further testing to determine the precise toxicity of his product, or he may simply comply with the child-resistant packaging requirement. If the Agency is unable to determine whether a product meets the toxicity criteria for child-resistant packaging based on the data available, it will assume that the product should be distributed in child-resistant packaging.

7. *Unit G—Released for shipment.* The term "distributed and sold" is used in FIFRA sec. 3 and in this rule to describe when the section 3 requirements (including child-resistant packaging) apply. The term includes "release for shipment," which is viewed as the initial act in distribution and sale. A product is therefore deemed to have been "distributed or sold" if it has been packaged and labeled in the manner in which it will be shipped, or if it is stored in an area where finished products are ordinarily held for shipment.

8. *Unit H—Testing procedures for child-resistant packaging which requires a tool for opening.* Since mandatory CPSC testing has been eliminated, this unit no longer applies.

9. *Unit I—Limited exception for products sold to, used and stored by, servicepersons.* The serviceperson exemption is not being adopted by the Agency, as stated earlier. Therefore, this provision of the notice does not apply.

10. *Unit J—Testing each size of a design.* Since mandatory CPSC testing has been eliminated, this unit no longer applies.

11. *Unit K—Label language.* The policy is unchanged. The specific label language instructing adults how to open the child-resistant packaging is at the registrant's discretion.

12. *Unit L—Certification of child-resistance.* The final rule contains provisions requiring that the registrant certify to the Agency that the package, including the closure, is child-resistant. As discussed earlier in this preamble, each affected registrant will be required to submit a new certification to that effect.

13. *Unit M—Amended product registrations for child-resistant packaging.* This unit of the notice stated the procedures for filing an application for amended registration with the Agency. These procedures are stated in § 162.6 of the registration regulations and, because registrants should be familiar with these procedures, they will not be restated in the rule. An application for amended registration is required to revise the directions for use to delete residential uses, or to limit use only to non-residential sites. However, neither submission of a certification statement nor a request for exemption is considered an amendment to registration.

14. *Unit N—Child-resistant packaging certification for registration of a new pesticide product which meets the criteria.* The procedures for new registration are found in § 162.6. If a certification of the child-resistance of the package is required, it must be submitted as part of the application, and registration will not be approved without the certification on file with the Agency. Thus, this rule need not include these provisions.

15. *Unit O—Requesting exemptions.* This unit of the notice explained how to submit requests for exemption. The pertinent portions of this section have been incorporated into the regulation as § 162.16(f)(2).

16. *Unit P—Data compensation.* Applications for new registration and amendment are subject to the provisions of FIFRA sec. 3(c)(1)(D). The submission of a certification statement of child-resistance of a package or a statement that the product will be packaged in child-resistant packaging are notifications to the Agency, and are exempt from those provisions of the Act, provided no other amendments to the registration are requested at the same time.

V. Statutory Review

In accordance with FIFRA sec. 25(a), this final rule was submitted to the Secretary of Agriculture for comment.

USDA reiterated its previously stated opposition to the extension of the efficacy data waiver and discontinuation of final printed label review. These comments have been expressed in regulation reviews in the past, and have been addressed in several responses by the Agency. EPA's position on the discontinuance of the final printed label review is unchanged, and the Agency has no further response. As stated earlier in this preamble, the

Agency is reserving its decision on the extension of the efficacy data waiver until promulgation of its Part 158 data requirements rule.

Copies of the rule were also provided to the Committee on Agriculture of the U.S. House of Representatives, and the Committee on Agriculture, Nutrition, and Forestry of the U.S. Senate. No comments were received from either of these Committees.

VI. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. The Agency determined that these revisions to Part 162 are not a major regulation as defined by E.O. 12291.

This final rule was submitted to the Office of Management and Budget (OMB) for review, as required by E.O. 12291.

VII. Regulatory Flexibility Act

This rule has been reviewed under the provisions of sec. 3(a) of the Regulatory Flexibility Act, and it has been determined that this rule does not contain provisions that would have a significant adverse impact on a substantial number of small entities. Since the revisions would reduce paperwork, registration processing times, and compliance costs, the regulation would be beneficial to small businesses. Thus, a detailed Regulatory Flexibility Analysis is not required. I hereby certify that the revisions to 40 CFR Part 162 in this rule do not have a significant impact on a substantial number of small entities.

VIII. Paperwork Reduction Act

The rule requires that each applicant and registrant whose product is subject to the requirement for child-resistant packaging certify to the Agency that the packaging being used for his product meets the standards set out in § 162.16(g). In order to reduce paperwork burdens, the Agency had proposed that a registrant could accomplish his certification by simply checking an appropriate box on the application form and signing it. As discussed earlier in this preamble, several commenters representing the regulated pesticide companies questioned whether this simplified approach was not too casual, and suggested that a specific certification document be required to be submitted to the Agency. Although EPA acknowledges that this would increase the paperwork burdens on pesticide producers, it has agreed that a new certification is preferable from a legal and enforcement standpoint, and thus will require each registrant and applicant to submit a specifically worded certification in addition to the application form.

Information collection requirements contained in this regulation (§§ 162.6(b)(4), and 162.16 (h) and (i)) have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and have been assigned OMB Control Number 2000–0014 (notification of supplemental distribution) and 2000–0407 (child-resistant packaging compliance requirements).

(Secs. 3, 25(a)(1) and 25(c)(3), Federal Insecticide, Fungicide, and Rodenticide Act, as amended (Pub. L. 92–516, 92 Stat. 819; 7 U.S.C. 136 through 136y; 1972, 1975, and 1978))

List of Subjects in 40 CFR Part 162

Intergovernmental relations, Labeling, Packaging and containers, Pesticides and pests, Administrative practice and procedure.

Dated: December 21, 1983.

William D. Ruckelshaus,

Administrator.

PART 162—[AMENDED]

Therefore, 40 CFR Part 162 is amended as follows:

1. In § 162.6, by revising paragraph (b)(2)(i)(A)(*2*), (3)(ii)(B), and (4), and by adding OMB control numbers at the end thereof to read as follows:

§ 162.6 Registration procedures.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(A) * * *

(*2*) A number copies, as specified by the Agency, of the complete final printed labeling, modified in accordance with any Agency requirements specified in the Notice of Registration, and meeting the requirements of § 162.10. Final printed labeling must be submitted before the product is released for shipment by the registrant. The Agency may require that final printed labeling be submitted prior to registration, including, but not limited to, when the applicant has previously failed to comply with labeling requirements, or the Agency finds that the revisions are so extensive that further label review is needed.

* * * * *

(3) * * *

(ii) * * *

(B) A number of copies, as specified by the Agency, of the complete final printed labeling, modified in accordance with any Agency requirements specified in the notice of approval, and meeting the requirements of § 162.10. Final printed labeling must be submitted before the product is released for shipment bearing the revised labeling. The Agency may require that final printed labeling be submitted prior to approval of the amendment, including, but not limited to, when the applicant has previously failed to comply with labeling requirements, or the Agency finds that the labeling revisions are so extensive that further review is needed.

* * * * *

(4) *Notification of supplementally distributed product.*

(i) A distributor may sell or distribute a registered product bearing his own name and address and brand name if:

(A) The registrant has submitted to the Agency for each distributor product a statement signed by both the registrant and the distributor listing the names and addresses of the registrant and the distributor, the distributor's company number, the additional brand name(s) to be used, and the registration number of the registered product;

(B) The composition of the supplementally distributed product is identical to that of the registered product;

(C) The supplementally distributed product is manufactured, packaged and labeled in a registered establishment operated by the same producer who manufactures, packages, and labels the registered product;

(D) The supplementally distributed product remains in the producer's unopened container (is not repackaged);

(E) The label of the supplementally distributed product bears the name and address of the distributor and the registration number of the registered product followed by the EPA distributor number, and the label or immediate container bears the establishment number of the final establishment at which the product was produced;

(F) Except as provided by paragraph (b)(4)(i)(E) of this section, the labeling of the supplementally distributed product is the same as that of the registered product; provided, however, that: specific claims may be deleted if by so doing no other changes are necesary; the brand name of the distributor product may be different; and the name and address of the supplemental distributor may be substituted for that of the registrant;

(G) The distributor product name is not misleading, as defined in § 162.10.

(ii) If a registrant has a potential distributor to whom a company number

has not been assigned, he should have the distributor apply, by letterhead, to the Agency for a company number.

(iii) The distributor is deemed to be an agent of the registrant for all intents and purposes under the Act.

* * * * *

(Information collection requirements contained in § 162.6(b)(4) have been approved by OMB under control number 2000–0014)

2. By revising § 162.16 to read as follows:

§ 162.16 Child-resistant packaging.

(a) *Definitions.* Terms used in this section shall have the following meanings:

(1) "Appropriate," when used with respect to child-resistant packaging, means that the packaging is chemically compatible with the pesticide contained therein.

(2) "Child-resistant packaging" means packaging that is designed and constructed to be significantly difficult for children under five years of age to open or obtain a toxic or harmful amount of the substance contained therein within a reasonable time, and that is not difficult for normal adults to use properly.

(3) "Package" or "packaging" means the immediate container or wrapping, including any closure(s) and liners, in which the pesticide is contained for consumption, use of storage. "Package" does not include any shipping or bulk container used for transporting or delivering the pesticide, unless it is the only such package.

(4) "Practicable," when used with respect to child-resistant packaging, means that the packaging can be mass-produced and can be used in assembly line production.

(5) "Residential use" means use of a pesticide:

(i) Directly on humans or pets;

(ii) In, on or around any structure, vehicle, article, surface, or area associated with the household, including but not limited to areas such as out-buildings, non-commercial greenhouses, pleasure boats, or recreational vehicles; or

(iii) In or around any preschool or day care facility.

(6) "Technically feasible," when applied to child-resistant packaging, means that the technology exists to produce child-resistant packaging for a particular pesticide.

(7) "Unit packaging" means a package which is labeled with directions to use the entire contents of the package in a single application.

(b) *When required.* A pesticide product must be distributed and sold in child-resistant packaging if the product meets all of the following criteria:

(1) It meets any of the following toxicity criteria:

(i) The pesticide has an acute oral LD_{50} of 1.5 g/kg or less;

(ii) The pesticide has an acute dermal LD_{50} of 2000 mg/kg or less;

(iii) The pesticide has an acute inhalation LC_{50} of 2 mg/liter or less;

(iv) The pesticide is corrosive to the eye (causes irreversible destruction of ocular tissue) or causes corneal involvement or irritation persisting for 21 days or more;

(v) The pesticide is corrosive to the skin (causes tissue destruction into the dermis and/or scarring) or causes severe skin irritation (severe erythema or edema) at 72 hours; or

(vi) The pesticide has such characteristics that, based upon human toxicological data, use history, accident data or such other evidence as is available, the Agency determines there is a serious hazard of accidental injury or illness which child-resistant packaging could reduce;

(2) Its labeling either directly recommends residential use or reasonably can be interpreted to permit residential use;

(3) It has not been restricted to use by or under the direct supervision of a certified applicator;

(4) It has not been exempted in accordance with paragraph (f) of this section.

(c) *Voluntary use of child-resistant packaging.* A registrant whose product is not required to be in child-resistant packaging may distribute or sell his pesticide product in child-resistant packaging. If he does so, that packaging must meet the standards for child-resistant packaging stated in paragraph (g) of this section. The registrant must certify to this effect in accordance with paragraph (h) of this section, and must retain the records required by paragraph (i) of this section.

(d) *Products classified for restricted use.* Nothwithstanding the provisions of paragraph (b) of this section, the Agency may require the use of child-resistant packaging if the product is classified for restricted use only by or under the direct supervision of a certified applicator and the Agency determines that the product poses a risk of serious accidental injury or illness which child-resistant packaging could reduce. If the Agency makes such a determination, it will notify the registrant in writing and provide a short statement of the basis of its determination. The registrant will then have 30 days to show in writing why his product should not be in child-resistant packaging. Thereafter the Agency will determine whether to require the product to be distributed only in child-resistant packaging and will so notify the registrant.

(e) *Unit packaging.* Pesticide products distributed and sold as an aggregate of one or more unit packages and meeting the criteria of paragraph (b) of this section must be distributed and sold in child-resistant packaging either for each unit package or for the outer retail container which contains the unit packages. Child-resistant packaging is not required for both the outer package and the unit packages unless the Agency determines, on a case-by-case basis, that it is necessary for risk reduction.

(f) *Exemptions*—(1) *General.* The Agency may, on a case-by-case or class basis, grant exemptions from the requirements of this section, provided that the Agency first determines that such an exemption would be in the public interest. An exemption may be withdrawn by the Agency at any time if the lack of child-resistant packaging results in serious illnesses or injuries to children, or if a feasible package becomes available for the product.

(2) *Requesting an exemption.* An applicant or registrant who wishes to request an exemption from the requirement of child-resistant packaging must submit two copies of the following information:

(i) The name, address and telephone number of the requester;

(ii) The name and registration number (or file symbol) of the product(s) for which the exemption is requested;

(iii) A description of the package and the size(s) for which the exemption is requested; and

(iv) Documentation supporting the request for exemption, including the length of time for which the exemption is requested.

(3) *Exemption based upon lack of toxicity.* The Agency may grant an exemption from the requirements of this section if the registrant or applicant demonstrates to the Agency's satisfaction that the hazards indicated by the toxicity criteria in paragraph (b) of this section are not indicative of the risk to man. If granted, an exemption shall apply to other products of substantially similar composition. A notice will be issued in the **Federal Register** stating the nature of and reasons for the exemption.

(4) *Exemption based upon technical factors.* The Agency may grant an exemption from the requirements of this section based upon technical considerations. If granted, the exemption will be for a specified length of time, and will apply to other products

of substantially similar composition and intended uses. A notice of the granting of an exemption will be issued in the Federal Register. In considering whether to grant an exemption, the Agency will consider, among other things, the following:

(i) Whether the toxicity of the product is such that it should not be allowed to be distributed or sold except in child-resistant packaging.

(ii) Whether child-resistant packaging is technically feasible, practicable or appropriate.

(iii) Whether the composition or use pattern of the product necessitates a particular form of packaging for proper use.

(iv) Whether child-resistant packaging that is technically feasible, practicable and appropriate is available for the product or can reasonably be made available to the registrant in sufficient quantities to meet his packaging needs. This determination does not include a consideration of whether the packaging would be adaptable to a registrant's existing package type or packaging equipment.

(v) Whether the registrant has made a timely and good faith effort to obtain child-resistant packaging for the product.

(vi) If child-resistant packaging which is technically feasible, practicable and appropriate is not yet available, when such packaging is likely to be available.

(g) *Standards*—(1) *Effectiveness standard.* The child-resistant package, when tested by the protocol specified in 16 CFR 1700.20, shall meet the effectiveness specifications in 16 CFR 1700.15(b).

(2) *Compatibility standard.* The child-resistant packaging must continue to meet the effectiveness specifications of paragraph (g)(1) of this section when in actual use as a pesticide container. The registrant may assure himself that this standard is met by appropriate scientific evaluation of the compatibility of the substance with the child-resistant packaging to determine that the chemical and physical characteristics of the pesticide will not compromise or interfere with the proper functioning of the child-resistant packaging and that the packaging will not be detrimental to the integrity of the product during storage and use.

(3) *Durability standard.* The child-resistant packaging must continue to meet the effectiveness and compatibility standards of paragraph (g) (1) and (2) of this section for the reasonably expected lifetime of the package, taking into account the number of times the package is customarily opened and closed. The registrant may assure himself that this standard is met by appropriate technical evaluation based on physical wear and stress factors of the packaging, the force required for activation, and other relevant factors.

(h) *Certification*—(1) *General.* (i) The registrant of a pesticide product required to be in child-resistant packaging shall certify to the Agency that the package meets the standards set forth in paragraph (g) of this section.

(ii) Certification must be submitted with each application for new registration, if applicable. A previous certification pertaining solely to the closure of the child-resistant package does not comply with the requirements of this section. A certification that complies with the requirements of this section must be submitted for each currently registered product subject to the requirement for child-resistant packaging by October 1, 1984.

(2) *Contents of certification.* The certification must contain the following information:

(i) The name and EPA registration number of the product to which the certification applies, the registrant's name and address, the date, and the name, title, and signature of the company official making the certification.

(ii) A statement that the packaging that is being used for the product meets the standards of paragraph (g) of this section. The statement "I certify that the packaging used for this product meets the standards of 40 CFR 162.16(g)" will suffice for this purpose.

(i) *Recordkeeping.* For as long as the registration of a pesticide product required to be in child-resistant packaging is in effect, the registrant must retain the records listed in paragraph (i) (1) through (3). The registrant must, upon request by the Agency, make them available to Agency representatives for inspection and copying, or submit them to the Agency.

(1) A description of the package including a description of:

(i) The container, including its dimensions and composition.

(ii) The closure or child-resistant mechanism, including the name of its manufacturer and the manufacturer's designation for the closure or the physical working of the child-resistant packaging mechanism.

(2) A copy of the certification statement required by paragraph (h) of this section.

(3) One of the following types of records verifying that each package for the product is child-resistant:

(i) Test data on the package based on the CPSC protocol in 16 CFR 1700.20.

(ii) Test data, not conforming to the protocol in 16 CFR 1700.20, or a set of measurements on the package, together with an explanation as to why such data or measurements demonstrate that the package is child-resistant.

(iii) Test data, whether or not conducted according to the protocol in 16 CFR 1700.20, on a different package, together with an explanation of why such data demonstrate that the package being used is child-resistant.

(iv) Written evidence that verifies that testing on the package has been conducted according to the CPSC protocol. Written evidence may be:

(A) A letter or literature from the packaging supplier;

(B) A letter from the facility that conducted the testing; or

(C) A specification in the contract between the registrant or applicant and the packaging supplier;

(v) When the container and closure are purchased separately by the registrant:

(A) Information of the kinds described in paragraphs (i)(3) (i) through (iv) of this section showing that the closure is child-resistant; and

(B) A written explanation of why the container is child-resistant; and

(C) Information showing that the closure and container are compatible with each other, and a written explanation of why the resulting package is child-resistant.

(vi) A combination of the above.

[Information collection requirements contained in § 162.16 (h) and (i) have been approved by OMB under control number 2000-0467.]

[FR Doc. 84-8 Filed 1-3-84; 8:45 am]
BILLING CODE 6560-50-M

---

40 CFR Part 180

[PP 2F2665/R519A; OPP-FRL-250-6]

Technical Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Rule; technical amendment.

SUMMARY: This document amends the regulation permitting residues of the fungicide 1-(4-chlorophenoxy)-3,3-dimethyl-1-(1*H*-1,2,4-triazol-1/yl)-2-butanone to include in the tolerance expression the metabolite "beta-(4-chlorophenoxy)-alpha-(1,1-dimethylethyl)-1*H*-1,2,4-triazole-1-ethanol" in or on raw agricultural commodities and the metabolites "containing chlorophenoxy and triazole moieties (expressed as the fungicide)" in or on animal derived commodities.

This amendment will permit the maximum permissible levels of residues of the fungicide in or on the commodities.

EFFECTIVE DATE: Effective on January 4, 1984.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Henry Jacoby, Product Manager (PM) 21, Registration Division (TS–767C), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. Office location and telephone number: Rm. 229, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–1900).

SUPPLEMENTARY INFORMATION: EPA issued a regulation published in the **Federal Register** of February 9, 1983 (48 FR 5920) that established tolerances for the combined residues of the fungicide 1-(4-chlorophenoxy)-3,3-dimethyl-1-(1*H*-1,2,4-triazol-1-yl)-2-butanone in or on certain raw agricultural and animal derived commodities.

In the pesticide petition 2F2665 submitted to the Agency by Mobay Chemical Corp., PO Box 4913, Kansas City, MO 64120, published in the **Federal Register** of May 26, 1982 (47 FR 23021) proposing tolerances for the fungicide, the tolerance expression was given as "1-(4-chlorophenoxy)-3,3-dimethyl-1-(1*H*-1,2,4-triazol-1-yl)-2-butanone and its metabolite beta-(4-chlorophenoxy)-alpha-(1,1-dimethylethyl)-1*H*-1,2,4-triazole-1-ethanol" for all the commodities included in the petition. In the **Federal Register** of November 30, 1983 (48 FR 54117), the petition was amended to include the metabolite "beta-(4-chlorophenoxy)-alpha-(1,1-dimethylethyl)-1*H*-1,2,4-triazole-1-ethanol" in or on raw agricultural commodities and the metabolites "containing chlorophenoxy and triazole moieties (expressed as the fungicide)" in or on animal derived commodities.

There were no comments received in response to the amendment. The regulation is amended as set forth below.

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346(a), (e)))

List of Subjects in 40 CFR Part 180

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

Dated: December 19, 1983.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR 180.410 is revised to read as follows:

§ 180.410 1-(4-Chlorophenoxy)-3,3-dimethyl-1-(1H/1,2,4-triazol-1-yl)-2-butanone; tolerances for residues.

(a) Tolerances are established for the combined residues of the fungicide 1-(4-chlorophenoxy)-3,3-dimethyl-1-(1H-1,2,4-triazol-1-yl)-2-butanone and the metabolite beta-(4-chlorophenoxy)-alpha-(1,1-dimethylethyl)-1*H*-1,2,4-triazole-1-ethanol in or on the following raw agricultural commodities:

Commodities	Parts per million
Almonds	0.05
Almond, hulls	0.10
Apples	1.0
Barley, grain	1.0
Barley, green forage	15.0
Barley, straw	5.0
Chick pea, seed (dry)	0.1
Grapes	1.0
Grass, forage	0.2
Grass, seed cleanings (including hulls)	145.0
Grass, seed straw (including chaff)	105.0
Pears	1.0
Pineapples (fresh)	3.0
Wheat, grain	1.0
Wheat, green forage	15.0
Wheat, straw	5.0

(b) Tolerances are established for the combined residues of the fungicide 1-(4-chlorophenoxy)-3,3-dimethyl-1-(1H-1,2,4-triazol-1-yl)-2-butanone and its metabolites containing chlorophenoxy and triazole moieties (expressed as the fungicide) in or on the following raw agricultural commodities:

Commodities	Parts per million
Eggs	0.04
Cattle, fat	1.0
Cattle, mbyp	1.0
Cattle, meat	1.0
Goats, fat	1.0
Goats, mbyp	1.0
Goats, meat	1.0
Hogs, fat	0.04
Hogs, mbyp	0.04
Hogs, meat	0.04
Horses, fat	1.0
Horses, mbyp	1.0
Horses, meat	1.0
Milk	0.04
Poultry, fat	0.04
Poultry, mbyp	0.04
Poultry, meat	0.04
Sheep, fat	1.0
Sheep, mbyp	1.0
Sheep, meat	1.0

[FR Doc. 84–6 Filed 1–3–84; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 180

[OPP–260047; FRL–2502–1]

Pesticide Chemicals in or on Raw Agricultural Commodities; Cross-Referencing Update

AGENCY: Environmental Protection Agency (EPA).

ACTION: Rule; cross-referencing update.

SUMMARY: These editorial amendments to 40 CFR 180.1001 (c), (d), and (e) update cross-references to certain sections in 21 CFR Part 121 which were recodified.

EFFECTIVE DATE: Effective on January 4, 1984.

FOR FURTHER INFORMATION CONTACT: John A. Richards, Chief, Federal Register Unit (TS–788), Office of the Assistant Administrator for Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E–130, 401 M St., SW., Washington, D.C. 20460 (202–382–3626).

SUPPLEMENTARY INFORMATION: The Food and Drug Administration issued a recodification of 21 CFR Part 121, Subparts:

B—Exemption of Certain Food Additives from the Requirement of Tolerances

C—Food Additives Permitted in Feed and Drinking Water of Animals

F—Food Additives Resulting From Contact with Containers or Equipment and Food Additives Otherwise Affecting Food

published in the **Federal Register** of September 10, 1976 (41 FR 38618) and Subpart D—Food Additives Permitted in Food For Human Consumption, published in the **Federal Register** of March 16, 1977 (42 FR 14302).

These regulations are cross-referenced in 40 CFR 180.1001 (c), (d), and (e). This document amends the cross-references to reflect the new codification under 21 CFR, and represents no substantive change in the content of the regulations under 40 CFR Part 180.

Dated: December 22, 1983.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180.1001 is amended as follows:

§ 180.1001 [Amended]

1. In paragraph (c), the following changes are made in the table:

a. Under "Calcium salt of partially dimerized rosin" the reference to "§ 121.1179" is changed to read "§ 172.210".

b. Under "Coumarone-indene resin" the reference to "§ 121.1050" is changed to read "§ 172.215".

c. Under "Fatty acids" the reference to "§ 121.1070" is changed to read "§ 172.860".

d. Under "Methyl esters of higher fatty acids" the reference to "§ 121.224" is changed to read "§ 573.640".

e. Under "Methyl ester of rosin, partially hydrogenated" the reference to "§ 121.1059" is changed to read "§ 172.615".

f. Under "Petrolatum" the reference to "§ 121.1166" is changed to read "§ 172.880".

g. Under "Petroleum hydrocarbons, light odorless" the reference to "§ 121.1182" is changed to read "§ 172.884".

h. Under "Petroleum hydrocarbons, synthetic isoparaffinic" the reference to "§ 121.1154" is changed to read "§ 172.882".

i. Under "Petroleum naphtha" the reference to "§ 121.1203(d)" is changed to read "§ 172.250(d)".

j. Under "Petroleum wax" the reference to "§ 121.1156(d)" is changed to read "§ 172.886(d)".

k. Under "Polyethylene, oxidized" the reference to "§ 121.1142" is changed to read "§ 172.260".

l. Under "Polyglycerol esters of fatty acids" the reference to "§ 121.1120" is changed to read "§ 172.854".

m. Under "Polysorbate 65" the reference to "§ 121.1108" is changed to read "§ 172.838".

n. Under "Propylene glycol alginate" the reference to "§ 121.1015" is changed to read "§ 172.858".

o. Under "Rosin, partially dimerized" the reference to "§ 121.1059" is changed to read "§ 172.615".

p. Under "Rosin, partially hydrogenated" reference to "§ 121.1059" is changed to read "§ 172.615".

q. Under "Salts of fatty acids", the reference to "§ 121.1071" is changed to read "§ 172.863".

r. Under "Sperm oil" the reference to "§ 121.1179" is changed to read "§ 172.210".

s. Under "Xylene" the reference to § 121.1182(b)(4)" is changed to read "§ 172.884(b)(4)".

2. In paragraph (d), the following changes are made in the table:

a. Under "Carrageenan" the reference to "§ 121.1066" is changed to read "§ 172.620".

b. Under Polyethylene, oxidized" the reference to "§ 121.1142(a)" is changed to read "§ 172.260(a)".

c. Under "Polysorbate 60" the reference to "§ 121.1030" is changed to read "§ 172.836".

d. Under "Polyvinyl acetate" the reference to "§ 121.1059" is changed to read "§ 172.615".

e. Under "Rosin, dark wood" the reference to "§ 121.2592" is changed to read "§ 178.3870(a)(1)(v)".

f. Under "Sodium salt of partially or completely saponified dark wood rosin" the reference to "§ 121.2592(a)(1)(5)" is changed to read "§ 178.3870(a)(4)".

g. Under "Zinc stearate" the reference to "§ 121.101(d)(5)" is changed to read "§§ 182.5994 and 582.5994".

3. In paragraph (e), the following changes are made in the table:

a. Under "Methyl esters of higher fatty acids" the reference to "§ 121.224" is changed to read "§ 573.640".

b. Under "Mineral oil, U.S.P." the reference to "§ 121.1146 or § 121.2589(a)(b)" is changed to read "§ 172.878 or § 178.3620(a)(b)".

c. Under "Petroleum hydrocarbons, light, odorless" the reference to "§ 121.1182 or § 121.2594" is changed to read "§ 172.884 or § 178.3650".

d. Under "Petroleum hydrocarbons, synthetic isoparaffinic" the reference to "§ 121.1154 or § 121.2558" is changed to read "§ 172.882 or § 178.3530".

e. Under "Polyethylene esters of fatty acids" the reference to "§ 121.1120" is changed to read "§ 172.854".

f. Under "Wood rosin acid, potassium salts" the reference to "§ 121.2592" is changed to read "§ 178.3870".

g. Under "Zinc stearate" the reference to "§ 121.101(d)(g)" is changed to read "§§ 182.5994 and 582.5994".

[FR Doc. 84-72 Filed 1-3-84; 8:45 am]
BILLING CODE 6560-50-M

---

40 CFR Part 180

[PP 2F2645/R631; PH FRL 2499-4]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Ethalfluralin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for residues of the herbicide ethalfluralin in or on certain raw agricultural commodities. This regulation to establish the maximum permissible level for residues of ethalfluralin in or on these commodities was requested by Elanco Products Co.

EFFECTIVE DATE: Effective on January 4, 1984.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Richard F. Mountfort, Product Manager (PM) 23, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. Office location and telephone number: Rm. 237, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1830).

SUPPLEMENTARY INFORMATION: EPA issued a notice published in the **Federal Register** of March 10, 1982 (47 FR 10286), which announced that Elanco Products Co., a division of Eli Lilly Co., 740 South Alabama St., Indianapolis, IN 46285, had submitted a pesticide petition (2F2645) to EPA proposing that 40 CFR Part 180 be amended by establishing a tolerance for residues of the herbicide ethalfluralin -ethyl-N-(2-methyl-2-propenyl)-2,6-dinitro-4-(trifluoromethyl) benzenamine] in or on the agricultural commodities groupings seed and pod vegetables, forage legumes, and cucurbits at 0.05 part per million (ppm). This petition was later amended to specify dry beans, dry peas, soybeans, and the crop commodity grouping cucurbits at 0.05 ppm.

Since the petition was amended, a new crop grouping scheme was enacted (see the **Federal Register** of June 29, 1983 (48 FR 29855)). The cucurbit crop commodity group has been replaced by the cucurbit vegetable group. Adequate data have been submitted to support the 0.05 ppm tolerance for the representative crops for this new grouping; therefore, the Agency acting on its own initiative is establishing the 0.05 ppm tolerance in the cucurbit vegetable group.

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

The data submitted in the petition and other relevant material have been evaluated. The data submitted include plant and animal metabolism studies; a 90-day rat-feeding study with a no-observed-effect level (NOEL) of 500 ppm (equivalent to 25 milligrams (mg/kilogram (kg) of body weight (bw)); a 90-day dog-feeding study with a NOEL of 27.5 mg/kg; a rabbit teratology study with a fetotoxic, maternal toxicity, and teratogenic NOEL of 75 mg/kg (the teratogenic effect level is 150 mg/kg with multiple anomalies observed in 2 fetuses out of 76 examined at this level (margin of safety (MOS) values are based on the NOEL of 75 mg/kg/day); a 3-generation rat reproduction study with a NOEL of 250 ppm (12.5 mg/kg); a 2-year rat chronic feeding/oncogenicity study with a systemic NOEL of 750 ppm (37.5 mg/kg) and a significant increase

in mammary gland fibroadenomas at 250 ppm (12.5 mg/kg) and 750 ppm (37.5 mg/kg) (this study is discussed further below); a 2-year mouse oncogenicity study with no observed oncogenic potential up to 1,500 ppm (225 mg/kg), the highest dose tested; a bacterial gene mutation (modified Ames test), positive; an Ames assay, positive; an *in vitro* unscheduled DNA synthesis (UDS) in rat hepatocytes, negative; an *in vitro* mouse lymphoma assay, negative.

The Agency has evaluated dietary exposure to ethalfluralin residues for the commodities proposed. Assuming 100 percent of the proposed crops are treated with residues at the tolerance level (0.05 ppm), using the "one-hit" model, the worst-case dietary oncogenic risk is calculated to be 3.77 incidences in one million.

The benefits analysis for ethalfluralin has been prepared concerning these uses. The Agency will use this analysis in considering registration for ethalfluralin.

Data lacking and considered desirable are as follows: a second species teratology study and a nonrodent chronic feeding study. The petitioner has submitted a rat teratology study which did not indicate teratogenic potential at the dose levels tested (up to 250 mg/kg). This study is considered supplementary, however, because maternal toxicity was not demonstrated at the highest dose used.

Tolerances have not previously been established for ethalfluralin. Based on a NOEL of 750 ppm in the 2-year rat study and a 100-fold safety factor, the acceptable daily intake (ADI) has been set at 0.375 mg/kg/day with a maximum permissible intake (MPI) of 25.5 mg/day for a 60-kg person. The tolerances have a theoretical maximal residue contribution (TMRC) of 0.0031 mg/day in a 1.5-kg diet or 0.01 percent of the ADI.

There are no regulatory actions pending against the registration of ethalfluralin. The metabolism of ethalfluralin in plants and animals is adequately understood for purposes of the tolerances set forth below. An analytical method, electron capture gas-liquid chromatography, is available for enforcement purposes. There is no expectation of secondary residues in meat, milk, poultry, and eggs.

Based on the information cited above, the Agency has determined that establishing tolerances for residues of the pesticide in or on the commodities will protect the public health. Therefore, the tolerances are established as set forth below.

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

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

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

List of Subjects in 40 CFR Part 180

Administrative practice procedure, Agricultural commodities, Pesticides and pests.

Dated: November 28, 1983.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR 180.416 is added to Subpart C, to read as follows:

§ 180.416 Ethalfluralin; tolerances for residues.

Tolerances are established for residues of the herbicide ethalfluralin [*N*-ethyl-*N*-(2-methyl-2-propenyl)-2,6-dinitro-4-(trifluoromethyl)benzenamine] in or on the following raw agricultural commodities:

Commodities	Parts per million
Beans, dry	0.05
Cucurbits vegetable group	0.05
Peas, dry	0.05
Soy beans	0.05

[FR Doc. 84-1 Filed 1-3-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 83-424; RM-4332]

TV Broadcast Station in Mobile, Alabama; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns UHF Channel 61 to Mobile, Alabama, in response to a petition filed by David Allen Crabtree.

DATE: Effective: February 27, 1984.

ADDRESS: Federal Communications Commission, Washington, D. C. 20554.

FOR FURTHER INFORMATION CONTACT: Mark N. Lipp, Mass Media Bureau, (202) 634-6530

List of Subjects in 47 CFR Part 73

Television broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.606(b), Table of Assignments, TV Broadcast Stations. (Mobile, Alabama) MM Docket No. 83-424 RM-4332.

Adopted: December 5, 1983.
Released: December 21, 1983.

By the Chief, Policy and Rules Division.

1. The Commission herein considers the *Notice of Proposed Rule Making*, 48 FR 23862, published May 27, 1983, which invited comments on a proposal to assign UHF Television Channel 61 to Mobile, Alabama, in response to a petition filed by David Allen Crabtree ("petitioner"). Petitioner submitted comments in support of the proposal and expressed his interest in applying for the channel, if assigned. Comments in support of the proposal were also filed on behalf of Ken Vallis and other unnamed individuals.

2. We believe that the petitioner has adequately demonstrated the need for a seventh television service in Mobile and that the public interest would be served by assigning UHF Commercial Television Channel 61 to that community. The channel can be assigned in compliance with the minimum distance separation requirements of § 73.610 of the Commission's Rules.

§ 73.606 [Amended]

3. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as

amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, that effective February 27, 1984, the Television Table of Assignments, § 73.606(b) of the Rules, is amended, with respect to the following community:

City	Channel No.
Mobile, Ala	5+, 10+, 15+, 21+, *31, *42, and 61.

4. It is further ordered, that this proceeding is terminated.

5. For further information contact Mark N. Lipp, Mass Media Bureau, (202) 634–6530.

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84–40 Filed 1–3–84; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 83–360; RM–4369]

TV Broadcast Station in Novato, California; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns UHF television Channel 68 to Novato, California, as its first television service, in response to a request filed by Stephen J. Mewhort.

DATE: Effective: February 27, 1984.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau (202) 634–6530.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.606(b) Table of Assignments, TV Broadcast Stations. (Novato, California) MM Docket No. 83–360, RM–4369.

Adopted: December 12, 1983.
Released: December 21, 1983.

By the Chief, Policy and Rules Division.

1. The Commission herein considers the *Notice of Proposed Rule Making*, 48 FR 16922, published April 20, 1983, issued in response to a request filed by Stephen J. Mewhort ("petitioner"), proposing the assignment of UHF television Channel 68 to Novato, California, as that community's first television service. Petitioner filed comments reaffirming his intention to apply for the channel, if assigned. No oppositions to the proposal were received.

2. Novato (population 43,916),[1] in Marin County (population 222,952), is located approximately 35 kilometers (22 miles) north of San Francisco, California.

3. In light of the fact that the proposed assignment could provide a first local television service to Novato, we believe that the public interest would be served by assigning UHF television Channel 68 as requested. The assignment can be made in conformity with the minimum distance separation requirements of §§ 73.610 and 73.698 of the Commission's Rules, provided the transmitter is located 2.4 miles northwest [2] of the community to avoid short-spacing to Station KTEH (Channel 54) in San Jose, California, and to applications for Channel 66 in Vallejo, California.

§ 73.60 [Amended]

4. Accordingly, pursuant to the authority contained in §§ 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, that effective February 27, 1984, the Television Table of Assignments, § 73.606(b) of the Commission's Rules, is amended with respect to the community listed below, as follows:

City	Channel No.
Novato, Calif	68

5. It is further ordered, that this proceeding is terminated.

6. For further information concerning the above, contact Nancy V. Joyner, Mass Media Bureau, (202) 634–6530.

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 83–34 Filed 1–3–84; 8:45 am]

BILLING CODE 6712–01–M

[1] Population figures were extracted from the 1980 U.S. Census.

[2] The *Notice* incorrectly indicated that a site restriction 2.4 miles "northeast" of Novato was required to effectuate this proposal. Accordingly, that error has been corrected herein.

47 CFR Part 73

[MM Docket No. 83–420; RM–4340]

TV Broadcast Station in Bowling Green, Kentucky; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns UHF Television Channel 59 to Bowling Green, Kentucky, in response to a petition filed by Stanley G. Emert.

DATE: Effective: February 27, 1984.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554

FOR FURTHER INFORMATION CONTACT: Mark N. Lipp. Mass Media Bureau, (202) 634–6530.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.606(b), Table of Assignments, TV Broadcast Stations. (Bowling Green, Kentucky) MM Docket 83–420; RM—4320.

Adopted: December 5, 1983.
Released: December 21, 1983.

By the Chief, Policy and Rules Division.

1. The Commission herein considers the *Notice of Proposed Rule Making*, 48 FR 23869, published May 27, 1983, which proposed the assignment of UHF Television Channel 59 to Bowling Green, Kentucky, in response to a petition filed by Stanley G. Emert ("petitioner"). Petitioner filed comments in support of the *Notice* and reaffirmed his interest in applying for the channel, if assigned. No opposing comments were filed.

2. The Association of Maximum Services Telecasters filed comments noting a short spacing between petitioner's proposal and a proposal to assign Channel 66 to Lebanon, Tennessee (MM Docket 83–415). A site restriction has been placed on the Lebanon proposal to eliminate the short spacing.

3. We believe that the petitioner has adequately demonstrated the need for a fourth television assignment to Bowling Green, Kentucky, and that the public interest would be served by assigning UHF Television Channel 59 to that community. The channel can be assigned in compliance with the minimum distance separation requirements and other technical criteria of the Commission's Rules.

§ 73.606 [Amended]

4. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, that effective February 27, 1984, the Television Table of Assignments, § 73.606(b) of the Rules, is amended with respect to the community listed below:

City	Channel No.
Bowling Green, Ky.	13, 40+, *53–, and 59+.

5. It is further ordered, that this proceeding is terminated.

6. For further information please call Mark N. Lipp, Mass Media Bureau, (202), 634–6530.

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84–39 Filed 1–3–84; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 83–377; RM–4344]

TV Broadcast Station in Madisonville, Kentucky; Changes Made in Table of Assignment

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns UHF Television Channel 57 to Madisonville, Kentucky, in response to a petition filed by William T. Conner.

DATE: Effective: February 27, 1984.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mark N. Lipp, Mass Media Bureau (202) 634–6530.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.606(b), Table of Assignments, TV Broadcast Stations. (Madisonville, Kentucky) MM Docket No. 83–377 RM–4344.

Adopted: December 5, 1983.
Released: December 21, 1983.
By the Chief, Policy and Rules Division.

1. The Commission herein considers the *Notice of Proposed Rule Making*, 48 FR 18858, published April 26, 1983, which invited comments on a proposal to assign UHF Channel 57 to Madisonville, Kentucky, in response to a petition filed by William T. Conner ("petitioner"). Petitioner submitted comments in support of the proposal and expressed an interest in applying for the channel, if assigned. No other comments were received.

2. We believe that the petitioner has adequately demonstrated the need for a second commercial television assignment in Madisonville, and that the public interest would be served by assigning UHF Television Channel 57 to that community. The channel can be assigned in compliance with the minimum distance separation requirements of § 73.610 of the Commission's Rules.

§ 73.606 [Amended]

3. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, that effective February 27, 1984, the Television Table of Assignments, § 73.606(b) of the Rules, is amended, with respect to the following community:

City	Channel No.
Madisonville, Ky	19–, *35–, and 57+.

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

5. For further information contact Mark N. Lipp, Mass Media Bureau, (202) 634–6530.

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84–36 Filed 1–3–84; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 83–227; RM–4320]

TV Broadcast Station in McCook, Nebraska; Changes in Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns UHF television Channel 16 to McCook, Nebraska, as its second commercial television assignment, in response to a request filed by Jerrell E. Kautz.

DATE: Effective: February 27, 1984.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau (202) 634–6530

List of Subjects in 47 CFR Part 73

Television broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.606(b), Table of Assignments, TV Broadcast Stations. (McCook, Nebraska) MM Docket No. 83–227 RM–4320.

Adopted: December 9, 1983.
Released: December 21, 1983.
By the Chief, Policy and Rules Division.

1. The Commission herein considers the *Notice of Proposed Rule Making*, 48 FR 14685, published April 5, 1983, in response to a petition filed by Jerrell E. Kautz ("petitioner"), proposing the assignment of UHF television Channel 16 [1] to McCook, Nebraska, as that community's second commercial television assignment. Supporting comments were filed by petitioner in which he reaffirmed his intention to apply for the channel, if assigned. No oppositions to the proposal were received.

2. We believe the public interest would be served by granting petitioner's request since it could provide a competitive television service to the community for the expression of diverse viewpoints and programming.

3. As indicated in the *Notice*, the channel can be assigned consistent with the minimum distance separation requirements of §§ 73.610 and 73.698 of the Commission's Rules.

§ 73.606 [Amended]

4. In view of the foregoing, and pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, that effective February 27, 1984, the Television Table of Assignments, § 73.606(b) of the Commission's Rules, is amended as follows:

City	Channel No.
McCook, Nebr	8–, 16+.

5. It is further ordered, that this proceeding is terminated.

[1] Although petitioner initially requested assignment of UHF television Channel 14 to McCook, that proposal conflicted with an assignment on the co-channel at Hays, Kansas. As a result, UHF television Channel 16 was proposed as a substitute for Channel 14.

6. For further information concerning the above, contact Nancy V. Joyner, Mass Media Bureau (202) 634–6530.

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84–32 Filed 1–3–84; 8:45 am]

BILLING CODE 6712–01–M

---

47 CFR Part 73

[MM Docket No. 83–381; RM–4294]

TV Broadcast Station in Omaha, Nebraska; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns UHF Television Channel 54 to Omaha, Nebraska, in response to a petition filed by Harry C. Powell.

DATE: Effective: February 27, 1984.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mark N. Lipp, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.606(b), Table of Assignments, TV Broadcast Stations. (Omaha, Nebraska) MM Docket No. 83–381 RM–4294.

Adopted: December 5, 1983.
Released: December 21, 1983.

By the Chief, Policy and Rules Division.

1. The Commission herein considers the *Notice of Proposed Rule Making*, 48 FR 18859, published April 26, 1983, which invited comments on a proposal to assign UHF Television Channel 54 to Omaha, Nebraska, in response to a petition filed by Harry C. Powell ("petitioner"). Petitioner submitted information in support of the proposal and expressed his interest in applying for the channel, if assigned. No other comments were received.

2. We believe that the petitioner has adequately demonstrated the need for a sixth commercial television assignment in Omaha and that the public interest would be served by assigning UHF commercial Television Channel 54 to that community. The channel can be assigned in compliance with the minimum distance separation requirements of § 73.610 of the Commission's Rules.

§ 73.606 [Amended]

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, that effective February 27, 1984, the Television Table of Assignments, § 73.606(b) of the Rules, is amended, with respect to the following community:

City	Channel No.
Omaha, Nebr	3, 6+, 7, 15, *26, 42+, *48–, and 54.

4. It is further ordered, that this proceeding is terminated.

5. For further information contact Mark N. Lipp, Mass Media Bureau, (202) 634–6530.

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84–37 Filed 1–3–84; 8:45 am]

BILLING CODE 6712–01–M

---

47 CFR Part 73

[MM Docket No. 83–383; RM–4357]

TV Broadcast station in Charleston, Illinois; Changes made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns and reserves UHF Channel *51 to Charleston, Illinois, for noncommercial educational use, in response to a petition filed by Eastern Illinois University.

DATE: Effective: February 27, 1984.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau (202) 634–6530

List of Subjects in 47 CFR Part 73

Television broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.606(b), Table of Assignments, TV Broadcast Stations. (Charleston, Illinois) MM Docket No. 83–383 RM–4357.

Adopted: December 5, 1983.
Released: December 21, 1983.

By the Chief, Policy and Rules Division.

1. The Commission herein considers the *Notice of Proposed Rule Making*, 48 FR 18856, published April 26, 1983, which invited comments on a proposal to assign UHF Television Channel *51 (reserved for noncommercial educational use) to Charleston, Illinois, in response to a petition filed by Eastern Illinois University ("petitioner"). Petitioner filed comments in support of the *Notice* and reaffirmed its interest in applying for the channel, if assigned. No other comments were received.

2. We believe that the petitioner has adequately demonstrated the need for a first noncommercial educational television service at Charleston, Illinois, and that the public interest would be served by assigning and reserving UHF Television Channel *51 for noncommercial educational use at that community.

§ 73.606 [Amended]

3. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, that effective February 27, 1984, the Television Table of Assignments, § 73.606(b) of the Rules, is amended, with respect to the following community:

City	Channel No.
Charleston, Ill	*51+

4. It is further ordered, that this proceeding is terminated.

5. For further information contact Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84–38 Filed 1–3–84; 8:45 am]

BILLING CODE 6712–01–M

---

47 CFR Part 73

[MM Docket No. 83–361; RM–4336]

TV Broadcast station in Cleveland, Tennessee; Changes made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns UHF television Channel 53 to Cleveland,

Tennessee, in response to a petition filed by Peggy Ann Rothchild. The assignment could provide Cleveland with its first television service.

DATE: Effective: February 27, 1984.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau (202) 634–6530.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.606(b), Table of Assignments, TV Broadcast Stations. (Cleveland, Tennessee) MM Docket No. 83–361 RM–4336.

Adopted: December 12, 1983.
Released: December 21, 1983.

By the Chief, Policy and Rules Division.

1. Before the Commission for consideration is the *Notice of Proposed Rule Making*, 48 FR 16921, published April 20, 1983, issued in response to a petition filed by Peggy Ann Rothchild ("petitioner"), proposing the assignment of UHF television Channel 53 to Cleveland, Tennessee, as that community's first television service. Supporting comments were filed by petitioner reiterating her intention to apply for the channel, if assigned. No oppositions to the proposal were received.

2. Cleveland (population 26,415),[1] seat of Bradley County (population 67,547), is located in southeastern Tennessee, approximately 200 kilometers (125 miles) southeast of Nashville.

3. We believe the public interest would be served by assigning UHF television Channel 53 to Cleveland, since it could provide that community with its first television service. As indicated in the *Notice*, the assignment can be made to Cleveland in conformity with the minimum distance separation requirements of §§ 73.610 and 73.698 of the Commission's Rules, provided the transmitter is located 9.7 miles southeast to avoid short-spacing on the co-channel to Station WKGB, Bowling Green, Kentucky.

§ 73.606 [Amended]

4. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b), and 0.283 of the Commission's Rules, it is ordered, that effective February 27, 1984, the Television Table of Assignments, § 73.606(b) of the Commission's Rules, is amended with regard to the community listed below, as follows:

City	Channel No.
Cleveland, Tenn	53

5. It is further ordered, that this proceeding is terminated.

6. For further information, concerning the above, contact Nancy V. Joyner, Mass Media Bureau, (202) 634–6530.

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division Mass Media Bureau.

[FR Doc. 84–35 Filed 1–3–84; 8:45 am]

BILLING CODE 6712–01–M

[1] Population figures were extracted from the 1980 U.S. Census.

47 CFR Part 73

[MM Docket No. 83–355; RM–4305]

TV Broadcast Station in Fort Worth, Texas; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns UHF television Channel 52 to Fort Worth, Texas, as that community's fourth commercial television service, in response to a petition filed by Dennis H. Owen.

DATE: Effective: February 27, 1984.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634–6530.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.606(b), Table of Assignments, TV Broadcast Stations. (Fort Worth, Texas) MM Docket No. 83–355; RM–4305.

Adopted: December 5, 1983.
Released: December 21, 1983.

By the Chief, Policy and Rules Division.

1. Before the Commission for consideration is the *Notice of Proposed Rule Making*, 48 FR 16088, published April 14, 1983, proposing the assignment of UHF television Channel 52 [1] to Fort Worth, Texas, as that community's fourth commercial television service, in response to a request from Dennis H. Owen ("petitioner"). Supporting comments were filed by petitioner reaffirming his intention to apply for the channel, if assigned. Additionally, comments were filed by Latin American Broadcasting Company ("LABC") advocating its support of the proposed assignment. No oppositions to the proposal were received.

2. Fort Worth (population 385,141),[2] the seat of Tarrant County (population 860,880), is located in northeast Texas, approximately 50 kilometers (28 miles) west of Dallas. Currently, Fort Worth is served by commercial television stations KXAS(TV) (Channel 5+), KTVT(TV) (Channel 11–), KTXA(TV) (Channel 21–), and noncommercial educational Channel *31 (applications pending).

3. We find that the public interest would be served by assigning UHF television Channel 52 to Fort Worth as its fourth commercial television service. As set forth in the *Notice*, Channel 52 can be assigned to Fort Worth consistent with the minimum distance separation requirements of §§ 73.610 and 73.698 of the Commission's Rules provided it is offset [3] to avoid short spacing on the co-channel.

§ 73.606 [Amended]

4. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, that effective February 27, 1984, the Television Table of Assignments, § 73.606(b) of the Commission's Rules, is amended as follows:

City	Channel No.
Fort Worth, Tex	5+, 11–, 21–, *31+, and 52–.

5. It is further ordered, that this proceeding is terminated.

[1] Although petitioner initially requested the assignment of UHF television Channel 43 to Fort Worth, that proposal was short-spaced to the proposed assignment of Channel 58 to Dallas, Texas, in BC Docket No. 82–834 (RM–4202). Therefore, Channel 52 was proposed for consideration, in lieu of Channel 43.

[2] Population figures were extracted from the 1980 U.S. Census, Advance Reports.

[3] Although the *Notice* proposed the assignment of Channel 52 with a plus offset to avoid short spacing to Station KSBI(TV), Oklahoma City, Oklahoma, it will be changed herein to avoid conflicting with another pending rule making proposing the assignment of Channel 52+ to Blanco, Texas (see MM Docket No. 83–478; RM–4371).

6. For further information concerning the above, contact Nancy V. Joyner, Mass Media Bureau, (202) 634–6530.

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84–33 Filed 1–3–84; 8:45 am]

BILLING CODE 6712–01–M

---

47 CFR Part 73

[MM Docket No. 83–481; RM–4382]

TV Broadcast Station in Morton, Washington; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns UHF Television Channel 39 to Morton, Washington, in response to a petition filed by The Daily Chronicle, Inc.

DATE: Effective: February 27, 1984.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mark N. Lipp, Mass Media Bureau (202) 634–6530.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.606(b), Table of Assignments, TV Broadcast Stations. (Morton, Washington) MM Docket 83–481, RM–4382.

Adopted: December 5, 1983.

Released: December 21, 1983.

By the Chief, Policy and Rules Division.

1. The Commission herein considers the *Notice of Proposed Rule Making*, 48 FR 27567, published June 16, 1983, which proposed the assignment of UHF Television Channel 39 to Morton, Washington, in response to a petition filed by The Daily Chronicle, Inc. ("petitioner"). The petitioner filed comments in support of the *Notice* and reaffirmed its interest in applying for the channel, if assigned. No opposing comments were received.

2. The Association of Maximum Service Telecasters, Inc. filed comments noting a short spacing of 16.9 miles between proposed Channel 39 in Morton and Channel 25 in Rochester, Washington (MM Docket 83–473, RM–4383). The conflict has been resolved by substituting Channel 26 in MM Docket 83–473.

3. We believe that the petitioner has adequately demonstrated the need for a first commercial television assignment to Morton, Washington, and that the public interest would be served by assigning UHF Television Channel 39 to that community. The channel can be assigned in compliance with the minimum distance separation requirements and other technical criteria of the Commission's Rules provided there is a site restriction of 1 mile north of the city to avoid short spacing to a construction permit on Channel 24 at Portland, Oregon. Canadian concurrence has been received.

§ 73.606 [Amended]

4. Accordingly, pursuant to the authority contained in Section 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, that effective February 27, 1984, the Television Table of Assignments, § 73.606(b) of the Rules, is amended with respect to the community listed below:

City	Channel No.
Morton, Wash	39

5. It is further ordered, that this proceeding is terminated.

6. For further information please call Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84–41 Filed 1–3–84; 8:45 am]

BILLING CODE 6712–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1152

[Ex Parte No. 274 (Sub-No. 8)]

Exemption of Out of Service Rail Lines

AGENCY: Interstate Commerce Commission.

ACTION: Final rule; partial granting of petition.

SUMMARY: At 48 FR 27547, June 16, 1983, the Commission issued a decision exempting railroad abandonments from the requirement or prior approval under 49 U.S.C. 10903–10905, where the lines have been out of service for at least 2 years, subject to certain conditions and standard labor protection provisions. Petitions to reopen the proceeding and rescind the rules at 49 CFR 1152.50 were filed. Those petitions are granted to the extent of narrowing the exemption to exclude those instances where a formal complaint has been filed by State or local government entities with regard to unanswered service requests. In all other respects the petitions are denied. The amended rule appears in the Appendix.

DATE: This action is effective on January 4, 1984.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer (202) 275–7245.

SUPPLEMENTARY INFORMATION:

List of Subjects in 49 CFR Part 1152

Railroads.

This action taken under 49 U.S.C. 10321 and 10505 and 5 U.S.C. 553.

Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to: T. S. InfoSystems, Inc., Interstate Commerce Commission, Room 2227, Washington, DC 20423, or call 289–4357 (DC metropolitan area) or toll free (800) 424–5403.

Decided: December 27, 1983.

By the Commission, Chairman Taylor, Vice Chairman Sterrett, Commissioners Andre and Gradison. Vice Chairman Sterrett did not participate.

James H. Bayne,

Acting Secretary.

Appendix

Title 49 of the Code of Federal Regulations is amended as follows:

PART 1152—[AMENDED]

§ 1152.50 [Amended]

The first sentence of § 1152.50(b) is amended by adding the parenthetical expression "(or a State or local governmental entity acting on behalf of such user)" to follow the words "filed by a user or rail service on the line."

[FR Doc. 84–48 Filed 1–3–84; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 675

[Docket No. 31214–236]

Foreign Fishing; Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues a final rule to implement Amendment 1 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). The amendment (1) establishes a multi-year, multi-species optimum yield for the Bering Sea and Aleutian Islands area groundfish complex, (2) establishes a framework procedure for the determination and apportionment of amounts of groundfish specified for total allowable catch, domestic annual harvest, reserves, and total allowable level of foreign fishing, (3) modifies domestic restrictions in the Winter Halibut Savings Area and Bristol Bay Pot Sanctuary, (4) modifies foreign trawl restrictions in the area known as Petrel Bank, and (5) modifies certain appendices and annexes to the FMP. These management measures are necessary to provide the flexibility necessary for efficient management of the groundfish resource and the fishery and are intended to allow more timely implementation of management decisions made in response to the needs of the rapidly developing U.S. groundfish fishery and to changes in the condition of the groundfish resource.

EFFECTIVE DATE: January 1, 1984.

ADDRESSES: Copies of the amendment, environmental impact statement, and the regulatory impact review/final regulatory flexibility analysis may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, Alaska 99510; telephone 907–274–4563.

FOR FURTHER INFORMATION CONTACT: Susan J. Salveson (Regional Plan Coordinator), 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

The FMP was implemented on January 1, 1982 (46 FR 63295, December 31, 1981), by the NOAA Assistance Administrator for Fisheries (Assistant Administrator) under the Magnuson Fishery Conservation and Management Act (Magnuson Act). Since then, five amendments to the FMP have been implemented.

Amendment 1 to the FMP as adopted by the North Pacific Fishery Management Council (Council), on May 20, 1982, is the subject of this action. An earlier version of the amendment had been adopted by the Council in February 1981, but that version was later revised by the Council at its May 1982 meeting. The amendment makes the following changes to the management system prescribed in the FMP: (1) The current optimum yield (OY) specifications for individual groundfish species are replaced by a combined OY for the entire Bering Sea and Aleutian Islands area groundfish resource, or "complex," with a total allowable catch (TAC) specified annually for each target species and for the "other species" category; (2) a new system is established for the annual determination of domestic annual harvest (DAH), total allowable level of foreign fishing (TALFF), and reserves, and for apportionment of reserves to DAH and TALFF and of the DAH that will not be harvested by U.S. fishing vessels to TALFF; (3) domestic fishing restrictions stipulated in the FMP for the Bristol Bay Pot Sanctuary and the Winter Halibut Savings Area are changed to allow year-round fishing; (4) the January 1 through June 30 closure to foreign trawling between 3 and 12 miles from the baseline used to measure the U.S. Territorial Sea in Area "D" (known as the Petrel Bank) is changed so that all of Area D is closed to foreign trawling for the first 6 months of a calendar year; and (5) appendices and annexes to the FMP are revised to reflect changes made in the body of the FMP.

The preamble to the proposed rule (48 FR 41791, September 19, 1983) thoroughly discussed the need and justification of Amendment 1. It also discussed the procedures for the annual determination of TAC, DAH, and TALFF amounts for each target species and the "other species" category and for the reapportionment to TALFF of reserves and DAH amounts surplus to the needs of the U.S. fishing industry. Public comments on the proposed rule were invited until November 3, 1983. Seven comments were received from three individuals representing various sectors of the Japanese fishing industry. All comments received have been considered and are responded to below. After considering the comments, the Director of the National Marine Fisheries Service, Alaska Region (Regional Director), has decided to give final approval to Amendment 1.

The final rule incorporates four changes to the proposed regulations in response to public comment and Council clarification of its intent for the amendment. First, § 611.93 (c)(2)(i)(B) and (c)(2)(ii)(D) is changed to accommodate a comment submitted by the Council that clarifies the Council's intent for the foreign trawl restriction in the Petrel Bank area. Currently, the area between 3 and 12 miles from the baseline used to measure the U.S. Territorial Sea in the Petrel Bank area is closed to foreign trawling from January 1 through June 30 to reduce the potential for gear conflicts with U.S. crab fishermen and to reduce the incidental mortality of crabs during spring months when the crabs are molting. The proposed regulations revised these restrictions so that the entire Petrel Bank area would be closed to foreign trawling from 7 days before the opening of the U.S. king crab fishery in the western Aleutian Islands area (currently November 10) through June 30. These revisions were proposed because (1) the U.S. king crab fishery extends beyond 12 miles in the Petrel Bank area, and (2) the opening of the king crab fishery is currently at an earlier date than that which is supported by the current restrictions on the foreign trawl fishery in the Petrel Bank area.

Protests to the Council by representatives for Japanese trawling interests on the proposed revisions to the Petrel Bank restrictions made evident to the Council that its intent for the Petrel Bank closure had not been made clear to the public. Also questioned was whether or not the extension of the time closure in the Petrel Bank area had ever been formally adopted by the Council. The Council therefore reexamined its intent for the Petrel Bank closure at its September 1983 meeting and after considering the present use of the area by U.S. crab fishermen and the need to protect molting crab in *all* of Petrel Bank, reaffirmed its intent to extend the Petrel Bank closure from between 3 and 12 miles to all of Petrel Bank. However, information and testimony from U.S. and Japanese fishery representatives confirmed that U.S. and foreign fishermen have been able to resolve any gear conflicts among themselves, and that the potential for gear conflicts is not considered a problem by U.S. crab fishermen utilizing the Petrel Bank area. As a result, the Council affirmed that it did not wish to extend the closure of the Petrel Bank beyond the current 6-month closure of January 1 through June 30, and requested that the final rule be changed accordingly. Thus, § 611.93 (c)(2)(i)(B) and (c)(2)(ii)(D) of the final rule is changed to reflect that the entire Petrel Bank area is closed to foreign trawling from January 1 through June 30.

The second change in the regulations implementing Amendment 1 as reflected in the final rule involves § 675.20(a)(2)(i) and addresses a clarification of the Council's intent that socioeconomic factors will be considered when annual TACs are determined, when the reapportionment of reserves to a target species or the "other species" category will result in that species' TAC being exceeded, and when surplus DAH is reapportioned to TALFF.

The third change to the proposed regulations involves § 675.20 (a)(6) and (b) and clarifies that the **Federal Register** notices addressed in these two paragraphs are rule-related notices.

The last change to the proposed regulations is in § 675.20(b)(2) and makes provisions for public notice and comment if reserves are to be retained for conservation reasons, or if surplus DAH is to be retained for conservation or socioeconomic reasons.

Public Comments

1. *Comment:* The changes to the foreign trawl closure set forth in the proposed rule should be revised to reflect the Council's intent for that closure as expressed at its September 1983 meeting.

Response: As noted above, the appropriate changes have been incorporated into the final rule.

2. *Comment:* The proposed extension of the six-month closure of the Petrel Bank from between 3 and 12 miles of the baseline used to measure the U.S. territorial sea to all of Petrel Bank should be disapproved, because it is in violation of the Magnuson Act, the Administrative Procedure Act (APA), and other applicable law for the following reasons: (1) Adequate notice was never given to the public that the proposed change was contemplated prior to the time the Council acted on Amendment 1; (2) this change was never a part of Amendment 1, as approved by the Council; (3) no supporting data or rationale were ever presented to either the Council or to the public on this proposed change prior to the adoption of Amendment 1 by the Council; and (4) no mention of this proposed change, much less discussion of it, occurred before the Council or its advisory bodies.

Response: In July 1978 and at the behest of the Japanese North Pacific Longline-Gillnet Association, a longline sanctuary concept was introduced into the draft FMP for Council consideration. The draft would have prohibited foreign trawling between 172° W. longitude and 179° E. longitude. Analysis of the potential impacts of the proposed sanctuary by the Council's Plan Development Team (PDT) indicated that, aside from the obvious benefits to longline fleets, the potential savings accrued through the reduced incidental trawl mortality of red and blue king crab in the sanctuary would have to be balanced against a potential loss of foreign groundfish production.

Representative for Japanese trawl interests (including the commenter) subsequently proposed a smaller alternative for a longline sanctuary (between 172° W. longitude and 178°30′ W. longitude) to reduce the projected loss of foreign groundfish production. The PDT highlighted, however, that the smaller longline sanctuary would also reduce the projected savings of king crab. It suggested, therefore, that should the longline sanctuary be reduced in size as proposed by foreign trawl interests, then it might be necessary to consider specific closures to foreign trawling to protect both halibut and crab.

Several alternatives for Aleutian Islands area trawl closures and longline sanctuaries were presented to the Council and its advisory bodies at the May 1979 meeting, at which the commenter was present. It was moved before the Council that the alternative providing for (1) no foreign trawling year round in the proposed longline sanctuary between 172° W. longitude and 178°30′ W. longitude and (2) no trawling from January 1 through June 30 in the entire Petrel Bank be adopted. The motion was passed unanimously by the Council in order to provide for the foreign and domestic longline fisheries, to avoid gear conflicts during the conduct of the domestic king crab fishery, and to reduce the incidental mortality of king crab by foreign trawlers during those months when the crab are molting, making them particularly vulnerable to mortality from trawl gear.

Unfortunately, the Petrel Bank trawl closure as adopted by the Council was misspecified in the FMP, which stated that only that portion of the Petrel Bank between 3 and 12 miles would be closed to foreign trawling from January 1 through June 30. This language did not express the intent of the Council as voiced at the May 1979 meeting and did not conform to the Council's objective for the Petrel Bank closure of protecting crab stocks in all of Petrel Bank and reducing the potential for gear conflicts in the area. The subsequent drafts of revisions to section 14 of the FMP under Amendment 1 that were distributed for public review from April 1980 through March 1982 did reflect the Council's intent for the Petrel Bank closure and stated the foreign trawl closure applied to all of Petrel Bank and not just to that area between 3 and 12 miles. Although this change in the Petrel Bank trawl closure was not highlighted in staff summaries of Amendment 1, NOAA has determined that the public was given due notice of this action through its consistent inclusion in public review drafts of the amendment itself. The procedures followed by the Council when it adopted this change were consistent with the Magnuson Act, the APA, and other applicable law for the following reasons: (1) The Council deliberated before the public on the Petrel Bank issue in 1979; (2) the revised language closing all of Petrel Bank was in every Amendment 1 public review package since 1980 and a careful reading of the amendment by persons knowledgeable of foreign trawl restrictions should have identified to the reader the revisions being made, (3) the issues surrounding the Petrel Bank closure were reexamined by the Council at its September 1983 meeting and, after receiving public comment, the Council reaffirmed its intent to close all of Petrel Bank from January 1 through June 30 for the same reasons stated at its May 1979 meeting and (4) the public was provided a 75-day period in which to review and submit comments on Amendment 1 to the Secretary of Commerce through the NMFS Regional Director. NOAA has considered the comment questioning the Petrel Bank trawl closure and, after reviewing the history of this action and the opportunity for public input since 1979 on the proposed closure, does not find that this part of Amendment 1 warrants disapproval.

3. *Comment:* The upper end of the OY range established by the amendment should be set at a value which exceeds the upper end of the range established for the maximum sustainable yield (MSY). The fact that the upper limit of the OY range is set higher than the maximum range for MSY does not necessarily imply that the level of exploitation will ever exceed the MSY. However, an OY range which encompasses the MSY range will provide the flexibility necessary for managing the resource and the fishery in accordance with the OY provisions of the Magnuson Act and the goals and objectives of Amendment 1. Therefore, it is recommended that the upper limit of the OY range be conservatively increased to at last 2.5 million mt.

Response: The most recent biological information estimates the total 1984 equilibrium yield for target species and the "other species" category to be in excess of 2.2 million mt and the 1984 TAC for these species has been set at the maximum 2.0 million mt level allowed by Amendment 1. The Council may find it desirable to expand the 1.4–2.0 million mt OY range in view of the apparent health of the groundfish resource and to enhance management flexibility under the FMP. Such action, however, may be inconsistent with the conservative approach to groundfish management that the Council has found to be necessary in view of the available information on groundfish stocks. If an expansion of the OY range is found

appropriate and necessary by the Council, such expansion would require a separate amendment to the FMP.

4. *Comment:* The portion of each species' TAC (15 percent) that is contributed towards the reserve should be reapportioned back to the respective species' TAC when reserves are released, unless there is evidence that the condition of any particular species requires a downward adjustment in its TAC.

Response: Amendment 1 does not contain any constraint on the reapportionment of reserves to a species unless a conservation problem exists or if a species' TAC will be exceeded, in which case the reserve reapportionment must be consistent with various socioeconomic factors and must not result in overfishing. The intended use of reserves is to address unexpected developments or adjustments in either the foreign or domestic fisheries. As such, the reapportionment of reserves to various species cannot be predicted except that all reapportionments must be consistent with the rule implementing Amendment 1. If no unexpected development of the domestic industry or condition of groundfish stocks arose and no operational problems developed in either the foreign or domestic fleets, the reapportionment of reserves to target species and the "other species" category would likely be such that the entire TAC for each species would be made available to the fishery.

5. *Comment:* In the event the Regional Director anticipates a retention of reserves for conservation reasons, some means of reasonable notice to the affected user groups in advance of a scheduled reserve apportionment would be desirable. The notice should also include a brief description of the biological information upon which the proposed retention is based.

Response: As noted above, the final rule makes provisions for public notice and comment if reserves are retained for conservation reasons.

6. *Comment:* The provisions of the proposed rule to authorize the retention of surplus DAH for socioeconomic reasons is inconsistent with the Magnuson Act because it may preclude the attainment of OY. Furthermore, the retention of surplus DAH for conservation reasons is not necessary because the Regional Director already has the authority to withhold reserves for conservation reasons.

Response: Amendment 1 defines the OY for the Bering Sea and Aleutian Islands area target species and the "other species" category as a range of 1.4 to 2.0 million mt to the extent that this amount can be harvested consistently with the rules implementing the FMP as amended, including the proposed rule for retention of surplus DAH for socioeconomic reasons. Thus, a proper DAH retention under that rule would necessarily lead to the attainment of OY, as so defined.

Unlike the reserve, surplus DAH is apportioned by species and is reapportioned to TALFF as such. Thus, if an inseason conservation problem did arise for a particular species, it would be much more effective to retain any surplus DAH for that species, rather than to retain a portion of the reserve, which could be reapportioned to other species in better biological condition.

The authority to retain surplus DAH if the reapportionment of those amounts to TALFF would have an *adverse* biological or socioeconomic effect is set forth in Section 12.2 of the original FMP. The Council found it desirable to implement this provision of the FMP with the rule implementing Amendment 1, because the management flexibility inherent in the FMP provision enhances and augments similar types of provisions originating under Amendment 1.

7. *Comment:* Consideration of biological or socioeconomic factors every time surplus DAH is or is not reapportioned to TALFF is both redundant and cumbersome. Rather, socioeconomic and/or conservation factors should be considered only when a reapportionment of surplus DAH to TALFF would result in a harvest in excess of the TAC established for the species in question. In that event, the consideration of such factors would be entirely reasonable and consistent with the purpose of the amendment and the objectives of the Magnuson Act.

Response: Socioeconomic and biological conditions within various segments of the groundfish fishery may vary within a year. For that reason, NOAA has determined that implementation of the current provision in the FMP authorizing the retention of surplus DAH is necessary and appropriate if an adverse biological or socioeconomic effect on the U.S. industry would otherwise result from its reapportionment to TALFF.

Classification

The Regional Director has determined that Amendment 1 and this rule are necessary for the conservation and management of the Bering Sea and Aleutian Islands area groundfish fishery and that both are consistent with the Magnuson Act and other applicable law.

The Council prepared a final environmental impact statement for this FMP and filed it with the Environmental Protection Agency on November 20, 1981; it addresses Amendment 1 and is available from the Council at the address set forth above.

The NOAA Administrator determined that this final rule is not "major rule" requiring a regulatory impact analysis under Executive Order 12291 because it will not result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices to consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises on domestic or export markets. This rule will have a significant beneficial economic impact on a substantial number of small entities for purposes of the Regulatory Flexibility Act, and thus requires the preparation of a regulatory flexibility analysis.

These determinations are based on the regulatory impact review/final regulatory flexibility analysis (RIR/FRFA) available at the address above. The analysis in the RIR/FRFA is essentially the same as that contained in the RIR/initial regulatory flexibility analysis, which was summarized in the preamble to the proposed rule at 48 FR 41791.

This rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act.

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of the State of Alaska. The Alaska Office of Management and Budget has concurred in this determination.

The Assistant Administrator finds good cause not to delay for 30 days the effective date of this final rule under 5 U.S.C. 553(d). The intended effect of this rule is to provide the management flexibility necessary to meet the allocation needs of the rapidly developing U.S. groundfish fishery and to provide for fuller utilization of the groundfish resource. If the 1984 fishery were initiated on January 1, 1984, under the outdated fishery specifications currently set forth in the FMP, the domestic fishery would not be provided with sufficient amounts of groundfish, and recent increases in the annual surplus production of various target species would not be made available to either the domestic or foreign fisheries. Implementation of Admendment 1 after that date would require midseason

changes, causing confusion and disruption within the groundfish fisheries, and may preclude full utilization of available groundfish resources. Both the U.S. and foreign fishing industries are aware of and expect the implementation of Amendment 1 by January 1, 1984. The provisions of the final rule for notice and comment on proposed TACs for 1984 are already being implemented, so as to provide all interested parties with the opportunity to comment on the rule's implementation for that year. No purpose would be served by a delay in the rule's implementation.

List of Subjects

50 CFR Part 611

Fish, Fisheries, Foreign relations, Reporting and recordkeeping requirements.

50 CFR Part 675

Fish, Fisheries, Reporting and recordkeeping requirements.

Dated: December 29, 1983.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR Parts 611 and 675 are amended as follows:

PART 611—[AMENDED]

1. The authority citation for Part 611 reads as follows:

Authority: 16 U.S.C. 1801 *et seq.*, unless otherwise noted.

2. In § 611.93, paragraphs (a)(3), (b)(1)(i), (b)(2), (b)(3)(ii)(A), and (c)(2)(i) are revised, paragraph (c)(2)(ii)(D) is redesignated as (c)(2)(ii)(E) and the references to paragraph "(c)(2)(ii)(D)" in paragraph (e) are changed to "(c)(2)(ii)(E)", and a new paragraph (c)(2)(ii)(D) is added to read as follows:

§ 611.93 Bering Sea and Aleutian Islands groundfish fishery.

(a) * * *

(3) The optimum yield for the fishery regulated by this section and by 50 CFR Part 675 is a range of 1.4 to 2.0 million mt for target species and the "other species" category in the management area to the extent this amount can be harvested consistently with this Part and 50 CFR Part 675, plus the amounts of "nonspecified species" taken incidentally to the harvest of target species and the "other species" category. For a definition of the categories of species involved in the fishery, see Table 1 of this section.

(b) *Authorized fishery.* (1)(i) See 50 CFR Part 675, Subpart B, for procedures to determine total allowable catch (TAC), reserve, domestic annual harvest (DAH), and total allowable level of foreign fishing (TALFF).

* * * * *

(2) For apportionment to TALFF of Reserves and surplus DAH, see 50 CFR Part 675, Subpart B.

(3) * * *

(ii) * * *

(A) *Attainment of quota.* If the amount of "other species" or any target species, except sablefish, turbots, or Pacific cod, that is apportioned to the fishery will be reached, the Secretary shall prohibit foreign trawling in all or part of the management area until January 1. If the amount of sablefish, turbots, or Pacific cod that is apportioned to the fishery will be reached, the Secretary shall prohibit all foreign harvesting in all or part of the management area until January 1.

* * * * *

(c) * * *

(2) *Trawling.* (i) Trawling by foreign vessels between 3 and 12 nautical miles from the baseline used to measure the territorial sea is allowed (A) at all times in the area bounded by 170°00′ W. and 172°00′ W. longitude south of the Aleutians and between 170°30′ W. and 172°00′ W. longitude north of the Aleutians, (B) on Petrel Bank from July 1 through December 31, and (C) from May 1 through December 31 in other areas west of 178°30′ W. longitude. Petrel Bank is bordered by straight lines connecting the following coordinates in the order listed:

Latitude

52°51′ N.
52°51′ N.
51°15′ N.
51°15′ N.
52°51′ N.

Longitude

178°30′ W.
179°00′ E.
179°00′ E.
178°30′ W.
178°30′ W.

(ii) * * *

(D) From January 1 through June 30 in the area known as Petrel Bank, described in paragraph (c)(2)(i) of this section.

* * * * *

PART 675—[AMENDED]

3. The authority citation for Part 675 is revised to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

4. In § 675.20, paragraphs (a) and (b) are revised, a new paragraph (d) is added, and Table 1 is revised to read as follows:

§ 675.20 General limitations.

(a) *OY, TAC, Reserve, DAH, and TALFF.* (1) *Optimum yield.* The optimum yield (OY) for the fishery regulated by this section and by 50 CFR § 611.93 is a range of 1.4 to 2.0 million mt for target species and the "other species" category in the Bering Sea and Aleutian Islands management area, to the extent this amount can be harvested consistently with this Part and 50 CFR Part 611, plus the amounts of "nonspecified species" taken incidentally to the harvest of target species and the "other species" category. The species categories are defined in Table 1 of this section.

TABLE 1.—CATEGORIES OF SPECIES INVOLVED IN THE BERING SEA AND ALEUTIAN ISLANDS GROUNDFISH FISHERY

Unallocated species [1]	Target species	Other species	Nonspecified	Groundfish
Salmonids, halibut, herring, king crab, Tanner crab, coral, shrimp, horsehair crab, lyre crab, scallops, snails, dungeness crab, surf clams.	Pollock, cod, other flatfishes, Atka mackerel, sablefish, turbots, squid, Pacific ocean perch, other rockfish, yellowfin sole.	Sculpins, sharks, skates, eulachon, smelts, capelin, octopus.	All species not included in previous categories.	Target, "other", and nonspecified species.

[1] Salmonids, Pacific halibut, Tanner crab, and any other unallocated species, the retention of which is prohibited by other applicable law, must be returned to the sea with a minimum of injury.

(2) *TAC.* The Secretary, after consultation with the North Pacific Fishery Management Council (Council), will specify the total allowable catch (TAC) for each calendar year for each target species and for the "other species" category. The sum of the TACs established must be within the OY range of 1.4–2.0 million mt for target species and the "other species" category.

(i) The annual determination of the TAC for each target species and the "other species" category, the exceeding of these species' TACs through the apportionment of reserves, and the

reapportionment of surplus domestic annual harvest (DAH) to total allowable level of foreign fishing (TALFF) will be based upon and be consistent with two types of information:

(A) Biological condition of groundfish stocks as set forth in the resource assessment documents prepared annually for the Council. These documents will provide information on historical catch trend; updated estimates of the maximum sustainable yield of the groundfish complex and its component species groups; assessments of the stock condition of each target species and the "other species" category; assessments of the multi-species and ecosystem impacts of harvesting the groundfish complex at current levels given the assessed condition of stocks, including consideration of rebuilding depressed stocks; and alternative harvesting strategies and related effects on the component species group.

(B) Socioeconomic considerations that are consistent with the goals of the fishery management plan for the groundfish fishery of the Bering sea and Aleutian Islands area, including the need to promote efficiency in the utilization of fishery resources, including minimizing costs; the need to manage for the optimum marketable size of a species; the impact of groundfish harvests on prohibited species and the domestic target fisheries which utilize these species; the desire to enhance depleted stocks; the seasonal access to the groundfish fishery by domestic fishing vessels; the commerical importance of a fishery to local communities; the importance of a fishery to subsistence users; and the need to promote utilization of certain species.

(3) *Reserve.* Fifteen percent of the TAC for each target species and the "other species" category is automatically placed in a reserve, and the remaining 85 percent of the TAC for each target species and the "other species" category is apportioned between DAH and TALFF. The reserve is not designated by species or species group and any amount of the reserve may be apportioned to a target species or the "other species" category provided that such apportionments are consistent with paragraph (a)(2)(i) of this section and do not result in overfishing of a target species or the "other species" category.

(4) *DAH.* (i) The initial amounts for the two components of DAH, i.e., expected domestic annual processing (DAP) and U.S. harvest authorized for delivery to foreign processors (JVP), will be determined each year by the Regional Director. The DAP and JVP amounts for each target species and for the "other species" category equals the actual DAP and JVP of the previous year plus any additional amounts the Regional Director projects will be used by the U.S. fishing industry during the coming fishing year. This projection will be based upon the latest reliable information that is available, including industry surveys, market data, and stated intentions by representatives for the U.S. fishing industry.

(ii) The DAH for the "nonspecified species" category equals the amount of that category caught during the fishing year while harvesting the DAH for the target species and "other species" categories.

(5) *TALFF.* The TALFF for each target species and for the "other species" category at the beginning of the fishing year is 85 percent of each TAC minus DAH. The TALFF for the "nonspecified species" category equals the amount caught during the fishing year while harvesting the TALFF for the target species and "other species" categories.

(6) *Rule-related notice.* As soon as is practicable after October 1 of each year, the Secretary, after consultation with the Council, shall publish a rule-related notice in the **Federal Register** specifying preliminary TAC, Reserve, DAP, JVP, and TALFF amounts for each target species and for the "other species" category for the next calendar year. Public comment on these amounts will be accepted by the Secretary for a period of 30 days after the amounts have been published in the **Federal Register**. The Secretary shall consider all timely comments when determining, after consultation with the Council, the final annual TAC, initial DAH, and initial TALFF for each target species and the "other species" category for the next year. These figures will be published as a rule-related notice in the **Federal Register** as soon as practicable after December 15 and made available to the public through other suitable means by the Regional Director.

(7) When the combined catch by foreign and U.S. vessels in the fishery or applicable sub-area of the fishery reaches the amount of a target species or the "other species" category that is apportioned to the fishery, further fishing by U.S. vessels that involves the taking of that species is prohibited in the management area or applicable sub-area for the remainder of the fishing year.

(b) *Apportioning the reserve and surplus DAH*—(1) *Dates.* (i) *Reserve to DAH and TALFF.* As soon as practicable after April 1, June 1, and August 1, and on such other dates as he determines appropriate, the Secretary shall by rule-related notice apportion to DAH and TALFF all or part of the reserve in accordance with paragraphs (a)(3) and (b)(2) of this section. The Secretary shall apportion to DAH the amount of reserve that he finds will be harvested by U.S. vessels during the remainder of the year and shall apportion to TALFF the remaining portion of the reserve that will not be apportioned to DAH, except that part or all of the reserve may be withheld if an apportionment would adversely affect the conservation of groundfish resources or prohibited species.

(ii) *DAH to TALFF.* As soon as practicable after April 1, June 1, and August 1, and on such other dates as he determines appropriate, the Secretary shall, by rule-related notice, reassess and reapportion to TALFF the part of DAH that he determines will not be harvested by U.S. vessels during the remainder of the fishing year, unless such reapportionments to TALFF would adversely affect the conservation of groundfish or prohibited species or would have an adverse impact on the socioeconomic considerations set forth in paragraph (a)(2)(i)(B) of this section.

(2) *Procedure.* (i) The Secretary shall provide all interested persons an opportunity to comment on the proposed apportionments or retentions under paragraph (b)(1) of this section before such apportionments or retentions are made, unless he finds that there is good cause for not providing a prior comment opportunity, and publishes the reasons therefor in the rule-related notice of apportionment and/or retention. No apportionment or retention may take effect until it has been published in the **Federal Register** as a rule-related notice with a statement of the findings upon which the apportionment or retention is based. Comments provided for in this paragraph must be received by the Secretary not later than 5 days before April 1, June 1, and August 1, or other dates that may be specified. If the Secretary determines for good cause that a rule-related notice of apportionment and/or retention must be issued without providing interested persons a prior opportunity for public comment, comments on the apportionment or retention will be received for a period of 15 days after its effective date. The Secretary shall consider all timely comments in deciding whether to make a proposed apportionment or retention or to modify an apportionment or retention that has previously been made, and shall publish responses to those comments in the **Federal Register** as soon as practicable.

(ii) Comments provided for in paragraphs (a)(6) and (b)(2)(i) of this section should be addressed to Director,

Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802. The Regional Director will make available to the public during business hours the aggregate data upon which any preliminary TAC, DAH, or TALFF figure is based or the data upon which any apportionment or retention of surplus DAH or reserve was or is proposed to be based at the National Marine Fisheries Service Alaska Regional Office, Federal Building, Room 453, 709 West Ninth Street, Juneau, Alaska. These data will be available for a sufficient period to facilitate informed comment by interested persons.

* * * * *

(d) The Secretary of Commerce shall make appropriate arrangements to place observers aboard U.S. trawl vessels operating in the Winter Halibut Savings Area from December 1 through May 31. The Winter Halibut Savings Area is bounded by straight lines connecting the following coordinates in the order listed:

Latitude

54°36′ N.
52°48′ N.
55°30′ N.
55°30′ N.
56°00′ N.
56°00′ N.
56°30′ N.
56°30′ N.
56°20′ N.
55°16′ N.
54°36′ N.

Longitude

164°55′42″ W. (Cape Sarichef Light)
170°00′ W.
170°00′ W.
166°47′ W.
167°45′ W.
166°00′ W.
166°00′ W.
163°00′ W.
163°00′ W.
166°10′ W.
164°55′42″ W.

[FR Doc. 84-152 Filed 1-3-84; 8:45 am]
BILLING CODE 3510-22-M

---

50 CFR Part 655

[Docket No. 31220-244]

Foreign Fishing, Atlantic Mackerel, Squid, and Butterfish Fisheries

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues a final rule to implement Amendment No. 1 to the Fishery Management Plan for the Atlantic Mackerel, Squid, and Butterfish Fisheries. The rule provides for additional flexibility in the annual specification of the optimum yields for squid and revises the estimated Atlantic mackerel natural mortality rate downward from 0.30 to 0.20 on the basis of recent scientific information. The regulations are intended to promote development and orderly operations of the U.S. fishery.

EFFECTIVE DATE: February 7, 1984, through March 31, 1986.

ADDRESS: Copies of Amendment 1 to the Fishery Management Plan for the Atlantic Mackerel, Squid, and Butterfish Fisheries, the environmental assessment, and the regulatory impact review are available from the Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, Delaware, 19901–6790.

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

SUPPLEMENTARY INFORMATION: The Director, Northeast Region (RD), National Marine Fisheries Service (NMFS) has approved Amendment 1 to the Fishery Management Plan for the Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP). Amendment 3 to the FMP consolidated three separate plans for Atlantic mackerel, squid (*Illex* and *Loligo*), and butterfish into one management regime for a three-year period which ends on March 31, 1986. Final regulations to implement the FMP were published September 30, 1983 (48 FR 44834). Amendment 1, prepared by the Mid-Atlantic Fisherey Management Council (Council), incorporates a more flexible mechanism to establish optimum yields (OY) for squid and changes the Atlantic mackerel natural mortality rate based upon recent scientific information.

The preamble to the proposed rule to implement Amendment 1 (48 FR 49077, October 24, 1983) provided a detailed discussion of the management measures. The procedure which sets squid annual specifications provides greater flexibility for proper management of this developing resource. The procedure allows adjustments to the OY because of changes in availability of squid; increases in total allowable foreign fishing (TALFF) to foreign nations providing markets for U.S. exports; joint venture operations and changes to approved joint ventures; or other benefits to the U.S. fishing industry. The procedure fosters the "fish and chips" policy and the Magnuson Fishery Conservation and Management Act (Magnuson Act).

The adopting of the new natural mortality rate for Atlantic mackerel based upon the best scientific information available is consistent with National Standard 2: "Conservation and management measures shall be based upon the best scientific information available."

The procedure which establishes the domestic annual harvest amount when the minimum spawning stock size exceeds 400,000 metric tons (mt) has confused some reviewers, who interpreted the formulation to set a minimum domestic annual harvest of 30,000 mt. This is not the case. There is no minimum amount for domestic annual harvest or domestic annual processing.

Response to Public Comments

Written comments were submitted by the Council, the Office of the United States Trade Representative (U.S. Trade Representative), the National Fisheries Institute (NFI), the Association of Spanish Fishermen (ANAVAR), and the Japan Deep Sea Trawlers Association (JDSTA).

The Council's comment was to notify NOAA that the council had voted at its November 1983 meeting to support the proposed regulations to implement Amendment 1 as published in the Federal Register.

Comment 1: The NFI comment focuses primarily on the offshore sales of squid, i.e., joint venture "over-the-side" transactions, stating that these sales compete both with the amount of squid landed shoreside by U.S. vessels and with domestic shoreside products in the world market. NFI does not suggest excluding all offshore sales of squid, but suggests that offshore sales of squid should be the exception, rather than the rule.

Response: The Magnuson Act provides that U.S. processors have first preference to the U.S. harvest of a species when they are able to and will utilize this harvest. At the present time, the domestic squid industry is evolving and domestic landings are increasing each year. Landings in 1983 may exceed 12,000 metric tons (mt), the greatest amount of squid landed along the Northwest Atlantic coast since fishery information began to be collected. This year's squid catch, including catch for joint ventures, exceeded 21,000 mt, which is approximately one-third of the potential maximum total squid OYs available.

Based upon the Council's survey of processors and past performance of the industry, NOAA will first assign the portion of U.S. squid harvest for domestic annual processing (DAP) and then consider joint venture applications

for the U.S. harvest in determining preliminary specifications. There will be ample opportunity for NFI and the public to be heard on the upcoming 1984–1985 fishing year specifications, when the Council meets in January, 1984, to recommend initial annual specifications, and during the subsequent public comment period.

Comment 2: The U.S. Trade Representative, the ANAVAR and the JDSTA have requested NOAA not to implement final regulations on Amendment 1. All are in opposition to the flexible mechanism for establishing squid OY, although for varying reasons. The U.S. Trade Representative believes that the establishment of the squid specification deviated from § 303 of the Magnuson Act, while the JDSTA comment specifically stated that the assessment and specification of squid OY is not in accordance with § 303(a)(3) of the Magnuson Act. ANAVAR expressed concern that the OY setting mechanism for squid appears to undermine several provisions of the Governing International Fishery Agreement (GIFA).

Response: The JDSTA comments concerning § 303 stated that the RD, in a memorandum to the Council in October 1981, considered the "floating" OY concept in the FMP and Amendment 1 not to be in accordance with the Magnuson Act. NOAA replies to the comment by reference to the RD memorandum. The memorandum demonstrates that the method of determining the OYs for both Amendment 1 and the FMP are in accordance with § 303(a)(3) and other applicable sections of the Magnuson Act and other applicable laws, including NOAA's regulatory guidelines.

The RD memorandum began by saying that to determine OY, "* * * the appropriate process is to begin with a MSY, maximum sustainable yield, (either newly specified or confirmed with knowledge of best available scientific information), and then to consider whether to modify MSY." Both Amendment 1 and the FMP state that, "* * * the OY for *Illex, Loligo,* and butterfish reflect the best current estimates of maximum sustainable yield, except for *Illex,* for which the OY was reduced from MSY in the original Squid Plan to account for biological uncertainties, and this reduction is continued" (p. 34, Amendment 1; p. 50, FMP). Both the MSY and the OY for *Loligo* is 44,000 mt, for *Illex,* OY is 30,000 mt.

In Amendment 1, the allowable biological catch (ABC) may be equal to or less than MSY to take into account the latest biological information. Such a process is consistent with National Standard 1. The ABC in turn is adjusted by economic factors to become the initial optimum yield (IOY); this adjustment is also consistent with National Standard 1. The definition of OY in the Magnuson Act § 3(18) provides that OY may differ from MSY for economic reasons. In the case of Amendmemt 1, the reason for the difference is the development of the U.S. fishery for export, since the less squid the foreigners are allowed to catch for themselves, the more incentive they will have to buy squid from U.S. processors. This revision merely allows the estimation of DAH without regard for policy considerations while carrying out the Council's policy of reducing the maximum TALFFs in order to increase the probability of the development of the export markets.

Thus, the RD's memorandum further stated "* * * after an OY is determined, the next step is to determine the expected annual harvest (DAH and reserve both represent domestic interests) with the remainder being TALFF * * *" Amendment 1 follows this policy. This shows that DAH is estimated *first,* with the remainder being TALFF in conformance with the procedure outlined by the RD. It is definitely not the case, as in the JDSTA comment, of determining TALFF first and adding a DAH with the sum representing the specification of OY.

Under Amendment 1, after the IOY is determined, DAH is projected by reviewing the data concerning past domestic landings and estimating anticipated domestic catches, including joint venture harvests. The TALFF is the amount left over.

Finally, the JDSTA comment makes the assertion that "* * * the Magnuson Act allows Councils to set OYs lower than the MSY levels, providing the OY specifications have an inseparable, integral relationship to the MSYs and all deviations from MSY are well documented and thoroughly justified to show a real need for such reductions."

The definition of OY in the Magnuson Act allows MSY to be modified by any relevant economic, social, or ecological factor. Only the latter has "an inseparable, integral relationship to the MSY levels"; the other two factors are dependent on extraneous human decisions but are expressly authorized by the Magnuson Act.

This being the case, the floating OY proposed by Amendment 1, which can be adjusted at any time during the year owing to changed economic conditions, is consistent with the Magnuson Act. As Amendment 1 states:

> The purpose of the Magnuson Act and this Plan is to develop the U.S. fishery while recognizing that a significant part of such development, particularly in the short run, involves arrangements with foreign nations to purchase U.S. harvested and processed fish, with incentives to the foreign nations provided by preferential allocations from TALFF. To do this effectively requires the ability to adjust OY and DAH during a year in response to changing economic conditions (p. 10).

The reply also applies to the JDSTA comment that the amount of TALFF under Amendment 1 must be derived from the formula OY−DAH=TALFF; not, as the JDSTA comment states, DAH+TALFF=OY. Amendment 1 does use the OY−DAH=TALFF formula, as described above.

ANAVAR's concern that Amendment 1 undermines provisions of the GIFA, Article I and III, by straying from the achievement of OY is unfounded. The achievement of OY is a goal. Since the passage of the Magnuson Act, the fixed OYs have never been achieved; neither have allotted TALFF amounts. Amendment 1, with its flexible OY will calculate IOY and subsequent OY amounts from actual DAH and TALFF needs, thereby making the actual achievement of OY more likely. If during the fishing year, one or both of the components of OY need to be adjusted upward beyond the established OY, the flexible mechanism allows for adjustments. However, the ABC amount must not be exceeded.

Comment 3: The U.S. Trade Representative, ANAVAR, and the JDSTA also expressed concern over the nine economic factors to be considered in specifying squid OYs within Amendment 1. The JDSTA and ANAVAR believe that these economic factors are sufficiently vague to allow arbitrary and discriminatory determinations to be made with respect to the IOY. ANAVAR believes there is no assurance that the factors will be equitably applied or that they will not be used as a simple means of extracting trade benefits from the foreign fishing interests.

The U.S. Trade Representative expressed concern that the RD, in conjunction with the Council, would use the list of economic criteria to modify the ABC or the OY for squid. The U.S. Trade Representative considered that the end results of these modifications will be to set the TALFF for squid on the basis of U.S. trade policy considerations, rather than on the basis of sound fishery management and conservation practices.

All three commenters are opposed to delegating the authority for the

establishment of the squid OY to the RD, preferring instead the Secretary of Commerce (Secretary).

Response: NOAA has determined that the nine factors are based upon sound fishery management and conservation practices. Further, as previously stated, these factors are consistent with National Standard 1: "Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery."

MSY is reviewed annually against the latest biological information. If new biological information indicates that the MSY may not be attained for that particular fishing year, a lower ABC is established. The reduction prevents overfishing, thereby maintaining the consistency of the fishery. In turn, ABC may be adjusted by the nine social and economic factors to determine the IOY. IOY may be equal to ABC or less than ABC.

NOAA's reply to the above commenters on the designation of the RD, instead of the Secretary, as the official empowered to set final annual specifications is quite similar to the reply given in the final rule implementing the FMP. In that rule, the majority of domestic comments opposed designation of the Secretary as the official to set final annual amounts. They stated that a change from the RD to the Secretary was at variance with the intent of the Council as specified in the FMP.

NOAA notes for the public that any decision by the RD is subject to review by the Secretary. Therefore, the procedure for determining annual specifications is similar whether the RD or the Secretary sets the final annual amounts. After consultation with the Council and after publication of notice and an invitation to comment on the proposed amounts, the agency will set specifications that are in the best interest of the United States.

Comment 4: ANAVAR and the JDSTA objected to the flexible procedures for establishing squid OY in Amendment 1. These organizations contend that the flexibility will create uncertainty and instability in the Northwest Atlantic squid industry, thereby undermining U.S. development of its squid resources and seriously affecting foreign fishing operations in the fishery conservation zone (FCZ). ANAVAR claims that FMP regulations inhibit foreign fishermen from coming into the FCZ to fish for squid and that the introduction of the squid procedure of Amendment 1 will exacerbate the situation. Also, the comments claim that the flexible procedure subject to the consideration of the nine factors will be used to reduce TALFF. Additionally, the U.S. Trade Representative and the foreign organizations believe that the squid OY procedure will be used unfairly to induce foreign nationals to increase imports of squid harvested by U.S. fishermen.

Response: NOAA recognizes that the overall amount of squid within the Northwest Atlantic resource is finite; the present maximum harvestable amount of squid totals 74,000 mt. As pointed out by the JDSTA, many unforeseeable conditions affect squid resources, as well as the world market for squid. NOAA acknowledges these conditions and believes that the flexible procedure for adjusting OY will provide the most reasonable means to manage the squid resources in the U.S. interests.

The foreign associations commented that the flexibility will create uncertainty and instability because of the assumption that TALFF can be reduced after it has been allotted. This is not the case. At the establishment of initial annual specifications, a TALFF will be allowed. If an inseason adjustment to OY occurs during the fishing year, TALFF can only be increased, not decreased. Therefore, foreign nations can plan to conduct fishing operations based upon their allocation.

ANAVAR's comment on the present FMP regulations refers particularly to the 1983–1984 fishing year for the *Illex* fishery that is entirely an incidental fishery. Because of the increased joint venture processing (JVP) demand for *Illex* within the DAH, the level of TALFF was reduced to an incidental fishery. Domestic harvest has priority under the Magnuson Act. However, the *Loligo* fishery TALFF was set at 11,000 mt, thereby maintaining a foreign directed fishery. Additionally, an amount of 11,000 mt was placed within the reserve creating a potential 22,000 mt amount for foreign nations. In October 1983, an additional 10,166 mt was moved from reserve to TALFF, bringing the latter amount to 21,166 mt (48 FR 50080). NOAA has determined that the use of a reduced TALFF to induce foreign nationals to increase fishery product trade is a distinct goal of the Magnuson Act. The Magnuson Act, as amended, promotes as purposes Number 6—"to encourage the development by the United States fishing industry of fisheries which are currently underutilized or not utilized by United States fishermen, * * * to ensure that optimum yield determinations promote such development." Although the Magnuson Act preserves certain rights for foreign nations, the domestic industry has preference. Therefore, TALFF for squid could be reduced to levels which promote the growth of the U.S. commercial fishery, including the fishery for export. If foreign nations are not allowed to harvest squid directly, they will have a greater incentive to purchase squid from U.S. harvesters and processors. However, TALFF need not be reduced to incidental-catch levels only, but may be allocated to individual foreign nations by prior "fish and chips" agreement. To repeat, an IOY established at the level that will provide the greatest overall benefits to the nation, if greater than DAH, will include an appropriate TALFF.

Annual squid specifications, including IOY, will be published on or about March 15, prior to the beginning of the next fishing year. Since foreign fishing resumes off the Northeast Atlantic on June 15, foreign nations can plan their fishing strategy for the summer-fall *Illex* fishery. The fishing season for *Loligo* also provides ample opportunity for foreign nations to plan their fishing strategy since it begins in early winter, ending March 31.

Comment 5: The JDSTA objected to the designation of butterfish and Atlantic mackerel as incidental-catch fisheries.

Response: Amendment 1 specifically addresses two new management measures. First, a mechanism to enable the RD, in consultation with the Council, to specify initially and then adjust the squid OYs at any time during the year; and second, a revision of the Atlantic mackerel natural mortality rate from 0.30 to 0.20 to reflect recent scientific information.

The JDSTA comment on incidental catch was previously addressed in the final rule implementing the FMP. As noted in the preamble to that rule, the demand for butterfish for domestic processing has grown to incorporate all good quality butterfish landed by domestic vessels; therefore, the DAP equals the DAH minus the TALFF provided for the foreign incidental catch of butterfish, but not to exceed the OY (see Comment 9, 48 FR 44834, September 30, 1983). Within the same rule, Comment 10 addressed the issue of Atlantic mackerel as an incidental-catch fishery. It should be noted that as the spawning stock increases beyond 400,000 mt, TALFF may sustain a directed fishery. For example, in fishing year 1983–1984 the TALFF is presently 35,850 mt with a reserve equal to that amount. Depending on the growth of the Atlantic mackerel spawning biomass, the foreign nations can benefit by having a directed fishery.

Comment 6: The JDSTA claims that the fixed incidental-catch rate is inappropriate for a multi-year plan and violates National Standards 1, 5, and 6.

Response: NOAA has concluded that National Standards 1 and 6 are not applicable to the fixed incidental-catch rates which are set within the FMP and continued in Amendment 1. NOAA has considered whether the fixed incidental-catch rates may violate National Standard 6 which requires, "Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches."

The Council in preparation of the FMP calculated the relationships within the incidental catch of foreign fisheries in the Northwest Atlantic. In Background Paper No. 2, "Incidental Catch Relationships Among Foreign Fisheries for the Squids, Atlantic Mackerel, Butterfish, and the Hakes," approved by the Council in January, 1983, the Council evaluated the relationships of six species: Atlantic mackerel, butterfish, silver hake, red hake, and *Loligo* and *Illex* squids. Three sources of information were considered to establish the fixed rates: (1) International Commission for the Northwest Atlantic Fisheries (ICNAF) Statistical Bulletins, (2) NMFS Designated Foreign Official Reports (NEREIS) and, (3) NMFS Foreign Fishery Observer Program information. The findings within this paper, taking into consideration the targeted fisheries during certain seasons, all major foreign nations participating within a certain fishery, and the variation between nations with specific harvesting practices, concluded that average fixed rates could be achieved by all nations which chose to operate a "clean" fishery for targeted species. NOAA concludes on the basis of this study that National Standard 6 is not violated.

The JDSTA also claimed that for Amendment 1 to comply with Magnuson Act section 201(d)(2)(A), a provision should be included to allow the reallocation of unused portions of DAH to TALFF.

This comment was previously addressed in the final rule implementing Amendment 3 to the FMP. NOAA considers various sources of information when setting the DAH that include Council recommendations and public comments on proposed amounts. With this information, NOAA evaluates and determines DAP and JVP portions which comprise the DAH. Since the DAHs are based on substantive data and reviews, a reallocation mechanism is not necessary (see Comment 7, 48 FR 44834, September 30, 1983).

Comment 7: ANAVAR and the JDSTA criticized the flexible OY procedure stating that an adjusted OY less than the maximum OY would prevent foreign fishermen from utilizing the squid. The commenters concluded that this would contribute to additional "waste" in the squid fishery. Additionally, the JDSTA challenged NOAA's conclusion that the regulations implementing Amendment 1 are not a major rule under Executive Order 12291.

Response: NOAA has concluded that, unlike previous squid FMPs and amendments, the flexible OY allows realistic OYs to be set for squid. An IOY or a subsequent adjusted OY will reflect the best determined DAH and TALFF. Each component of DAH, DAP, and JVP will be examined based upon previous past performance and results from a survey of the industry. Biological assessments and predicted abundance will also be examined. TALFF amounts will be calculated based upon needs of foreign nations taking into consideration "fish and chips" agreements and participation within other fisheries where an incidental catch of squid is necessary.

The question of "waste" was addressed previously in the final rule for Amendment 3 (48 FR 44834, Comment 7). As stated, NOAA believed there was the potential to achieve estimated amounts. However, as noted, shortfalls in these harvests may occur and will be taken into account in future DAH projections. NOAA believes that the flexible procedure facilitates achievement of OY projections.

The JDSTA, commented that it believed that the Council had failed to properly assess all of the costs and benefits accruing to the United States if Amendment 1 were implemented. They asserted that the amendment will have an annual effect on the economy of $100 million or more.

NOAA re-examined the analysis provided by the Council in the recent regulatory impact review (RIR) prepared for Amendment 1. NOAA disagrees with the JDSTA calculation of potential loss based on total allocations. These total allocations have never been achieved in Atlantic mackerel, squid, and butterfish fisheries since the Magnuson Act was enacted. The Council used peak levels of foreign catch as a basic for analysis. These were multiplied by the corresponding foreign fishing fees with a calculated amount of $5 million, and when this is coupled with a total phase-out of foreign fishing and its associated loss of expenditures of supplies, the total would amount to less than $10 million.

On these calculations, NOAA concluded that the final rule implementing Amendment 1 was not a major rule under E.O. 12291.

Classification

The RD has determined that implementation of Amendment 1 is necessary for the conservation and management of the Atlantic mackerel, squid, and butterfish fisheries and that it is consistent with the Magnuson Act and other applicable law.

The NOAA Administrator determined that this rule is not a major rule requiring a regulatory impact analysis under E.O. 12291. The General Counsel of the Department of Commerce certified to the Small Business Administration that the rule will not have a significant economic impact on a substantial number of small entities. (RIR summary published at 48 FR 49077, October 24, 1983.) Based upon these findings, a regulatory flexibility analysis was not prepared.

The Council prepared an environmental assessment (EA) in accordance with the National Environmental Policy Act for this FMP amendment and concluded that there will be no significant impact on the environment as a result of this rule. Copies of the EA can be obtained from the Council at the address above.

This rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act.

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of all the coastal States from Maine to Florida. As of the date of implementation, the Council has received no negative findings. Responses indicating consistency have been received from New Hampshire, Massachusetts, Connecticut, New York, Delaware, and Maryland.

List of Subjects in 50 CFR Part 655

Fisheries, Reporting and recordkeeping requirements.

Dated: December 29, 1983.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

PART 655—ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FISHERIES

1. The authority citation for 50 CFR Part 655 is as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Section 655.2 is amended by revising the definition of "*Joint venture harvest*" to read as follows:

§ 655.2 Definitions.

* * * * *

Joint venture harvest means U.S.-harvested Atlantic mackerel, squid, or butterfish transferred to foreign vessels in the FCZ or in the internal waters of a State. Transfers to foreign vessels in the internal waters of a State are governed under § 306(c) of the Magnuson Act.

* * * * *

3. Section 655.21 is amended by revising paragraphs (a)(2), (b), (b)(1) in its entirety, (b)(2) introductory text, (b)(2)(i) introductory text, (b)(2)(ii) introductory text, (b)(2)(ii)(A)(*1*), (b)(2)(ii)(B)(*1*), (b)(2)(ii)(C)(*3*), and (c), to read as follows:

§ 655.21 Allowable levels of harvest.

(a) * * *

(2) For Atlantic mackerel, the OY may not exceed 30,000 mt if the spawning stock at the end of the upcoming year is estimated, under the procedures specified in the FMP, to be less than or equal to 400,000 mt. If the spawning stock at the end of the upcoming year is estimated to exceed 400,000 mt, the maximum OY is determined in accordance with paragraph (b)(2)(ii) of this section.

(b) *Annual specifications.* Total allowable biological catch (ABC), initial optimum yield (IOY), and amounts for domestic annual harvest (DAH), domestic annual processing (DAP), joint venture processing (JVP), and total allowable level of foreign fishing (TALFF) for each species will be determined annually by the Regional Director, in consultation with the Mid-Atlantic Fishery Management Council (Council) under the procedures specified in § 655.22, consistent with the following:

(1) *Squid.* (i) Total allowable biological catch (ABC) for any fishing year is either the maximum OY specified in paragraph (a)(1) of this section, or a lower amount determined by the Regional Director, in consultation with the Council, if stock assessments or other ecological data indicate that the potential yield is less than the maximum OY level.

(ii) The IOY consists of an initial DAH and initial TALFF and represents a modification of ABC, based on economic factors. These factors must include the following:

(A) Total world export potential by squid-producing countries;

(B) Total world import demand by squid-consuming countries;

(C) U.S. export potential based on expected U.S. harvests, expected U.S. consumption, relative prices, exchange rates, and foreign trade barriers;

(D) Increased or decreased revenues to the U.S. from foreign fishing fees;

(E) Increased or decreased revenues to U.S. harvesters (with or without joint ventures);

(F) Increased or decreased revenues to U.S. processors and exporters;

(G) Increases or decreases in U.S. harvesting productivity due to decrease or increase in foreign harvest;

(H) Increases or decreases in U.S. processing productivity; and

(I) Potential impact of increased or decreased TALFF on foreign purchases of U.S. products and services and U.S.-caught fish, changes in trade barriers, technology transfer, and other considerations.

(iii) The DAH, DAP and JVP must be based on data from sources specified in § 655.22(e) and other relevant data including past domestic landings, the capacity and intent of U.S. processors to process U.S.-harvested squid, and projected amounts of squid necessary for joint ventures during the fishing year.

(iv) IOY must be set at a level that will produce the greatest overall net benefit to the United States. In determining this amount, the Regional Director, in consultation with the Council, will provide for a TALFF of at least a minimum incidental catch in other directed fisheries. TALFF may be greater than an incidental catch level, if the IOY determined to produce the greatest overall benefit to the United States is sufficiently greater than DAH.

(A) *Loligo.* The incidental catch level is one percent of the allocated portion of *Illex*, mackerel (if a directed fishery is allowed), silver hake, and red hake TALFFs.

(B) *Illex.* The incidental catch level is ten percent of the allocated portion of *Loligo*, and one percent of the allocated portion of mackerel (if a directed fishery is allowed), silver hake, and red hake TALFFs.

(v) The IOY may be adjusted by the Regional Director, in consultation with the Council, at any time during the fishing year, under § 655.22(f). The basis for any adjustment may be that new information or changed circumstances indicate that U.S. fishermen will exceed the initial DAH, or that the IOY should be increased to produce maximum net benefits to the United States based upon an application of the factors above. The IOY may be increased by the amount that DAH or TALFF, or both, are increased, but IOY may not exceed ABC. An adjustment to IOY may not result in TALFF being reduced to a quantity less than that allocated to and accepted by foreign nations or to a quantity less than the incidental catch levels specified in paragraph (b) of this section.

(2) *Atlantic mackerel.* In all cases, initial DAP is the estimated amount of initial DAH that domestic processors will process. In estimating the DAH in the cases set forth below, the recreational catch will be predicted by the formula: $Y=(0.01)(X)+(180)$, where "X" is equal to the current spawning stock size, and "Y" is the estimated recreational catch in metric tons.

(i) *Case 1.* If the spawning stock size at the end of the upcoming fishing year, estimated in accordance with the procedures specified in the FMP, is less than or equal to 400,000 mt, then:

* * * * *

(ii) *Case 2.* If the spawning stock size at the end of the upcoming fishing year, estimated under the procedures specified in the FMP, is more than 400,000 mt, then OY during that fishing year may not exceed the acceptable catch (AC). AC is that amount which, when taken in addition to the predicted catch in the Canadian fishery, would result in a spawning stock size of 400,000 mt at the end of the upcoming fishing year. AC plus the predicted Canadian catch may not exceed a fishing mortality rate (F) greater than 0.1.

(A) * * *

(*1*) TALFF equals the fixed percentages specified in paragraph (b)(2)(i)(A) of this section.

* * * * *

(B) * * *

(*1*) TALFF equals the fixed percentages specified in paragraph (b)(2)(i)(A) of this section.

* * * * *

(C) * * *

(*3*) *TALFF plus reserve.* If OY minus DAH is less than 10,000 mt, then TALFF equals OY minus DAH (but no less than the fixed percentages specified in paragraph (b)(2)(i)(A) of this section), and there is no reserve. If OY minus initial DAH is greater than or equal to 10,000 mt, then the difference between OY and initial DAH is divided evenly between TALFF and reserve.

* * * * *

(c) *Allowable domestic harvest.* Fish taken within State jurisdiction will be counted against the domestic harvests specified under this section. The allowable domestic harvest for each species is the OY (including OY as increased under paragraph (b)(1)(v) of this section) minus TALFF.

4. Section 655.22 is amended by revising paragraphs (a) and (b) and by adding a new paragraph (f) to read as follows:

§ 655.22 Procedures for determining initial annual amounts and adjustments.

(a) On or about January 15 of each year, the Mid-Atlantic Council will prepare and submit recommendations to the Regional Director of the initial annual amounts for the fishing year beginning April 1, based on information gathered from sources specified in paragraph (e) of this section.

(b) By February 1 of each year, the Secretary will publish a notice in the Federal Register that specifies preliminary initial amounts of OY, DAH, DAP, JVP, TALFF, and reserve (if any) for each species. The amounts will be based on information submitted by the Council and from the sources specified in paragraph (e) of this section; in the absence of a Council report, the amounts will be based on information gathered from sources specified in paragraph (e) of this section and other information considered appropriate by the Regional Director. The Federal Register notice will provide for a 30-day comment period.

* * * * *

(f) Any adjustments to the IOY for squid must be published in the Federal Register with the reasons for such adjustment. Any notice of adjustment may provide for a public comment period.

5. Section 655.23 is amended by removing paragraphs (a)(1) and (b)(1), by redesignating paragraph (a)(2) as (a)(1) and paragraph (b)(2) as (b)(1), and by revising the introductory paragraph to the section to read as follows:

§ 655.23 Reserve releases.

All or part of the Atlantic mackerel reserve may be allocated to TALFF following the procedures of this section.

* * * * *

§ 655.2 [Amended]

6. In addition to the amendments set forth above, 50 CFR Part 655 is further amended § 655.2 by revising the definition of *Fishery Management Plan* to read as follows: *Fishery Management Plan* (FMP) means the Fishery Management Plans for the Atlantic Mackerel, Squid, and Butterfish Fisheries of the Northwest Atlantic Ocean, as consolidated by amendment 3 and revised by subsequent amendments.

* * * * *

[FR Doc. 84-153 Filed 1-3-84; 8:45 am]
BILLING CODE 3510-22-M

50 CFR Part 681

[Docket No. 31219-240]

Western Pacific Spiny Lobster Fisheries

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues a final rule to implement Amendment 2 to the Fishery Management Plan for the Spiny Lobster Fisheries of the Western Pacific Region (FMP). Implementation of the amendment will allow the use of a wider variety of lobster traps in the spiny lobster fishery in the Northwestern Hawaiian Islands (NWHI) while still affording protection for the Hawaiian monk seal.

EFFECTIVE DATE: January 9, 1984.

ADDRESSES: Copies of the environmental assessment and regulatory impact review are available by writing to Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Suite 1608, Honolulu, Hawaii 96813.

FOR FURTHER INFORMATION CONTACT: James J. Morgan (National Marine Fisheries Service (NMFS), Southwest Region), 213-548-2518.

SUPPLEMENTARY INFORMATION: On February 7, 1983, regulations implementing the FMP were published in the Federal Register (48 FR 5560) with an effective date of March 9, 1983. Final regulations implementing Amendment 1 to the FMP, which established management measures for the Fishery Conservation Zone (FCZ) off the main Hawaiian Island the same as State of Hawaii regulations for the territorial sea, were published in the Federal Register on November 23, 1983 (48 FR 52922).

Section 681.24(b) of the regulations that implemented the FMP required that "an entryway in a spiny lobster trap may measure no greater than 10½ inches in its greatest diagonal or diameter at the large end, and no greater than 6½ inches in its greatest diagonal or diameter at the small end." The entryway specifications were implemented to minimize the possible entrapment of the endangered Hawaiian monk seal as the seals search for food.

During review and implementation of the FMP, new traps, different in design from those formerly used, were introduced into the fishery. Also, the traditional traps became distorted with use. The new traps and some of the traditional traps do not conform to the specifications in § 681.24(b); therefore, the question was raised about their effect on the monk seal, and what prohibiting the new traps would mean to the fishermen. The Western Pacific Fishery Management Council (Council) reviewed the trap problem and concluded that the measurements required for the entryway of spiny lobster traps could be changed and still prevent the possible entrapment of monk seals, as long as the 6.5 inch measurement was retained. As a result, the Council voted unanimously on May 24, 1983, to request the Secretary of Commerce to implement emergency regulations with the following language for § 681.24(b): "The smallest opening of an entryway of any spiny lobster trap may not allow any sphere or cylinder greater than 6.5 inches in diameter to pass from outside the trap to inside the trap." An emergency rule was approved on June 27, 1983, and published in the Federal Register on July 11, 1983 (48 FR 31655). The rule was effective for 90 days, to October 11, 1983. A complete background on the lobster trap problem is contained in the July 11 publication of the Federal Register.

Amendment 2 to the FMP was submitted by the Council to make the emergency interim rule permanent. Proposed rules to implement the amendment were published in the Federal Register on October 21, 1983 (48 FR 48853), and comments were invited until December 2, 1983. No comments were received. Amendment 2 presents the economic and environmental costs and benefits of four alternatives for managing the lobster trap problem. The Council's preferred alternative in the amendment is identical to the emergency interim rule and it will maintain a 6.5 inch measurement to minimize the possible entrapment of monk seals while allowing the use of a wider variety of traps in the lobster fishery of the NWHI. In addition, enforcement costs and costs to the fishermen will be minimized by this approach.

The emergency interim rule was extended for an additional 90 days, from October 11, 1983, to January 9, 1984, under section 305(e)(3)(B) of the Magnuson Fishery Conservaton and Management Act (Magnuson Act) to permit public review of Amendment 2 (48 FR 46342, October 12, 1983). This is the maximum extension of an emergency rule permitted by the Magnuson Act.

The 30-day delayed effectiveness period for implementing regulations required by the Administrative Procedure Act (Act) is waived according

to section 553(d)(1) of the Act because the final rule is a substantive rule that relieves a restriction. The effective date of the amendment and the expiration date of the emergency rule will coincide on January 9, 1984.

Classification

The Secretary of Commerce has determined that Amendment 2 to the FMP is necessary for the conservation and management of the spiny lobster fishery and that it is consistent with the Magnuson Act and other applicable law. The Council prepared an environmental assessment of this amendment and concluded that there will be no significant impact on the environment as a result of this rule.

Based upon the analysis in the regulatory impact review, the Administrator of NOAA has determined that the regulations implementing this amendment are not major under Executive Order 12291 and that they do not require a regulatory impact analysis.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities because the amendment removes a restriction and permits more flexibility for fishermen in the type of traps which may be used in the fishery which results in savings to individual fishermen. This rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act.

In response to a letter from the Council that this rule will be implemented in a manner consistent to the maximum extent practicable with the approved coastal zone management program of Hawaii, in accordance with § 307 of the Coastal Zone Management Act, the Hawaii Department of Planning and Economic Development, on August 17, 1983, informed the Council that Amendment 2 is consistent with the Hawaii Coastal Zone Management Plan.

Implementation of Amendment 2 will not constitute an action that "may affect" endangered or threatened species within the meaning of regulations implementing the Endangered Species Act of 1973. Furthermore, implementation of the amendment will not affect marine mammal populations within the meaning of the Marine Mammal Protection Act of 1972. The biological opinion for the FMP concluded that the FMP contained safeguards to reduce adverse impacts to monk seals from the lobster fishery, and recommended that the FMP be implemented with provisions for emergency closures in the event fishery-related mortality of monk seals was identified. Amendment 2 will not change the safeguards established for the protection of the monk seal. The proposed change in the regulations on trap openings is as protective to monk seals as those considered in the biological opinion. Some of the new traps are likely to be safer. The proposed change in the regulation is consistent with the conclusions of the biological opinion; therefore, reinitiation of the consultation process is not necessary.

Lists of Subjects in 50 CFR Part 681

Fish, Fisheries, Reporting and recordkeeping requirements.

Dated: December 29, 1983.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

For the reasons stated above, 50 CFR Part 681 is amended as follows:

PART 681—WESTERN PACIFIC SPINY LOBSTER FISHERIES

1. The Authority citation for Part 681 reads as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 681.24, paragraph (b) is revised to read as follows:

§ 681.24 Gear restriction.

* * * * *

(b) The smallest opening of an entryway of any spiny lobster trap may not allow any sphere or cylinder greater than 6.5 inches in diameter to pass from outside the trap to inside the trap.

[FR Doc. 84-154 Filed 1-3-84; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 405

Medicare Program; Prospective Payment for Medicare Inpatient Hospital Services

Correction

In FR Doc. 83-34405 beginning on page 234 in the issue of Tuesday, January 3, 1984, make the following correction on page 313: In the third column, in § 405.463, paragraph (c)(5)(iii) should have read:

§ 405.463 [Corrected]

* * * * *

(c) * * *

(5) * * *

(iii) The applicable target rate percentage will be the prospectively determined percentage published by HCFA. The percentages will be applied prospectively and will be prorated in accordance with the paragraph (c)(5)(ii) of this section, but will not be retroactively adjusted if the actual marketed basket rate of increase differs from the estimate.

* * * * *

BILLING CODE 1505-01-M

Proposed Rules

Federal Register
Vol. 49, No. 2
Wednesday, January 4, 1984

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

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

7 CFR Part 770

Special Programs of Payment in Kind Acreage Diversion for 1983 Crops of Wheat, Feed Grains, Upland Cotton, and Rice

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the regulations at 7 CFR Part 770 which now set forth the provisions of the payment in kind program for the 1983 crops of wheat, corn, grain sorghum, upland cotton, and rice. The proposed rule would make these regulations, as amended, applicable to any programs of payment in kind for acreage diversion for any of the 1984 and subsequent crops of wheat, corn, grain sorghum, barley, oats, upland cotton, extra long staple cotton, or rice which are announced by the Secretary of Agriculture. The rule, as amended, would provide that payments in kind received under such programs with respect to 1984 and subsequent crops shall be taken into account in the application of the payment limitation regulations set forth at 7 CFR Part 795.

DATE: Comments must be received on or before January 13, 1984, in order to be assured of consideration.

ADDRESS: Grant Buntrock, Director, Cotton, Grain, and Rice Price Support Division, USDA-ASCS, Room 3620, South Building, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Grant Buntrock, ASCS, (202) 447-7641.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under USDA Procedures implementing Executive Order 12291 and Secretary's Memorandum No. 1512-1 and has been classified "not major". It has been determined that this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local governments, or geograhic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The titles and numbers of the Federal assistance programs to which this proposed rule applies are: Cotton Production Stabilization, 10.052; Feed Grain Production Stabilization, 10.055; Rice Production Stabilization, 10.065; and Wheat Production Stabilization, 10.058; as found in the Catalog of Federal Domestic Assistance.

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

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore neither an Environmental Assessment nor an Environmental Impact Statement is needed.

The Secretary announced on August 9, 1983, that a program of payment in kind for acreage diversion for the 1984 crop of wheat, which is similar to the one offered for the 1983 crop of wheat, would be in effect. A program of payment in kind for acreage diversion may also be considered for subsequent crops of various commodities. The current regulations set forth at 7 CFR Part 770 are applicable only to the 1983 crops. Since a program of payment in kind for acreage diversion has been authorized for the 1984 crop of wheat and may be authorized in subsequent years for various crops, it is proposed to amend these regulations and make them applicable to such programs as are announced by the Secretary.

Participation in the 1983 program of payment in kind for a commodity was conditioned upon a producer's participation in the 1983 acreage reduction and cash land diversion programs for that commodity. The 1983 payment in kind program provided that a producer would be eligible to receive payment in kind compensation based upon a percentage of the farm's yield (i.e., 95 percent for wheat and 80 percent for corn, grain sorghum, rice, and upland cotton) in return for a reduction in acreage of 10 to 30 percent of the farm acreage based established for the commodity.

The 1983 program also provided that contracts would be awarded on a competitive bid basis to producers who devoted 100 percent of the farm acreage base for one or more commodities to an approved conserving use. Payment in kind compensation was made in accordance with the percentage of the farm's yield specified on an accepted bid.

This proposed rule provides that, for the 1984 and subsequent crops of wheat, feed grains, upland cotton, extra long staple (ELS) cotton, and rice, the Secretary may establish a program of payment in kind for acreage diversion under which: (1) The producer would be allowed to divert only a portion of the farm's crop acreage base as determined by the Secretary; (2) the producer would be allowed to submit a bid to divert the entire farm's crop acreage base; or (3) the producer would be allowed to elect whether to divert either a portion of the farm's crop acreage base or to submit a bid to divert the entire farm's crop acreage base. The decision with respect to the options available to the producer would be announced by the Secretary for the applicable crop of the commodity.

The 1983 program of payment in kind for acreage diversion included in the contract a provision commonly known as "harvest for PIK." Under this provision, the producer who had insufficient price support loan collateral which could be utilized for payment in kind purposes could have been required to pledge as loan collateral an eligible quantity of the commodity produced in the 1983 crop year. This loan collateral would then be redeemed and sold to CCC. CCC would then make such quantities available to the producer as payment in kind compensation. Under the 1983 program, the producer could also be compensated from other stocks of the commodity which were available to CCC.

While the 1984 wheat program as announced by the Secretary includes a

similar "harvest for PIK" provision, it does not include any provision with respect to compensation of the producer from other stocks available to CCC. This proposed rule includes a "harvest for PIK" provision. The proposed rule further provides that, if the producer has no quantities of commodities pledged as collateral for outstanding price support loans which can be redeemed and sold to CCC for payment in kind purposes or has no crop year production of such commodities which could be utilized in accordance with the "harvest for PIK" provisions, the Secretary may release such producer from the obligations under the payment in kind contract.

The current regulations include references to the specific percentages of the farm yield which are utilized in order to determine the amount of payment in kind compensation which is to be received by the producer. With respect to the option available to the producer to divert from production a portion of the farm's crop acreage base rather than the entire farm's crop acreage base, references are also made in the current regulations to the percentage of the farm's crop acreage base which may be diverted from production in return for which payment in kind compensation will be made available to the producer. In the proposed rule, such percentages are not specified for the 1984 and subsequent crops. It is proposed that such percentages would be determined for the individual crop of the commodity and announced by the Secretary at the same time the announcement is made of the other program provisions which are applicable to such commodity.

The Extra Long Staple Cotton Act of 1983 (Pub. L. 98–88, 97 Stat. 494) (the "Act") made inapplicable acreage allotments and marketing quotas with respect to Extra Long Staple (ELS) cotton and authorized the Secretary to implement annual commodity price support and production adjustment programs for ELS cotton which are similar to the commodity programs which are authorized for upland cotton. While the 1984 program for ELS cotton which has been announced in accordance with the provisions of this Act does not include a program of payment in kind, it is possible that such a program may be implemented for subsequent crop years. Accordingly, this proposed rule includes ELS cotton as a commodity for which a future program of payment in kind may be implemented.

In addition, the current regulations applicable to the 1983 payment in kind program provide that the limitation imposed by Section 1101 of the Agriculture and Food Act of 1981 on the amount of payments which a person may receive under one or more of the annual programs of wheat, feed grains, upland cotton, and rice shall not be applicable to commodities received as payment in kind compensation. Recently, the General Counsel of the General Accounting Office has taken the position that compensation received under the payment in kind program is subject to the payment limitation. The Department is also involved in litigation with respect to this issue.

It does not appear that this issue will be resolved in the near future. While the Department does not agree with the position taken by the General Accounting Office, it has been concluded that the current uncertainty as to the applicability of the payment limitation to payment in kind compensation must be removed before producers contract with CCC to participate in the 1984 production adjustment programs. Accordingly, this proposed rule, as a matter of administrative policy, provides that, for the 1984 and subsequent crops, payments in kind received under programs established by this part shall be taken into account in the application of the payment limitation regulations (7 CFR Part 975). For this purpose, the value assigned to the payment in kind would be based upon the county price support loan rate applicable to the commodity for the crop year for which the payment in kind program has been implemented.

A program of payment in kind for the 1984 crop of wheat has been announced and producers must execute contracts to participate in such program during the period January 16 through February 24, 1984. If the program is to achieve its objectives, this rule must be made effective as soon as posible so that producers might be made aware of their opportunity to participate in the program. Therefore, comments will be received with respect to this proposed rule through January 13, 1984, and any appropriate changes in the program as a result of such comments will be made before the final rule is issued.

List of Subjects in 7 CFR Part 770

Cotton, Feed grains, Price support program, Wheat, Rice.

Proposed Rule

Accordingly, it is proposed that, effective for the 1984 and subsequent crops of wheat, feed grains, upland cotton, extra long staple cotton, and rice, Part 770 of Subchapter C of Chapter VII of Title 7 of the Code of Federal Regulations is revised to read as follows:

PART 770—SPECIAL PROGRAMS OF PAYMENT IN KIND FOR ACREAGE DIVERSION FOR THE 1984 AND SUBSEQUENT CROPS OF WHEAT, FEED GRAINS, UPLAND COTTON, EXTRA LONG STAPLE COTTON, AND RICE

Sec.

770.1 General description of program.
770.2 Obligations of operators and producers.
770.3 Obligations of the Department.
770.4 Other contract provisions.
770.5 Contracting procedures.
770.6 Miscellaneous provisions.
770.7 Paperwork Reduction Act assigned number.

Authority: Secs. 101(i), 103(g), 103(h), 105B and 107B of the Agricultural Act of 1949, as amended (7 U.S.C. 1441, 1444, 1444(d), 1444(g), 1444(h), and 1445b–1) and the Commodity Credit Corporation Charter Act (15 U.S.C. 714).

§ 770.1 General description of program.

(a) The Department of Agriculture, through the Commodity Credit Corporation, will enter into contracts with operators and producers who agree to reduce the acreage normally planted to a commodity specified in § 770.1(b) and devote an equivalent acreage to an approved conserving use in return for compensation in the form of the commodity for which the planted acreage is reduced. This part describes the general terms and conditions of these contracts and the procedures under which the Department will enter into such contracts.

(b) This special program is available throughout the United States, including Puerto Rico, for the 1984 and subsequent crops of wheat, corn, grain sorghum, barley, oats, upland cotton, extra long staple cotton, or rice as announced by the Secretary of Agriculture (the "Secretary").

§ 770.2 Obligations of operators and producers.

(a) The contract between the Department and the operator of a farm and any other producers on the farm will impose the following obligations on the operator and any other producers:

(1) The operator and any other producers will be required to comply with all of the requirements of any other acreage reduction or paid diversion program established by the Department for any commodity included in the contract.

(2) The operator and any other producers will be required to devote a percentage of the farm's acreage base

for any commodity included in the contract to an approved conserving use in addition to any other acreage reduction or paid diversion. This percentage will depend on the contract between the Department and the operator and any other producers.

(i) The Department may enter into a contract with the operator of a farm and any other producer on the farm which provides for devoting a percentage of the farm's acreage base for one or more commodities to an approved conserving use, with a commensurate reduction in permitted acreage, if the operator and any other producers wish to do so. The operator and any other producers may select the commodities to be included in the contract, except that the Department may require that the contract include either both crops or neither crop of corn and grain sorghum or barley and oats. Compensation to operators and other producers under these contracts will be based on a fixed percentage of the farm yield for each of the commodities included in the contract. See § 770.3(a)(1). The percentage or range of percentages will be announced by the Secretary.

(ii) In addition, the Department may, in some cases, enter into a contract with the operator of a farm and any other producers on the farm which requires the operator and any other producers to devote 100 percent of the farm's acreage base for one or more commodities to an approved conserving use. These contracts will be awarded on a competitive bid basis and the compensation to an operator and any other producers under one of these contracts will be based on the percentage of the established yield for the farm for each of the commodities included in the contract which was bid by the operator and any other producers. See § 770.5(b).

(3) If the operator of a farm or any other producers on the farm have outstanding farmer owned reserve loans obtained prior to a date specified by the Secretary or regular price support loans for which they have pledged as security a commodity which the Department is obligated to pay them under the contract they must, at the time they request payment of the commodity, sell the commodity to the Department, if required by the Secretary, up to the quantity of the commodity the Department is obligated to pay them. The purchase price shall be equal to the cost of liquidating the loan or the portion of the loan for which the quantity of the commodity sold to the Department is pledged as collateral, except that, in the case of a farmer owned reserve loan, the price will be reduced by the amount of any unearned advance storage payments received under the loan.

(4) To the extent that the operator or any other producers have loans to which paragraph (a)(3) of this section applies at the time they enter into the contract, they may liquidate those loans or forfeit the commodity securing them only to the extent that the liquidation or forfeiture does not reduce the quantity of the commodity pledged as security for the loans still held by the operator and such other producers below the quantity of the commodity the Department is obligated to pay the operator and such other producers under the contract. The commodities pledged as security for loans that must be held under this paragraph will be used by the Department to compensate the operator and any other producers under the contract. See § 770.3(a)(2)(i).

(b) The contract shall provide for the payment of liquidated damages in the event that the operator or any other producers fail to comply with their obligations under the contract. The purpose of a program of payment in kind is to obtain a diversion of acreage from production of the applicable crops of commodities in order to adjust the total national acreage of such commodities to desirable goals. Once a contract has been entered into between the Department and producers, the Department, and other segments of the agricultural community, act based upon the assumption that the contract will be fulfilled and the reduction in acreage will be obtained. The Department's action include budgeting and planning for programs in subsequent crop years, as well as making the necessary arrangements to compensate producers through payment in kind. A producer's failure to comply with a contract undermines the basis for these actions, damages the credibility of the Department's programs with other segments of the agricultural community, and requires additional expenditures in subsequent crop years to offset the effect of the increased production in the current crop year. While the adverse effects on the Department of the producer's failure to comply with a contract are obvious, it would be impossible to compute the actual damages suffered by the Department.

§ 770.3 Obligations of the Department.

(a) The contract between the Department and the operator of a farm and any other producers on the farm will impose the following obligations on the Department:

(1) The Department will be required to compensate the operator and any other producers for devoting acreage to an approved conserving use by payment of a quantity of the commodity or commodities that would otherwise have been produced, unless the substitution of a different commodity is provided for in the contract. The quantity shall be the yield for the farm for a commodity multiplied by the acreage devoted to a conserving use in accordance with the provisions of the contract less the acreage devoted to a conserving use as required under any acreage reduction and cash land diversion program which is in effect for the commodity, multiplied by a percentage determined as follows:

(i) For contracts awarded on a competitive bid basis, the percentage shall be the percentage bid by the operator and any other producers.

(ii) For contracts other than those awarded on a competitive bid basis, the percentage shall be the percentage announced by the Secretary.

(2) The contract will provide that the commodities will be paid in the following manner:

(i) To the extent that the operator and any other producers have outstanding regular price support or farmer owned reserve loans for which they have pledged as security a commodity which they must sell to the Department, the commodities sold to the Department will be paid to the operator and such other producers. See § 770.2(a)(3).

(ii) To the extent that a commodity cannot be paid using the procedure described in paragraph (a)(2)(i) of this section, the producer may be required to pledge as collateral for a price support loan eligible quantities of the crop produced in the current crop year and then be paid the commodity using the procedure described in paragraph (a)(2)(i) of this section.

(iii) To the extent that a commodity cannot be paid using the procedures described in paragraphs (a)(2)(i) and (ii) of this section, the contract may provide that the commodity shall be paid out of stocks available to the Department for that purpose. Alternatively, as announced by the Secretary, the contract may provide that the producer will be released from the obligations under the contract rather than receiving any quantity of the commodity.

(3) The contract will provide that the commodities will be paid upon request of the operator and any other producers at any time during the five month period with a date announced for the commodity in the area where the area where the farm is located.

(4) The contract may contain special arrangements and requirements with respect to the Department's obligations to producers who are active members of a marketing cooperative.

§ 770.4 Other contract provisions.

(a) The contract between the Department and the operator of a farm and any other producers on the farm will establish standards for the grade and other characteristics affecting the quality of any commodity the Department is obligated to pay to the operator and any other producers. It will further provide for adjustments in the quantity of a commodity paid to this operator and any other producers to compensate for any difference between these standardss and the grade and other characteristics affecting the quality of the commodity paid to the operator and any other producers. For the purpose of determining these adjustments, a commodity paid under the procedure described in § 770.3(a)(2)(i) shall be treated as having the grade and other characteristics affecting its quality which it was treated as having at the time that the price support or farmer owned reserve loan for which it was pledged as security was made.

(b) The contract between the Department and the operator of a farm and any other producers on the farm shall contain such other provisions as the Department determines appropriate to carry out the program established by this part.

§ 770.5 Contracting procedures.

(a) An operator of a farm and any other producers on the farm may enter into a contract with the Department, which provides for devoting a percentage of the farm's acreage base, as determined in accordance with § 770.2, to an approved conserving use. The contract may be entered into at the appropriate county ASCS office prior to the close of business on a date to be announced by the Secretary.

(b) An operator of a farm and any other producers on the farm may submit a bid for a contract with the Department, which provides for devoting 100 percent of the farm's acreage base for one or more commodities to an approved conserving use. The bid may be submitted to the appropriate county ASCS office prior to the close of business on a date to be announced by the Secretary.

(1) The operator and any other producers may select the commodities to be included in the bid, except that the Department may require that the bid include either both crops or neither crop of corn and grain sorghum, or barley and oats.

(2) The bid shall state the percentage of the established yield for the farm for each of the commodities included in the bid to be used in determining the compensation to be paid to the operator and any other producers under the contract if the bid is accepted. The operator and any other producers may select any percentage, except that the maximum percentage and other conditions will be announced by the Secretary.

(c) After the final date for submitting bids, the bids in each county shall be ranked for each commodity, treating corn and grain sorghum or barley and oats as single commodities, if so required by the Department, on the basis of the percentage of established yield to be used in determining compensation stated in the bids, with the lowest percentage being ranked highest. In the case of identical bids, they shall be ranked in the order received or, where an appointment procedure was utilized by the county ASCS office during the course of which producers submitted bids, a lottery shall be conducted to determine the order by which such bids should be ranked. The bids for each commodity shall then be accepted in rank order. The Department will establish the number of acres for which bids will be accepted for each commodity in each county, based on particular supply/demand situations, conditions in local communities, and other relevant factors. In no case will more than 50 percent of the total of the acreage bases for a commodity in a county be removed from production of the commodity under the program established by this part and any other acreage reduction or diversion program established under Part 713 of this chapter. Acceptance of a bid under this subsection with respect to a commodity shall terminate any contractual obligations with respect to that commodity entered into under paragraph (a) of this section.

§ 770.6 Miscellaneous provisions.

(a) Part 795 of this chapter contains regulations which govern the applicability of the payment limitations imposed by section 1101 of the Agriculture and Food Act of 1981. Payments in kind received under the programs established by this part with respect to 1984 and subsequent crops shall be taken into account in the application of the payment limitation regulations set forth at Part 795 of this chapter. The value assigned to the payment in kind for this purpose will be based upon the county price support loan rate applicable to the commodity for the crop year for which the payment in kind program has been implemented.

(b) Part 713 of this chapter contains regulations which govern regular annual acreage reduction and diversion and other programs for wheat, feed grains, cotton and rice. Sections 713.60 through 713.74 of that part concerning land eligible for designation as conserving use acreage and the obligations of producers with respect to the use of that acreage shall apply to the program established by this part.

(c) In addition, the following provisions of this title concerning general program administration also apply to the program established by this part:

(1) Part 707—Payments Due Persons Who Have Died, Disappeared, or Have Been Declared Incompetent.

(2) Part 718—Determination of Acreage and Compliance.

(3) Part 780—Appeal Regulations.

(4) Part 790—Incomplete Performance Based Upon Action Or Advice of an Authorized Representative of the Secretary.

(5) Part 791—Authority to Make Payments Where There Has Been a Failure to Comply Fully with the Program.

(6) Part 1403—Interest on Delinquent Debts.

(7) Section 110 of Part 713 concerning protection of tenants and sharecroppers.

(d) When any person who had an interest as a producer in the commodity or would have had an interest in the commodity as a producer if the commodity had been planted (herein called "predecessor") is succeeded on the farm by another producer (herein called "successor") after a contract has been executed, any payment in kind which is due and owing shall be divided between the predecessor and successor on such basis as the predecessor, successor, and the Department agree is fair and equitable, the contract shall be revised accordingly, and the successor shall sign the revised contract.

(e) Assignments with respect to quantities of a commodity which can be received by a producer as payment in kind will be recognized by the Department only if such assignment is made on Form CCC-479, Assignment of Payment-In-Kind, executed by the assignor and assignee, and filed with the county committee.

(f) Except as provided in paragraph (e) of this section, any payment in kind or portion thereof which is due any person shall be made without regard to questions of title under State law, and without regard to any claim of lien

against the commodity, or proceeds thereof, which may be asserted by any creditor, except for a levy the the Internal Revenue Service.

§ 770.7 Paperwork Reduction Act assigned number.

The information collection requirements contained in these regulations (7 CFR Part 770) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Control Number 0560–0092.

Signed at Washington, D.C. on December 30, 1983.

C. Hoke Leggett,

Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 84–177 Filed 1–3–84; 8:45 am]

BILLING CODE 3410–05–M

Agricultural Marketing Service

7 CFR Part 989

Raisins Produced From Grapes Grown in California; Quality Control, Minimum Grape and Condition Standards, Supplementary Regulations and Weight Dockage System

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This notice of proposed rulemaking invites written comments on changing the incoming substandard tolerances on Natural (sun-dried) Seedless, Golden Seedless, Dipped Seedless, Monukka, and Oleate and Related Seedless raisins, as well as modifying the weight dockage system to conform with the proposed changes. The proposed tolerances are intended to improve product quality and reduce handling costs without placing an excessive burden on producers. The proposal was recommended by the Raisin Administrative Committee, which works with the USDA in administering the marketing agreement and order for California raisins.

DATE: Comments must be received by February 2, 1984.

FOR FURTHER INFORMATION CONTACT: Frank M. Grasberger, Acting Chief, Specialty Crops Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250 (202) 447–5053.

SUPPLEMENTARY INFORMATION: This proposal has been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum No. 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities

The substandard tolerances for the varietal types of raisins proposed to be changed are contained in § 989.701 of Subpart—Quality Control (7 CFR 989.701–989.703; 48 FR 49214; 53683). The weight dockage system is contained in § 989.210 of Subpart—Supplementary Regulations (7 CFR 989.210–989.221; 48 FR 35347; 49214; 52028; 53683). These subparts are operative pursuant to the marketing agreement, and Order No. 989, both as amended, regulating the handling of raisins produced from grapes grown in California (hereinafter referred to collectively as the "order"). The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

On the basis of a Raisin Administrative Committee recommendation, the Department recently changed tolerances prescribed for substandard Natural (sun-dried) Seedless, Golden Seedless, Dipped Seedless, Monukka, and Oleate and Related Seedless raisins, which growers deliver to packers, from 8 percent to 6 percent for the 1983–84 crop year, to 4 percent for the 1984–85 crop year, and to 2 percent for the 1985–86 and subsequent crop years. This action was issued on October 19, 1983, and published in the Federal Register on October 25, 1983 (48 FR 49214). On November 21, 1983, the Committee recommended that the substandard tolerances of 4 percent and 2 percent be revoked, and that a substandard tolerance of 5 percent be established for the 1984–85 and all subsequent crop years. The substandard tolerance is one of the factors prescribed in the minimum grade and condition standards for natural condition raisins. Substandard (immature) raisins made from grapes with less than desired sugar levels.

The Committee made its recommendation because, after further consideration, it concluded that the tolerances scheduled to take effect in 1984–85 and subsequent crop years were too restrictive and would place an undue burden on producers.

This proposal requires conforming changes to be made in the weight dockage system tables prescribed in § 989.210(g) for Natural (sun-dried) Seedless, Golden Seedless, Dipped Seedless, Monukka, and Oleate and Related Seedless raisins. The weight dockage system permits handlers to acquire as standard raisins any lot of the above varietal types even though the lots have been determined to be off-grade because they contain an excess of substandard (immature) raisins. Immature raisins are removed during normal processing. The creditable weight of such lots is computed by multiplying the net weight of the lot by a factor from the dockage table in § 989.210(g). The factor reduces the weight of the lot by an amount approximating the weight of the substandard (immature) raisins needed to be removed from the lot in order for the balance of the lot to meet grade standards.

The proposal also deletes § 989.703 because it is obsolete. That section prescribed changes in the standards for certain packed raisins through November 30, 1983, and the changes are no longer applicable.

PART 989—[AMENDED]

The proposal is as follows:

1. Section 989.210(a) and (g) of Subpart-Supplementary Regulations (7 CFR 989.210–989.221; 48 FR 35347, 49214, 52028, 53683) are revised to read as follows:

§ 989.210 Handling of varietal types of raisins acquired pursuant to a weight dockage system.

(a) *General.* Subject to prior agreement between handler and tenderer, a handler may acquire as standard raisins by any lot of Natural (sun-dried) Seedless, Golden Seedless, Dipped Seedless, Monukka, and Oleate and Related Seedless raisins containing more than 6 percent beginning with the 1983–84 crop year, and 5 percent beginning with the 1984–85 and all subsequent crop years, by weight, of substandard raisins under a weight dockage system. A handler also may, subject to prior agreement, acquire as standard raisins any lot of Muscat (including other raisins with seeds), Sultana, and Zante Currant raisins containing more than 12 percent, by weight, of substandard raisins under a weight dockage system. The creditable weight of each lot of raisins acquired in this manner shall be that obtained by multiplying the net weight of the raisins in the lot by the applicable dockage factor from the appropriate dockage table prescribed in paragraphs (g) or (h) of this section.

* * * * *

(g) *Dockage table applicable to Natural (sun-dried) Seedless, Golden Seedless, Dipped Seedless, Monukka, and Oleate and Related Seedless raisins.*

Percent substandard	Dockage factor
Crop Year—1983—84	
6.0 or less	(1)
6.1	.999
6.2	.998
6.3	.997
6.4	.996
6.5	.995
Crop Year—1984—85 and Thereafter	
5.0 or less	(1)
5.1	.999
5.2	.998
5.3	.997
5.4	.996
5.5	.995

[1] No dockage.

NOTE.—Percentages in excess of the last percentage shown in each table shall be expressed in the same increments as the foregoing, and the dockage factor for each such increment shall be .001 less than dockage factor for the preceding increment.

* * * * *

2. Section 989.701 (a)(3), (b)(3) and (c)(3) of Subpart—Quality Control (7 CFR 989.701–989.703; 48 FR 49214, 53683) are amended to read as follows:

§ 989.701 Minimum grade and condition standards for natural condition raisins.

(a) * * *

(3) shall for the 1983–84 crop year contain not more than 6 percent, and for the 1984–85 and subsequent crop years, contain not more than 5 percent, by weight, of substandard raisins (raisins that show development less than that characteristic of raisins prepared from fairly well-matured grapes);

* * * * *

(b) * * *

(3) shall for the 1983–84 crop year contain not more than 6 percent, and for the 1984–85 and subsequent crop years, contain not more than 5 percent, by weight, of substandard raisins (raisins that show development less than that characteristic of raisins prepared from fairly well-matured grapes);

(c) * * *

(3) shall for the 1983–84 crop year contain not more than 6 percent, and for the 1984–85 and subsequent crop years, contain not more than 5 percent, by weight, of substandard raisins (raisins that show development less than that characteristic of raisins prepared from fairly well-matured grapes);

* * * * *

§ 989.703 [Removed]

3. Section 989.703 of Subpart—Quality Control (7 CFR 989.701–989.703) is removed.

List of Subjects in 7 CFR Part 989

Marketing agreements, Grapes, Raisins, California.

(Secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674))

Dated: December 28, 1983.

Russell L. Hawes,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 84-46 Filed 1-3-84; 8:45 am]

BILLING CODE 3410-02-M

Foreign Agricultural Service

7 CFR Part 1540

Emergency Relief From Duty-Free Imports of Perishable Products, Correction

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a proposed rule relating to emergency relief from duty-free imports of perishable products. It corrects § "1540.2 Definitions" relating to the definitions of "perishable products". The correction is necessary because several categories were omitted in the original announcement. For further information contact: Gretchen Stanton (202) 382–1336.

SUPPLEMENTARY INFORMATION:

Correction

In FR Doc. 83–33600 beginning on page 56060 in the issue of Monday, December 19, 1983, make the following correction:

On page 56061, § "1540.2 Definitions" is incomplete; the complete section should have read:

§ 1540.2 Definitions.

(a) "Perishable product" means:

(1) Live plants provided for in subpart A of part 6 of schedule 1 of the TSUS;

(2) Fresh or chilled vegetables provided for in items 135.10 through 138.42 of the TSUS;

(3) Fresh mushrooms provided for in item 144.10 of the TSUS;

(4) Fresh fruit provided for in items 146.10, 146.20,146.30, 146.50 through 146.62, 146.90, 146.91, 147.03 through 147.33, 147.50 through 149.21 and 149.50 of the TSUS;

(5) Fresh cut flowers provided for in items 192.17, 192.18, and 192.21 of the TSUS; and

(6) Concentrated citrus fruit juice provided for in items 165.25 and 165.35 of the TSUS.

(b) "Beneficiary country" means any country listed in section 212(b) of the Act with respect to which there is in effect a proclamation by the President designating such country as a beneficiary country for purposes of the Act.

Issued at Washington, D.C. this 29th day of December 1983.

Richard A. Smith,

Administrator.

[FR Doc. 83-34847 Filed 12-29-83; 2:38 pm]

BILLING CODE 3410-10-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2 and 72

Hybrid Hearing Procedures for Expansion of Onsite Spent Fuel Storage Capacity at Civilian Nuclear Power Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: Extension of comment period.

SUMMARY: On December 5, 1983 (48 FR 54499), the NRC published for public comment two versions of a proposed rule to implement the hybrid hearing process established by Section 134 of the Nuclear Waste Policy Act of 1982. The notice provided that the comment period would expire on January 5, 1984. The Utility Nuclear Waste Management Group (UNWMG) has requested a sixty-day extension of the comment period. In view of the importance of the proposed rule, the amount of time that the UNWMG suggests is required in order to provide meaningful comments on behalf of its forty-three member utilities, and the desirability of developing a final rule as soon as practicable, the NRC has decided to extend the comment period for an additional forty-five (45) days to February 20, 1984.

DATES: The comment period has been extended and now expires February 20, 1984. Comments received after that date will be considered if it is practicable to do so, but assurance of consideration cannot be given except as to comments received on or before that date.

ADDRESSES: Send written comments or suggestions to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch. Copies of comments received may be examined at the NRC Public Document Room, 1717 H. Street NW., Washington, D.C. 20555.

FOR FURTHER INFORMATION CONTACT: Linda S. Gilbert, Office of the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Telephone: (301) 492–7678.

Dated at Washington, D.C. this 28th day of December 1983.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary to the Commission.

[FR Doc. 84-132 Filed 1-3-84; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 563b

Sale-of-Control Conversions

December 27, 1983.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed recission of rule.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("Corporation"), proposes to rescind its regulations governing Sale-of-Control Conversions contained in Subpart B of 12 CFR Part 563b. The action is proposed because the rules in their current form do not provide a workable method of capital formation. If adopted, the rescission would be effective as of the date of this proposal.

DATES: Comments must be received by February 3, 1984.

ADDRESS: Send comments to Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552. Comments will be available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: James C. Stewart, Attorney, Office of General Counsel, (202–377–6457), J. Larry Fleck, Deputy Director, Division of Securities and Corporate Analysis, Office of General Counsel (202–377–6413) or Julie L. Williams, Director, Division of Securities and Corporate Analysis, Office of General Counsel (202–377–6459).

SUPPLEMENTARY INFORMATION: In Resolution No. 83–149, dated March 17, 1983, the Federal Home Loan Bank Board ("Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("Corporation"), adopted Subpart B of Part 563b of the Conversion Regulations, 12 CFR 563b.11 through 563b.19, authorizing conversions of mutual insured institutions into stock form in transactions in which a person or persons could acquire control of the institution. 48 FR 15591 (Apr. 12, 1983). Unlike standard mutual-to-stock conversions in which purchases are generally limited to five percent of the offering, these "sale-of-control" conversion regulations would allow an individual to buy more than ten percent of the institution's conversion stock, provided that a control premium is paid in connection with their purchase. During the sale-of-control conversion process, the regulations allow other persons to make competing bids for the institution. The mutual members determine the successful bid at a special meeting held for consideration of the competing proposals.

As stated in the preamble to the regulations, the Board's objectives in adopting the sale-of-control conversion regulations were to: (1) Increase the flexibility of the conversion process; (2) recognize the ownership rights of the members of mutual insured institutions; and (3) increase the potential sources of capital available to converting institutions and the capital received in the conversion process. To date, however, the sale-of-control conversion regulations have not accomplished these goals.

In the nine months since their adoption, no association has submitted an application for a sale-of-control conversion. From the informal inquiries that have been made to the staff, it has become readily apparent that, in their present form, the sale-of-control conversion regulations do not provide a workable method of capital-raising and do not accomplish the objectives established by the Board.

The Board therefore is proposing to rescind Subpart B of its conversion regulations. The recission will allow the Board to reassess the need and methodology for sale-of-control conversions. Should the Board determine in future that a modified sale-of-control conversion process is an appropriate addition to the conversion methods available to insured institutions, a new regulation would be proposed.

If the proposal to rescind Subpart B is adopted as a final action by the Board, the rescission shall become effective as of the publication date of the proposal January 4, 1984; the Board believes that this is an appropriate step to take in order to avoid precipitate filings during the comment period, when the public is on notice that the Board is considering rescission of the sale-of-control conversion procedure.

The Board also finds that good cause exists for using an abbreviated 30-day public comment period on the grounds that the failure to take expeditious action may engender public confusion regarding the rules applicable to mutual-to-stock conversions.

Initial Regulatory Flexibility Analysis

1. *Description of reasons why actions is being considered:* Discussed above.

2. *Succinct statement of the objectives and legal basis of proposed rule:* The legal basis of the proposed actions National Housing Act section 402(j)(1), 12 U.S.C. 1725 (1982). Objective is discussed above.

3. *Description and estimate of small entities to which proposed rule will apply.* Cannot be determined since no small entities have applied for sale-of-control conversions.

4. *Description of projected reports and other requirements of proposed rule:* None.

5. *Identification of overlapping rules:* None.

List of Subjects in 12 CFR Part 563b

Reporting and recordkeeping requirements, Savings and loan associations, Securities.

Accordingly, the Board hereby proposes to amend Part 563b of Subchapter D, Chapter V, Title 12 of the Code of Federal Regulations, as set forth below.

PART 563b—CONVERSIONS FROM MUTUAL TO STOCK FORM

Subpart B—Sale-of-Control Conversion [Removed]

Remove the table of contents and text of Subpart B of Part 563b.

(Section 402(j) of the National Housing Act, 12 U.S.C. 1725(j) (1982))

By the Federal Home Loan Bank Board.

J. J. Finn,

Secretary.

[FR Doc. 84-82 Filed 1-3-84; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 83-NM-113-AD]

Airworthiness Directives; British Aerospace Model DH/HS/BH 125 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes an airworthiness directive (AD) that would require replacement of fuses and installation of covers on an electrical panel on certain British Aerospace Model DH/HS/BH 125 airplanes. There has been an incident on the ground that seriously damaged an airplane due to a

short circuit on this panel. These actions are needed to prevent electrical failures in the panel which could cause a fire in the aircraft.

DATES: Comments must be received no later than February 20, 1984.

ADDRESSES: The applicable service information may be obtained from British Aerospace, Inc., Box 17414, Dulles International Airport, Washington, D.C. 20041 or may also be examined at the address shown below.

FOR FURTHER INFORMATION CONTACT: Mr. Sulmo Mariano, Foreign Aircraft Certification Branch, ANM-150S, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington, telephone (206) 431-2979. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: .

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified below. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report sumarizing each FAA-public contact concerned with the substance of this proposed will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 83-NM-113-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The Civil Aviation Authority of the United Kingdom (CAA) has classified British Aerospace 125 Service Bulletins 24-239-(2885) and 24-220-(2749) as mandatory. Incidents have been reported where resetting a circuit breaker after an electrical system failure led to rupture of the main electrical bus bar feeder fuses. Service Bulletin 24-239-(2885) prescribes replacement of the two existing 80 amp fuses on 'ZL' panel with 100 amp fuses.

In another incident also related to 'ZL' panel, an aircraft was badly damaged on the ground when a mechanic created a short circuit in the panel. Service Bulletin 24-220-(2749) prescribes the addition of protective covers on 'ZL' panel.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable airworthiness bilateral agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require the actions described above.

It is estimated that 150 U.S. registered airplanes would be affected by this AD, that it would take approximately 6 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Repair parts are estimated at $1000 per airplane. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $186,000. For these reasons, the proposed rule is not considered to be a major rule under the criterial of Executive Order 12291. Few small entities within the meaning of the Regulatory Flexibility Act would be affected.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new airworthiness directive:

British Aerospace: Applies to all Model DH/HS/BH 125 series airplanes, certificated in all categories, specified in the service bulletins listed below. Compliance is required as indicated. To prevent electrical failures in 'ZL' panel, accomplish the following within the next 60 days after the effective date of this AD unless previously accomplished:

A. Replace the two existing 80 amp fuses on the 'ZL' panel with 100 amp fuses in accordance with the Accomplishment Instructions of British Aerospace 125 Aircraft Service Bulletin 24-239-(2885), dated March 17, 1983.

B. Install covers on the 'ZL' panel in accordance with Accomplishment Instructions of British Aerospace 125 Aircraft Service Bulletin 24-220-(2749), Revision 3, dated March 3, 1983.

C. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

(Sec. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85)

Note.—For the reasons discussed earlier in the preamble, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. A regulatory evaluation has been prepared and has been placed in the public docket.

Issued in Seattle, Washington on December 22, 1983.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 84-60 Filed 1-3-84; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 83-NM-112-AD]

Airworthiness Directives; Airbus Industrie Model A300 Series B2 and B4 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes an airworthiness directive (AD) that would require repetitive inspections of the aft bulkhead of the Airbus Model A300 airplanes for cracks and repairs, as necessary. Further, it would require reinforcement of the bulkhead after a certain number of landings. This action is necessary because cracks developed in the aft bulkhead of the test airplane after the equivalent of 50,000 landings. These actions are needed to ensure bulkhead integrity and prevent possible loss of pressurization.

DATES: Comments must be received no later than February 20, 1984.

ADDRESSES: The applicable service information may be obtained from Airbus Industrie, Airbus Support

Division, Avenue Didier Daurat, 31700 Blagnac, France or may also be examined at the address shown below.

Send comments to: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

FOR FURTHER INFORMATION CONTACT:

Mr. Sulmo Mariano, Foreign Aircraft Certification Branch, ANM–150S, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington, telephone (206) 431–2979. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communication should identify the regulatory docket number and be submitted in duplicate to the address specified below. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitted a request to the FAA, Northwest Mountain Region, Office of the Regional Cousel, Attention: Airworthiness Rules Docket No. 83–NM–112–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

The Direction General De l'Aviation Civile (DGAC), which is the French Civil Aviation Authority, has issued an AD mandating compliance with Airbus Industrie Service Bulletins A300–53–152, A300–53–121, and A300–53–122.

During fatigue tests done by the manufacturer, cracks developed in the aft bulkhead after the equivalent of 50,000 landings. A scatter factor was used to establish a conservative life limit for the structure. Once the life limit has been reached, reinforcing modifications must be incorporated to ensure the structural integrity of the bulkhead.

The service bulletins prescribe inspections; repairs, if necessary; and reinforcing modifications.

This airplane model is manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable airworthiness bilateral agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require the actions described in the service bulletins.

It is estimated that nine U.S. registered airplanes would be affected by this AD, that it would take approximately 665 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Repair parts are estimated at $4,000 per airplane. Based on these figures, the total cost impact of this AD to the sole U.S. operator is estimated to be $275,400. For these reasons, the proposed rule is not considered to be a major rule under the criteria of Executive Order 12291. No small entities within the meaning of the Regulatory Flexibility Act would be affected.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new airworthiness directive:

Airbus Industrie: Applies to all Model A300 Series B2 and B4 airplanes, certificated in all categories, whose serial numbers are listed in Airbus Industrie Service Bulletin A300–53–152. To ensure aft bulkhead integrity and prevent loss of cabin pressurization, accomplish the following, unless previously accomplished:

A. Inspect the aft bulkhead and repair, as necessary, in accordance with the Accomplishment Instructions of Service Bulletin A300–53–152, Revision 1, dated January 30, 1981, within 120 days after the effective date of this AD or upon reaching the landing threshold specified in the service bulletin, whichever occurs later.

B. Incorporate Airbus Industrie modifications 2476/D1842 and 2476/D1869 described respectively in Airbus Industrie Service Bulletins A300–53–121, Revision 3, and A300–53–122, Revision 2, both dated January 30, 1981, prior to the accumulation of 17,000 landings or within 12 months after the effective date of this AD, whichever occurs later.

C. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

(Sec. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.85)

Note.—For the reasons discussed earlier in the preamble, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because no small entities operate model A300 airplanes. A regulatory evaluation has been prepared and has been placed in the public docket.

Issued in Seattle, Washington on December 22, 1983.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 84–58 Filed 1–3–84; 8:45 am]

BILLING CODE 4910–13–M

---

14 CFR Part 39

[Docket No. 83–NM–114–AD]

Airworthiness Directives; Short Brothers Limited Model SD3–30 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes an airworthiness directive (AD) that would require inspection of structural and system components on certain Shorts SD3–30 series airplanes and modification or repair, as necessary, to correct unsafe conditions which may exist. This action is necessary to preserve the structural integrity of the wing and horizontal stabilizer; to prevent fuel leaks into the cabin; to ensure adequate fire protection for the aft baggage compartment; and to prevent attempted operations with the control surfaces locked.

DATES: Comments must be received no later than February 20, 1984.

ADDRESSES: The applicable service information may be obtained from

Shorts Aircraft, 1725 Jefferson Davis Highway, Suite 510, Arlington, Virginia 22202 or may be examined at the address shown below.

Send comments to: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

FOR FURTHER INFORMATION CONTACT:
Mr. Harold N. Wantiez, Foreign Aircraft Certification Branch, ANM-150S, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington, telephone (206) 431-2977. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified below. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 83-NM-114-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The United Kingdom Civil Aviation Authority (CAA) has, in accordance with existing provisions of a bilateral agreement, notified the FAA of a number of unsafe conditions that may exist on Shorts SD3-30 airplanes. These may be corrected by incorporating eight (8) separate mandatory service bulletins. The unsafe conditions and corrective actions are described as follows:

A. The amount of fire extinguishing agent available to extinguish a fire in the aft baggage compartment may not be adequate because the compartment is not sealed. A new closing panel is installed which seals the compartment. (Reference Short Brothers Ltd. Service Bulletin SD3-25-30.)

B. Fuel leakage into the cabin can occur if there is spillage during refueling. Inspections of the fuselage crown skins are required and repairs or additional sealing must be accomplished where necessary. (Reference Short Brothers Ltd. Service Bulletins SD3-53-01 R2, SD3-53-18, and SD3-53-41.)

C. The bottom flanges of the wing drag links were notched to clear the aft attachment bracket. A fatigue crack could form in the drag link if a sharp corner was left in the web which would compromise the strength of the wing attachment. Inspections and modifications/replacement are required. (Reference Short Brothers Ltd. Service Bulletin SD 3-53-48 R1.)

D. Corrosion and/or wear has occurred on the horizontal stabilizer-to-fuselage attachment pins and bushings which, if allowed to increase, could compromise the strength of the stabilizer/fuselage assembly. An inspection of the lugs, bushings, and pins is required and replacement is necessary if the are worn beyond acceptable limits. (Reference Short Brothers Ltd. Service Bulletin SD3-55-16 R2).

E. Cracks have been found in the rib/skin attachment cleats at the left wing upper surface which, if allowed to grow, could compromise the structural capability of the wing. Inspections and repairs, where necessary, are required. (Reference Short Brothers Ltd. Service Bulletin SD3-57-10 R1.)

F. The existing gust lock/power control interlock system allows excessively high power selections to be made with the flight controls locked. The power control circuit must be modified so that only limited power is available when the flight control gust locks are engaged in order to prevent takeoff with locked controls. (Reference Short Brothers Ltd. Service Bulletin SD3-76-01.)

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable airworthiness bilateral agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require the incorporation of the previously mentioned corrective actions.

It is estimated that approximately 50 airplanes would be affected by this AD, that it would take approxmately 180 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Repair parts are estimated at $3000 per airplane. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $510,000. For these reasons, the proposed rule is not considered to be a major rule under the criteria of Executive Order 12291. Few small entities within the meaning of the Regulatory Flexibility Act would be affected.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new airworthiness directive:

Short Brothers Limited: Applies to Model SD3-30 airplanes as indicated in the applicability statement of each service bulletin listed below. Compliance is required within the time interval specified in each of the following paragraphs unless already accomplished:

A. To ensure the availability of adequate concentration of fire extinguishing agent in the event of a baggage compartment fire, within 180 days after the effective date of this AD, install a new closing panel in the aft baggage compartment in accordance with Short Brothers Ltd. Service Bulletin SD3-25-30 dated january 8, 1982.

B. To prevent fuel leakage into the passenger cabin, within 180 days after the effective date of this AD, inspect and seal the fuselage crown in accordance with Short Brothers Ltd. Service Bulletin SD3-53-01 R2 dated January 19, 1977, SD3-53-18 dated November 25, 1977, and SD3-53-41 dated May 21, 1980.

C. To prevent fatigue failure of the wing drag links, within 600 hours time in service after the effective date of this AD or upon the accumulation of 4800 total hours time in service, whichever occurs later, inspect and modify in accordance with Short Brothers Ltd. Service Bulletin SD3-53-48 R1 dated January 5, 1983. Replace damaged parts per the service bulletin.

D. To detect excessive corrosion or wear in the stabilizer/fuselage attach pins, within the next 600 hours time in service after the effective date of this AD or upon the accumulation of 4800 total hours time in service, whichever occurs later, inspect in accordance with Short Brothers Ltd. Service Bulletin SD3-55-16 R2 dated June 24, 1982. Replace damaged parts per the service bulletin.

E. To detect cracked or broken rib/skin attachment cleats at left wing station 160,

within 300 hours time in service after the effective date of this AD or upon the accumulation of 4800 hours total time in service, whichever occur later, inspect in accordance with Short Brothers Ltd. Service Bulletin SD3–57–10 R1 dated October 11, 1982. Replace damaged parts as necessary.

F. To prevent takeoff with locked flight controls, within 180 days after the effective date of this AD, modify the power control circuit in accordance with Short Brothers Ltd. Service Bulletin SD3–76–01 dated September 8, 1981.

G. Alternate means of compliance which provide an equavalent level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

H. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.85)

Note.—For the reasons discussed earlier in the preamble, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291, and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. A regulatory evaluation has been prepared and has been placed in the public docket.

Issed in Seattle, Washington on December 22, 1983.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 84–57 Filed 1–3–84; 8:45 am]

BILLING CODE 4910–13–M

---

14 CFR Part 71

[Airspace Docket No. 83–AWA–31]

Proposed Alteration of Marshfield, MA, Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the description of the Marshfield, MA, Transition Area to provide airspace protection for aircraft utilizing the nondirectional beacon (NDB) approach to Runway 06 at Marshfield Airport, Marshfield, MA. This action would improve air safety by providing controlled airspace for standard instrument approaches to that airport.

DATES: Comments must be received on or before February 14, 1984.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, New England Region, Attention: Manager, Air Traffic Division, Docket No. 83–AWA–31, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (AAT–230), Airspace-Rules and Aeronautical Information Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 83–AWA–31." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426–8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to §71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the description of the Marshfield, MA, Transition Area. The transition area's proposed enlargement is to provide airspace protection for aircraft executing IFR approaches to Runway 06 at Marshfield, MA, Airport. This action provides controlled airspace with a base altitude of 700 feet above the surface for arriving IFR flights. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Advisory Circular AC 70–3A dated January 3, 1983.

ICAO Considerations

As part of this proposal relates to navigable airspace outside the United States, this notice is submitted in consonance with the International Civil Aviation Organization (ICAO) International Standards and Recommended Practices.

Applicability of International Standards and Recommended Practices by the Air Traffic Service, FAA, in areas outside domestic airspace of the United States is governed by Article 12 of, and Annex 11 to, the Convention on International Civil Aviation, which pertains to the establishment of air navigational facilities and services necessary to promoting the safe, orderly, and expeditous flow of civil air traffic. Their purpose is to ensure that civil flying on international air routes is carried out under uniform conditions designed to improve the safety and efficiency of air operations.

The International Standards and Recommended Practices in Annex 11 apply in those parts of the airspace under the jurisdiction of a contracting state, derived from ICAO, wherein air traffic services are provided and also whenever a contracting state accepts the responsibility of providing air traffic services over high seas or in airspace of

undetermined sovereignty. A contracting state accepting such responsibility may apply the International Standards and Recommended Practices in a manner consistent with that adopted for airspace under its domestic jurisdiction.

In accordance with Article 3 of the Convention on International Civil Aviation, Chicago, 1944, state aircraft are exempt from the provisions of Annex 11 and its Standards and Recommended Practices. As a contracting state, the United States agreed by Article 3(d) that its state aircraft will be operated in international airspace with due regard for the safety of civil aircraft.

Since this action involves, in part, the designation of navigable airspace outside the United States, the Administrator is consulting with the Secretary of State and the Secretary of Defense on accordance with the provisions of Executive Order 10854.

List of Subjects in 14 CFR Part 71

Transition areas, Aviation safety.

The Proposed Amendment

§ 71.181 [Amended]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

Marshfield, MA [Amended]

By deleting all the words after "Marshfield, MA;" and substituting the words "and within 5 miles on each side of the 224° bearing from the Marshfield NDB (lat. 42°05'52" N., long. 70°40'33" W.) extending from the NDB to 11.5 miles southwest, excluding the portion within the Boston, MA, and Plymouth, MA, Transition Areas."

(Secs. 307(a), 313(a), and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348(a), 1354(a), and 1510); Executive Order 10854 (24 FR 9565) (49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)); and 14 CFR 11.65)

Note.—The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Washington, D.C., on December 21, 1983.

B. Keith Potts,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 84-54 Filed 1-3-84; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Office of the Secretary

15 CFR Part 17

Appeal Procedures Related to Licensing of Patents Under the Jurisdiction of the Department of Commerce

AGENCY: Office of the Secretary, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: This new subpart sets forth proposed appellate procedures for patent licensing in the Department of Commerce. This regulation implements Pub. L. 96-517, The Patent and Trademark Amendments of 1980, and the General Services Administration Regulation in 41 CFR Part 101-4 dealing with federally owned inventions in the control of Federal agencies with the exception of the Tennessee Valley Authority. This subpart describes the terms, conditions and procedures under which a party may appeal from a decision of the Director of the National Technical Information Service concerning the grant, denial, interpretation, modification or termination of a license of any patent in the custody of the Department of Commerce.

DATE: Comments should be received no later than February 3, 1984.

ADDRESS: All comments should be directed to: Robert B. Ellert, Assistant General Counsel for Economic Affairs, Room 4610, U.S. Department of Commerce, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Michael R. Rubin, 202-377-5394.

SUPPLEMENTARY INFORMATION: The Secretary of Commerce has delegated the responsibility of rendering decisions concerning the licensing of Department patents to the Director of the National Technical Information Service (NTIS). This proposed rule deals with appeals to the Assistant Secretary from that Director's determinations pursuant to 41 CFR Part 101-4.

List of Subjects in 15 CFR Part 17

Inventions and patents, Appeal procedures.

PART 17—[AMENDED]

Subpart C is added to 15 CFR Part 17 as follows:

Subpart C—Appeal Procedures for Licensing Department of Commerce Patents

Sec.

17.21 Purpose.
17.22 Definitions.
17.23 Authority to grant licenses.
17.24 Persons who may appeal.
17.25 Procedures.
17.26 Adjudicatory.

Authority: 40 U.S.C. 486(c).

Subpart C—Appeal Procedures for Licensing Department of Commerce Patents

§ 17.21 Purpose.

This subpart describes the terms, conditions and procedures under which a party may appeal from a decision of the Director of the National Technical Information Service concerning the grant, denial, interpretation, modification or termination of a license of any patent in the custody of the Department of Commerce.

§ 17.22 Definitions.

(a) 41 CFR Part 101-4 shall mean the General Services Administration Final Rule concerning "Patents: Licensing of Federally Owned Inventions" which was originally published in the **Federal Register**, Vol. 47, No. 152, Friday, August 6, 1982 at pages 34148 through 34151.

(b) Director shall mean the Director of the National Technical Information Service, an operating agency within the U.S. Department of Commerce.

(c) Assistant Secretary means the Assistant Secretary for Productivity, Technology and Innovation who is an officer appointed by the President and confirmed by the Senate and is an official to whom the Director reports within the Department of Commerce.

§ 17.23 Authority to grant licenses.

The Director has been duly delegated authority to make any decision or determination concerning the granting, denial, interpretation, modification or termination of any license of any patent in the custody and control of the U.S Department of Commerce. The decision and determination of the Director is final and conclusive on behalf of this Department unless the procedures for appeal set forth below are initiated.

§ 17.24 Persons who may appeal.

The following person(s) may appeal to the Assistant Secretary any decision or determination concerning the grant,

denial, interpretation, modification or termination of a license:

(a) A person whose application of the license has been denied;

(b) A licensee whose license has been modified or terminated in whole or in part; or

(c) A person who has timely filed a written objection in response to the notice published in the **Federal Register** as required by 41 CFR 101–4.104–3(a)(1)(c)(1) or 101–4.104–3(b)(1)(i) and who can demonstrate to the satisfaction of the Assistant Secretary that such person may be damaged by the Director's determination.

§ 17.25 Procedures.

(a) Any appellant party(ies) who was denied a license by the Director under § 17.24(a) above shall not be entitled to an adversary hearing. Such party(ies) shall file appropriate documents no later than 30 days from the receipt of the Director's decision unless the Assistant Secretary grants for good cause an extension of time. The notice, in concise and brief terms, should state the grounds for appeal and include copies of all pertinent documents. Accompanying the notice should be concise arguments as to why the Director's decision should be rejected or modified.

(b) The Assistant Secretary shall render a written opinion within 30 days of receiving all required documentation in a non-adversary appeal.

(c) Judicial review is available as the law permits.

§ 17.26 Adjudicatory.

(a) Any appellant party who seek review of the Director's decision based upon a modification or termination of a license by the Director under § 17.24(b) above, or who has filed a timely objection and can demonstrate damages as provided in § 17.24(c) above, shall be entitled to an adversary hearing in accord with the provisions of the Administrative Procedures Act (5 U.S.C. 554–557). A party may waive an adversary hearing by filing a written waiver with the Assistant Secretary.

(b) When an adversary hearing is required under § 17.24 (b) or (c) the Assistant Secretrary shall appoint as promptly as possible an Administrative Law Judge who shall hold hearings no later than 45 days from the date of the appointment. The hearings will be conducted in conformity with the objectives of the Administrative Procedures Act. The Administrative Law Judge shall submit a written recommendation to the Assistant Secretary no later than 30 days subsequent to the hearing and/or the filing of any required written arguments or documentation.

(c) The Assistant Secretary shall render a final written decision on behalf of the Department based upon the appeal file which shall include the hearing record, exhibits, written submissions of the party(ies), and the recommendation of the Administrative Law Judge. The Assistant Secretary's decision shall include the reasons which form the basis of the determination. The final decision may uphold, overrule, or modify the Director's decision or take any action deemed appropriate.

(d) Judicial review is available as the law permits.

Dated: December 5, 1983.

D. Bruce Merrifield,

Assistant Secretary for Productivity, Technology and Innovation.

[FR Doc. 84–77 Filed 1–3–84; 8:45 am]

BILLING CODE 3510–04–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–20517; File No. S7–1000]

Applicability of Broker-Dealer Registration to Banks

AGENCY: Securities and Exchange Commission.

ACTION: Extension of time for comment.

SUMMARY: The Securities and Exchange Commission announced today that it has extended until February 15, 1984 the date by which comments on Securities Exchange Act Release No. 34–20357 (November 15, 1983) (48 FR 51930) must be submitted. The Commission has received a request that the comment period be extended and believes that an extension of time until February 15, 1984 will be beneficial since it will result in the receipt of additional useful comments. The release originally had a comment period ending on December 30, 1983.

DATE: Comments must be received on or before February 15, 1984.

ADDRESS: Comments should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549 (Reference to File No. S7–1000). All comments will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Colleen Curran Harvey, Office of Chief Counsel, Division of Market Regulation (202) 272–2417, or Karen Buck Burgess, Office of Chief Counsel, Division of Market Regulation (202) 272–2848.

SUPPLEMENTARY INFORMATION: In Securities Exchange Act Release No. 34–20357, the Commission published for public comment Rule 3b–9 which provides that, for purposes of the "broker" and "dealer" definitions in Sections 3(a)(4) and (5) of the Securities Exchange Act of 1934, the term "bank" does not include a bank that engages in certain securities activities. Sections 3(a)(4) and (5) provide that the terms "broker" and "dealer" do not include a "bank." Under the proposed rule, a bank could not rely on this exclusion from the difinitions of "broker" and "dealer" when it (i) publicly solicits brokerage business, (ii) receives transaction-related compensation for providing brokerage services for trust, managing agency, or other accounts to which the bank provides advice, or (iii) deals in or underwrites (on either a firm commitment or best efforts basis) securities other than exempted or municipal securities. The proposed rule would require that the activities listed above be performed through a broker-dealer registered with the Commission and subject to the same rules and regulations as all others who engage in such activities.

The Commission has received a request that the comment period be extended. In view of such request and in order to receive the benefit of comments from the greatest number of interested persons, the Commission has extended the comment period for Securities Exchange Act Release No. 34–20357 until February 15, 1984.

By the Commission.

December 28, 1983.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84–118 Filed 1–3–84; 8:45 am]

BILLING CODE 8010–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 87

[AMS–FRL–2475–1]

Control of Air Pollution From Aircraft and Aircraft Engines; Smoke Emission Standard

AGENCY: Environmental Protection Agency.

ACTION: Proposed denial of petition for reconsideration.

SUMMARY: EPA proposes to deny a petition for reconsideration of the aircraft gas turbine smoke standard submitted by the General Aviation Manufacturers Association (GAMA) on March 17, 1983, and extend the compliance date for specified small engines until one year from the date this proposal is finalized.

DATE: All comments should be submitted by March 5, 1984, or, if a hearing is held, within 30 days after the date of the hearing.

Any person requesting a public hearing on this proposal should submit a request in writing to the information contact identified below no later than January 19, 1984. If a hearing is requested, its date and location will be announced in a subsequent **Federal Register** notice.

ADDRESS: Interested parties may participate in this rulemaking by submitting written comments to the U.S. Environmental Protection Agency, Central Docket Section (A–130), Attn: Docket No. OMSAPC–78–1, 401 M Street, SW, Washington, D.C. 20460. Two copies of comments are requested but not required. The docket may be inspected between 8 a.m. and 4 p.m. on weekdays and a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. George D. Kittredge (ANR–455), U.S. Environmental Protection Agency, at the above address. Telephone: (202) 382–4981.

SUPPLEMENTARY INFORMATION:

I. Background

On December 30, 1982 EPA issued final rules which amended emission standards applicable to aircraft gas turbine engines (47 FR 58462). One change consisted of the adoption by EPA of a smoke standard which had been developed and adopted by the International Civil Aviation Association (ICAO) in June, 1981. The ICAO standard is similar in format to, but slightly less stringent than, that proposed by EPA in the March 24, 1978, Notice of Proposed Rulemaking which preceded the 1982 amendments (43 FR 12614). On March 17, 1983, GAMA submitted a petition for reconsideration of the amended smoke standard asserting that EPA did not consider comments it had submitted during the rulemaking process and that the standard adopted was inequitable as applied to small gas turbine engines. The petition recommended an alternative smoke standard which GAMA believes would eliminate the perceived inequity.

The Garrett Turbine Engine Company, a member of GAMA, also filed a petition for reconsideration of the 1982 amendments in the U.S. Court of Appeals for the District of Columbia Circuit.

In an agreement reached between EPA and Garrett, EPA, on July 18, 1983, proposed to stay the January 1, 1984 date of compliance with the smoke standard for engines rated below 26.7 kilonewtons (kN) thrust, so as to provide time for careful evaluation of the issues raised by the GAMA petition (48 FR 32745). A final stay was published on October 12, 1983 (48 FR 46481).

II. Discussion of Issues

The smoke standard which is the subject of this proposed rulemaking action was originally established on July 17, 1973, as one component of a wide-ranging series of emission standards applicable to almost all categories of civil aircraft (38 FR 19088). The smoke standard took the form of a limiting graph relating engine rated thrust to a measured smoke number which was selected to ensure that engines meeting the standard would be for all practical purposes "smokeless" as perceived by human observers during normal viewing conditions. The standard was necessarily subjective, since human observers vary widely in their abilities to evaluate aircraft smoke and since climatic conditions as well as the direction from which an observer views the aircraft can influence the visibility of the engine exhaust plume. Nevertheless, the 1973 standard was not challenged.

Because of problems in applying the graphical limit to practical enforcement situations, EPA developed a mathematical equation to substitute for the graph and EPA proposed this standard in the form of an equation in its 1978 proposal. The intent was not to alter the stringency of the standard, but only to provide a more precise way of calculating the exact standard applicable to any given engine.

The 1981 ICAO standard subsequently adopted by EPA in 1982 is a similar equation developed independently by the British National Gas Turbine Establishment and recommended to ICAO in May, 1978. While the objective was to match the same 1973 EPA curve, the ICAO equation turned out to be slightly less stringent than the 1978 EPA proposal.

The principal focus of the GAMA petition was an August, 1979 EPA report which attempted to relate the visibility of aircraft engines in flight to the EPA smoke standard, taking advantage of research conducted by the U.S. Air Force. This report is available in the public docket along with the petition itself. The analysis carried out in this report entailed a conversion from engines characterized by exhaust nozzle diameter, which is the Air Force practice, to rated thrust as used by EPA and ICAO. The GAMA petition claimed that the exhaust nozzle diameters attributed to small engines in the report were inaccurate and, because of this, the resultant smoke standard based upon threshold visibility as estimated in the report is excessively stringent. GAMA proposed an alternative standard which it believes would be more equitable. The petition also claims that the 1980 GAMA comments on this point were not responded to in EPA's 1982 rulemaking.

The issues brought up by GAMA have been investigated in a report which supports this proposed rulemaking action and which is available in the public docket for review. The results of this analysis are summarized below:

(1) Neither the EPA rulemaking docket nor any other available documentation shows any evidence that the 1980 GAMA comments were considered during the rulemaking process leading to the 1982 amendments.

(2) The 1979 EPA report which was the subject of the 1980 GAMA comments and 1983 petition used inaccurate engine exhaust nozzle data in attempting to support the 1973 (reproposed in 1978) smoke standards. This inaccuracy extended to engines of all sizes, not just to the small engines identified by GAMA.

(3) The amended EPA standard was not based upon the disputed 1979 report, but rather on the ICAO standard, consistent with a decision to eliminate as many differences as posible between the two sets of standards in the interests of international harmonization.

(4) A review of the available technical literature comparing measured smoke number to smoke plume visibility in flight shows that the amended smoke standard is not inequitable to any class of engines, but rather is a reasonable good compromise between the environmental goal of threshold visibility under all realistic viewing situations and the availability of effective control technology. The errors in the EPA report mentioned above are irrelevant since only the least severe viewing situation was considered in the report.

(5) Only 1 of the 23 engines for which data were available has experienced any difficulty in achieving compliance with the standard.

Two comments were received on the GAMA petition in response to EPA's

notice of proposed rulemaking to stay the smoke standard (48 FR 32745). The Aircraft Owners and Pilots Association stated that standards should be no more stringent than necessary and should be based upon the best available evidence. The above conclusions indicate that the current smoke standard appears to fulfill these two criteria.

Somewhat more extensive comments were received from Garrett, some of which are also responded to in the conclusions of EPA's analysis listed above. Among other things, Garrett commented that the TFE731 series of engines has not been brought into compliance with the standard and that to achieve compliance would require significant additional engine development costs plus potential costs for air frame component redesign.

However, since many other engines have been brought into compliance apparently without excessive costs, based on the information cited above, it does not appear that an industry-wide problem with either costs or availability of technology exists. In this situation, an exemption would be a more appropriate mechanism for dealing with the situation described by Garrett rather than a change to the standard itself. The 1982 amendments provide expanded exemption provisions designed expressly for situations in which isolated compliance problems exist with a standard for which industry as a whole has achieved compliance § 87.7(c)). The criteria justifying consideration of an exemption include "(1) adverse economic impact on the manufacturer" and "(3) equity in administering the standards among all economically competing parties", either or both of which might apply in the case cited by Garrett if there are unique features about the TFE-731 engine which make compliance more difficult and costly than for other engines.

Moreover, the added time for compliance provided by this proposed rulemaking action and the stay announced on October 12, 1983 will provide temporary relief to Garrett and other GAMA members. EPA believes that revising the standard should be an action of last resort, because the standard in question is an ICAO standard which was accepted by EPA as a step towards international harmonization of aircraft engine emission standards and which has never before been challenged on the basis of cost of compliance.

The inaccuracies in the 1979 EPA report and the failure to acknowledge the GAMA comments on the report are regrettable. Nevertheless, the manufacturers of small engines were not damaged by these errors, since the report was not the basis for selection of the final smoke standard and since subsequent analysis has not shown the standard to be unreasonable.

III. Proposed Action

The evaluation of the GAMA petition does not justify changing the smoke standard, since it has not been shown to be inequitable based upon the information available to EPA reviewers. The single engine type experiencing compliance problems may qualify for exemption under § 87.7(c) of the amended regulations and Garrett is encouraged to pursue its request now pending before the Federal Aviation Administration.

Nevertheless, EPA proposes to extend the compliance date for engines covered by the current stay until one year following the date this proposal is finalized, to provide to those manufacturers who have been awaiting the outcome of this rulemaking action the leadtime they would have had without the stay.

IV. Public Participation

Comments are invited on the proposed action and on the EPA analysis of the GAMA petition. Additional comments on the GAMA petition itself would also be welcomed. Comments should be submitted in writing to the EPA Central Docket Section at the address given earlier.

V. Regulatory Analysis

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirements for a Regulatory Analysis. This rulemaking is not major because it will result in annual adverse effects on the economy of less than $100 million. There are no discernible effects on competition, productivity, investment, employment or innovation. For these reasons, EPA has not prepared a formal Regulatory Impact Analysis.

This proposal has been sent to the Office of Management and Budget (OMB) for review pursuant to Executive Order 12291. Any OMB comments and EPA responses thereto have been placed in the docket.

VI. Impacts on Reporting Requirements

There are no reporting requirements directly associated with this proposed rulemaking.

VII. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., EPA is required to determine when a regulation will have a significant effect on a substantial number of small entities so as to require a regulatory flexibility analysis. Because of the limited classes of engines influenced by the proposal, no small entities (as defined by the Small Business Act) will be affected. Therefore, no regulatory flexibility analysis has been prepared.

List of Subjects in CFR Part 87

Air pollution control, Aircraft.

Dated: December 27, 1983.

Alvin L. Alm,

Acting Administrator.

PART 87—[AMENDED]

For the reasons set forth above, EPA proposes that the stay in the effective date of smoke standards applicable to turbojet and turbofan engines rated below 26.7 kN thrust be rescinded, effective (one year after date of publication of the final rule). EPA also proposes that the effective date of standards for these engines in 40 CFR 87.21(e) be amended to (one year after the date of publication of the final rule).

[FR Doc. 84-76 Filed 1-3-84; 8:45 am]

BILLING CODE 6560-50-M

---

40 CFR Part 162

[OPP-30061B; FRL 2399-8]

Pesticide Products; Child-Resistant Packaging

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to amend its regulations on the use of child-resistant packaging for pesticide products. The proposed amendment would exempt certain products from the requirement to use child-resistant packaging based on the size of the package in which the product was distributed. The Agency believes that child-resistant packaging is unnecessary for pesticides in certain size packages because the bulk of pesticides purchased in these sizes are used primarily by service personnel, who, although they may use them in residential areas, do not leave them in such areas. This revision could reduce the cost of packaging for producers who market large-size containers to this segment of the pest control user community.

DATE: Written comments on this proposed rule should be submitted on or before March 5, 1984. Identify comments with the notation OPP-30061B.

ADDRESS: Submit written comments to: Program Management and Support Division (TS–757C), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. In person, bring comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Written comments may be reviewed in Rm. 236, at the address given above.

FOR FURTHER INFORMATION CONTACT: By mail: Jean M. Frane, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. Office location and telephone number: Rm. 1114, CM#2, 1921 Jefferson Davis Highway, Arlington, VA (703–557–0592).

SUPPLEMENTARY INFORMATION:

I. Background

Under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA or the Act), as amended, EPA has the responsibility for regulating all pesticide products distributed in commerce in the United States. FIFRA sec. 25(c)(3) authorizes the Administrator to establish standards for the packaging of pesticide products and devices to protect children and adults from accidental poisoning. Regulations under this section of the Act were issued by the Agency in the **Federal Register** of March 9, 1979 (44 FR 13022).

The Agency issued a notice clarifying the provisions of the 1979 regulations, which was published in the **Federal Register** of March 3, 1981 (46 FR 15104). That notice provided, among other things, that products, which were otherwise required to be in child-resistant packaging, could be distributed in packaging that was not child-resistant if the label restricted purchase, storage, and use to "servicepersons." The term "serviceperson" was defined to include persons who provide a service of controlling pests without delivering any unapplied pesticide to the person so served. The definition was intended to cover pest control operators, janitors, pool service technicians, nursery and lawn care specialists and similar persons. The notice also indicated that the Agency intended to incorporate the serviceperson exception into its regulations at a future date.

Subsequently, the Agency proposed a revision if its child-resistant packaging regulations, which was published in the **Federal Register** on September 15, 1982 (47 FR 40659), including provisions adopting the serviceperson exception described in the earlier notice. The majority of commenters on the proposal opposed the serviceperson exception or expressed concern about its enforceability under the Act. Based on these comments, the Agency has decided not to adopt the serviceperson exception provisions. Final rules amending the child-resistant packaging regulations, published elsewhere in today's issue of the **Federal Register**, do not contain the proposed serviceperson exception provisions. A discussion of the comments on the serviceperson proposal and the Agency's subsequent decision is included in the preamble to that rule.

II. Purpose of This Proposal

The Agency recognizes that there are certain types of products and uses for which child-resistant packaging is currently required but which pose little hazard to children. Such products are primarily marketed to specialized segments of the residential service industry, and are generally not available to, or not likely to be purchased by, individual consumers. The Agency is interested in limiting the requirements to use child-resistant packaging in a way that excludes this class of products, without reducing the protection afforded children by the use of child-resistant packaging.

EPA believes that its objective can be accomplished by establishing an exemption based on container size for child-resistant packaging. EPA believes that child-resistant packaging should not be required for large size products which are typically purchased by users who would have been characterized as "servicepersons" under its previous policy. These persons buying larger quantities of pesticides are generally in the business of applying pesticides, and thus purchase large sizes for economic resons. Since they provide pest control as a service to other persons, groups, or institutions, they normally do not leave unused pesticide at the site of application. Thus the potential hazard to children because these packages are not child-resistant is minimal.

In addition, residential consumers typically do not require large amounts of pesticides for home or garden use. Pesticides for individual consumer use are, with few exceptions, marketed in small quantities more appropriate for their limited residential use. Large packages marketed to service users are not generally readily available to residential users. Furthermore, the high cost of pesticides should preclude routine purchase of large packages by a residential consumer.

For the above reasons, the Agency concludes that permitting the distribution of pesticides in large packages without child-resistant packaging would not significantly increase the risks to children from exposure to those products.

III. Size Exemption for Child-Resistant Packaging

This proposal would establish a general exemption based on package size. Products distributed or sold in package sizes greater than the sizes listed would be exempt from the child-resistant package requirements. Products distributed or sold in package sizes equal to or less than those proposed would not be so exempted.

Certain types of products, however, are generally available to individual consumers in large packages because they are used in larger quantities even in household situations. Examples are swimming pool chemcials, which are needed on a continuing basis throughout the season. The proposal identifies swimming pool products, and would establish separate limits for that specific product type. If other products are identified as generally available to consumers in large size containers, the list will be modified to establish higher limits for the packaging exemption.

Further, the proposal would reserve to the Agency the right to determine that the exemption based on size would not apply to a particular product. If the Agency were to make this determination, the product(s) to which it applied would have to be marketed in child-resistant packaging notwithstanding the size exemption. This likely would occur because the Agency had reason to believe either that the exempt sizes were generally used by or marketed to consumers for residential use. The Agency's determination could apply to an individual product or to a group of products having common characteristics.

Specifically, the Agency proposes to amend § 162.16(f) of its child-resistant packaging regulations to include a size exemption for both liquid and solid products of various types. The sizes proposed as the limits are based on the best information available to the Agency. They are believed to be those generally marketed to and purchased by the serviceperson industry as opposed to the individual residential user.

The Agency considered proposing a single size cutoff point that would apply to all products, regardless of type. A single size cutoff would be comparable to the interpretation of the Consumer Prouduct Safety Commission (CPSC) in its regulations under the Poison Prevention Packaging Act (PPPA). The CPSC states in 16 CFR 1701.3 that products packaged in containers of five

gallons or more are not deemed to be "household substances," and therefore not subject to the special [child-resistant] packaging requirements of the PPPA, unless the CPSC makes a determination to the contrary with respect to a specific substance.

Because of the range of products regulated under the FIFRA, EPA believes that a single size cutoff would not be suitable. The size of a pesticide product marketed primarily for consumer residential use as opposed to serviceperson use depends on the intended use of the product. Insecticides, rodenticides, herbicides, fungicides, disinfectants and swimming pool chemicals are normally distributed for residential use in packages of different size.

Moreover, the distinct marketing channels normally expected for residential products (such as those regulated by the CPSC) are for pesticides more likely to be blurred by usage and user considerations. Larger sizes may be marketed to individual consumers if the dosage rate is high, the active ingredient concentration is low, or frequent application is needed. On the other hand, servicepersons may purchase smaller containers of a product whose use requires less product per application, or which is more concentrated. Because of the variety of pesticide types, and the greater potential for user "crossover," the Agency believes that a single size limit would not realistically define the residential and serviceperson markets for the purposes of child-resistant packaging requirements. EPA believes that an exemption based on product type would permit the Agency to more accurately delineate the residential and serviceperson markets. This proposal therefore would establish size exemptions according to product type.

The Agency is proposing a set of size limits that it believes represent limits above residential users are unlikely to purchase the product. Child-resistant packaging would be required for products in sizes at or below the specified limits. Packaging in sizes above the specified limits would be exempt from the child-resistant packaging requirements. If a serviceperson chooses to purchase a smaller package, the only consequence would be that he would have to open a child-resistant package in order to use the product. EPA does not view this as an unreasonable burden for servicepersons.

Because data on the marketing of pesticides are not required to be submitted to the Agency, EPA has little information to substantiate that its proposed size limits are those that most accurately reflect the residential and serviceperson markets. The Agency's intention is that products in sizes available for purchase by residential consumers be required to be in child-resistant packaging. EPA has proposed to include products at or below the specified sizes within the requirement for child-resistant packaging. For example, an insecticide or rodenticide in a 5-gallon container would be required to be in child-resistant packaging. Only those above the specified size limits (in the example, greater than 5 gallons) would be exempt. EPA believes that this approach would offer the greatest assurance of protection for children. EPA requests comment on its proposed size limits, in particular on the following questions:

1. Is it sound to conclude that there is little risk to children from the use of a pesticide by servicepersons if the pesticide is not packaged in child-resistant packaging?

2. Are the categories of products sufficiently defined for the purpose of specifying a size limit for that type of product? Are sub-categories, for example, needed to refine the limits?

3. Is it sufficient to specify size cutoffs for liquid and solid products, or should additional product formulation descriptions be added?

4. Do the size limits for the product types identified accurately describe a cutoff such that sizes above the limit are generally available exclusively to servicepersons and those at or below exclusively to residential users? If any should be changed, in what way?

5. Are there product types and/or uses other than those identified for which higher and/or separately defined limits clearly should be established because they are ordinarily marketed to consumers for residential use in sizes larger than that specified for the product category?

6. What, if any, marketing practices should be taken into consideration in defining the categories or limits?

EPA notes that the CPSC provides for non-complying [non-child-resistant] packaging for certain household products under the PPPA. Their provision is intended to aid the elderly and handicapped who may have difficulty in opening child-resistant packaging. In its original promulgation of child-resistant packaging requirements in 1979, EPA did not establish a comparable provision for pesticide products, because, as stated at that time: "The Agency assumed that a person's need for a pesticide is not normally as urgent as for a drug and the person normally could arrange for someone to help him apply the pesticide. . . . [B]ecause less toxic pesticides would be available in non-complying packaging, the Agency believed the elderly and handicapped would not be seriously inconvenienced."

No comments opposing or contradicting this proposal were received by the Agency at that time, and since then the Agency has received only one request (from a pesticide producer) for a consumer non-complying package. The Agency continues to believe that non-complying packaging for the benefit of the elderly and handicapped is not necessary for pesticides, and currently has no plans to incorporate a non-complying package option into pesticide regulations. However, EPA would like additional comment on the matter at this time. The comment would be useful if in the future the Agency considers a noncomplying package option for household pesticides. If it were to do so, the Agency would likely use the CPSC approach as a model, within the framework and limitations of the FIFRA.

IV. Application of the Exemption

The general exemption would be automatically applicable to products subject to child-resistant packaging. Neither an application by the registrant nor approval by the Agency would be required.

The Agency recognizes the pesticide marketing strategies are constantly changing, and that the size limits proposed may not in the future reflect the sizes actually offered in residential and serviceperson channels of trade. For this reason, the Agency would reserve authority to require that a product intended for residential use be distributed in child-resistant packaging, notwithstanding the size exemption that would otherwise apply. This action could be taken on a single product, or applied to a group of products if the Agency discovered that those products were being made readily available to residential users.

V. Labeling of Exempted Products

Because of the inexact nature of the size limits, and the difficulty of addressing the many factors that influence consumer purchase choice, EPA is proposing that products exempted from child-resistant packaging requirements solely because of application of the size exemption be labeled with an advisory statement. This would assure that residential users who sought out a large size package would at least be informed that the package was not child-resistant. The statement would reinforce the existing

admonition to "Keep Out of Reach of Children," but would not replace it.

EPA proposes that language similar to "This package is not child-resistant" be used for this purpose. This statement would not require the user to take any particular action and would not be considered a restriction upon the purchaser. The statement would be required to appear on the front panel of the label in type size at least as large as the "Keep Out of Reach of Children" statement.

VI. Statutory Review

In accordance with FIFRA sec. 25(a), this proposal was submitted to the U.S. Department of Agriculture for comment.

USDA generally supported the proposal to exempt certain package sizes from child-resistant packaging requirements. USDA did, however, suggest that herbicide products be categorized in more detail, with higher limits for products of the "weed-and-feed" variety (mixed with fertilizers) and lower limits for more concentrated products. Since the Agency has specifically requested comment on the questions of appropriate sizes and level of detail of the description of the exempted products, it will consider USDA's comments in conjunction with those received in response to the proposal from other interested parties.

Copies were also supplied to the Committee on Agriculture of the U.S. House of Representatives and the Committee on Agriculture, Forestry, and Nutrition of the U.S. Senate for comment. No comments were received from either Committee.

VII. Regulatory Requirements

A. Executive Order 12291

Under E.O. 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. EPA has determined that this proposal is not a major regulation as defined by E.O. 12291.

This proposal could decrease the costs to pesticide producers to package large-size products intended for the residential service industry. In small packages, child-resistant packaging adds about three cents to the cost of each package. The savings by not having to use child-resistant packaging for large packages should not be less than the cost for small containers.

When promulgated, this proposal would replace a current policy permitting products labeled for serviceperson use only to be excepted from the requirement of child-resistant packaging. To the extent that producers of pesticides in large-size packages avail themselves of the exemption, producers of child-resistant packaging could suffer some losses. This proposal may also have a negative effect on any research and development efforts in the area of large-size child-resistant packaging. Both of these impacts are expected to be negligible, however, since most producers marketing large size packages currently use the serviceperson statement in lieu of child-resistant packaging. Hence few package of the size that would be exempted by the proposal are currently in child-resistant packaging.

This proposed rule was submitted to the Office of Management and Budget (OMB) for review as required by E.O. 12291.

B. Regulatory Flexibility Act

This proposed regulation has been reviewed under the provisions of sec. 3(a) of the Regulatory Flexibility Act and it has been determined that this proposal does not contain provisions which would have a significant adverse impact on a substantial number of small entities. Since this proposal would reduce costs to all pesticide producers, it would be beneficial to small producers. Therefore, I hereby certify that the proposed revisions to 40 CFR 162.16 would not have a significant impact on a substantial number of small entities.

C. Paperwork Reduction Act

This proposal contains no information collection requests. Therefore, the Paperwork Reduction Act does not apply.

(Secs. 3, 25(a)(1) and 25(c)(3), Federal Insecticide, Fungicide, and Rodenticide Act, as amended (Pub. L. 92-516, 92 Stat. 819; 7 U.S.C. 136 through 136y; 1972, 1975, and 1978)

List of Subjects in 40 CFR Part 162

Intergovernmental relations, Labeling, Packaging and containers, Pesticides and pests, Administrative practices and procedures.

Dated: December 21, 1983.

William D. Ruckelshaus,

Administrator.

PART 162—[AMENDED]

Therefore, it is proposed that 40 CFR 162.16 be amended by adding paragraph (f)(5) (i), (ii), and (iii) to read as follows:

§ 162.16 Child-resistant packaging.

* * * * *

(f) * * *

(5) *Exemption based upon package size.* (i) Except as provided in paragraph (f)(5)(ii) of this section, the Agency hereby grants an exemption from the requirements of this section for each product that is distributed or sold in packages having the net contents specified in the following table:

TABLE A—SIZE LIMITS FOR PACKAGES THAT ARE NOT REQUIRED TO BE DISTRIBUTED OR SOLD IN CHILD-RESISTANT PACKAGING

If the product type is:	The following sizes are not required to be distributed or sold in child-resistant packaging if the net contents are measured by:	
	Volume (for liquids, gallons)	Weight (for non-liquids, pounds)
Insecticide	>1	>40
Rodenticide	>1	>40
Herbicide	>5	>75
Fungicide	>5	>75
Antimicrobial (except swimming pool chemicals)	>5	>10
Swimming pool chemicals	>15	>100

(ii) Notwithstanding the general exemption granted by paragraph (f)(5)(i) of this section, the Agency may require that a product packaged in a size exceeding that listed in the table be distributed or sold only in child-resistant packaging if the Agency determines that the product is, or is intended to be, distributed or sold to homeowners or other members of the general public. If the Agency makes such a determination, it will notify the registrant in writing and provide a short statement on the basis of its determination. The registrant will then have 30 days to show in writing why his product should not be in child-resistant packaging. Thereafter the Agency will determine whether to require the product to be distributed only in child-resistant packaging and will so notify the registrant.

(iii) A product that is exempted from the reqirement for child-resistant packaging by the provisions of this paragraph (f)(5), must bear the following statement on the front panel of the label, in capital letters and in type size at least as large as that used for the child hazard warning ("Keep Out of Reach of Children"): "This package is not child-resistant."

* * * * *

[FR Doc. 84-9 Filed 1-3-84; 8:45 am]

BILLING CODE 6560-50-M

---

40 CFR Part 180

[PP 2E2605/P320; OPP-FRL-2500-5]

Ethyl 3-Methyl-4-(Methylthio) Phenyl (1-Methylethyl) Phosphoramidate; Proposed Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that a tolerance be established for the combined residues of the nematocide ethyl 3-methyl-4-(methylthio) phenyl (1-methylethyl) phosphoramidate and its cholinesterase-inhibiting metabolites in or on the raw agricultural commodity raspberries. The proposed regulation to establish a maximum permissible level for residues of the nematocide in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR–4).

DATE: Comments must be received on or before February 3, 1984.

ADDRESS: Written comments by mail to: Program Management and Support Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, bring comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Donald Stubbs (703–557–1192).

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition 2E2605 to EPA on behalf of the IR–4 Technical Committee and the Agricultural Experiment Stations of Oregon and Washington.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for the combined residues of the nematocide ethyl 3-methyl-4-(methylthio) phenyl (1-methylethyl) phosphoramidate and its cholinesterase-inhibiting metabolites ethyl 3-methyl-4-(methylsulfinyl) phenyl (1-methylethyl) phosphoramidate and ethyl 3-methyl-4-(methylsulfonyl) phenyl (1-methylethyl) phosphoramidate in or on the raw agricultural commodity raspberries at 0.1 part per million (ppm).

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicological data considered in support of the proposed tolerance were a 2-year dog feeding study with a no-observed effect level (NOEL) of 0.025 mg/kg/day (1.0 ppm); an 18-month mouse oncogenicity study with a NOEL of 7.5 mg/kg/day (50 ppm) and no observed oncogenic effects at all levels tested (2, 10, and 50 ppm); a 2-year rat feeding study with a NOEL for ChE inhibition of 0.15 mg/kg/day (3 ppm); a 3-generation rat reproduction study with a NOEL of 1.5 mg/kg/day (30 ppm); and teratology studies using rates and rabbits with NOEL's of 0.5 mg/kg and 0.3 mg/kg, respectively. An oncogenicity study in a second species (rat) is currently being conducted and is expected to be completed in 1986.

The acceptable daily intake (ADI), based on the 2-year dog feeding study (NOEL of 0.025 mg/kg/day) and using a 10-fold safety factor, is calculated to be 0.0025 mg/kg of body weight (bw)/day. The maximum permitted intake (MPI) for a 60-kg human is calculated to be 0.15 mg/day. The theoretical maximum residue contribution (TMRC) from existing tolerances for a 1.5-kg; daily diet is calculated to be 0.0045 mg/day; the current action will increase the TMRC by 0.00005 mg/day (1.1 percent). Published tolerances utilize 3.01 percent of the ADI; the current action will utilize an additional 0.03 percent.

The nature of the residues is adequately understood and an adequate analytical method, gas-liquid chromatography, is available for enforcement purposes. Raspberries are not considered an animal feed item and, therefore, there is no expectation of secondary residues in meat, milk, poultry, and eggs. There are presently no actions pending against the continued registration of this chemical.

Based on the above information considered by the Agency, the tolerance established by amending 40 CFR 180.349 would protect the public health. It is proposed, therefore, that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 2E2605/P320]. All written comments filed in response to this petition will be available in the Program Management and Support Division at the address given above from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–534, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a(e)))

List of Subjects in 40 CFR Part 180

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

Dated: December 16, 1983.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, it is proposed that 40 CFR 180.349(a) be amended by adding and alphabetically inserting the raw agricultural commodity raspberries to read as follows:

§180.349 Ethyl 3-methyl-4-(methylthio) phenyl (1-methylethyl) phosphoramidate; tolerances for residues.

(a) * * *

Commodities	Parts per million
* * * *	*
Raspberries	0.1
* * * *	*

[FR Doc. 84–7 Filed 1–3–84; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 261

[FRL-2501-1]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of data and request for comment.

SUMMARY: On March 16, 1981, the American Iron and Steel Institute following up on its comments on interim final Agency regulations, submitted a rulemaking petition pursuant to the Resource Conservation and Recovery Act of 1976 (RCRA) requesting an exclusion from the presumption of hazardousness presently contained in the regulations for lime neutralized

waste pickle liquor sludge from all steel finishing operations (formerly EPA Hazardous Waste No. K063). In response to that petition, the Agency has obtained data which will become part of the administrative record for Agency action. EPA is now making this data available for public inspection and comment.

DATE: EPA will accept comments until February 21, 1984.

ADDRESSES: Comments should be sent to Docket Clerk, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. Comments should identify the docket number "Section 3001—Spent pickle liquor listings." The supporting information is available for inspection and copying in Room S-212, U.S. Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays. Comments will be made available as they are received.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at 1-800-424-9346 or at (202) 382-3000. For technical information contact Jacqueline W. Sales, Office of Solid Waste (WH-565B), 401 M St., SW., Washington, D.C. 20460, (202) 382-4770.

SUPPLEMENTARY INFORMATION:

I. Background

On May 19, 1980, when EPA promulgated the first phase of the RCRA Subtitle C hazardous waste regulations, the Agency included in its list of hazardous wastes spent pickle liquor from steel finishing operations (EPA Hazardous Waste No. K062) and sludge from lime treatment of spent pickle liquor from steel finishing operations (EPA Hazardous Waste No. K063). The sludge is generated by a well known technique involving lime neutralization, flocculation, clarification, and, in most cases, dewatering of the resultant sludge.

On November 12, 1980, in response to public comment, the Agency removed EPA Hazardous Waste No. K063 from the list and relied on the provisions of 40 CFR 261.3(c)(2) to retain regulatory control over these wastes. This provision states that wastes derived from treating hazardous wastes are presumptively hazardous. In addition, the Agency indicated that it would consider a rulemaking petition to exclude these wastes from RCRA control it the steel finishing industry submitted data which demonstrated that these wastes are non-hazardous.

On March 16, 1981, the American Iron and Steel Institute (AISI), following up on its earlier comments, submitted a rulemaking petition requesting an exclusion of lime neutralized waste pickle liquor sludge (LNWPLS). AISI submitted data showing that lead and hexavalent chromium, the constituents of concern for which the waste is listed, are present in the LNWPLS in essentially an immobile form. EPA has since obtained considerable additional data, both from AISI members and from other sources, which bears on the original waste listing and on AISI's rulemaking petition. We are now seeking comment on this information. This information and comments we receive will form the record for subsequent Agency rulemaking.

II. Availability of Information

The following information is available for public inspection in the EPA RCRA docket:

A. American Iron and Steel Institute Rulemaking Petition

AISI submitted Extraction Procedure (EP) extract data from fourteen steel finishing operations to support their claim that lead is present in lime neutralized waste pickle liquor sludge (LNWPLS) in concentrations well below the maximum EP toxicity limits and hexavalent chromium is well below the proposed EP toxicity limits (see 45 FR 72029-72041, October 30, 1983) demonstrating that they are present in essentially an immobile form (see Table 1).

TABLE 1.—LIME NEUTRALIZED WASTE PICKLE LIQUOR SLUDGE

[EP Extract Values (ppm) [1]]

Facility	Lead	Total chromium	Hexavalent chromium
1[2]	<0.030	0.19	0.069
2[2]	0.039	0.018	0.008
3	0.0027	0.037	
4[2]	0.04	0.82	0.16
5[2]	<0.02	2.07	
6	0.37	0.35	
7	0.15	1.00	
8	0.60	<0.03	
9	0.12	0.024	0.025
10	0.09	<0.02	
11[2]	<0.10	0.05	
12[2]	0.055	0.076	
13	0.10	<0.02	
14[2]	0.18	5.10	0.127

[1] These values represent an *average* of all samples analyzed from each facility.
[2] Stainless steel facilities.
Source: AISI rulemaking petition.

B. Data from Site-specific Delisting Petitions

Agency records indicate that approximately 360 steel finishing facilities handle or generate LNWPLS; therefore, the Agency does not view the data submitted in the AISI rulemaking petition (*i.e.*, EP extract data from fourteen facilities) as fully representative of steel finishing industry wastes. The Agency, therefore, reviewed additional data available from site-specific delisting petitions (see Table 2 for data; petitioners names are listed at the end of today's notice). These data appear to support AISI's contention that lead and hexavalent chromium are present in low levels and are substantially immobilized in properly neutralized LNWPLS. (Virtually all of the chromium present in the lime neutralized waste will be in the trivalent state because total chromium is reduced by ferrous ion, a reducing agent present in all spent pickle liquors.)

TABLE 2—IRON AND STEEL INDUSTRY, LIME NEUTRALIZED WASTE PICKLE LIQUOR SLUDGE

[EP Extract values (ppm [1])]

Facility [2]	Lead	Total chromium	Hexavalent chromium
1	0.50	0.10	0.10
2	0.29	0.05	0.05
3	0.80		0.10
4	0.08	0.05	
5	0.45	0.26	
6	0.04		0.07
7	0.30	0.06	0.01
8	0.02	4.73	
9	1.20	0.03	0.02
10	1.00	3.80	0.01
11	0.05		0.22
12	0.17	0.03	0.02
13	0.25	0.02	
14	0.57	15.0	0.03
15	1.00	0.38	0
16	1.36		0.01
17	0.50	0.50	
18	0.147	0.04	
19	0.50	0.10	0.005
20	0.06	0.223	0.022
21	1.70		0.053
22	0.056	0.082	
23	0.19	0.17	
24	0.10	0.03	0.03
25	0.08	0.10	
26	1.00		1.00
27	0.06	0.10	0.50
28	0.02	0.68	0.02
29	0.15		0.45
30	0.01	2.20	0.02
31	0.649		0.058
32	0.12	0.10	
33	0.04	0.40	
34	0.60	0.02	
35	0.42	0.11	
36	0.32	0.11	
37	0.21	0.10	
38	<0.50	0.38	
39	0.10	0.28	
40	0.11	2.70	0.18
41	2.60	0.05	
42	0.17	1.03	<0.02
43	0.03	0.04	

[1] These values represent the *maximum* EP values for all samples analyzed from each facility.
[2] The facility names are listed at the end of today's notice.

C. EPA Studies to Determine Whether Commingling of Spent Pickle Liquor With Non-hazardous Waste May Affect the Treatment Process And Whether Hazardous Constituents Other Than Those For Which Spent Pickle Liquor Was Listed Are Present in the Waste at Levels of Regulatory Concern

In considering the AISI petition, the Agency is concerned that in making such a decision (such as to exclude LNWPLS), a diverse group of persons who treat spent pickle liquor but whose wastes may still be hazardous may be excluded. Our basis for this concern is two-fold; first, we are concerned that if the spent pickle liquor is commingled with non-hazardous waste (such as organic waste streams), commingling could adversely affect the treatment process and increase the leachability of the toxic heavy metals. Steel finishing is practiced by a large diverse group of manufacturers. For example, plants in such standard industrial classes (SIC) as Paints, Varnishes, Lacquers, Enamels (SIC 285), Industrial Organic Chemicals (SIC 286) and Adhesives, Sealants, Printing Ink, Other (SIC 289) treat spent pickle liquor and generate LNWPLS. If the spent pickle liquor were commingled with other wates that are generated by these industries, the Agency believes that the metal leachability could be directly affected. The Agency has data from delisting petitions which indicate that organic-containing wastes may interfere with effective lime neutralization.[1]

Therefore, because commingling of spent pickle liquor with other materials could likewise affect treatability, we are contemplating a rule to exclude only those wastes where we have assurances that the treatment process is controlled to prevent significant interferences. Although the steel industry may mix other waste streams with spent pickle liquor before treatment, there do not appear to be interfering agents, such as organics, in these other waste streams (see EPA Phase I Report for the Spent Pickle Liquor Listing). For example, cold rolling process wastes (oily waste containing organics) are frequently mixed with spent pickle liquor prior to treatment. However, the oily organic containing phase is typically skimmed off prior to lime treatment. Thus, organics are not expected to be present in significant concentrations to interfere with waste treatment, or to be present in LNWPLS. Findings from delisting petitions for LNWPLS from the iron and steel industry appear to indicate that treatment is effective.

Secondly, the Agency is concerned that when spent pickle liquor is commingled with other wastes before treatment there may be hazardous constituents, other than lead and hexavalent chromium, in the LNWPLS at levels of regulatory concern. The Agency has completed the first phase of this study which addresses hazardous constituents present in LNWPLS from the iron and steel industry. We have evaluated raw waste pickle liquor influent typically lime treated by the iron and steel industry. Organic toxicants do not appear to be present in the effluent in significant concentrations (see Development Document for Effluent Limitations Guidelines and Standards for the Iron and Steel Manufacturing Point Source Category, Vol. V). Data indicate, however, that nickel is present in LNWPLS from stainless steel finishing operations. Since nickel is a constituent in the manufacture of stainless steel, the Agency can reasonably expect nickel to be present in the wastes. The Agency is evaluating whether the levels present in these wastes are of regulatory concern. No other toxic metals are present in significant concentrations in the EP extract from LNWPLS (see EPA Stainless Steel Finishing Waste Characterization, May 1982 and Development Document for Effluent Limitations Guidelines and Standards for the Iron and Steel Manufacturing Point Source Category, Vol. VI).

Copies of the following information and studies discussed in this Notice are available for public inspection in the RCRA docket:

1. AISI Rulemaking Petition.
2. EPA, *Stainless Steel Finishing Waste Characterization,* Contract No. 68-01-6467, May 1982.
3. Witmer, Charlotte, *Toxicity of Orally Ingested Nickel Compounds,* September 1982 (report submitted to EPA by the Specialty Steel Industry).
4. EPA, Phase I Report for the Spent Pickle Liquor Listing, Contract No. 68-01-6804, December, 1983.
5. Delisting Verification, Sampling Mission No. 1: Environmental Waste Removal, Inc. Contract No. 68-01-6467, October, 1982.
6. Delisting Verification, Sampling Mission No. 2: Al-Chem Tron, Inc., Contract No. 68-01-6467, October, 1983.
7. EPA, Development Document for Effluent Limitation Guidelines and Standards for the Iron and Steel Manufacturing Point Source Category, Vol. V, EPA 440/1-82/024, May 1982.
8. EPA, Development Document for Effluent Limitation Guidelines and Standards for the Iron and Steel Manufacturing Point Source Category, Vol. VI, EPA 440/1-82/024, May 1982.
9. Letter to Earle Young (AISI) from John Lehman (EPA), July 16, 1981.
10. Letter from Matthew Straus (EPA) to Stephen Schwartz (AISI), October 5, 1981.
11. Letter from John Lehman (EPA) to Stephen Schwartz (AISI), October 27, 1981.
12. Letter from Rita Lavelle (EPA) to Earle Young (AISI), December 27, 1982.
13. Letter to Lee Thomas (EPA) from R. Sarah Compton (Counsel for Specialty Steel Institute), April 21, 1983.
14. Letter to R. Sarah Compton (Counsel for Specialty Steel Institute) from John H. Skinner (EPA), November 9, 1983.
15. Site-Specific Petitions to Delist EPA Hazardous Waste Nos. K062 and K063:

IRON AND STEEL INDUSTRY

Petition No.	Facility
0506	U.S. Steel Corp.
0120	Copperweld Steel Co.
0271	Union Carbide.
0027	Bekaert Steel Wire.
0228	Carpenter Technology.
0014	Johnson Steel & Wire.
0475	Olin Corp.
0097	Allegheny Ludlum.
0099	Keystone Group.
0348	Bethlehem Steel Corp.
0106	Jones & Laughlin Steel.
0115	Timken Co.
0423	Quanex Corp.
0117	Trent Tube.
0314	Ohio Steel Tube Co.
0455	Inland Steel/Indiana Harbor Works.
0482	Mid-West Fabricating Co.
0105	Great Lakes Steel.
0298	Ingersoll Johnson Steel Co.
0158	Al Tech Specialty Steel Corp.
0086	Crucible, Inc.
0029	Firestone Steel Products.
0055	ARMCO, Inc.
0063	Keystone Group.
0075	Ohio Steel Tube Co.
0080	Gulf & Western.
0085	ARMCO, Inc.
0094	Allegheny Ludlum.
0108	Allegheny Ludlum.
0110	Allegheny Ludlum.
0134	Empire Detroit Steel Division.
0159	General Cable.
0160	Al Tech Specialty Steel Corp.
0266	General Cable.
0179	Lehigh Lancaster.
0203	Vulcan Rivet & Bolt Corp.
0132	Peerless Chain Co.
0389	Sandvik.
0144	Bekaert Steel Wire Corp.
0273	Bethlehem Steel Corp.
0193	Bethlehem Steel Corp.
0243	Plymouth Tube Co.
0089	Triangle PWC.

Other Industries

0191	Leggett & Platt, Inc.
0192	Chemline Corp.
0193	American Nickeloid Co.
0303	Robertson, Inc.
0310	Calvin Ind.
0323	Liquid Dynamics.
0324	National Standard.
0347	General Electric.
0397	Beech Aircraft Corp.
0404	Conversion Systems, Inc.
0424	GMC Harrison Radiator.
0379	Special Metals.
0433	Cleaners Hanger Co.
0451	True Temper Sport, Inc.
0460	Steel Warehouse Co.

[1] For example, as part of its spot check verification program for delisting, the Agency has visited several facilities that treat electroplating wastes and commingle them with other nonhazardous wastes (such as organic waste streams). In reviewing these results, we find that, in most instances, the treated wastes continue to leach high concentrations of toxic metals or actually exhibit the EP toxicity characteristic. The type of treatment used at these facilities is virtually the same as that used in treatment of spent poickle liquor. (See Delisting Verification, Sampling Mission #1 and Sampling Mission #2, October, 1982.)

IRON AND STEEL INDUSTRY—Continued

Petition No.	Facility
0460	MOO6 Automotive.
0471	H. H. Robertson Co.
0491	CWM.
0507	Teledyne Monarch Rubber.
0523	All-Brite.
0524	International Galvanizing Co.
0005	Fosbrink.
0024	Dresser Industries.
0028	Florida Wire & Cable.
0044	Wiremill Inc.
0048	American Recovery Co.
0051	Maytag.
0059	Chem Met Services.
0068	Carborundum.
0060	Al Chem-Tron, Inc.
0139	Resource Recycle Tech/Industrial.

The Agency requests that all comments be submitted to the RCRA Docket Clerk on or before February 21, 1984.

Dated: December 21, 1983.

Jack McGraw,

Acting Assistant Administrator for Solid Waste.

[FR Doc. 84-16 Filed 1-3-84; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 799

[OPTS-42028A; FRL 2742-3]

Propylene Oxide; Proposed Test Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In the First Report of the Interagency Testing Committee (ITC), the ITC designated the category of alkyl epoxides for priority consideration for epidemiological studies and testing for carcinogenicity, mutagenicity, teratogenicity, other chronic effects, and environmental fate. This notice addresses one member of the alkyl epoxides category, propylene oxide. Other members of the category will be addressed in other **Federal Register** notices.

Under section 4(a) of the Toxic Substances Control Act (TSCA), EPA today is proposing that manufacturers and processors of propylene oxide test this chemical for teratogenicity. EPA is not proposing epidemiological studies or testing for carcinogenicity, mutagenicity, other chronic effects, or environmental fate at this time.

DATES: Submit written comments on or before March 5, 1984. Make requests to submit oral comments by February 21, 1984. If requests are made to submit oral comments, EPA will hold a public meeting on March 19, 1984 on this rule in Washington, D.C. For further information on arranging to speak at the meeting see Unit X of this preamble.

ADDRESS: Submit written comments in triplicate identified by the document control number (OPTS-42028A) to: TSCA Public Information Office (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-108, 401 M St. SW., Washington, D.C. 20460.

A public version of the administrative record supporting this action (with any confidential business information deleted) is available for inspection at the above address from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Jack P. McCarthy, Director, TSCA Assistance Office (TS-799), Rm. E-543, 401 M St. SW., Washington, D.C. 20460, Toll Free: (800-424-9065), In Washington, D.C.: (554-1404), Outside the USA: (Operator-202-554-1404).

I. Introduction

Section 4(e) of TSCA (Pub. L. 94-469, 90 Stat. 2003 *et seq.*; 15 U.S.C. 2601 *et seq.*) established in Interagency Testing Committee (ITC) to recommend to EPA a list of chemicals to be considered for testing under section 4(a) of the Act.

The ITC designated the alkyl expoxides category for priority consideration in its First Report, submitted to EPA in October 1977, and published in the **Federal Register** of October 12, 1977 (42 FR 55026). The category, as defined by the ITC, includes all non-cyclic aliphatic hydrocarbons with one or more epoxide functional groups. The ITC recommended that the alkyl epoxides category be considered for the following testing: carcinogenicity, mutagenicity, teratogenicity, other chronic effects and environmental fate; it also recommended epidemiological studies. This notice serves as EPA's response to the recommendations of the ITC for one member of the alkyl epoxide category, propylene oxide.

Under section 4(a) of TSCA, the Administrator shall by rule require testing of a chemical substance or mixture to develop appropriate test data if the Agency finds that:

(A) (i) the manufacture, distribution in commerce, processing, use, or disposal of a chemical substance or mixture, or that any combination of such activities, may present an unreasonable risk of injury to health or the environment,

(ii) there are insufficient data and experience upon which the effects of such manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data; or

(B) (i) a chemical substance or mixture is or will be produced in substantial quantities, and (I) it enters or may reasonably be anticipated to enter the environment in substantial quantities or (II) there is or may be significant or substantial human exposure to such substance or mixture.

(ii) there are insufficient data and experience upon which the effects of the manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data.

In making section 4(a)(1)(A) findings, EPA considers both exposure and toxicity information to make the finding that the chemical may present an unreasonable risk. For the first finding under section 4(a)(1)(B), EPA considers only production, exposure and release information to determine if there is substantial production and significant or substantial exposure or substantial release. For the second finding under both sections 4(a)(1)(A) and 4(a)(1)(B), EPA examines toxicity and fate studies to determine if existing information is adequate to reasonably determine or predict the effects of human exposure to or environmental release of the chemical. In making the third finding that testing is necessary, EPA considers whether any ongoing testing will satisfy the information needs for the chemical and whether testing which the Agency might require would be capable of developing the necessary information.

EPA's approach to determining when these findings are appropriately made is described in detail in EPA's first and second proposed test rules as published in the **Federal Register** of July 18, 1980 (45 Fr 48528) and June 5, 1981 (46 FR 30300). The section 4(a)(1)(A) finding is discussed in 45 FR 48528 and the section 4(a)(1)(B) finding is discussed in 46 FR 30300.

In evaluating the ITC's testing recommendations for propylene oxide, EPA considered all available relevant information including the following: information presented in the ITC's report recommending testing consideration; production volume, use, exposure, and release information reported by manufacturers of propylene oxide under the TSCA section 8(a) Preliminary Assessment Information Rule (40 CFR Part 712); unpublished health and safety studies submitted by manufacturers and processors of propylene oxide under the TSCA section

8(d) Health and Safety Data Reporting Rule (40 CFR Part 716); and other published and unpublished data available to the Agency.

II. Proposed Rule

On the basis of its evaluation, as described in this proposed rule and the technical support document, EPA is proposing teratogenicity testing for propylene oxide on the authority of sections 4(a)(1)(A) and 4(a)(1)(B) of TSCA.

A. Profile

Propylene oxide (CAS No. 75-56-9) is a colorless liquid that has an ether-like odor and is extremely flammable. It has a boiling point of 34.23°C (Ref. 1) and a density of 0.859 g/ml at 0°C (Ref. 1). Its solubility in water is 405,000 ppm at 20°C (Ref. 1).

In 1980, domestic production of propylene oxide totaled 1.77 billion pounds. Propylene oxide is currently produced by two firms—Dow and ARCO Chemical Companies—at four sites in the United States. Dow uses the chlorohydrin process at its propylene oxide plants; ARCO uses the peroxidation process. Each process accounts for about 50 percent of total U.S. capacity. Propylene oxide's major use is as a chemical intermediate. It is also used as a stabilizer in dichloromethane. In 1977, there were 32 processors of propylene oxide (Ref. 2). For a more detailed discussion of production, uses and exposure of propylene oxide, see the propylene oxide support document available from the TSCA Assistance Office.

B. Findings

EPA is basing its proposed testing on the authority of sections 4(a)(1)(A) and 4(a)(1)(B) of TSCA.

1. The 4(a)(1)(A) findings for teratogenic effects are as follows:

a. EPA finds that the manufacture, processing, and use of propylene oxide may present an unreasonable risk of injury to human health due to teratogenic effects because (a) available animal studies suggest that propylene oxide has a teratogenic potential and (b) in excess of 40,000 individuals are potentially exposed to propylene oxide as a result of its manufacture, processing, and use.

b. EPA also finds that there are insufficient animal and human data to reasonably determine or predict the teratogenic effects of propylene oxide. The finding of "may present an unreasonable risk" of teratogenic effects is based on a NIOSH inhalation teratology study (Ref. 3). Rats and rabbits were exposed to a single concentration of 300 ppm propylene oxide. Neither developmental toxicity nor maternal toxicity was observed in rabbits exposed to 300 ppm. However, developmental and maternal toxicity were observed among female rats and their pups exposed to 300 ppm propylene oxide. A no-effect level for developmental toxicity in the rat could not be determined and one can not determine if the developmental toxicity observed in the study can be attributed entirely to maternal toxicity.

c. EPA finds that additional teratogenicity testing of propylene oxide is necessary to develop additional data to evaluate reasonably the teratogenic risks posed by exposure to propylene oxide.

2. The 4(a)(1)(B) findings for teratogenic effects are as follows:

a. There are substantial amounts of propylene oxide produced in or imported into the United States each year. The annual U.S. production volume of propylene oxide is estimated to be approximately 1.8 billion pounds, with another 90 million pounds imported into the United States each year.

b. Estimates indicate that over 40,000 people may be exposed to propylene oxide each year via manufacturing, processing, and use activities.

c. EPA finds that there are insufficient data from the NIOSH teratology study (Ref. 3) from which to reasonably determine or predict the teratogenic effect from exposure to propylene oxide, and that additional testing of propylene oxide for teratogenicity is necessary to develop such data.

On the basis of these findings, the Agency is proposing a teratogenicity test in rats on propylene oxide.

The Agency is not proposing the other tests which the ITC recommended at this time. Data from several recently completed oncogenicity studies should be sufficient to make a reasonable determination of the carcinogenicity of propylene oxide. A decision for additional mutagenicity testing on propylene oxide will be postponed until the results of a number of mutagenicity tests in progress on ethylene oxide are analyzed by the Agency (ethylene oxide, a member of the alkyl epoxides category, consistently has shown greater activity in mutagenesis assays and has tested positive in more mutagenesis assays than propylene oxide). EPA believes that the data from ongoing mutagenicity testing on ethylene oxide, along with available mutagenicity data on propylene oxide, should be used to determine what, if any, further mutagenicity testing on propylene oxide may be appropriate. Inhalation mutagenicity testing in progress on ethylene oxide includes: (1) Alkylation in *Drosophila* sperm cells; (2) alkylation in mouse sperm cells; (3) mouse specific locus test; (4) biochemical specific locus test in mice; and (5) heritable translocation test in mice. After the data from the ongoing ethylene oxide mutagenicity testing and existing propylene oxide mutagenicity data are analyzed by the Agency, the Agency will consider: (1) whether a mouse specific locus test or other additional mutagenicity testing on propylene oxide is necessary or (2) whether ethylene oxide mutagenicity data will provide a sufficient basis for mutagenicity risk assessment for propylene oxide without further testing of propylene oxide for this effect. In making its analysis, EPA will take into account available data on other effects that may provide sufficient basis for regulation. The Agency is interested in public comment on the various aspects of assessing mutagenicity testing needs for propylene oxide. Because Dow and ARCO are performing reproductive and neurotoxic effects testing, EPA is not proposing testing for these two effects at this time. Data from these studies should be sufficient to make a reasonable determination of the reproductive and neurotoxic effects (including behavioral changes) of propylene oxide. EPA is not proposing an epidemiological study at this time. When the Agency has evaluated the results of all the oncogenicity studies on propylene oxide, it will determine whether an epidemiological study is necessary. In addition, EPA has concluded that available data are sufficient to reasonably predict the environmental fate of propylene oxide.

The analysis on which the above findings are based is presented in the propylene oxide support document, which is available from the TSCA Assistance Office.

C. Test Substance

EPA is proposing that propylene oxide of at least 99.0 percent purity be used as the test substance. Such a grade is readily available commercially.

D. Persons Required to Test

Section 4(b)(3)(B) of TSCA specifies that the activities for which the Administrator makes section 4(a) findings (manufacturing, processing, distribution in commerce, use and/or disposal) determine who bears the responsibility for testing. Manufacturers are required to test if the findings are based on manufacturing ("manufacture" is defined in section 3(7) of TSCA to include "import"). Processors are

required to test if the findings are based on processing. Both manufacturers and processors are required to test if the exposures giving rise to the potential risk occur during use, distribution, or disposal. Because EPA has found that manufacture, processing, and use of propylene oxide give rise to exposures that may lead to an unreasonable risk, EPA is proposing that persons who manufacture or process, or who intend to manufacture or process this chemical at any time from the effective date of this test rule to the end of the reimbursement period, be subject to the rule. The end of the reimbursement period ordinarily will be 5 years after the submission of the last final report required under the final test rule. As discussed in Unit II. F, EPA expects that manufacturers will conduct testing and that processors will ordinarily be exempted from testing.

Because TSCA contains provisions to avoid duplicative testing, not every person subject to this rule must individually conduct testing. Section 4(b)(3)(A) of TSCA provides that EPA may permit two or more manufacturers or processors who are subject to the rule to designate one such person or a qualified third person to conduct the tests and submit data on their behalf. Section 4(c) provides that any person required to test may apply to EPA for an exemption from that requirement.

E. Approach to Adoption of Test Rules

1. *General process.* On March 26, 1982, EPA announced a new approach to adoption of test rules (47 FR 13102). EPA intends to promulgate a general procedural rule in 40 CFR Part 770 which will contain the procedural requirements of this new approach. However, since that procedural rule is not in effect, this proposed rule contains specific procedures for adoption of this test rule. If the general rule is promulgated before this proposed rule becomes final, the propylene oxide rule will be modified to comport with the general procedural provisions.

Under the new approach, test rule development will be a two-phase process. In phase I, EPA will propose that specific testing be required for the chemical. This phase of the rulemaking will allow the public to comment on the decision to require testing and the specific tests required. Phase II begins after promulgation of the phase I rule. In phase II, EPA will receive proposed study plans for the specific tests adopted in the phase I rule. EPA will propose those study plans for public comment. After comment, the Agency will adopt the study plans, as proposed or modified, as specific test standards for the tests required by the phase I rule. Persons who submit the study plans will be obligated to perform the tests in accordance with the test standards adopted.

2. *Letter of intent to test or exemption application.* The proposed rule would require manufacturers and processors of propylene oxide to perform certain tests. Once the rule is in effect (February 3, 1984) each current manufacturer would have 30 days to submit, for each required test, either a letter of intent to perform the test or an application for exemption. Each manufacturer who submitted a letter of intent to perform a specific test would be obligated, first, to submit, within 90 days of the effective date, a proposed study plan for the test and, ultimately, to perform the test.

If manufacturers of propylene oxide performed all the required tests, processors of propylene oxide would not be required to test or to submit exemption applications. EPA would automatically grant them exemptions from the requirements of the rule.

If no manufacturer of propylene oxide submitted a letter of intent to perform a particular test within the 30-day period, EPA would publish a notice in the **Federal Register** to notify all processors of propylene oxide. The notice would state that EPA had not received letters of intent to perform certain tests and that current processors would have 30 days to submit, for each test remaining, either a letter of intent to perform the test or an exemption application for that test. Each processor who submitted a letter of intent to perform a specific test would be obligated, first, to submit, within 90 days of the publication of the **Federal Register** notice, a proposed study plan for the test and, ultimately, to perform the test.

If no manufacturer or processor submitted a letter of intent to perform a particular test, EPA would notify all manufacturers and processors, by letter or through the **Federal Register**, that all exemption applications would be denied and that all manufacturers and processors would be in violation of the rule until a proposed study plan is submitted for the test.

Any person not manufacturing propylene oxide at the time the rule goes into effect, who later begins manufacturing, would be required to submit a letter of intent to test or an exemption application for each required test by the day the person begins manufacture. If EPA has published a notice in the **Federal Register** telling processors to submit letters of intent or exemption applications for certain tests, any person not processing propylene oxide at the time the **Federal Register** notice is published who later begins processing would be required to submit a letter of intent to test or an exemption application for each test specified in the **Federal Register** notice by the day the person begins processing.

3. *Submission and adoption of study plans.* Any manufacturer of propylene oxide who submitted a letter of intent to perform a test would have to submit, within 90 days after the effective date of the rule, a proposed study plan for that test. In the event manufacturers do not submit letters of intent for all the required tests, any processor who submits a letter of intent to perform a specific test would have to submit, within 90 days of the publication of the **Federal Register** notice discussed in Unit II. E., a proposed study-plan for that test. Paragraph (e) of the rule describes the contents of a proposed study plan.

EPA proposed generic test methodology requirements (generic test standards) which were published in the **Federal Register** of May 9, 1979 (44 FR 27334), July 26, 1979 (44 FR 44054), and November 21, 1980 (45 FR 77332). In response to concerns about the rigidity of generic test methodology requirements, EPA has changed its approach for providing test standards for TSCA section 4 test rules. It has issued generic test methodology guidelines to replace the previously proposed generic test methodology requirements. The TSCA guidelines have been published by the National Technical Information Service (NTIS) for health effects (PB 82–232984), environmental effects (PB 82–232992), and chemical fate (PB 82–233008). Good Laboratory Practice (GLP) standards for development of data on health effects of chemical substances under TSCA were proposed in the **Federal Register** of May 9, 1979 (44 FR 27334) and July 26, 1979 (44 FR 44054). GLP standards for development of data on physical and chemical properties, persistence, and ecological effects of chemical substances under TSCA were proposed in the **Federal Register** of November 21, 1980 (45 FR 77353). These GLP standards will be promulgated as generic requirements. The final GLP Standards will apply to the propylene oxide rule.

For guidance in preparing study plans, EPA recommends that test sponsors consult the TSCA Test Guidelines and the TSCA GLP Standards as referenced in Unit II. E.; the Organization for Economic Cooperation and Development's (OECD) Guidelines, as adopted by the OECD Council on May 12, 1981; or the FIFRA Pesticide Assessment Guidelines (PB 83–153916),

published by the National Technical Information Service (see the Federal Register of November 24, 1982 (47 FR 53192), for a list of these guidelines).

Failure to submit a study plan would be a violation of the rule.

EPA would review the proposed study plans. If they are incomplete, the manufacturer or processor would be notified of the deficiency and would have 15 days to provide appropriate information to make the plan complete. If the information is not provided in 15 days, the manufacturer or processor would be in violation of the rule. In addition, EPA would return to the appropriate stage of the process and require manufacturers or processors, as appropriate, to submit letters of intent, exemption application, and study plans.

If the proposed study plan is complete, EPA will propose the study plan for public comment. In particular, the comment would focus on whether the study plan will ensure that data from the test will be reliable and adequate. There would be a 45-day comment period and the opportunity to present views orally upon request. After considering the public comment, EPA would adopt the study plan as proposed, or as modified in response to comment, as the test standard for the required test.

The person who submitted the proposed study plan would be required to perform the test according to that standard. Failure to perform the test would be a violation of the rule.

F. Exemptions

EPA's proposed policy on application for exemptions from section 4 testing requirements was published in the Federal Register of July 18, 1980 (45 FR 48512). EPA intends to promulgate its final procedures for exemptions in 40 CFR Part 770. The exemption procedures described in Unit II. F. and included in the proposed rule language are consistent with EPA's current thinking on exemption procedures. If the general rule is promulgated before this proposal becomes final, the propylene oxide rule will be modified to comport with the general procedural provisions.

Any manufacturer or processor of propylene oxide would be able to apply for an exemption. Any person who has applied for an exemption would not be in violation of the rule until such time as EPA denies the application.

If manufacturers perform all the required testing, processors would be granted exemptions automatically without having to file applications.

When EPA has received a proposed study plan for a test and has adopted the plan as the test standard, EPA would conditionally grant all exemption applications for that test. If the test sponsor later fails to perform the test, EPA would notify all persons who had submitted exemption applications for that test, that the exemptions would be denied unless within 30 days a manufacturer or processor notified EPA of its intent to perform the test in accordance with the adopted test standards.

EPA is not proposing to require the submission of equivalence data as a condition for exemption from the proposed testing for propylene oxide. As noted in Unit II. C., EPA is interested in evaluating the effects attributable to propylene oxide itself and has specified a relatively pure substance for testing.

G. Reporting Requirements

EPA is proposing that all data developed under this rule be reported in accordance with the final EPA Good Laboratory Practice (GLP) Standards which will appear in 40 CFR Part 792. EPA has reviewed public comments on the proposed GLP Standards and will soon publish final GLP standards. The final GLP standards will apply to this rule.

EPA is required by TSCA section 4(b)(1)(C) to specify the time period during which persons subject to a test rule must submit test data. These deadlines will be established in the phase II rulemaking in which study plans are approved.

TSCA section 14(b)(1)(A)(ii) governs Agency disclosure of all test data submitted pursuant to section 4 of TSCA. Upon receipt of data required by this rule, the Agency will publish a notice of receipt in the Federal Register as required by section 4(d).

H. Enforcement Provisions

Section 15(1) of TSCA makes it unlawful for any person to fail or refuse to comply with any rule or order issued under section 4. Section 15(3) of TSCA makes it unlawful for any person to fail or refuse to (1) establish or maintain records, (2) submit reports, notices, or other information, or (3) permit access to or copying of records required by the Act or any regulation or rule issued under TSCA. The Agency considers that failure to comply with any aspect of a section 4 rule or the submission of invalid data would be a violation of section 15 of TSCA.

Additionally, TSCA section 15(4) makes it unlawful for any person to fail or refuse to permit entry or inspection as required by section 11. Section 11 applies to any "establishment, facility, or other premises in which chemical substances or mixtures are manufactured, processed, stored, or held before or after their distribution in commerce. . . ." The Agency considers a testing facility to be a place where the chemical is held or stored, and therefore, subject to inspection. Laboratory audits/inspections will be periodically conducted in accordance with the authority and procedures outlined in TSCA section 11 by authorized representatives of the EPA for the purpose of determining compliance with this rule. These inspections may be conducted for purposes which include verification that testing has begun, that schedules are being met, that reports accurately reflect the underlying raw data and intepretations and evaluations thereof, and that the studies are being conducted according to EPA Good Laboratory Practice Standards and the test standards adopted in the phase II rule.

EPA's authority to inspect a testing facility also derives from section 4(b)(1) of TSCA, which directs EPA to promulgate standards for the development of test data. These standards are defined in section 3(12)(B) of TSCA to include those requirements necessary to assure that data developed under testing rules are reliable and adequate, and such other requirements as are necessary to provide such assurance. The Agency maintains that laboratory inspections are necessary to provide this assurance.

Violators of TSCA are subject to criminal and civil liability. Persons who submit materially misleading or false information in connection with the requirement of any provision of this rule may be subject to penalties which may be calculated as if they had never submitted their data. Under the penalty provision of section 16 of TSCA, any person who violates section 15 could be subject to a civil penalty of up to $25,000 per day for each violation. Each day of operation in violation may constitute a separate violation. This provision would be applicable primarily to manufacturers or processors that fail to submit a letter of intent or an exemption request and that continue manufacturing or processing after the deadlines for such submissions. Knowing or willful violations could lead to the imposition of criminal penalties of up to $25,000 for each day of violation and imprisonment for up to 1 year. In determining the amount of penalty, EPA will take into account the seriousness of the violation and the degree of culpability of the violator as well as all the other factors listed in section 16. Other remedies are available to EPA under section 17 of TSCA, such as seeking an injunction to restrain violations of TSCA section 4.

Individuals, as well as corporations, could be subject to enforcement actions. Sections 15 and 16 of TSCA apply to "any person" who violates various provisions of TSCA. EPA may, at its discretion, proceed against individuals as well as companies themselves. In particular, this includes individuals who report false information or who cause it to be reported. In addition, the submission of false, fictitious, or fraudulent statements is a violation under 18 U.S.C. 1001.

Dow Chemical Company, which is conducting reproductive effects and neurotoxic effects testing on propylene oxide, has agreed to adhere to the proposed TSCA Good Laboratory Practice Standards issued by the Agency and published in the **Federal Register** of May 9, 1979 (44 FR 27334) and Nov. 21, 1980 (45 FR 77332) and has agreed to permit laboratory audits/inspections in accordance with the procedures outlined in TSCA section 11, at the request of authorized representatives of the EPA for the purpose of determining compliance with this agreement. These inspections may be conducted for purposes which include verification that testing has begun, that schedules are being met, that reports accurately reflect the raw data, and that the studies are being conducted with adequate quality assurance procedures.

In addition, Dow has agreed that all raw data, documentation, records, protocols, specimens, and reports generated as a result of a study will be retained as specified in the proposed TSCA Good Laboratory Practice Standards published by the Agency and made available during an inspection or submitted to EPA if requested by EPA or its authorized representative.

Dow has agreed that TSCA section 14(b)(1)(A)(ii) governs Agency disclosure of all test data submitted for these tests.

Dow Chemical Company began the reproductive effects test and neurotoxicity test in March, 1983. The final reports on the 2-generation reproductive test and neurotoxicity test will be submitted in June 1985. Should industry fail to make a good faith effort to adhere to this schedule, EPA may require this testing by rule.

I. Issues

1. EPA considers it appropriate to postpone proposing additional mutagenicity testing on propylene oxide until the results of the ongoing mutagenicity testing on ethylene oxide are submitted to and analyzed by the Agency. Ethylene oxide is a member of the alkyl epoxides category. It has consistently shown greater activity in mutagenicity assays and has tested positive in more mutagenicity assays than propylene oxide. Inhalation mutagenicity testing in progress on ethylene oxide includes: (1) Mouse specific locus test; (2) biochemical specific locus test in mice; (3) heritable translocation test in mice; (4) sperm alkylation in mice; and (5) sperm alkylation in *Drosophila*. EPA believes that the data from ongoing mutagenicity testing on ethylene oxide along with available mutagenicity data on propylene oxide, should be considered in determining what, if any, further mutagenicity testing on propylene oxide may be approriate.

After the data from the ongoing ethylene oxide mutagenicity testing and existing propylene oxide mutagenicity data are analyzed by the Agency, the Agency will consider: (1) Whether a mouse specific locus test or other additional mutagenicity testing on propylene oxide is necessary or (2) whether ethylene oxide mutagenicity data will provide a sufficient basis for mutagenicity risk assessment for propylene oxide without further testing of propylene oxide for this effect. In making its analysis, EPA will take into account available data on other effects that may provide sufficient basis for regulation. The Agency is interested in public comment on the various aspects of assessing mutagenicity testing needs for propylene oxide.

2. Propylene oxide has been found to be oncogenic. (See pages 22–23 of the propylene oxide support document, which is available from the TSCA Assistance Office.) Will control of propylene oxide for its established oncogenicity be sufficient to provide adequate protection against other possible health effects of concern?

III. Economic Analysis of Proposed Rule

To evaluate the potential economic impact of test rules, EPA has adopted a two-stage approach. All candidates for test rules go through a Level I analysis; this analysis consists of evaluating each chemical, or chemical group, on four principal market characteristics: (1) Demand sensitivity, (2) cost characteristics, (3) industry structure, and (4) market expectations. The results of the Level I analysis for propylene oxide, along with a consideration of the cost of the required tests, indicated no significant adverse economic impact exists; therefore, Level II analysis was not needed.

Total teratogenicity testing costs for the proposed rule for propylene oxide are estimated to range from $18,000 to $54,000. The annualized cost range is $4,700 to $14,000 per year based upon the requirement for a teratogenic health effects test.

The potential for adverse economic effects due to this test rule is small. Each of the market characteristics evaluated indicates that the potential for adverse economic impact is low. Furthermore, the additional product costs imposed by the required tests would at most be 0.0007 cents per pound, or between 0.0006 and 0.002 percent of the current price per pound (46.5 cents). This suggests that the economic impact would be minimal.

For a more complete and thorough discussion of the methodology used to conduct the economic analysis of this test rule see *Economic Impact Analysis for Test Rule on Propylene Oxide.* A copy of this document is available in the public record for this rulemaking, docket number [OPTS–42028A].

IV. Availability of Test Facilities and Personnel

Section 4(b)(1) requires EPA to consider "the reasonably foreseeable availability of the facilities and personnel needed to perform the testing required under the rule." Therefore, EPA conducted a study to assess the availability of test facilities and personnel to handle the additional demand for testing services created by section 4 test rules and test programs negotiated with industry in place of rulemaking. Copies of the study, Chemical Testing Industry: Profile of Toxicological Testing, can be obtained through the National Technical Information Service (NTIS), Springfield, Virginia (Publication No. 82–140773).

The conclusions reached in the laboratory availability study were: (1) The chemical testing industry's anticipation of increased testing requirements has prompted the rapid expansion of testing facilities in recent years; (2) currently, excess capacity exists in all major testing areas, and surveyed laboratories indicated they could perform about 20 percent more testing; (3) measurable industry concentration exists, but it is not enough to restrict market entry or control key resources; and (4) currently, capital and professional manpower are the most constraining resources on industry expansion of testing facilities. Capital is understandably a cyclical constraint. The constraint imposed by a shortage of professional personnel can be long-term because of the lengthy period required for professional preparation; however, current personnel numbers appear adequate relative to present testing levels.

On the basis of this study, the Agency believes that there will be available test facilities and personnel to perform the testing required in this proposed rule.

V. Environmental Impact Statement

EPA is not required to prepare Environmental Impact Statements (EIS) under the National Environmental Policy Act (NEPA), 41 U.S.C. 4321, for test rules. EPA has determined that voluntary preparation of an EIS is not appropriate for regulations issued under section 4 of TSCA. See the preamble to the Agency's rules for compliance with NEPA published in the Federal Register of November 6, 1979 (44 FR 64174).

VI. Guidelines and Study Plans

The following guidelines and/or study plans cited in this proposed test rulemaking are available from the: National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161 (703–487–4650).

NTIS Publication No.	Title	Price
PB 82-232984	Health Effects Test Guidelines	$40.00
PB 82-233008	Environmental Effects Test Guidelines.	40.00
PB 82-233008	Chemical Fate Test Guidelines	40.00
PB 82-140773	Chemical Testing Industry: Profile of Toxicological Testing.	16.00
PB 83-153916	Pesticide Assessment Guidelines.	11.50

VII. Classification of Rule

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore subject to the requirement of a Regulatory Impact Analysis. According to section 1, definition (b) " 'Major rule' means any regulation that is likely to result in: (1) Annual effect on the economy of $100 million or more; (2) A major increase in costs of prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets." This test rule is not major because it does not meet any of the criteria set forth in section 1(b) of the Order. First, the actual annual cost of all the testing proposed for propylene oxide is $4,700–14,000, or less than $54,000 over the testing and reimbursement period. Second, because the cost of the required testing will be distributed over a large production volume, the rule will have only very minor effects on users' prices (less than 0.002 percent) for this chemical, even if all test costs were passed on. Finally, taking into account the nature of the market for this substance, the low level of costs involved, and the expected nature of the mechanisms for sharing the costs of the required testing, EPA concludes that there will be no significant adverse economic effects of any type as a result of this rule.

This proposed regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any comments received from OMB are included in the Public Record for this rulemaking.

VIII. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), (15 U.S.C. 601 *et seq.*, Pub. L. 96–354, September 19, 1980), EPA is certifying that this test rule, if promulgated, will not have a significant impact on a substantial number of small business for the following reasons:

1. There are no small manufacturers of this chemical.

2. Small processors will not perform testing themselves, or participate in the organization of the testing efforts.

3. Small processors will experience only very minor costs in securing exemption from testing requirements.

4. Small processors are unlikely to be affected by reimbursement requirements and any testing costs passed on to small processors through price increases will be small.

IX. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* the information provisions in test rules are subject to the OMB review and are not effective until OMB approves them. OMB is currently reviewing information requirements under section 4 test rules. A notice concerning the results of that review will be published in the Federal Register.

X. Public Meetings

If persons indicate to EPA that they wish to present comments on this proposed rule to EPA officials who are directly responsibile for developing the rule and supporting analyses, EPA will hold a public meeting on March 19, 1984 in Washington, D.C. This meeting is scheduled after the deadline for submission of written comments, so that issues raised in the written comments can be discussed by EPA and the public commenters. Information on the exact time and place of the meeting will be available from the TSCA Assistance Office. Toll Free: (800–424–9065). In Washington, D.C.: (554–1404). Outside the U.S.A.: (Operator–202–554–1404).

Persons who wish to attend or present comments at the meeting should call the TSCA Assistance Office by February 21, 1984. While the meeting will be open to the public, active participation will be limited to those persons who have arranged to present comments and to designated EPA participants. Attendees should call the TSCA Assistance Office before making travel plans because the meeting will not be held if members of the public do not indicate they wish to make oral comments.

Should a meeting be held, the Agency wil transcribe the meeting and include the written transcript in the public record. Participants are invited, but not required, to submit copies of their statements prior to or on the day of the meeting. All such written materials will become part of EPA's record for this rulemaking.

XI. References

(1) Winholz, M., editor. *The Merck Index*, 9th Ed. Rathway, NJ. Merck and Co., p. 1017. (1976).

(2) SRI, "A Study of Industrial Data on Candidate Chemicals for Testing." Prepared by SRI International, Menlo Park, CA. for the Office of Toxic Substances, U.S. Environmental Protection Agency, Washington, D.C. Contract No. 68–4109 (PB 274–264). (1977).

(3) Hackett, P.L., Brown, M.G., Buschbom, R.L., Clark, M.L., Miller, R.A., Musie, R.L., Rowe, S.E., Schirmer, R.E., and Sikov, M.R., "Teratogenic Study of Ethylene and Propylene Oxide and n-Butyl Acetate." Prepared for the National Institute for Occupational Safety and Health under contract 2311104277 (NIOSH Contract No. 210–80–0013). (1982).

XII. Rulemaking Record

EPA has established a public record for this rulemaking, docket number [OPTS–42028A]. This record includes the basic information considered by the Agency in developing this proposal, and appropriate Federal Register notices. The Agency will supplement the record with additional information as it is received.

The Record includes the following information:

(1) Federal Register notices pertaining to this rule consisting of:

(a) Notice of proposed rule on propylene oxide

(b) Notice containing the ITC addition of the alkyl epoxides category to the Priority List [42 FR 550926]

(c) Notices relating to EPA's health effects test guidelines and TSCA Good Laboratory Practice Standards [44 FR 27334 and 44 FR 44054]

(d) Notice of proposed rule on exemption policy and procedures

(e) Notice of final rule on reimbursement policy and procedures

(2) Support Documents: consisting of:

(a) Propylene oxide support document

(b) Economic analysis support document

(3) Minutes of informal meetings

(4) Communications before proposal consisting of:

(a) Written public and intra-agency or interagency memoranda and comments

(b) Summaries of telephone conversations

(c) Summaries of meetings

(d) Reports—published and unpublished factual materials, including contractors' reports.

Confidential business information (CBI), while part of the record, is not available for public review. A public version of the record, from which CBI has been deleted, is available for inspection in the OPTS Reading Room, Rm. E-107, 401 M St. SW., Washington, D.C., from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

(Sec. 4, 90 Stat. 2003; (15 U.S.C. 2601))

List of Subjects in 40 CFR Part 799

Testing, Environmental Protection Agency, Environmental protection, Hazardous materials, Chemicals.

Dated: December 23, 1983.

Alvin L. Alm,

Acting Administrator.

PART 799—[AMENDED]

Therefore, it is proposed that a new § 799.3450 be added to Subpart B of proposed Part 799 to read as follows:

§ 799.3450 Propylene Oxide.

(a) *Identification of test substance.* (1) Propylene oxide (CAS No. 75-56-9) shall be tested in accordance with this part.

(2) Propylene oxide of at least 99.0 percent purity shall be used as the test substance.

(b) *Persons required to submit study plans, conduct tests, and submit data.* (1) All persons who manufacture or process propylene oxide from the effective date of this section February 3, 1984 to the end of the reimbursement period shall submit letters of intent to test, exemption applications, and study plans and shall conduct tests and submit data as specified in paragraphs (c), (d), (e), (h), (i), and (j) of this section.

(2) Any person subject to the requirements of this section may apply to EPA for an exemption from study plan submission and testing requirements. Any such application shall be in accordance with paragraph (h) of this section.

(c) *Submission of notice of intent to test or exemption application.* (1) No later than 30 days after the effective date of this section, each person manufacturing propylene oxide as of the effective date of this section must, for each test required by paragraph (i) of this section, either notify EPA by letter of its intent to perform the test or submit an application for an exemption from the study plan submission and testing requirements for the test.

(2) If, by the date specified in paragraph (c)(1) of this section, no manufacturer of propylene oxide has notified EPA of its intent to perform testing for a test required by paragraph (i) of this section, EPA will publish a notice in the **Federal Register** of this fact specifying the test for which no notice of intent has been submitted. No later than 30 days after publication of such a notice, each person processing propylene oxide as of the [effective date of this rule] must, for each test specified in the **Federal Register** notice, either notify EPA by letter of its intent to perform the test or submit an application for an exemption from the study plan submission and testing requirements for the test.

(3) Any person not manufacturing propylene oxide as of the effective date of this section who, before the end of the reimbursement period, manufactures propylene oxide must comply with the requirements of paragraphs (c)(1) and (d)(1) of this section. For purposes of this paragraph (c)(3), the manufacturer must submit the notice of intent to test or exemption application required by paragraph (c)(1) of this section by the date manufacture begins and must submit any proposed study plan required by paragraph (d)(1) of this section within 60 days of the date manufacture begins.

(4) If a **Federal Register** notice has been published under paragraph (c)(2) or (d)(4) of this section, any person not processing propylene oxide as of the effective date of this section who, before the end of the reimbursement period, processes propylene oxide must comply with the requirements of paragraphs (c)(2) and (d)(2) of this section. For purposes of this paragraph, the processor must submit the notion of intent to test or exemption application required by paragraph (c)(2) of this section by the date processing begins and must submit any proposed study plan required by paragraph (d)(2) of this section within 60 days of the date processing begins.

(5) Any manufacturer or processor of propylene oxide, which has notified EPA under paragraphs (c) (1), (2), (3), or (4) of this section of its intent to perform testing for a test required by paragraph (i) of this section, must submit a proposed study plan for the test as required in paragraph (d) of this section and must perform that test in accordance with the test standards in paragraph (j) of this section.

(d) *Submission of proposed study plans.* (1) Manufacturers of propylene oxide which notify EPA under paragraph (c)(1) of this section that they intend to perform a test must submit a proposed study plan for the test in accordance with paragraph (e) of this section no later than 90 days after the effective date of this section. Manufacturers may jointly submit a single proposed study plan if they plan to sponsor or perform the test jointly. Any manufacturer which, having notified EPA of its intent to perform a test, fails to submit a proposed study plan for that test will have been in violation of this section as if no letter of intent to perform the test had been submitted.

(2) Processors of propylene oxide which notify EPA under paragraph (c) (2) of this section that they intend to perform a test must submit a proposed study plan for the test in accordance with paragraph (e) of this section no later than 90 days after the publication of the notice specified in paragraph (c) (2) of this section. Processors may jointly submit a single proposed study plan if they plan to sponsor or perform the test jointly. Any processor which, having notified EPA of its intent to perform a test, fails to submit a proposed study plan for that test will have been in violation of this section as if no letter of intent to perform the test had been submitted.

(3) If EPA determines in accordance with paragraph (f)(1)(i) of this section that a proposed study plan is imcomplete and the manufacturer or processor has not, after notice from EPA, submitted appropriate information to make the study plan complete within 15 days, the manufacturer or processor will have been in violation of this section as if no letter of intent to perform the test had been submitted.

(4) If either: (i) By the date specified in paragraph (d)(1) of this section a manufacturer of propylene oxide, which notified EPA of its intent to perform a test, has failed to submit a proposed study plan for that test, or

(ii) A proposed study plan submitted under paragraph (d)(1) of this section has been found to be incomplete under paragraph (f)(1)(i) of this section and the manufacturer has not submitted appropriate information to make the study plan complete within 15 days, EPA will publish a notice in the Federal Register of this fact specifying the test.

The requirements of paragraphs (c)(2) and (d)(2) of this section for processors to submit letters of intent to perform testing, applications for exemption, and proposed study plans will apply.

(5) If either: (i) By the date specified in paragraph (c)(2) of this section no prosessor of propylene oxide has notified EPA of its intent to perform testing for any test identified in a Federal Register notice published under paragraphs (c)(2) or (d)(4) of this section, or

(ii) By the date specified in paragraph (d)(2) of this section any processor of propylene oxide, which notified EPA of its intent to perform a test, has failed to submit a proposed study plan for that test, or

(iii) A proposed study plan submitted under paragraph (d)(2) of this section has been found to be incomplete under paragraph (f)(1)(i) of this section and the processor has not submitted appropriate information to make the study plan complete within 15 days, all applications for exemption from the requirements to submit study plans and to perform tests for the specific test involved will automatically be denied. EPA will notify each manufacturer and processor of propylene oxide, which applied for an exemption for the specific test involved, of this automatic denial either by letter or by notice in the Federal Register. Each manufacturer or processor of propylene oxide for whom an exemption application has been automatically denied will be in violation of this section 30 days from the time that it receives the notice letter or that the notice is published in the Federal Register, whichever comes first. The violation will continue until a manufacturer or processor of propylene oxide submits a proposed study plan for each test involved.

(6) Any manufacturer or processor of propylene oxide may submit a proposed study plan for any test required by this section at any time regardless of whether the manufacturer or processor previously submitted an application for exemption from testing for that test.

(e) *Content of study plans.* (1) All study plans are required to contain the following information:

(i) A citation to this section and the specific test covered by the study plan.

(ii)(A) The names and addresses of the test sponsors.

(B) The names, addresses, and telephone numbers of the responsible administrative officials and project manager(s) in the principal sponsor's organization.

(C) The name, address, and telephone number of the appropriate individual for oral and written communications with EPA.

(D)(*1*) The name and address of the testing facility and the names, addresses, and telephone numbers of the testing facility's administrative officials and project manager(s) responsible for this testing.

(*2*) Brief summaries of the training and experience of each professional involved in the study including study director, veterinarian(s), toxicologist(s), pathologist(s) and pathology assistants.

(iii) Identity and data on the chemical substance being tested, including appropriate physical constants, spectral data, chemical analysis, and stability under test and storage conditions.

(iv) Study protocol, including rationale for: species/strain selection; dose selection (and supporting data); route(s) or method(s) of exposure; a description of diet to be used and its source, including nutrients and contaminants and their concentrations; for *in vitro* test systems, a description of culture medium and its source; and a summary of expected spontaneous chronic diseases (including tumors), genealogy, and life span.

(v) Schedule for initiation and completion of major phases of long-term tests; schedule for submission of interim progress and final reports to EPA.

(2) Information specified under paragraph (e)(1)(ii)(D) of this section is not required in proposed study plans if the information is not available at the time of submission; however, the information must be submitted before the initiation of testing.

(f) *Review and adoption of study plans.* (1) Upon receipt of a proposed study plan, EPA will review the study plan to determine whether it complies with paragraph (e) of this section.

(i) If EPA determines that the proposed study plan does not comply with paragraph (e) of the section, EPA will notify the submitter that the submission is incomplete and will identify the deficiencies and the steps necessary to complete the submission. The submitter will have 15 days from the day it receives this notice to submit appropriate information to make the study plan complete. If the submitter fails to provide appropriate information to complete the study plan within this time, the submitter will have been in violation of this section as if no study plan had been submitted.

(ii) If EPA determines the proposed study plan complies with paragraph (e) of this section, EPA will publish a notice in the Federal Register requesting comments on the ability of the study plan to ensure that data from the test will be reliable and adequate. EPA will provide a 45-day comment period and will provide an opportunity for an oral presentation upon request of any person. EPA may extend the comment period if it appears from the nature of the issues raised by EPA's review or from public comments that further comment is warranted.

(2) After receiving and considering public comment, EPA will adopt the study plan, including time deadlines and reporting schedules, as proposed or as modified in response to EPA review and pubic comments, as test standards for the testing of propylene oxide in paragraph (j) of this section.

(g) *Modification of study plans during conduct of study.* (1) *Application.* Any test sponsor who wishes to modify the adopted study plan for any test or study required under this section must submit an application in accordance with this paragraph. Application for modification shall be made in writing to the Chief, Test Rules Development Branch, Office of Toxic Substances, or by phone with written confirmation to follow as soon as feasible. Applications must include appropriate explanation of why the modification is necessary.

(2) *Adoption.* To the extent feasible, EPA will seek public comment on all substantive changes in study plans. EPA will issue a notice in the Federal Register requesting comments on requested modifications. However, EPA will act on the requested modification without seeking public comment if either: (i) EPA believes that an immediate modification to a study plan is necessary in order to preserve the accuracy or validity of an ongoing study, or

(ii) EPA determines that a modification clearly does not pose any substantive issues. EPA will notify the sponsor of EPA's approval or disapproval. When EPA approves a modification, it will publish a note in the Federal Register indicating that the study plan has been modified.

(h) *Exemption applications.* (1) Any manufacturer or processor of propylene oxide may submit an application to EPA for an exemption from submitting proposed study plans for and from performing any or all of the tests specified in paragraph (i) of this section. The application must include the name and address of the manufacturer or processor and must identify the specific requirements of this section for which the exemption is sought.

(2) No manufacturer or processor of propylene oxide will be in violation of the requirement to perform a specific test under paragraph (i) of this section if it has submitted a timely application for

an exemption for that test and the application has not been denied by EPA.

(3) EPA will conditionally grant any requested exemption for a specific test required by paragraph (i) of this section if EPA has received a complete proposed study plan for that test in accordance with paragraph (e) of this section and has adopted the study plan in accordance with paragraph (f)(2) of this section.

(4) EPA will deny any exemption for a specific test in paragraph (i) of this section if the study sponsor fails to perform the test or to submit data as required in the test standards adopted under paragraph (j) of this section.

(5) If manufacturers of propylene oxide perform all the tests required by paragraph (i) of this section, processors of propylene oxide will automatically be granted an exemption from the study plan submission and testing requirements of this section without the need to file an application for exemption.

(i) *Health effects testing; teratogenicity inhalation toxicity*—(1) *Required testing.* A teratogenicity inhalation toxicity test in rats shall be conducted with propylene oxide.

(2) *Study plans.* For guidance in preparing study plans, the inhalation teratogenicity study design submitted by the Chemical Manufacturing Association (CMA) for inhalation teratology of isophorone in the rat and mouse should be consulted. A copy of this protocol is available in the public record for this rulemaking, docket number [OPTS–42028A].

(j) *Test standards.* (1) Test sponsors and testing facilities must adhere to EPA Good Laboratory Practice Regulations in Part 792 of this chapter.

(k) *Enforcement.* (1) If a manufacturer or processor, which notified EPA under paragraph (c)(1), (2), (3) or (4) of this section of its intent to perform a test required by paragraph (i) of this section, fails to perform the test in accordance with the test standards in paragraph (j) of this section, that failure will be a violation of this section.

(2) EPA will publish a notice in the **Federal Register** to inform all manufacturers and processors that all exemptions for performance of that test will be denied unless within 30 days of the publication of the notice a manufacturer or processor of propylene oxide notifies EPA by letter that it intends to perform that test in accordance with the test standards in paragraph (j) of this section.

(3) Any person who fails or refuses to comply with any aspect of this section is in violation of section 15 of TSCA.

(l) *Availability of study plans.* The various study plans given in this proposed rule are available from the: National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161 (703–487–4650).

[FR Doc. 84–74 Filed 1–3–84; 8:45 am]
BILLING CODE 6560–50–M

---

40 CFR Part 799

[OPTS–42048; FRL 2480–4]

Hydroquinone; Proposed Test Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Under section 4(a) of the Toxic Substances Control Act (TSCA), EPA is proposing that manufacturers and processors of hydroquinone perform tests to evaluate hydroquinone's toxicokinetics and tests to evaluate its potential nervous system, reproductive, teratogenic, and mutagenic effects. Epidemiologic studies that evaluate the explicit types and risks of adverse health effects resulting from human exposure to hydroquinone are also proposed. In addition, the Agency is proposing that chemical fate and environmental effects testing be performed. This notice constitutes EPA's response to the Interagency Testing Committee's designation of hydroquinone as a priority candidate for testing.

DATES: Submit written comments on or before March 5, 1984. If persons request an opportunity for oral comment by February 21, 1984, EPA will hold a public meeting on March 19, 1984 on this rule in Washington, D.C. For further information on arranging to speak at the meeting see unit V of this preamble.

ADDRESS: Submit written comments in triplicate to: TSCA Public Information Office (TS–793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E–108, 401 M St. SW., Washington, D.C. 20460. Include the document control number [OPTS–42048] on all submissions.

FOR FURTHER INFORMATION CONTACT: Jack P. McCarthy, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Rm. E–543, 401 M St. SW., Washington, D.C. 20460, toll free: (800–424–9065), in Washington, D.C.: (554–1404), outside the USA: (Operator–202–554–1404).

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 4(e) of TSCA (Pub. L. 94–469, 90 Stat. 2003 *et seq.*; 15 U.S.C. 2601 *et seq.*) established an Interagency Testing Committee (ITC) to recommend to EPA a list of chemicals to be considered for testing under section 4(a) of the Act. The ITC may designate substances on the list for priority consideration for requiring testing by EPA.

The ITC designated hydroquinone for priority consideration in its Fifth Report, published in the **Federal Register** on December 7, 1979 (44 FR 70684). The ITC recommended that hydroquinone be considered for testing for carcinogenicity and teratogenicity, and that epidemiology, human metabolism and environmental fate studies also be considered.

The ITC's recommendations were based on the widespread use of the chemical substance by people having little knowledge of its health and environmental effects. The ITC estimated that the U.S. production of hydroquinone in 1977 was about 11 million pounds.

Under section 4(a)(1) of TSCA, EPA must require testing of a chemical substance to develop health or environmental data if the Agency finds that:

(A) (i) the manufacture, distribution in commerce, processing, use, or disposal of a chemical substance or mixture, or that any combination of such activities, may present an unreasonable risk of injury to health or the environment,

(ii) there are insufficient data and experience upon which the effects of such manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data; or

(B) (i) a chemical substance or mixture is or will be produced in substantial quantities, and (I) it enters or may reasonably be anticipated to enter the environment in substantial quantities or (II) there is or may be significant or substantial human exposure to such substance or mixture,

(ii) there are insufficient data and experience upon which the effects of the manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data.

EPA uses a weight of evidence approach in making a section 4(a)(1)(A)(i) finding in which both exposure and toxicity information are considered to make the finding that the chemical may present an unreasonable risk. For the finding under section 4(a)(1)(B)(i), EPA considers only production, exposure, and release information to determine if there is or may be substantial production and substantial or significant exposure or substantial release. For the second finding under both sections 4(a)(1)(A)(ii) and 4(a)(1)(B)(ii), EPA examines toxicity and fate studies to determine if existing information is adequate to reasonably determine or predict the effects of human exposure to, or environmental release of, the chemical. In making the third finding, that testing is necessary, EPA considers whether any ongoing testing will satisfy the information needs for the chemical and whether testing which the Agency might require would be capable of developing the necessary information.

EPA's process for determining when these findings apply is described in detail in EPA's first and second proposed test rules. The section 4(a)(1)(A) findings are discussed in the Federal Register of July 18, 1980 (45 FR 48528) and June 5, 1981 (46 FR 30300), and the section 4(a)(1)(B) findings are discussed in the Federal Register of June 5, 1981 (46 FR 30300).

In evaluating the ITC's testing recommendations for hydroquinone, EPA considered all available relevant information including the following: information presented in the ITC's report recommending testing consideration; production volume, use, exposure, and release information reported by manufacturers of hydroquinone under the TSCA section 8(a) Preliminary Assessment Information Rule (40 CFR Part 712); unpublished health and safety studies submitted by the manufacturers of hydroquinone under the TSCA section 8(d) Health and Safety Data Reporting Rule (40 CFR Part 716); and other published and unpublished data available to the Agency. On the basis of its evaluation as described in this proposed rule and the accompanying technical support document, EPA is proposing limited metabolism (toxicokinetics), nervous system effects, reproductive effects, teratogenicity, and mutagenicity testing requirements, as well as epidemiologic studies, for hydroquinone under section 4(a)(1)(B). The Agency believes that its proposed health effects testing requirements also can be based on section 4(a)(1)(A) of TSCA. EPA is also proposing chemical fate and environmental effects testing requirements for hydroquinone under section 4(a)(1)(A) of TSCA. By these actions, EPA is responding to the ITC's designation of hydroquinone for testing consideration.

II. Proposed Rule

A. Profile

Hydroquinone [$C_6H_4(OH)_2$] CAS No. 123-31-9, is a white crystalline solid at room temperature and is very soluable in water, ethanol, and acetone. It acts chemically as a reducing agent, being oxidized to quinone. Although the EPA Toxic Substances Inventory records that approximately 11 million pounds of hydroquinone were produced in the United States in 1977, data obtained through the Preliminary Assessment Information Rule, issued under section 8(a) of TSCA (47 FR 26992), indicates that the annual production is significantly higher. These 8(a) data have been claimed as confidential business information and aren not cited directly in this document. The annual production of photograde, technical, and other grades of hydroquinone from 1978 to 1980 has been estimated to be as high as 25 to 26 million pounds.

Hydroquinone is used as a photographic developer and as an organic intermediate in the manufacture of dyes and other chemicals. It is used directly as an antioxidant or is processed into derivatives that are used as antioxidants to inhibit the breakdown of nonfood industrial fats, oils, paints, and motor fuels. Hydroquinone is used in dermatologic preparations designed to bleach hyperpigmented skin and as a storage and in-process polymerization inhibitor for vinyl monomers and unsaturated resins.

B. Findings

EPA is basing its proposed hydroquinone health effects testing on the authority of section 4(a)(1) (A) and (B) of TSCA.

1. EPA finds that hydroquinone is manufactured, processed, and used in substantial quantities, and these activities may result in substantial human exposure. Furthermore, EPA finds that there are insufficient data available to reasonably determine or predict either the result of this exposure in the areas of carcinogenic, mutagenic, teratogenic, nervous system, and reproductive health effects or the incidence of hydroquinone-rated effects among humans. Finally, EPA finds that testing of hydroquinone for these health effects and epidemiologic parameters is necessary to develop data needed to evaluate the health risks posed by exposure to hudroquinone.

These findings are based on the following information:

a. There are substantial amounts of hydroquinone produced in the United States each yaar. The annual U.S. production volume of hydroquinone is estimated to be as high as 26 million pounds.

b. In 1980 the National Institute for Occupational Safety and Health estimated that approximately 470,000 U.S. workers, in 137 occupations, are potentially exposed to hydroquinone annually. Of major concern to the Agency are the estimated 2.2 million photohobbyists who develop their own film and prints, because much of this involves the development of black and

white film which incorporates solutions containing hydroquinone. The Agency believes that both workers and hobbyists will receive inhalation and dermal exposure.

2. In addition, EPA has found that the manufacture, processing and use of hydroquinone may present an unreasonable risk of injury to human health. There is evidence of potential human health risks from nervous system, mutagenic, teratogenic, reproductive, and carcinogenic effects resulting from the manufacture, processing, and use activities associated with hydroquinone; there are existing data to support this belief with respect to these effects. Exposures to hydroquinone are sufficient to result in such effects. The existing data are inadequate to reasonably predict or determine the effects of these exposures to hydroquinone. Testing is necessary for these effects. Therefore, EPA believes that requiring epidemiologic studies and testing of hydroquinone for nervous system effects, mutagenicity, teratogenicity, reproductive effects, and carcinogenicity can also be based upon section 4(a)(1) (A) of TSCA.

EPA is not proposing oncogenicity testing of hydroquinone, since the National Toxicology Program (NTP) is currently conducting a 2-year bioassay on hydroquinone. However, the Agency is proposing limited metabolism (toxicokinetic) studies of hydroquinone via dermal and oral routes of exposure. These studies will provide a reliable means by which the internal dose administered in the NTP bioassay can be related to doses expected to be received by workers and hobbyists.

In addition, the Agency has concluded that the acute toxicity (lethality) and the subchronic toxicity of hydroqinone are adequately characterized, and therefore, no further testing should be required at this time.

The Agency is basing its chemical fate and environmental effects testing on the authority of section 4(a)(1)(A) of TSCA. (1) EPA finds that there is evidence of potential environmental risks to aquatic organisms resulting from the processing and use activities associated with hydroquinone. (2) While there are existing data to support this belief with respect to these effects, the data are inadequate to reasonably predict or determine the effects of these exposures to hydroquinone. (3) Testing is necessary to develop data with respect to these effects.

Although the ITC did not recommend environmental effects testing for hydroquinone, the Agency is concerned with effluents from photoprocessing facilities and is proposing a series of environmental effects tests. Based on existing aquatic toxicity data and the limited data on photoprocessing effluents, the Agency believes that the levels of hydroquinone in these effluents, although not so substantial as to dictate a section 4 (a)(1)(B) finding, may present an unreasonable risk (section 4(a)(1)(A)) to aquatic organisms. Testing is needed to provide data to establish whether an unreasonable risk to freshwater and saltwater aquatic species exists.

The Agency is also proposing chemical fate testing for hydroquinone. EPA believes that this testing is essential, because the existing chemical fate data are limited and more data are needed to assess the magnitude of the possible risks to aquatic organisms. EPA needs information to establish biodegradation rates in order to assess the levels of hydroquinone exposure to aquatic organisms.

EPA does not believe that the rule will result in a loss to society of the benefits of hydroquinone because the Agency's economic evaluation has shown that the economic impact of testing this substance will be minimal.

The analyses on which these findings are based are presented in the Technical Support Document, "Assessment of Testing Needs: Hydroquinone/Quinone," which is available from the TSCA Assistance Office. The ITC recommendations and EPA's proposed testing requirements are summarized in the following Table.

TESTING RECOMMENDATIONS FOR HYDROQUINONE

Effect or study	ITC recommendation	EPA proposal
Mutagenicity	—	X
Carcinogenicity	X	—*
Teratogenicity	X	X
Nervous System Effects	—	X
Reproductive Effects	—	X
Epidemiology	X	X
Metabolism (Toxicokinetics)	X	X
Environmental Fate	X	X
Environmental Effects	—	X

* Not proposed since NTP is conducting a 2-year bioassay.

C. Test Substance

EPA is proposing for the mutagenicity, teratogenicity, reproductive effects, nervous system effects, toxicokinetics, chemical fate, and environmental effects testing that hydroquinone of at least 99 percent purity, available commercially, be used as the test substance. EPA has specified a relatively pure substance for testing because the Agency is interested in evaluating the effects attributed to hydroquinone itself. This requirement would increase the likelihood that any toxic effects observed are related to hydroquinone and not to any impurities.

D. Persons Required to Test

Section 4(b)(3)(B) specifies that the activities for which the Administrator makes section 4(a) findings (manufacture, processing, distribution, use, and/or disposal) determine who bears the responsibility for testing. Manufacturers are required to test if the findings are based on manufacturing ("manufacture" is defined in section 3(7) of TSCA to include "import"). Processors are required to test if the findings are based on processing. Both manufacturers and processors are required to test if the exposures giving rise to the potential risk occur during use, distribution, or disposal. Because EPA has found that the manufacturing, processing, and use of hydroquinone give rise to exposures that may lead to an unreasonable risk, EPA is proposing that persons who manufacture or process, or who intend to manufacture or process hydroquinone at any time from the effective date of this test rule to the end of the reimbursement period be subject to the rule. The end of the reimbursement period ordinarily will be 5 years after the submission of the last final report required under the test rule.

Because TSCA contains provisions to avoid duplicative testing, not every person subject to this rule must individually conduct testing. Section 4(b)(3)(A) of TSCA provides that EPA may permit two or more manufacturers or processors who are subject to the rule to designate one such person or a qualified third person to conduct the tests and submit data on their behalf. Section 4(c) provides that any person required to test may apply to EPA for an exemption from that requirement (as discussed in Unit II.F. below).

E. Approach to Adoption of Test Rules

1. *General Process.* On March 26, 1982, EPA announced a new approach to adoption of test rules (47 FR 13102). EPA intends to promulgate a general procedural rule in 40 CFR Part 770 which will contain the procedural requirements of this new approach. However, since that procedural rule is not in effect, this proposed rule contains specific procedures for adoption of this test rule. If the general rule is promulgated before this proposal becomes final, the hydroquinone rule will be modified to comport with the general procedural provisions.

Under the approach being followed for hydroquinone, test rule development will be a two-phase process. In phase I, EPA will propose that specific testing be

required for hydroquinone. This phase of the rulemaking will allow the public to comment on the decision to require testing and the specific types of tests to be required. Phase II begins after promulgation of the phase I rule. In phase II, EPA will receive proposed study plans for the specific tests adopted in the phase I rule. EPA will propose those study plans for public comment. After comment, the Agency will adopt the study plans, as proposed or modified, as specific test standards for the tests required by the phase I rule. Persons who submit the study plans will be obligated to perform the tests in accordance with the test standards adopted.

2. *Letter of Intent to Test or Exemption Application.* The proposed rule would require manufacturers and processors of hydroquinone to perform certain test sets. (The term "test set" is used because certain mutagenicity tests in the proposal are tiered, and EPA is proposing that the person who tests must perform all the required tests in that tier.) Once the rule is in effect, 30 days after publication in the **Federal Register**, each current manufacturer would have 30 days to submit, for each required test set in paragraphs (j), (k), and (l) of the rule, either a letter of intent to perform the test set or an application for exemption. Each manufacturer who submitted a letter of intent to perform a specific test set would be obligated, first, to submit, within 90 days of the effective date, a proposed study plan for the test set and, ultimately, to perform the testing.

If manufacturers of hydroquinone performed all the required test sets, processors of hydroquinone would not be required to test or to submit exemption applications. EPA would automatically grant them exemptions from the requirements of the rule.

If no manufacturer of hydroquinone submitted a letter of intent to perform a particular test set within the 30-day period, EPA would publish a notice in the **Federal Register** to notify all processors of hydroquinone. The notice would state that EPA had not received letters of intent to perform certain test sets and that current processors would have 30 days to submit, for each test set remaining, either a letter of intent to perform the test or an exemption application for that test set. Each processor who submitted a letter of intent to perform a specific test set would be obligated, first, to submit, within 90 days of the publication of the **Federal Register** notice, a proposed study plan for the test set and, ultimately, to perform the testing.

If no manufacturer or processor submitted a letter of intent to perform a particular test set, EPA would notify all manufacturers and processors, by letter or through the **Federal Register**, that all exemption applications would be denied and that within 30 days all manufacturers and processors would be in violation of the rule until a proposed study plan is submitted for that test set.

Any person not manufacturing hydroquinone at the time the rule goes into effect, who later begins manufacturing before the end of the reimbursement period, would be required to submit a letter of intent to test or an exemption application for each required test set, by the day the person begins manufacture. If EPA has published a notice in the **Federal Register** telling processors to submit letters of intent or exemption applications for certain test sets, any person not processing hydroquinone at the time the rule goes into effect, who later begins processing before the end of the reimbursement period, would be required to submit a letter of intent to test or an exemption application for each test set specified in the **Federal Register** notice by the day the person begins processing.

3. *Submission and Adoption of Study Plans.* Any manufacturer of hydroquinone who submitted a letter of intent to perform a test set would have to submit, within 90 days after the effective date of the rule, a proposed study plan for that test set. In the event manufacturers do not submit letters of intent for all the required test sets, any processor who submits a letter of intent to perform a specific test set would have to submit, within 90 days of the publication of the **Federal Register** notice notifying processors, a proposed study plan for that test set. Paragraph (e) of the rule describes the contents of a proposed study plan.

EPA proposed generic test methodology requirements (generic test standards) in the **Federal Register** of May 9, 1979 (44 FR 27334) July 26, 1979 (44 FR 44054), and November 21, 1980 (45 FR 77332). In response to concerns about the rigidity of generic methodology requirements, EPA has changed its approach for providing test standards for TSCA section 4 test rules. It has issued generic test methodology guidelines to replace the previously proposed generic test methodolgy requirements. The TSCA Guidelines have been published by the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161 (703–487–4650), for health effects (PB 82–232984), chemical fate (PB 82–233008), and environmental effects (PB–82–232992), respectively. Good Laboratory Practice (GLP) standards for development of data on health effects of chemical substances under TSCA were proposed in the **Federal Register** of May 9, 1979 (44 FR 27334) and July 26, 1979 (44 FR 44054), and for chemical fate and environmental effects testing in the **Federal Register** of November 21, 1980 (44 FR 77357). GLP standards for development of data on physical and chemical properties, persistance, and ecological effects of chemical substances under TSCA were proposed in the **Federal Register** of November 21, 1980 (44 FR 77357). These GLP standards will be promulgated as generic requirements. The final TSCA GLP regulations will apply to the hydroquinone test rule.

For guidance in preparing study plans, EPA recommends that test sponsors consult the TSCA Test Guidelines and the TSCA GLP standards as referenced above, the Organization for Economic Cooperation and Development's (OECD) Guidelines, as adopted by the OECD Council on May 12, 1981, or the FIFRA Pesticide Registration Guidelines: Proposed Data Requirements, published by the National Technical Information Service (see the **Federal Register** of November 24, 1982 (47 FR 53192), for a list of these guidelines).

Failure to submit a study plan would be a violation of the rule.

EPA would review the proposed study plans. If they were incomplete, the manufacturer or processor would be notified of the deficiency and would have 15 days to provide appropriate information to make the plan complete. If the information were not provided in 15 days, the manufacturer or processor would be in violation of the rule. In addition, EPA would return to the appropriate stage of the process and require manufacturers or processors, as appropriate, to submit letters of intent, exemption applications, and study plans.

If the proposed study plan were complete, EPA would propose the study plan for public comment. In particular, the request for comments would focus on whether the study plan would ensure that data from the test set would be reliable and adequate. There would be a 45-day comment period and the opportunity to present views orally upon request. After considering the public comment, EPA would adopt the study plan as proposed, or as modified in response to comment, as the test standard for the required test set.

The person who submitted the proposed study plan would be required

to perform the testing according to that standard. Failure to perform the testing would be a violation of the rule.

F. Exemptions

EPA's proposed policy on application for exemptions from section 4 testing requirements was published in the **Federal Register** of July 18, 1980 (45 FR 48512). EPA intends to promulgate its final procedures for exemptions in 40 CFR Part 770. The exemption procedures described below and included in the proposed rule language are consistent with EPA's current thinking on exemption procedures. If the general rule is promulgated before this proposal becomes final, the hydroquinone rule will be modified to comport with the general procedural provisions.

Any manufacturer or processor of hydroquinone would be able to apply for an exemption. Any person who has applied for an exemption would not be in violation of the rule until such time as EPA denies the application.

If manufacturers perform all the required testing, processors would be granted exemptions automatically without having to file applications.

When EPA has received a proposed study plan for a test set and has adopted the plan as the test standard, EPA would conditionally grant all exemption applications for that test set. If the test sponsor later fails to perform the testing, EPA would notify all persons who had submitted exemption applications for that test set that the exemptions would be denied, unless within 30 days a manufacturer or processor notified EPA of its intent to perform the testing in accordance with the adopted test standards.

EPA is not proposing to require the submission of equivalence data as a condition for exemption from the proposed testing for hydroquinone. As noted in Unit II.C., EPA is interested in evaluating the effects attributable to hydroquinone itself and has specified a relatively pure substance for testing.

G. Reporting Requirements

EPA is proposing that all data developed under this rule be reported in accordance with its final GLP Standards, which will appear in 40 CFR Part 792.

EPA is required by TSCA section 4(b)(1)(C) to specify the time period during which persons subject to a test rule must submit test data. These deadlines will be established in the phase II rulemaking in which study plans are approved.

TSCA section 14(b) governs Agency disclosure of all test data submitted pursuant to section 4 of TSCA. Upon receipt of data required by this rule, the Agency will publish a notice of receipt in the **Federal Register** as required by section 4(d).

H. Enforcement Provisions

The Agency considers failure to comply with any aspect of a section 4 rule to be a violation of section 15 of TSCA. Section 15(1) of TSCA makes it unlawful for any person to fail or refuse to comply with any rule or order issued under section 4. Section 15(3) of TSCA makes it unlawful for any person to fail or refuse to (1) establish or maintain records, (2) submit reports, notices, or other information, or (3) permit access to or copying of records required by the Act or any rule issued under TSCA.

Additionally, TSCA section 15(4) makes it unlawful for any person to fail or refuse to permit entry or inspection as required by section 11. Section 11 applies to any "establishment, facility, or other premises in which chemical substances or mixtures are manufactured, processed, stored, or held before or after their distribution in commerce. . . ." The Agency considers a testing facility to be a place where the chemical is held or stored and, therefore, subject to inspection. Laboratory audits/inspections will be conducted periodically in accordance with the authority and procedures outlined in TSCA section 11 by duly designated representatives of EPA for the purpose of determining compliance with any final rule for hydroquinone. These inspections may be conducted for purposes which include verification that testing has begun, that schedules are being met, that reports accurately reflect the underlying raw data and interpretations and evaluations thereof, and that the studies are being conducted according to EPA GLP standards and the protocols established in the phase II rule.

EPA's authority to inspect a testing facility also derives from section 4(b)(1) of TSCA, which directs EPA to promulgate standards for the development of test data. These standards are defined in section 3(12)(B) of TSCA to include those requirements necessary to assure that data developed under testing rules are reliable and adequate, and such other requirements as are necessary to provide such assurance. The Agency maintains that laboratory inspections are necessary to provide this assurance.

Violators of TSCA are subject to criminal and civil liability. Persons who submit materially misleading or false information in connection with the requirement of any provision of this rule may be subject to penalties calculated as if they never submitted their data. Under the penalty provision of section 16 of TSCA, any person who violates section 15 could be subject to a civil penalty of up to $25,000 per day for each violation. Each day of operation in violation may constitute a separate violation. This would be applicable primarily to manufacturers or processors that fail to submit a letter of intent to perform testing or an exemption request, and that continue manufacturing or processing after the deadlines for such submissions. Knowing or willful violations could lead to the imposition of criminal penalties of up to $25,000 for each day of violation and imprisonment for up to one year. Other remedies are available to EPA under sections 7 and 17 of TSCA, such as seeking an injunction to restrain violations of TSCA section 4.

Individuals, as well as corporations, could be subject to enforcement actions. Sections 15 and 16 of TSCA apply to "any person" who violates various provisions of TSCA. EPA may, at its discretion, proceed against individuals as well as companies themselves. In particular, this includes individuals who report false information or who cause it to be reported. In addition, the submission of false, fictitious, or fraudulent statements is a violation under 18 U.S.1001.

I. Issues for Public Comment

1. EPA has proposed only limited metabolism (toxicokinetic) studies via oral and dermal routes of exposure in lieu of full metabolism investigations. Of concern, however, is the presence of unconjugated hydroquinone and unconjugated metabolites in the systemic circulation after penetration through the skin. This is of concern because hydroquinone is a suspected carcinogen, and, at this time, it is assumed that unconjugated rather than conjugated hydroquinone is the carcinogenic agent. The Agency is requesting comments on possible additional study requirements for the skin penetration investigation of hydroquinone. Specifically, it may be useful to ascertain the time-course and distribution of unconjugated hydroquinone after topical application, since hydroquinone reaching the blood via this route may be metabolized differently than that via the oral route.

2. Some xenobiotics are known to penetrate skin more readily after repeated applications. The skin penetrating potential of hydroquinone is unknown, and thus, the possible differences between single and repeated exposures remain obscured. The

Agency, therefore, is requesting comments on whether or not repeated topical exposures during the required toxicokinetic testing may be more definitive as regards the true penetrating potential of hydroquinone.

3. The Agency is concerned with the effect of chronic exposures to hydroquinone on aquatic organisms. Therefore, EPA has proposed a series of acute and chronic tests on aquatic organisms with hydroquinone. The data derived from these tests will be used to determine whether an unreasonable risk exists to aquatic species. Further, if it is determined from these data that hydroquinone poses an unreasonable risk, this universe of data could be used to establish water quality criteria under the Clean Water Act.

However, it is anticipated that chronic testing of hydroquinone on aquatic species may present some technical problems in that it appears difficult to maintain the compound in test systems (see Hydroquinone/Quinone Technical Support Document). The Agency is requesting comments, from a technological standpoint, on the feasibility of conducting these chronic aquatic toxicity studies. If the methods for the chronic studies prove to be unsatisfactory, EPA may require supplemental acute testing of embryo-juvenile life stages of fish and larvae of invertebrates.

4. EPA is proposing two epidemiologic studies to evaluate the magnitude of the potential health risks, identified by the Agency, in individuals exposed to hydroquinone. The Agency is requesting comments on:

a. The suitability of the Agency's selection of endpoints (i.e., ocular lesions, total cancers for one study; total birth defect incidence, spontaneous abortions, and testicular effects for the other study).

b. The Agency's suggestion that the study design specified, which uses cancer as a guide, will also assist in detecting unreasonable risks from other morbid endpoints.

Further, is there enough information regarding human responses to hydroquinone exposure for the Agency to be more explicit in its design requests and still (1) gain information on a variety of endpoints and (2) not restrict the investigations?

5. As indicated in the Technical Support Document for Hydroquinone/Quinone, the Agency believes that the presence of quinone in the environment is primarily a result of the release of hydroquinone which is converted to quinone in the environment. The Agency is proposing environmental effects and chemical fate testing for quinone as well as environmental effects and chemical fate testing for hydroquinone. As proposed, manufacturers and processors of quinone would be responsible for testing quinone for environmental effects, regardless of the fact that most quinone in the environment might result from release of hydroquinone.

Requiring manufacturers and processors of quinone to conduct environmental effects and chemical fate testing of quinone may be inequitable if the quinone in the environment results primarily from hydroquinone manufacture and processing. However, section 4(b)(3)(B) of TSCA specifies that testing must be conducted by "[e]ach person who manufactures or intends to manufacture *such substance*" and "[e]ach person who processes or intends to process *such substance.*" EPA believes that this language requires the approach contained in the proposal for quinone testing. However, the Agency is considering requiring the manufacturers and processors of hydroquinone to either conduct or share in the cost of conducting environmental effects and chemical fate testing for quinone. This could be accomplished either by transferring the quinone environmental effects and chemical fate testing requirements to the hydroquinone test rule or by adding manufacturers and processors of hydroquinone to those required to test under the quinone test rule. EPA solicits comments on these alternative approaches to testing quinone for chemical fate and environmental effects.

III. Economic Analysis of Proposed Rule

To assess the potential economic impact of this proposed rule, EPA has prepared a Level I economic analysis that examines the costs of the required testing and analyzes four market characteristics of the chemical substance: (1) Demand sensitivity, (2) cost characteristics, (3) industry structure, and (4) market expectations.

The Level I analysis of hydroquinone, which estimates the total testing costs to range from $682,600 to $1,577,700, indicates that the potential for adverse economic effects due to the estimated testing costs is low. This conclusion is based on the following observations:

1. Stable or moderate market growth is expected for hydroquinone.

2. The relative magnitude of the test cost is minor, i.e., on an annualized unit cost basis, the hydroquinone test costs are estimated to average 0.7 to 1.6 cents per pound. The unit costs represent 0.31 to 0.71 percent of the price of hydroquinone.

3. Because the market for hydroquinone is stable or growing somewhat and demand in its primary uses is inelastic, it appears that the direct cost of testing hydroquinone can be passed on to consumers with little or no economic impact.

Because the Level I analysis indicates very little potential for an adverse economic impact, EPA has determined that a more comprehensive and detailed Level II economic evaluation is not needed for hydroquinone.

IV. Availability of Test Facilities and Personnel

Section 4(b)(1) of TSCA requires EPA to consider "the reasonably foreseeable availability of the facilities and personnel needed to perform the testing required under the rule." Therefore, EPA conducted a study to assess the availability of test facilities and personnel to handle the additional demand for testing services created by section 4 test rules and test programs negotiated with industry in place of rulemaking. Copies of the study, "Chemical Testing Industry: Profile of Toxicological Testing, October, 1981," can be obtained from NTIS, under publication number PB 82–140773.

On the basis of this study, the Agency believes that there will be available resources to perform the testing in this proposed rule.

V. Public Meetings

If persons indicate to EPA that they wish to present comments on this proposed rule to EPA officials who are directly responsible for developing the rule and supporting analyses, EPA will hold a public meeting on March 19, 1984 in Washington, D.C. Persons who wish to present comments at the meeting should call the TSCA Assistance Office (TAO), Toll Free: (800–424–9065). In Washington, D.C.: (554–1404). Outside the U.S.A. (Operator-202–554–1404) by February 21, 1984. The meeting will not be held if members of the public do not indicate they wish to make oral presentations. This meeting is scheduled after the deadline for submission of written comments, so that issues raised in the written comments can be discussed by EPA and the public commenters.

While the meeting will be open to the public, active participation will be limited to those persons who arranged to present comments and to designated EPA participants. Attendees should call the TAO before making travel plans to check whether the meeting will be held.

Should a meeting be held, the Agency will transcribe the meeting and include the written transcript in the public record. Participants are requested, but

not required, to submit copies of their statements prior to or on the day of the meeting. All such written materials will become part of EPA's record for this rulemaking.

VI. Rulemaking Record

EPA has established a record for this rulemaking, docket number [OPTS–42048]. This record includes the basic information the Agency considered in developing this proposal, and appropriate **Federal Register** notices. The Agency will supplement the record with additional information as it is received. Confidential business information (CBI), while part of the record, is not available for public review. A public version of the record, from which CBI has been deleted, is available for inspection in the OPTS Reading Room from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays, in Rm. E–107, 401 M St. SW., Washington, D.C.

The record includes the following information:

(1) **Federal Register** notices pertaining to this rule consisting of:

(a) Notice of proposed rulemaking on hydroquinone.

(b) Notice containing the ITC designation of hydroquinone to the Priority List [44 FR 70664, December 7, 1979].

(c) Notices relating to EPA's health effects, chemical fate, and environmental effects test guidelines [44 FR 27334, May 9, 1979; 44 FR 44054, July 26, 1979) and EPA Good Laboratory Practice standards [44 FR 27334 May 9, 1979; 44 FR 44054, July 26, 1979).

(d) Notice of proposed rulemaking on exemption policy and procedures.

(e) Final reimbursement policy and procedures.

(2) Support Documents consisting of:

(a) Hydroquinone/Quinone technical support document.

(b) Economic analysis support decument.

(3) Communications before proposal consisting of:

(a) Written public comments.

(b) Summaries of telephone conversations.

(c) Meeting summaries.

(d) Reports—published and unpublished factual materials, including contractors' reports.

(4) Report—Chemical Testing Industry: Profile of Toxicological Testing. October, 1981.

VII. Classification of Rule

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This test rule is not major because it does not meet any of the criteria set forth in section 1(b) of the Order. First, the actual annual cost of the testing proposed for hydroquinone is less than $408,800 over the testing and reimbursement period. Second, because the cost of the testing will be distributed over a large production volume, the rule will have only very minor effects (annualized unit costs are less than 1.6 cents per pound) on producers' costs or users' prices for this chemical substance. Finally, taking into account the nature of the market for this substance, the low level of costs involved, and the expected nature of the mechanisms for sharing the costs of the required testing, EPA concludes that there will be no significant adverse economic impact of any type as a result of this rule.

This proposed regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any comments from OMB to EPA, and any EPA response to those comments, will be included in the public record.

VIII. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, (15 U.S.C. 601, *et seq.*, Pub. L. 96–354, September 19, 1980), EPA is certifying that this test rule, if promulgated, will not have a significant impact on a substantial number of small businesses because:

(1) Small processors will not perform testing themselves and will not participate in the organization of the testing effort.

(2) They will experience only minor costs in securing exemption from testing requirements.

(3) They are unlikely to be affected by reimbursement requirements.

(4) There are no small manufacturers of hydroquinone which will be affected by this rule.

IX. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs of OMB marked Attention: Dest Officer for EPA. The final rule package will respond to any OMB or public comments on the information collection requirements.

X. Guidelines and Study Plans

The following guidelines and/or study plans cited in this proposed test rulemaking are available from: National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, (703) 487–4650.

NTIS Publication No.	Title	Price
PB–82–140773	Chemical Testing Industry: Toxicological Testing.	$16.00
PB–82–232984	TSCA Health Effects Guidelines	40.00
PB–82–232992	Environmental Effects Guidelines	60.00
PB–83–153908	OECD Test Guidelines for Hazard Evaluation: Wildlife and Aquatic Organisms.	11.50
PB–82–233008	TSCA Chemical Fate	40.00
PB–83–153916	FIFRA Pesticides Registration Guidelines: Proposed Data Requirements for Hazard Evaluation: Human and Domestic Animals.	11.50

List of Subjects in 40 CFR Part 799

Testing, Environmental protection, Hazardous material, Chemicals.

(Sec. 4, Pub. L. 94–469, 90 Stat. 2003; (15 U.S.C. 2061))

Dated: December 23, 1983.

Alvin L. Alm,

Acting Administrator.

PART 799—[AMENDED]

Therefore, it is proposed that a new § 799.2200 be added to Subpart B of proposed Part 799 to read as follows:

§ 799.2200 Hydroquinone.

(a) *Identification of test substance.* (1) Hydroquinone (CAS No. 123–31–9) shall be tested in accordance with this section.

(2) Hydroquinone of at least 99 pecent purity shall be used as the test substance.

(b) *Persons required to submit study plans, conduct tests and submit data.* (1) All persons who manufacture or process hydroquinone from the effective date of this section (30 days from the publication date of the final rule in the **Federal Register**) to the end of the reimbursement period shall submit letters of intent to test, exemption applications, and study plans and shall conduct tests and submit data as specified in paragraphs (c), (d), (e), (h), (j), (k) and (l) of this section.

(2) Any person subject to the requirements of this section may apply to EPA for an exemption from study plan submission and testing requirements. Any such application shall be in accordance with paragraph (h) of this section.

(c) *Submission of notice of intent to test or exemption application.* (1) No later than 30 days after the effective date of this section, each person manufacturing hydroquinone as of the effective date of this section must, for

each test set required by paragraphs (j), (k), and (l) of this section, either notify EPA by letter of his/her intent to perform the test set or submit an application for an exemption from the study plan submission and testing requirements for the test set.

(2) If, by the date specified in paragraph (c)(1) of this section, no manufacturer of hydroquinone has notified EPA of its intent to perform testing for a test set required by paragraphs (j), (k), or (l) of this section, EPA will publish a notice in the **Federal Register** of this fact specifying the test sets for which no notice of intent has been submitted. No later than 30 days after publication of such a notice, each person processing hydroquinone as of the effective date of this section must, for each test set specified in the **Federal Register** notice, either notify EPA by letter of his/her intent to perform the test set or submit an application for an exemption from the study plan submission and testing requirements for the test set.

(3) Any person not manufacturing hydroquinone as of the effective date of this section who, before the end of the reimbursement period, manufactures hydroquinone must comply with the requirements of paragraphs (c)(1) and (d)(1) of this section. For purposes of this paragraph (c)(3), the manufacturer must submit the notice of intent to test or exemption application required by paragraph (c)(1) of this section by the date manufacture begins and must submit any proposed study plan required by paragraph (d)(1) of this section within 60 days of the date manufacture begins.

(4) If a **Federal Register** notice has been published under paragraphs (c)(2) or (d)(4) of this section, any person not processing hydroquinone as of the effective date of this section who, before the end of the reimbursement period, processes hydroquinone must comply with the requirements of paragraphs (c)(2) and (d)(2) of this section. For purposes of this paragraph (c)(4), the processor must submit the notice of intent to test or exemption application required by paragraph (c)(2) of this section by the date processing begins and must submit any proposed study plan required by paragraph (d)(2) of this section within 60 days of the date processing begins.

(5) Any manufacturer or processor of hydroquinone which has notified EPA under paragraphs (c) (1), (2), (3), or (4) of this section of its intent to perform testing for a test set required by paragraph (j), (k), or (l) of this section, must submit a proposed study plan for the test set as required in paragraph (d) of this section and must perform that test set in accordance with the test standards in paragraph (m) of this section.

(d) *Submission of proposed study plans.* (1) Manufacturers of hydroquinone which notify EPA under paragraph (c)(1) of this section that they intend to perform a test set must submit a proposed study plan for the test set in accordance with paragraph (e) of this section no later than 90 days after the effective date of this section. Manufacturers may jointly submit a single proposed study plan if they plan to sponsor or perform the test set jointly. Any manufacturer which, having notified EPA of its intent to perform a test set, fails to submit a proposed study plan for that test set will have been in violation of this section as if no letter of intent to perform the test set had been submitted.

(2) Processors of hydroquinone which notify EPA under paragraphs (c)(2) of this section that they intend to perform a test set must submit a proposed study plan for the test set in accordance with paragraph (e) of this section no later than 90 days after the publication of the notice specified in paragraph (c)(2) of this section. Processors may jointly submit a single proposed study plan if they plan to sponsor or perform the test set jointly. Any processor which, having notified EPA of its intent to perform a test set, fails to submit a proposed study plan for that test set will have been in violation of this section as if no letter of intent to perform the test set had been submitted.

(3) If EPA determines in accordance with paragraph (f)(1)(i) of this section that a proposed study plan is incomplete and the manufacturer or processor has not, after notice from EPA, submitted appropriate information to make the study plan complete within 15 days, the manufacturer or processor will have been in violation of this section as if no letter of intent to perform the test set had been submitted.

(4) If either:

(i) By the date specified in paragraph (d)(1) of this section a manufacturer of hydroquinone, which notified EPA of its intent to perform a test set, has failed to submit a proposed study plan for that test set, or

(ii) A proposed study plan submitted under paragraph (d)(1) of this section has been found to be incomplete under paragraph (f)(1)(i) of this section and the manufacturer has not submitted appropriate information to make the study plan complete within 15 days, EPA will publish a notice in the **Federal Register** of this fact specifying the test set. The requirements of paragrpahs (c)(2) and (d)(2) of this section for processors to submit letters of intent to perform testing, applications for exemption, and proposed study plans will apply.

(5) If either:

(i) By the date specified in paragraph (c)(2) of this section no processor of hydroquinone has notified EPA of its intent to perform testing for any test set identified in a **Federal Register** notice published under paragraphs (c)(2) or (d)(4) of this section,

(ii) By the date specified in paragraph (d)(2) of this section any processor of hydroquinone, which notified EPA of its intent to perform a test set, has failed to submit a proposed study plan for that test set, or

(iii) A proposed study plan submitted under paragraph (d)(2) of this section has been found to be incomplete under paragraph (f)(1)(i) of this section and the processor has not submitted appropriate information to make the study plan complete within 15 days, all applications for exemption from the requirements to submit study plans and to perform tests for the specific test set involved will automatically be denied. EPA will notify each manufacturer and processor of hydroquinone, which applied for an exemption for the specific test set involved, of this automatic denial either by letter or by notice in the **Federal Register**. Each manufacturer or processor of hydroquinone for which an exemption application has been automatically denied will be in violation of this section 30 days from the time that it receives the notice letter or 30 days from the time that the notice is published in the **Federal Register**, whichever comes first. The violation will continue until a manufacturer or processor of hydroquinone submits a proposed study plan for each test set involved.

(6) Any manufacturer or processor of hydroquinone may submit a proposed study plan for any test set required by this section at any time, regardless of whether the manufacturer or processor previously submitted an application for exemption from testing for that test set.

(e) *Content of study plans.* (1) All study plans are required to contain the following information:

(i) A citation to this section.

(ii) The specific test set covered by the study plan.

(iii)(A) The names and addresses of the test set sponsors.

(B) The names, addresses, and telephone numbers of the responsible administrative officials and project manager(s) in the principal sponsor's organization.

(C) The name, address, and telephone number of the appropriate individual for oral and written communications with EPA.

(D)(*1*) The name and address of the testing facility and the names, addresses, and telephone numbers of the testing facility's administrative officials and project manager(s) responsible for this testing.

(*2*) Brief summaries of the training and experience of each professional involved in the study including study director, veterinarian(s), toxicologist(s), pathologist(s) and laboratory assistants.

(iv) Identity and data on the chemical substance being tested, including appropriate physical constants, spectral data, chemical analysis, and stability under test and storage conditions.

(v) Study protocol, including rationale for: species/strain selection; dose selection (and supporting data); route(s) or method(s) of exposure; a description of diet to be used and its source, including nutrients and contaminants and their concentrations; for *in vitro* test systems, a description of culture medium and its source; and a summary of expected spontaneous chronic diseases (including tumors), genealogy, and life span.

(vi) Schedule for initiation and completion of major phases of long term tests; schedule for submission of interim progress and final reports to EPA.

(2) Information specified under paragraph (e)(1)(iii)(D) of this section is not required in proposed study plans if the information is not available at the time of submission; however, the information must be submitted before the initiation of testing.

(f) *Review and adoption of study plans.* (1) Upon receipt of a proposed study plan, EPA will review the study plan to determine whether it complies with paragraph (e) of this section.

(i) If EPA determines that the proposed study plan does not comply with paragraph (e) of this section, EPA will notify the submitter that the submission is incomplete and will identify the deficiencies and the steps necessary to complete the submission. The submitter will have 15 days from the day it receives this notice to submit appropriate information to make the study plan complete. If the submitter fails to provide appropriate information to complete the study plan within this time, the submitter will have been in violation of this section as if no study plan had been submitted.

(ii) If EPA determines the proposed study plan complies with paragraph (e) of this section, EPA will publish a notice in the **Federal Register** requesting comments on the ability of the study plan to ensure that data from the test set will be reliable and adequate. EPA will provide a 45-day comment period and will provide an opportunity for an oral presentation upon the request of any person. EPA may extend the comment period if it appears from the nature of the issues raised by EPA's review or from public comments that further comment is warranted.

(2) After receiving and considering public comment, EPA will adopt the study plan, including time deadlines and reporting schedules, as proposed or as modified in response to EPA review and public comments, as test standards for the testing of hydroquinone in paragraph (m) of this section.

(g) *Modification of study plans during conduct of study*—(1) *Application.* Any test set sponsor who wishes to modify the adopted study plan for any test set required under this section must submit an application in accordance with this paragraph. Application for modification shall be made in writing to the Chief, Test Rules Development Branch, Office of Toxic Substances, or by phone with written confirmation to follow as soon as feasible. Applications must include appropriate explanation of why the modification is necessary.

(2) *Adoption.* To the extent feasible, EPA will seek comment on all substantive changes in study plans. EPA will issue a notice in the **Federal Register** requesting comments on requested modifications. However, EPA will act on the requested modification without seeking public comment if either:

(i) EPA believes that an immediate modification to a study plan is necessary in order to preserve the accuracy or validity of an ongoing study, or

(ii) EPA determines that a modification clearly does not pose any significant substantive issues. EPA will notify the sponsor of EPA's approval or disapproval. When the Agency approves a modification, it will publish a notice in the **Federal Register** indicating that the study plan has been modified.

(h) *Exemption applications.* (1) Any manufacturer or processor of hydroquinone may submit an application to EPA for an exemption from submitting proposed study plans for, and from performing, any or all of the test sets specified in paragraphs (j), (k), and (l) of this section. The application must include the name and address of the manufacturer or processor and must identify the specific requirements of the section from which the exemption is sought.

(2) No manufacturer or processor of hydroquinone will be in violation of the requirement to perform a specific test set under paragraph (j), (k), or (l) of this section if it has submitted a timely application for an exemption for that test set and the application has not been denied by EPA.

(3) EPA will conditionally grant any requested exemption for a specific test set required by paragraph (j), (k), or (l) of this section if EPA has received a complete proposed study plan for that test set in accordance with paragraph (e) of this section and has adopted the study plan in accordance with paragraph (f)(2) of this section.

(4) EPA will deny any exemption for a specific test set in paragraph (j), (k), or (l) of this section if the test set sponsor fails to perform the test or to submit data as required in the test set standards adopted under paragraph (m) of this section.

(5) If manufacturers of hydroquinone perform all the test sets required by paragraphs (j), (k), and (l) of this section, processors of hydroquinone will automatically be granted an exemption from the study plan submission and testing requirements without the need to file an application for exemption.

(i) *Test results.* A positive or negative test result in any of the health effects tests enumerated in paragraph (j) of this section is defined as specified in the TSCA Health Effects Test Guidelines published by the National Technical Information Service (NTIS) under publication number PB 82-232984.

(j) *Health effects testing*—(1) *Toxicokinetic Studies*—(i) *Required testing.* Skin and oral dosing studies, which provide data regarding both rate and extent of absorption, shall be conducted with hydroquinone.

(ii) *Study plans.* At present, EPA has no approved guidelines or protocols for determining the penetrating potential of xenebiotics through skin. The best available guidance may be the method of Feldman and Maibach (1969). In addition, Chapter 5 of the *Dermatotoxicology* (*in vivo* percutaneous absorption, Webster R., Maibach H. In: *Dermatotoxicology*, Second edition, 1983, edited by F. Marzulli and H. Maibach. Hemisphere Publishing Corporation, New York) contains a thorough discussion of *in vitro* percutaneous absorption testing. The purpose of this test is to determine the rate and extent of hydroquinone penetration through skin. Concurrent intraveneous dosing of a separate group of animals is mandatory and collection of urine and feces from all test animals should be sensitive enough to characterize the penetration of the applied dose during the first 24 hours of

observation. In addition, urine and fecal collection should continue until at least 90 percent of the administered dose is recovered, but no longer than 14 days. To determine the rate and extent of gastrointestinal absorption of hydroquinone, an acute methodology, such as that described in the TSCA Health Effects Testing Guidelines, using at least two doses would be appropriate. One dose should be of the same magnitude as that used in the National Toxicology Program cancer bioassay, preferably the medium dose. The low dose should reflect actual human exposure levels. As with the skin penetration study, urine and fecal collection should be sensitive enough to characterize the penetration of the applied dose during the first 24 hours of observation; and collection should continue until at least 90 percent of the administered dose is recovered, but not longer than 14 days.

(2) *Mutagenic effects—Chromosomal aberrations*—(i) *Required testing.* A dominant lethal assay shall be conducted in rodents with hydroquinone.

(ii) *Study plans.* For guidance in preparing study plans, the TSCA Health Effects Test Guidelines for Chromosomal Effects, published by NTIS (PB 82–232984), should be consulted. Additional guidance may be obtained from the OECD Test Guidelines for Genetic Toxicology, and the FIFRA Pesticide Registration Guidelines; Proposed Data Requirements for Hazard Evaluation: Human and Domestic Animals, published by NTIS (PB 83–153916).

(3) *Mutagenic effects—Gene Mutation*—(i) *Required testing.* (A) A gene mutation assay, in mammalian cells in culture, shall be conducted with hydroquinone.

(B) Hydroquinone shall be tested in a *Drosophila* sexlinked recessive lethal (SLRL) assay if the results of the gene mutation assay are positive.

(C) A mouse-specific locus assay shall be conducted with hydroquinone if a positive result is produced in the *Drosophila* SLRL assay.

(ii) *Study plans.* For guidance in preparing study plans, the TSCA Health Effects Test Guidelines for Gene Mutations, published by NTIS (PB 82–232984), should be consulted. Additional guidance may be obtained from the OECD Test Guidelines for Genetic Toxicology and the FIFRA Registration Guidelines; Proposed Data Requirements for Hazard Evaluation: Human and Domestic Animals, published by NTIS (PB 83–153916).

(4) *Teratogencity*—(i) *Required testing.* Teratogenicity studies in both a rodent and a non-rodent species shall be conducted with hydroquinone. These tests must be conducted using the oral route of exposure.

(ii) *Study plans.* For guidance in preparing study plans, the TSCA Health Effects Test Guidelines for Specific Organ/Tissue Toxicity-Teratogenicity, published by NTIS (PB 82–232984), should be consulted. Additional guidance may be obtained from the OECD Test Guidelines for Health Effects, and the FIFRA Pesticide Registration Guidelines; Proposed Data Requirements for Hazard Evaluation: Human and Domestic Animals, published by NTIS (PB 83–153916).

(5) *Reproductive Effects*—(i) Required testing. A two-generation reproductive effects study in the rodent shall be conducted with hydroquinone. Oral dosing shall be the route of administration of the test substance in this study.

(ii) *Study plans.* For guidance in preparing study plans, the TSCA Health Effects Test Guidelines for Specific Organ/Tissue Toxicity—Reproduction/Fertility Effects, published by NTIS (PB 82–232984), should be consulted. Additional guidance may be obtained from the FIFRA Pesticide Registration Guidelines—Proposed Data Requirements for Hazard Evaluation: Human and Domestic Animals, published by NTIS (PB 83–153916).

(6) *Epidemiology*—(i) Required testing. Two epidemiologic studies shall be conducted for hydroquinone. One study shall be a cohort study designed to detect a 50 percent increase in total cancer incidence with at least 80 percent probability when both random and nonrandom sources of error have been taken into account. Incidence of and mortality from the following additional specific endpoints shall be included: specific cancers and a variety of ocular effects including loss of visual acuity and conjunctival or corneal changes. The other study shall be a study of teratogenic and adverse reproductive effects. This study shall conform to category 5 or category 4 of the levels of inferential knowledge specified by the 1979 Draft Interagency Regulatory Liaison Group's Guideline for Documentation of Epidemiological Studies. It shall be designed to detect a relative risk of 2 in the rate of total defects among live-borns, if of category 5, or an odds ratio of 2, if of category 4, with at least 90 percent probability at 5 percent significance. Both spouses shall be included, and spontaneous abortions (with recorded gestational age), testicular effects, and effects on sperm formation shall be studied.

(ii) *Study plans.* For guidance in preparing study plans, the following paper should be consulted: Epidemiology Workgroup. Interagency Regulatory Liaison Group, Nov. 1979. Draft IRLG Guideline for Documentation of Epidemiology Studies.

(7) *Neurotoxicity*—(i) *Required testing.* The following neurotoxicity testing shall be conducted for hydroquine using an animal with oral exposure:

(A) A functional observation battery,

(B) A neuropathology test, and

(C) A motor activity test or an operant behavior test.

(ii) *Study plans.* For guidance in preparing study plans, the TSCA Health Effects Test Guidelines for Neurotoxicity, published by NTIS (PB 82–232984), should be consulted. Additional guidance may be obtained by consulting the FIFRA Pesticide Registration Guidelines; Proposed Data Requirements for Hazard Evaluation: Human and Domestic Animals (PB 83–153916).

(k) *Chemical fate testing*—(1) *Aerobic biodegradation*—(i) *Required testing.* An aerobic biodegradation test shall be conducted with hydroquinone using natural waters representative of aquatic environments that may be exposed to hydroquinone. Transformation of hydroquinone may be determined using either compound-specific analytical techniques or radiolabeled test compound. Regardless of the analytical method chosen, it shall be adequate to determine both disappearance of parent compound and the extent of interconversion of hydroquinone and quinone.

(ii) *Study plans.* The Agency has not published guidelines for the type of biodegradation test suggested for hydroquinone. However, any natural waters die-away or similar test method should be suitable, provided that it meets the requirements set forth above. Examples of methods that may be used to develop an acceptable study plan are described in Saeger, V.W. and Tucker, E.S., "Biodegradation of phthalic Acid Esters in River Water and Activated Sludge," Applied Environmental Microbiology *31*, 29–34 (1976), and Spain, J.C., Pritchard, P.H., and Bourquin A.W., Effects of Adaptation on Biodegradation Rates in Sediment/Water Cores from Estuarine and Freshwater Environments, Applied Enivronmental Microbiology *40*, 726–734 (1980).

(2) [Reserved]

(l) *Environmental effects testing*—(1) *Aquatic freshwater acute toxicity*—(i) *Required testing.* Acute toxicity tests

shall be conducted with hydroquinone with freshwater animals in eight different species provided that, of the eight species:

(A) At least one is a salmonid fish.

(B) At least one is a on-salmonid fish.

(C) At least one is a Planktonic crustacean.

(D) At least one is a benthic crustacean.

(E) At least one is a benthic insect.

(F) At least one of the benthic species is a detritivore.

(ii) *Study plans.* For guidance in preparing study plans, the STCA Environmental Effects Test Guidelines for acute toxicity testing, published by NTIS (PB 82–232992), should be consulted. Additional guidance may be obtained by consulting the OECD Test Guidelines for Effects on Biotic Systems, the FIFRA Guidelines for Hazard Evaluation: Wildlife and Aquatic Organisms (PB 83–153908), and the Water Quality Criteria Guidelines, published in the **Federal Register** on November 28, 1980 (45 FR 79341).

(2) *Aquatic freshwater chronic toxicity*—(i) *Required testing.* Chronic toxicity testing shall be conducted with hydroquinone for three species of aquatic animals provided that of the three species:

(A) At least one is fish.

(B) At least one is an invertebrate.

(C) At least one is a freshwater species (the other two may be saltwater species).

(ii) *Study plans.* For guidance in preparing study plans, the TSCA Environmental Effects Test Guidelines for chronic toxicity testing, published by NTIS (PB 82–232992), should be consulted. Additional guidance may be obtained by consulting the FIFRA Guidelines for Hazard Evaluation: Wildlife and Aquatic Organisms (PB 83–153908) and the Water Quality Criteria Guidelines (45 FR 79341).

(3) *Aquatic freshwater plants*—(i) *Required testing.* Testing shall be conducted with hydroquinone with a freshwater alga, or a chronic test shall be conducted with hydroquinone with a freshwater vascular plant.

(ii) *Study plans.* For guidance in preparing study plans, the TSCA Environmental Effects Test Guidelines for algal and macrophytic toxicity testing, published by NTIS (PB 82–23992), should be consulted. Additional guidance may be obtained by consulting the FIFRA Guidelines for Hazard Evaluation: Wildlife and Aquatic Organisms (PB 83–153908), the OECD Test Guidelines for Effects on Biotic Systems, and the Water Quality Criteria Guidelines.

(4) *Freshwater bioconcentration testing*—(i) *Required testing.* A bioconcentration factor test shall be conducted with hydroquinone with a freshwater aquatic animal species.

(ii) *Study plans.* For guidance in preparing study plans, the TSCA Environmental Effects Test Guidelines, published by NTIS (PB 82–232992), should be consulted. Additional guidance may be obtained by consulting the FIFRA Guidelines for Hazard Evaluation: Wildlife and Aquatic Organisms (PB 83–153908), the OECD Test Guidelines for Degradation and Accumulation, and the Water Quality Criteria Guidelines.

(5) *Aquatic saltwater acute toxicity*—(i) *Required testing.* Acute toxicity tests shall be conducted with hydroquinone with saltwater animals in eight different species provided that of the eight species:

(A) At least two different fish families are included.

(B) At least five different invertebrate families are included.

(C) Either the Mysidae or Penaeidae family or both are included.

(D) At least one of the invertebrate families is in a phylum other than Arthropoda.

(ii) *Study plans.* For guidance in preparing study plans, the TSCA Environmental Effects Test Guidelines for acute toxicity testing, published by NTIS (PB 82–232992), should be consulted. Additional guidance may be obtained by consulting the OECD Test Guidelines for Effects on Biotic Systems, and the FIFRA Guidelines for Hazard Evaluation: Wildlife and Aquatic Organisms (PB 83–153908), and the Water Quality Criteria Guidelines.

(6) *Aquatic saltwater chronic toxicity*—(i) *Required testing.* Chronic toxicity tests shall be conducted for three species of aquatic animals provided that of the three species:

(A) At least one is a fish.

(B) At least one is an invertebrate.

(C) At least one is a saltwater species (the other two may be freshwater species).

(ii) *Study plans.* For guidance in preparing study plans, the TSCA Environmental Effects Test Guidelines for chronic toxicity testing, published by NTIS (PB 82–232992), should be consulted. Additional guidance may be obtained by consulting the FIFRA Guidelines for Hazard Evaluation: Wildlife and Aquatic Organisms (PB 83–153908) and the Water Quality Criteria Guidelines.

(7) *Aquatic saltwater plants*—(i) *Required testing.* Testing shall be conducted with hydroquinone with saltwater alga, or a chronic test shall be conducted with hydroquinone with a saltwater vascular plant.

(ii) *Study plans.* For guidance in preparing study plans, the TSCA Environmental Effects Test Guidelines for algal and macrophytic toxicity testing, published by NTIS (PB 82–232992 and PB 83–257709), should be consulted. Additional guidance may be obtained by consulting the FIFRA Guidelines for Hazard Evaluation: Wildlife and Aquatic Organisms (PB 83–153908), the OECD Test Guidelines for Effects on Biotic Systems, and the Water Quality Criteria Guidelines.

(8) *Saltwater bioconcentration testing*—(i) *Required testing.* A bioconcentration factor test shall be conducted with a saltwater aquatic animal species.

(ii) *Study plans.* For guidance in preparing study plans, the TSCA Environmental Effects Test Guidelines, published by NTIS (PB 82–232992), should be consulted. Additional guidance may be obtained by consulting the FIFRA Guidelines for Hazard Evaluation: Wildlife and Aquatic Organisms (PB 83–153908), the OECD Test Guidelines for Degradation and Accumulation, and the Water Quality Criteria Guidelines.

(m) *Test Standards.* (1) Sponsors and testing facilities must adhere to the EPA Good Laboratory Practice Regulations in Part 792 of this chapter.

(n) *Enforcement.* (1) If a manufacturer or processor, which notified EPA under paragraph (c) (1), (2), (3), or (4) of this section of its intent to perform testing for a test set required by paragraphs (j), (k), or (l) of this section, fails to perform the test set in accordance with the test standards in paragraph (m) of this section, that failure will be a violation of this section.

(2) EPA will publish a notice in the **Federal Register** to inform all manufacturers and processors that all exemptions for performance of that test set will be denied unless, within 30 days of the publication of the notice, a manufacturer or processor of hydroquinone notifies EPA by letter that it intends to perform that test set in accordance with the test standards in paragraph (m) of this section.

(3) Any person who fails or refuses to comply with any aspect of this section is in violation of section 15 of the Act.

(o) Availability of study plans. The TSCA and FIFRA guidelines for the various study plans are available from the National Technical Information Service (NTIS). Address and telephone number: National Technical Information

Service, 5285 Port Royal Road, Springfield, VA 22161, (703–487–4650).

[FR Doc. 84–71 Filed 1–3–84; 8:45 am]
BILLING CODE 6560–50–M

40 CFR Part 799

[OPTS–42053; FRL 2482–8]

Toxic Substances; Alkyl Epoxides; Response to the Interagency Testing Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This Advance Notice of Proposed Rulemaking (ANPR) is the Agency's response to the Interagency Testing Committee's (ITC) designation of the chemical category "alkyl epoxides" and its recommendation that the alkyl epoxides be considered for health effects and chemical fate testing. This notice addresses those alkyl epoxides on the Toxic Substances Control Act (TSCA) Chemical Substances Inventory other than ethylene oxide, propylene oxide, and 1,2–butylene oxide, which are addressed in other **Federal Register** notices. EPA is publishing this notice to inform the public of the rationale to be used in selecting the chemicals for testing, to define the regulatory approaches that are being considered, and to seek public comments on EPA's approach in proposing a test rule.

DATE: Interested persons are invited to comment on this ANPR. All comments should be submitted on or before March 5, 1984.

ADDRESS: Submit written comments identified by the document control number (OPTS 42053) in triplicate to: TSCA Public Information Office (TS–793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E–108, 401 M St. SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Jack P. McCarthy, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Room E–543, 401 M St. SW., Washington, D.C. 20460, Toll Free: (800–424–9065), In Washington, D.C. (554–1404), Outside the USA: (Operator–202–554–1404.

SUPPLEMENTARY INFORMATION:

I. Background

A. ITC Report

Section 4(a) of TSCA (Pub. L. 94–469, 90 Stat. 2003 *et seq.*; 15 U.S.C. 2601 *et seq.*) authorizes the Administrator of EPA to promulgate regulations requiring testing of chemical substances and mixtures in order to develop data relevant to determining the risks that such chemicals may present to health and the environment.

Section 4(e) of TSCA established the ITC to recommend to the Administrator of EPA those chemicals that should receive priority consideration for the development of test rules under section 4(a).

The ITC transmitted its First Report to the Administrator of EPA, as published in the **Federal Register** of October 12, 1977 (42 FR 55026), and designated the category "alkyl epoxides" for priority testing consideration for mutagenicity, carcinogenicity, teratogenicity, other chronic effects (with emphasis on organ effects and behavioral changes), and environmental fate. Epidemiological studies were also recommended for priority consideration for two or three of the highest exposure compounds, if suitable cohorts could be identified.

In order to make a section 4(a)(1)(A) finding, EPA must determine that the manufacture, distribution in commerce, processing, use or disposal of a chemical substance or mixture, or any combination of such activities, may present an unreasonable risk of injury to health or the environment, that insufficient data exist to characterize the potential effects of that chemical to human health and the environment, and that testing is necessary to develop such data. In order to make a section 4(a)(1)(B) finding, EPA must determine that a substance is produced in substantial quantities and that there is or may be significant or substantial human exposure or substantial environmental release of that substance, that there are insufficient data to characterize the potential effects of that chemical to human health and the environment, and that testing is necessary to develop such data.

B. Category Members

The ICC defined the alkyl epoxides category as noncyclic aliphatic hydrocarbons bearing one or more epoxide functional groups.

EPA has identified from the non-confidential (public) TSCA Chemical Substances Inventory six short-chain up to four carbon atoms) alkyl epoxides and eight longer chain (greater than nine carbon atoms) alkyl epoxides and eight longer-chain (greater than nine carbon atoms) alkyl epoxides that fit the alkyl epoxides chemical category definition. No additional alkyl epoxides are listed in the confidential portion of the Inventory. Of the short-chain compounds, three are addressed in separate **Federal Register** documents: ethylene oxide (Ref. 1), propylene oxide (Ref. 2), and 1,2-butylene oxide (Ref. 3). This notice addresses the remaining three short-chain compounds and eight long-chain substances:

Chemical	CAS No.
SHORT-CHAIN	
2,3-Epoxybutane	(CAS No. 3266–23–7)
Isobutylene oxide	(CAS No. 558–30–5)
1,2:3,4-Diepoxybutane	(CAS No. 1464–53–5)
LONG-CHAIN	
1,2-Epoxydecane	(CAS No. 2404–44–6)
1,2-Epoxydodecane	(CAS No. 2855–19–8)
1,2-Epoxytetradecane	(CAS No. 3234–28–4)
1,2-Epoxypentadecane	(CAS No. 18633–25–5)
1,2-Epoxyhexadecane	(CAS No. 7320–37–8)
1,2-Epoxyheptadecane	(CAS No. 22092–38–2)
1,2-Epoxyoctadecane	(CAS No. 7390–81–0)
1,2-Epoxynonadecane	(CAS No. 67860–04–2)

II. Response to ITC Report

EPA has reviewed the ITC report, the data on which their recommendations were based, the information obtained on alkyl epoxides under the TSCA section 8(a) Preliminary Assessment Information Rule (40 CFR Part 712), unpublished health and safety studies submitted by manufacturers of alkyl epoxides under the TSCA section 8(d) Health and Safety Data Reporting Rule (40 CFR part 716), and other published and unpublished data available to the Agency. EPA is publishing in this **Federal Register** notice its tentative conclusions as to appropriate action the Agency may take on the alkyl epoxides not addressed in other **Federal Register** notices.

EPA previously indicated that, although it would generally initiate testing action through publication of a proposed rule, it would initiate action on some chemical categories and certain complex chemicals through publication of an ANPR, as it is doing in this case. There are several reasons, both general to categories and specific to the long-chain alkyl epoxides, why the Agency has chosen to apply this approach in this situation. EPA believes that there are definite advantages to using an ANPR to initiate the process of section 4 rulemaking for certain categories of chemicals.

The Agency has found that in attempting to develop testing rules for a category of chemical substances, the issues that require attention are more complex and numerous than in rulemakings for a single chemical. For example, the Agency is attempting to determine whether it is scientifically valid to obtain data for one or more representative chemicals within the category rather than to test each chemical, in order to avoid unnecessary

or duplicative testing while assuring that adequate data are developed.

One method of achieving this goal is through the use of structure-activity relationships (SAR). The agency believes that there is a logical basis for subcategorization of the long-chain alkyl epoxides based on SAR analysis, see unit IV.C., and for the adoption of a representative testing sample, see unit IV.D.

Publication of an ANPR provides an opportunity for public comment on the difficult issues associated with the alkyl epoxides structural category before the Agency proposes a testing approach for the chemicals in this category. Proceeding with the development of proposed rules prior to receiving such input could result in needless expenditure of the Agency's limited resources and considerable delay in promulgating a final rule, especially if public comments necessitate modification of the proposed sampling approaches or reconsideration of the bases for requiring testing.

Moreover, available data are inadequate for a complete characterization of the extent and types of exposures presented by the alkyl epoxides identified in this notice. The Agency is soliciting public comment through this ANPR in order to obtain additional information on production volumes, exposure, off-site processing and use of these chemicals.

III. General Information

A. Chemical Description

The commercial short-chain alkyl epoxides, Unit I.B., are gases or volatile liquids at ambient temperature, except for the diepoxide, 1,2:3,4-diepoxybutane which is a moderately volatile liquid. The long-chain members of the alkyl epoxide category, Unit I.B., are liquids or lowmelting, waxy solids at ambient temperature. Because all of the long-chain substances are 1,2-monoepoxides, physicochemical properties such as water solubility and partition coefficients are expected to change in a consistent fashion with increasing chain length.

Alkyl epoxides are alkylating agents, because of the presence of the epoxide functional group. These alkylating groups react with nucleophiles such as alcohols, amines or mercaptans, a property that makes them useful as chemical intermediates.

B. Manufacturing Process and Exposure Potential for Alkyl Epoxides

EPA has no information on the specific processes that are being used to manufacture the alkyl epoxides under consideration in this ANPR. However, in general alkyl epoxides can be prepared from the corresponding olefins by oxidation with organic peracids, by catalytic oxidation with air or oxygen, or by treatment of the corresponding halohydrin with base (Refs. 4 and 5).

The three short-chain epoxides—isobutylene oxide, 2,3-epoxybutane, and 1,2:3,4-diepoxybutane—are reported to be available only in small quantities for very minor captive use or for research purposes (Ref. 6). According to information available to EPA, isobutylene oxide is produced on a custom basis and is sold entirely to research laboratories (Ref. 6); 2,3-epoxybutane is produced in amounts less than 100 pounds per year and is used captively as an intermediate (Ref. 6); 1,2:3,4-diepoxybutane is not currently produced in this country but is imported for use as a laboratory research intermediate, with sales of 3 to 4 kilograms per year. On the basis of the low production/import volumes and the known uses of these chemicals, EPA believes that a small number of individuals are likely to be exposed to these chemicals, and that exposure levels are likely to be low. However, given the lack of specific information on exposures (levels and durations), EPA is soliciting comment on its tentative conclusion that such exposures are minimal as well as obtaining any specific exposure information that may be available.

Viking Chemical Company produces the eight long-chain epoxides reported in the TSCA Chemical Substances Inventory. Viking's total annual production of the eight chemicals is estimated at less than 100,000 pounds (Ref. 6). In addition to Viking Chemical Company, Union Carbide Corporation also produces 1,2-epoxyhexadecane; the actual production levels have been claimed as TSCA Confidential Business Information (CBI). The long-chain alkyl epoxides are thought to be used primarily as acid scavengers and in the synthesis of specialty chemicals, possibly including surfactants, lubricants, alkyl resins and coatings (Ref. 6).

Recent patterns indicate a relatively stable demand for the long-chain alkyl epoxides (Ref. 6). Because they may be sold to a variety of users, and because possible intermittent high-level exposures to these chemicals are a concern owing to their alkylating properties, human exposure to some of these long-chain alkyl epoxides could be sufficient to support a finding of potential unreasonable risk. Furthermore, intermittent releases to the environment could be significant near manufacturing, processing, use and disposal sites. However, a lack of detailed knowledge about the uses of the long-chain alkyl epoxides makes a meaningful exposure assessment for these substances difficult, and it is further complicated, as discussed in more detail in unit IV, by the differences in properties between short-chain and long-chain alkyl epoxides.

C. Existing Data and Potential for Adverse Health and Environmental Effects

The alkylating properties that make alkyl epoxides useful as synthetic intermediates also confer the potential to react with and alter biomolecules such as proteins, enzymes, and nucleic acids, with possible adverse consequences such as carcinogenicity, mutagenicity and other effects.

Discussions of the toxicity data for high-production short-chain alkyl epoxides appear in separate **Federal Register** notices on ethylene oxide (Ref. 1), propylene oxide (Ref. 2), and 1,2-butylene oxide (Ref. 3). The following health effects have been reported for one or more of these three compounds: carcinogenicity, mutagenicity, neurotoxicity, and reproductive toxicity.

EPA has not located any toxicity data for two of the three short-chain alkyl epoxides discussed in this document: 2,3-epoxybutane and isobutylene oxide. Information on 1,2:3,4-diepoxybutane shows acute toxicity with an inhalation LC_{30} (rats) of 90 ppm for a 4-hour exposure, an oral LD_{50} (rats) of 78 mg/kg and a dermal LD_{50} of 89 mg/kg (rabbits) (Ref. 7). Also, the substance elicited a carcinogenic response in a number of studies using a dermal or subcutaneous route of administration (Ref. 8, 9, 10, 11, and 12). In addition, teratogenic effects have been reported in studies using rats and chickens (Ref. 13), and a mutagenic response was reported for a number of test systems (Refs. 14, 15, 16, and 17).

Some acute toxicity data are available on the long-chain alkyl epoxides (specific gravity and animal weight not provided) (Ref. 18). For several mixed long-chain 1,2-epoxides, rat i.p. LD_{50} values were in the range of 4.9 to 7.5 "ml/kg", while rabbit dermal LD_{50}'s were in the range of 5.0 to 14.1 "ml/kg". For 1,2-epoxyhexadecane the corresponding values were 4.9 "ml/kg" (rat) and 10.0 "ml/kg" (rabbit). Skin irritation (rabbit) was "moderate" or "minor"; eye injury (rabbit) was graded as "none" or "trace" (Ref. 18). Additional information on the toxicity of long-chain alkyl epoxides is available from a subchronic study on 1,2-epoxyhexadecane applied dermally to

rats and mice, completed in 1980 for the National Toxicology Program (NTP). Dosages given to both species were 62.5, 125, 250, 500 and 1,000 mg/kg. The material (1,2-epoxyhexadecane in acetone) was applied 5 times weekly to a one-inch square, shaved portion of the dorsal area for 13 weeks. Some mortiality was observed in the mouse at doses of 250 mg/kg and above; none was observed in the rat. Cutaneous reactions, manifested by exfoliation of the stratum corneum, alopecia, hyperemia and/or blanching were seen at the application sites in male mice and rats receiving dose levels of 250, 500 and 1,000 mg/kg, in female mice receiving 1,000 mg/kg and in female rats receiving 500 and 1,000 mg/kg. Reduced body weights were observed in male mice and rats dosed at 250 mg/kg and above and female rats dosed at 500 and 1,000 mg/kg. No other toxic effects were observed (Ref. 19).

Although a recently completed Ames test on 1,2-epoxyhexadecane, with and without metabolic activation, was negative (Ref. 20), the work of Van Duuren *et al.* (Ref. 21) suggests that some long-chain alkyl epoxides may be oncogenic. Van Duuren *et al.* (Ref. 21) tested 1,2-epoxydodecane and 1,2-epoxyhexadecane separately in mouse skin painting studies to assess their oncogenic activity. No tumors were observed in a group of 30 ICR/Ha Swiss mice treated for 540 days (18 months) with approximately 100 mg of a 2 percent solution of 1,2-epoxydodecane in acetone (applied to the clipped back of each mouse three times per week from the age of 8 weeks). However, in an experimental group of 41 mice similarly treated with a 10 percent solution of 1,2-epoxyhexadecane in acetone, two mice developed papillomas and one developed a squamous carcinoma. The test duration was 598 days, with a median survival time of 427 days. The first papilloma appeared on day 308 and the carcinoma appeared on day 372. No tumors were reported for the control group.

To confirm the results of Van Duuren *et al.*, the NTP selected 1,2-epoxyhexadecane as a representative long-chain terminal monoepoxide "having potential for significant exposure" to undergo a 2-year bioassay in B6C3F1 mice and Fisher 344 rats by dermal application (Ref. 22). The exposure phase of the test was completed in June, 1982. Doses of 62.5 and 125 mg/kg were applied to a one-inch square shaved portion of the dorsal area of the mice and rats five times per week. The results from this study are not yet available.

The Agency has no data on the environmental effects of alkyl epoxides addressed in this notice nor does it have information relating to the release or the environmental fate of these chemicals. The ITC's concerns for the environmental effects of alkyl epoxides were for the characterization of biodegradation products and the environmental fate of these chemicals.

IV. Tentative EPA Decisions and Issues

A. Preliminary Findings

EPA does not believe that testing of the three short-chain alkyl epoxides 2,3-epoxybutane, isobutylene oxide and 1,2:3,4-diepoxybutane is warranted at this time because of their extremely low current production and import volume. These chemicals do not appear to meet the criteria for a finding under section 4(a)(1)(A)(i), that they may present an unreasonable risk, or for a finding under section 4(a)(1)(B)(i), that they are produed in substantial quantities and may enter the environment in substantial quantities or have significant or substantial human exposure. However, the Agency is soliciting comment on its tentative conclusion that such exposures are minimal and is interested in obtaining specific exposure and environmental release information that may be available. In addition, EPA is considering options for follow-up activities on these chemical substances such as rulemaking to require reporting of production and importation levels under a TSCA section 8(a) rule or reporting of significant new uses under a TSCA section 5(a)(2) rule.

EPA believes that the long-chain alkyl epoxides may meet the criteria for a section 4(a)(1)(A)(i) finding of potential unreasonable risk to human health on the basis of the information presented in units III.C and IV.C. Although it seems unlikely that the long-chain alkyl epoxides would meet the criteria for a finding under section 4(a)(1)(B)(i), the Agency is interested in acquiring information to better define exposure to these chemicals.

B. Testing Alternatives

On the basis of information available to the Agency and in order to address the ITC's concerns for the long-chain alkyl epoxides the Agency is considering a number of testing options.

1. *Full-scale testing.* This approach could include testing for carcinogenicity, mutagenicity, teratogenicity, other chronic effects and environmental fate as well as conducting epidemiological studies. This assumes that the Agency could make the requisite findings under section 4(a)(1)(A). The Agency acknowledges that in light of the available information on the production and economics of these chemicals this approach may cause curtailment of production and use of some or all of these alkyl expoxides (Ref. 6) and thus may be less desirable than other alternatives.

2. *Battery of tests for all long-chain alkyl epoxides.* EPA believes that as another alternative, the uncertainties about the health effects and environmental fate of these epoxides could be addressed by performing a limited series of tests (Tables 1).

TABLE 1.—EXAMPLE OF LIMITED TESTING FOR SELECTED LONG-CHAIN ALKYL EPOXIDES

	1,2-epoxy-decane	1,2-epoxy-hexa-decane	1,2-epoxy-nona-decane
Health effects:			
Ames (Salmonella) assay	X	(1)	X
Cell transformation	X	X	X
90-Day subchronic	X	(1)	X
Chemical fate:			
Melting point	(2)	(1)	X
Boiling point	(1)	(1)	X
Vapor pressure, 20°	X	X	X
Water solubility	X	X	X
Partition coeff. (oct.-H_2O)	X	X	X
Partition coeff. (soil-H_2O)	X	X	X
Hydrolysis rate	X	X	X
Biodegradation	X	X	X

X=Testing proposed.
1=Testing completed or in progress.
2=Liquid at ambient temperature.

These tests might include: health effects—Ames test, with an without metabolic activation; *in vitro* cell transformation (possible substitute: *in vitro* cytogenetics and sister chromatid exchange); 90-day subchronic study (which would include parameters for assessing behavioral effects) in rats. Environmental fate—water solubililty; vapor pressure at 20° C; octanol-water partition coefficient; soil-water partition coefficient; hydrolysis rate; boiling point; melting point; and biodegradation rate. Certain results from these tests could trigger additional testing. In general, the intent of these tests is to verify that the long-chain alkyl epoxides behave differently than the short-chain alkyl epoxides while addressing as many of the ITC concerns as is possible. Additional testing may be required if this group of chemicals exhibits activity in these tests.

3. *Battery of tests for representative long-chain alkyl epoxides.* Tests such as those mentioned in alternative 2 could be applied to the three alkyl epoxides that EPA believes could provide data representative of the group. These are: 1,2-epoxydecane, 1,2-epoxyhexadecane and 1,2-epoxynonadecane. Certain results from these tests would trigger additional testing. A discussion of the

rationale for selecting these three epoxides can be found in unit IV.D. This approach would provide information on a range of long-chain alkyl epoxides (C–10, C–16 and C–19) and should provide an indication of the environmental fate and general toxicity of the eight long-chain alkyl epoxides.

4. *Battery of tests for one representative long-chain alkyl epoxides.* The tests (described in alternative 2) might be applied to only one long-chain alkyl epoxide such as 1,2-epoxyhexadecane. Again, certain results from these tests would trigger additional testing. It may be determined that this approach would adequately characterize the group of alkyl epoxides with chain lengths of C–10 to C–19. This testing approach would have the least economic impact. However, the Agency questions the adequacy of such limited testing to characterize all eight of the substances in question.

5. *No testing.* The Agency may decide on the basis of information received as a result of this ANPR that testing is unwarranted at this time. It may become apparent that another approach such as better control of exposures in the workplace or follow-up activities requiring the reporting of production and importation levels under a TSCA section 8(a) rule or the reporting of significant new uses under a TSCA section 5(a)(2) rule might be appropriate.

C. Structure-Activity Analysis

The Agency believes that it is reasonable to expect that a consistent structure-activity relationship will exist among the eight long-chain alkyl epoxides identified in this notice with respect to physicochemical and toxicologic properties. These compounds are members of a homologous series of organic compounds; i.e. they are long-chain 1,2-monoepoxides that differ only in their numbers of methylene groups. Effects of such changes are increasingly subtle at longer chain lengths and would not be expected to result in substantial differencs among longchain epoxides differing by only one or two carbon atoms. Some physical properties of the long-chain alkyl epoxides are available and are listed in Table 2.

BILLING CODE 6560–50–M

TABLE 2

PHYSICAL PROPERTIES OF LONG-CHAIN ALKYL EPOXIDES

	C_{10}	C_{12}	C_{14}	C_{16}	C_{18}	C_{15-18}
Formula wt.	156.26	184.81	212.36	240.42	268.47	
Boiling point	112-113°C, 35mm	106-109°C, 6mm	95-96°C, .4mm	104-106°C, .2mm	137°C, .5mm	
Melting point	Low	Low	Below room temperature	22°C	26°C	
Specific gravity	.837	.844	.847	.849	.830	.844
N_D	1.4286	1.4358	1.4412	1.4441	-	1.4447
Appearance	Colorless, mobile liquid	Colorless, mobile liquid	Colorless, mobile liquid	Clear, colorless liquid or white, waxy solid	White waxy solid	Pale yellow liquid
Odor	Ether like, penetrating	Ether like, pleasant	Ether like, pleasant	Faint, pleasant	Very faint	Characteristic, pleasant
Vapor pressure				< .01 mm 4.6×10^{-4}mm*		
Solubility in water				< 100 ppm 6×10^{-4} ppm*		

* EPA estimates based on physical data.

(Ref. 24)

BILLING CODE 6560-50-C

Considerable data on physicochemical properties and on health effects are available or are being generated for several of the short-chain alkyl epoxides, particularly the three substances, ethylene, propylene and 1,2-butylene oxides that the Agency is addressing in the separate Federal Register notices (Refs. 1, 2 and 3). Where sufficient data are available for comparison of effects, ethylene oxide appears to be more toxic than propylene oxide, which in turn appears more toxic than 1,2-butylene oxide. Because no corresponding data are available on the 1,2-epoxides having five to nine carbon atoms, it is difficult to determine whether the trend continues beyond 1,2-butylene oxide. Fewer data are available on the longer chain alkyl epoxides than for their two-, three-, and four-carbon homologs. This is unfortunate because some of the physicochemical properties that are extremely important contributors to health effects and chemical fate differ markedly between the short-chain and long-chain members of the series.

The long-chain alkyl epoxides, for example, have much lower water solubilities and vapor pressures and higher estimated soil-water and octanol-water partition coefficients than do the short-chain alkyl expoxides. In addition, the aqueous hydrolysis rates of the long-chain alkyl epoxides may be considerably slower than those of the short-chain alkyl epoxides, owing to their hydrophobic nature and/or their less reactive molecular conformations. Such lowered reactivity can be a consequence of the molecular folding that occurs with large flexible molecules such as straight-chain alkyl derivatives; the folding can result in blocking (steric hindrance) of reactive sites in a molecule. Thus, persistence and bioaccumulation, which depend on factors such as high fat solubility and low reactivity, could be significant for these substances, whereas for the short-chain homologs they are not, according to the available data. In addition, dermal exposures would be expected to be the primary route of human exposures for the long-chain alkyl epoxides, whereas inhalational exposures are likely to predominate for the volatile or gaseous short-chain alkyl epoxides.

For these reasons, the Agency believes that, on the basis of its structure activity analysis, the long-chain alkyl epoxides comprise a subcategory of alkyl epoxides that are more similar to each other than they are to their short-chain homologs, and will most likely exhibit different physicochemical properties and toxicities than their short-chain homologs. However, the Agency believes that the available data on the long-chain alkyl epoxides are insufficient to confirm this conclusion and that they do not provide adequate information to characterize their toxicity. The Agency believes that the presence of the epoxide functional group, a known alkylator, and the well documented toxicity of the short-chain alkyl epoxides, ethylene oxide and propylene oxide, are sufficient to generate concern for the potential toxic effects of these compounds.

D. Justification for Testing Representative Chemicals

EPA believes that the close relationshop of the long-chain alkyl epoxides to one another affords an opportunity to obtain adequate information about the group without testing all members of the category. Although the differences in physicochemical properties described in unit IV.C. and the lack of data on epoxides having an intermediate number (five to nine) of carbon atoms reduces the accuracy of extrapolating test data from short-chain to Long-chain alkyl epoxides, the near-continuity of the series from C–10 to C–19 suggests that relatively little difference in physicochemical properties can be expected between nearest neighbors in the latter series. This is true largely because all the chemicals are 1,2-monoepoxides and, therefore, no discontinuities are introduced as a result of positional isomerism. Thus, the Agency is considering as an alternative requiring the testing of a representative sample rather than all eight of the long-chain alkyl epoxides. In that case, EPA believes that the following group members would be appropriate: 1,2-epoxydecane, 1,2-epoxyhexadecane, and 1,2-epoxynonadecane. The Agency is considering this approach because by testing three members of the group, the entire group of long-chain alkyl epoxides (i.e., C–10 to C–19) might be adequately characterized on the basis of test results from one substance having a low number of carbon atoms (i.e., C–10), one having a high number (i.e., C–19) and one an intermedate number (i.e., C–16). The Agency believes such an approach is appropriate because, as discussed above, chemical activity for this group of epoxides, seems to correlate well with chain length. Although the C–14 or C–15 compound is closer to the midpoint of the series, the Agency believes that the available data and ongoing testing of the C–16 epoxide justifies the choice of this substance for testing. This may result in a more complete data base on one of the chemicals tested. The Agency believes that testing only one of the long-chain alkyl epoxides is a less desirable alternative in that extrapolations based on data for one representative member of the group will result in greater uncertainties than would be the case if data were obtained on three representative epoxides.

E. Economic Impact

Although EPA is still assessing the economic impact of different approaches to testing the long-chain alkyl epoxides, it appears that conducting the full range of ITC-recommended tests on all eight epoxides would impose a substantial financial burden on the industry. While adverse economic effects are not a barrier to requiring testing under section 4(a), these economic assessments have encouraged the Agency to examine testing needs carefully with respect to this category and to seek public comment on the best way to obtain needed data while not depriving society of the benefits of the chemicals. Estimated comparative costs for the testing alternatives 2, 3 and 4, described in unit IV.B., are indicated in Table 3.

TABLE 3. Estimated Cost of Tests Listed in Table 1.

	Estimated Cost for Limited Testing[1]		
	C-10,C-12,C-14 to C-19 ($)	C-10, C-16, C-19 ($)	C-16 ($)
Testing Cost range[2]	402,200—1,350,400	102,200—360,400	20,700—80,100
Annualized testing cost range[2,3]	104,217—349,910	26,482—93,385	5,364—20,755

[1] Cost estimated for limited testing only, additional testing not considered in estimates.

[2] Cost range reflects variations in protocols and costs among testing laboratories.

[3] Annual Cost derived using a 15 year period and a 25% cost of capital.

(Ref. 23)

The potential for adverse economic effects resulting from even relatively limited testing requirements for alkyl epoxides is high for the following reasons:

1. Of the two companies producing these long-chain alkyl epoxides, one produces approximately 100,000 pounds per year of all eight chemicals combined (Ref. 6) and the other produces only 1,2-epoxyhexadecane (quantity is Confidential Business Information);

2. No major demand changes are expected in the next 3 to 5 years.

Testing costs would be expected to create a noticeable impact on the pricing structure of these compounds with resulting effects on the marketability of products. These effects could range from a minor curtailment of production to a complete cessation of production of one or more of the compounds. A manufacturer might elect to stop production rather than embark on testing (Ref. 6).

V. Issues and Alternatives

1. EPA is soliciting exposure-related data and additional production data to refine its analysis of the alkyl epoxides. EPA requests the submission of more detailed exposure information and current production figures for the short-chain and long-chain alkyl epoxides addressed in this notice. The Agency is particularly interested in receiving information on the number of workers at manufacturing, processing, and use sites actually involved with alkyl epoxides, their use patterns, and the potential for exposure of workers, consumers and the general public. The Agency is likewise soliciting information on the release, potential release, disposal, transformation products, persistence and bioaccumulation of the alkyl epoxides addressed in this notice. The Agency will reconsider which alkyl epoxides should be tested if new production and other exposure related data on the compounds warrant this approach.

2. The Agency is interested in obtaining data on ecotoxicity and any additional health effects information not previously submitted under the section 8(d) Health and Safety Reporting Rule.

3. The Agency is interested in obtaining information on the industrial uses and consumer uses of the alkyl epoxides addressed in this notice and their possible substitutes.

4. The Agency is interested in receiving comments on the proposed testing options, other testing alternatives not considered in this notice, the choice of tests which would comprise the optimum testing battery, the rational for selecting representative chemicals for testing and the conclusions drawn by EPA from its structure-activity analysis.

5. The Agency invites suggestions for other testing approaches such as combinations of the testing options, see unit IV.B., or other approaches which could be employed. An example of a combination is the application of the tests to all eight of the compounds and the application of futher tests to one or several of the compounds. The Agency is interested in receiving comments on this and other approaches for testing.

6. If epidemiological studies were to be conducted, could suitable cohorts be identified?

VI. References

(1) USEPA. 1983. Draft **Federal Register** Notice for Ethylene Oxide. Federal register Office, No. 83T-2747; OPTS No. 42027.

(2) USEPA. 1983. Draft **Federal Register** Notice for Propylene Oxide. Federal Register Office, No. 83T-3741; OPTS No. 42028A.

(3) USEPA. 1983. Draft **Federal register** Notice for 1,2-Butylene Oxide. Federal Register Office, No. 83T-3742; OPTS No. 42049.

(4) Wallace JG. 1965. Epoxidation. In: Kirk-Othmer Encylopedia of Chemical Technology, 2nd ed., Vol. 12., New York: Wiley-Interscience. p. 249.

(5) Malinovskii MS. 1965. Epoxides and Their Derivatives. New York: Daniel Davey and Company. p. 65

(6) Mathtech. 1983. Level I Economic Evaluation: Low Volume Alkyl Epoxides (April 1982). Mathtech, Arlington, Va. p. 17.

(7) Clayton GD, Clayton FE, editors. 1981. Patty's Industrial Hygiene and Toxicology. 3rd Edition; Volume 2A; John Wiley and Sons, Publisher. p. 2161.

(8) Kotin P, Falk HL. 1963. Organic Peroxides, Hydrogen Peroxide, Epoxides and Neoplasia. *Radiat. Res. Supp.* 3:193–211.

(9) Van Duuren BL, Orris L, and Nelson N. 1965. Carcinogenicity of Epoxides, Lactones and Peroxy Compounds. *II. J. Nat. Cancer Inst.* 35:707–717.

(10) Van Duuren BL, Orris L. and Teebor G, Nelson N, Kuschner M. 1966. Carcinogenicity of Epoxides, Lactones and Peroxy Compounds. IV. Tumor Response in Epithelial and Connective Tissue in Mice and Rates. *J. Nat. Cancer Inst.* 37:825–838.

(11) Van Duuren BL, Nelson N, Orris L, Palmes ED, Schmitt FL., 1963. Carcinogenicity of Epoxides, Lactones and Peroxy Compounds. *J. Nat. Cancer Inst.* 31:41–55.

(12) Koppers Company. 1978. The potential carcinogenic activity of butadiene dioxide, 1980. TSCA Section 8(d) Submission 8DHQ-0978-0156. Washington, D.C.; Office of Pesticides and Toxic Substances, U.S. Environmental Protection Agency.

(13) Shell Oil Company. 1978. Review of the Toxicology of Epoxy Compounds. TSCA Section 8(d) submission 8DHQ-0978-0018. Washington, D.C.; U.S. Environmental Protection Agency, Office of Pesticides and Toxic Substances (8DHQ-0978-0018).

(14) Kilbey BJ. 1974. The Analysis of a Dose-Rate Effects Found With a Mutagenic Chemical. *Mutat. Res.* 26(4):249–256.

(15) Klimczuk J. 1970. Spontaneous and Induced Reversions of Meth 1 Mutant of Aspergillus Nidulans. *Genet. Pol.* 11(3–4):313–319.

(16) Polakowska R, Putrament A. 1979. Mitochondrial Mutagenesis in *Saccharomyces Cerevisiae*. II. Methy Methanesulphonate and Diepoxybutane. Mutat. Res. 61:207–213.

(17) Wade MJ, Moyer JW, Hine CH. 1979. Mutagenic Action of a Series of Epoxides. *Mutal. Res.* 66:367–371.

(18) Union Carbide Corporation. 1978. Listing of health and safety studies. TSCA Section 8(d) submission 8DHQ–0978–123. Washington, D.C.; U.S. Environmental Protection Agency, Office of Pesticides and Toxic Substances.

(19) NTP. 1980. A subchronic test of 1,2-Epoxyhexadecane (55538) in B6C3F1 mice and Fischer 344 rats by dermal application. Tracor Jitco Subcontract No. 78–61–106002; Gulf South Research Institute, Project No. 410–927, Dr. Ron Milnick, NTP, NIEHS, Research Triangle Park, North Carolina.

(20) NTP. 1982. Summary of Genetic Testing at EMTDP Lab., January 11, 1982. Dr. Errol Zeiger, NTP, NIEHS Research Triangle Park, North Carolina.

(21) Van Duuren BL, Langseth J, Goldschmidt BM, Orris L. 1967. Carcinogenicity of Epoxide, Lactones, and Peroxy Compounds. VI. Structure and Carcinogenic Activity. *J. Nat. Cancer Inst.* 39:1217–1228.

(22) Blaschka AM. 1983. Test Rules Development Branch, Office of Pesticides and Toxic Substances, U.S. Environmental Protection Agency. November 21, 1983. Contact report on a telephone conversation between Andrea Blaschka and Ron Milnick regarding NTP Bioassay for 1,2-epoxyexadecane.

(23) USEPA. 1983. U.S. Environmental Protection Agency. November 15, 1983. Memorandum from Michael Shapiro to Gary Timm.

(24) Viking Chemical Company. 1980. Technical data information sheets. Viking Chemical Company, Minneapolis, MN.

VII. Development of Rulemaking

After an analysis of the public comments on the ITC report and review of the available data, EPA tentantively believes that there is reason to proceed with development of a proposed rule for testing of the long-chain alkyl epoxides but not of the short-chain alkyl epoxides addressed in this notice.

By publishing this ANPR, EPA hopes to receive early comment on its tentative bases for proceeding with rulemaking, on the testing alternatives proposed, on the use of structure-activity analysis for the long-chain alkyl expoxides, on its proposed sampling approach to test substances, and on the kinds of tests the Agency believes necessary to characteristize the effects of these chemicals. Also, comment is requested on the bases for the choice of test chemicals, for the suggested findings, and for the screening tests under consideration. The Agency will analyze all comments, production, use patterns, available data, and other relevant issues raised in comments on this ANPR. The Agency will also consider any negotiated testing plans proposed for its review and comment. Testing plans submitted for the Agency's consideration in the ANPR comments need not be in final form, but they should include formal protocoals for proper review.

VIII. Public Record

The EPA has established a public record for this ANPR. (Docket Number OPTS–42053). This record includes:

(1) **Federal Register** notice containing the designations of alkyl epoxides to the priority list and all comments on alkyl epoxides received in response to that notice.

(2) Communications with industry.

(3) Letters.

(4) Contact reports of telephone conversations.

(5) Published and unpublished data.

(6) **Federal Register** notice requesting information and comments on alternatives being considered by the Agency and all comments received in response to that notice.

This record, containing the basic information considered by the Agency in developing the decision, is available for inspection in the OPTS Reading Room 8:00 a.m. to 4:00 p.m., Monday through Friday (except legal holidays) in Room E–107, 401 M Street, SW., Washington, D.C. 20460. The Agency will supplement this record periodically with additional relevant information received.

(Sec. 4, 90 Stat. 2003 (15 U.S.C. 2601))

Dated: December 23, 1983.

Alvin L. Alm,

Acting Administrator.

[FR Doc. 84–67 Filed 1–3–84; 8:45 am]

BILLING CODE 6560–50–M

---

40 CFR Part 799

[OPTS–42047; FRL 2480–5]

Quinone; Proposed Test Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Interagency Testing Committee recommended that EPA consider requiring carcinogenicity, teratogenicity, and environmental fate testing of quinone. Under section 4(a) of the Toxic Substances Control Act (TSCA), EPA is proposing that manufacturers and processors of quinone perform testing to evaluate quinone's carcinogenic potential. Testing for teratogenicity is not being proposed because, in reviewing the existing data, the Agency has no reason to believe that quinone may present an unreasonable risk of producing teratogenic effects. EPA is not proposing to require any additional health effects testing at this time. However, EPA is proposing chemical fate and environmental effects testing because existing data indicate that effluents to surface waters may present an unreasonable risk to aquatic organisms. Chemical fate testing will establish the magnitude of the potential risk. This notice constitutes EPA's response to the Interagency Testing Committee's (ITC) designation of quinone as a priority candidate for testing.

DATES: The public is asked to submit written comments on this proposed rule on or before March 5, 1984. If persons request an opportunity for oral comment by February 21, 1984 EPA will hold a public meeting on March 19, 1984 on this rule in Washington, D.C. For further information on arranging to speak at the meeting see unit V of this preamble.

ADDRESS: Submit written comments in triplicate to: TSCA Public Information Office (TS–793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E–108, 401 M St. SW., Washington, D.C. 20460.

Include the document control number [OPTS–42047] on all submissions.

FOR FURTHER INFORMATION CONTACT: Jack P. McCarthy, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Rm. E–543, 401 M St. SW., Washington, D.C. 20460, Toll Free: (800–424–9065), in Washington, D.C.: (554–1404), outside the USA: (Operator–202–554–1404).

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 4(e) of TSCA (Pub. L. 94–469, 90 Stat. 2003 *et seq.*; 15 U.S.C. 2601 *et seq.*) established an Interagency Testing Committee (ITC) to recommend to EPA a list of chemicals to be considered for testing under section 4(a) of the Act. The ITC may designate substances on the list for priority consideration for requiring testing by EPA.

The ITC designated quinone for priority consideration in its Fifth Report, published in the **Federal Register** on December 7, 1979 (44 FR 70664). The ITC recommended that quinone be considered for testing for carcinogenicity and teratogenicity, and also recommended that it be considered for environmental fate testing.

The ITC based its recommendation on its belief that there was potentially high exposure to humans in manufacturing and processing operations. The ITC held this assumption even considering the reported annual production of 100,000 pounds.

The ITC also had concerns about the environmental fate of quinone once it

was released into the environment because of a potentially stable oxidation/reduction system involving quinone and hydroquinone, with a stable theoretical intermediate, semiquinone.

Under section 4(a)(1) of TSCA, EPA must require testing of a chemical substance to develop health or environmental data if the Agency finds that:

> (A) (i) the manufacture, distribution in commerce, processing, use, or disposal of a chemical substance or mixture, or that any combination of such activities, may present an unreasonable risk of injury to health or the environment,
> (ii) there are insufficient data and experience upon which the effects of such manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and
> (iii) testing of such substance or mixture with respect to such effects is necessary to develop such data; or
> (B) (i) a chemical substance or mixture is or will be produced in substantial quantities, and (I) it enters or may reasonably be anticipated to enter the environment in substantial quantities or (II) there is or may be significant or substantial human exposure to such substance or mixture,
> (ii) there are insufficient data and experience upon which the effects of the manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and
> (iii) testing of such substance or mixture with respect to such effects is necessary to develop such data.

EPA uses a weight of evidence approach in making a section 4(a)(1)(A)(i) finding in which both exposure and toxicity information are considered to make the finding that the chemical may present any unreasonable risk. For the section 4(a)(1)(B)(i) finding, EPA considers only production, exposure and release information to determine if there is or may be substantial production and substantial or significant exposure or substantial release. For the findings under both sections 4(a)(1)(A)(ii) and 4(a)(1)(B)(ii), EPA examines toxicity and fate studies to determine if existing information is adequate to reasonably determine or predict the effects of human exposure to, or environmental release of, the chemical. In making the third finding, that testing is necessary, EPA considers whether any ongoing testing will satisfy the information needs for the chemical and whether testing which the Agency might require would be capable of developing the necessary information.

EPA's process for determining when these findings apply is described in detail in EPA's first and second proposed test rules. The section 4(a)(1)(A) findings are discussed in the Federal Register of July 18, 1980 (45 FR 48528) and June 5, 1981 (46 FR 30300) and the section 4(a)(1)(B) findings are discussed in the Federal Register of June 5, 1981 (46 FR 30302).

In evaluating the ITC's testing recommendations for quinone, EPA considered all available relevant information including the following: information presented in the ITC's report recommending testing consideration; production volume, use, exposure, and release information reported by manufacturers of quinone under the TSCA section 8(a) Preliminary Assessment Information Rule (40 CFR Part 712); unpublished health and safety studies submitted by the manufacturers of quinone under the TSCA section 8(d) Health and Safety Data Reporting Rule (40 CFR Part 716); and other published and unpublished data available to the Agency. On the basis of its evaluation, as described in this proposed rule and the accompanying technical support document, EPA is proposing oncogenicity, chemical fate, and environmental effects testing requirements for quinone under section 4(a)(1)(A) of TSCA. By these actions, EPA is responding to the ITC's designation of quinone for testing consideration.

II. Proposed Rule

A. Profile

Quinone ($C_6H_4O_2$), CAS No. 106-51-4, is a yellow crystalline solid at room temperature, is slightly soluble in water, and is soluble in ethanol, ether, and hot petroleum ether. It acts chemically as an oxidizing agent and, in aqueous solution, is reduced to hydroquinone by sulfur dioxide. The EPA Toxic Substances Inventory records that from 100,000 to 1,000,000 pounds of quinone were produced in the United States in 1977.

Quinone is primarily used as an intermediate in the production of hydroquinone. Because quinone is a very good oxidizing agent, it is used as a bleach for silver in photographic processes. It is also used as an inhibitor of polymerization, as a tanning agent, and as an intermediate in the synthesis of other chemicals.

B. Findings

1. EPA is basing its proposed health effects testing on the authority of section 4(a)(1)(A) of TSCA. Based upon the facts stated below, EPA finds that quinone may present an unreasonable risk of injury to human health and that there are insufficient data and experience to reasonably determine or predict the carcinogenic potential of quinone. Therefore, testing is needed to obtain these data.

a. EPA has determined that existing data indicate a potential human health hazard from quinone with respect to carcinogenic effects. Two studies have suggested the induction of malignant adenomas in mice after prolonged inhalation, and another has reported sarcomas in rats after subcutaneous exposure. While these studies have limited quality, they do suggest that quinone may have carcinogenic potential.

b. EPA believes that persons are exposed to quinone in the workplace, both in manufacturing and processing activities at levels that may lead to carcinogenic effects. In 1980, the National Institute for Occupational Safety and Health (NIOSH) estimated that annually about 3,700 U.S. workers, in nine occupations, are potentially exposed to quinone. Therefore, based on the Agency's review and analyses of the information at its disposal, EPA is proposing that quinone be tested for carcinogenic effects.

2. The Agency is basing its chemical fate and environmental effects testing on the authority of section 4(a)(1)(A) of TSCA. The ITC proposed that chemical fate testing be conducted with quinone to establish the stability of the quinone-semiquinone-hydroquinone oxidation-reduction system in the environment. EPA finds that there is evidence of potential unreasonable environmental risks to aquatic organisms resulting from exposure to quinone.

a. The levels of quinone that may be found in receiving waters after

treatment efforts are very close to the quinone levels that have been found to be acutely toxic to two aquatic species. While the existing exposure and environmental effects data suggest these concerns, these data are inadequate to reasonably predict or determine the actual effects of these exposures of aquatic organisms to quinone. Therefore, testing is needed to obtain these data.

b. The Agency believes that hydroquinone is released to surface waters from photoprocessing operations and that a substantial portion of this material is converted to quinone. EPA also believes that the levels of hydroquinone in these effluents may be high enough that, when converted, the resulting levels of quinone would pose an unreasonable risk to freshwater and saltwater aquatic species. This conclusion is based on existing aquatic organism toxicity data. Additional environmental effects testing is needed to assess the types of organisms potentially at risk.

c. The Agency is also proposing chemical fate testing for quinone. EPA believes this testing is essential because the existing chemical fate data are limited and additional data are needed to assess the magnitude of the possible risks to aquatic organisms. EPA needs additional information to establish biodegradation rates in order to assess the levels of exposure of aquatic organisms to quinone.

3. EPA does not believe that the rule will result in a loss to society of the benefits of quinone because the Agency's economic evaluation has shown that the economic impact of testing this substance will be minimal.

The analyses on which these findings are based are presented in the Technical Support Document "Assessment of Testing Needs: Hydroquinone/Quinone" which was developed for this rulemaking and is available from the TSCA Assistance Office (TAO). The ITC recommendations and EPA's proposed testing requirements are summarized in the following Table.

TABLE—TESTING RECOMMENDATIONS FOR QUINONE

Test or study	ITC recommendation	EPA proposal
Carcinogenicity	X	X
Teratogenicity	X	
Environmental fate	X	X
Environmental effects		X

The Agency is not proposing teratogenicity testing for quinone. Although teratogenicity testing was proposed by the ITC, EPA has not identified any data that provide sufficient evidence under section 4(a)(1)(A) of TSCA that quinone may present an unreasonable risk of causing teratogenic effects.

C. Test Substance

EPA is proposing that quinone of at least 99 percent purity be used as the test substance in the carcinogenicity, chemical fate and environmental effects testing. EPA has specified a relatively pure substance for testing because the Agency is interested in evaluating the effects attributable to quinone itself. This requirement would increase the likelihood that any toxic effects observed are related to quinone and not to any impurities.

D. Persons Required to Test

Section 4(b)(3)(B) specifies that the activities for which the Administator makes section 4(a) findings (manufacture, processing, distribution, use, and/or disposal) determine who bears the responsibility for testing. Manufacturers are required to test if the findings are based on manufacturing ("manufacture" is defined in section 3(7) of TSCA to include "import"). Processors are required to test if the findings are based on processing. Both manufacturers and processors are required to test if the exposures giving rise to the potential risk occur during use, distribution, or disposal. Because EPA has found that the manufacture, processing, disposal, and use of quinone may present an unreasonable risk to human health and the environment, EPA is proposing that persons who manufacture or process, or who intend to manufacture or process, quinone at any time from the effective date of this test rule to the end of the reimbursement period be subject to the rule. The end of the reimbursement period ordinarily will be 5 years after the submission of the last final report required under the test rule.

Because TSCA contains provisions to avoid duplicative testing, not every person subject to this rule must individually conduct testing. Section 4(b)(3)(A) of TSCA provides that EPA may permit two or more manufacturers or processors who are subject to the rule to designate one such person or a qualified third person to conduct the tests and submit data on their behalf. Section 4(c) provides that any person required to test may apply to EPA for an exemption from that requirement (as discussed in Unit II F. below).

E. Approach to Adoption of Test Rules

1. *General Process.* On March 26, 1982, EPA announced a new approach to adoption of test rules (47 FR 13102). EPA intends to promulgate a general procedural rule in 40 CFR Part 770 which will contain the procedural requirements of this new approach. However, since that procedural rule is not in effect, this proposed rule contains specific procedures for adoption of this test rule. If the general rule is promulgated before this proposal becomes final, the quinone rule will be modified to comport with the general procedural provisions.

Under the approach being followed for quinone, test rule development will be a two-phase process. In phase I, EPA will propose that specific testing be required for quinone. This phase of the rulemaking will allow the public to comment on the decision to require testing and the specific types of tests to be required. Phase II begins after promulgation of the phase I rule. In phase II, EPA will receive proposed study plans for the specific tests adopted in the phase I rule. EPA will propose those study plans for public comment. After comment, the Agency will adopt the study plans, as proposed or modified, as specific test standards for the tests required by the phase I rule. Persons who submit the study plans will be obligated to perform the tests in accordance with the test standards adopted.

2. *Letter of Intent to Test or Exemption Application.* The proposed rule would require manufacturers and processors of quinone to perform certain tests. Once the rule is in effect, 30 days after publication in the **Federal Register**, each current manufacturer would have 30 days to submit, for each required test in paragraphs (i), (j) and (k) of the rule, either a letter of intent to perform the test or an application for exemption. Each manufacturer who submitted a letter of intent to perform a specific test would be obligated, first, to submit, within 90 days of the effective date, a proposed study plan for the test and, ultimately, to perform the testing.

If manufacturers of quinone performed all the required tests, processors of quinone would not be required to test or to submit exemption applications. EPA would automatically grant them exemptions from the requirements of the rule.

If no manufacturer of quinone submitted a letter of intent to perform a particular test within the 30-day period, EPA would publish a notice in the **Federal Register** to notify all processors of quinone. The notice would state that EPA had not received letters of intent to perform certain tests and that current processors would have 30 days to submit, for each test remaining, either a

letter of intent to perform the test or an exemption application for that test. Each processor who submitted a letter of intent to perform a specific test would be obligated, first, to submit, within 90 days of the publication of the Federal Register notice, a proposed study plan for the test and, ultimately, to perform the testing.

If no manufacturer or processor submitted a letter of intent to perform a particular test, EPA would notify all manufacturers and processors, by letter or through the Federal Register, that all exemption applications would be denied and that within 30 days all manufacturers and processors would be in violation of the rule until a proposed study plan is submitted for that test.

Any person not manufacturing quinone at the time the rule goes into effect, who later begins manufacturing before the end of the reimbursement period, would be required to submit a letter of intent to test or an exemption application for each required test by the day the person begins manufacture. If EPA has published a notice in the Federal Register telling processors to submit letters of intent or exemption applications for certain test, any person not processing quinone at the time the rule goes into effect, who later begins processing before the end of the reimbursement period, would be required to submit a letter of intent to test or an exemption application for each test specified in the Federal Register notice by the day the person begins processing.

3. *Submission and Adoption of Study Plans.* Any manufacturer of quinone who submitted a letter of intent to perform a test would have to submit, within 90 days after the effective date of the rule, a proposed study plan for that test. In the event manufacturers do not submit letters of intent for all the required tests, any processor who submits a letter of intent to perform a specific test would have to submit, within 90 days of the publication of the Federal Register notice notifying processors, a proposed study plan for that test. Paragraph (e) or the rule describes the contents of a proposed study plan.

EPA proposed generic test methodology requirements (generic test standards) in the Federal Register of May 9, 1979 (44 FR 27334) July 26, 1979 (44 FR 44054) and November 21, 1980 (45 FR 77332). In response to concerns about the rigidity of generic methodology requirements, EPA has changed its approach for providing test standards for TSCA section 4 test rules. It has issued generic test methodology guidelines to replace the previously proposed generic test methodology requirements. The TSCA guidelines have been published by the National Technical Information Service (NTIS) for health effects (PB 82–232984), for chemical fate, (PB 82–233008) and for environmental effects (PB 82–232992), respectively. Good Laboratory Practice (GLP) Standards for development of data on health effects of chemical substances under TSCA were proposed in the Federal Register of May 9, 1979 (44 FR 27334) and July 26, 1979 (44 FR 44054), and for chemical fate and environmental effects testing in the Federal Register of November 21, 1980 (44 FR 77357). GLP standards for development of data on physical and chemical properties, persistence, and ecological effects of chemical substances under TSCA were proposed in the Federal Register of November 21, 1980 (44 FR 77357). These GLP standards will be promulgated as generic requirements. The final TSCA GLP regulations will apply to the quinone test rule.

For guidance in preparing study plans, EPA recommends that test sponsors consult the TSCA Test Guidelines and the TSCA GLP standards as referenced above; the Organization for Economic Cooperation and Development's (OECD) Guidelines, as adopted by the OECD Council on May 12, 1981; or the FIFRA Pesticide Registration Guidelines: Proposed Data Requirements, published by the National Technical Information Service (see the Federal Register of November 24, 1982 (47 FR 53192), for a list of these guidelines).

Failure to submit a study plan would be a violation of the rule.

EPA would review the proposed study plans. If they are incomplete, the manufacturer or processor would be notified of the deficiency and would have 15 days to provide appropriate information to make the plan complete. If the information is not provided in 15 days, the manufacturer or processor would be in violation of the rule. In addition, EPA would return to the appropriate stage of the process and require maufacturers or processors, as appropriate, to submit letters of intent, exemption applications, and study plans.

If the proposed study plan is complete, EPA would propose the study plan for public comment. In particular, the request for comments would focus on whether the study plan will ensure that data from the test will be reliable and adequate. There would be a 45-day comment period and the opportunity to present views orally upon request. After considering the public comment, EPA would adopt the study plans as proposed, or as modified in response to comment, as the test standard for the required test.

The person who submitted the proposed study plan would be required to perform the testing according to that standard. Failure to perform the testing would be a violation of the rule.

F. Exemptions

EPA's proposed policy on application for exemptions from section 4 testing requirements was published in the Federal Register of July 18, 1980 (45 FR 48512). EPA intends to promulgate its final procedures for exemptions in 40 CFR Part 770. The exemption procedures described below and included in the proposed rule language are consistent with EPA's current thinking on exemption procedures. If the general rule is promulgated before this proposal becomes final, the quinone rule will be modified to comport with the general procedural provisions.

Any manufacturer or processor of quinone would be able to apply for an exemption. Any person who has applied for an exemption would not be in violation of the rule until such time as EPA denies the application.

If manufacturers perform all the required testing, processors would be granted exemptions automatically without having to file applications.

When EPA has received a proposed study plan for a test and has adopted the plan as the test standard, EPA would conditionally grant all exemption applications for that test. If the test sponsor later fails to perform the test, EPA would notify all persons who had submitted exemption applications for that test that the exemptions would be denied, unless within 30 days a manufacturer or processor notified EPA of its intent to perform the test in accordance with the adopted test standards.

EPA is not proposing to require the submission of equivalence data as a condition for exemption from the proposed testing for quinone. As noted in Unit II.C., EPA is interested in evaluating the effects attributable to quinone itself and has specified a relatively pure substance for testing.

G. Reporting Requirements

EPA is proposing that all data developed under this rule be reported in accordance with the TSCA GLP standards which will appear in 40 CFR Part 792.

EPA is required by TSCA section 4(b)(1)(C) to specify the time period during which persons subject to a test rule must submit test data. These

deadlines will be established in the phase II rulemaking in which study plans are approved.

TSCA section 14(b) governs Agency disclosure of all test data submitted pursuant to section 4 of TSCA. Upon receipt of data required by this rule, the Agency will publish a notice of receipt in the Federal Register as required by section 4(d).

H. Enforcement Provisions

The Agency considers failure to comply with any aspect of a section 4 rule to be a violation of section 15 of TSCA. Section 15(1) of TSCA makes it unlawful for any person to fail or refuse to comply with any rule or order issued under section 4. Section 15(3) of TSCA makes it unlawful for any person to fail or refuse to: (1) Establish or maintain records, (2) submit reports, notices, or other information, or (3) permit access to or copying of records required by the Act or any rule issued under TSCA.

Additionally, TSCA section 15(4) makes it unlawful for any person to fail or refuse to permit entry or inspection as required by section 11. Section 11 applies to any "establishment, facility, or other premises in which chemical substances or mixtures are manufactured, processed, stored, or held before or after their distribution in commerce. . . ." The Agency considers a testing facility to be a place where the chemical is held or stored, and therefore, subject to inspection. Laboratory audits/inspections will be conducted periodically in accordance with the authority and procedures outlined in TSCA section 11 by duly designated representatives of EPA for the purpose of determining compliance with any final rule for quinone. These inspections may be conducted for purposes which include verification that testing has begun, that schedules are being met, that reports accurately reflect the underlying raw data and interpretations and evaluations thereof, and that the studies are being conducted according to EPA GLP standards and the protocols established in the phase II rule.

EPA's authority to inspect a testing facility also derives from section 4(b)(1) of TSCA, which directs EPA to promulgate standards for the development of test data. These standards are defined in section 3(12)(B) of TSCA to include those requirements necessary to assure that data developed under testing rules are reliable and adequate, and such other requirements as are necessary to provide such assurance. The Agency maintains that laboratory inspections are necessary to provide this assurance.

Violators of TSCA are subject to criminal and civil liability. Persons who submit materially misleading or false information inconnection with the requirement of any provision of this rule may be subject to penalties calculated as if they never submitted their data. Under the penalty provision of section 16 of TSCA, any person who violates section 15 could be subject to a civil penalty of up to $25,000 per day for each violation, with each day of operation in violation constituting a separate violation. This provision would be applicable primarily to manufacturers or processors that fail to submit a letter of intent to perform testing or an exemption request, and that continue manufacturing or processing after the deadlines for such submissions. Knowing or willful violations could lead to the imposition of criminal penalties of up to $25,000 for each day of violation and imprisonment for up to one year. Other remedies are available to EPA under section 17 of TSCA, such as seeking an injunction to restrain violations of TSCA section 4.

Individuals as well as corporations could be subject to enforcement actions. Sections 15 and 16 of TSCA apply to "any person" who violates various provisions of TSCA. EPA may, at its discretion, proceed against individuals as well as companies themselves. In particular, this includes individuals who report false information or who cause it to be reported. In addition, the submission of false, fictitious, or fraudulent statements is a violation under 18 U.S.C. 1001.

I. Issue for Public Comment

As indicated in the Technical Support Document for Hydroquinone/Quinone, the Agency believes that the presence of quinone in the environment is primarily a result of the release of hydroquinone which is converted to quinone in the environment. The Agency is proposing environmental effects and chemical fate testing for quinone as well as environmental effects and chemical fate testing for hydroquinone. As proposed, manufacturers and processors of quinone would be responsible for testing quinone for environmental effects, regardless of the fact that most quinone in environment might result from releases of hydroquinone.

Requiring manufacturers and processors of quinone to conduct environmental effects and chemical fate testing of quinone may be inequitable if the quinone in the environment results primarily from hydroquinone manufacture and processing. However, section 4(b)(3)(B) of TSCA specifies that testing must be conducted by "[e]ach person who manufactures or intends to manufacture *such substance*" and "[e]ach person who processes or intends to process *such substance.*" EPA believes that this language requires the approach contained in the proposal for quinone testing. However, the Agency is considering requiring the manufacturers and processors of hydroquinone to either conduct or share in the cost of conducting environmental effects and chemical fate testing for quinone. This could be accomplished either by transferring the quinone environmental effects and chemical fate testing requirements to the hydroquinone test rule or by adding manufacturers and processors of hydroquinone to those required to test under the quinone test rule. EPA solicits comments on these alternative approaches to testing quinone for chemical fate and environmental effects.

III. Economic Analysis of Proposed Rule

To evaluate the potential economic impact of this proposed rule, EPA has prepared a Level I economic analysis that examines the costs of the required testing and analyzes four principal market characteristics of the chemical substance: (1) Demand sensitivity, (2) cost characteristics, (3) industry structure, and (4) market expectations.

The Level I analysis of quinone, which estimates the total testing costs to range from $322,200 to $975,800, indicates that the potential for adverse economic effects due to the estimated testing costs is low. This conclusion is based on the following observations:

1. Stable or moderate market growth is expected for quinone.

2. The relative magnitude of the test cost is minor, i.e., on an annual unit cost basis, the test costs are estimated to average 0.5–1.4 cents per pound. The unit costs represent 0.1 to 0.3 percent of the price of quinone.

3. Since most of the quinone produced is used for the production of hydroquinone, most of the cost of testing quinone will be passed on to the consumers of hydroquinone.

4. Because the market for hydroquinone is stable or growing somewhat and demand in its primary uses is inelastic, it appears the indirect cost of quinone testing can be passed on to consumers with little or no economic impact.

Because the Level I analysis indicates very little potential for an adverse economic impact, EPA has determined that a more comprehensive and detailed Level II economic analysis is not needed for quinone.

IV. Availability of Test Facilities and Personnel

Section 4(b)(1) of TSCA requires EPA to consider "the reasonably foreseeable availability of the facilities and personnel needed to perform the testing required under the rule." Therefore, EPA conducted a study to assess the availability of test facilities and personnel to handle the additional demand for testing services created by section 4 test rules and test programs negotiated with industry in place of rulemaking. Copies of the study, "Chemical Testing Industry: Profile of Toxicological Testing," October, 1981, can be obtained through the NTIS (PB 82-140773).

On the basis of this study, the Agency believes that there will be available test facilities and personnel to perform the testing in this proposed rule.

V. Public Meetings

If persons indicate to EPA that they wish to present comments on this proposed rule to EPA officials who are directly responsible for developing the rule and supporting analyses, EPA will hold a public meeting on March 19, 1984 in Washington, D.C. Persons who wish to present comments at the meeting should call the TSCA Assistance Office (TAO), Toll Free: (800-424-9065). In Washington, D.C.: (554-1404). Outside the U.S.A.: (Operator 202-554-1404), by February 21, 1984. The meeting will not be held if members of the public do not indicate they wish to make oral presentations. This meeting is scheduled after the deadline for submission of written comments, so that issues raised in the written comments can be discussed by EPA and the public commenters. While the meeting will be open to the public, active participation will be limited to those persons who arranged to present comments and to designated EPA participants. Attendees should call the TAO before making travel plans to check whether the meeting will be held.

Should a meeting be held, the Agency will transcribe the meeting and include the written transcript in the public record. Participants are requested, but not required, to submit copies of their statements prior to or on the day of the meeting. All such written materials will become part of EPA's record for this rulemaking.

VI. Rulemaking Record

EPA has established a record for this rulemaking, docket number [OPTS-42047]. This record includes the basic information the Agency considered in developing this proposal, and appropriate **Federal Register** notices. The Agency will supplement the record with additional information as it is received. Confidential business information (CBI), while part of the record, is not available for public review. A public version of the record, from which CBI has been deleted, is available for inspection in the OPTS Reading Room from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays, in Rm. E-107, 401 M St. SW., Washington, D.C.

The record includes the following information:

(1) **Federal Register** notices pertaining to this rule making consisting of:

(a) Notice of proposed rulemaking on quinone.

(b) Notice containing the ITC designation of quinone to the Priority List [44 FR 70664, December 7, 1979].

(c) Notices relating to EPA's health effects, chemical fate, and environmental effects (44 FR 27334, May 9, 1979; 44 FR 44054, July 26, 1979) test guidelines and EPA's Good Laboratory Practice Standards (44 FR 27334, May 9, 1979; 44 FR 44054, July 26, 1979).

(d) Notice of proposed rulemaking on exemption policy and procedures.

(e) Final reimbursement policy and procedures.

(2) Support Documents consisting of:

(a) Hydroquinone/Quinone technical suppport document.

(b) Quinone economic analysis support document.

(3) Communications before proposal consisting of:

(a) Written public comments.

(b) Summaries of telephone conversations.

(c) Meeting summaries.

(d) Reports—published and unpublished factual materials, including contractors' reports.

(4) Report—Chemical Testing Industry: Profile of Toxicological Testing. October, 1981.

VII. Classification of Rule

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This test rule is not major becaue it does not meet any of the criteria set forth in section 1(b) of the Order. First, the actual annual cost of the testing proposed for quinone is less than $253,000 over the testing and reimbursement period. Second, because the cost of the testing will be distributed over a large production volume, the rule will have only very minor effects (annualized unit costs are less than 1.4 cents per pound) on producers' costs or users' prices for this chemical substance. Finally, taking into account the nature of the market for this substance, the low level of costs involved, and the expected nature of the mechanisms for sharing the costs of the required testing, EPA concludes that there will be no significant adverse economic impact of any type as a result of this rule.

This proposed regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any comments from OMB to EPA, and any EPA response to those comments, will be included in the public record.

VIII. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (15 U.S.C. 601, *et seq.*, Pub. L. 96-354, September 19, 1980), EPA is certifying that this test rule, if promulgated, will not have a significant impact on a substantial number of small businesses for the following reasons:

1. Small processors will not perform testing themselves and will not participate in the organization of the testing effort.

2. Small processors will experience only minor costs in securing exemption from testing requirements.

3. Small processors are unlikely to be affected by reimbursement requirements.

4. There are no small manufacturers of quinone.

IX. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs of OMB marked Attention: Desk Officer for EPA. The final rule package will respond to any OMB or public comments on the information collection requirements.

X. Guidelines and Study Plans

The following guidelines and/or study plans cited in this proposed test rulemaking are available from the: National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, (703-487-4650).

NTIS publication No.	Title	Price
PB 82-140773	Chemical Testing Industry: Profile of Toxicological Testing.	$16.00
PB 82-232984	TSCA Health Effects Guidelines.	40.00
PB 82-232992	Environmental Effects Guidelines.	60.00

NTIS publication No.	Title	Price
PB 83-153908	OECD Test Guidelines for Hazard Evaluation: Wildlife and Aquatic Organisms.	11.50
PB 83-153916	FIFRA Pesticides Registration Guidelines: Proposed Data Requirements for Hazard Evaluation: Human and Domestic Animals.	11.50
PB 82-233008	TSCA Chemical Fate	40.00

List of Subjects in 40 CFR Part 799

Testing, Environmental protection, Hazardous material, Chemicals.

(Sec. 4, Pub. L. 94-469, 90 Stat. 2003; (15 U.S.C. 2061))

Dated: December 23, 1983.

Alvin L. Alm,

Acting Administrator.

PART 799—[AMENDED]

Therefore, it is proposed that a new § 799.3600 be added to Subpart B of proposed Part 799 to read as follows:

§ 799.3600 Quinone.

(a) *Identification of test substance.* (1) Quinone (CAS No. 106-51-4) shall be tested in accordance with this section.

(2) Quinone of at least 99 percent purity shall be used as the test substance in all tests.

(b) *Persons required to submit study plans, conduct tests and submit data.* (1) All persons who manufacture or process quinone from the effective date of this rule (30 days from the publication date of the final rule in the **Federal Register** to the end of the reimbursement period shall submit letters of intent to test, exemption applications and study plans and shall conduct tests and submit data as specified in paragraphs (c), (d), (e), (h), (i), (j), and (k) of this section.

(2) Any person subject to the requirements of this section may apply to EPA for an exemption from study plan submission and testing requirements. Any such application shall be in accordance with paragraph (h) of this section.

(c) *Submission of notice of intent to test or exemption application.* (1) No later than 30 days after the effective date of this section, each person manufacturing quinone as of the effective date of this section must, for each test required by paragraphs (i), (j), and (k) of this section, either notify EPA by letter of its intent to perform the test or submit an application for an exemption from the study plan submission and testing requirements for the test.

(2) If, by the date specified in paragraph (c)(1) of this section, no manufacturer of quinone has notified EPA of its intent to perform testing for a test required by paragraphs (i), (j), or (k) of this section, EPA will publish a notice in the **Federal Register** of this fact specifying the tests for which no notice of intent has been submitted. No later than 30 days after publication of such a notice, each person processing quinone as of the effective date of this section must, for each test specified in the **Federal Register** notice, either notify EPA by letter of its intent to perform the test or submit an application for an exemption from study plan submission and testing requirements for the test.

(3) Any person not manufacturing quinone as of the effective date of this section, who before the end of the reimbursement period manufactures quinone, must comply with the requirements of paragraphs (c)(1) and (d)(1) of this section. For purposes of this paragraph (c)(3), the manufacturer must submit the notice of intent to test or exemption application required by paragraph (c)(1) of this section by the date manufacture begins and must submit any proposed study plan required by paragraph (d)(1) of this section within 60 days of the date manufacture begins.

(4) If a **Federal Register** notice has been published under paragraphs (c)(2) or (d)(4) of this section, any person not processing quinone as of the effective date of this section, who before the end of the reimbursement period processes quinone, must comply with the requirements of paragraphs (c)(2) and (d)(2) of this section. For purposes of this paragraph (c)(4), the processor must submit the notice of intent to test or exemption application required by paragraph (c)(2) of this section by the date processing begins and must submit any proposed study plan required by paragraph (c)(2) of this section within 60 days of the date processing begins.

(5) Any manufacturer or processor of quinone which has notified EPA under paragraphs (c)(1), (c)(2), (c)(3), or (c)(4) of this section of its intent to perform testing for a test required by paragraphs (i), (j), or (k) of this section, must submit a proposed study plan for the test and must perform that test in accordance with the test standards in paragraph (l) of this section.

(d) *Submission of proposed study plans.* (1) Manufacturers of quinone which notify EPA under paragraph (c)(1) of this section that they intend to perform a test must submit a proposed study plan for the test in accordance with paragraph (e) of this section no later than 90 days after the effective date of this section. Manufacturers may jointly submit a single proposed study plan if they plan to sponsor or perform the test jointly. Any manufacturer which, having notified EPA of its intent to perform a test, fails to submit a proposed study plan for that test will have been in violation of this section as if no letter of intent to perform the test had been submitted.

(2) Processors of quinone which notify EPA under paragraph (c)(2) of this section that they intend to perform a test must submit a proposed study plan for the test in accordance with paragraph (e) of this section no later than 90 days after the publication of the notice specified in paragraph (c)(2) of this section. Processors may jointly submit a single proposed study plan if they plan to sponsor or perform the test jointly. Any processor, which, having notified EPA of its intent to perform a test, fails to submit a proposed study plan for that test will have been in violation of this section as if no letter of intent to perform the test had been submitted.

(3) If EPA determines in accordance with paragraph (f)(1)(i) of this section that a proposed study plan is incomplete and the manufacturer or processor has not, after notice from EPA, submitted appropriate information to make the study plan complete within 15 days, the manufacturer or processor will have been in violation of this section as if no letter of intent to perform the test had been submitted.

(4) If either:

(i) By the date specified in paragraph (d)(1) of this section a manufacturer of quinone, which notified EPA of its intent to perform a test, has failed to submit a proposed study plan for that test, or

(ii) A proposed study plan submitted under paragraph (d)(1) of this section has been found to be incomplete under paragraph (f)(1)(i) of this section and the manufacturer has not submitted appropriate information to make the study plan complete within 15 days, EPA will publish a notice in the **Federal Register** of this fact specifying the test. The requirements of paragraphs (c)(2) and (d)(2) of this section for processors to submit letters of intent to perform testing, applications for exemption, and proposed study plans will apply.

(5) If either:

(i) By the date specified in paragraph (c)(2) of this section no processor of quinone has notified EPA of its intent to perform testing for any test identified in a **Federal Register** notice published under paragraphs (c)(2) or (d)(4) of this section,

(ii) By the data specified in paragraph (d)(2) of this section any processor of quinone, which notified EPA of its intent to perform a test, has failed to submit a proposed study plan for that test, or

(iii) A proposed study plan submitted under paragraph (d)(2) of this section has been found to be incomplete under paragraph (f)(1)(i) of this section and the processor has not submitted appropriate information to make the study plan complete within 15 days, all applications for exemption from the requirements to submit study plans and to perform tests for the specific test involved will automatically be denied. EPA will notify each manufacturer and processor of quinone, which applied for an exemption for the specific test involved, of this automatic denial either by letter or by notice in the **Federal Register.** Each manufacturer or processor of quinone for whom an exemption application has been automatically denied will be in violation of this section 30 days from the time that it receives the notice letter or 30 days from the time that the notice is published in the **Federal Register,** whichever comes first. The violation will continue until a manufacturer or processor of quinone submits a proposed study plan for each test involved.

(6) Any manufacturer or processor of quinone may submit a proposed study plan for any test required by this section at any time, regardless of whether the manufacturer or processor previously submitted an application for exemption from testing for that test.

(e) *Content of study plans.* (1) All study plans are required to contain the following information: (i) A citation to this section

(ii) The specific test covered by the study plan.

(iii)(A) The names and addresses of the test sponsors.

(B) The names, addresses and telephone numbers of the responsible administrative officials and project manager(s) in the principal sponsor's organization.

(C) The name, address, and telephone number of the appropriate individual(s) for oral and written communications with EPA.

(D)(*1*) The name and address and telephone number of the testing facility including administrative officials and project manager(s) responsible for this testing.

(*2*) Brief summaries of the training and experience of each professional involved in the study including study director, veterinarian(s), toxicologist(s), pathologist(s) and laboratory assistants.

(iv) Identity and data on the chemical substance being tested including appropriate physical constants, spectral data, chemical analysis, and stability under test and storage conditions.

(v) Study protocol, including rationale for: species/strain selection; dose selection (and supporting data); route(s) or method(s) of exposure; a description of diet to be used and its source, including nutrients and contaminants and their concentrations; for *in vitro* test systems, a description of culture medium and its source; and a summary of expected spontaneous chronic diseases (including tumors), genealogy, and life span.

(vi) Schedule for initiation and completion of major phases of long term tests; schedule for submission of interim progress and final reports to EPA.

(2) Information specified under paragraph (e)(1)(iii)(D) of this section is not required in proposed study plans if the information is not available at the time of submission; however, the information must be submitted before the initiation of testing.

(f) *Review and adoption of study plans.* (1) Upon receipt of a proposed study plan, EPA will review the study plan to determine whether it complies with paragraph (e) of this section.

(i) If EPA determines that the proposed study plan does not comply with paragraph (e) of this section, EPA will notify the submitter that the submission is incomplete and will identify the deficiencies and the steps necessary to complete the submission. The submitter will have 15 days from the day it receives this notice to submit appropriate information to make the study plan complete. If the submitter fails to provide appropriate information to complete the study plan within this time, the submitter will have been in violation of this section as if no study plan had been submitted.

(ii) If EPA determines the proposed study plan complies with paragraph (e) of this section, EPA will publish a notice in the **Federal Register** requesting comments on the ability of the study plan to ensure that data from the test will be reliable and adequate. EPA will provide a 45-day comment period and will provide an opportunity for an oral presentation upon the request of any person. EPA may extend the comment period if it appears from the nature of the issues raised by EPA's review or from public comments that further comment is warranted.

(2) After receiving and considering public comment, EPA will adopt the study plan, including the time deadlines and reporting schedules, as proposed or as modified in response to EPA review and public comments, as test standards for the testing of quinone in paragraph (1) of this section.

(g) *Modification of study plans during conduct of study*—(1) *Application.* Any test sponsor who wishes to modify the adopted study plan for any test required under this section must submit an application in accordance with this paragraph. Application for modification shall be made in writing to the Chief, Test Rules Development Branch, Office of Toxic Substances, or by phone, with written confirmation to follow as soon as feasible. Applications must include appropriate explanation of why the modification is necessary.

(2) *Adoption.* To the extent feasible, EPA will seek comment on all substantive changes in study plans. EPA will issue a notice in the **Federal Register** requesting comments on requested modifications. However, EPA will act on the requested modification without seeking public comment if either: (i) EPA believes that an immediate modification to a study plan is necessary in order to preserve the accuracy or validity of an on-going study, or

(ii) EPA determines that a modification clearly does not pose any significant substantive issues. EPA will notify the sponsor of the EPA's approval of disapproval. When EPA approves a modification, it will publish a notice in the **Federal Register** indicating that the study plan has been modified.

(h) *Exemption applications.* (1) Any manufacturer or processor of quinone may submit an application to EPA for an exemption from submitting proposed study plans for, and from performing, any or all of the tests specified in paragraphs (i), (j), and (k) of this section. The application must include the name and address of the manufacturer or processor and must identify the specific requirements of the section from which the exemption is sought.

(2) No manufacturer or processor of quinone will be in violation of the requirement to perform a specific test under paragraphs (i), (j), or (k) of this section if it has submitted a timely application for an exemption for that test and the application has not been denied by EPA.

(3) EPA will conditionally grant any requested exemption for a specific test required by paragraphs (i), (j), or (k) of this section if EPA has received a complete proposed study plan for that test in accordance with paragraph (e) of this section and has adopted the study plan in accordance with paragraph (f)(2) of this section.

(4) EPA will deny any exemption for a specific test in paragraphs (i), (j), or (k) of this section if the study sponsor fails to perform the test or to submit data as required in the test standards adopted under paragraph (l) of this section.

(5) If manufacturers of quinone perform all the tests required by

paragraphs (i), (j), or (k) of this section, processors of quinone will automatically be granted an exemption from the study plan submission and testing requirements without the need to file an application for exemption

(i) *Health effects testing*—(1) *Carcinogenicity*—

(i) *Required testing.* A two-year oncogenicity bioassay, with inhalation as the route of exposure, shall be conducted with quinone.

(ii) *Study plans.* For guidance in preparing study plans, the TSCA Health Effects Guidelines for Chronic Exposure—Oncogenicity, published by NTIS (PB 82–232984), should be consulted. Additional guidance may be obtained from the OECD Test Guidelines for Health Effects, and the FIFRA Pesticides Registration Guidelines: Proposed Data Requirements for Hazard Evaluation: Human and Domestic Animals, published by NTIS (PB 83–153916).

(j) *Chemical fate testing*—(1) *Aerobic biodegradation.* (i) *Required testing.* An aerobic biodegradation test shall be conducted with quinone using natural waters representative of aquatic environments that may be exposed to quinone. Transformation of quinone may be determined using either compound-specific analytical techniques or radiolabeled test compound. Regardless of the analytical method chosen, it shall be adequate to determine both disappearance of parent compound and the extent of interconversion of hydroquinone and quinone.

(ii) *Study plans.* EPA has not published guidelines for this type of biodegradation test. However, any natural waters die-away or similar test methods should be suitable, provided that it meets the requirements set forth above. Examples of methods that may be used to develop an accepable study plan are described in Saeger, V.W. and Tucker, E.S., Biodegradation of Phthalic Acid Esters in River Water and Activated Sludge, Applied Environmental Microbiology 31, 29–34 (1976), and Spain, J.C., Pritchard, P.H. and Bourquin, A.W., Effects of Adaptation Rates in Sediment/Water Cores from Estuarine and Freshwater Environments, Applied Environmental Microbiology 40 726–734 (1980).

(k) *Environmental effects testing*—(1) *Aquatic freshwater acute toxicity*—(i) *Required testing.* Acute toxicity tests shall be conducted with quinone with freshwater animals in eight different species provided that of the eight species:

(A) At least one is a salmonid fish.

(B) At least one is a non-salmonid fish.

(C) At least one is a planktonic crustacean.

(D) At least one is a benthic crustacean.

(E) At least one is a benthic insect.

(F) At least one is a benthic species.

(ii) *Study plans.* For guidance in preparing study plans, the TSCA Environmental Effects Test Guidelines for acute toxicity testing, published by NTIS (PB 82–232992), should be consulted. Additional guidance may be obtained by consuting the OECDS Test Guidelines for Effects on Biotic Systems, the FIFRA Guidelines for Hazard Evaluation: Wildlife and Aquatic Organisms (PB 83–153908), and the Water Quality Criteria Guidelines (45 FR 79341).

(2) *Aquatic freshwater chronic toxicity*—(i) *Required testing.* Chronic toxicity tests shall be conducted with quinone for three species of aquatic animals provided that of the three species:

(A) At least one is a fish.

(B) At least one is an invertebrate.

(C) At least one is a freshwater species (the other two may be saltwater species).

(ii) *Study plans.* For guidance in preparing study plans, the TSCA Environmental Effects Test Guidances for chronic toxicity testing, published by NTIS (PB 82–232992), should be consulted. Additional guidance may be obtained by consulting the FIFRA Guidelines for Hazard Evaluation: Wildlife and Aquatic Organisms (PB 83–153908) and the Water Quality Criteria Guidelines, published in the Federal Register on November 28, 1980 (45 FR 79341).

(3) *Aquatic freshwater plants*—(i) *Required testing.* Testing shall be conducted with quinone with a freshwater alga, or a chronic test shall be conducted with quinone with a freshwater vascular plant.

(ii) *Study plans.* For guidance in preparing test study plans, that the TSCA Environmental Effects Test Guidelines for algal and macrophytic toxicity testing, published by NTIS (PB 82–232992), should be consulted. Additional guidance may be obtained by consulting the FIFRA Guidelines for Hazard Evaluation: Wildlife and Aquatic Organisms (PB 83–153908), the OECD Test Guidelines for Effects on Biotic Systems, and the Water Quality Criteria Guidelines (45 FR 79341).

(4) *Freshwater bioconcentration testing*—(i) *Required testing.* A bioconcentration factor test shall be conducted with guinone with a freshwater aquatic animal species.

(ii) *Study plans.* For guidance in preparing study plans, the TSCA Environmental Effects Test Guidelines, published by NTIS (PB 82–232992), should be consulted. Additional guidance may be obtained by consulting the FIFRA Guidelines for Hazard Evaluation: Wildlife and Aquatic Organisms (PB 83–153908), the OECD Test Guidelines for Degradation and Accumulation, and the Water Quality Criteria Guidelines (45 FR 79341).

(5) *Aquatic saltwater acute toxicity*—(i) *Required testing.* Acute toxicity tests shall be conducted with quinone with saltwater animals in eight different species provided that, of the eight species:

(A) At least two different fish families are included.

(B) At least five different invertebrate families are included.

(C) Either the Mysidae or Penaeidae family or both are included.

(D) At least one of the invertebrate families is in a phylum other than Arthropoda.

(ii) *Study plans.* For guidance in preparing study plans, the TSCA Environmental Effects Test Guidelines for acute toxicity testing, published by NTIS (PB 82–232992), should be consulted. Additional guidance may be obtained by consulting the OECD Test Guidelines for Effects on Biotic Systems, the FIFRA Guidelines for Hazard Evaluation: Wildlife and Aquatic Organism (PB 83–153908), and the Water Quality Criteria Guidelines (45 FR 79341).

(6) *Aquatic saltwater chronic toxicity*—(i) *Required testing.* Chronic toxicity tests shall be conducted with quinone for three species of aquatic animals provided that of the three species:

(A) At least one is a fish.

(B) At least one is an invertebrate.

(C) At least one is a saltwater species (the other two may be freshwater species).

(ii) *Study plans.* For guidance in preparing study plans, the TSCA Environmental Effects Test Guidelines for chronic toxicity testing, published by NTIS (PB 82–232992), should be consulted. Additional guidance may be obtained by consulting the FIFRA Guidelines for Hazard Evaluation: Wildlife and Aquatic Organisms (PB 83–153908) and the Water Quality Criteria Guidelines (45 FR 79341).

(7) *Aquatic saltwater plants*—(i) *Required testing.* Testing shall be conducted with quinone with a saltwater alga, or a chronic test shall be conducted with quinone with a saltwater vascular plant.

(ii) *Study plans.* For guidance in preparing study plans, the TSCA Environmental Effects Test Guidelines for algal and macrophytic toxicity testing, published by NTIS (PB 82–232992 and PB 83–257709), should be consulted. Additional guidance may be obtained by consulting the FIFRA Guidelines for Hazard Evaluation: Wildlife and Aquatic Organisms (PB 83–153908), the OECD Test Guidelines for Effects on Biotic Systems, and the Water Quality Criteria Guidelines.

(8) *Saltwater bioconcentration testing*—(i) *Required testing.* A bioconcentration factor test shall be conducted with a saltwater aquatic animal species.

(ii) *Study plans.* For guidance in preparing study plans, the TSCA Environmental Effects Test Guidelines published by NTIS (PB 82–232992), should be consulted. Additional guidance may be obtained by consulting the FIFRA Guidelines for Hazard Evaluation: Wildlife and Aquatic Organisms (PB 83–153908), the OECD Test Guidelines for Degradation and Accumulation, and the Water Quality Criteria Guidelines.

(l) *Test standards.* (1) Sponsors and testing facilities must adhere to the EPA Good Laboratory Practice Regulations in Part 792 of this chapter.

(m) *Enforcement.* (1) If a manufacturer or processor, which notified EPA under paragraph (c)(1), (2), (3) or (4) of this section of its intent to perform testing for a test required by paragraphs (i), (j) or (k) of this section, fails to perform the test in accordance with the test standards in paragraph (l) of this section, that failure will be a violation of this section.

(2) EPA will publish a notice in the **Federal Register** to inform all manufacturers and processors that all exemptions for performance of that test will be denied unless, within 30 days of the publication of the notice, a manufacturer or processor of quinone notifies EPA by letter that it intends to perform that test in accordance with the test standards in paragraph (l) of this section.

(3) Any person who fails or refuses to comply with any aspect of this section is in violation of section 15 of the Act.

(n) *Availability.* The TSCA and FIFRA guidelines for the various study plans are available from the National Technical Information Service (NTIS). Address and telephone number: National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161 (703–487–4650).

[FR Doc. 84–65 Filed 1–3–84; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 83–482; RM–4402]

FM Broadcast Station in Williams, Arizona; Withdrawal of Proposed Rule

AGENCY: Federal Communications Commission.

ACTION: Withdrawal of Notice of Proposed Rulemaking.

SUMMARY: Action taken herein dismisses a proposal to assign FM Channel 257A to Williams, Arizona, based upon the petitioner's notification withdrawing interest in the request.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mark N. Lipp, Mass Media Bureau, (202) 634–6530.

List of subjects in 47 CFR Part 73

Radio broadcasting.

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations, (Williams, Arizona), MM Docket No. 83–482, RM–4402.

Report and Order (Proceeding Terminated)

Adopted: December 5, 1983.

Released: December 21, 1983.

By the Chief, Policy and Rules Division.

1. Before the Commission is the *Notice of Proposed Rule Making*, 48 FR 27565, published June 16, 1983, proposing the assignment of Channel 257A to Williams, Arizona, as its second FM assignment, in response to a petition filed by Soho Broadcasting ("petitioner"). Petitioner initially stated that he would apply for the channel, if assigned, but has since filed a request to dismiss his proposal.

2. Absent an expression of interest in the use of a proposed channel, it is the Commission's general policy to refrain from making a new assignment to a community. Therefore, since there has been no such interest here, we will grant the petitioner's request for dismissal.

3. Accordingly, it is ordered, that the petition of Soho Broadcasting, proposing the assignment of Channel 257A to Williams, Arizona, is hereby dismissed.

4. It is further ordered, that this proceeding is terminated.

5. For further information concerning the above, contact Mark N. Lipp, Mass Media Bureau, (202) 634–6530.

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84–42 Filed 1–3–84; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 83–1343; RM–4606]

FM Broadcast Stations in Aspen, Colorado; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes to assign Channel 296A to Aspen, Colorado, as its second FM service, in response to a petition filed by Nae Kyung Kim.

DATES: Comments must be filed on or before February 13, 1984, and reply comments on or before February 28, 1984.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634–6530.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Notice of Proposed Rule Making

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations, (Aspen, Colorado), MM Docket No. 83–1343, RM–4606.

Adopted: December 12, 1983.

Released: December 23, 1983.

By the Chief, Policy and Rules Division.

1. A petition for rule making was filed by Nae Kyung Kim ("petitioner"), seeking the assignment of Channel 296A to Aspen, Colorado, as that community's second local FM service. Petitioner indicates that he, or an entity of which he is a part, will apply for the channel, if assigned. The channel can be assigned in conformity with the minimum distance separation requirements of § 73.207 of the Commission's Rules.

§ 73.202 [Amended]

2. In view of the fact that the proposed assignment could provide a second local FM service to Aspen, Colorado, for the expression of diverse viewpoints and programming, the Commission believes it is appropriate to propose amending

the FM Table of Assignments, § 73.202(b) of the Commission's Rules, with respect to that community, as follows:

City	Channel No.	
	Present	Proposed
Aspen, Colorado	249A	249A, 296A.

3. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

4. Interested parties may file comments on or before February 13, 1984, and reply comments on or before February 28, 1984, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner and his consultant, as follows:

Nae Kyung Kim, P.O. Box 1226, Aspen, Colorado 81611 (Petitioner); and Edward M. Johnson, One Regency Square, #450, Knoxville, Tennessee 37915 (Consultant).

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act ot 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules,* 46 FR 11549, published February 9, 1981.

6. For further information concerning this proceeding, contact Nancy V. Joyner, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken of written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 84-43 Filed 1-3-84; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 83-1244; RM-4643]

FM Broadcast Station in Manteo, North Carolina; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes to assign FM Channel 252A to Manteo, North Carolina, in response to a petition filed by Bayliss Broadcasting Co.

DATES: Comments must be filed on or before February 13, 1984, and reply comments must be filed on or before February 28, 1984.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mark N. Lipp, Mass Media Bureau (202) 634–6530..

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Notice of Proposed Rule Making

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast

Stations. (Manteo, North Carolina) MM Docket No. 83-1344 RM-4643

Adopted: December 9, 1983.
Released: December 23, 1983.
By the Chief, Policy and Rules Division.

1. A petition for rule making has been filed by Bayliss Broadcasting Co. ("petitioner"), proposing the assignment of FM Channel 252A to Manteo, North Carolina, as its second local FM service.[1] Petitioner expressed an interest in applying for the channel, if assigned. The channel can be assigned in compliance with the minimum distance separation requirements.

§ 73.202 [Amended]

2. In view of the fact that the proposed assignment could provide a second FM service to Manteo, North Carolina, the Commission believes it is appropriate to propose amending the FM Table of Assignments, § 73.202(b) of the Rules, with respect to the following community:

City	Channel No.	
	Present	Proposed
Manteo, North Carolina	257A	252A, 257A

3. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

NOTE.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

4. Interested parties may file comments on or before February 13, 1984, and reply comments on or before February 28, 1984, and are advised to read the Appendix for the proper procedures. A copy of such comments should be served on the petitioner as follows: Peter D. O'Connell, Marnie K. Sarver, Pierson, Ball & Dowd, 1200—18th St. NW., 1000 Ring Building, Washington, D.C. 20036, (counsel for the petitioner).

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

6. For further information concerning this proceeding, contact Mark N. Lipp, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment to which the reply is directed constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Appendix

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61. 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commisssion to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commisson's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 84-44 Filed 1-3-84; 8:45 am]
BILLING CODE 6712-01-M

[1] Channel 257A has recently been assigned to Manteo, North Carolina (MM Docket No. 83-715, RM-4451).

---

47 CFR Part 73

[MM Docket No. 83-1345; RM-4595]

TV Broadcast Station in Sturgeon Bay, Wisconsin; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the assignment of UHF Television Channel 42 to Sturgeon Bay, Wisconsin, as that community's first local television station in response to a petition filed by Sturgeon Bay Television Company.

DATES: Comments must be filed on or before February 13, 1984, and reply comments on or before February 28, 1984.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Kathleen M. Scheuerle, Mass Media (202) 634–6530.

SUPPLEMENTARY INFORMATION: .

List of Subjects in 47 CFR Part 73

Television broadcasting

Notice of Proposed Rule Making

In the matter of amendment of § 73.606(b), Table of Assignments, TV Broadcast Stations. (Sturgeon Bay, Wisconsin) MM Docket No. 83–1345 RM–4595.

Adopted: December 7, 1983.
Released: December 23, 1983.

1. A petition for rule making has been filed by Sturgeon Bay Television Company ("petitioner"), seeking the assignment of UHF Television Channel 42 [1] to Sturgeon Bay, Wisconsin, as that community's first local television service. Petitioner indicates that it will apply for the channel, if assigned.

2. Sturgeon Bay (population 8,847) [2], seat of Door County (population 25,029), is located on a peninsula approximately 60 kilometers (38 miles) northeast of Green Bay, Wisconsin.

3. We believe the proposal warrants consideration. The channel can be assigned consistent with the minumum distance separation requirements of §§ 73.610 and 73.698 of the Commission's Rules. Since Sturgeon Bay is located within 400 kilometers (250 miles) of the common U.S.-Canadian border, the Commission must obtain Canadian concurrence in the proposal.

§ 73.606 [Amended]

4. In view of the foregoing and the fact that the proposed assignment could provide a first local commercial television broadcast service to Sturgeon Bay, Wisconsin, the Commission believes it appropriate to propose amending the Television Table of Assignments, § 73.606(b) of the Commission's Rules, as follows:

City	Channel No.	
	Present	Proposed
Sturgeon Bay, Wisconsin	—	42

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

6. Interested parties may file comments on or before February 13, 1984, and reply comments on or before February 28, 1984, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: J. Geoffrey Bentley, Esq., Joseph P. Benkert, Esq., Liberman, Sanchez & Bentley, 2000 "L" Street, NW., Suite 200, Washington, D.C. 20036, (Counsel for petitioner).

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

8. For further information concerning this proceeding, contact Mark N. Lipp, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is not longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Appendix

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice*

[1] Petitioner originally requested Channel 46. We have substituted Channel 42 for consideration in order to avoid a conflict with an application for Channel 32 in Appleton, Wisconsin.

[2] Population figures are from the 1980 U.S. Census, Advance Report.

of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 84-45 Filed 1-3-84; 8:45 am]
BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 49, No. 2
Wednesday, January 4, 1984

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

Section 22 Import Fees; Determination of Quarterly Import Fees on Sugar

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: Headnote 4(c) of Part 3 of the Appendix to the Tariff Schedules of the United States (TSUS) requires the Secretary of Agriculture to determine on a quarterly basis the amount of the fees which shall be imposed on imports of raw and refined sugar (TSUS items 956.05, 956.15, and 957.15) under the authority of Section 22 of the Agricultural Adjustment Act of 1933, as amended. This notice announces those determinations for the first calendar quarter of 1984.

EFFECTIVE DATE: January 1, 1984.

FOR FURTHER INFORMATION CONTACT: William F. Doering, Foreign Agricultural Service, Department of Agriculture, Washington, D.C. 20250 (202–447–6723).

SUPPLEMENTARY INFORMATION: By Presidential Proclamation No. 4940, dated May 5, 1982, Headnote 4 of Part 3 of the TSUS was amended to provide that quarterly adjusted fees shall be imposed on imports of raw and refined sugar (TSUS items 956.05, 956.15, and 957.15). Paragraph (c)(ii) of Headnote 4 provides that the quarterly adjusted fee for item 956.15 shall be the amount by which the average of the adjusted daily spot (domestic) price quotations for raw sugar for the 20 consecutive market days immediately preceding the 20th day of the month preceding the calendar quarter during which the fee shall be applicable (as reported by the New York Coffee, Sugar, and Cocoa Exchange), expressed in United States cents per pound, in bulk, is less than the market stabilization price. The market stabilization price for the first calendar quarter of 1984 is 21.17 cents per pound. However, whenever the average of the daily spot price quotations for 10 consecutive market days within any calendar quarter: (1) Exceeds the market stabilization price by more than one cent, the fee then in effect shall be decreased by one cent; or (2) is less than the market stabilization price by more than one cent, the fee then in effect shall be increased by one cent. Paragraph (c)(i) of Headnote 4 further provides that the quarterly adjusted fee for items 956.05 and 957.15 shall be the amount of the fee for item 956.15 plus one cent.

The average of the adjusted daily spot (domestic) price quotations for raw sugar for the applicable period prior to the first calendar quarter of 1984 has been calculated to be 21.5680 cents per pound. This results in a fee of 0.00 cent per pound for item 956.15, since the adjusted average spot price is greater than 21.17 cents. Accordingly, the fee for items 956.05 and 957.15 for the first calendar quarter of 1984 is 1.00 cent per pound.

Headnote 4(c) requires the Secretary of agriculture to determine and announce the amount of the quarterly fees no later than the 25th day of the month preceding the calendar quarter during which the fees shall be applicable. The Secretary is also required to certify the amounts of such fees to the Secretary of the Treasury and file notice thereof with the **Federal Register** prior to the beginning of the calendar quarter during which the fees shall be applicable. This notice is therefore being issued in order to comply with the requirements of Headnote 4(c).

Notice is hereby given that, in accordance with the requirements of Headnote 4(c) of Part 3 of the Appendix to the Tariff Schedules of the United States, it is determined that the quarterly adjusted fees for raw and refined sugar (TSUS items 956.05, 956.15, and 957.15) for the first calendar quarter of 1984 shall be as follows:

Item	Fee
956.05	1.00 cent per lb.
956.15	0.00 cent per lb.
957.15	1.00 cent per lb.

The amounts of such fees have been certified to the Secretary of the Treasury in accordance with paragraph (c)(iv) of Headnote 4.

Signed at Washington, D.C. on December 28, 1983.

Richard E. Lyng,

Acting Secretary of Agriculture.

[FR Doc. 83-33702 Filed 12-29-83; 4:00 pm]

BILLING CODE 3410-10-M

Farmers Home Administration

Servicing of Farmer Program Loan Accounts; Temporary Directives

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice of Temporary Directives Sent to Field Staff Concerning Servicing Actions.

SUMMARY: In an effort to comply with the November 14, 1983, Preliminary Injunction entered in the nationwide class action entitled *Coleman* v. *Block*, Civil No. Al–83–47 (D. N. Dak.) so that it can proceed with servicing certain of its farmer program loan accounts while the litigation is pending, the Farmers Home Administration (FmHA) has issued temporary directives to its field staff. These directives will generally affect only those farmer program loan borrowers (including those who have both farmer program and single-family rural housing loans) who have had, or are about to have: (1) The release of income which their current year's farm plan of operation shows they planned to use family living and/or farm operating expenses terminated by FmHA; (2) their FmHA debts accelerated and their real estate or chattels foreclosed upon; (3) demand made on them to convey to FmHA property they own on which FmHA has a lien; and (4) their chattels repossessed or in other ways property they own in which FmHA has a security interest proceeded against.

Copies of these directives may be obtained from any FmHA office.

The Catalog of Federal Domestic Assistance Programs affected are:

10.404 Emergency Loans
10.406 Farm Operating Loans
10.407 Farm Ownership Loans
10.416 Soil and Water Loans

FOR FURTHER INFORMATION CONTACT: Edward R. Yaxley, Senior Loan Officer, Processing Branch, Farm Real Estate and Production Division, Farmers Home Administration, USDA, Room 5322–S, Washington, D.C. 20250, telephone (202) 447–4572.

Dated: December 21, 1983.

Michael E. Brunner,

Acting Administrator, Farmers Home Administration.

[FR Doc. 84-118 Filed 1-84; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 50-83]

Foreign-Trade Zone 72, Indianapolis, Indiana; Application for Subzone Eli Lilly Plants, Indianapolis Area

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Indianapolis Airport Authority, grantee of Foreign-Trade Zone 72, requesting special-purpose subzone status for pharmaceutical and chemical manufacturing plants of Eli Lilly and Company, located in Indianapolis, Lafayette and Clinton, Indiana, within a 75-mile radius of the Indianapolis Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on December 22, 1983. The applicant is authorized to make this proposal under Indiana Code 3–10–3–2. The question of adjacency is being reviewed by Customs.

On September 28, 1981, the Board authorized the Airport Authority to establish a foreign-trade zone in the Indianapolis area (Board Order 179, 46 FR 50091, 10/9/81). The project involves 15 acres at the Indianapolis International Airport, including an air cargo building.

The proposed subzone is for the three Indianapolis area manufacturing plants of Eli Lilly a multi-national producer of human health, cosmetic and agricultural products with 38 plants in 17 countries and annual sales of close to $3 billion. The subzone's Site I will cover 220 acres at the company's Indianapolis plant, including the production complex in the White River and Kentucky Avenue area, about one-half mile south of I–70, an a facility at 2301 Executive Drive. Site II is at the company's Lafayette plant covering 449 acres on Lilly Road in West Lafayette, some 60 miles northeast of Indianapolis. Site III is at Lilly's Clinton plant, a 747-acre facility on State Road 63 in Clinton, some 70 miles west of Indianapolis. The plants employ a total of 9,600 persons.

The three plants are part of an integrated process for producing pharmaceuticals, herbicides and animal health products. Althought the major proportion of the materials used in the plants' production come from domestic sources, certain intermediate chemicals, such as cephalexin disolvate and other benzenoid derivatives, are purchased from abroad. Because about 75 percent of the imported material is reexported, foreign content of the plants' products destined for the domestic market is only 2 percent. The operations of the three plants account for the most of the company's $350 million in annual U.S. exports.

Zone procedures will exempt Lilly from duty payments on the material it uses in its exports. The company will derive secondary cost savings by deferring duty and by taking advantage the same duty rate available to importers of finished products. On the imported material used by Lilly the duty rates range from 7.9 to 17.9 percent whereas final product rates range from 7.4 to 12.5 percent. The savings from zone procedures, primarily derived from reexports, will help the company's U.S. facilities remain competitive with similar production plants abroad.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, D.C. 20230; John F. Nelson, District Director, U.S. Customs Service, North Central Region, 55 Erieview Plaza, 6th Floor, Cleveland, OH 44114; and Colonel Dwayne G. Lee, District Engineer, U.S. Army Engineer District Louisville, P.O. Box 59, Louisville, KY 40201.

Comments concerning the proposed subzone are invited in writing from interested persons and organizations. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before February 3, 1984.

A copy of the application is available for public inspection at each of the following locations:

U.S. Dept. of Commerce District Office, 375 Federal Bldg./Courthouse, 46 East Ohio Street, Indianapolis, OH 46204.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1872, 14th and Pennsylvania, NW., Washington, D.C. 20230.

Dated: December 28, 1983.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 84-68 Filed 1-3-84; 8:45 am]

BILLING CODE 3510-DS-M

[Order No. 240]

Removal of Time Limit on Temporary Zone Site of Foreign-Trade Zone No. 31, Granite City, Illinois, Within the St. Louis Customs Port of Entry

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zones Board Regulations (15 CFR Part 400), the Foreign-Trade Zones Board (the Board) adopts the following order:

Whereas, on November 21, 1980, the Tri-City Regional Port District (Port District), grantee of Foreign-Trade Zone 31 in Granite City, Illinois, received authority from the Board to establish a temporary zone site on South State Street in Granite City until December 31, 1983 (Board Order 169, 45 FR 79520);

Whereas, the Port District has applied to the Board for authority to remove the time limitation on zone status for the South State Street site;

Whereas, the application was accepted for filing on September 26, 1983, and notice inviting public comment was given in the **Federal Register** on October 6, 1983 (Docket No. 36–83, 48 FR 45579);

Whereas, the temporary site has provided zone services in a satisfactory manner from the standpoint of both the grantee and local Customs officials;

Whereas, the FTZ Staff has investigated the proposal in accordance with the Board's regulations and, finding continuation of zone services at the site to be in the public interest, has recommended approval; and;

Whereas, the Board has found that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied;

Now, Therefore, the Board hereby orders:

That the time limitation on the South State Street zone site of FTZ 31 is removed. The Grantee shall notify the Executive Secretary of the Board for approval prior to the commencement of any manufacturing operations. The authority given in this Order is subject to settlement locally by the District Director of Customs and the District Army Engineer regarding compliance with their respective requirements relating to foreign-trade zones.

Signed at Washington, D.C. this 27th day of December 1983.

William T. Archey,

Acting Assistant Secretary of Commerce for Trade Administration Chairman, Committee of Alternates.

ATTEST:

John T. DuPonte,

Executive Secretary

[FR Doc. 84-84 Filed 1-3-84; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-588-008]

Lightweight Polyester Filament Fabric From Japan; Final Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have determined that lightweight polyester filament fabrics (LPFF) from Japan are being sold in the United States at less than fair value. Therefore, we have notified the U.S. International Trade Commission (ITC) of our determination, and the ITC will determine, within 45 days of publication of this notice, whether these imports are materially injuring, or are threatening to materially injure, a U.S. industry. We have directed the U.S. Customs Service to continue to suspend the liquidation of all entries of the subject merchandise which are entered, or withdrawn from warehouse, for consumption, on or after August 8, 1983, in accordance with our preliminary determination, and to require a cash deposit or bond for each entry in an amount equal to the estimated dumping margin as described in the "Suspension of Liquidation" section of this notice. Those firms which are subject to the suspension of liquidation are indicated in the "Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: January 4, 1983.

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

SUPPLEMENTARY INFORMATION: .

Final Determiation

We have determined that LPFF from Japan are being sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The firms investigated are indicated in the "Suspension of Liquidation" section of this notice.

Case History

On January 4, 1983, we received a petition filed by counsel for Burlington Industries, Inc., Milliken & Co., J.P. Stevens & Co., Inc., Dan Rivers, Inc., Texfi Industries, Frank Ix & Sons, Inc., and Bloomsburg Mills, Inc. on behalf of the U.S. industry producing lightweight polyester filament fabrics. In accordance with the filing requirements of § 353.36 of the Commerce Department Regulations (19 CFR 353.36), the petitioner alleged that LPFF from Japan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are materially injuring, or are threatening to materially injure, a U.S. industry. The allegations of sales at less than fair value include an allegation that home market sales are being made at less than the cost of production in Japan.

After reviewing the petition,we determined that it contained sufficient grounds upon which to initiate an antidumping investigation. We notified the ITC of our action and initiated such an investigation on January 24, 1983 (48 FR 3797). The ITC subsequently found, on February 18, 1983, that there is a reasonable indication that imports of LPFF are materially injuring, or are threatening to materially injure, a U.S. industry.

The petitioner alleged that at least eight Japanese companies produce LPFF for export to the United States. However, we identified eleven producers and exporters which account for at least 60 percent of the exports to the United States. Questionnaires were presented in Japan to these producers and exporters on February 21, 1983.

On March 28, 1983 and May 19, 1983, we received letters from Counsel for the Japanese LPFF producers and exporters requesting additional time in which to respond because of the numerous companies and complicated products. Extensions were granted and we received responses on April 28, 1983; and May 2, 6, 9 and 31, 1983. Supplemental questionnaires were sent on June 21, and the supplemental responses were received between June 29 and July 19, 1983. We received responses from the following companies: Asahi Chemical Industry Co., Ltd. (Asahi); C. Itoh & Co., Ltd.; Kanebo Synthetic Textiles, Ltd. (Kanebo); Kuraray Co., Ltd.; Mitsubishi Rayon Co., Ltd. (Mitsubishi); Nichibo Co., Ltd.; Nishikawa Bussan Co., Ltd. (Nishikawa); Teijin Limited; Toray Industries, Inc.; Toyobo Co., Ltd; and Unitika, Ltd. We also received a response to Section E of the questionnaire, "Data from Certain Resellers," from Chori Company, Ltd. Chori is a trading company related to Toray.

On May 20, 1983, we found this case to be extraordinarily complicted because of the large number of complex transactions and the large number of firms whose activities had to be investigated. We postponed our preliminary determination until August 2, 1983 (48 FR 23471).

On August 2, 1983, we preliminarily determined that LPFF from Japan were being sold in the United States at less than fair value (48 FR 35976). We held a hearing on November 1, 1983, to allow the parties an opportunity to address the issues.

During the period August 4, to September 1, 1983, we received letters from eight of the respondents requesting that the final determination be extended until December 21, 1983. We extended our final determination until that date.

Scope of Investigation

The products covered by this investigation are lightweight polyester filament fabrics, currently provided for in items 338.5009, 388.5011, 388.5012, 388.5013, and 338.5015 of the *Tariff Schedules of the United States Annotated (TSUSA).*

Since the respondents produced and exported at least 60 percent of the LPFF from Japan to the United States during the period of investigation, we limited our investigation to them.

We investigated sales of LPFF by these respondents during the period from July 1, to December 31, 1982.

Fair Value Comparison

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

United States Price

As provided in section 772(b) of the Act, we used the purchase price of the subject merchandise to represent the United States price for the sales by the Japanese producers or exporters, because the merchandise was sold to unrelated purchasers prior to its importation into the United States.

We calculated the purchase price based on the ex-factory, ex-go-down, f.o.b., c.& f., c.i.f., c.i.f., duty-paid, or c.i.f. duty-paid delivered packed price to unrelated purchasers in the United

States. We made deductions, where appropriate, for foreign inland freight, foreign inland insurance, foreign brokerage and handling charges, bank charges, ocean freight, marine insurance, U.S. brokerage and handling charges, U.S. excise and other special taxes, U.S. customs duties, factor charges, U.S. inland freight, and U.S. inland insurance.

Foreign Market Value

In accordance with section 773(a) of the Act, we calculated foreign market value based on home market sales and, where appropriate, third country sales and constructed value.

We established categories of "such or similar" merchandise, pursuant to section 771(16)(C) of the Act, on the basis of fabric designation (georgette, palace crepe, etc.), the type of weave, and whether a fabric is greige or partially finished, or is completely finished. Individual combinations of these components each determine a "such or similar" group upon which a viability test was performed (i.e., we decided whether there were adequate above-cost sales to warrant price-to-price comparisions) and within which price-to-price comparisons were made. In order to select the most similar fabrics within a "such or similar" category, we used the following factors: the finished width of a fabric, the state of a fabric, the type of yarn, whether or not the fabric has been caustically reduced, whether or not the fabric has a specialty post finish. This system accounts for the major factors influencing the cost of manufacture and market value. Where adjustments were necessary to account for differences in physical characteristics of fabrics, we were able to calculate these differences in the cost of manufacture.

Petitioner alleged that sales in the home market were at prices below the cost of producing LPFF. We examined production costs which included all appropriate costs for materials, fabrication and general expenses. Sales below the cost of production were found to be made within certain such or similar categories of LPFF. Where sales within any of the categories were made over an extended period of time and in substantial quantities, and were at prices which did not permit recovery of all costs within a reasonable period of time in the normal course of trade, we disregarded these sales in our analysis in accordance with section 773(b) of the Act. Disregarding such sales, we found for certain categories that sufficient sales of such or similar merchandise were made at or above the cost of production in the home market. Therefore, we used those sales to determine foreign market value. If, within these such or similar categories, all home market sales of particular fabric types identical or most similar to particular fabrics sold to the United States were disregarded pursuant to section 773(b) of the Act, we used sales of the most similar home market merchandise made at or above the cost of production for comparision to those United States sales, after appropriate adjustments. On the other hand, where sales remaining above the cost of production in a such or similar category were inadequate as a basis for determining foreign market value, we used constructed value to determine the foreign market value of those particular fabric types.

In addition, Teijin identified a number of its home market sales made at distress prices (in the case of end-of-season or out-of-fashion merchandise), which it claims are in the normal course of trade for the LPFF industry. The Department's product expert verified that this was indeed the case. Accordingly, we have used these distress sales in making fair value comparisons.

Where we used home prices as the basis for foreign market value, we calculated the home market prices for each type of LPFF on the basis of delivered packed prices to unrelated purchasers. From these prices we deducted, where appropriate, foreign inland freight, foreign inland insurance, rebates, and discounts. We made adjustments, were appropriate, for credit expenses, advertising expenses, warranty and servicing expenses, after-sale warehousing expenses, and other direct selling expenses, such as sales promotional activities by company staff, in accordance with § 353.15 of the Commerce Regulations.

We also made an adjustment, where appropriate, for the differences between commissions on sales to the United States and indirect selling expenses in the home market used as an offset to U.S. commissions, in accordance with § 353.15(c) of the Commerce Regulations. We also made adjustments for the cost of materials, labor, and direct factory overhead associated with differences in the merchandise in accordance with § 353.16 of the Commerce Regulations. In the cases of Kuraray and Teijin, we made an adjustment to the weighted-average home market price for differences in shrinkage of greige fabric, which is sold on a shrunk basis in the home market and on an unshrunk basis in the United States. We also deducted home market packing cost and added the packing cost incurred on sales to the United States.

We disallowed the follwing claims in calculating foreign market value. Asahi requested a circumstance-of-sale adjustment for quality testing inspection expenses and other direct selling expenses covering entertainment and meeting costs. We disallowed these claims because we do not consider these items to be a circumstance-of-sale bearing a direct relationship to sales of LPFF in the home market.

Kuraray requested circumstance-of-sale adjustments for advertising expenses covering various trade shows. One of these claims was disallowed because the expenditure was not incurred during the period of investigation. Kuraray also requested circumstance-of-sale adjustments for other direct selling expenses covering travel, special promotion, and entertainment costs. These claims were disallowed because they do not bear a direct relationship to sales of LPFF.

Unitika requested a circumstance-of-sale adjustment for the LPFF share of corporate funding for Unitika's volleyball and basketball teams. We disallowed this claim because the expenditures do not bear a direct relationship to sales of LPFF, nor are they attributable to a letter sale of LPFF by a purchaser.

We also disallowed the following claims by Unitika for other direct selling expenses because we could not establish that the expenditures bore a direct relationship to sales of LPFF, not that they were attributable to a later sale of LPFF by a purchaser: travel expenses, sales meetings, quality tests, meeting costs, and notebooks distributed to clients. In addition, we disallowed Unitika's claims for special Silmie-5 advertising and direct selling expenses because the expenditures were not incurred during the period of investigation. Unitika also requested an adjustment for the higher value of its trademarked Silmie-5 habutae. Although the qualitative evidence in the record of this investigation indicates that the Silmie-5 trademark does generate a higher market value for Unitika's Silmie-5 habutae; however, we were not able to conclude that the method used by Unitika to calculate the higher market value of the trademarked fabric was adequate upon which to base the adjustment. Because we recognize that the Silmie-5 trademark does have an effect on the market value that we cannot sufficiently quantity, we excluded Unitika's Silmie-5 habutae from our fair value comparisons.

As required in section 773(a)(1)(B) of the Act, we selected sales for export to a country other than the United States (a "third country") as the basis for foreign market value in two instances. In the case of Nichibo, where there were insufficient sales of LPFF in the home market, we calculated the third country prices on the basis of the c. & f. or c.i.f., packed price to unrelated purchasers in Saudi Arabia. In the case of C. Itoh, all home market sales were of greige products which we do not consider as being such or similar to fully finished products. Lacking home market sales of such or similar merchandise for comparison to sales of dyed goods to the United States, we calculated the foreign market value based in the c. & f. or c.i.f., packed price to unrelated purchasers in Hong Kong, Canada, and the United Kingdom. We made deductions, where appropriate, for inland freight insurance. An adjustment was also made, where appropriate, for the differences between commissions on sales to the United States and indirect selling expenses incurred on sales in the home market, used as an offset to U.S. commissions, in accordance with § 353.15(c) of the Commerce Regulations. We made circumstance-of-sale adjustments, where appropriate, for quality control, testing, inspection expenses, and credit expenses in accordance with § 353.15 of the Commerce Regulations. We also made adjustments for the cost of materials, labor, and direct factory overhead associated with difference in merchandise in accordance with § 353.16 of the Commerce Regulations. We deducted third-country packing costs and added the packing costs incurred on sales to the United States. Regarding the other companies where there were insufficient sales in the home market in certain such or similar categories and the companies had provided adequate third country sales information, we used the third country sales date as a basis for the determination of foreign market value in making our comparisons.

Where we used constructed value as the basis for foriegn market value, we calculated the cost of materials, fabrication, general expenses, profit, and the cost of packing. The amount added for general expenses was the statutory minimum of 10 percent of the sum of material and fabrication costs or the actual general expenses, which is higher. The amount added for profit was the statutory minimum of 8 percent of the sum of materials, fabrication costs, and general expenses or the actual profit, whichever was higher.

Verification

In accordance with 776(a) of the Act, we verified the information used in making this determination by using standard verification procedures, including on-site inspection of the manufacturers' operations and examination of accounting records and selected documents containing relevant information.

Results of Verification

We made fair value comparisons on all U.S. sales reported by the respondents. We have found that the foreign market value of LPFF exceeded the U.S. price on 43.065 percent of the sales we compared. These margins ranged from 0.013 percent to 68.47 percent. The overall weighted-average margin on all sales compared is 5.211 percent. The weighted-average margins for individual companies investigated are presented in the "Suspension of Liquidation" section of this notice.

Petitioners' Comments

Comment 1

Respondents failed to provide the necessary information needed to calculate the cost of producing individual fabrics. Detailed fabric-by-fabric information on labor costs, yarn costs, energy costs, production processes, equipment efficiency, and the amount of each cost factor used in each step of the production process was not provided in the questionnaire responses. In addition, respondents did not provide quarterly breakdowns of costs for materials; direct labor; factory overhead; selling, general, and administrative expenses; and packing and financing costs for lightweight polyester fabric as a whole, and separately for each fabric type. Furthermore, individual fabrics were not described fully enough in the questionnaire responses for the Department to evaluate the cost information and to make proper comparisons. Therefore, the Department should disregard the respondents' cost information and substitute the best information available.

DOC Position

During verification respondents provided additional information related to calculating the cost of producing LPFF products, including:

- Fabric specific information on the price of labor costs, raw materials costs, energy costs, production processes, equipment efficiency, and actual weaving and finishing costs;
- The amount of each cost factor used in each step in the production processes;
- Monthly breakdowns of costs for materials; direct labor; factory overhead; selling, general, and administrative expenses; and packing and financing costs for LPFF as a whole, and separately for each fabric type;
- The number of employees at each stage of the production process, their wages and other compensation levels;
- Internal industrial engineering standards and fabric descriptions.

Petitioners maintain that "the sample cost sheets provided to the Department show that cost information is routinely kept at that level of detail." Respondents do maintain extensive cost accounting systems, which were reviewed at verification. It is their verified cost sheets which they used as the basis for preparing their submissions. In all cases, the LPFF production cost elements submitted by each respondent company were reconciled with its general ledger and financial statements to assure that the cost of production schedules submitted included all costs incurred.

Additionally, the fabric designation methodology developed by our product consultant, Geoffrey Lund Associates, accounts for all the major factors influencing the cost of manufacture and market value of LPFF fabrics (such as weight, twist, texturizing, and complexity of manufacture). It allowed us to both evaluate the cost information and to make proper price-to-price comparisons.

Comment 2

Petitioners maintain that not all responding companies described the manner in which costs were allocated among individual lightweight polyester fabrics, nor did they describe how allocations were made between lightweight polyester yarns and other heavier polyester yarns. The allocation methods used by respondents to determine preparation costs, weaving costs, yarn costs, labor costs per hour, dyeing costs, and overhead were improper in that they are not reasonably related to the actual expenses incurred during each stage of the production process, including subcontracted work, and they distort downward the cost of light-weight fabric. The Department should disregard the cost information that is not based on fully-disclosed, proper methods of allocation, and base foreign market value on constructed value, with production costs calculated according to a reasonable method of

allocation selected by the Department, as the best available information.

DOC Position

During verification, we discovered that in the Japanese textile industry all weaving and finishing functions are performed by outside subcontractors. The weaving and finishing costs accounted for between 61 and 72 percent of the costs of producing LPFF for the companies verified. After determining that such prices approximated the costs incurred by related companies, we used actual fabric-specific invoice prices as the basis for determining the weaving and finishing components of cost of production, rather than internal cost allocation procedures.

Selling, general, and administrative expenses accounted for an additional 9 to 14 percent of the cost of producing LPFF. These costs were generally allocated to LPFF production by either production volume or value.

The cost of manufacturing yarn accounted for the remaining 17 to 26 percent of LPFF cost of production. The cost allocation methodologies used by respondents to determine yarn-specific manufacturing costs were based on company-specific enginering standards prepared by respondents' industrial engineers for use in the normal course of business. With one exception, each of the companies visited used these engineering standards to adjust the cost amounts allocated to major yarn categories (fully-oriented yarn, partially oriented yarn, and drawn-textured yarn) for yarn specific characteristics such as denier, number of filaments and other distinguishing characteristics (semidull, bright, etc.) The one exception calculated the overall weighted average cost per kilogram for each major yarn category. However, this is the cost accounting system used by this company for internal management purposes, and the same methodology was used to calculate the yarn cost component of both home market and export fabric production costs.

Based on the information obtained during verification, we determined that respondents' cost allocation methodologies are based on fully-disclosed, proper methods of allocation. Therefore, we used this information for our final determination.

Comment 3

Based on petitioners's analysis, the product-specific cost estimates provided by Toray materially understate the cost associated with high-twist lightweight polyester filament fabric production. Toray's allocation procedures do not result in a pattern of costs that comport with reasonable industrial standards and the impact that such factors as construction and twist would have on costs.

DOC Position

The LPFF cost of production elements submitted by Toray were reconciled with its general ledger and financial statements to ensure that the response included all costs incurred. As was the case for each respondent, all Toray's weaving and finishing requirements are performed by subcontractors. Consequently, Toray used the actual fabric-specific invoice prices to determine the weaving and finishing components of the cost of production. These items plus selling, general and administrative expenses accounted for a large majority of total costs. Yarn manufacturing costs representing the balance were allocated based on reasonable procedures to the major yarn categories: fully-oriented yarn, partially-oriented yarn, and drawn-textured yarn. Through the use of engineering standards which were developed by Toray's industrial engineers and applied consistently throughout the company's accounting system, costs were then adjusted for yarn-specific characteristics such as denier, number of filaments, and other distinguishing characteristics. Therefore, we determined that Toray's allocation procedures are acceptable for the purposes of our final determination.

Comment 4

According to section 773(b) of the Act, the Department is to disregard below cost sales made over an extended period of time and in substantial quantities and at prices which will not permit the recovery of all costs within a reasonable period. Where the remaining above-cost sales are inadequate as a basis for the determination of foreign market value, the Department should employ the constructed value of the merchandise to determine its foreign market value. However, even though respondents sold substantial quantities of fabric below cost, they avoided application of the constructed value provisions of the law in the preliminary determination by listing in their concordances of such or similar merchandise only those fabrics sold at above cost in the home market. As a result of the Department's acceptance of respondents' concordances for the preliminary determination, virtually all transaction margins were based on home market prices. This approach leads to inequitable results which the Department should correct in its final determination.

DOC Position

We have not accepted respondents' concordances for purposes of this determination. With the advice of our product expert, we have organized the fabrics according to whether they are "such or similar," and compared "such" or "most similar" fabrics pursuant to section 771(16)(C) of the Act. When sales were made below cost over an extended period of time, in substantial quantities, and at prices not permitting the recovery of all costs within a reasonable period, and where the remaining above cost sales are inadequate as a basis for determining foreign market value, we used the constructed value of the merchandise to determine its foreign market value.

Comment 5

Petitioners maintain that home market viability and sales below cost tests should be conducted on the basis of the narrowest possible product grouping. Petitioners support the establishment of "such or similar" merchandise categories on the basis of various combinations of fabric designation, type of weave, degree of twist, and state (to include greige, prepared for print, dyed and printed).

DOC Position

Fabric designations, such as georgette, palace crepe, etc. have become well established in the textile industry and are considered to be indicative of the purposes for which particular fabrics may be used. Therefore, we believe that these common designations should be used to determine "such or similar" merchandise. We have used home market sales of "such or similar" merchandise for purposes of testing home market viability as well as for price comparisons. In addition to fabric designations, we have included type of weave and state (greige or partially-finished not suitable for use in apparel; and completely-finished, suitable for use in apparel). We have also included as adjustment factors: orientation, caustic reduction, width, state and specialty post-finish. We have defined the categories as narrowly as possible in determining "such or similar" merchandise. To be consistent with section 771(16)(C), we could not further refine the categories. To do so would have prevented merchandise from being compared which, under the Act is reasonable comparable.

Comment 6

Petitioners argue that if the Department accepts respondents' product groupings, then we must maintain an approach in our pricing analysis that is consistent with the group(s) upon which it performs the viability tests. Petitioners assert that in order to maintain such consistency, the Department must compare the price of individual U.S. sales with the average price for home market sales of all such or similar merchandise used for testing home market viability.

DOC Position

We did not accept respondents' arguments that the viability test be conducted on the class or kind of merchandise, or alternatively on the three product groupings used in the preliminary. Nor have respondent's concordances been relied upon for the selection of most similar merchandise. Not only have we developed product groupings which include only fabrics which can be considered similar (and in fact, include all fabrics which are similar), but we have selected from these already narrowly defined groups those fabrics which are most similar to the fabrics sold to the United States based on our own methodology developed in conjunction with our fabric expert. In rejecting respondents' arguments on these issues, we analyzed respondents' information ourselves.

Comment 7

Petitioners maintain that "such" or "more similar" fabrics must be selected over "similar" fabrics for purposes of comparisons. In selecting similar merchandise, the Department may not base foreign market value on a product that is not "approximately equal in commercial value" to the product exported to the United States if a product that is "approximately equal in commercial value" is sold in the home market.

DOC Position

As stated in response to petitioners' comment 4, we have compared "such" or "most similar" fabrics pursuant to section 771(16)(C) of the Act.

Comment 8

In evaluating below-cost sales and calculating constructed value, the Department should substitute actual costs for transaction prices where yarn producers are related to raw material suppliers, weavers or finishers, or trading companies are related to yarn or fabric suppliers, weavers or finishers.

DOC Position

Our analysis of the transaction prices between the manufacturers of LPFF and their related company suppliers indicates that such prices approximated the costs incurred by the related companies in the production of LPFF. Therefore, we used the transaction prices where yarn producers are related to raw material suppliers, weavers or finishers, or trading companies related to yarn or fabric suppliers, weavers or finishers, in computing respondents' costs of production.

Comment 9

Petitioners claim that no adjustment is warranted under 19 CFR 353.16 or 353.15 for Unitika's claimed adjustment between the "Silmie-5" sold in Japan and its non-trademarked equivalent or very similar fabric sold in the United States. By its terms, the regulation clearly limits adjustments to cost differences, or differences in physical characteristics that affect market value. It does not encompass differences in market value based on consumer perception.

DOC Position

See DOC position to Respondents' Comment 14.

Comment 10

Petitioners maintain that there is no percedent in the administration of the antidumping law or in normal accounting practices for including fixed factory overhead in general, selling and administrative expenses for the purpose of calculating constructed value. Fixed overhead more appropriately relates to the production process, and should be allocated to particular operations or output.

DOC Position

We agree with petitioners that it is standard cost accounting practice to allocate fixed factory overhead to particular operations or output. The financial and cost accounting systems used by respondents in the normal course of business treat the "indirect yarn costs" in this manner, and we see no reason to diverge from this practice for the purpose of calculating constructed value.

Comment 11

In determining whether to exclude Teijin's close-out sales from the computation of fair value, the Department must evaluate whether these below-cost sales are consistent in timing, volume and price with the normal practice in the Japanese lightweight polyester industry. In the event the Department does not determine that, because these sales occur normally in the practices of the Japanese textile industry, they should not be disregarded even where they are made at prices which are less than the cost of production, then in the interest of fairness such sales should not be used as the basis for comparison to the non-closeout sales to the United States.

DOC Position

At verification, our industry expert ascertained that Teijin's distress sales of end-of-season or out-of-fashion merchandise are consistent with normal business practices and are often unavoidable in the ordinary course of trade in the Japanese textile industry. We have, instead, aggregated such sales, which appear to have been made at less than the cost of production, with other sales made at less than cost to determine whether a sufficient home market exists with respect to specific fabric types.

Respondents' Comments

Comment 1

Respondents maintain that whether a fabric is finished or greige is not at all indicative of the use of that fabric. It is the construction of a fabric, not the finish, which determines its use or similarity to another fabric. Therefore, when calculating home market values, "such or similar" merchandise should include fabric sold in the home market in the greige or "prepared-for-printing" state.

DOC Position

Fabrics of the same designation may be sold in different stages of the production sequence. For example, fabrics may be sold in the greige or loom state, in which case they are only suitable for sale as an intermediate product to a converter. Only after further processing by the converter is the product suitable for use in the styles and garments suggested by its designation. Other states, such as "boiled-off," and in some cases, "bleached white" or "prepared for printing" may or may not be suitable for use in garments without further processing. We determined that fabrics which are suitable for use in garments without further processing in these various stages of the production sequence are such or similar to finished fabrics sold to the United States.

Comment 2

Respondents maintain that the inflexible use of "weave type"as a bar to similar merchandise comparisons is

improper both as a matter of fact and as a matter of law.

DOC Position

We disagree. Based on the advice of our product expert, we have determined that weave type is a significant factor in determining whether or not merchandise is such or similar.

Comment 3

The Department's late changes in the product classification system have been detrimental to respondents. During the verification process, respondents state that our expert—who knew that the intermediate/finished distinction had been a significant question with certain Department employees—told them that he believed comparisons of intermediate and finished fabrics were appropriate. Later, the analytical focus of the classification system was changed from the 11 technical characteristics of fabric set forth in the Department's original questionnaire, to turn upon the single criterion of the stage of fabrics in the production sequence. Respondents were neither given an opportunity to comment on revisions made to the product groupings for similar merchandise comparisons, nor given adequate time in which to provide the Department with alternative similar merchandise comparisons.

DOC Position

The parties did not raise the comparability of intermediate to finished fabrics as an issue prior to verification. Nor were we aware, nor was it likely for us to have been aware, prior to verification of any differences between the uses of intermediate and finished fabrics. We did not then have the assistance of a product expert. During verification, our product expert assumed that, because the extra cost of processing griege or other incompletely finished fabrics to make them suitable for use in garments could be estimated, such fabrics could be compared to fully finished fabrics. However, once the issue of the comparability of intermediate to finished fabrics became apparent to Department officials in late September, we asked Mr. Lund to describe the differences in uses between intermediate and finished fabrics. We publicly released our position on this issue in our notice of final determination, published on October 27, 1983, in the investigation of LPFF from the Republic of Korea (Korea) (48 FR 49679). We also formalized our classification system for determining such or similar merchandise for the Korean case in the same Federal Register notice. Additionally, in our letter to the Japanese respondents of October 20, 1983, we clarified that, at least with respect to the intermediate/finished product distinction, we intended to base our determination of such or similar merchandise in the Japanese case on the same criteria that we used in the Korean case. Furthermore, at the time we decided in the Korean case the most reasonable and statutorily consistent means by which to select such or similar merchandise, we were well aware that the final determination in the Korean case would be precedent-setting for the Japanese case, barring discovery of facts unique to the Japanese case. We suggested that respondents bring to our attention any such facts. Respondents submitted extensive comments with respect to our decision in the Korean case that intermediate fabrics are not similar to fully finished fabrics, and that identical weave type is a prerequisite for similar merchandise comparisons. Additionally, certain respondents submitted information which ultimately convinced us that certain "boiled off," "bleached white" and "prepared for printing" fabrics are suitable for use in garments and are, therefore, similar to the fully finished fabrics sold to the United States. Although our product expert's formal statement was not ready for release until December 15, 1983, respondents were well aware that we had been considering each of their arguments as they presented them, since we had responded favorably to their argument that certain fabrics in stages of the production process other than finished are suitable for use in garments. Thus, while the potential existed for changes to the position we had taken in the Korean LPFF final determination, we feel that our intended position for the final Japanese determination was, in essence, known to respondents. They in turn knew that we would consider any comments which they submitted.

The sheer volume of comments on this issue submitted by respondents shows that they took full advantage of their opportunity to comment on this issue. Accordingly, we feel that ample time has been accorded to all interested parties to comment on these positions. This is especially true in light of the fact that our product expert has suggested no substantial change for this final determination after careful analysis of all facts and comments available to him.

In any case, respondents are not entitled to a second preliminary prior to our final determination.

Comment 4

Respondents are opposed to the Department's using the costs of production of finishers, weavers and other suppliers of goods or services who are related to the fabric manufacturers, rather than the actual transaction prices between those parties, for purposes of determining the cost of production of the merchandise sold in the home market. Further, respondents maintain that based on previous cases, all costs used in calculating the cost of production or constructed value should be based on the actual costs incurred by a manufacturer, as distinguished from the suppliers' internal production costs. Pursuant to section 773(e)(2) of the Act, once it is established that the price at which a supplier sells input to a related party represents an arm's length price, in that it fairly reflects the market value for that input in the country in question, then, in calculating what it actualy costs the manufacturer of the merchandise to produce it, that price must be accepted as constituting the manufacturer's actual cost for the input, whether or not the price at which that supplier provided the input was less than what it cost to produce it. The Department has verified that the prices from related suppliers of inputs are at market value. Therefore, the value of suppliers' inputs to the respondents' costs of production should be based on the market prices paid by respondents.

DOC Position

We verified that the related party suppliers did not appear to be selling dyeing and finishing services to the primary manufacturers at below the suppliers' cost of production. Our analysis of the related party supplier commission fees to primary manufacturers and related party suppliers' cost of production amounts indicates that sales prices to the primary manufacturers approximated cost in the aggregate. When calculating cost of production, we use the full actual cost incurred by the manufacturer as well as those costs incurred by related companies (20 percent or more owned by the manufacturer) in the production of the product under investigation. When circumstances indicate that transaction prices between the manufacturer and a related company (5 percent or more but less than 20 percent owned by the manufacturer) may not represent a fair market value, that is a price which could recover all costs, then the Department will also examine the costs associated with these transactions.

In this case, the Department examined the costs incurred by the production of LPFF by all related companies (5 percent or more owned by the manufacturer).

Our analysis of the transaction price between the manufacturer and the related companies indicated that in the aggregate these prices approximated the costs incurred by the related companies to produce the input in the manufacturing of LPFF.

Therefore, the use of transaction price or costs from the related companies would have little, if any, effect.

Comment 5

The home market viability test, the adequacy and degree of sales above cost and similar merchandise tests should each be made across "the class or kind" of merchandise (i.e. lightweight polyester fabric) rather than groupings of similar merchandise, because the statute speaks in terms of "class of kind of" or "the merchandise." If "the merchandise" is some subgroup of LPFF, then the fair value determination should be made on that same subgroup. However, if the Department maintains its position that it is necessary to conduct the above-mentioned tests on such or similar product groupings, the system employed in the preliminary determination should be used for the final determination and no additional product groupings should be created.

DOC Position

Section 773(a) of the Act requires that the determination of foreign market be based on sales, or in the absence of sales, offers for sale of "such or similar" merchandise in the home market, if "such or similar" merchandise is sold or offered for sale in the market. Section 773(a)(1)(B) of the Act limits the use of home market sales as a basis for the determination of foreign market value to those situations in which the quantity of sales or offers for sale of "such or similar" merchandise in the home market is adequate. This test for the adequacy of home market sales is commonly called the home market viability test. Pursuant to the directive of § 353.4 of the Commerce Regulations, we grouped together all merchandise sold in the home market which is either "such or similar" to the merchandise sold to the United States, and then determined whether the quantity of this merchandise was adequate. Consistent with this statutory scheme, we then performed our test for sales at less than the cost of production on each of the "such or similar" product groupings. In this case we consistently applied the home market viability test and the sales at less than cost of production test to each category of "such or similar" merchandise.

Based on the advice of our product expert, we determined to use certain criteria (fabric designation, weave type and whether the fabric is partially or fully finished) in making our selection of similar merchandise. Using these criteria has resulted in an expansion of the number of product groupings. As we did not have the benefit of a product expert's opinion for our preliminary determination for this investigation, we erroneously used broader categories of merchandise for our tests in our preliminary determination.

Comment 6

Respondents claim that the Department has created another viability test to determine whether the above-cost home market sales constitute more than 5 percent of third country sales, in addition to the home market viability and below-cost tests. Respondents argue that this goes against precedent and serves only to decrease the chances that home market sales will be the measure of "foreign value" and increases the resort to constructed value with the greater potential for dumping margins.

DOC Position

Section 773(b) states that sales made at less than the cost of production shall be disregarded if such sales have been made over an extended period of time and in substantial quantities and are not at prices which permit recovery of all costs within a reasonable period in the normal course of trade. Section 773(b) further states that whenever sales are disregarded by virtue of having been made at less than the cost of production, and the remaining sales in the home market (or, as appropriate, the third countries) made at not less than the cost of production are determined to be inadequate as a basis for determining foreign market value under section 773(a), the Secretary shall determine foreign market value on the basis of constructed value.

In order to determine whether the remaining above-cost home market sales may be used as a basis for the determining foreign market value under section 773(a), we must test the adequacy of these sales. Section 353.4 of the Commerce Regulations describes the standard by which home market sales are tested for adequacy. As section 773(b) dictates by its reference to section 773(a), the remaining above-cost sales should be tested for adequacy using the same standard employed to determine the adequacy of home market sales under 773(a), that standard being the five percent test described in section 353.4 of the Commerce Regulations. Therefore, the Department is not creating a "new" viability test, but rather is adhering to the Congressional mandate requiring that the home market or third country sales which are ultimately used in making price-to-price comparison be adequate.

Comment 7

When home market sales are inadequate for fair value comparisons, the respondents believe the Department should seek third country comparisons before using constructed value.

DOC Position

The Department provided respondents with the opportunity to submit third country sales data. For those respondents that did submit information on third country sales, we have used this information, as appropriate, in making fair value comparisons for the final determination where home market sales could not be used.

Comment 8

Respondents maintain that the Department incorrectly calculated the constructed values used in the preliminary determination. When the statutorily mandated 10 percent minimum for general expenses was calculated, selling, general and administrative expenses were included and fixed factory overhead was erroneously excluded.

DOC Position

We use for our criteira—the purpose for which a cost was incurred—to determine our classification in the constructed value calculation.

Costs associated with manufacturing the product are considered "fabrication" expenses. Therefore, fixed factory overhead—e.g. depreciation of the factory and equipment used for the production of LPFF—would rightfully be classified as a fabrication expense.

Costs associated with selling and the general over-all operations of the company would be considered "general" expenses.

Comment 9

Since the rebates given by Asahi to the customers of trading companies selling Asahi's fabrics are established at the time of contract with the trading company, and each claimed rebate amount is directly related to a specific sale of the merchandise in the home market, the Department should allow these rebates as a circumstance-of-sale adjustment.

DOC Position

In providing data to us, Asahi included the rebates to customer's

customers with other direct selling expenses. At the time of the preliminary determination, we were not able to separate the amount of rebates from the amount of other direct selling expenses, some of which were not allowable circumstance-of-sale adjustments.

At our request, Asahi submitted a revised computerized sales listing which identified as separate variables these verified rebates to customer's customers and each of the other direct selling expenses claimed. For the final determination, we are allowing the rebates given to the customers of trading companies to whom Asahi sells the merchandise under investigation.

Comment 10

Teijin maintains that its claims for each of the three types of direct selling expenses [promotional payments to cutter and apparel wholesalers and retailers, payments to customers for allowances to apparent manufacturers, and exhibitions held by Teijin directed at apparel manufacturers) incurred in the home market should be allowed as a circumstance-of-sale adjustment. All three payments are directly related to home market sales, are targeted or paid directly to customers or customers of customers, and are ordinary and necessary incidents of doing business in the home market.

DOC Position

We agree. At verification we ascertained that these other direct selling expenses claimed by Teijin to have been incurred in the home market were directly related to sales of the products under investigation were targeted to later purchasers of the merchandise. Therefore, we allowed these claims.

Comment 11

Teijin maintains that the Department now has sufficient evidence to reverse the position taken in the preliminary determination regarding Teijim's claim that its close-out sales of end-of-season or out-of-fashion goods are a necessary and normal part of the textile business and allow recovery of costs over time. Teijin points out that the legislative history recognizes that in normal business practice, sales of obsolete or end-of-model year merchandise frequently occur at less than cost and, based on this language, argues that its below cost sales of obsolete or end-of-model year merchandise not be disregarded for the final determination because they were made in the course of normal Japanese business practice.

DOC Position

See response to petitioners' comment 11.

Comment 12

Claims made by certain respondents for circumstance-of-sale adjustments which were not allowed in the preliminary determination because they were included in aggregated claims involving both allowable and non-allowable expenses, and the Department did not have sufficient information to segregate the allowable expenses that should be allowed for the final determination because these claims have now been separately identified and verified.

DOC Position

In responding to our questionnaire, respondents included a number of different expenses in the variables for advertising and other direct selling expenses. At the time of the preliminary determination, we were unable to separate the allowable expenses from those that were not allowable.

At our request, respondents have identified each of the claimed advertising expenses and other direct selling expenses as separate variables. For the final determination, we have allowed circumstance-of-sale adjustments for those advertising expenses where they are attributable to a later sale of the merchandise of a purchaser, and those other direct selling expenses which we have determined are directly related to sales of LPFF (see the Foreign Market Value section of this notice for a description of which claims were allowed and which were not).

Comment 13

Respondents maintain that the reversals in policy guidelines and burdensome, last-minute requests for information raise the question of whether this proceeding has been tainted by legislative interference. Even if a showing can be made that it has not, respondents argue that the abundance of last minute reversals of longstanding administrative practice alone, have denied their rights to due process.

DOC Position

It is not unusual for there to be a degree of Congressional interest in our determinations, this case being no exception. Notwithstanding whatever legislative interest there may have been in this case, all of our decisions throughout the course of the investigation were based upon the Act and our regulations as applied to the facts of this case.

Respondents make the subsidiary argument that they have been denied due process as a result of what they perceive to be policy reversals by the Department and last minute requests for information. While we have, based on verification of the data and the opinion of our product expert, changed some of the conclusions reached in our preliminary determination, this is not unusual in the course of an investigation. This particularly true where,as here, where there are many related parties and the technical characteristics of the product under investigation are numerous and complex. In such a situation, difficulties often arise in calculating production costs, in assessing the reasonableness of respondents' cost allocation methods and in making determinations of such or similar merchandise. Decisions on these types of questions are necessarily made on a case-by-case basis, applying the law, as we understand its requirement and intent, to the facts of each case. Consequently, issues are resolved as they become apparent to the Department, either through our continuing analysis of the facts before us or because an interested party raises them; for us to address. Unfortunately, there is often no mechanism for ensuring that each issue comes to our attention at some early stage in the course of an investigation. However where, as here, we have had to resolve issues at various stages during the investigation, we have promptly disclosed our positions to all interested parties, and where appropriate, have made prompt requests for submissions of information. Each respondent took advantage of its opportunity to comment, both orally and in writing, upon these decisions and requests for information. We took all of these comments fully into account in reaching our final determination. As such, each respondent fully participated in the decision-making process, and cannot properly be viewed as having been denied any such rights.

Comment 14

Unitika argues that the Department should allow its claimed adjustment on its trademarked Silmie-5 habutae because a recognized trademark is an advertising and marketing tool with an ascertainable market value distinct from the value of the merchandise bearing the mark. Unitika further claims that the Department must adjust the foreign market value to account for the market value of a trademark on merchandise sold in the home market when similar merchandise sold for exportation to the United States does not bear that mark.

Alternatively, Unitika argues that if the Department determines that an adjustment cannot be allowed for the value of the Silmie-5 trademark, then, as a matter of law, the Department must conclude that the Silmie-5 merchandise is not such or similar to the merchandise sold to the United States not bearing this mark because the presence of the trademark precludes a reasonable comparison under section 771(16)(C) of the Act.

DOC Position

In its questionnaire response, Unitika quantified the amount of its claimed adjustment by comparing the price of its trademarked Silmie-5 brand habutae with the prices of non-branded identical or very similar habutal sold to the same customers in Japan. Based on our understanding from reading the response that, in its above-described quantification method, Unitika produced and sold both trademarked and untrademarked habutae to the same customers in Japan, we allowed the adjustment in our preliminary determination. However, after further investigation it became apparent that in order to quantify what it believes to be the value of the Silmie-5 trademark, Unitika was using for benchmark the prices at which a competitor sells a very similar fabric in Japan.

Determining whether the prices at which a competitor sells a very similar fabric can properly be used as a benchmark for calculating the effect of the claimed difference in circumstance-of-sale upon the market value of the merchandise in question presents the Department with a novel issue. We have difficulty concluding that such price differentials are reliable as a benchmark for purposes of determining the value of the Slimie-5 trademark, since any number of factors conceivably could explain why one manufacturer's price for habutae are different from those of another manufacturer. Thus, in the absence of an objective, reliable benchmark for the effect of the trademark upon the value of the merchandise, we did not feel able to make the requested adjustment. At the same time, we believe that there is sufficient evidence of a significant effect of the trademark so as to distort the reliability of and make arbitrary any comparisons of this merchandise which ignores this fact, but insufficient evidence of which we are aware, to justify the use of constructed value in place of adjusted home market prices, as Unitika has urged in the alternative. Accordingly, we have not included these sales in making fair value comparisons. However, even without them, we were able to examine at least 60 percent of the dollar volume of exports to the United States of the merchandise subject to this investigation, as is required by § 353.38 of our regulations. These transactions would be subject to any antidumping order which might be issued, and in the course of a review under section 751 of the Act, information may be developed to permit proper resolution of this issue.

Suspension of Liquidation

In accordance with section 733(d) of the Act, on August 8, 1983 we instructed the United States Customs Service to suspend liquidation of all entries of LPFF from Japan, with the exception of LPFF produced by C. Itoh & Co., Ltd., Chori Company Ltd., Kanebo Synthetic Textiles, Ltd., Kuraray Co., Ltd., Mitsubishi Rayon Company, Ltd., Nichibo Co., and Toray Industries, Inc. (48 FR 35976).

As of the date of publication of this notice in the **Federal Register** the Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price in the following amounts. Where sales by trading companies cannot be identified by manufacturer, the Customs Service shall require a cash deposit or the posting of a bond equal to the highest estimated weighted-average margin of 10.831 percent.

This suspension of liquidation will remain in effect until further notice. The weighted-average margins are as follows:

Manufacturer and status	Weighted-average margin percentage
Asahi Chemical Industry Co., Ltd.	9.325
C. Itoh & Co., Ltd.	8.081
Kanebo Synthetic Textiles, Ltd.	2.651
Kuraray Co., Ltd.	4.900
Mitsubishi Rayon Co., Ltd.	6.838
Nichibo Co.	1.863
Nishikawa Bussan Co., Ltd.	2.027
Teijin Limited	3.113
Toray Industries, Inc. (including sales through Chori Company, Ltd.)	5.216
Toyobo Co., Ltd.	1.880
Unitika, Ltd.	10.831
All other companies	5.211

ITC Notification

In accordance with section 735(d) of the Act, we will notify the ITC of our final determination. In addition, we are making available to the ITC all non-privileged and non-confidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

The ITC will make its determination whether these imports are materially injuring, or threatening to materially injure, a U.S. industry within 45 days of the publication of this notice.

If the ITC determines that material injury or threat of material injury does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury does exist, we will issue an antidumping order, directing Customs offices to assess an antidumping duty on LPFF from Japan entered, or withdrawn, for consumption after the suspension of liquidation, equal to the amount by which the foreign market value of the merchandise exceeds the U.S. prices.

This determination is being published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

William T. Archey,

Acting Assistant Secretary for Trade Administration.

December 21, 1983.

[FR Doc. 84-69 Filed 1-3-84; 8:45 am]

BILLING CODE 3510-DS-M

[C-274-002]

Carbon Steel Wire Rod From Trinidad and Tobago Final Affirmative Countervailing Duty Determination and Countervailing Duty Order

AGENCY: International Trade Administration, Commerce.

ACTION: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order.

SUMMARY: We have determined that certain benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to the manufacturers, producers, or exporters in Trinidad and Tobago of carbon steel wire rod, as described in the "Scope of Investigation" section of this notice. The net bounty or grant is indicated under the "Administrative Procedures" section of this notice.

EFFECTIVE DATE: January 4, 1984.

FOR FURTHER INFORMATION CONTACT: Andrew Debicki, Office of Investigation, Import Administration, International

Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230, telephone (202) 377–5403.

SUPPLEMENTARY INFORMATION:

Final Determination and Order

Based upon our investigation, we determined that certain benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Trinidad and Tobago of carbon steel wire rod, as described in the "Scope of Investigation" section of this notice.

We determine the bounty or grant to be the amount indicated for the Iron and Steel Company of Trinidad and Tobago (ISCOTT) in the "Administrative Procedures" section of this notice.

Case History

On May 16, 1983, we received a petition from counsel for Atlantic Steel Company, Continental Steel Corporation, Georgetown Steel Corporation, Georgetown Texas Steel Corporation and Raritan River Steel Company on behalf of the U.S. industry producing carbon steel wire rod. The petition alleged that producers, manufacturers, or exporters in Trinidad and Tobago of steel wire rod receive, directly or indirectly, bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act).

We found the petition to contain sufficient grounds upon which to initiate a countervailing duty investigation and, on June 6, 1983, we initiated a countervailing duty investigation (48 FR 27415).

We stated that we would issue a preliminary determination on or before August 9, 1983. We subsequently determined the investigation to be "extraordinarily complicated," as defined in section 733(c) of the Act, and postponed our preliminary determination until October 13, 1983 (48 FR 43206).

Trinidad and Tobago is not a "country under the Agreement" within the meaning of section 701(b) of the Act, and, therefore, section 303 of the Act applies to this investigation. Under this section, since the merchandise being investigated is dutiable, the domestic industry is not required to allege that, and the U.S. International Trade Commission is not required to determine whether, imports of this product cause or threaten material injury to a U.S. industry.

On April 18, 1983, we presented questionnaires concerning the allegations in the petition to the government of Trinidad and Tobago and to counsel for the Iron and Steel Company of Trinidad and Tobago (ISCOTT) in Washington, D.C. on August 12, 1983, we received the responses to our questionnaire from the government of Trinidad and Tobago and ISCOTT.

On October 13, 1983, we issued our preliminary determination in this investigation (48 FR 48694). We preliminarily determined that benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Trinidad and Tobago of carbon steel wire rod.

The program preliminarily determined to bestow countervailable benefits was the Guarantee of Debt Service by the Government of Trinidad and Tobago (GOTT).

We preliminarily determined that the following programs which were listed in the notice of "Initiation of Countervailing Duty Investigation" were not used by the manufacturers, producers or exporters in Trinidad and Tobago of carbon steel wire rod:

- Tax Benefits.
- Worker Training.
- Marketing Assistance.
- Preferential Export Insurance.
- Export Shipping Rates.
- Preferential Loans.

We preliminarily determined that we needed additional information about GOTT equity participation in ISCOTT, loss coverage or absorption, Point Lisas Development Estate, import duty exemptions, preferential prices for natural gas and short-term loans.

On November 1–5, 1983, we conducted a verification in Trinidad and Tobago of the responses. Our notice of preliminary determination gave interested parties an opportunity to submit oral and written views. We held a public hearing on November 26, 1983, at which counsel for the parties to the investigation and consultants retained by petitioners' counsel participated.

Scope of Investigation

The product covered by this investigation is carbon steel wire rod, a coiled semi-finished, hot-rolled carbon steel product of approximately round solid cross section, not under 0.20 inch nor over 0.74 inch in diameter, not tempered, not treated, not partly manufactured, and valued over 4 cents per pound. The merchandise is currently classified under item number 607.17 of the Tariff Schedules of the United States.

ISCOTT is the sole producer and exporter of carbon steel wire rod from Trinidad and Tobago.

The period for which we are measuring bounties or grants is January 1, 1982 to April 30, 1983.

Analysis of Programs

In their responses, the GOTT and ISCOTT provided data for the applicable period. Based upon our analysis of the petition, the responses to our questionnaire, legal briefs submitted by counsel for ISCOTT and the petitioners, our verification, oral and written comments by interested parties and other information gathered by the Department, we determine the following:

I. Programs Determined To Confer Bounties or Grants

We determine bounties or grants are being provided to manufacturers, producers, or exporters in Trinidad and Tobago of carbon steel wire rod under the programs listed below:

A. ISCOTT Point Lisas Lease

The Point Lisas Industrial Port Development Company, Ltd (PLIPDECO) is responsible for managing the Point Lisas Industrial Estate. Majority ownership and effective control are in the hands of the GOTT. The terms of ISCOTT's lease of real estate in the Point Lisas Estate were established through negotiations with PLIPDECO conducted over several years. The final lease agreement between PLIPDECO and ISCOTT was executed in 1983 and made retroactive to 1978.

As noted by the Department in Certain Steel Products from Belgium (47 FR 39304), government ownership of separate companies does not necessarily preclude them from conducting some transactions on an arm's-length basis, but our examination should focus on whether prices actually charged were at prevailing market rates. In addition, we have balanced factors supporting ISCOTT's negotiating advantages (e.g., it was the first tenant at Point Lisas; it is a major tenant capable of attracting other tenants) against commercial considerations which would argue for a higher rate (e.g., ISCOTT occupies a choice site within the Point Lisas Estate; the Lessor Authority is currently unprofitable; and the terms of ISCOTT's lease resulted in ISCOTT's position having been better than that of other lessees concluding lease agreements in more recent years).

Based on our analysis, we determine that any preferential nature of ISCOTT's lease *vis-a-vis* commercially available leases cannot be ascribed to ISCOTT's

apparent negotiating advantages because such advantages are fully counterbalanced by the benefits ISCOTT receives by virtue of its location. Accordingly, we determine ISCOTT received a countervailable benefit.

To calculate the existence and extent of any bounty or grant, we compared ISCOTT's payments under its PLIPDECO lease with what it would have paid for the same amount of space under the published tariffs. The published tariffs are our "benchmarks" for comparison purposes because all leases in the Industrial Estate, except for ISCOTT and two others, follow the tariffs. Under the tariffs, a lessee may either (1) sign a 99-year lease by paying a set price for the land and a nominal annual fee for 99 years, or (2) sign a renewable 30-year lease by paying a premium or down payment at the start of the lease period, followed by annual rental payments. The 30-year lease also provides that the annual payments may escalate periodically based on increases in the Index of Retail Prices. The basic unadjusted annual rental amount is calculated such that the stream of annual payments, when discounted to the present at a 6 percent discount rate, will equal the difference between (1) the fixed purchase price of a 99 year lease and (2) the amount of the premium. Thus, the larger the premium, the smaller the annual payments.

To calculate the bounty or grant, we computed the present value of the 30 years of payments for each square meter of land, as specified in the ISCOTT lease. We added this to the down payment actually made by ISCOTT and subtracted the total from the tariffed purchase price. In order to compare consistent results, we used the same discount rate which the development authority uses to calculate annual rentals from the purchase price. We ignored unspecified and indeterminable future escalations which may result from rental under the standard tariff because another renter would have the option of making a lump-sum purchase payment, which would preclude those escalations. This also explains why we did not base our calculations on a simple comparison of payments made during the period for which we are measuring bounties or grants. The result is the present value of ISCOTT's rental savings over the life of the lease.

We then treated the rental savings as the grant equivalent of the lease benefits using methodology similar to that applied to preferential loans in Appendix 2 of Certain Steel Products from Belgium (47 FR 39,304). Finally, we allocated the grant equivalent over the term of the lease (30 years) in annual amounts using the GOTT's "risk free" 20-year plus borrowing rate for 1978, the year the lease became effective.

When allocated over the total value of ISCOTT's 1982 sales, this yields a bounty or grant of 2.246% *ad valorem*.

B. ISCOTT Dock Facility

Petitioners allege that a specially designed marine terminal was created for use by ISCOTT at preferential prices. We found that during three quarters of 1982 ISCOTT had the free use of a specialized dock facility owned by GOTT, built with GOTT funds, and constructed for ISCOTT's use.

Though the GOTT has indicated its intention to vest ownership of the ISCOTT dock in the National Energy Corporation, a wholly GOTT owned entity, as of the end of 1982 no arrangement regarding leasing or fees for use of the dock was concluded by ISCOTT with either GOTT or the National Energy Corporation. ISCOTT showed no accrual, which might be applied retroactively after a contract is concluded, in its fiscal year 1982 financial statements of estimated rental or use fees for the dock.

The dock was put in service in the first quarter of 1982 and was used almost exclusively by ISCOTT during the second, third and fourth quarters of 1982. During this time, ISCOTT did not either pay or accrue any rental fee for the dock. Our investigation established that there was no similar dock facility in Trinidad and Tobago with established rental fees against which to compare the ISCOTT situation. Certain information obtained during verification, however, indicates that any payment for this facility which may ultimately be required of ISCOTT will be based on a present value calculation of its cost.

We allocated to ISCOTT the dock's capital cost for 1982 using the grant method described in *Certain Steel Products from Belgium* (47 FR 39,304). We took the total construction cost of the dock and computed the annual amount whose present value taken over 25 years would give the amount of the construction cost.

Following the methodology of the Belgian case, we used the "risk free" interest rate on GOTT bonds in 1982, the year the dock was put into service, as the discount rate; we used 25 years as the estimated useful life of the facility, consistent with ISCOTT depreciation practices. We applied appropriate proportionality factors to account for the fact that the dock was in service for only three quarters of 1982 and that some non-ISCOTT-related ships also used it during this time.

We determine that the benefit to ISCOTT from the acquisition and use of dock facilities at no cost amounts to 4.02% *ad valorem*. As agreements concerning the dock may be concluded in the future, this amount and any subsequent agreements relating to leasing or rental of the dock will be examined in a section 751 administrative review.

C. Preferential Prices for Natural Gas

The petitioners allege that ISCOTT benefits from the provision of natural gas through government-owned entities at preferential rates, and that this gas is delivered through a specially built pipeline. Petitioners believe that ISCOTT is one of the largest gas consumers in the region.

Based upon our investigation, we found that ISCOTT uses gas supplied by the National Gas Company (NATGAS), but is billed for its gas consumption by the National Energy Corporation (NEC).

Both entities are wholly owned by the GOTT. NATGAS purchases, processes and meters gas, which it transports through its own pipelines. NATGAS rates throughout the country do not depend on distance from the wellhead. Pipeline transmission costs are implicitly included in NATGAS rates. Although ISCOTT receives gas under a large consumer contract, its gas consumption is relatively small in proportion to that of other large consumers at Point Lisas.

During 1982, NATGAS invoiced NEC for ISCOTT's gas usage at a rate which is equal to the average of those of other comparable large users. NEC, however, invoiced ISCOTT at a lower rate. In the absence of an adequate explanation of this differential, we consider this difference to be countervailable subsidy. Because ISCOTT's gas price escalation factor is higher than those of certain other large users, ISCOTT's rate in future years, including the reduction, may become equal to or higher than those of many other consumers and the relationship of rates paid by ISCOTT to NEC to rates of other consumers should be examined in subsequent years as part of section 751 administrative review.

We compared the rate charged NEC by NATGAS for ISCOTT's gas consumption with the rate charged ISCOTT by NEC. We multiplied this rate difference by ISCOTT's total 1982 gas consumption. We then allocated this amount over the value of ISCOTT's total 1982 sales. This resulted in a bounty or grant rate of 0.472% *ad valorem*.

II. Programs Determined Not to Confer Bounties or Grants

A. Government Equity Participation in ISCOTT

ISCOTT was incorporated June 20, 1975 to serve as the vehicle for a joint venture between the Government of Trinidad and Tobago and three private investors—Hoogovens Igmuiden, B.V.; Kawasaki Steel Corporation and Mitsui & Company. As originally conceived, the venture would involve the parties in the ownership and construction of a greenfield steel mill dedicated primarily to billet production. In 1976–77, changing market conditions led to reevaluation of the project. This included redefining the project to envisage construction of a scaled down mini-mill oriented primarily toward finished products, specifically wire rod.

The redefined project was unacceptable to GOTT's foreign partners in that it no longer would serve to accommodate their interest in a steady supply of billets to be "off taken" for further processing in their own mills. The GOTT then purchased the equity interest of its co-venturers and commissioned a feasibility study of the redefined project. After further study, the GOTT determined to proceed with the redefined project.

A financing package put together by a private concern was proposed and, on December 1, 1978, ISCOTT, the GOTT, Barclays Bank, Ltd. (as Trustee) and several external private and government-sponsored lenders entered into a financing contract, the Completion and Cash Deficiency Agreement (CCDA). Under the terms of the CCDA, the GOTT agreed to provide equity investment in ISCOTT at a level which maintained a 60/40 debt to equity ratio for the company. Completion of construction, as defined in the CCDA, is now scheduled for 1984. In addition to providing seed capital, the GOTT has continued to make equity contributions to ISCOTT in accordance with its obligations under the CCDA.

It is well established that government equity participation in a commercial enterprise is not a bounty or grant *per se*. In assessing whether such participation gives rise to bounties or grants within the meaning of the countervailing duty law, the Department applies the standard of whether a government's investment is not inconsistent with commercial considerations. The issue is whether the investment, analyzed in terms of objective business or investment criteria operative *at the time the investment was made*, may be deemed commercially reasonable in that, from the perspective of a commercial investor making the same decision in the same circumstances, there is a reasonable expectation of return within an acceptable period of time.

The test whether a particular investment is not inconsistent with commercial considerations is based on a case-by-case analysis of the commercial context in which the investment decision is made. In the case of ISCOTT, an assessment of commercial reasonableness must take into account the special circumstances of a start-up project in a developing country.

Factors ordinarily applied in the case of investment in an established industry or enterprise in a developed country may require adjustment or prove inappropriate. For example, investments in developing countries pose a variety of special problems which may include scarcity of capital, lack of established financial markets, lack of complementary infrastructure, shortages of skilled labor, insufficient managerial experience and other "learning curve" costs. While these may, in some some senses, increase the element of risk in such investments, the increased risk which may be present does not of itself become dispositive of the issue of whether a particular investment in a developing economy may be viewed as inconsistent with commercial considerations.

In citing the special circumstances affecting evaluation of investment in a start-up project in a developing country, we do not, however, seek to imply that we are deviating from or softening the statutory standard of consistency with commercial considerations. We are simply restating our policy that consistency with commercial considerations should be judged in terms of the specific commercial context in which a particular investment decision is being evaluated.

On the basis of our analysis, we determine the GOTT's initial decision to proceed with the ISCOTT project was consistent with the requirements of commercial reasonableness. First, as originally conceived and later redefined, the ISCOTT mill was designed to make use of certain natural advantages. Trinidad and Tobago has ample natural gas reserves. The direct reduction of iron (DRI) process employed in ISCOTT's mill is particularly well suited to capitalize on the availability of natural gas. Trinidad and Tobago also enjoys a strategic geographic location close to plentiful sources of iron ore and to potential Caribbean, North American and South American markets. Second, ISCOTT's installation of state of the art technology builds upon natural advantages by providing long-term cost efficiencies and producing consistent qualities of steel. Third, at the time the ISCOTT mini-mill venture was initially conceived, the consensus among steel industry analysts was that projected demand would require installation of considerable new worldwide capacity by 1985.

GOTT's commitments to the ISCOTT project were undertaken on the basis of at least three independent feasibility studies prepared by private consultants. The original concept of an integrated mini-mill emerged from both engineering and economic studies. The subsequent adaptation of the project to emphasis wire rod production was also based on a study which assessed the potential viability of the redefined project in a changed market. Finally, preparation of the financing package which formed the basis of the CCDA entailed a third, independent assessment of the project's financial prospects, including specific projections of a probable rate of return on investment. All these studies concluded the project was feasible and would be profitable. In our view, the GOTT's decision to supplement its own evaluation of the commercial viability of the ISCOTT project with independent analyses by private consultants indicates a careful approach consistent with a prudent investment policy.

Independent confirmation of favorable projections made in the studies noted may be discerned from the decisions of several private commercial lenders to participate in the debt financing of the ISCOTT project. Participants include private lenders in the U.S., Japan, Canada and the Federal Republic of Germany. In addition to reviewing the feasibility studies commissioned by the GOTT, these lenders were also in a position to draw on their own internal resources and experience to assess the project's viability. That they chose to lend to the project is further indication of its commercial reasonableness.

Moreover, while we do not question that quarantees provided by the GOTT would be taken into account in a decision by private lenders to finance the ISCOTT project, it is our understanding of commercial banking practice thay any decision to lend would have been based primarily on consideration of the underlying project's viability and potential apart from the presence of governmental guarantees or backing. In these circumstances, the participation of private lenders should not be discounted as having no bearing on the central issue of whether investment in ISCOTT is consistent with

commercial considerations. (See section II.C *infra*).

Although the GOTT's decision to commence the ISCOTT mini-mill project apprears to have been carried out on a sound commercial basis, its continued commitment through the period of construction and beginning of commercial production poses somewhat different questions. In this stage, fundamental assumptions supporting the commercial reasonableness of the decision to initiate the project must be measured against actual development and operating experience. The issue is whether that experience raises fundamental questions about the commercial reasonableness of the GOTT's maintaining its commitment to the ISCOTT project.

The GOTT has continued to make heavy equity investments in ISCOTT during a period in which the company has encountered significant difficulties associated with construction, start-up and initial commercial operation. Unanticipated construction delays have resulted in substantially higher than projected costs which have been compounded by the effects of inflation. Breakdowns in key plant components and delays in obtaining replacements have also hampered the project. Shortages of adequately trained operations, maintenance and management personnel present continuing problems. The plant has not yet approached full rated capacity, and the engineering performance tests for all production units have not been completed. As a consequence, ISCOTT has not begun to achieve significant production levels or earnings on its products. Its cash flow per-ton of nominal capacity remains negative. All of this has occurred against the background of a severely deteriorated world market for steel.

In the latter phase of the investigation, both petitioners and respondents developed and presented financial models which seek to assess the commercial reasonableness of the GOTT's continued investment in ISCOTT, even in the face of the difficulties cited. The focal point of these studies has been the commercial reasonableness of the GOTT's decision in 1982 to make substantial additional equity investiments in the company.

The fact construction delays and other difficulties have occurred during the course of ISCOTT's start-up phase does not necessarily lead to the conclusion that the assumptions and expectations which arguably supported the GOTT's decision to embark upon the project are no longer tenable.

First, natural advantages such as reliable and plentiful sources of basic inputs and location continue to support ISCOTT's long-term prospects. Second, particularly in a developing country, the learning curve costs associated with the installation of a technologically advanced industrial facility may reasonably be expected to be higher than those in a more developed economy. Similarly, shortages of adequately trained manpower needed for the construction and maintenance of a major industrial plant make it more likely there will be delays in both construction and the achievement of fully operational status. In this respect it is significant that the CCDA made specific allowances for the possibility of delay, and that its final deadline for the certification of completion has not, as yet, been exceeded. Third, while ISCOTT's cash flow per-ton of capacity figures are negative, they nevertheless compare favorably with available estimates of expected per-ton devleopment costs for new steel mills in both developing and developed countries. Fourth, while ISCOTT is not profitable, it has been conducting limited commercial operations for a period of only 26 months. Regardless of location in a developed or developing country, the Department has found no indication in any of the sources available to it that a new industrial facility requiring large capital investment should be expected to show a positive rate of return within so short time from the commencement of production. To the contrary, it appears the reasonable commercial expectation is that the project would normally be expected to operate at a loss for several years before beginning to earn a positive return on the initial investment.

Fifth, lenders who participated in ISCOTT's debt financing arrangement have not withdrawn their support and have continued to make funds available to the company. Sixth, despite problems with start-up, ISCOTT has made some shipments to unrelated buyers, thereby demonstrating the existence of at least a potential market for its products.

In sum, while ISCOTT may not yet have unquestionably proven itself as a viable, self-sustaining venture, nothing in its experience to date establishes a compelling argument that the considerations or expectations which led the GOTT to begin the project have, in light of subsequent developments, lost all measure of commercial reasonableness. Though difficulties encountered during start-up have led to substantial cost increases not contemplated in the original projections, the GOTT's continuing commitment to the project, a commitment seconded by independent lenders, does not at this juncture appear inconsistent with commercial considerations.

We stress that this determination is not based on judgment that one of the financial models analyzing the GOTT's 1982 equity investments in ISCOTT is superior to another. The analyses submitted by both respondents and petitioners employed the same basic operational methodology and factored in essentially the same raw data. The pronounced differences in their respective results stem primarily from financial assumptions built into the models. While these assumptions may in either case be presumed arguable, they are not, in the strict sense of the word, "wrong." Rather, the divergence in results is inherent in the analytical process. Certain assumptions involved necessarily speculative attempts to predict events. Others require a substantial element of subjectivity.

In our view, this divergence bears on the issue of the consistency with commercial considerations of the GOTT's 1982 equity infusions by highlighting the complexities involved in applying the standard to investments of this kind. Sophisticated models applied to the same basic data and employing the same methodology achieve very different results, supporting the conclusion that, in this instance at least, there is no unanimity or consensus as to what constitutes consistency with commercial considerations. When this additional element of uncertainty is factored into other arguments for or against the GOTT's 1982 decision to continue investing in ISCOTT, we believe it reinforces our determination that, absent a convincing showing the project has lost virtually all reasonable measure of commercial viability, the GOTT's decision may properly be viewed as not inconsistent with commercial considerations.

B. Loss Coverage or Absorption

Petitioners allege that at least a portion of the funds which the GOTT has committed to the ISCOTT project since the commencement of commercial operations should be treated as loss coverage or absorption. In effect, they maintain that ISCOTT has been the beneficiary of substantial operating subsidies without which the company could not reamain viable.

As discussed in the section of this notice titled "Equity Participation by the Government", the GOTT's continued commitment to getting ISCOTT off the ground does not represent an investment

inconsistent with commercial considerations as we view them within the context of the start-up of a new industry in a developing country. While ISCOTT has begun to market its products on an intermittent basis, it is not yet a fully operational enterprise. From this perspective, equity infusions by the GOTT which may in some instances serve to offset initial operating losses may still be viewed primarily as investments in the capitalization and establishment of ISCOTT rather than as loss coverage *per se*. As such, they remain within the realm of commercial reasonableness which governs with respect to investment in the start-up of an enterprise.

C. Government Guarantees of Debt Service

Section 401, Article I of the Completion and Cash Deficiency Agreement (CCDA) states: "if, for any reason whatsoever, ISCOTT shall fail to pay or to pay in full any debt service amount on any debt service date with respect thereto, the Government, in consideration for the loans made by the lenders to ISCOTT, shall, and hereby covenants and agrees with each of the lenders to, pay to the lenders or the lenders entitled to such debt service amount the cash deficiency in respect thereof . . . within 10 days after the applicable debt service date, unless prior thereto ISCOTT shall have paid such cash deficiency in full."

During the period 1978–1981, ISCOTT obtained several medium-term loans from private lenders and other government loan agencies in the United States and elsewhere. Petitioners allege the guarantees provided for in Article IV of the CCDA enabled ISCOTT to obtain financing at interest rates several points below those charged for comparable commercial loans. They contend that ISCOTT would have had to pay a substantial premium over the commercial rate charged (estimated by petitioners as 5 percent), if the loan financing had not been backed by a government guarantee. In support of these arguments, petitioners cited banking authorities to the effect that a project of ISCOTT's magnitude would not have received debt financing without the government's guarantee.

Respondents argued the GOTT guarantee was part of a larger financing package and was given because banks, as a standard practice, often require principal shareholders in a project to guarantee loans to the project. They also contend it would be commercially irrational for a lender not to require such a guarantee of a majority shareholder in a new enterprise in a developing country. Respondents cited examples of other projects in Trinidad and Tobago for which guarantees have been provided by private shareholders at no charge. Finally, they asserted it is not standard commercial practice for principal shareholders to charge a fee to their corporations for loan guarantees which they provide.

In our preliminary determination, we concluded there was a subsidy from the GOTT to ISCOTT based on our estimate of the fee which ISCOTT would have been required to pay in the absence of such a guarantee. The value of this fee was 1.5 percent per year, an amount derived from information gathered by the Department. Our assumption was that the GOTT's guarantee of ISCOTT's debt service provided a benefit to the company for which it had made no payment.

After additional review, we conclude the method followed in the preliminary determination was not appropriate to this situation. Specifically, we have found that standard international banking practice in comparable transactions in Trinidad and Tobago does not involve a charge to the borrower by the shareholder guarantor for a guarantee.

We consulted banking experts in the area of international project financing regarding guarantee requirements and their relationship to the creditworthiness or commercial feasibility of a project. They indicated the usual practice in deciding on credits for start-up projects in developing countries is first to evaluate the commercial viability of each project, before taking into account any guarantees. If the project is not considered creditworthy on this basis, it will generally not be extended credit, regardless of any guarantee.

Once the creditworthiness of a project is established, if it is a greenfield project in a less developed country (LDC), such as Trinidad and Tobago, a guarantee would normally be required. It is standard banking practice to require a guarantee for any new project in an LDC.

If a countervailable subsidy were ruled on the basis of such a guarantee being given, then all guaranteed projects in LDC's, which require guarantees for bank financing, would be considered to have received *prima facie* countervailable subsidies. Viewed in this context, the requirement for a guarantee does not in itself indicate the ISCOTT project was not creditworthy.

To further clarify the issue, we sought to determine whether a guarantee was reflected in interest rates, and whether private shareholders in similar venture would charge a guarantee fee.

We examined agreements for U.S. dollar loans made by international lenders to similar projects in Trinidad and Tobago. These were joint ventures between U.S. companies and the GOTT and involved loan agreements entered into at approximately the same time as the ISCOTT financing agreements. We found that these loans were made at rates comparable to those for the ISCOTT loans; that they were guaranteed by private U.S. companies and by GOTT in proportion to their respective share ownership and that no guarantee fees were charged by the guarantors.

Thus, the GOTT guarantee did not give ISCOTT access to rates of interest which were below those obtainable by enterprises guaranteed by private U.S. investors. Furthermore, GOTT's action in not charging ISCOTT a guarantee fee was not inconsistent with that of a private major shareholder.

The results of our investigation indicate the GOTT guarantee should be viewed as the action of a major shareholder contributing to its investment in a new project. Thus, the loans taken by ISCOTT and the associated guarantees should be evaluated as part of the overall project financing package of equity and debt and considered in terms of the project's commercial viability at the time the financing was arranged. As the determination regarding the equity investment (see section of this notice titled "Government Equity Participation in ISCOTT") finds the GOTT's investment in the ISCOTT project was not inconsistent with commercial considerations, we determine there was no countervailable bounty or grant to ISCOTT resulting from loan guarantees given by GOTT.

D. Point Lisas Development Estate

Petitioners allege the Point Lisas Development Estate (the Estate), in which ISCOTT's steel mill is located, represents the GOTT's effort to establish an infrastructure specifically designed to support the company's operations, and that this infrastructure is not generally available to all companies in Trinidad and Tobago.

As noted previously, the Point Lisas Industrial Port Development Company, Ltd. (PLIPDECO), which is responsible for development of services in the Estate, is a corporation whose majority ownership and almost total control is in the hands of the GOTT. We have determined the Estate does not exist as a means for the GOTT to provide

subsidies based on regional preference. Companies which locate there derive no special benefits as a result of their location. Though the Estate provides infrastructure and services not available elsewhere in Trinidad and Tobago, there are no restrictions on eligibility to become a tenant, nor is the ability to locate in the estate dependent on export performance or objectives.

With certain exceptions applicable to ISCOTT treated elsewhere in this notice, all lessees in the Estate are subject to the same schedules of fees and charges for use of the infrastructure and services. We have no evidence on the record to indicate that fees charged are not reflective of the long-term true cost of the facilities and services provided by the Estate. Finally, there are over twenty-five other tenants in the Estate, an indication its facilities are not dedicated to the sole use of ISCOTT. We determine, therefore, that ISCOTT receives no countervailable benefits by virtue of locating at Point Lisas.

E. Port Facilities

Petitioners allege that ISCOTT received subsidized stevedoring and other port services from a GOTT controlled development authority.

Based on our investigation, we found that port services provided to ISCOTT by the Point Lisas Development Estate authority are also available to other users at the same rates and do not represent a countervailable subsidy to ISCOTT.

There are three docks at the Point Lisas Estate:

- ISCOTT Dock, specialized for, used and operated by ISCOTT (see separate section of this notice titled "ISCOTT Dock Facility");
- Savonetta Pier, with specialized facilities for another company;
- PLIPDECO Dock, for general users.

Charges for all services provided to users of Port Point Lisas follow a standard schedule of tariffs. We verified that ISCOTT pays these tariffs at the same rates as for all other users. Stevedoring on the ISCOTT Dock is provided by ISCOTT. We determine, therefore, that port services provided by the Development Estate authority do not constitute countervailable bounties or grants.

E. Worker Training-Management Development Center (MDC)

Though petitioners did not specifically allege ISCOTT has benefitted from worker training subsidies provided through the MDC, the questionnaire responses of both the GOTT and ISCOTT indicated that certain of the company's employees had participated in MDC programs.

The MDC is a government corporation founded in 1965 under joint sponsorship with the International Labor Organization (ILO). Its purpose is to provide improved management knowledge. In 1973 the MDC became independent of the ILO. The MDC is active in five areas: (1) Training courses, (2) Consultancy, (3) Research, (4) Publications and (5) Promotion of scientific management in the media. Any company in Trinidad and Tobago may subscribe to courses offered by the MDC. Fees are charged for courses offered.

Some ISCOTT workers were enrolled in MDC courses during 1982, and the fees paid by the company for this training were comparable to those charged other companies enrolling their personnel in similar courses. Since MDC courses are available without restriction to all industries in Trinidad and Tobago, and the fees paid by ISCOTT for MDC training are comparable to those charged other companies, we determine the company receives no countervailable benefits as a result of this program.

F. Import Duty Exemptions

Under the laws of Trinidad & Tobago imports may or may not be subject to duties under any one of three tariff schedules. Products on the First Schedule, which is established by treaty and identical for all countries in the Caribbean Common Market, are assigned duties ranging from zero to some percentage of value. Those on the Second Schedule benefit a general exemption. The Third Schedule establishes conditional exemptions for approved industries.

The First and Second Schedules are general enactments applicable to all industries in Trinidad and Tobago. Section 49A of the Customs Act of 1973 empowers the Government to grant duty exemptions on any merchandise imported by a company which is within the approved industry list of the Third Schedule. ISCOTT has applied for and received exemptions under this provision.

Examination of the Third Schedule shows that at least 76 industries in Trinidad and Tobago are specifically listed as qualifying for a Third Schedule exemption. Furthermore, the criteria for granting a concession under section 49A are not industry specific or related to exports, and the Third Schedule exemption is effectively available to any company which meets them, regardless of whether it falls within the list of approved industries. A review of concessions actually granted under Section 49a shows that the vast majority of applications are approved without any discernible degree of preference for any industry or specific group of industries. Finally a substantial portion of the items subject to a conditional exemption under the Third Schedule may already qualify for a general Second Schedule exemption. Other items are assessed a duty free rate under the First Schedule.

Since Third Schedule exemptions are not made available on the basis of preference for any specific industry or group of industries, we determine ISCOTT receives no countervailable benefits as a result of its participation in this program.

G. Short Term Loans

ISCOTT indicates the receipt of several short-term loans from private sources during the period for which we are measuring bounties or grants. Some of these loans have been repaid and others have been rolled-over. There is no evidence these loans were made to ISCOTT on preferential terms. Consequently we determine ISCOTT received no countervailable benefits as a result of these short-term loans.

H. Export Shipping Rates

Petitioners allege ISCOTT has benefitted from preferential shipping rates provided at government direction or with government financial assistance.

The Shipping Corporation of Trinidad and Tobago (SCOTT) acts as a broker for ISCOTT in locating private vessel owners and negotiating shipping fees. As such, SCOTT is not responsible for setting rates, nor does it own any vessels. It is reimbursed for its services on a commission basis. The commission fees charged ISCOTT by SCOTT are in line with those charged throughout the industry.

During the period for which we are measuring benefits, ISCOTT has used both SCOTT and a private concern based in New York as its agents for locating vessels and negotiating shipping rates. Rates have varied with each shipment, and ISCOTT has received no direct assistance from the GOTT for purposes fo paying export freight charges. Consequently, we have determined ISCOTT has not benefitted from preferential shipping rates as the result of direct or indirect action by the GOTT.

III. Programs Determined Not To Be Used

We determine that the following programs have not been used by

producers or exporters in Trinidad and Tobago of carbon steel wire rod:

A. Tax Benefits

Petitioners allege ISCOTT benefits from preferential tax treatment accorded under the Fiscal Incentives Act and other provisions of the tax laws of Trinidad and Tobago.

Since ISCOTT has not to date been profitable, it has not been in a position to take advantage of any preferential tax benefits which might otherwise be available to it under the laws of Trinidad and Tobago. We note, however, that certain preferential carryover benefits which may accrue to ISCOTT should be examined in the appropriate administrative review period under section 751 of the Act.

B. Worker Training—Industrial Development Corporation

Petitioners allege ISCOTT has benefitted from worker training subsidies provided through the Industrial Development Corporation (IDC).

The IDC's activities are limited to the support of training through grants to small businesses with assets of less than TT $250,000. On the basis of its size, ISCOTT is ineligible for IDC grants. We verified that ISCOTT received no training grants from the IDC during the period for which we are measuring bounties or grants.

C. Marketing Assistance

Petitioners allege ISCOTT has benefitted from marketing assistance provided by the GOTT through the International Marketing Company (IMC).

The IMC was established in 1979 as a GOTT owned non-revenue company for export promotion. In late 1982, the GOTT made the decision to terminate the IMC and ordered it to disband. We verified that the IMC's records showed no disbursements on behalf of ISCOTT or for activities related to the promotion of steel exports.

D. Preferential Export Insurance

Petitioners allege ISCOTT has benefitted from preferential export insurance provided through the Trinidad and Tobago Export Credit Insurance Company, Ltd. (EXICO).

EXICO is a GOTT-owned company founded in 1974 to provide insurance to exporters against the risks involved in exporting goods on credit. Due to limitations on the amount of risk it can assume, EXICO deals only with small and medium-sized companies. The limit on EXICO's assumable risk is far too small to allow for insuring ISCOTT shipments. We verified EXICO had no dealings with ISCOTT during the period for which we are measuring bounties or grants.

E. Preferential Loans

In our initiation notice, we stated we would investigate the allegation ISCOTT received loans from the GOTT at preferential interest rates. Since foreign lending institutions served as the sources of ISCOTT's debt financing, the issue is moot.

Comments

Petitioners' Comments

Comment 1

Petitioners contend the Department should find the GOTT's initial decision to invest in ISCOTT countervailable as inconsistent with commercial considerations. In making this contention they cite the existence of studies other than those commissioned by the GOTT which cast doubt on the commercial reasonableness of its investment and failure to explain adequately the withdrawal of foreign co-venturers initially involved in the project.

DOC Position

For reasons set forth in the section of this notice titled "Government Equity Participation in ISCOTT," we have determined the GOTT's initial decision to invest in ISCOTT was not inconsistent with commercial considerations. In our view, the issue is not whether there are studies available which contradict those commissioned by the GOTT, but whether the GOTT acted in a commercially reasonable manner when it made the decision to commerce the ISCOTT project. The important fact is that the GOTT did seek independent evaluations of the project's feasibility.

Nor was it commercially unreasonable to rely on those studies as a basis for the decision to go forward. Finally, as to the issue of the withdrawal of the GOTT's original co-venturers, we are satisfied that their decision was based primarily on the fact the redefined project would not meet their interest in an "off-take" arrangement for billets and not on any reservations as to its commercial feasibility.

Comment 2

Petitioners contend that, even if for purposes of argument the GOTT's initial investment in ISCOTT is determined to be consistent with commercial considerations, the GOTT's decision to continue its commitment by making additional large equity infusions in 1982 was, in light of actual experience, not consistent with commercial considerations. They also argue that, faced with the choice of continuing the project or shutting it down, a reasonable investor would opt for the latter as the less costly alternative to a massive commitment in a project which had demonstrated no reasonable prospect of return.

DOC Position

We do not agree. See the section of this notice titled "Government Equity Participation in ISCOTT." Regarding the issue of whether a shut-down of ISCOTT represents a less costly and, therefore, more reasonable option than continued operation, we find no evidence in the record which makes a compelling case for the former over the latter. Though shut-down is an option, it is not, on the basis of all the information available to us, the only commercially reasonable option open to an investor in ISCOTT.

Comment 3

Petitioners contend the GOTT's 1982 infusion of funds conveyed a countervailable benefit for the further reason that at least a portion of the infusion constituted a grant of funds to cover operating losses.

DOC Position

We do not agree. See the section of this notice titled "Loss Coverage or Absorption."

Comment 4

Petitioners contend the GOTT's guarantee of ISCOTT's debt service constitutes a countervailable benefit.

DOC Position

For reasons set forth in the section of this notice titled "Government Guarantees of Debt Service", we have altered our preliminary determination and now determine ISCOTT has received no countervailable benefits as a result of the GOTT's guarantee.

Respondents Comments

Comment 1

Respondents contend the Department erred in determining the GOTT's guarantees of ISCOTT's debt service constituted a countervailable benefit.

DOC Position

As discussed in the section of this notice titled "Government Guarantees of Debt Service", we now agree.

Comment 2

Respondents contend it is contrary to law and policy to countervail against loan guarantees required by the Export-Import Bank and other export credit agencies.

DOC Position

In view of our final determination that the GOTT's guarantees of ISCOTT's debt service do not give rise to countervailable benefits, this issue is moot.

Comment 3

Respondents contend the Department's imputed 1.5 percent guarantee fee applied in the preliminary determination is overstated.

DOC Position

In view of our final determination that ISCOTT does not receive countervailable benefits as the result of the GOTT's guarantee of its debt, the issue is moot.

Comment 4

Respondents contend the Department should not have based its calculations of the benefit from the GOTT's loan guarantees on the total amount of the loan commitment by the lender but only on the amounts actually drawn down.

DOC Position

In view of our final determination regarding the GOTT's loan guarantees, the issue is moot.

Comment 5

Respondents contend that, despite acknowledged difficulties in achieving fully operational status, the ISCOTT project remains feasible and retains its potential for a reasonable rate of return. Consequently, the GOTT's 1982 equity infusions are consistent with commercial considerations and do not represent countervailable bounties or grants.

DOC Position

We agree. See the section of this notice titled "Government Equity Participation in ISCOTT."

Comment 6

Respondents contend the denominator used in the Department's subsidy calculations should include the total value of ISCOTT's sales during the appropriate period and not only wire rod and billet sales.

DOC Position

We agree. However, the figures for ISCOTT's total sales were not made available to us in time for use in the preliminary determination. We have adjusted our calculations in this determination to take account of these sales.

Comment 7

Respondents contend that, since ISCOTT is in a start-up mode, the denominator in our subsidy calculations should employ an extrapolated sales figure reflective of total sales for a fully operational plant. This would be consistent with the Department's recognition that ISCOTT is suffering from under-utilization and avoid overstatement of the *ad valorem* rate merely because of ISCOTT's start-up status.

DOC Position

There is no guarantee that, even if ISCOTT were capable of operating at full capacity, its would actually be selling its full production. Rather than speculating as to what might be, we prefer to base our calculations on actual sales. Increases in ISCOTT's production capability and sales are properly addressed in a section 751 review.

Verification

In accordance with section 776(a) of the Act, we verified the information used in making our final determination. During this verification, we followed normal procedures, including meetings and inspection of documents with government officials and on-site inspection of the records and operation of the companies exporting the merchandise under investigation to the United States.

Administrative Procedures

The Department has afforded interested parties an opportunity to present oral views in accordance with its regulations (19 CFR 355.34(a)). Oral and written views have been received and considered.

The suspension of liquidation ordered in our preliminary affirmative determination shall remain in effect until further notice. The net bounty or grant for duty deposit purposes for ISCOTT is 6.738 percent *ad valorem*.

As required by section 706(a)(3) of the Act, we are directing the United States Customs Service to require a cash deposit in the amount indicated above for each entry of the subject merchandise entered or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**, and to assess countervailing duties in accordance with sections 706(a)(1) and 751 of the Act.

The Department intends to conduct an administrative review within 12 months of publication of this determination as provided in section 751 of the Act.

This notice is published pursuant to sections 303 and 706 of the Act (19 U.S.C. 1303, 1671e).

Dated: December 27, 1983.

William T. Archey,

Acting Assistant Secretary for International Trade Administration.

[FR Doc. 84-78 Filed 1-3-84; 8:45 am]

BILLING CODE 3510-DS-M

Articles of Quota Cheese; Annual Listing of Foreign Government Subsidies

AGENCY: International Trade Administration, Commerce.

ACTION: Publication of Annual List of Foreign Government Subsidies on Articles of Quota Cheese.

SUMMARY: The Department of Commerce, in consultation with the Secretary of Agriculture has prepared its annual list of foreign government subsidies on articles of quota cheese. We are publishing the current listing of those subsidies that we have determined exist.

EFFECTIVE DATE: January 1, 1984.

FOR FURTHER INFORMATION CONTACT: Patricia W. Stroup or Susan E. Silver, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION: Section 702(a) of the Trade Agreements Act of 1979 ("the TAA") requires the Department of Commerce ("the Department") to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of quota cheese, as defined in section 701(c)(1) of the TAA, and to publish an annual list and quarterly updates of the type and amount of those subsidies.

The Department has developed, in consultation with the Department of Agriculture, information on subsidies (as defined in section 702(h)(2) of the TAA) being provided either directly or indirectly by foreign governments on articles of quota cheese. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amount of each subsidy on which information is currently available.

The Department will incorporate programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of quota cheese to submit such information in writing to the Deputy Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230.

This determination and notice are in accordance with section 702(a) of the TAA (19 U.S.C. 1202 note).

Dated: December 29, 1983.

C. Christopher Parlin,

Acting Deputy Assistant Secretary, Import Administration.

APPENDIX.—QUOTA CHEESE SUBSIDY PROGRAMS

Country	Program(s)	Gross [1] subsidy (cents per pound)	Net [2] subsidy (cents per pound)
Belgium	European Community (EC) Restitution Payments	3.5	3.5
Canada	Export Assistance on Swiss Cheese	28.3	28.3
	Export Assistance on Aged Cheddar N/Ov. 2.37 Kg/pkg	28.3	28.3
	Export Assistance on NSPF Cheeses	28.3	28.3
Denmark	EC Restitution Payments	10.2	10.2
Finland	Export Subsidy	36.8	36.8
	Indirect Subsidies	16.1	16.1
		52.9	52.9
France	EC Restitution Payments	.3	.3
Ireland	EC Restitution Payments	0	0
Italy	EC Restitution Payments	20.8	20.8
Luxembourg	EC Restitution Payments	3.5	3.5
Netherlands	EC Restitution Payments	.2	.2
Norway	Indirect (Milk) Subsidy	16.7	16.7
	Consumer Subsidy	36.9	36.9
		53.6	53.6
Switzerland	Deficiency Payments	69.1	69.1
U.K.	EC Restitution Payments	0	0
W. Gemany	EC Restitution Payments	1.0	1.0

[1] Defined in 19 U.S.C. 1677(5).
[2] Defined in 19 U.S.C. 1677(6).

[FR Doc. 84-122 Filed 1-3-84; 8:45 am]
BILLING CODE 3510-25-M

[C-475-008]

Countervailing Duty Order; Semifinished Forged Undercarriage Components From Italy

AGENCY: International Trade Administration, Commerce.

ACTION: Countervailing Duty Order.

SUMMARY: In separate investigations, the U.S. Department of Commerce (the Department) and the U.S. International Trade Commission (ITC) have determined that certain benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers and exporters in Italy of semifinished forged undercarriage components and that these imports are materially injuring a U.S. industry. Therefore, all entries, or withdrawals from warehouse, for consumption, of semifinished forged undercarriage components from Italy made on or after August 30, 1983, the date on which the Department published its "Suspension of Liquidation" notice in the **Federal Register**, are liable for the possible assessment of countervailing duties.

Further, a cash deposit of estimated countervailing duties must be posted on all such entries and withdrawals from warehouse, for consumption, on or after the date of publication of this order in the **Federal Register**.

EFFECTIVE DATE: January 4, 1984.

FOR FURTHER INFORMATION CONTACT: Deborah A. Semb, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377-3534.

SUPPLEMENTARY INFORMATION: In accordance with section 703 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1671b) on August 30, 1983, the Department published its preliminary determination that certain benefits which constitute subsidies within the meaning of the countervailing duty law were being provided to the manufacturers, producers, or exporters in Italy of semifinished forged undercarriage components (48 FR 39273). On November 16, 1983, in accordance with section 705 of the Act (19 U.S.C. 1671d), we published our final determination that certain benefits that constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Italy of semifinished forged undercarriage components (48 FR 52111). On December 21, 1983, in accordance with section 705 of the Act (19 U.S.C. 1671d), the ITC notified the Department that it had determined that an industry in the United States is being materially injured by reason of imports of semifinished forged undercarriage components from Italy. Therefore, all entries or withdrawals from warehouse, for cosumption, on or after August 30, 1983, the date on which the Department published its "Suspension of Liquidation" notice in the **Federal Register**, are liable for the possible assessment of countervailing duties.

Scope of Countervailing Duty Order

The products covered by this investigation are semifinished forged undercarriage links and rollers for crawler-mounted machinery (forged undercarriage components). The subject merchandise is currently classifiable under item numbers 664.08, 692.34 and 692.35 of the *Tariff Schedules of the United States Annotated (TSUSA).*

Industries Meccanica e Stampaggio S.p.A. (IMES) of Sumirago (Varese), Italy is the only known exporter of the forged undercarriage components which were exported to the United States.

In accordance with sections 706(a)(1) and 751 of the Act (19 U.S.C. 1671e), the Department directs the U.S. Customs Service to assess countervailing duties and to require a cash deposit equal to the amount of the estimated net subsidy on all entries of semifinished forged undercarriage components from Italy. This countervailing duty order applies to all entries of the subject merchandise entered or withdrawn from warehouse, for consumption, on or after the date of publication of this notice. The amount to be deposited is 1.37 percent *ad valorem.*

This notice is published pursuant to section 706(a) of the Act (19 U.S.C. 1671e(a)) and § 355.36 of the Commerce Regulations (19 CFR 355.36). The Department intends to conduct an administrative review of this order, as

provided for under section 751 of the Act (19 U.S.C. 1675).

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

December 27, 1983.

[FR Doc. 84-121 Filed 1-3-84; 8:45 am]

BILLING CODE 3510-25-M

[Case No. 647]

Globe Computers AB and Goran B. Josberg; Order Temporarily Denying Export Privileges

In the Matter of: Globe Computers AB, Strandvagen 9, S-114 56 Stockholm, Sweden, and Goran B. Josberg, President, Globe Computers AB, Strandvagen 9, S-114 56 Stockholm, Sweden.

The Department of Commerce (the Department), pursuant to the provisions of § 388.19 of the Export Administration Regulations (15 CFR parts 368-399 (1983)) (the Regulations), has petitioned the Hearing Commissioner for an order temporarily denying all export privileges to Globe Computers AB, Strandvagen 9, S-114 56 Stockholm, Sweden and its president, Goran B. Josberg (hereinafter collectively referred to as respondents).

The Department states thats the respondents are under investigation by the Department's Office of Export Enforcement. The Department states further that its investigation gives it reason to believe: (1) That respondents made false and misleading statements to the Department for the purpose of effecting exports from the United States; (2) that respondents have reexported a U.S.-origin computer from Sweden to the Union of Soviet Socialist Republics without obtaining authorization for that reexport from the Department; and (3) that the respondents may attempt to reexport or divert U.S.-origin commodities or technical data contrary to the Regulations in the future, unless appropriate action is taken to preclude such attempts.

Based on the showing made by the Department, I find that an order temporarily denying all export privileges to the respondents, and to any party related to them, is required in the public interest to facilitate enforcement of the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (Supp. V 1981)), and the Regulations and to permit completion of the Department's investigation.

Anyone who is now or may in the future be dealing with the above-named respondents or any related party in transactions that in any way involve U.S.-origin commodities or technical data is specifically alerted to the provisions set forth in Paragraph IV below.

Accordingly, it is hereby

Ordered:

I. All outstanding validated export licenses in which respondents or any related party appear or participate, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Administration for cancellation.

II. The respondents, their successors or assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations. Without limitation of the generality of the foregoing, participation prohibited in any such transaction, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (a) As a party or as a representative of a party to a validated export license application, (b) in the preparation or filing of any export license application or reexport authorization, or of any document to be submitted therewith, (c) in the obtaining or using of any validated or general export license or other export control document, (d) in the carrying on of negotiations with respect to, or in the receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported, and (e) in the financing, forwarding, transporting, or other servicing of such commodities or technical data.

III. Such denial of export privileges shall extend not only to the respondents, but also to their agents and employees and to any successors. After notice and opportunity for comment, such denial may also be made applicable to any person, firm, corporation, or business organization with which respondents are now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of export trade or related services. A party now known to be affiliated with the respondents, and which is accordingly subject to the provisions of this order, is: Globe Metals AB, Strandvagen 9, S-114 56 Stockholm, Sweden.

IV. No person, firm, corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Administration, shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with the respondents or any related party, or whereby the respondents or any related party may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly: (a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for the respondents or any related party denied export privileges; or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any export, reexport, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States.

V. In accordance with the provisions of § 388.19(b) of the Regulations, the respondents or any related party may move at any time to vacate or modify this temporary denial order by filing with the Hearing Commissioner, International Trade Administration, U.S. Department of Commerce, Room 6716, 14th and Constitution Avenue, NW., Washington, D.C. 20230, an appropriate motion for relief and may also request an oral hearing thereon, which, if requested, shall be held before the Hearing Commissioner at the earliest convenient date.

VI. This order is effective immediately. It remains in effect until the final disposition of any administrative or judicial proceedings initiated against the respondents as a result of the ongoing investigation. A copy of this order and Parts 387 and 388 of the Regulations shall be served upon the respondents and the above-named related party.

Dated: December 28, 1983, 11:30 am EST.

Thomas W. Hoya,

Hearing Commissioner.

[FR Doc. 84-85 Filed 1-3-84; 8:45 am]

BILLING CODE 3510-25-M

National Oceanic and Atmospheric Administration

[Docket No. 31202-230]

Civil Penalties for U.S. Fishermen

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of policy on civil penalties.

SUMMARY: This notice announces the general agency policy to deny applications under any agency grant, loan, or loan guaranty program from any applicant who has not paid a final and unappealable civil penalty under the provisions of statutes protecting living marine resources. It is this Agency's policy to encourage payment of assessed penalties as they become due. In addition, it is not consistent with the wise use of the nation's living marine resources to make loans, loan guarantees or grants to those individuals who have not paid outstanding civil penalties under programs administered by this agency.

DATES: This policy is effective on January 4, 1984.

FOR FURTHER INFORMATION CONTACT: Cdr. John K. Callahan, Jr., National Oceanic and Atmospheric Administration, Washington, D.C. 20235 (202/254-5043).

SUPPLEMENTARY INFORMATION: Under the provisions of a number of statutes administered by the National Oceanic and Atmospheric Administration (See Appendix), the Secretary of Commerce may assess a civil penalty against any person who commits an act prohibited by regulations promulgated under the statutes' provisions. Regulations enacted for these statutes contain provisions for formal administrative hearings with appellate review. The assessment of a civil penalty becomes a final and unappealable order thirty days after final administrative action or, if the agency's decision is challenged in the courts, at such time as a final and unappealable judicial order is entered.

The Secretary of Commerce also has the authority to provide assistance to the fishing industry under a variety of grant, loan, and loan guaranty programs. The Secretary of Commerce has delegated authority for many of these programs to the National Marine Fisheries Service. It is the policy of the agency to encourage payment of assessed penalties as they become due and to ensure that the assistance programs are implemented in a manner consistent with the wise use of the nation's living marine resources. Accordingly, the National Oceanic and Atmospheric Administration will generally not approve an application submitted under any of its grant, loan, or loan guaranty programs by a person who has been assessed a civil penalty which has become final and unappealable under the statutes listed in the Appendix, unless that person has either paid the penalty or entered into an agreement to pay the penalty in installments and has paid installments as they fell due. Exceptions to this policy may be made when necessary to limit the financial exposure of the federal government.

Samuel A. Lawrence,

Director, Office of Administrative and Technical Services.

Appendix

This policy applies as to civil penalties assessed under the following statutes.

Antarctic Conservation Act of 1978, 16 U.S.C. 2401-2412;
Atlantic Tuna Conventions Act of 1975, 16 U.S.C. 971-971g;
Atlantic Salmon Convention Act of 1982, Pub. L. 97-389 (Dec. 29, 1982);
Endangered Species Act of 1973, 16 U.S.C. 1531-1543;
Lacey Act Amendments of 1981, 16 U.S.C. 3371-3378;
Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801-1882;
Marine Mammal Protection Act of 1972, 16 U.S.C. 1361-1407;
Marine Protection, Research and Sanctuaries Act, 16 U.S.C. 1431-1434;
Northern Pacific Halibut Act of 1982, 16 U.S.C. 773-773k;
North Pacific Fisheries Act of 1954, 16 U.S.C. 1021-1032;
Tuna Conventions Act of 1950, 16 U.S.C. 951-961.

[FR Doc. 84-119 Filed 1-3-84; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Soliciting Public Comment on Bilateral Textile Consultations with the Government of Hong Kong on Categories 314, 318, 337, 359, 361, 369, 459, 649 and 669

December 29, 1983.

On December 23, 1983, the Government of the United States requested consultations with the Government of Hong Kong with respect to Categories 314 (Poplin and Broadcloth), 318 (Other Yarn-Dyed Fabrics), 337 (Playsuits), 349 (Other Cotton Apparel), 361 (Sheets), 369 (Other Cotton Manufactures), 459 (Other Wool Apparel), 649 (Brassieres) and 669 (Other Man-Made Fiber Manufactures). This request was made on the basis of the agreement of June 23, 1982, as amended, between the Governments of the United States and Hong Kong relating to trade in cotton, wool and man-made fiber textiles and textile products.

The purpose of this notice is to advise the public that if no solution is agreed upon in consultations between the two governments, the Committee for the Implementation of Textile Agreements may later establish limits for the entry and withdrawal from warehouse for consumption of textile products in Categories 314, 318, 337, 359, 361, 369, 459, 649 and 669, produced or manufactured in Hong Kong and exported to the United States during the twelve-month period which began on January 1, 1983 and extended through December 31, 1983.

Any party wishing to comment or provide data or information regarding the treatment of these categories under the bilateral agreement, or on any other aspect thereof, or to comment on domestic production or availability of textile products included in these categories is invited to submit such comments or information in ten copies to Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Since the exact timing of the consultations is not yet certain, it is requested that comments be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. 20230, and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreements or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreement.

[FR Doc. 83-34239 Filed 12-29-83; 4:51 pm]

BILLING CODE 3510-DR-M

Announcing Import Limits for Certain Cotton, Wool, and Man-Made Fiber Textile Products, Produced of Manufactured in the Republic of Korea

December 29, 1983.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA) under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on January 9, 1984. For further information contact Ross Arnold, International Trade Specialist (202/377–4212).

Background

Under the terms of the Bilateral Cotton, Wool and Man-Hour Fiber Textile Agreement of December 1, 1982, as amended, between the Governments of the United States and the Republic of Korea, the United States Government has decided to convert to specific limits in 1984 the levels or textile products in Categories 313, 314, 315, 317, 319, 320, 336, 435, 442, 448, 613, 631, 636, 642, 644, 647 and parts of 669, which are exported during 1984. The letter to the Commissioner of Customs which follows this notice establishes the new specific limits.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), and December 14, 1983 (48 FR 55607).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

December 29, 1983.

Committee for the Implementation of Textile Agreements

Commissioner of Customs
Department of the Treasury
Washington, D.C.

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of December 1, 1982, as amended, between the Government of the United States and the Republic of Korea; and in accordance with the provisions in Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 9, 1984, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, and man-made fiber textile products in the following categories, produced or manufactured in Korea, and exported during 1984, in excess of the indicated levels of restraint:

Category and Twelve-Month Level of Restraint

313—35,875,000 square yards
314—2,562,500 square yards
315—21,693,199 square yards
317—15,781,692 square yards
319—7,681,561 square yards
320—35,487,398 square yards
336—41,000 dozen
435—30,366 dozen
442—43,438 dozen
448—30,561 dozen
613—21,798,820 square yards
631—215,250 dozen pairs
636—205,000 dozen
642—74,513 dozen
644—82,000 dozen
647—773,963 dozen
669–F [1]—647,795 pounds
669–P [2]—4,356,250 pounds
669–T [3]—4,944,435 pounds

Textile products in the foregoing categories which have been exported to the United States prior to January 1, 1984 shall not be subject to this directive.

Textile products in the foregoing categories which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

The levels set forth above are subject to adjustment according to the provisions of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 1, 1982, as amended, which provide, in part, that: (1) During any agreement year specific limits and sublimits may be exceeded by designated percentages, provided a corresponding reduction in square yards equivalent is made in one or more other specific limits; (2) under specified conditions specific limits and sublimits may be adjusted for carryover and carryforward not to exceed 10 percent; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement. Any appropriate adjustments under the provisions of the bilateral agreement. Any adjustments under the foregoing provisions of the agreement will be made to you by letter.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), and December 14, 1983 (48 FR 55607).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of the Republic of Korea and with respect to imports of cotton, wool and man-made fiber textile products from Korea have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 533. This letter will be published in the **Federal Register**.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 83–34846 Filed 12–29–83; 5:05 pm]

BILLING CODE 3510–DR–M

[1] In Category 669, only TSUSA numbers 355.4520 and 355.4530.

[2] In Category 669, only T.S.U.S.A. number 385.5300.

[3] In Category 669, only TSUSA numbers 386.1105 and 389.6210.

Soliciting Public Comment on Bilateral Textile Consultations with Korea to Review Trade in Categories 359, 369, 436 and 438

December 29, 1983.

On December 27, 1983, the Government of the United States requested consultations with the Government of the Republic of Korea with respect to Categories 359 (Other Cotton Apparel), 369 (Other Manufactures), 436 (Women's, Girls' and Infants' Dresses) and 438 (Knit Shirts and Blouses). This request was made on the basis of the agreement of December 1, 1982, as amended, between the Governments of the United States and the Republic of Korea relating to trade in cotton, wool and man-made fiber textiles and textile products.

The purpose of this notice is to advise the public that if no solution is agreed upon in consultations with Korea, the Committee for the Implementation of Textile Agreements may later establish limits for the entry and withdrawal from warehouse for consumption of textile products in Categories 359, 369, 436 and 438, produced or manufactured in Korea and exported to the United States during the twelve-month period which began on January 1, 1983 and extended through December 31, 1983.

Any party wishing to comment or provide data or information regarding the treatment of Categories 359, 369, 436 and 438 from Korea under the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, or any other aspect thereof, or to comment on domestic production or availability of textile products included in these categories, is invited to submit such comments or information in ten copies to Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Since the exact timing of the

consultations is not yet certain, it is requested that comments be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230, and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreements or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 83-34330 Filed 12-29-83; 4:55 pm]

BILLING CODE 3510-DR-M

Establishing a New Export Visa Requirement for Certain Cotton, Wool and Man-Made Fiber Textile and Apparel Products Produced or Manufactured in the Socialist Republic of Romania

December 29, 1983.

ACTION: Establishing a new visa requirement for certain cotton, wool and man-made fiber textile and apparel products in Categories 300–369, 400–469 and 600–669, produced or manufactured in Romania, under the terms of the Bilateral Cotton Textile Agreement of January 28 and March 31, 1983 and the Bilateral Wool and Man-Made Fiber Textile Agreement of September 3 and November 3, 1980, as amended, between the Governments of the United States and the Socialist Republic of Romania.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175) and May 3, 1983 (48 FR 19924).

EFFECTIVE DATE: February 1, 1984 for cotton, wool and man-made fiber textile and apparel products in Categories 300–369, 400–469 and 600–669, exported on and after that date. Merchandise in these categories exported before February 1, 1984, shall not be denied entry for lack of a visa.

FOR FURTHER INFORMATION CONTACT: Diana Bass, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. (202/377–4212).

SUPPLEMENTARY INFORMATION: Cotton, wool and man-made fiber textile and apparel products in Categories 300–369, 400–469 an 600–669, which are subject to the terms of the bilateral agreements and exported on and after February 1, 1984, shall be visaed with a circular stamp in order to be entered, or withdrawn from warehouse, for consumption in the United States.

Shipments shall be visaed by the placing of an original stamped marking (the visa) in blue ink on the front of the invoice (Special Customs Invoice Form 5515, successor document, or commercial invoice, when such form is used). Each visa shall include the number, date of export, and signature of the authorized issuing official. The visa shall also state the correct category and quantity in the shipment in the applicable category units; however, if the quantity shown on the export visa is more than the actual quantity of the merchandise, entry shall be permitted, despite the inaccuracy. A facsimile of the new visa stamp is published as an enclosure to the letter to the Commissioner of Customs which follows this notice.

Merchandise imported for the personal use of the importer, and not for resale, does not require a visa, regardless of value.

The Government of the Socialist Republic of Romania has authorized the following officials to issue export visas:

Tomulescu Petre
Lungu Gheorghe
Linc Mircea
Atanasiu Bogdan
Ciobanescu Stefan
Mateescu Jeni
Sadeanu Neli
Romanescu Mircea

Interested persons are advised to take all necessary steps to ensure that cotton, wool and man-made fiber textile and apparel products, produced or manufactured in Romania which are to be entered into the United states for consumption, or withdrawn from warehouse for consumption on and after February 1, 1984, will meet the stated visa requirements.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

December 29, 1983.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton Textile Agreement of January 28 and March 31, 1983 and the Bilateral Wool and Man-Made Fiber Textile Agreement of September 3 and November 3, 1980, as amended, between the Governments of the United States and the Socialist Republic of Romania; and in accordance with the provisions in Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on February 1, 1984, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile and apparel products in Categories 300–369, 400–469, and 600–669, produced or manufactured in Romania and exported on and after February 1, 1984, for which the Government of the Socialist Republic of Romania has not issued an appropriate export visa. Merchandise exported before February 1, 1984, shall not be denied entry.

Textile and apparel products in Categories 300–369, 400–469 and 600–669, exported on and after February 1, 1984, shall be visaed with a circular stamp in order to be entered into the United States for consumption, or withdrawn from warehouse for consumption. Merchandise shall be visaed by the placing of an origianl stamped marking (the visa) in blue ink on the front of the invoice (Special Customs Invoice Form 5515, successor document, or commercial invoice, when such form is used). Each visa shall include the number, date of export, and signature of the issuing official. The visa shall also state the correct category and quantity in the applicable category units, except that, if the quantity indicated on the export visa is more than that of the merchandise, entry shall be permitted. The categories and quantities shall be those determined by the U.S. Customs Service. A facsimile of the visa stamp is enclosed.

Merchandise imported for the personal use of the importer, and not resale, does not require a visa or certification for entry, regardless of value.

You are directed to permit entry into the United States for consumption and withdrawal from warehouse for consumption of designated shipments of textile products, produced or manufactured in Romania and exported to the United States, notwithstanding the designated merchandise does not fulfill the aforementioned visa requirements, whenever requested to do so in writing by the Chairman of the Committee for the Implementation of Textile Agreements.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175) and May 3, 1983 (48 FR 19924).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of the Socialist Republic of Romania and with respect to imports of cotton, wool and man-made fiber textile products from Romania have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-114 Filed 1-3-84; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee on Women in the Services (DACOWITS); Meeting

Pursuant to Pub. L. 92-463, notice is hereby given that a meeting of the Executive Committee of the Defense Advisory Committee on Women in the Services (DACOWITS) is scheduled to be held from 1:30 p.m. to 5:00 p.m., February 7, 1984 in MRA&L Conference Room No. 3E794, the Pentagon, and from 9:30 a.m. to approximately 12:00 noon, February 8, 1984 in MRA&L Conference Room No. 3E794, the Pentagon. Meeting sessions will be open to the public.

The purpose of the meeting is to review the responses to recommendations/requests for information/continuing concerns made at the 1983 Fall Meeting, discuss current issues relevant to women in the Services, and finalize the itinerary/program for the next Semiannual Meeting scheduled for April 29-May 3, 1984 in Washington, D.C.

Persons desiring to (1) attend the Executive Committee Meeting or (2) make oral presentations or submit written statements for consideration at the Meeting must contact Captain Marilla J. Brown, Executive Secretary, DACOWITS, OASD (Manpower, Reserve Affairs, and Logistics), Room 3D769, The Pentagon, Washington, D.C. 20301, telephone (202) 697-2122 no later than Janruary 23, 1984.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

December 28, 1983.

[FR Doc. 84-58 Filed 1-3-84; 8:45 am]

BILLING CODE 3810-01-M

DOD Advisory Group on Electron Devices; Committee Meeting

Working Group B (Mainly Low Power Devices) of the DOD Advisory Group on Electron Devices (AGED) will meet in closed session on January 17, 1984 at Palisades Institute For Research Services, Inc. 1925 North Lynn Street, Arlington, Virginia 22209.

The mission of the Advisory Group is to provide the Under Secretary of Defense for Research and Enginering, the Director, Defense Advanced Research Projects Agency and the Military Department with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group B meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. The low power device area includes such programs as integrated circuits, charge coupled devices and memories. The review will include classified program details throughout.

In accordance with Section 10(d) of Pub. L. 92-463, as amended (5 U.S.C. App. 1 section 10(d) (1976)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1976), and that accordingly, this meeting will be closed to the public.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

December 28, 1983.

[FR Doc. 84-51 Filed 1-3-84; 8:45 am]

BILLING CODE 3810-01-M

DOD Advisory Group on Electron Devices; Committee Meeting

Working Group D (Mainly Laser Devices) of the DOD Advisory Group on Electron Devices (AGED) will meet in closed session on January 26 and 27, 1984 at Lawrence Livermore Labs, 7000 East Avenue, Livermore, Ca.

The mission of the Advisory Group is to provide the Under Secretary of Defense for Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Department with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group D meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. The laser area includes such programs on developments and research related to low energy lasers for such applications as battlefield surveillance, target designation, ranging, communications, weapon guidance and data transmission. The review will include classified program details throughout.

In accordance with Section 10(d) of Pub. L. 92-463, as amended, (5 U.S.C. App. 1 section 10(d) (1976)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1976), and that accordingly, this meeting will be closed to the public.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

December 28, 1983.

[FR Doc. 84-50 Filed 1-3-84; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board.

Dates of meeting: Thursday and Friday, January 19 and 20, 1984.

Times: 0830-1700 (Closed).

Place: Pentagon, Washington, D.C.

Agenda: Several members of the Planning, Concepts and Management Support Functional Subgroup are scheduled to meet to review preparations for Army descriptions of Research and Development programs. This meeting will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., App. 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The Army Science Board's Administrative Officer, Sally A. Warner, may be contacted for further information at (202) 695-3039 or (202) 697-9703.

Sally A. Warner,

Administrative Officer.

[FR Doc. 84-61 Filed 1-3-84; 8:45 am]

BILLING CODE 3710-08-M

Public Information Collection Requirement Submitted to OMB for Review

The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of

submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; (8) The point of contact from whom a copy of the information proposal may be obtained.

New

Commercial Transportation Facilities Data.

Information on transportation facilities at Department of Defense commercial contractors is needed by MTMC for publication of current data in the Commercial Contractors Terminal Facilties Guide. The data is used by DOD activities for shipment of freight.

Businesses: 230 respondents, 690 hours.

Forward comments to Edward Springer, OMB Desk Officer, Room 3235, NEOB, Washington, D.C. 20503, and John V. Wenderoth, DOD Clearance Officer, WHS/DIOR, Room 1C535, Pentagon, Washington D.C. 20301, telephone (202) 694–0187.

A copy of the information collection proposal may be obtained from David O. Cochran, DAAG–OPI, Room 1D667, Pentagon, Washington, D.C. 20310, telephone (202) 605–5111.

Dated: December 28, 1983.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84–52 Filed 1–3–84; 8:45 am]

BILLING CODE 3710–8–M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Proposed Transmission Rate Adjustment

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice. *BPA File No.:* TR–83. Federal Energy Regulatory Commission Docket No. EF84–2021–000

SUMMARY: On January 28, 1983, BPA gave notice of its intent to revise transmission rates. On March 28, 1983, BPA published its initial proposal for transmission rate schedules in anticipation that such rates would become effective on an interim basis on or about November 1, 1983. Following an extensive hearing process, BPA submitted its rates to the Federal Energy Regulatory Commission (Commission) for approval on October 3, 1983. On October 26, 1983, the Commission denied BPA's request for interim approval of its transmission rates. BPA was directed to cure a deficiency in its filing by submitting certain accounting information. By request of November 23, 1983, BPA has asked the Commission to grant interim approval to its transmission rates while a "tracking system" is developed which will provide the Commission with the accounting information for which the Commission asked. In the event that BPA's application for rehearing is successful and the Commission subsequently approves BPA's transmission rates, BPA hereby gives notice that BPA anticipates that new transmission rates will be effective on the first day of the month following interim or final approval of such rates by the Commission.

FOR FURTHER INFORMATION CONTACT: Ms. Kathleen S. Johnson, Public Involvement, P.O.Box 12999, Portland, Oregon 97212; 503–230–3478. Oregon callers outside of Portland may use 800–452–8429; callers in California, Idaho, Montana, Nevada, Utah, Washington, and Wyoming may use 800–547–6048. Additional information is available from the following:

Mr. George Gwinnutt, Lower Columbia Area Manager, Suite 288, 1500 Plaza Building, 1500 N.E. Irving Street, Portland, Oregon 97232, 503–230–4551.

Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Avenue, Eugene, Oregon 97401, 503–687–6952.

Mr. Ronald H. Wilkerson, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509–456–2518.

Mr. George E. Eskeidge, Montana District Manager, 800 Kensington, Missoula, Montana 49801, 406–329–3860.

Mr. Ronald K. Rodewald, Wenatchee District Manager, P.O. Box 741, Wenatchee, Washington 98801, 509–662–4377.

Mr. Richard Casad, Puget Sound Area Manager, Room 250, 415 First Avenue North, Seattle, Washington 98109, 206–442–4130.

Mr. Thomas Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509–525–5500, extension 701.

Mr. Robert N. Laffel, Idaho Falls District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208–523–2706.

Mr. Frederic D. Rettenmund, Boise District Manager, Owyee Plaza Suite 245, 1109 Main Street, Boise, Idaho 83707, 208–334–9138.

SUPPLEMENTARY INFORMATION: On January 28, 1983, BPA published in the **Federal Register** (48 FR 4027) a "Notice of Intent to Revise Transmission Rates" because revenue from the current rates is insufficient to recover increased costs of the Federal Columbia River Transmission System (FCRTS). On March 28, 1983, BPA published in the **Federal Register** (48 FR 12766) a "Notice of Proposed Transmission Rate Adjustment, Public Hearings, and Opportunities for Public Review and Comment" setting forth an initial proposal for Transmission Rate Schedules and anticipating that new transmission rates would become effective on an interim basis on or about November 1, 1983.

Subsequent to these notices, BPA and 42 parties participated in an extensive hearing process beginning April 5, 1983, and continuing until September 30, 1983, when BPA's decision was released. This process afforded parties a full opportunity to review and rebut evidence submitted by the Administrator, and allow cross-examination. In addition, BPA held field hearings throughout the Pacific Northwest to allow the public at large to comment on BPA's proposed rates.

On October 3, 1983, BPA filed its proposed transmission rate schedules with the Federal Energy Regulatory Commission (Commission). On October 26, 1983, the Commission issued an order denying BPA's request for interim approval of its transmission rates. The Commission directed BPA to cure the deficiency in its filing by submitting certain accounting information as required by the Commission. Pending resolution of the filing deficiency, the Commission extended until December 31, 1984, confirmation and approval of BPA's current transmission rates.

On October 31, 1983, BPA sent a telegram to all of its wheeling customers and the parties to the rate proceedings canceling the November 1, 1983, rate adjustment date. The telegram was solely due to the Commission's order, a circumstance beyond BPA control. BPA noted that additional details would follow. This **Federal Register** notice provides additional details regarding that telegram.

On November 23, 1983, BPA filed with the Commission an "Application for Rehearing and Request for Clarification" regarding BPA's transmission rate proposal. In pertinent part, this application establishes two points. First, BPA is undertaking a comprehensive effort to complete a "tracking system" to satisfy the concerns expressed in the Commission's Order of October 26, 1983.

The application proposes a methodology for compiling data on transmission revenue deficiencies and surpluses. Second, BPA has requested that the Commission reconsider its decision to deny interim approval of the proposed transmission rates. BPA requests that the Commission grant interim approval of proposed transmission rates for a period of 4 months pending resolution of the "tracking system" issues. With regard to the proposed Townsend-Garrison (TGT–1) transmission rate, for which there is no pre-existing rate, BPA requests interim approval as of November 1, 1983. TGT–1 is unrelated to the "tracking system" issue and interim approval would not be limited to 4 months.

In the event that BPA's application for rehearing is successful and the Commission subsequently approves BPA's transmission rates, BPA hereby gives notice that BPA anticipates that new transmission rates will be effective on the first day of the month following interim or final approval of such rates by the Commission. Under certain contractual provisions, this effective date may be July 1 following Commission approval for some customers. As a courtesy, BPA will notify its customers of the date of any future Commission hearings in the event this matter is placed on the Commission's docket. BPA now anticipates that the Commission will consider the BPA rehearing application in January of 1984.

Issued in Portland, Oregon, on December 22, 1983.

Peter T. Johnson,

Administrator.

[FR Doc. 84–62 Filed 1–3–84; 8:45 am]

BILLING CODE 6450–01–M

Office of Conservation and Renewable Energy

[Docket Nos. CE–CP–SPRM, 006–029]

Energy Conservation Program for Consumer Products; State Notices of Petition

Correction

In FR Doc. 83–34311 beginning on page 56996 in the issue of Tuesday, December 27, 1983, make the following corrections:

1. On page 56997, in the table in the entry for "Illinois", under the category for "Room air conditioner", delete the "X".

2. In the entry for "Washington", delete all "X's" under all categories.

BILLING CODE 1505–01–M

Federal Energy Regulatory Commission

[Docket No. ER84–152–000]

Allegheny Power Service Corp.; Filing

December 29, 1983.

The filing Company submits the following:

Take notice that Allegheny Power Service Corporation (Allegheny) on December 13, 1983, tendered for filing an Agreement concering limited term and supplemental power service among Monongahela Power Company (Monongahela), the Potomac Edison Company (Potomac), West Penn Power Company (West Penn) and Public Service Electric and Gas Company (Buyer).

Allegheny states that the Agreement set forth terms pursuant to which Monongahela, Potomac and West Penn will deliver to Buyer 496,000 kilowatts of limited term power and energy and 124,000 kilowatts of supplemental power and energy for 1984 or such other amounts as the parties may agree on from time-to-time in 1984 and in future periods.

Allegheny requests an effective date of January 1, 1984, and therefore requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said filing should file motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 13, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–95 Filed 1–3–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. ER78–490–002 and ER80–673–001]

American Electric Power Service Corp.; Compliance Filing

December 29, 1983.

Take notice that on December 12, 1983 American Electric Power Service Corporation (AEP) submitted for filing on behalf of Ohio Power Company (Ohio Power) Supplement No. 13 dated December 1, 1983 to the Interconnection Agreement dated January 1, 1952, between Ohio Edison Company and Ohio Power, which is an operating subsidiary of AEP.

AEP states that the purpose of the Supplement No. 13 is to settle the remaining issues in Docket Nos. ER78–490–002 and ER80–673–001, as specified in the Commission's Opinion No. 170 issued on June 3, 1983. AEP further states Supplement No. 13 is being submitted to provide additional information to the Commission pertaining to AEP's Emergency Service Schedule, and to revise its response concerning a Supplement No. 12.

AEP requests that section 1 of Supplement No. 12, dated August 9, 1983, and Supplement No. 13 dated December 1, 1983, become effective as soon as possible.

Copies of this filing have been served upon Ohio Edison Company and the Public Utilities Commission of Ohio.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before January 11, 1984. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–96 Filed 1–3–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER84–166–000]

Arizona Public Service Co.; Filing

December 29, 1983.

The filing Company submits the following:

Take notice that on December 19, 1983, Arizona Public Service Company (APS) tendered for filing a Notice of Cancellation of the Wholesale Power Agreement between APS and Plains Electric Generation and Transmission Cooperative, Inc., FERC Rate Schedule No. 83.

APS requests an effective date of December 31, 1983.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of

Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 18, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-97 Filed 1-3-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-161-000]

Carolina Power & Light Co.; Filing

December 29, 1983.

The filing Company submits the following:

Take notice that on December 14, 1984, Carolina Power & Light Company (CP&L) tendered for filing Exhibits A for the following customers and Points of Delivery:

Jones-Onslow EMC-Topsail 115 kV
Lumbee River EMC-Pembroke 115 kV
Wake EMC-Wake Forest 115 kV

CP&L also tendered for filing an executed Amendment dated August 1, 1983, to the Service Agreement between CP&L and the Town of Waynesville, FPC No. 89.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 18, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-98 Filed 1-3-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-157-000]

Cleveland Electric Illuminating Co.; Filing

December 29, 1983.

The filing Company submits the following:

Take notice that on December 13, 1983, the Cleveland Electric Illuminating Company (CEI) submitted for filing a November 22, 1983 Service Agreement between CEI and the City of Cleveland, Ohio providing transmission service, and Exhibits A and B to the Service Agreement.

CEI states that under this Agreement, it will purchase the power and energy from Ohio Power Company, and the City will pay the cost of such power purchased by CEI from the Ohio Power Company.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 18, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-99 Filed 1-3-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-158-000]

Cleveland Electric Illuminating Co.; Filing

December 29, 1983.

The filing Company submits the following:

Take notice that on December 13, 1983, Cleveland Electric Illuminating Company (CEI) submitted for filing the November 9, 1983 Service Agreement between CEI and the City of Cleveland Ohio (the City), and Exhibits A and B to the Service Agreement.

CEI states that the City has contracted to purchase 50 MW of power and associated energy generated by Big Rivers Electric Corporation, Henderson, Kentucky, from November 16, 1983 to November 22, 1983. Pursuant to this arrangement, CEI will purchase the power and energy, bought indirectly by Ohio Power Company from Big Rivers, from Ohio Power, and will sell it to the City for Ohio Power's cost of such energy.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of Commission's Rules and Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 18, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-100 Filed 1-3-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-159-000]

Cleveland Electric Illuminating Co.; Filing

December 29, 1983.

The filing Company submits the following:

Take notice that on December 13, 1983, Cleveland Electric Illuminating Company (CEI) submitted for filing a November 30, 1983 Service Agreement between CEI and the City of Cleveland, Ohio (the City), and Exhibits A and B to the Service Agreement, and an Agreement for Transmission and Purchase of Ontario Hydro Power for the City's Department of Public Utilities, dated December 2, 1983.

CEI states that Cleveland has contracted to purchase up to 20 MW of power and associated energy generated by Ontario Hydro from November 30, 1983 to February 28, 1984. Pursuant to this Agreement for Transmission and Purchase of Ontario Hydro Power, CEI will purchase the power and energy from Toledo Edison Company, and the City will purchase the power for the cost for which it was purchased by CEI.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests

should be filed on or before January 18, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-101 Filed 1-3-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER81-267-003 and ER81-341-005]

Kentucky Utilities Co.; Compliance Filing

December 29, 1983.

Take notice that on December 2, 1983, Kentucky Utilities Company (Kentucky) submitted for filing its Compliance Report pursuant to the Commission's Order of November 3, 1983, approving the Settlement Agreement.

Kentucky states that the Order approved a stipulated amount for the fuel synchronization adjustment and required Kentucky to make other changes as called for by Opinion No. 184.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before January 16, 1984. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-102 Filed 1-3-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-137-000]

Kentucky Utilities Co.; Filing

December 29, 1983.

The filing Company submits the following:

Take notice that on November 14, 1983, Kentucky Utilities Company (KUC) submitted for filing a notice of delayed construction of its 500 kV line pursuant to section 4, Subsection (f) of the Amendatory Agreement dated April 5, 1979 between KUC and the Tennessee Valley Authority (TVA).

KUC also submitted a letter of acceptance of the delay from the TVA.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 18, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervenue. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-103 Filed 1-3-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-156-000]

Montana Power Co.; Filing

December 29, 1983.

The filing Company submits the following:

Take notice that on December 13, 1983, Montana Power Company (Montana) tendered for filing a revised Appendix I as required by Exhibit C for retail sales in accordance with the provisions of the Residential Purchase and Sale Agreement (Agreement) between Montana and the Bonneville Power Administration (BPA).

Montana states that the Agreement was entered into pursuant to the Pacific Northwest Electric Power Planning and Conservation Act, Pub. L. 96-501. The Agreement provides for the exchange of electric power between Montana and BPA for the benefit of Montana's residential and farm customers.

Montana requests an effective date of June 30, 1983, and therefore requests waiver of the Commission's notice requirements.

A copy of the filing was served upon BPA.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 13, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-104 Filed 1-3-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-153-000]

Northern States Power Co.; Filing

December 29, 1983.

The filing Company submits the following:

Take notice that on December 13, 1983, Northern States Power Company (NSP) tendered for filing the Interconnection and Interchange Agreement between NSP and Hutchinson Utilities Commission of the City of Hutchinson, Hutchinson, Minnesota (Agreement).

NSP states that this Agreement provides for the interconnection of the NSP system with that of the City of Hutchinson and provides for transmission service between other municipalities with an interconnection agreement with NSP and other power suppliers.

NSP requests an effective date of February 13, 1984.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 13, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-105 Filed 1-3-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-162-000]

Pacific Gas & Electric Co.; Contract Filing

December 29, 1983.

Take notice that Pacific Gas and Electric Company (PG&E) on December

15, 1983, tendered for filing as an initial rate schedule a October 20, 1983 Letter Agreement for interruptible transmission service by PG&E for the Western Area Power Administration (Western).

The agreement provides that PG&E will transmit non-firm energy obtained by Western, from the Colorado River Storage Project, from Midway Substation to Tracy Substation, subject to the availability of transmission capacity in the PG&E system. The transmission rate of 1.0 mill/kWh is a negotiated rate. Energy delivered at Midway shall be reduced by 1.7 percent to compensate for transmission losses.

Excess non-firm energy not required for Western's preference customers load shall be sold to PG&E at Tracy Substation for banking at Western's cost for such energy (including wheeling and losses) or 85 percent of PG&E's R-1 energy rate including applicable Fuel Cost Adjustment, whichever is less.

PG&E has requested a waiver of the 60-day notice requirement of Section 35.11 of the Commission Regulations so as to permit an immediate effective date of January 1, 1982.

Copies of the filing were served upon Western and the California Public Utilities Commission.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before January 18, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-106 Filed 1-3-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-163-000]

Portland General Electric Co.; Filing

December 29, 1983.

The filing company submits the following:

Take notice that on December 15, 1983 Portland General Electric Company (PGE) tendered for filing its Revised Average System Cost which reflects PGE's Power Cost Adjustment (PCA) rate change effective with meter readings on and after July 29, 1983. The filing includes a revised Schedule 5 of Appendix 1, Exhibit C to the Residential Purchase and Sale Agreement and the authorization for the PCA change from the Public Utility Commissioner of Oregon.

PGE states that the filing shows PGE's PCA adjustment to the base ASC of 47.89 mills/kWh is (5.83) mills/kWh.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 18, 1984. Protests will be considered by the Commission determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-107 Filed 1-3-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-167-000]

Portland General Electric Co.; Filing

December 29, 1983.

The filing Company submits the following:

Take notice that on December 19, 1983, Portland General Electric Company (PGE) tendered for filing the Peak Sale-Energy Exchange Agreement (Agreement).

PGE states that the purpose of the Agreement is to supply the City of Seattle, City Light Department, at its request, 100 megawatts of firm peaking capacity not to exceed 8,400 megawatt hours during any seven-day period. The term of the Agreement is from December 1, 1983 to February 28, 1984. PGE also states that the Agreement provides that Seattle shall pay PGE $450,000 for firm peaking capacity plus $1.85 times each kilowatt of capacity scheduled.

PGE further states that estimates of the expected transactions and revenues under this rate schedule are impossible to give at this time.

PGE requests an effective date of December 1, 1983, and therefore requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 18, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-108 Filed 1-3-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-155-000]

Public Service Company of New Mexico; Filing

December 29, 1983.

The filing Company submits the following:

Take notice that on behalf of the following utilities: Arizona Public Service Company (APS), El Paso Electric Company (EPE), Public Service Company (SPS), and Texas-New Mexico Power Company (TNP) hereinafter referred to as the Jurisdictional Participants, Public Service Company of New Mexico (PSNM) tendered for filing on December 13, 1983, the Southwest Bulk Power Market Experiment Participation Agreement. In addition to the Jurisdictional Participants, the City of Farmington (COF), and the Salt River Project Agricultural Improvement and Power District (SRP) are participating in this experiment. The primary purpose of the Participating Agreement is to create a controlled bulk power market experiment for limited nonrequirements power interchanges between the participating utilities. The Participation Agreement has an initial term of one year, commencing January 1, 1984, with a possible one year extension.

In order to enable the experiment to be undertaken, the participants have requested FERC approval of the Participation Agreement as an initial filing, which includes approval of a zone of reasonableness for the pricing of economy and block energy transactions. Approval is also requested for certain

transmission service to be provided by the participants. A portion of the incentive revenues received by the selling participants, is requested to not be required to flow through the experiment adjustment clause, but be retained by the selling utility as incentive for entering into the transaction.

Additionally the participants have requested that the Commission's Order No. 84, as well as certain other rules and regulations such as supplemental filing requirements and filing of notice of termination not be made applicable to this experiment.

The participants have indicated that without the above-referenced approvals, the participants reasons for participating in this experiment would be substantially reduced which might result in the experiment not being pursued.

Copies of this filing were served on the above listed participants, the New Mexico Public Service Commission, the Texas Public Utility Commission, and the Arizona State Corporation Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 13, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-109 Filed 1-3-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-471-001]

Public Service Company of Oklahoma; Compliance Filing

December 29, 1983.

Take notice that on November 28, 1983, the Public Service Company of Oklahoma (PSO) submitted for filing its Revised Schedule PRA that reflects the Settlement Agreement reached in Docket No. ER80-592-000, *et al.*

PSO requests that the Commission cancel Supplement No. 8 to Rate Schedule FPC No. 172 and accept Service Schedule PRA in its place with an effective date of October 19, 1983.

PSO states that there is no refund due to the Western Farmers Electric Cooperative because no transactions pursuant to service schedule PRA have occurred.

PSO further states that copies of this filing have been sent to the Oklahoma Corporation Commission and Western Farmer's Electric Cooperative.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before January 16, 1984. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-87 Filed 1-3-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-178-001]

Public Service Co. of Oklahoma; Compliance Filing

December 29, 1983.

Take Notice that on November 28, 1983, Public Service Company of Oklahoma (PSO) submitted for filing its Revised Service Schedule PRA which reflects the settlement agreement reached in Docket No. ER80-594, *et al* on October 19, 1983.

PSO requests that the Commission cancel Supplement No. 3 to Rate Schedule FERC No. 223 and accept the Service Schedule PRA with an effective date of October 19, 1983.

PSO states that no refund is due to the Southwestern Power Administration because no transactions have occurred that are subject to service schedule PRA.

PSO further states that copies of this letter have been sent to the Oklahoma Corporation Commission and the Southwestern Power Administration.

Any person desiring to the heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before January 16, 1984. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-88 Filed 1-3-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-179-001]

Public Service Company of Oklahoma; Compliance Filing

December 29, 1983.

Take notice that on November 28, 1983, the Public Service Company of Oklahoma (PSO) submitted for filing its Revised Service Schedule PRA to an Interchange Agreement between PSO and the Grant River Dam Authority (GRDA).

PSO requests that the Commission cancel Supplement No. 5 to Rate Schedule FERC No. 224 and accept service schedule PRA to be effective as of October 19, 1983.

PSO states that it is also submitting the refund documents served on GRDA on November 11, 1983.

PSO further states that copies of this filing have been sent to the Oklahoma Corporation Commission, Counsel for the intervenors (Oklahoma Municipal Power Authority, Municipal Electric Systems of Oklahoma, and Municipal wholesale customers of PSO), and GRDA.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before January 16, 1984. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-89 Filed 1-3-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-160-000]

Southern California Edison Company; Filing

December 29, 1983.

The filing Company submits the following:

Take notice that on December 14, 1983, Southern California Edison (SCE) submitted for filing as an initial rate schedule the Coordination Agreement Between Southern California Edison and the State of California Department of Water Resources (Agreement).

SCE states that the Agreement provides for the sale of non-firm energy, the short-term exchange of energy, energy banking for use at San Luis Reservoir, and seasonal capacity and energy exchange, pursuant to Sections 6, 7, 8, and 9, respectively, of the Agreement.

SCE further states charges for non-firm energy transactions under section 6 of the Agreement, unless otherwise provided, be equal to the average of the Decremental Energy Value and the Incremental Energy Cost.

SCE proposes an effective date of 60 days after receipt of this filing by the Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 18, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-90 Filed 1-3-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-164-000]

Toledo Edison Co.; Filing

December 29, 1983.

The filing Company submits the following:

Take notice that on December 16, 1983, Toledo Edison Company (Toledo) submitted for filing Original Sheet Nos. 41 through 48 to the Toledo's FERC Electric Tariff, Original Volume No. 1, setting forth a proposed Partial Requirements Rate for inclusion in that tariff.

Toledo states that under the Partial Requirements Rate, any customer may purchase any portion, up to and including 100 percent, of its firm power requirements from Toledo. The rate for power and energy purchased by any customer from Toledo includes a Generation Capacity Billing Charge, an Energy Charge, and a fuel cost adjustment charge.

In addition, Toledo states that it will transmit all power purchased by a customer, whether or not the power is purchased from Toledo Edison.

Toledo requests that the Partial Requirements be made effective on March 1, 1984.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 13, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-91 Filed 1-3-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-165-000]

Toledo Edison Co.; Filing

December 29, 1983.

The filing Company submits the following:

Take notice that on December 16, 1983, Toledo Edison Company (Toledo) submitted for filing as an initial rate schedule a Municipal Resale Service Rate Agreement dated as of June 1, 1983, between the Toledo Edison Company and American Municipal Power-Ohio, Inc. (AMP-Ohio).

Toledo states that under the enclosed Agreement, Toledo will provide to AMP-Ohio a portion of the power and energy needed to serve those municipal electric systems listed on Exhibit A, which were previously directed to Toledo Edison. In addition, Toledo has agreed to transmit such power for AMP-Ohio to the municipal systems designated on Exhibit A at the rates specified in the Municipal Resale Service Rate Agreement.

Toledo requests an effective date of February 1, 1984.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 13, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-92 Filed 1-3-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-64-000]

Virginia Electric & Power Co.; Notice of Revised Filing

December 29, 1983.

Take notice that on December 1, 1983 Virginia Electric and Power Company (Vepco) submitted for filing an Agreement for the Purchase of Electricity for Resale (Agreement) by Vepco and North Carolina Electric Membership Corporation (NCEMC).

Vepco states that the Agreement has been revised extensively, and supercedes the unexecuted version of the Agreement filed on November 1, 1983.

Vepco requests that the Agreement be accepted for filing, without suspension, as of November 1, 1983.

Vepco requests that the Agreement become effective immediately, and therefore, requests a waiver of 18 CFR 5.3.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 13, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-93 Filed 1-3-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-89-001]

Columbia Gas Transmission Corp.; Notice of Petition for Waiver of Rule

December 29, 1983.

Take notice that on December 23, 1983, Columbia Gas Transmission Corporation (Petitioner), P.O. Box 1273, Charleston, West Virginia 25325-1273, filed in Docket No. CP84-89-001 a petition pursuant to § 385.207 of the Commission's Rules of Practice and Procedure, for a waiver of § 157.209(e)(1) of the Commission's Regulations. Petitioner seeks waiver of § 157.209(e)(1) to permit it to continue to transport gas on behalf of an industrial customer in an automatically authorized transaction commenced under § 157.209(a)(2).

Petitioner states that, pursuant to § 157.209(a)(2), it initiated transportation on behalf of SCM Corporation (SCM), an industrial customer of Baltimore Gas and Electric Company in Baltimore, Maryland, on September 9, 1983. Accordingly, the 120-day authorization period prescribed by § 157.209(e)(1) extends only through January 6, 1984.

Petitioner further states that its Request for Authority to Transport, seeking long-term authorization for the above transportation, was filed in Docket No. CP84-89-000 on November 23, 1983, and that notice of that Request, required under § 157.205, entails a 45-day comment period before final action will be taken by the Commission. That notice was issued by the Commission on December 27, 1983.

Because the comment period will extend beyond the 120-day authorization period, petitioner asserts that should Columbia be forced to cease transportation on behalf of SCM on January 6, 1984, SCM would lose a low-cost gas supply and would be forced to switch to higher-cost fuel oil. Petitioner also asserts that should transportation on behalf of SCM cease, Columbia would lose relief from take-or-pay exposure provided thereby, and Columbia's customers would lose in excess of $0.01 per dekatherm of natural gas which other wise would be transported for SCM.

Any person desiring to be heard or to make any protest with reference to said petition should on or before January 5, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene, or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (§§ 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any persons wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene. All persons who have heretofore filed need not file again.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-84 Filed 1-3-84; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-180635; PH-FRL-2499-6]

Oregon Department of Agriculture; Receipt of Application for Specific Exemption To Use an Unregistered Pesticide, 3,4,5-Trimethoxybenzoyl Methyl Resperate; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Oregon Department of Agriculture (hereafter referred to as the "Applicant") for a specific exemption to use the active ingredient 3,4,5-trimethoxybenzoyl methyl reserpate to control Aplodontia (*Aplodontia rufa*) on 1,200 acres of Douglas fir plantations in two counties in Oregon. EPA is soliciting comment before making the decision whether to grant the specific exemption.

DATE: Comments must be received on or before January 19, 1984.

ADDRESS: By mail, submit comments to:

Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, bring comments to: Rm. 236, CM 2, 1921 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: By mail: Donald Stubbs, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. Office location and telephone number: Rm. 716B, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1192).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any registration provision of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue a specific exemption to permit the use of 3,4,5-trimethoxy benzoyl methyl resperate to control Aplodontia (*Aplodontia rufa*), mountain beaver or boomer, not to be confused with the common beaver) in Elliott State Forest in Coos and Douglas Counties in Oregon. Information in accordance with 40 CFR Part 166 was submitted as part of this request.

The Applicant claims that trapping is the method of contol of these pests. Trapping requires repeated visits to set and check traps on the part of trappers, thus limiting the acreage which can be treated; costs become prohibitive. Trapping costs amount to $100 per acre, baiting would cost $20 per acre, a saving of approximately $96,000 per year. Non-treatment can result in losses up to $1,250 per acre adding up to nearly $1.5 million in losses in this single forest area. The Applicant proposes to treat Douglas fir plantations in growth areas of between the ages of 3 to 15 years. Reforestation in 1983-84 due to Aplodontia damage alone would amount to $400 per acre or $480,000 over the 1,200 acre forest with trapping. With baiting, reforestation needs are expected to be minimal.

Aplodontia are primitive rodents that are physiologically unable to produce concentrated urine and are highly vulnerable to hypothermia. The active ingredient is a tranquilizer that induces a reduction in body temperature and causes death within 24 to 48 hours after bait ingestion.

The Applicant proposes to use approximately 1,200 grams of 3,4,5-trimethoxybenzoyl methyl reserpate in an extruded bait pellet formulation using 1.5 mg of the active ingredient per gram (w/w dry) or 0.15 percent active ingredient in each pellet. Pellets would be formulated from grain, alfalfa, and fresh apples and mixed with a high viscosity binder. It is estimated that the rate of bait application will amount to 1 gram (0.0022 lb) active ingredient per acre (1,200 grams active ingredient for the 1,200 acres proposed for treatment). Application would be under the supervision of a licensed pesticide applicator or pest control consultant. Each applicator would be trained in:

1. The biology and ecology of the Aplidontia.
2. Safe handling of the toxic grain and apple baits.
3. Proper placement of the baits.
4. Consideration of environmental conditions before baiting is begun.
5. Necessary record keeping.

6. Other competency standards.

Treatment would be made once in any area, and the application period would be from December 1983 through April 30, 1984. To prevent unreasonable hazard to the environment, the Applicant proposes to apply baits inside main runways of active Aplodontia burrows in piles at least 12 inches from any surface opening and to avoid burrows in or near the edges of streams.

This notice does not constitute a decision by EPA on the application itself. The chemical 3,4,5-trimethoxybenzoyl methyl reserpate is an unregistered pesticide and therefore, the Agency has decided that public notice and opportunity for public comment pursuant to 40 CFR 166.10 is called for as a part of the informal adjudication for specific exemptions. Accordingly, interested persons may submit written views on this subject to the Program Management and Support Division at the address above. The comments must be received on or before January 19, 1984, and should bear the identifying notation OPP-180635. All written comment filed pursuant to this notice will be available for public inspection in Rm. 236, Crystal Mall No. 2, at the address given above, from 8:00 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by Oregon.

Dated: December 16, 1983.

James M. Conlon,

Acting Director, Office of Pesticide Programs.

[FR Doc. 84-3 Filed 1-3-84; 8:45 am]

BILLING CODE 6560-50-M

[PF-358; PH-FRL 2499-5]

Certain Companies; Pesticide and Feed Additive Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received pesticide and feed additive petitions relating to the establishment of tolerances for residues of certain pesticide chemicals in or on certain commodities.

ADDRESS: By mail, submit written comments to:

Program Management and Support Division (TS-757C), Attn: Product Manager (PM) 17, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, deliver comments to: Rm. 236, CM#2, Environmental Protection Agency, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Written comments must be identified by the document control number [PF-358]. All written comments filed in response to this notice will be available for public inspection in the Program Management and Support Division office at the address above from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Timothy A. Gardner, PM-17, CM#2, Rm. 207, (703-557-2690).

SUPPLEMENTARY INFORMATION: EPA gives notice that the Agency has received the following pesticide and feed additive petitions relating to the establishment of certain pesticide chemicals in or on certain commodities in accordance with the Federal Food, Drug, and Cosmetic Act. The analytical method for determining residues, where required, is given in each petition.

Initial Filings

1. *PP 4F2985.* ICI Americas, Inc., Agricultural Chemicals Division, Concord Pike and New Murphy Road Wilmington, DE 19897. Proposes amending 40 CFR 180.378 by establishing tolerances for the combined residues of the insecticide permethrin [(3-phenoxyphenyl) methyl 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate] and its metabolites in or on the commodity tomatoes at 2.0 parts per million (ppm). The proposed analytical method for determining residues is gas chromatography.

2. *PP 4F2995.* ICI Americas, Inc. Proposes amending 40 CFR 180.378 by establishing tolerances for the combined residues of the insecticide permethrin or on the commodity pistachios at 0.1 ppm. The proposed analytical method for determining residues is gas chromatography.

3. *PP 4F2981.* FMC Corp., Agricultural Chemical Group, 2000 Market St., Philadelphia, PA 19103. Proposes amending 40 CFR 180.378 by establishing tolerances for the combined residues of the insecticide permethrin in or on the commodity sunflowers at 0.05 ppm. The proposed analytical method for determining residues is gas chromatography.

4. *PP 4F3003.* Shell Oil Co., Suite 200, 1025 Connecticut Ave., NW, Washington, D.C. 20036. Proposes amending 40 CFR 180.379 by establishing tolerances for residues of the insecticide cyano-(3-phenoxyphenyl) methyl-4-chloro-alpha-(1-methylethyl) benzeneacetate in or on the commodities as follows:

Commodities	Parts per million (ppm)
Alfalfa	10.0
Alfalfa hay	25.0
Eggs	0.2
Fat of cattle, goats, hogs, horses, and sheep	2.0
Meat of cattle, goats, hogs, horses, and sheep	0.5
Milk	0.4
Milk fat	9.0
Poultry fat	0.15
Poultry meat byproducts	0.15
Poultry meat	0.03
Sorghum grain	8.0
Sorghum fodder and forage	15.0

The proposed analytical method for determining residues is gas chromatography.

5. *FAP 4H5419.* Shell Oil Co. Proposes amending 21 CFR Part 561 by establishing a regulation permitting residues of the above insecticide (PP 4F3003) in or on the commodity sorghum milled products at 15.0 ppm.

6. *PP 4F2994.* Shell Oil Co. Proposes amending 40 CFR 180.379 by establishing tolerances for residues of the above insecticide (PP 4F3003) in or on the commodity English walnuts at 0.2 ppm. The proposed analytical method for determining residues is gas chromatography.

7. *PP 4F3004.* Shell Oil Co. Proposes amending 40 CFR 180.379 by establishing tolerances for residues of the above insecticide (PP 4F3003) in or on the commodities grass hay and grass (pasture and rangeland) at 15.0 ppm.

8. *PP 4F3002.* SDS Biotech Corp., 7528 Auburn Rd., P.O. Box 348, Plainesville, OH 44077. Proposes amending 40 CFR 180.379 by establishing tolerances for residues of the above insecticide (PP 4F3003) in or on the commodities poultry eggs at 0.03 ppm; poultry fat, meat and meat byproducts at 0.2 ppm. The proposed analytical method for determining residues is gas chromatography.

(Sec. 408(d)(2) 68 Stat. 512 (21 U.S.C. 346a(d)(2); 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348)))

Dated: December 20, 1983.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 84-2 Filed 1-3-84; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-42049; OTS-FRL 2501-7]

1,2-Butylene Oxide; Response to the Interagency Testing Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The First Report of the Interagency Testing Committee (ITC) designated the category of alkyl epoxides for consideration by EPA for health and environmental effects testing. This notice provides EPA's response to the ITC's recommendations with respect to 1,2-butylene oxide, one member of the alkyl epoxides category. Other category members are being addressed in separate **Federal Register** notices.

The available data and the testing in progress on 1,2-butylene oxide appear to address adequately the ITC's concerns that this chemical's potential for carcinogenicity, teratogenicity, and other chronic effects be evaluated. In the case of reproductive and neurotoxic effects, EPA believes that testing being performed for these effects on propylene oxide can also serve as the basis for any needed regulation and control of 1,2-butylene oxide exposure for these two effects. A decision for additional mutagenicity testing on 1,2-butylene oxide will be postponed until the results of a number of mutagenicity tests on 1,2-butylene oxide and ethylene oxide are analyzed by the Agency. EPA is not pursuing the ITC's recommendation for an epidemiological study because a toxicological endpoint has not been sufficiently well characterized to warrant an epidemiological study at this time.

EPA has sufficient data to reasonably predict the environmental fate of 1,2-butylene oxide. Consequently, EPA is not initiating rulemaking under section 4(a) of the Toxic Substances Control Act (TSCA) to require health or environmental fate testing of 1,2-butylene oxide at this time.

DATE: Submit written comments on or before February 21, 1984.

ADDRESS: Submit written comments in triplicate identified by the document control number (OPTS-42049) to:

TSCA Public Information Office (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-108, 401 M St. SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Jack P. McCarthy, Director, TSCA Assistance Office (TS-799), Offfice of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St. SW., Washington, D.C. 20460, Toll free: (800-424-9065), In Washington, D.C.: (554-1404), Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION:

I. Background

Section 4(a) of the Toxic Substances Control Act (TSCA) (Pub. L. 94-469, 90 Stat. 2003 *et seq.*; 15 U.S.C. 2601 *et seq.*) authorizes EPA to promulgate regulations requiring testing of chemical substances and mixtures to develop data relevant to determining the risks that such chemicals may present to health and the environment.

Section 4(e) of TSCA established an Interagency Testing Committee (ITC) to recommend to EPA a list of chemicals to be considered for the promulgation of testing rules under section 4(a) of TSCA. The ITC placed the alkyl epoxides category on its priority testing list in October 1977. The ITC recommended testing the alkyl epoxides for carcinogencity, mutagencity, teratogenicity, other chronic effects, and environmental effects. The ITC recommended that the chronic effects testing consider organ effects and behavioral changes and that the environmental testing focus on the fate of epoxides in the environment. Epidemiological studies were also recommended for two or three of the highest exposure compounds if suitable cohorts could be identified.

The alkyl epoxides category, as defined by the ITC, includes all noncyclic aliphatic hydrocarbons with one or more epoxide functional groups. This notice addresses a single member of this category, 1,2-butylene oxide. Other members of the category will be addressed in other **Federal Register** notices.

A. Production and Uses

1. *Production.* Dow Chemical Company is the only U.S. producer of 1,2-butylene oxide (Ref. 1). This production occurs at the Midland, Michigan, plant using the chlorohydrin process. 1,2-Butylene oxide produced by this process is at least 98 percent pure (Ref. 2).

In 1977, 1,2-butylene oxide production in the U.S. was approximately 5.7 million pounds or about 0.1 percent of the total alkyl epoxides produced (Ref. 3). Total demand for 1,2-butylene oxide was estimated at eight million pounds in 1978 (Ref. 4). The same source projected demand to increase moderately to about ten million pounds in 1983 and eleven million pounds in 1985 (Ref. 4). According to Dow (Ref. 5), 1,2-butylene oxide is produced in the U.S. in quantities of less than 10 million pounds per year, and about a half million pounds is imported into the U.S. annually. However, according to BOC-Imports (Ref. 6), imports of 1,2-butylene oxide totalled 2.5 million pounds in 1981.

2. *Uses.* According to Dow, the principal use of 1,2-butylene oxide is as a stabilizer in chlorinated hydrocarbon solvents. About 75 percent of 1,2-butylene oxide is used for this purpose and constitutes 0.1 to 0.7 weight percent of the solvent formulation. About 20 percent is used as a chemical intermediate and about 5 percent is exported (Refs. 3 and 5).

B. Human Exposure

1. *Occupational exposure.* The National Occupational Hazard Survey estimated 43,705 people were exposed to 1,2-butylene oxide (Ref. 7). Estimates on human exposure to 1,2-butylene oxide provided by Dow (Ref. 5) are shown in this table.

TABLE—DOW'S ESTIMATES ON HUMAN EXPOSURE TO 1,2-BUTYLENE OXIDE

Activity	Number of persons exposed
Manufacturing	<100
Processing	<500
Distribution	<100
Use and disposal	<50,000

The large number of persons exposed during the use of 1,2-butylene oxide reflects its major use as a solvent stabilizer. Dow has conducted industrial hygiene surveys to determine occupational exposure to 1,2-butylene oxide. A review of Dow surveys for the past 10 years shows the exposure levels in the air to 1,2-butylene oxide (Ref. 5) from its use as a stabilizer for the following solvents: trichloroethylene—1,2-butylene oxide exposure <0.5 parts per million (ppm); 1,1,1-trichlorethane—1,2-butylene oxide exposure <0.5 ppm; and dichloromethane—1,2-butylene oxide exposure <1 ppm.

In the absence of an Occupational Safety and Health Administration (OSHA) standard or an American Conference of Governmental Industrial Hygienists threshold limit value (ACGIH TLV), Dow has set a 40 ppm 8-hour time-weighted-average (TWA) limit for exposure in its manufacturing and processing facilities.

2. *Consumer exposure.* Chlorinated solvents such as 1,1,1-trichloroethane are available to consumers and may contain 1,2-butylene oxide as a stabilizer. Therefore, consumers may be exposed to low levels of 1,2-butylene oxide when they use these solvents.

II. Analysis of the ITC's Concerns

EPA's response to the specific ITC recommendations is set forth below.

A. Carcinogenicity

The National Toxicology Program (NTP) is sponsoring an inhalation bioassay with 1,2-butylene oxide with B6C3F1 mice and Fisher 344 rats. Exposure levels are 0, 200, and 400 ppm in the rats and 0, 50, and 100 ppm in the mice. The exposure phase began in November 1981, and is to run to November 1983. The data from this study should be sufficient to reasonably determine the carcinogenic effects of 1,2-butylene oxide.

B. Mutagenicity

1,2-Butylene oxide gave positive results in gene mutation assays in *Salmonella* (Refs. 8 through 11), in *N. crassa* (Ref. 12), in mouse lymphoma cells (Ref. 8), and in feeding studies in *Drosophila* in the sex-linked recessive lethal test (Ref. 8). A negative result was observed in *Drosophila* in the sex-linked recessive lethal test via inhalation (Ref. 13).

A positive result in a feeding study in *Drosophila* in the reciprocal translocation test, a test to detect chromosomal aberrations, has been reported (Ref. 8). Negative results have also been reported by McGregor (Ref. 13) in the following tests to detect chromosomal aberrations and primary DNA damage: (1) Dominant lethal in male rats; (2) sperm abnormality test in male mice; (3) cytogenetic test in male and female rat bone marrow cells; and (4) unscheduled DNA synthesis assay in human diploid fibroblasts.

For a number of reasons, EPA is not proposing additional mutagenicity testing on 1,2-butylene oxide at this time. First, EPA believes that a further evaluation needs to be made of the apparently conflicting results from the two sex-linked recessive lethal tests in *Drosophila* on 1,2-butylene oxide. A feeding study was positive (Ref. 8), while an inhalation study was negative (Ref. 13). Secondly, a number of mutagenicity tests are in progress on ethylene oxide, which is the alkyl epoxide having two fewer carbon atoms than 1,2-butylene oxide. On the basis of structure activity relationship considerations between 1,2-butylene oxide and ethylene oxide, and the fact that ethylene oxide consistently has shown greater activity in mutagenesis assays, and has tested positive in more mutagenesis assays than 1,2-butylene oxide, EPA believes that results of the ongoing mutagenicity testing on ethylene oxide along with available data on 1,2-butylene oxide will provide guidance as to what, if any, further mutagenicity testing on 1,2-butylene oxide may be appropriate. Inhalation mutagenicity testing in progress on ethylene oxide includes: (1) Mouse specific locus test; (2) biochemical specific locus test in mice; (3) heritable translocation test in mice; (4) sperm alkylation in mice; and (5) sperm alkylation in *Drosophila*.

After the data from the ongoing ethylene oxide mutagenicity testing and existing 1,2-butylene oxide mutagenicity data, including that from the two sex-linked recessive lethal tests in *Drosophila*, are analyzed by the Agency, the Agency will consider: (1) Whether a mouse specific locus test or other additional mutagenicity testing on 1,2-butylene oxide is necessary or (2) whether ethylene oxide and/or propylene oxide mutagenicity data will provide a sufficient basis for mutagenicity risk assessment for 1,2-butylene oxide without further testing of 1,2-butylene oxide for this effect. In making its analysis, EPA will take into account available data on other effects that may provide sufficient basis for regulation. The Agency is interested in public comment on the various aspects of assessing mutagenicity testing needs for 1,2-butylene oxide.

C. Teratogenicity

A teratogenicity study on 1,2-butylene oxide in rats and in rabbits via inhalation at concentrations of 250 ppm and 1,000 ppm has been reported by Sikov *et al.* (Ref. 14). Wistar rats were exposed for 7 hours per day, 5 days per week 3 weeks. They were then mated and exposed daily through the 19th day of gestation (dg 19). New Zealand white rabbits were artificially inseminated and exposed for 7 hours daily through dg 24. The rats were killed at dg 21 and the rabbits at dg 30. Pregnant animals were examined for toxic changes including altered tissue weights and histopathologic effects. Litters were evaluated using several measures of embryotoxicity and live fetuses were examined for external, visceral, and skeletal malformations. No significant effects were observed in the rats exposed to either 250 ppm or 1,000 ppm 1,2-butylene oxide. Maternal toxicity, developmental toxicity and embryotoxicity were observed in the rabbit at 1,000 ppm. Specific effects observed were: (1) Maternal mortality; (2) fetuses markedly smaller than controls; (3) decrease in number of live fetuses per litter; and (4) increased frequency of resorptions. At 250 ppm significantly elevated mortality in the dams was observed. No other significant effects were observed at 250 ppm in the rabbit.

The data from this study are sufficient to reasonably determine the teratogenic effects of 1,2-butylene oxide.

D. Other Chronic Effects

As a matter of general policy under section 4 of TSCA, EPA generally accepts data from well-conducted oncogenicity studies as being sufficient to assess the chronic toxicity of a chemical. EPA has concluded that adequate data will be available from the various subchronic studies (Refs. 15 through 17) that have been conducted and the ongoing oncogenicity study to reasonably determine or predict the other chronic effects of 1,2-butylene oxide with the exception of reproductive and neurotoxic effects.

E. Reproductive Effects

Both male and female reproductive organs were examined microscopically from mice and rats exposed to sublethal concentrations of 1,2-butylene oxide in a 9-day subchronic study (Ref. 16) and a 90-day subchronic study with exposures of up to 600 ppm 1,2-butylene oxide (Ref. 16), without any detectable treatment-related effects indicative of impaired reproductive function. EPA is not aware of any reproductive effects studies on 1,2-butylene oxide.

EPA concludes that it does not have sufficient data to reasonably predict or determine the reproductive effects of 1,2-butylene oxide. However, EPA is not proposing further reproductive effects testing of 1,2-butylene oxide at this time. EPA proposed to Dow that the results of the industry-sponsored propylene oxide 2-generation reproduction study (OPTS-42028A, appearing elsewhere in this issue of the **Federal Register**, discusses EPA's conclusions with respect to testing needs for propylene oxide) serve as the basis for any needed regulation and control of 1,2-butylene oxide exposure for reproductive effects. Factors relating to this proposal were that (a) Dow is the only domestic producer of 1,2-butylene oxide, (b) almost all exposures to 1,2-butylene oxide are low-level exposures resulting from its use as a stabilizer in chlorinated hydrocarbon solvents, and (c) testing to date, including that for mutagenicity and teratogenicity, has shown 1,2-butylene oxide to have a lower order of toxicity than propylene oxide. EPA believes that controlling 1,2-butylene oxide exposure on the basis of propylene oxide reproductive effects data will provide at least as much protection as basing control of 1,2-butylene oxide on a 1,2-butylene oxide reproductive effects study. Dow has agreed to EPA's proposal. If propylene oxide shows

adverse reproductive effects, Dow will enter into discussions with the Agency, which will determine what actions are required to reduce occupational exposure to 1,2-butylene oxide as a result of its manufacture, distribution in commerce, processing, use, and disposal. Such actions would continue in effect until Dow came forward with new data showing that such actions are unnecessary for 1,2-butylene oxide (Ref. 18). Because of this agreement between Dow and EPA, EPA is not proposing reproductive effects testing of 1,2-butylene oxide at this time.

F. Neurotoxicity

Miller *et al.* (Ref. 16) have conducted 9-day and 90-day subchronic studies on 1,2-butylene oxide in mice and rats. A number of neuropathological examinations were conducted. In addition to the histopathology of nervous tissue, all animals were observed daily for appearance and change in demeanor. In the 9-day study, all mice exposed to 1,600 ppm 1,2-butylene oxide died. The only lesions observed in the nervous system in either study were non-specific degeneration and inflammation of the olfactory epithelium, even at sublethal concentrations. These studies are weak negatives because no systematic functional tests were performed, no data were reported, and pathological methods were not described. This neurotoxicity assessment can best be regarded as demonstrating that no profound (rather than no) effects occurred owing to exposure to 1,2-butylene oxide. EPA concludes that it does not have sufficient data to reasonably predict or determine the neurotoxicity of 1,2-butylene oxide.

However, EPA is not proposing further neurotoxicity testing of 1,2-butylene oxide at this time. EPA proposed to Dow that the results of the industry-sponsored propylene oxide neurotoxicity testing (OPTS 42028A, appearing elsewhere in this issue of the **Federal Register**, discusses EPA's conclusions with respect to testing needs for propylene oxide) serve as the basis for regulation and control of 1,2-butylene oxide exposure for neurotoxicity. Factors relating to this proposal were that (a) Dow is the only domestic producer of 1,2-butylene oxide, (b) almost all exposures to butylene oxide are low level exposures resulting from its use as a stabilizer in chlorinated hydrocarbon solvents, and (c) testing to date, including that for mutagenicity, teratogenicity, and neurotoxicity, has shown 1,2-butylene oxide to have a lower order of toxicity than propylene oxide. EPA believes that controlling 1,2-butylene oxide exposure on the basis of propylene oxide neurotoxicity data will provide at least as much protection as basing control of 1,2-butylene oxide exposure on a 1,2-butylene oxide neurotoxicity study. Dow has agreed to EPA's proposal. If propylene oxide shows adverse neurotoxic effects, Dow will enter into discussions with the agency, which will determine what actions are required to reduce occupational exposure to 1,2-butylene oxide during its manufacture, distribution in commerce, processing, use, and disposal. Such actions would continue in effect until Dow came forward with new data showing that such actions are unnecessary for 1,2-butylene oxide (Ref. 18). Because of this agreement between Dow and EPA, EPA is not proposing neurotoxicity testing of 1,2-butylene oxide at this time.

G. Epidemiology

The Agency has concluded that a toxicological endpoint has not been sufficiently well characterized for 1,2-butylene oxide to warrant requiring an epidemiological study at this time.

H. Environmental Fate: Sufficiency of Data

The ITC expressed concern for the reaction products of alkyl epoxides in the environment. Therefore, the ITC recommended that the fate of alkyl epoxides in the environment should be determined through testing. EPA has concluded that there are sufficient data to reasonably predict the environmental fate, including the characterization of degradation products, of the 1,2-butylene oxide that might be released during manufacturing, distribution in commerce, processing, use, and disposal and that there is no need for EPA to require testing to further characterize the fate of such releases.

On the basis of the atmospheric emission factor of 0.000802 for propylene oxide as a result of the chlorohydrin process (Ref. 19), EPA estimates the amount of 1,2-butylene oxide lost to the atmosphere during production to be 8,000 lbs. annually. On the basis of structure-activity relationship considerations between propylene oxide and 1,2-butylene oxide, EPA predicts that 1,2-butylene oxide will undergo atmospheric hydrolysis and oxidation via hydroxyl-free radicals with rates similar to those of propylene oxide. The estimated half-life for atmospheric oxidation via hydroxyl-free radicals for propylene oxide is 6.1 days (Ref. 20). On the basis of structure-activity relationship considerations between propylene oxide and 1,2-butylene oxide, one would predict that the atmospheric reaction mechanisms and degradation products for 1,2-butylene oxide closely parallel those for propylene oxide. (OPTS 42028A, appearing elsewhere in this issue of the **Federal Register**, discusses EPA's conclusions with respect to testing needs for propylene oxide.)

There are no published data on the release of 1,2-butylene oxide into bodies of water or any monitoring data of 1,2-butylene oxide concentrations in water. However, on the basis of structure-activity relationship considerations among 1,2-butylene oxide, propylene oxide, and ethylene oxide, EPA estimates the hydrolysis half-life of 1,2-butylene oxide to be siilar to those for ethylene oxide and propylene oxide. The hydrolysis half-lives of ethylene oxide and propylene oxide at pH 7 are approximately 14 days (Ref. 21) and 12 days (Ref. 22), respectively. Hydrolysis of butylene oxide would produce butylene glycol. In salt water, butylene chlorohydrin would also be produced. A BOD_5 for 1,2-butylene oxide of 6 percent has been measured (Ref. 23)

On the basis of the environmental release, biodegradation, and environmental fate information on 1,2-butylene oxide or its homologs discussed above, EPA concludes that sufficient data exist to reasonably predict the environmental fate, including the characterization of degradation products, of the 1,2-butylene oxide that might be released during the manufacture, distribution in commerce, processing, use and disposal of 1,2-butylene oxide and that there is no need for EPA to require testing to further characterize that fate of such releases.

I. Other Testing

Although it was not recommended by the ITC, EPA recognized that a data gap existed for dermal sensitization testing of 1,2-butylene oxide Dow Chemical Company is conducting this test voluntarily. The study began in October 1983 and the final report is due in January 1984.

III. Decision Not To Require Testing

The EPA has decided not to initiate rulemaking at this time under section 4(a) of TSCA to require further health and environmental fate testing of 1,2-butylene oxide. This decision is based on a review of the available data and ongoing testing for this chemical and on agreements reached between EPA and Doe Chemical Company, the sole U.S. manufacturer of 1,2-butylene oxide, that exposure to the chemical will be restricted based on testing of propylene oxide to be performed. The most recent

information available to EPA indicates that available data are sufficient to reasonably predict or determine the teratogenicity and environmental fate of 1,2-butylene oxide.

Data from ongoing testing should be sufficient to reasonably predict the carcinogenicity of 1,2-butylene oxide. A decision for additional mutagenicity testing on 1,2-butylene oxide will be postponed until the result of a number of mutagenicity tests on 1,2-butylene oxide and ethylene oxide are analyzed by the Agency. Reproductive and neurotoxic effects testing are not being proposed because Dow has accepted EPA's proposal that propylene oxide testing will serve as the basis for any needed regulation and control of 1,2-butylene oxide exposure for these two effects. EPA is not proposing an epidemiological study for 1,2-butylene oxide because a toxicological endpoint has not been sufficiently well characterized to warrant an epidemiological study at this time. Therefore, EPA is not proposing a test rule for 1,2-butylene oxide at this time. Should new information reveal a need for additional testing, the Agency reserves the right to promulgate a test rule.

IV. Issues

1. EPA is not proposing reproductive or neurotoxic effects testing of 1,2-butylene oxide because Dow has accepted EPA's proposal that propylene oxide testing will serve as the basis for regulating and control of 1,2-butylene oxide exposure for these effects. The agency invites comments on this approach.

2. For a number of reasons, EPA is not proposing additional mutagenicity testing on 1,2-butylene oxide at this time. First, EPA believes that a further evaluation needs to be made of the apparently conflicting results from the two sex-linked recessive lethal tests in Drosophila on 1,2-butylene oxide. A feeding study was positive (Ref. 8), while an inhalation study was negative (Ref. 13). Secondly, a number of mutagenicity tests are in progress on ethylene oxide, which is the alkyl epoxide having two fewer carbon atoms than 1,2-butylene oxide. On the basis of structure-activity relationship considerations between 1,2-butylene oxide and ethylene oxide, and the fact that ethylene oxide consistently has shown greater activity in mutagenesis assays and has tested positive in more mutagenesis assays than 1,2-butylene oxide, EPA believes that results of the ongoing mutagenicity testing on ethylene oxide, along with available data on 1,2-butylene oxide, will provide guidance as to what, if any, further mutagenicity testing on 1,2-butylene oxide may be appropriate. Inhalation mutagenicity testing in progress on ethylene oxide includes: (1) Mouse specific locus test; (2) biochemical specific locus test in mice; (3) heritable translocation test in mice; (4) sperm alkylation in mice; and (5) sperm alkylation in *Drosophila*.

After the data from the ongoing ethylene oxide mutagenicity testing and existing 1,2-butylene oxide mutagenicity data, including the results from the two sex-linked recessive lethal tests in *Drosophila*, are analyzed by the Agency, the Agency will consider: (1) Whether a mouse specific locus test or other additional mutagenicity testing on propylene oxide is necessary, or (2) whether ethylene oxide and/or propylene oxide mutagenicity data will provide a sufficient basis for mutagenicity risk assessment for 1,2-butylene oxide without further testing of 1,2-butylene oxide for this effect. In making its analysis, EPA will take into account available data on other effects that may provide sufficient basis for regulation. The Agency is interested in public comment on the various aspects of assessing mutagenicity testing needs for 1,2-butylene oxide.

V. References

(1) SRI. 1981. Directory of Chemical Producers, United States. SRI International, Menlo Park, CA.

(2) Dow Chemical Co. (Undated). Midland, Michigan. Technical Product Data Sheet: 1,2-Butylene Oxide.

(3) Dow Chemical Co. 1978. TSCA sec. 8(d) submission 8DHQ-0978-0297. Summary of environmental response evaluations of ethylene oxide, propylene oxide, and butylene oxide. Washington, DC: Office of Toxic Substances, U.S. Environmental Protection Agency.

(4) C&EN. 1979 (April 16). Major changes ahead for butylenes. Chemical and Engineering News 57(16):12.

(5) Dow Chemical Co. 1981 (December 11). Midland, Michigan. Preliminary comments on testing proposed by EPA for EO, PO, and ten other alkyl epoxides. Letter to Steve Newburg-Rinn, Assessment Division, Office of Pesticides and Toxic Substances, U.S. Environmental Protection Agency, Washington, DC 20460.

(6) BOC-Imports. 1981. Bureau of the Census, U.S. Department of Commerce. U.S. imports for consumption and general imports TSUSA. Commodity by country of origin. Washington, DC: Government Printing Office. FT-246, Annual 1981.

(7) NIOSH. 1974. National Occupational Hazard Survey. National Institute for Occupational Safety and Health, Rockville, MD. 20853.

(8) NTP. 1983 (March 17). Summary of genetic toxicology results as of 3/17/83. Dr. Errol Zeiger, National Toxicology Program, Reseach Triangle Park, North Carolina.

(9) Chen C, Speck W, Rosenkranz H. 1975. Mutagenicity testing with *Salmonella typhimurium* strains. 2. Effects of unusual phenotypes on the mutagenic response. Mutation Res 28:31-35.

(10) McCann J, Chio E, Yamasa Ki E, Ames B. 1975. Detection of carcinogens as mutagens in the *Salmonella*/microsome test: assay of 300 chemicals. Proc Nat Sci 72:5135-5139.

(11) Rosenkranz HH, Poirier LA. 1979. Evaluation of the mutagenicity and DNA-modifying activity of carcinogens and non-carcinogens in microbial systems. J National Cancer Inst 62:873-892.

(12) Kolmark G, Giles NH. 1955. Comparative studies of monoepoxides as inducers of reverse mutations in *Neurospora*. Genetics 40:890-902.

(13) McGregor DB. 1981. Tier II mutagenic screening of 13 NIOSH priority compounds, individual compound report, butylene oxide. Contract report, butylene oxide. NIOSH Contract No. 210-78-0026. Inveresk Research International Limited, Musselburgh EH21 7UB, Scotland.

(14) Sikov MR, Cannon WC, Carr DB, Miller RA, Montgomery LF, Phelps DW. 1981. Teratologic assessment of butylene oxide, styrene oxide and methyl bromide. Prepared for U.S. Department of Health and Human Services under Contract No. 210-78-0025. DHHS (NIOSH) Publication No. 81-124

(15) Hine C, Rowe V. 1973. Industrial Hygiene and Toxicology. 2nd Ed—Vol 2. New York: Interscience, p. 1600-1601.

(16) Miller RR. Quast JF, Ayre JA, McKenna MJ. 1981. Inhalation toxicity of butylene oxide. Fundamental and Applied Toxicology 1:319-324.

(17) NTP. 1981. Prechronic test phase review of 1,2-epoxybutane. Submitted to NTP by Batelle Pacific Northwest Laboratories, Richland, Washington 99352.

(18) Dow Chemical Co. 1983 (May 24. Midland, Michigan. Letter to Steve Newburg-Rinn, Assessment Division, Office of Pesticides and Toxic Substances, U.S. Environmental Protection Agency, Washington, DC 20460.

(19) SAI. 1981. Human exposure to atmospheric concentrations of selected chemicals. Prepared by Science Applications, Inc. (SAI) for the Office of Air Quality Planning and Standards, Office of Air, Noise, and Radiation, U.S. Environmental Protection Agency, Washington, DC 20460.

(20) Cupitt LT. 1980. Fate of toxic and hazardous materials in the air environment (project summary). Environmental Sciences Research Laboratory, Research Triangle Park, NC 27711. EPA-600/53-80-084.

(21) Bronsted NJ, Kilpatrick M. 1929. Kinetic studies on ethylene oxide. J Am Chem Soc 50:428-461.

(22) Koskikallio J, Whalley E. 1959. Effects of pressure on the spontaneous and the base-catalyzed hydrolysis of epoxides. Can J Chem 37:783-787.

(23) Union Carbide Co. 1978. TSCA sec. 8(d) submission 8DHQ-1078-03305. Supplementary test results on butylene oxide, ethylene oxide, and propylene oxide. Washington, DC: Office of Toxic Substances, U.S. Environmental Protection Agency.

VI. Public Record

EPA has established a public record for this testing decision, docket number (OPTS–42049). This record includes:

(1) Federal Register notice designating the alkyl epoxides category to the priority list.

(2) Letters.

(3) Contact reports of telephone conversations and meeting summaries.

(4) Published and unpublished data.

This record, containing the basic information considered by the Agency in developing the decision, is available for inspection in the Office of Pesticide and Toxic Substances (OPTS) reading room from 8:00 a.m. to 4:00 p.m. Monday through Friday, except legal holidays, in Rm. E–107, 401 M St. SW., Washington, D.C. 20460. The Agency will supplement the record periodically with additional relevant information received.

(Sec. 4, 90 Stat. 2003; (15 U.S.C. 2601)

Dated: December 23, 1983.

Alvin L. Alm,

Acting Administrator.

[FR Doc. 84–75 Filed 1–3–84; 8:45 am]

BILLING CODE 6560–50–M

[OPP–62005; FRL 2501–8]

Griffin Technical Chlorothalonil; Intent To Hold a Hearing To Determine Whether To Cancel Registration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Intent to Hold a Hearing.

SUMMARY: The Administrator intends to hold a hearing under section 6(b)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (FIFRA) (7 U.S.C. 136d(b)(2)) to determine whether a registration for technical chlorothalonil held by the Griffin Corporation and bearing pesticide registration number 1218–268 (Griffin Technical Chlorothalonil) should be cancelled.

DATE: Notices indicating an intention to participate in this hearing must be filed by February 3, 1984. (See Unit III of this Notice for a discussion of the contents of a Notice of Intent to Participate.)

ADDRESS: Notices of Intent to Participate must be submitted to: Ms. Bessie Hammiel, Hearing Clerk (A–110), U.S. Environmental Protection Agency, Room 3708A, Waterside Mall, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: William L. Jordan, Office of General Counsel (LE–132P), Room 513, West Tower, 401 M Street, SW., Washington, DC 20460, Telephone: (202) 382–7505.

SUPPLEMENTARY INFORMATION: The Diamond Shamrock Corporation (Diamond Shamrock) in submittals dated June 28, 1983, and July 21, 1983, has petitioned the Environmental Protection Agency to cancel the registration for technical chlorothalonil (Griffin Technical Chlorothalonil, Reg. No. 1218–268) issued to the Griffin Corporation (Griffin) on January 10, 1983. Griffin's registration authorizes the sale and distribution of the product for use in the formulation of end use products. In July of 1983, Diamond Shamrock assigned all its rights and interests relating to its registration of chlorothalonil and its related data to SDS Biotech Corporation, a joint venture between Diamond Shamrock and Showatenko KK, a Japanese corporation. Throughout this notice, references to Diamond Shamrock are intended to include SDS Biotech Corporation where appropriate.

I. Background

By letter dated June 19, 1979, Diamond Shamrock and EPA entered into an agreement which provided that EPA would not take any registration action for a pesticide containing chlorothalonil as an active ingredient without providing 30 days prior notice in writing to Diamond Shamrock advising as to the nature of the proposed registration action. The Griffin registration in question was issued without the provision of formal written notice of the proposed registration action by EPA to Diamond Shamrock under the terms of the agreement.

In its July 21, 1983, submittal to EPA, Diamond Shamrock states that the Administrator has the authority to cancel the Griffin Technical Chlorothalonil registration under FIFRA section 6(b). Section 6(b) states in pertinent part:

> * * * If it appears to the Administrator that a pesticide or its labeling or other material required to be submitted, does not comply with the provisions of this Act * * * the Administrator may issue a notice of his intent either
>
> (1) To cancel its registration * * * or
>
> (2) To hold a hearing to determine whether or not its registration should be cancelled * * *.

Diamond Shamrock alleges that Griffin was required to submit with its application "a citation to data. . . that previously had been submitted to the Administrator and that the Administrator may consider in accordance with the following provisions. . . ," FIFRA sec. 3(c)(1)(D). Diamond Shamrock further alleges that Griffin did not comply with this requirement because the Diamond Shamrock data which Griffin cited in order to fulfill the data requirements for registration were not available for EPA to consider in support of Griffin's registration until EPA had complied with the terms of the agreement between Diamond Shamrock and EPA regarding prior written notice. Specifically, Diamond Shamrock provided the following analysis of its position:

> The very purpose of the EPA-Diamond agreement was to prevent reliance on Diamond's data by follow-on applicants (or the Administrator) until Diamond had an opportunity to seek judicial relief blocking such reliance. In effect, the agreement expressly barred EPA from "considering" the Diamond data, in the sense of issuing a registration based on that data, until Diamond had been given thirty days notice and opportunity to obtain judicial relief in the event EPA refused to deny the follow-on registration. Therefore, the data cited by Griffin was not data which Griffin could properly cite under Section 3(c)(1)(D) or which EPA could properly "consider" under Section 3(c)(5)(B) without prior notice to Diamond. The data was simply not available from a legal standpoint at least until after that notice had occurred. Under Section 6 EPA must, in Diamond's view, cancel Griffin's registration in ordr to effectuate its agreement with Diamond and restore Diamond's rights.

On the other hand, Griffin claims that it obtained its registration for Griffin Technical Chlorothalonil in complete compliance with the statutory requirements. It argues further that EPA's authority to cancel registrations is limited to very specific grounds and that the calm being made by Diamond Shamrock does not constitute a basis for cancelling the registration of a pesticide product.

It thus appears that there is a dispute as to whether the material required to be submitted by Griffin complied with the provisions of FIFRA. Therefore, it is appropriate to hold a hearing to determine whether the registration should be cancelled. See Fifteen Registrations Held by Velsicol Corp.; Intent to Hold Hearing, 44 FR 21706 (March 30, 1979).

II. Statement of Issues

EPA's Rules of Practice, 40 CFR Part 164, govern the initiation and conduct of formal adjudicatory hearings under FIFRA. Section 164.20 provides that a proceeding shall be commenced whenever "the Administrator decides to call a hearing to determine whether or not the registration of a pesticide should be cancelled * * *." The Administrator is filing with the Hearing Clerk a copy of this Notice and a statement of issues for the hearing. In addition, the

Administrator is sending a copy of this notice to Griffin and is issuing it for publication in the **Federal Register.** See FIFRA sec. 6(b); 40 CFR 164.8.

The Rules of Practice require that the Notice of Intent to Hold a hearing state the issues which will be addressed in the hearing. The Administrator desires to have the following issues addressed during the hearing:

(1) Whether the June 19, 1979 agreement between EPA and Diamond Shamrock was lawful.

(2) Whether the legal status of the Griffin Technical Chlorothalonil registration is affected by EPA's failure to provide formal written notice to Diamond Shamrock under the agreement.

(3) Whether EPA's dealings with Diamond Shamrock and with Griffin, and the dealings between the two companies, affect the status of the registrations. In particular, the hearing should consider EPA's provision of notice to Diamond Shamrock and issuance to Griffin of Registration No. 1812–266 on November 19, 1981, for an end use product containing chlorothalonil; Griffin's submission to Diamond Shamrock of an offer to pay compensation in connection with (and prior to) the issuance of the Griffin Technical Chlorothalonil registration; any informal communications between EPA and Diamond Shamrock regarding the Griffin Technical Chlorothalonil registration; and the timing of Diamond Shamrock's request to EPA for action to cancel the Griffin Technical Chlorothalonil registration.

(4) For purposes of the sec. 6(b) issues in this hearing, what consideration, if any, should be given to the recent decisions and orders in *Monsanto* v. *Administrator,* C.A. #79–366(c)(I) (E.D. Mo., May 9, 1983) and *Union Carbide Agricultural Products Co., Inc.* v. *Ruckelshaus,* Case No. 76 Civ. 2913 (RO) (S.D.N.Y. Oct. 29, 1983).

(5) What precedential value, if any, should be given to the determinations reached by the Administrator in *In re Fifteen Herbicide Registration-Velsicol,* FIFRA Docket No. 483 (April 24, 1980) and in *In re Herbicides: Dinitro Technical and Ancrack Herbicides,* FIFRA Docket No. 407 (April 3, 1980).

(6) Any other issues relevant to the question of whether the Griffin Technical Chlorothalonil registration should be cancelled because of EPA's failure to give notice under its agreement with Diamond Shamrock which are contained in Diamond Shamrock's June 28 and July 21 submittals to EPA or which may be raised by any participant or the Administrative Law Judge.

The language of FIFRA sec. 6(b) cited above states that the Administrator may issue a notice of intent to cancel or to hold a hearing. This contrasts with the language of sec. 6(a)(1) which states that the Administrator shall cancel certain registrations under certain circumstances. Nowhere in sec. 6(b) is there a requirement that the Administrator must cancel a registration even if he finds that there are grounds for cancellation, although, of course, a decision not to cancel would be judicially reviewable under FIFRA sec. 16. The Administrator thus appears to have a certain amount of discretion with respect to cancelling a registration, even if grounds for cancellation exist. Assuming the evidence developed at the hearing shows that the material required to be submitted in connection with the Griffin Technical Chlorothalonil registration does not comply with the provisions of FIFRA, as construed, a remaining issue will be whether the registration should be cancelled. In that regard, there are a number of significant issues which the Administrator must consider before determining whether to grant Diamond Shamrock's request for cancellation. Accordingly, the Administrator desires to have the following additional issues addressed during the hearing:

(1) Whether EPA's failure to provide prior written notice to Diamond Shamrock of its intent to issue the Griffin Technical Chlorothalonil registration has had, or will have, any adverse effect on Diamond Shamrock which cancellation of the registration could rectify.

(2) Whether cancellation of the Griffin Technical Chlorothalonil registration would have any adverse effect on Griffin.

(3) Whether cancellation of the Griffin Technical Chlorothalonil registration would cause an impact on: The price of chlorothalonil, the production or price of various commodities on which chlorothalonil is used, the extent of use of alternative fungicides, retail food prices, or otherwise on the agricultural economy.

(4) Any other related issue which may be raised by any participant or the Administrative Law Judge.

III. Procedure for Requesting to Participate in the Proceeding

Any person who wishes to participate in the proceeding shall submit a Notice of Intent to Participate to the Hearing Clerk on or before February 3, 1984. The Notice of Intent to Participate shall identify the person (individual or organization) and his representative. A Notice of Intent to Participate shall also contain a written response to the statement of issues including a statement of the person's interest and position with respect to the issues. Finally, the Notice of Intent to Participate shall include an address at which documents in the proceeding can be served.

IV. Separation of Functions

The Agency's Rules of Practice forbid anyone who may take part in deciding this case, at any stage of the proceeding, from discussing the merits of the proceeding *ex parte* with any party or with any person who has been connected with the preparation or presentation of the proceeding as an advocate or in any investigative or expert capacity, or with any of their representatives. 40 CFR 164.7.

Accordingly, the following Agency offices, and the staffs thereof, are designated as the trial staff to represent the institutional interests of the Agency as a party in this case: the Office of Pesticides and Toxic Substances; the Office of General Counsel; and the Office of Enforcement and Compliance Monitoring.

From the date of this notice until the final Agency decision in this case, neither the presiding Administrative Law Judge, the Judicial Officer, the members of the staff in the immediate office of the Administrator, or the Administrator shall have any *ex parte* communication with the trial staff or any other interested person not employed by EPA, on the merits of any of the issues involved in this proceeding.

V. Agricultural Impact Analysis

The Agency has performed an analysis of the impacts of cancelling Griffin's registration of technical chlorothalonil on the "production and prices of agricultural commodities, retail food prices and otherwise on the agricultural economy." See FIFRA sec. 6(b). The Agricultural Impact Analysis, dated September 28, 1983, indicates that cancellation of the Griffin registration would have no significant impacts on production or prices of agricultural commodities or on retail prices. However, EPA did estimate that agricultural producers might incur an annual cost increase of up to $5 million resulting from a possible increase in the price of chlorothalonil products. The size of this increase in production costs would vary from one commodity to another, but for peanut producers, the major use group, it would raise production costs less than 2 percent.

VI. Statutory Review

FIFRA sections 6(b) and 25(d) require the Agency to provide copies of a proposed Notice of Intent to Hold a Hearing to the Secretary of Agriculture and the Scientific Advisory Panel at least 60 days prior to sending the Notice to the affected registrants and issuing the notice for publication in the **Federal Register**. Section 6(b) also requires the Agency to prepare an analysis of the impacts of a proposed cancellation action on the agricultural economy and to send the analysis to the Secretary of Agriculture for his comments. If either the Panel or the Secretary comments, the Agency is required to issue for publication in the **Federal Register** the comments together with EPA's response in the Notice of Intent to Hold a Hearing. Both sections 6(b) and 25(d) allow the Secretary and Panel to waive their opportunity to comment on such Notices.

As required by the statute, the Agency sent the appropriate documents to the Secretary of Agriculture and the Scientific Advisory Panel. On August 22, 1983, the Panel notified the Agency that it waived its right to comment on the proposed Notice Of Intent To Hold A Hearing. Acting on behalf of the Secretary of Agriculture, Charles L. Smith submitted comments on the Agency's proposed Notice and Agricultural Impact Analysis in letters dated September 1, and November 1, 1983. Mr. Smith's September 1 letter addressed the Agency's proposed hearing notice and indicated that the Department of Agriculture considered it appropriate to comment at a later time—after the hearing record had been developed and briefs had been filed—on the impacts of cancellation of Griffin's chlorothalonil registration on the agricultural economy.

Mr. Smith's November 1 letter commented on the Agency's Agricultural Impact Analysis and indicated that EPA had failed to consider several relevant factors. Noting the paucity of readily available data on these factors, Mr. Smith stated that "this information can be developed as part of the hearing." The factors which his letter said were not considered and the EPA response regarding each factor are as follows:

"(1) Potential impacts to individual producers."

EPA response. While the Agency does not think that the statute requires the Agricultural Impact Analysis to address impacts on individual producers, it recognizes that estimates of such impacts may be useful in deciding what action should be taken on the continued registration of Griffin technical Chlorothalonil. Indeed, for this reason, the Agricultural Impact Analysis did attempt to estimate the producer level impacts of cancelling Griffin's registration. Specifically, EPA considered the consequences of cancelling Griffin's registration for the cost of producing peanuts, the crop on which the largest quantity of chlorothalonil is used. EPA discussed the impacts in terms of the change in production cost per acre, and estimated that, for peanut acreage treated with chlorothalonil, cancellation could lead to a maximum increase of $7.00 an acre, representing a rise of 1.7 percent in variable costs. This information can be used to predict the impacts on individual peanut producers. While EPA did not perform a quantitative assessment of the impacts of cancelling Griffin's registration on the cost of production of other commodities, the Agency expects the impacts to be comparable to the impacts on peanuts.

"(2) EPA estimates of use by crop do not concur with State and USDA pesticide use data. Reports containing these data are available to the public."

EPA response. In preparing its Agricultural Impact Analysis, EPA staff examined data on chlorothalonil usage from several sources covering a number of years. The estimates presented in the Analysis are not based on the use information from a single survey or a single year. Rather, as explained in the Analysis, the figures represent an approximate average of the amounts used on different commodities over the last few years, and reflect EPA's judgment about the realiability of the various sources of data.

Following receipt of Mr. Smith's letter, Agency staff contacted a USDA economist who helped to prepare the November 1 letter. The USDA economist identified a survey that EPA had not considered while it was developing the Agricultural Impact Analysis. This survey does, indeed, contain somewhat different estimates of the amount of chlorothalonil used on various commodities. While this additional survey may raise a question about the reliability of the data used by EPA, the Agency thinks that it does not require any fundamental change in the conclusions expressed in the Analysis. The usage estimates in the USDA survey are generally consistent with those of other surveys. EPA thinks that it would be appropriate to use the hearing to develop better estimates of the relative and absolute amounts of chlorothalonil used on different crops and sites.

"(3) The analysis did not include other major uses sites such as onions and watermelons."

EPA response. The survey used in preparing USDA's comments reported higher usage on onions—approximately 0.1 million pounds of active ingredient—than other sources considered by EPA in preparing the Agricultural Impact Analysis. Without information showing this figure to be more reliable than the other data reviewed by EPA, the Agency is reluctant to adopt this figure. If correct, however, this information shows that onions are one of the major crops on which chlorothalonil is used.

The level of usage of chlorothalonil on watermelons reported in the USDA survey (0.06 million pounds) was similar to that in other surveys. It was not as high as either of the lowest of the "major crops" identified by EPA: broccoli, 0.1 million pounds, and potatoes, 0.2 million pounds. USDA apparently considered watermelons to be a major crop because an unusually large part of this crop is treated with chlorothalonil. EPA thinks that this information may warrant closer examination during the hearing, regardless of whether watermelons are called a major chlorothalonil use crop.

"(4) It would have been useful to examine the competitiveness of chlorothalonil imported from Japan with the domestically produced chlorothalonil."

EPA response. If imported chlorothalonil competed in the U.S. market with chlorothalonil from domestic sources, this would have been a useful comparison, but no such competition exists. Currently, all chlorothalonil used in this country is imported by Diamond Shamrock, who sells to other domestic producers, as well as to users. Diamond Shamrock's imported chlorothalonil is produced under a joint agreement with a Japanese company, Showatenko KK. Thus, there is no direct competition in the U.S. market between chlorothalonil imported from Japan and domestically produced chlorothalonil products.

"(5) It would seem that changes in chlorothalonil sales since the price change would be an important consideration in predicting what could happen given various regulatory options. Unfortunately, sales figures for the current year are not yet available."

EPA response. EPA questions whether data on changes in the sales volume of chlorothalonil products following the recent price reduction by Diamond Shamrock would provide information useful in evaluating the impact of cancelling Griffin's registration. EPA has no information on the reasons for the price reduction. While Diamond Shamrock may have lowered its sales price for chlorothalonil in anticipation of

competition from Griffin, Diamond Shamrock may also have had other motives. If Diamond Shamrock acted for reasons largely unrelated to the existence of Griffin's registration, its action provides little basis for predicting how it would respond to active competition (or the removal of such competition) from Griffin. On the other hand, even if the price reduction were designed to reduce future competition, recent changes in the sales of chlorothalonil indicate only how effectively Diamond Shamrock's chlorothalonil products are competing with other fungicides, since Griffin's technical chlorothalonil product is not currently being sold and distributed. Sales and prices of chlorothalonil might follow a different pattern if Diamond Shamrock products must compete both with other fungicides and with Griffin's chlorothalonil products.

Dated: December 20, 1983.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 84-73 Filed 1-3-84; 8:45 am]

BILLING CODE 6560-50-M

[OPP-30235; FRL-2502-2]

Ethalfluralin; Determination Concerning Conditional Registration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of conditional registration; request for comments.

SUMMARY: This Notice sets forth the Agency's determination to issue a conditional registration, pursuant to section 3(c)(7)(C) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), for the herbicide ethalfluralin for use on dry beans, dry peas, soybeans, and cucurbits for a period which extends to December 1, 1985. The Agency has determined that, although ethalfluralin meets or exceeds the RPAR criteria set forth in 40 CFR 162.11, the benefits of use outweigh the risks of use for the period of the conditional registration, and the issuance of the conditional registration is in the public interest.

DATE: Comments must be received on or before December 1, 1985.

ADDRESS: Comments should bear the document control number OPP-30235 and be submitted by mail to:

Program Management and Support Division (TS-767C), Office of Pesticide Programs, Environmental Portection Agency, 401 M St., SW., Washington, D.C. 20460.

In person bring comments to: Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments will be available for inspection in Rm. 236 at the address above, from 8:00 a.m. to 4:00 p.m. on Monday through Friday, except legal holidays.

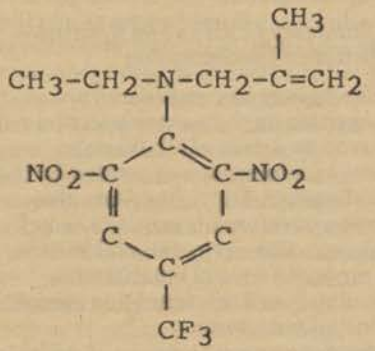
FOR FURTHER INFORMATION CONTACT: By mail: Lois Rossi, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. Office location and telephone number: Rm 711, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-7451).

I. Introduction

An application for registration for the herbicide, ethalfluralin, was received by the Agency. The Agency has evaluated the data submitted by the manufacturer and has decided to issue a conditional registration and request comments.

Ethalfluralin is the accepted American National Standards Institution name for the chemical [*N*-ethyl-*N*-(2-methyl-2-propenyl)-2,6-dinitro-4-(trifluoromethyl) benzenamine. The trade name for ethalfluralin is Sonalan.® Technical ethalfluralin is a yellow-orange, crystalline solid with a faint amine odor. The chemical has a molecular weight of 333.26. Ethalfluralin has a melting point of 53.0–55.5°C (determined by USP Class I Method) and a vapor pressure of 8.2×10^{-5} Torr at 25°C.

Ethalfluralin is a dinitroaniline herbicide and has the empirical formula $C_{13}H_{14}F_3N_3O_4$. The structural formula is:



Electron capture gas-liquid chromatographic methods of analysis are available to determine residues of ethalfluralin.

On February 4, 1982 Elanco Products Company filed an application with the EPA proposing the registration of the herbicide ethalfluralin, for selective preemergence control of certain annual grasses and broadleaf weeds in dry beans, soybeans, and cucurbits (cantaloupe, cucumber, pumpkin, watermelon). A pesticide petition to establish a tolerance for ethalfluralin for seed and pod vegetables, forage legumes, and cucurbits at 0.05 ppm was also filed, as published in the **Federal Register** (47 FR 10286, March 10, 1982). This petition was later amended to specify a tolerance of 0.05 ppm for dry beans, dry peas, soybeans, and cucurbits. Since 1978, Experimental Use Permits (EUPs) under section 5 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) have been issued for field evaluation of ethalfluralin. EUP's were initially requested and received for testing on the following crops: soybeans, dry beans (kidney, lima, pinto, cowpeas, blackeye peas), fresh beans (snap, string, wax, limas), cucurbits (cucumbers, muskmelons, squash, watermelons, pumpkins), lentils, peas (field, dry, English) and peanuts. Ethalfluralin was evaluated with S-ethyl dipropylthiocarbamate (EPTC) on beans, metribuzin on soybeans, and with vernolate and dinoseb on peanuts. Ethalfluralin was surface applied preemergent on cucumbers, preemergent to cracking on peanuts and preplant incorporated on all other crops under the EUP.

Elanco Products Company received EUP extensions in 1981 for evaluation of ethalfluralin on cucurbits, peanuts, and soybeans. In 1982, ethalfluralin was evaluated on soybeans in 19 States alone and in combination with chloramben and metribuzin; snapbeans and dry beans in 21 States alone or mixes with EPTC and chloramben; field peas and lentils in 10 States; cucurbits (cucumbers, cantaloupes, watermelons) in 25 States; and for peanuts in 6 States alone or mixed with vernolate, metolachlor and Dyanap®.

In 1983, the producer requested and was granted an EUP request that included the same State where ethalfluralin was tested in 1982 and to extend the testing in peanuts to four additional States.

The Agency has determined that ethalfluralin exceeds the RPAR criteria set forth in 40 CFR 162.11. Based on a review of the risks and benefits of the proposed uses of ethalfluralin, the Agency has determined that the benefits of use outweigh the risks. This Notice sets forth the bases for this determination and for EPA's determination to conditionally register ethalfluralin for use on dry beans, dry peas, soybeans, and cucurbits pursuant to section 3(c)(7)(C) of FIFRA. The supporting documentation which provides the detailed basis for this determination is available in Rm. 236 at the address given above.

This Notice is organized into four units. Unit I is this Introduction. The regulatory framework under which this action is taken is discussed in Unit II. Unit III summarizes the risks and benefits of the uses of ethalfluralin and sets forth the Agency's determination to issue a conditional registration for ethalfluralin. Finally Unit IV requests comments on the registration determination announced in this Notice and describes the procedures the Agency will follow subsequent to receipt of the comments.

II. Legal Background

In order to obtain a registration for a pesticide under FIFRA, a person must demonstrate that the pesticide satisfies the statutory standard for registration. That standard requires (among other things) that the pesticide perform its intended function without causing "unreasonable adverse effects on the environment" under section 3(c)(5). Section 2(bb) of FIFRA defines the term "unreasonable adverse effects on the environment" as "any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide." In effect, the statute requires a finding that the benefits of each use of the pesticide exceed the risks of use, when the pesticide is used in accordance with the terms and conditions of registration or in accordance with widespread and commonly recognized practice. The burden of proof that a pesticide satisfies this registration criterion is on the proponents of registration and continues as long as the registration remains in effect. Section 3(c)(7)(C) of FIFRA gives the Agency authority to issue a conditional registration for a pesticide containing a new active ingredient, where certain data are lacking, on condition that such data will be received by the end of the conditional registration period and do not meet or exceed the risk criteria set forth in the regulations. A conditional registration may only be granted if the Agency determines that the use of the pesticide during the conditional registration period will not cause unreasonable adverse effects during the period of conditional registration and when a determination is made that the registration is in the public interest.

The Agency created the Rebuttable Presumption Against Registration (RPAR) process to facilitate the identification of pesticide uses which may not satisfy the statutory standard for registration and to provide a structure for gathering and evaluating information about the risks and benefits of these uses. After an RPAR is issued, registrants and other interested persons are given the opportunity to review the data upon which the presumption is based and to submit data and information to rebut the presumption. Respondents may rebut the presumption of risk by showing that the Agency's initial determination of risk was in error, or by showing that use of the pesticide is not likely to result in any significant exposure to humans or to animals or plants of concern with regard to the adverse effects in question. See 40 CFR 162.11(a)(4). Further, in addition to submitting evidence to rebut the risk presumption, respondents may submit evidence as to whether the economic, social, and environmental benefits of uses of the pesticide subject to the presumption outweigh the risks of use. If the Agency determines that a presumption has not been rebutted, it will then consider information relating to the social, economic and environmental costs and benefits which registrants and other interested persons submitted to the Agency, and any other benefits information known to the Agency.

After weighing the risks and the benefits of a pesticide's use, the Administrator may conclude the RPAR process by issuing a notice of intent to cancel or deny registration pursuant to FIFRA section 6(b)(1) and section 3(c)(6), or issuing by a determination that the benefits of use outweigh the risks of use. The latter determination may include the imposition of regulatory measures to reduce the risk to an acceptable level.

III. Summary of Risks and Benefits—Registration Determination

The Agency has considered information on the risks associated with the proposed uses of ethalfluralin including information submitted by the manufacturer. The Agency has also considered information on the social, economic, and environmental benefits of the proposed uses of ethalfluralin, including benefits information submitted by the manufacturer.

The Agency's assessment of the risk and benefits of the proposed uses of ethalfluralin, its conclusions and determinations on whether any of these proposed uses pose unreasonable adverse effects on the environment, are set forth in this Notice and other supporting documentation. The reasons summarized below, and developed in the supporting documentation, support the conclusions of the Agency with respect to the determination to issue a conditional registration for ethalfluralin.

A. Determination of Risk

The Agency has reviewed and evaluated the data submitted by the manufacturer in support of the registration of ethalfluralin and the establishment of tolerances on food crops. Data submitted and used to evaluate the risk include: a 90-day rat-feeding study demonstrating a No-Observed-Effect Level (NOEL) of 500 ppm, the equivalent of 25 milligrams(mg)/ kilogram(kg) of body weight (bw); a 90-day dog feeding study demonstrating a NOEL of 27.5 mg/kg; a rabbit teratology study demonstrating a fetotoxic, maternal toxicity and teratogenic effect NOEL of 75 mg/kg; a 3-generation rat reproduction study demonstrating a NOEL of 250 ppm (12.5 mg/kg); a 2-year rat chronic feeding/ oncogenicity study demonstrating a systemic NOEL of 750 ppm (37.5 mg/kg) and a significant increase in mammary gland fibroadenomas at 250 ppm (12.5 mg/kg) and 750 ppm (37.5 mg/kg); a 2-year mouse oncogenicity study demonstrating no observed oncogenic potential up to 1500 ppm (225 mg/kg), the highest does tested; and a number of mutagenicity studies indicating a weak mutagenic response.

The following data are lacking and must be submitted by the manufacturer as a condition for this registration by December 1, 1985: a second species teratology study, a nonrodent chronic feeding study, and a dermal penetration study.

Several of the studies are discussed below.

Oncogenicity. Two long-term animal bioassays have been submitted and reviewed by the Agency to assess the oncogenic potential of ethalfluralin. In one study, ethalfluralin was administered to Fischer 344 rats in the diet for 2 years. Dietary concentrations of the chemical were 100, 250, and 750 ppm dose levels. Historical data provided by the manufacturer indicate an incidence of fibroadenomas in untreated Fischer 344 rats to be from 0 percent to 26.7 percent, with an overall incidence of 15.3 percent. In comparison, incidences of 35 percent and 46.7 percent respectively for the mid-dose and high-dose females in this study would categorize ethalfluralin as an oncogen for benign mammary gland adenomas. For systemic effects, a NOEL of 750 ppm was indicated.

In another bioassay, ethalfluralin was administered to B6C3F1 mice in the diet for 2 years to 100, 400, and 1500 ppm in replicate studies. The results were negative for oncogenicity at all dose levels.

Teratogenicity. The Agency has reviewed a rabbit teratology study of ethalfluralin conducted and submitted by the manufacturer. Twenty Dutch Belted female rabbits were randomly assigned to five test groups. Insemination was staggered over a 4-day period with equal numbers of animals per group being started on each day. On day 6 through 18 of gestation, technical ethalfluralin (94.0 percent purity) was administered by gavage at dose levels of 25, 75, 150, and 300 mg/kg to each of the test groups.

Based on the results of this study, a NOEL of 75 mg/kg is indicated for maternal toxicity, fetotoxicity, and teratogenic effects. Slight maternal toxicity in two dams was observed at 150 mg/kg/day and clear maternal toxicity was observed at 300 mg/kg/day. A possible teratogenic effect was observed at 150 mg/kg/day and cannot be clearly associated with maternal toxicity.

Mutagenicity. Two bacterial and two mammalian mutagenicity studies were submitted by the manufacturer and reviewed and considered valid by the Agency.

A bacterial mutation study was conducted in which eight *his*-strains of *Salmonella typhimurium* and two *try*-strains of *Escherichia coli* were simultaneously treated with technical ethalfluralin in a modification of the Ames procedure. The test was conducted both in the absence and presence of metabolic activation provided by microsomal S-9 fractions of liver from rats primed with Arochlor 1254, as well as those from non-induced animals. The results indicated that technical ethalfluralin is weakly mutagenic in bacterial cultures of *S. typhimurium* and *E. coli.*

In another study, five *his*-strains of *Salmonella typhimurium* were treated with technical ethalfluralin by the standard Ames plate incorporation procedure at dose levels ranging from 125 to 1000 μg/plate, both in the absence and presence of metabolic activation. Parallel cultures were exposed to a mutagen appropriate for each strain. All cultures responded to the positive control substances. The results of this test indicate that ethalfluralin induced point mutations in two strains of *S. typhimurium* in the presence of a metabolic activation enzyme system with results indicating a weak mutagenic response.

In another study, primary hepatocyte cultures from an adult male F344 rat were incubated for 20 hours with graded concentrations of technical ethalfluralin dissolved in DMSO. Ethalfluralin was inactive in inducing unscheduled DNA synthesis at all dose levels up to cytotoxic doses of 500 and 1000 nM.

In a further study investigating the induction of forward mutation at the thymidine kinase locus of L5178Y mouse lymphoma cells, ethalfluralin was judged not to induce increased incidences of mutants at any concentration administered.

Exposure—1. *Dietary.* The Agency has evaluated dietary exposure to ethalfluralin residues for the commodities: dry beans, dry peas, soybeans, and cucurbits. Assuming 100 percent of these crops are treated with ethalfluralin and residues are at the proposed tolerance level of 0.05 ppm, the Theoretical Maximal Residue Contribution (TMRC) is 3.1×10^{-3} mg/day in a 1.5 kg diet.

2. *Dermal and inhalation.* The manufacturer submitted a study in which dermal and inhalation exposure to ethalfluralin were determined during the application of ethalfluralin (Sonalan®)-treated fields. The Agency is not able to determine separate exposure estimates for the mixing/loading and application process. It is expected that the most exposure will occur during the mixing and loading operation. Also, for the purposes of this exposure analysis, it is assumed that the same individual is the mixerloader and the applicator.

Mixer/loaders and applicators of ethalfluralin will be exposed to an emulsifiable concentrate ethalfluralin formulation during the early stages of the mixing-loading process and during this process dermal absorption is assumed to be 100 percent. During the actual application of ethalfluralin, the applicator is exposed to the emulsifiable concentrate in water and, therefore, the dermal absorption is expected to be significantly less than 100 percent.

In estimating dermal exposure, the Agency assumed a "worst case" situation of 100 percent dermal absorption throughout the mixing/loading and application processes and no protective clothing. Dermal exposure is estimated to be 31,420 micrograms (ug)/applicator/year and inhalation exposure is estimated to be 394 ug/applicator/year. The dermal exposure estimates represent the amount of ethalfluralin potentially contacting the skin since data are not available to determine the amount of material that actually penetrates the skin. A dermal penetration study is being requested as a condition of this registration.

The daily lifetime exposure estimates were calculated assuming a 40-year life, a 70-year lifespan, and 100 percent vapor and particulate inhalation as well as dermal absorption. A daily lifetime worker dermal and inhalation exposure is calculated to be 7.0×10^{-4} mg/kg/day.

Risk Assessment—1. *Oncogenic Risk.* The Agency calculated the oncogenic risk associated with exposure levels using the "one-hit" dose extrapolation model and based on the results of the 2-year rat bioassay. Assuming that 100% of the crops are treated and residue levels are at tolerance levels, the upper bound estimate of dietary oncogenic risk is calculated to be 3.8×10^{-6}. Dietary risk estimates are significantly lower when using the registrant's projections for the five-year market penetration rather than the Agency's assumption that 100% of the crops will be treated with ethalfluralin. The oncogenic risk estimate for a 70 kg applicator/loader-mixer, assuming no protective clothing and 100% dermal absorption is 6.3×10^{-5}.

2. *Teratogenic risk.* Based on the NOEL of 75 mg/kg/day in the rabbit teratology study, and assuming residues at the tolerance level of 0.05 ppm on 100 percent of the crops, the consumption of an average single serving of all commodities on a given day results in a Margin of Safety (MOS) of 123,762.

Margin of safety estimates were calculated for the mixer/loader/applicator. Assuming a 60 kg female applicator, no protective clothing, and an 8-hour working day, the maximum daily exposure would be 18,595 micrograms/applicator. Assuming the 100 percent of ethalfluralin is absorbed dermally and by inhalation, a MOS of 242 is calculated using the 75 mg/kg/day NOEL.

B. Evaluation of Benefits

Ethalfluralin is currently proposed for registration as a herbicide for use on beans (dry commercial and dry peas), soybeans, and cucurbits. The Agency's review of the benefits of this chemical focused on evaluating the manufacturer's claims for benefits of ethalfluralin on each crop use proposed for registration. Based on these data, the Agency has determined that the conditional registration of ethalfluralin is in the public interest as required for a section 3(c)(7)(C) registration.

The manufacturer's benefit claims state that the spectrum interest of ethalfluralin weed control is similar to other dinitroaniline herbicides, but would be extremely useful to control the *Solanaceae spp.* (nightshade family), particularly hairy nightshade *Solanum sarachoides* (an increasingly hard to control weed in western irrigated dry bean production areas) and Eastern black nightshade, *Solanum pytcanthum*

(an increasing problem in midwest soybeans).

Nightshades appear to be increasing as a weed problem because of growth characteristics of the plant as well as various cropping practices. Nightshade seeds can become cemented to the crop seed by sticky, heavy juice and be spread or transported by contaminated seed, field equipment, water, birds and in feces of grazing animals that cannot digest the seeds. Nightshade seedlings may germinate as early as March and continue to germinate and emerge during the summer if conditions remain favorable. Nightshade plants can produce viable seed from two weeks after emergence until killing frosts. Nightshade must be controlled early as well as throughout the season to prevent harvesting problems as occurred in the midwest soybean growing areas in 1980. The 1980 drought, followed by late August rains, greatly increased the nightshade problem.

Several researchers indicate that nightshades have become a more serious problem because of the extensive use of dinitroaniline herbicides that do not control nightshade, and that reduced cultivations, or changes in cultivation practices (narrower rows) have reduced crop competition, resulting in increased nightshade infestation. Removal of competitive grasses and broadleaved weeds that were susceptible to these herbicides has helped favor the growth of more tolerant and/or resistant weeds such as nightshades.

The American black nightshade is common to California, Eastern States south to Florida and Texas, and warm regions of the world. It is the most variable nightshade weed and is often confused with Eastern black nightshade. Black nightshade is uncommon in most of North America except for Far Western States and occurs together with American black nightshade in California. The Eastern black nightshade is common to North America east of the Rocky Mountains and frequently confused with American black nightshade in the Southeastern States. It is the major species found in the North Central States. Hairy nightshade is locally abundant throughout North America especially on irrigated lands in parts of Plain States, Pacific Northwest and adjacent Canadian areas. The silverleaf nightshade infests Texas and Oklahoma and is spreading east and north.

Nightshades are considered a more serious weed pest than the other weeds claimed on the ethalfluralin label because they can compete with crops to directly reduce yields, are poisonous to humans and livestock, and can seriously impede harvesting operations.

Nightshades plants interfere with soybean and dry bean harvesting operations because these plants do not dry rapidly in the fall and are not killed by light frosts. The stems and leaves become a sticky mass after entering the combine and can plug up rotors and screens. Also, each plant can produce up to 1,000 berries with 50 or more seeds. When the nightshade berries are blended together with chaff in the combine it becomes cemented by the sticky berry juice to other parts of the combine. Once beans are coated with berry juice and are stained they are difficult to clean, are susceptible to mold and postharvest storage problems and often lowered in grade and quality. Loads containing berries may be refused at grain elevators because the berries are very difficult to separate from soybeans at harvest, being about the same size. Many dry edible bean processors begin discounting the price when greater than 4 percent of the beans are stained by the berries and may be sold as U.S. sample grade quality which cannot be used for human consumption. Even low weed infestation of nightshade interfere with harvesting. Soybean harvesting can be stopped by less than 1 nightshade plant per 10 feet of row.

Commercial Dry Beans, Dry Peas. The proposed registration of ethalfluralin for use on commercial dry beans and dry peas is targeted for control of hairy nightshade, which is a problem in fields of western dry beans. The economic value of ethalfluralin to dry bean growers is dependent upon the degree of hairy nightshade infestation, comparative efficacy of ethalfluralin and alternatives, and differences in treatment costs per acre between ethalfluralin and currently registered herbicides.

Hairy nightshade is considered a major problem in western irrigated dry beans in general and the primary weed problem for dry bean growers in Idaho. There are several herbicide alternatives to control hairy nightshade. Ethalfluralin used alone has the same spectrum of weed control as currently registered herbicide alternatives plus equal or somewhat superior control of hairy nightshade as compared to currently registered tank-mixed alternatives. Thus, the economic value of ethalfluralin to dry bean growers is primarily the difference in comparative treatment costs per acre. The cost reduction on a per acre basis will range from $2.61 to $10.74, depending upon the particular tank-mix used by the grower.

The overall effect on dry bean growers resulting from registering ethalfluralin is dependent on the extent of use by growers and the response of producers of competitive products in their pricing decisions. Assuming a market penetration of ethalfluralin in the dry bean market of at least 5.5 percent or 102,000 acres by the fifth marketing year and maintenance of the current differences in relative treatment costs per acre, the total range of cost reduction to growers would be approximately $266,000 to $1,095,000.

Soybeans. The manufacturer has targeted ethalfluralin for use on soybeans for control of Eastern black nightshade. Eastern black nightshade is a problem in 25–30 percent of the midwestern soybean acreage but only one percent of the acreage has a serious, unmanageable level of infestation.

The potential economic value to soybean producers from an ethalfluralin registration is dependent upon the product's comparative efficacy, effect on soybean yield, and relative treatment cost per acre. In terms of comparative efficacy, alternative herbicides appear to be superior to ethalfluralin and are expected to remain the herbicides of choice. Thus, the advantage ethalfluralin would provide to soybean growers is dependent upon the degree of substitution of ethalfluralin for alternatives in areas where suppression and not control of eastern black nightshade is desirable. As a single active ingredient, ethalfluralin would have a cost advantage on a per acre basis when compared to the currently registered preemergent and postemergent herbicide alternatives. If preemergent alternatives are incorporated, ethalfluralin has a $3.43 to $9.03 treatment cost advantage per acre and a $3.83 to $4.95 treatment cost advantage over the postemergent herbicide alternatives. The manufacturer expects a market penetration by the fifth market year of at least 1.6 percent or approximately 1.1 million acres. If this occurs, then the net cost advantage of using ethalfluralin as a single active ingredient would range from $1,903,000 to $9,933,000.

Cucurbits. Registration of ethalfluralin is proposed for use on the cucurbit crops of cantaloupes, cucumbers, pumpkins, and watermelons to control a wide spectrum of broadleaved weeds and grasses as a postplant surface applied herbicide. Relatively few herbicides exist for weed control for these crops and those that are currently used often cause phytotoxic damage. Comparisons of the performance of ethalfluralin to currently used alternatives indicate that it will be an attractive herbicide for cucurbit growers, particularly those in

the area extending south from North Carolina, and is less likely to cause phytotoxic damage. Depending upon the alternative used, the cost advantage in per acre treatment cost for ethalfluralin is $11.11 to $29.91. The manufacturer expects a market penetration by the fifth market year of at least 3.9 percent or approximately 20,000 acres. The total cost advantage would range from approximately $222,200 to $598,200 per year.

C. Conclusion Regarding Registration

Based on the data and information reviewed by the Agency on ethalfluralin, the RPAR criteria for oncogenicity [40 CFR 162.11(a)(3)(ii)(A)] and teratogenicity [40 CFR 162.11(a)(3)(ii)(B)] have been met. In evaluating the risks and benefits associated with the proposed uses of ethalfluralin, the Agency has determined that the benefits from the use of ethalfluralin on dry beans, dry peas, soybeans and cucurbits exceed the risks posed by these uses for the period of this conditional registration and the use of ethalfluralin is in the public interest. The Agency has decided to conditionally register ethalfluralin under the authority of section 3(c)(7)(C) of FIFRA for use on the commodities listed above for a period through December 1, 1985 to allow time for the generation and submission of the data which are lacking because a period reasonably sufficient for the generation of the data has not elapsed since the Administrator first imposed the data requirements. The data that must be submitted by December 1, 1985 are: a second species teratology study, a nonrodent chronic feeding study, and a dermal penetration study. These data were identified by the Agency as necessary as a result of this registration review. The Agency has determined that the label must specify the certain protective clothing requirements. Specifically, impermeable gloves, coveralls, and a long-sleeved shirt must be worn during the application process in order to reduce the applicator risk to an acceptable level.

A companion notice in this issue of the Federal Register establishes tolerances for the commodities listed above at 0.05 ppm. There is no expectation that residues of ethalfluralin in the raw agricultural commodities will concentrate in processed food or feed; therefore, food additive regulations do not have to be established under section 409 of the Federal Food, Drug and Cosmetic Act [FFDCA].

IV. Procedural Matters

Comments regarding the registration decision announced in this notice may be submitted to the Agency through December 1, 1985.

Comments may be submitted on all aspects of the Agency's risk/benefit analysis and the Agency's decision to conditionally register ethalfluralin. The Agency is sending information regarding the risk/benefit analysis on ethalfluralin to the Science Advisory Panel (SAP) for their comment, although the Agency is not required to do so by statute.

The Agency will consider any significant comments received in response to this Notice as they are received. In addition, all comments received along with the requested data will be considered in the future determination regarding the registration of ethalfluralin under Section 3(c)(5) of FIFRA.

Dated: November 28, 1983.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

[FR Doc. 84-66 Filed 1-3-84; 8:45 am]

BILLING CODE 6560-50-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Report Forms Under OMB Review

AGENCY: Equal Employment Opportunity Commission.

ACTION: Request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission. The proposed report form under review is listed below.

DATE: Comments must be received on or before February 21, 1984. If you anticipate commenting on a report form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Liaison Officer of your intent as early as possible.

ADDRESS: Copies of the proposed report form, request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Liaison Officer. Comments on the item listed should be submitted to the Agency Liaison Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

EEOC Agency Liaison Officer: Gary G. Papritz, Administrative Management Services, Room 281, 2401 E Street, NW., Washington, D.C. 20507: Telephone (202) 634-6990.

OMB REVIEWER: Joseph Lackey, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503; Telephone (202) 395-6880.

Type of request: Revision of Currently Approved Collection.

Title: Employer Information Report, EEO-1 (S.F.-100).

Form Number: S.F.-100.

Frequency of report: Annual.

Type of respondent: Private Employers.

Responses: 126,700.

Reporting hours: 633,500.

Federal cost: $543,000.00.

Number of forms: 1.

Abstract—Needs/Uses: EEO-1 data is used by EEOC to investigate charges of employment discrimination against employers in the private sector. It is used to support EEOC decisions and conciliations, and in systemic program activities. Data is also shared with other Federal agencies, particularly with the Office of Federal Contract Compliance Programs (OFCCP) and with the Small Business Administration (SBA). Additionally it is shared with State and Local Fair Employment Practices Commissions (FEPC's) as required by Title VII. The S.F.-100 is being changed to add necessary information. Additional questions are being asked (e.g. Dun and Bradstreet Number, reference financial assistance from SBA, and employment of apprentices), but no increase in recordkeeping burden is imposed.

Dated: December 21, 1983.

For the Commission.

Clarence Thomas,

Chairman, Equal Employment Opportunity Commission.

[FR Doc. 84-18 Filed 1-3-84; 8:45 am]

BILLING CODE 6570-06-M

FEDERAL RESERVE SYSTEM

C&P Bank Corporation of Pensacola, et al.; Formation of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become bank holding companies by acquiring voting shares or assets of a bank. 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 may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *C&P Bank Corporation of Pensacola,* Pensacola, Florida; to become a bank holding company by acquiring at least 80 percent of the voting shares of Citizens and peoples National Bank, Pensacola, Florida. Comments on this application must be received not later than January 25, 1984.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Decatur Bancshares, Inc.,* Greensburg, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of Decatur County Bank, Greensburg, Indiana. Comments on this application must be received not later than January 13, 1984.

C. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Peoples National Bancshares of Checotah, Inc.,* Checotah, Oklahoma; to become a bank holding company by acquiring 100 percent of the voting shares of The Peoples National Bank of Checotah, Checotah, Oklahoma. Comments on this application must be received not later than January 18, 1984.

D. **Federal Reserve Bank of Dallas** (Anthony J. Montlaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Milford Bancshares, Inc.,* Milford, Texas; to become a bank holding company by acquiring 80 percent or more of the voting shares of First State Bank, Milford, Texas. Comments on this application must be received not later than January 25, 1984.

E. **Board of Governors of the Federal Reserve System** (William W. Wiles, Secretary) Washington, D.C. 20551:

1. *AmerAsia Corp.,* Philadelphia, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of AmerAsia Bank, Philadelphia, Pennsylvania. This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Philadelphia. Comments on this application must be received not later than January 23, 1984.

2. *Coal City Capital Corp.,* Coal City, Illinois; to become a bank holding company by acquiring 80 percent or more of the voting shares of The First National Bank of Coal City, Coal City, Illinois. This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Chicago. Comments on this application must be received not later than January 27, 1984.

Board of Governors of the Federal Reserve System, December 28, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-25 Filed 1-3-84; 8:45 am]

BILLING CODE 6210-01-M

Citicorp, et al.; Acquisition of Bank Shares by Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire voting shares or assets of a bank. 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 may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. **Board of Governors of the Federal Reserve System** (William W. Wiles, Secretary) Washington, D.C. 20551:

1. *Citicorp,* New York, New York; to acquire 100 percent of the voting shares of Citibank (Maryland), National Association, Towson, Maryland. This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York. Comments on this application must be received not later than January 23, 1984.

2. *BankAmerica Corporation,* San Francisco, California; to acquire 100 percent of the voting shares of Bank of America—South Dakota, Rapid City, South Dakota. This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of San Francisco. Comments on this application must be received not later than January 23, 1984.

Board of Governors of the Federal Reserve System, December 28, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-24 Filed 1-3-84; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 83M-0423]

Safeway Products, Inc.; Premarket Approval of Soft Lens Thermal Disinfecting Unit, Model No. 6726

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application for premarket approval under the Medical Device Amendments of 1976 of the Soft Lens Thermal Disinfecting Unit, Model No. 6726, sponsored by Safeway Products, Inc., Middletown, CT. After reviewing the recommendation of the Ophthalmic Device Section of the Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel, FDA notified the sponsor that the application was approved because the device had been shown to be safe and effective for use as recommended in the submitted labeling.

DATE: Petitions for administrative review by February 3, 1984.

ADDRESS: Requests for copies of the summary of safety and effectiveness data and petitions for administrative review may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Charles H. Kyper, National Center for Devices and Radiological Health (HFK-402), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7445.

SUPPLEMENTARY INFORMATION: On December 3, 1982, Safeway Products, Inc., Middletown, CT 06457, submitted to FDA an application for premarket approval of the Soft Lens Thermal Disinfecting Unit, Model No. 6726, for use in the heat (thermal) disinfection of all soft (hydrophilic) contact lenses. The application was reviewed by the

Ophthalmic Device Section of the Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel, an FDA advisory committee, which recommended approval of the application. On December 5, 1983, FDA approved the application by a letter to the sponsor from the Associate Director for Device Evaluation of the Office of Medical Devices.

Before enactment of the Medical Device Amendments of 1976 (the amendments) (Pub. L. 94–295, 90 Stat. 539–583), accessories for contact lenses consisting of polymers other than polymethylmethacrylate (PMMA) were regulated as new drugs. Because the amendments broadened the definition of the term "device" in section 201(h) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(h)), non-PMMA lens accessories are now regulated as class III medical devices (premarket approval). As FDA explained in a notice published in the **Federal Register** of December 16, 1977 (42 FR 63472), the amendments provide transitional provisions to ensure continuation of premarket approval requirements for class III medical devices formerly regulated as new drugs. Furthermore, FDA requires, as a condition to approval, that sponsors of applications for premarket approval of non-PMMA contact lenses or accessories comply with the records and reports provisions of Subpart D of Part 310 (21 CFR Part 310) until these provisions are replaced by similar requirements under the amendments.

A summary of the safety and effectiveness data on which FDA's approval is based is on file with the Dockets Management Branch (address above) and is available upon request from that office. A copy of all approved final labeling is available for public inspection at the National Center for Devices and Radiological Health—contact Charles H. Kyper (HFK–402), address above. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360(g)), for administrative review of FDA's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and FDA's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration of FDA's action under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issues to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before February 3, 1984, file with the Dockets Management Branch (address above), two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 23, 1983.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84–28 Filed 1–3–84; 8:45 am]

BILLING CODE 4160–01–M

Health Care Financing Administration

Medicaid Program; Hearing; Reconsideration of Disapproval of an Idaho State Plan Amendment

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on February 7, 1984 in Seattle, Washington, to reconsider our decision to disapprove Idaho State Plan Amendment 83–11.

CLOSING DATE: Requests to participate in the hearing as a party must be received by January 19, 1984.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, Bureau of Eligibility, Reimbursement and Coverage, 365 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone: (301) 594–8261.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove an Idaho State Plan Amendment.

Section 1116 of the Social Security Act and 45 CFR Parts 201 and 213 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid Agency that informs the agency of the time and place of the hearing and the issues to be considered. (If we subsequently notify the agency of additional issues which will be considered at the hearing, we will also publish that notice.)

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained in 45 CFR 213.15(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins, in accordance with the requirements contained in 45 CFR 213.15(c)(1).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

The issue in this matter is whether Idaho's request to include personal care services, with certain limitations, as a covered service under the Idaho Medicaid Program violates regulations at 42 CFR 440.240(b). Subparagraph (b) of 42 CFR 440.240 states that the plan must provide that services available to any individual in the categorically needy or a covered medically needy group of recipients are equal in amount, duration and scope for all recipients within the group. Idaho includes only the categorically needy in its State Medicaid Plan. Under Idaho's proposed plan, coverage of personal care services are subject to the following limitations: (1) Prior authorization by the medical assistance section; (2) costs of personal care services in conjunction with other community services are not to exceed the cost of institutional placement based on the daily State expenditure for skilled nursing facilities, intermediate care facilities, and intermediate care facilities for the mentally retarded services; and (3) recipients must be medically eligible for facility placement in the absence of personal care services. HCFA determined that Idaho's proposed plan violated the comparability provisions at 42 CFR 440.240(b) on the basis that the limitations in items 2 and 3 would not allow all categorically eligible individuals equal access to personal care services.

The notice to Idaho announcing an administrative hearing to reconsider our

disapproval of its State plan amendment reads as follows:

Ms. Rose Bowman,
Director, Department of Health and Welfare, Bureau of Benefit Payment, Medical Assistance Section, Boise, Idaho.

Dear Ms. Bowman: This is to advise you that your request for reconsideration of the decision to disapprove Idaho State Plan Amendment 83–11 was received on November 30, 1983. You have requested a reconsideration of whether this plan amendment, which would include personal care services, with certain limitations, as a covered service under Idaho's Medicaid Program, conforms to the requirements for approval under the Social Security Act and pertinent Federal requirements.

I am scheduling a hearing on your request to be held on February 7, 1984, at 10 a.m., in Room 268, New Federal Building, 915 Second Avenue, Seattle, Washington. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties.

I am designating Mr. Stanley Krostar as the presiding official. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 594–8261.

Sincerely yours,

Carolyne K. Davis.

(Sec. 1116 of the Social Security Act (42 U.S.C. 1316))

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program)

Dated: December 27, 1983.

Carolyne K. Davis,
Administrator, Health Care Financing Administration.

[FR Doc. 84–83 Filed 1–3–84; 8:45 am]
BILLING CODE 4120–03–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Statute of Limitations Claims List

December 28, 1983.

AGENCY: Bureau of Indian Affairs.

ACTION: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

SUMMARY: This notice lists certain potential pre-1966 Indian damage claims which were submitted to the Bureau of Indian Affairs pursuant to Sec. 4(a) of the Indian Claims Limitation Act of 1982, Pub. L. 97–394, but which were inadvertently excluded from the list of claims published in the **Federal Register** on November 7, 1983 (Vol. 48, No. 216, Part II). This notice constitutes an addendum to that November 7 list. Publication of these claims is intended to preserve the potential rights of action of any affected Indian tribe or individual.

DATE: This notice establishes that for any claims appearing in this notice, the statute of limitations does not begin to run until the Secretary takes certain actions.

FOR FURTHER INFORMATION CONTACT: Guy Fringer, Bureau of Indian Affairs, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, D.C. 20245. Telephone: (202) 343–3604.

SUPPLEMENTARY INFORMATION: Pursuant to Sec. 4(a) of the Indian Claims Limitation Act of 1982, Pub. L. 97–394, Indian tribes, groups, and individuals had until September 27, 1983, to submit to the appropriate Area Office additional pre-1966 Indian damage claims not included on the list of claims published in the **Federal Register** on March 31, 1983 (Vol. 48, No. 63, Part V). Such additional claims were published in the **Federal Register** on November 7, 1983 (Vol. 48, No. 216, Part II). Certain claims submitted to the appropriate Area Office prior to the September 27, 1983, deadline were inadvertently excluded from the list of claims published on November 7. This notice constitutes an addendum to that November 7 list and is intended to preserve the potential rights of action of any affected Indian tribe or individual.

Certain claims submitted by the Duckwater Shoshone Tribe were listed as Claim No. H64642–157 and were erroneously characterized as "Mineral Materials Doc. 326–K" in the Federal Register of November 7, 1983. The Duckwater Shoshone Tribe had in fact submitted a list of mining companies which the Tribe alleges have trespassed on the aboriginal lands of the Western Shoshone Nation. This notice corrects the erroneous characterization of those claims by describing them as "Mineral Trespass Claims". In addition, the Duckwater Shoshone Tribe submitted a list of railroads which the Tribe alleges have trespassed on the aboriginal lands of the Western Shoshone Nation. Those claims are described in the November 7 list as "Railroad Trespass" under Claim No. H64642–158. It was intended by this description to encompass all the potential railroad trespass claims submitted by the Duckwater Shoshone Tribe even though the notice appears to describe only a single claim.

In the **Federal Register** of November 7, Claim P06 108–028 should read "Fishery—Lamb Creek" instead of "Fishery—Lamp Creek", and Claim P06 108–022 should read "Fishery—Ozette Lake" instead of "Fishery—Makah River".

Please note that the inclusion of any claims on this list does not constitute a determination by the Department of the Interior that a claim is valid or has any legal merit.

John W. Fritz,
Acting Assistant Secretary—Indian Affairs.

Tribe and case	Allottee	Allotment	Type of claim
F53404:0162	Tribal	N/A	Wrongful Diminution of Game Supplies.
F53405:0155	Tribal	N/A	Wrongful Diminution of Game Supplies.
F53406:0093	Tribal	N/A	Wrongful Diminution of Game Supplies.
H63602:174	Cocopah Tribe	N/A	Aboriginal Title Claim.
M45751:			
003	Ute Mountain Ute	N/A	Road Trespass.
004	Annie Dutchie	AC141	Do.
005	Mandy Bush	AC142	Do.
006	Betty Bennally	AC143	Do.
007	Temple W. Rabbit	AC146	Do.
008	Avon W. Rabbit	AC147	Do.
009	Mollie Cantsee	AC154	Do.
010	Pat Cantsee	AC156	Do.
011	Carrie Cantsee	AC157	Do.
012	James Eystoo	AC159	Do.
013	Etta Eystoo	AC160	Do.
014	Babe Deer	AC167	Do.
015	Erma Lehi	AC170	Do.
016	Ned Dutchie	AC176	Do.
017	Ute Mountain Ute	N/A	Recovery of State Mineral Taxes.
P06121:			
007	Squaxin Island Tribe	N/A	Claim for Recovery of Land.
008	Squaxin Island Tribe	N/A	Aboriginal Title Claim.
P10123:022	Tulalip Tribe	N/A	Dikes Constructed by Mr. Wester.
P12103: 007	Indian Joseph	N/A	Claim to Indian Island.
P13203:0132	Flathead Tribe	N/A	Catholic School Tuition-Tribal Funds.

The following list consists of Winnebago (A13383) forced fee patent claims.

Case	Allottee	Allotment No.
0585	Olive Grant	2
0586	Edward Hatchet	3
0587	David Blackhawk	6
0588	James Bird	7
0589	Fanny Bird	8
0590	David Blackhawk	9
0591	Mary Tiebault	10
0592	Samuel Wallace	19
0593	Clara Elk	29
0594	Henry Comingback	35
0595	David Henry	38
0596	Ruth Henry	39
0597	Mrs. Henry Decora	48
0598	Little Thunder Peterson	52
0599	Edward Bearskin	57
0600	Paul Edward Bearskin	58
0601	Helen Hunter Priest	63
0602	Charles Frenchman	64
0603	Marie Frenchman	65
0604	Benjamin B. Bird	67
0605	Small Woman	70
0606	James Thomas	78
0607	Jospeh Thomas	81
0608	John Cloud Holt	82
0609	William Holt	83
0610	Louis Buchanon	84
0611	Amos Buchanon	85
0612	Thomas Buchanon	86
0613	Joseph Littlebear, Jr	89
0614	Fanny West	90
0615	Abraham Priest	98
0616	William Hatchet	103
0617	Maria Hatchet	105
0618	See Suchkaw	114
0619	Rosalie Chief	116A
0620	Alexander Chief	117
0621	John Bigbear	126
0622	Louis Bigbear	127
0623	Louisa Bigbear	130
0624	Bigbear (Susie White)	131
0625	Mrs. Henrietta Lemon	132
0627	Davie Lemmon	133
0628	Irene Lemmon	138
0629	Thomas Van Buren	141
0630	Lawrence Smith	145
0631	Late Rave	148
0632	Emily Rave	149
0633	Clara Goodman	157
0634	John Goodman	158
0635	Emma Rave	160
0636	John Rave	162
0637	Henry Rave	165
0638	George Decora (Police)	168
0639	Mrs. Young Bear	178
0640	George Bear	179
0641	Henry Bear	181
0642	Lara Waggoner	186
0643	Harrison Tabo	200
0644	Peter Painter	201
0645	Lucy Tabo	204
0646	Mrs. James Smith	205
0647	George Sun	208
0648	Maggie Sun	209
0649	Henry Sun	210
0650	Charles Houghton	215
0651	Fanny Houghton	216
0652	Mary Houghton	217
0653	Bad Thunder Bradford	218A
0654	Henry Houghton	230
0655	Taylor Houghton	231
0656	Prosper Armell, Sr.	234A0
0657	Unknown	235
0658	Louis Arnell	237
0659	Unknown	238
0660	Elizabeth Armell	240
0661	Teresa Arnell	241
0662	Minnie St. Cyr	244
0663	Louis St. Cyr	245
0664	Julia St. Cyr	247
0665	David St. Cyr	248
0666	Lilly St. Cyr	249
0667	Henry Wolf	250
0668	Unknown	255
0669	Little Jim	257
0670	Mary Russell	264A0
0671	Russell Hunter	268
0672	Andrew Wolf	269
0673	Joseph Wolf	271
0674	Willie Littlebird	273
0675	William Wolf	275
0676	Henukaw Crosby	283
0677	Night Walking Woman	284
0678	Nancy Hittle	286
0679	Alexander Hittle	288
0680	Wind Walker	290
0681	William Davis	294
0682	James Blackhawk	295
0683	Redlegs	298
0684	Hattie James	302
0685	Joseph Johnson	303A0
0686	Unknown	304
0687	Unknown	305
0688	Henry White Spirit	309
0689	Lucy White Spirit	310
0690	Felix Wilson	317
0691	Mary Wilson	324
0692	Palagie Nash	327
0693	Marie Nash	328
0694	Violletta Nash	329
0695	Josephine Nash	330
0696	Albert Nash	331
0697	Nellie Raymond	333
0698	George Raymond	334
0699	Fanny Raymond	335
0700	Jeannette Raymond	336
0701	Maggie Raymond	337
0702	Charles Raymond	338
0703	Joseph Bigbear	339
0704	Unknon	340
0705	....do	340–A
0706	....do	340–B
0707	....do	340–2
0708	John Hunter	344
0709	Lettie Hunter	345
0710	Wiliam Hunter	346
0711	John Logan	349
0712	Julie Brown	351
0713	Belle Logan	352
0714	Albert Logan	357
0715	Jeanette Rice	368
0716	Eunice Rice	369
0717	Edmund Rice	370
0718	Edith Earth	378
0719	Harriet Earth	380
0720	Alice Cloud	384
0721	Nettie Perry	390
0722	James Peterson	391
0723	James Smith	392
0724	Joseph Baker	395
0725	Lewis Baker	396
0726	Philip Long	403
0727	Joseph Longtail	414
0728	James Paquette	421
0729	James Mallory	423
0730	Connokaw Mallory	424
0731	Mrs. Edward Walker	425
0732	....do	425A0
0733	Helen Walker	426
0734	Mary Walker	427
0735	Swan Chief	432
0736	Broken Treetop	433
0737	Henukaw Treetop	434
0738	Charles Fisher, Jr.	435
0739	Clarance Fisher	447
0740	Charles Mann	449
0741	Frank White	450
0742	Edward Sharp	452
0743	Edward Decora	459
0744	James Caramony	460–2
0745	Connokaw Caramony	461
0746	John Chief	462
0747	Lydia Chief	463
0748	George Whitewing	466
0749	....do	466A0
0750	Henry Lincoln	468–A
0751	John Bear Skin	470
0752	Peter Decora	480
0753	John Decora	481
0754	Sarah Decora	482
0755	Alice White	483
0756	Little Thunder	488
0757	Margret Perry	490
0758	Mrs. John Synder	491
0759	White Bear	492–A
0760	....do	492–B
0761	Moses Whitebear	494
0762	Louis Greyhair	498–A
0763	David Hinman	500
0764	....do	500–1
0765	Robinson Hinman	501
0766	Simeon Hinman	502
0767	Solomon Hill	504–A
0768	Elsie Perry	509
0769	Joseph Twin	515
0770	James Yellowbank	530
0771	John Decora	536
0772	David Lowry	541
0773	....do	541–1
0774	John Lowry	542
0775	Mary Rasdell	550
0776	Unknown	551
0777	Charles Gilbert	556
0778	Willie Esau	569
0779	Daniel Wolf	573
0780	Edward Lincoln	578–1
0781	Cyrus Ox	591
0782	Mrs. Raise Wing	592
0783	Henry Raise Wing	594
0784	Unknown	600–1
0785	John Little Walker	601
0788	Frank Lamere	609
0789	Catherine Lamere	612
0790	Connokaw	625
0791	Albert Hensley	631
0792	David McClaska, Jr.	633
0793	Joseph Armell, Jr.	637
0794	John Clay	643
0795	Jesse Clay	645
0796	Paul Priest	650
0797	Fishtail Lincoln	651–A
0798	Unknown	651–B
0799	James Fishtail Lincoln	655
0800	Emma Hill	660
0801	Frank Ewing	668
0802	Frank Bearer	671
0803	Joseph Armell	672
0804	Louisa Armell	674
0805	Frank Armell	675
0806	Johnson Smith	677
0807	Henukaw French	678
0808	Little Prophet	689
0809	John Lincoln	690
0810	Henukaw Blackdeer	691
0811	James Penn	697
0812	Green Crow	701
0813	Dora Green Crow	702
0814	Iowa Crow	703
0815	Charles Bonapart	706
0816	Mrs. Bradford L. Porter	711–1
0817	Amos Snow	717
0818	Henry Decora	721
0819	Charles Decora	722
0820	Porter Decora	723
0821	John Smith	730
0822	Twin	732
0823	James Smith	734
0824	Mary Smith	735
0825	Chone win kaw	744
0826	Henry French	752
0827	Lewis Greyhair	761
0828	John Greyhair	765–1
0829	Unknown	768
0830	Unknown	771
0831	Nancy Armell	774
0832	Andrew Sharpback	782
0833	Charles Brown	790
0834	Thomas Rice Hill	802–1
0835	....do	802–3
0836	Joseph Prophet	804
0837	Walter Prophet	805
0838	Unknown	809
0839	Julie Lamere	823
0840	Eunice Lamere	824
0841	James Rice Hill	827
0842	Charles Rice Hill	828
0843	George Eaton	829
0844	Abel Wolf	833–A
0845	Ebenezer Kingsley	835A0
0846	Fanny Man Eater	838
0847	George Brown No. 2	839
0848	Mattie Kuno	840
0849	George Brown, Jr.	841
0850	Bear	842
0851	Cyrus Bear	844
0852	Mrs. Mary Lamere Rave	846
0853	Turner Rave	849
0854	Ellen Baker	851
0855	Sally Baker	854
0856	Peter Sampson	857
0857	Mary Sampson	859
0858	Julia Decora	862
0859	Angel Decora	863
0860	Albert Walker	866
0861	Isaac Johnson	868

Case	Allottee	Allotment No.
0862	Siff Wing	869
0863	Charles Black Hawk	878
0864	Barclay Payer	900
0865	Maria Payer	901
0866	Jon Smith	904
0867	Walter Smith	905
0868	George Boyd	914
0869	Frank Boyd	915
0870	George Johnson	919
0871	Helena Johnson	920
0872	Henry Johnson	921
0873	Lamson Whirling Thunder	922
0874	Marl Wilkinson	923
0875	Frank T. Thunder	925
0876	Eli Williams	943
0877	George Brown Carpinter	945
0878	Joseph Carpenter	946
0879	Fanny bird	949
0880	John Painter	953
0881	Mary Painter	954
0882	Florence Lamere	970
0883	do	971
0884	John West	974
0885	Michael St. Cyr	975
0886	Unknown	976
0887	do	978
0888	do	988
0889	Florence White Man	990
0890	Unknown	166L-A
0891	do	221L
0892	do	326L
0893	do	371L

[FR Doc. 84-47 Filed 1-3-84; 8:45 am]
BILLING CODE 4310-02-M

Bureau of Land Management

Intent To Hold Public Scoping Meetings and To Prepare an Environmental Impact Statement for a Coal Preference Right Lease Application (PRLA), Located in the Craig District, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Scoping Meetings and Notice to Prepare an EIS (James Creek Preference Right Lease Application Environmental Impact Statement).

SUMMARY: This notice advises the public that the Bureau of Land Management intends to hold meetings to gather information and seek assistance in defining the range of uses and concerns for preparation of an Enviromental Impact Statement (EIS) for Coal PRLA (C-0126998) located in Rio Blanco County, Colorado. This notice is made in accordance with the National Environmental Policy Act (NEPA) and the Council on Environmental Quality (CEQ) regulations (40 CFR 1501.7 and 1508.22) to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the EIS. Comments and participation in this scoping process are solicited.

FOR FURTHER INFORMATION AND SUBMISSION OF COMMENTS: An information packet and PRLA location map will be available upon request from the White River Resource Area Office at the address given below and at the public meetings. The meeting dates and places are as follows:

Place, Date, Time and Address

Meeker, Colorado, Jan. 23, 1984, 7:00 p.m., BLM, WRRA Office, two (2) miles west of Meeker, Colorado

Denver, Colorado, Jan. 24, 1984, 2:00 p.m., Ramada Foothills, Union & 6th Avenue, Lakewood, Colorado

Oral testimony and submission or written comments will be received at the meetings, or written comments may be mailed to B. Curtis Smith, Area Manager, Bureau of Land Management, White River Resource Area, Post Office Box 928, Meeker, Colorado 81641. Written comments will be accepted through February 6, 1984.

SUPPLEMENTARY INFORMATION: The EIS is intended to evaluate leasing alternatives as well as identifying mitigating measures and special stipulations that the applicant must take into consideration when preparing the PRAL's final showing. Alternatives that have been tentatively identified include the following: (1) No Action, or no development alternative, (2) Applicants Proposed Action, and (3) Applicants Proposed Action incorporating BLM Mitigating Measures and Special Stipulations. The purpose of the meetings is to encourage participation from interested persons in defining significant environmental issues and concerns which may result from the issuance of a noncompetitive coal lease. The EIS will not be written until 1985, but the major issues and concerns need to be identified at this time in order to collect the necessary data for analysis.

Oral presentations may be made in lieu of or in addition to any written comments submitted. Each witness will be limited to a maximum of ten minutes of oral presentation. The text of any prepared presentation materials may be given to the BLM representative at the meetings.

The agenda for the scoping meetings will be as follows:

1. Introduction

a. Purpose and Intent of Meeting.

b. Location and description of the PRLA.

c. Presentation by Consolidation Coal Company on their Proposal.

d. Description of Issues Identified During Pre-Analysis.

e. Discussion of Possible Alternatives to be Considered in the EIS.

2. Solicitation of public comment, recommendations, and issues of major concern to be considered and addressed in the EIS.

Potential issues in the area associated with development of this PRLA include impacts to wildlife and groundwater hydrology. Preparation of the EIS will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, Council on Environmental Quality Regulations (40 CFR Part 1500), Federal Coal Management Regulations (43 CFR Part 3430), and other Federal laws and regulations, and Department of the Interior policies and precedures.

Dated: December 21, 1983.

Cecil Robert,

Acting State Director, Bureau of Land Management.

[FR Doc. 84-84 Filed 1-3-84; 8:45 am]
BILLING CODE 4310-JB-M

Minerals Management Service

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Chevron U.S.A.

AGENCY: Mineral Management Service, Interior.

ACTION: Notice of the receipt of a proposed development and production plan.

SUMMARY: Notice is hereby given that Chevron U.S.A. Inc. has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS-G 4858, Block 42, Eugene Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Morgan City, Louisiana.

PURPOSE: The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the Plan and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the Code of Federal Regulations, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the Plan for consistency with the Louisiana Coastal Resources Program.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and

procedures under which the Minerals Management Service makes information contained in Development and Protection Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations. Accordingly, a copy of the Plan is available for public review at the Office of the Regional Manager, Gulf of Mexico Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Matairie, Louisiana (Office hours: 9 a.m. to 3:30 p.m., Monday through Friday).

A copy of the Consistency Certification and the Plan are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, *Attention OCS Plans,* Post Office Box 44396, Baton Rouge, Louisiana 70804. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the Plan from the Minerals Management Service.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Public Records, Room 147, 3301 North Causeway Blvd., Matairie, Louisiana 70002, Phone (504) 838–0519.

Dated: December 20, 1983.

John L. Rankin,

Regional Manager, Gulf of Mexico Region.

[FR Doc. 84–21 Filed 1–3–84; 8:45 am]

BILLING CODE 4310–MR–M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Forest Oil Corp.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development and production plan.

SUMMARY: Notice is hereby given that Forest Oil Corporation has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS–G 0991, Block 284, Eugene Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Intracoastal City, Louisiana.

PURPOSE: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the Plan and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the Code of Federal Regulations, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the Plan for consistency with the Louisiana Coastal Resources Program.

SUPPLEMENTARY INFORMATION: Revised rules governing practices under which the Minerals Management Service makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations. Accordingly, a copy of the Plan is available for public review at the Office of the Regional Manager, Gulf of Mexico Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

A copy of the Consistency Certification and the Plan are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section *Attention OCS Plans,* Post Office Box 44396, Baton Rouge, Louisiana 70804. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the Plan from the Minerals Management Service.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Public Records, Room 147, 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone (504) 838–0519.

Dated: December 20, 1983.

John L. Rankin,

Regional Manager, Gulf of Mexico Region.

[FR Doc. 84–19 Filed 1–3–84; 8:45 am]

BILLING CODE 4310–MR–M

Office of Surface Mining Reclamation And Enforcement

Continuance of Public Hearing for the National Wildlife Federation/Wyoming Wildlife Federation's Petition To Designate the Red Rim Area, Carbon and Sweetwater Counties, Wyoming, as Unsuitable for Surface Coal Mining Operations; Extension of Comment Period for the Petition and Draft Combined Petition Evaluation Document/Environmental Impact Statement

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), U.S. Department of the Interior, Washington, D.C. 20240.

ACTION: Notice of date changes for public hearing and close of public comments on petition and draft petition evaluation document/environmental impact statement (PED/EIS).

SUMMARY: On December 2, 1983, OSM and the Wyoming Environmental Quality Council (EQC) granted the petitioners' and an intervenor's request for continuance of the hearing on the Red Rim unsuitability petition. The hearing will be held no sooner than February 6, 1984. The comment period on the petition and draft PED/EIS is extended until further notice. Notice of the hearing date and close of the comment period will be made in the Federal Register.

DATE: The date of the public hearing will be announced. The hearing will be held no sooner than February 6, 1984.

Public comments: Comments will be accepted until further notice.

ADDRESSES: Copies of the petitioners' and intervenor's request for continuance of the public hearing and the Wyoming EQC's order granting the continuance are available for review in OSM and Wyoming Department of Environmental Quality's (DEQ) administrative record of the petition process. The record is located at the following four locations:

Office of Surface Mining, 2d Floor, Brooks Towers, 1020 15th Street, Denver, Colorado 80202.

Wyoming Department of Environmental Quality, Equality State Bank Building, 401 West 19th Street, Cheyenne, Wyoming 82002.

Bureau of Land Management, District Office, 1300 North 3d Street, Rawlins, Wyoming 82301.

Office of the County Clerk, Carbon County Courthouse, Fifth and Spruce Street, Rawlins, Wyoming 82301.

FOR FURTHER INFORMATION CONTACT: Charles Albrecht, OSM, Western Technical Center (telephone (303) 837–

5421; FTS 327–5421), or Patrick Boles, Wyoming DEQ (telephone (307) 777–7756), at the addresses listed above.

SUPPLEMENTARY INFORMATION: On December 2, 1983, the petitioners, the National Wildlife Federation and Wyoming Wildlife Federation, and an intervenor, Rocky Mountain Energy Company, requested a continuance of the public hearing scheduled for December 6, 1983, until at least February 6, 1984. The basis for the request was that the petitioner and intervenor believed that a continuance might allow the parties to the petition to reach a settlement. On December 2, 1983, the Wyoming EQC and OSM granted the continuance as requested. Notice of the hearing date, time, and place, and of the date for the close of comments on the petition and draft PED/EIS will be published in the **Federal Register** at a later date. The comment period on the unsuitability petition and draft PED/EIS would be extended beyond the hearing date.

Copies of the joint OSM and Wyoming DEQ draft PED/EIS are available upon request from Charles Albrecht, OSM, and Patrick Boles, Wyoming DEQ, at the addresses listed above.

Dated: December 28, 1983.

Dean K. Hunt,

Acting Director, Office of Surface Mining.

[FR Doc. 84–115 Filed 1–3–84; 8:45 am]

BILLING CODE 4310–05–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30343]

Railcarriers; Burlington Northern Railroad Co. and Illinois Central Gulf Railroad Co.; Exemption; Acquisition, Trackage Rights, and Joint Use of Terminal Facilities

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts (1) the purchase by Burlington Northern Railroad Company (BN) of that part of the East Thomas Yard in Birmingham, AL owned by Illinois Central Gulf Railroad Company (ICG); (2) acquisition of trackage rights in that yard by ICG over BN; and (3) a new joint facilities agreement between BN and ICG governing operations in that yard, from prior approval requirements of 49 U.S.C. 11343 *et seq.*, subject to standard employee protective conditions.

DATES: The exemption is effective on December 29, 1983. Petitions to reopen must be filed by January 24, 1984.

ADDRESSES: Send petitions to reopen referring to Finance Docket No. 30343 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, D.C. 20423
and
(2) Petitioners' representatives:

Peter M. Lee, Burlington Northern Railroad Company, 176 East Fifth Street, St. Paul, MN 55101

Howard D. Koontz, Illinois Central Gulf Railroad Company, 233 North Michigan Avenue, Chicago, IL 60601

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Decided: December 21, 1983.

By the Commission, Chairman Taylor, Vice Chairman Sterrett, Commissioners Andre and Gradison.

James H. Bayne,

Acting Secretary.

[FR Doc. 84–49 Filed 1–3–84; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

Evaluation of the Habitual Serious and Violent Juvenile Offender Program and Operation Hardcore Program

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of issuance of guideline for a program evaluation.

SUMMARY: This guideline announces one new OJJDP program initiative entitled "Evaluation of Habitual Serious and Violent Juvenile Offender Program and Operation Hardcore Program."

Under the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) plans to sponsor the following two-year demonstration programs: (1) The Habitual Serious and Violent Juvenile Offender Program, and (2) the Operation Hardcore Program. Both of these programs focus on the enhanced prosecution and correctional treatment of habitual serious juvenile offenders. Those jurisdictions experiencing a juvenile gang problem may elect to focus solely on those offenders repeatedly involved in gang and gang-related felony cases, through the Operation Hardcore Program. OJJDP's National Institute for Juvenile Justice and Delinquency Prevention (NIJJDP) invites public or private agencies to submit applications to design and implement the evaluation component for both the Habitual Serious and Violent Juvenile Offender Program and the Operation Hardcore Program.

National Institute for Juvenile Justice and Delinquency Prevention—Solicitation for Grant Applications for the Evaluation of the Habitual Serious and Violent Juvenile Offender Program and Operation Hardcore

Introduction

Under the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) plans to sponsor the following two-year demonstration programs: (1) The Habitual Serious and Violent Juvenile Offender Programs, and (2) the Operation Hardcore Program. Both of these programs focus on the enhanced prosecution and correctional treatment of habitual serious juvenile offenders. Those jurisdictions experiencing a juvenile gang problem may elect to focus solely on those offenders repeatedly involved in gang and gang-related felony cases, through the Operation Hardcore Program. OJJDP's National Institute for Juvenile Justice and Delinquency Prevention (NIJJDP) invites public or private agencies to submit applications to design and implement the evaluation component for both the Habitual Serious and Violent Juvenile Program and the Operation Hardcore Program. Up to $325,000 is available for the initial twelve month period. It is anticipated that two noncompetitive continuation grants, at approximately the same level of funds, will be made available to support the evaluation for an additional two years subject to: (1) Availability of funds, (2) satisfactory completion of objectives and conditions of the initial grant award, (3) continued need for further evaluation of these programs, and (4) continued best interest of the Government.

Background

According to the UCR arrest statistics juveniles account for approximately 31% of arrests for serious property and violent crimes in the United States today. Various studies have shown, however, that a very small percentage of

the juvenile population is responsible for the majority of serious juvenile crime.

What is needed is a clearer understanding of the habitual serious juvenile offender. That is, why do these youth (who are repeatedly involved in serious crime, referred to the justice system, subjected to the adjudication process, and provided with correctional/probation interventions) continue to engage in serious criminal activity? The primary question to be addressed by this evaluation is how might the justice system more effectively identify, prosecute and rehabilitate these repeat offenders.

Research suggests that those youth who repeatedly come into contact with the juvenile justice system experience inconsistency in the sanctioning and treatment process, which may partially account for failure of rehabilitative efforts. These demonstration programs are intended to increase the consistency of the juvenile justice system in holding a youth accountable for his actions. Also stressed is the justice system's need to be held more accountable by the victims of these serious repeat offenders.

The present technology of prediction is not sufficiently advanced to allow for accurate early identification of individual youth who will pursue long-term criminal careers. The strongest known predictor of future criminal activity is past delinquent behavior. Therefore, each program site will be required to use the best available information to specify the "serious offense" pattern(s) a youth must exhibit in order to be considered eligible.

An issue to be considered in determining the selection criteria for target youth is the limitation of system resources. Each jurisdiction should establish selection criteria which, when consistently adhered to, result in a manageable caseload for prioritized prosecution and intensified correctional efforts. It is this small group of serious juvenile offenders who repeatedly victimize the community, that require the most intensive resources of the entire justice system in order to protect the public as well as enhance the likelihood of successful rehabilitation efforts.

Description of the Program Initiative

As indicated in the Program Announcements for the Habitual Serious and Violent Juvenile Offender Program (HSVJOP) and the Operation Hardcore Program (OHP) in the September 22, 1983, edition of the **Federal Register** (48 FR 43238–45), the target youth for these programs are those delinquents whose juvenile histories indicate repeated commission of serious and violent delinquent acts. The program design requires that each jurisdiction establish objective case selection criteria which will be uniformly adhered to throughout the duration of the demonstration program. Funds awarded under these programs cannot be used to pursue transfer to the adult system unless a provision exists under state law which permits the adult system to waive/transfer-back the juvenile to the juvenile system for treatment following disposition. Applications were invited from State and local prosecutor offices having jurisdiction over juvenile matters in jurisdictions where there is a high incidence of serious and violent crime. It is anticipated that up to sixteen jurisdictions will participate in the HSVJOP and that up to five jurisdictions will participate in the OHP.

HSVJOP and OHP share the following objectives:

(1) Expeditious prosecution and treatment of the targeted juvenile offenders;

(2) Reduction in the number of prehearing or pretrial release or bond decisions made without knowledge of the juvenile's delinquent history because juvenile records (court or police) are unavailable to the prosecutor;

(3) Reduction of pretrial, trial and dispositional delays;

(4) Restriction or elimination of charge or sentence bargaining;

(5) Reduction in the number of dismissals for reasons other than the merits of the case by ensuring that all evidence collected by law enforcement authorities is obtained in an admissible manner;

(6) Enhancement and improvement of methods for obtaining the cooperation of victims and witnesses (with OHP specifying the need to reduce the incidences of gang victim/witness intimidation through the development of victim/witness protection and relocation programs); and

(7) Enhancement of treatment and rehabilitative initiatives to foster successful reintegratioin into society.

In addtion to the above objectives, the OHP specifies:

(8) Prevention of gang-related serious and violent crimes through prosecution of the most serious gang offenders; and

(9) Increased cooperation and coordination among police, prosecutorial authorities, neighborhood groups, probation officials, schools, and youth organizations.

For both HSVJOP and OHP, there are four major strategy areas: prosecution, courts, victim/witness assistance, and corrections.

The prosecutorial and court approach for each of these programs builds upon lessons learned from the Law Enforcement Assistance Administration's Career Criminal Program which sought to intensify prosecutorial efforts of those adult defendants who appeared to have established a consistent, serious and violent pattern of criminal behavior. In those jurisdictions which choose to specifically target youth repeatedly involved in gang-related felonies, the OHP design incorporates key program strategies developed by the Los Angeles County District Attorney's Office in their approach to selective and targeted prosecution of these offenders, entitled "Operation Hardcore." Specific strategies to be demonstrated by the prosecutors include the following:

(1) Screening and evaluation of all juvenile arrests and delinquency petitions to identify target cases in accordance with predetermined and uniformly applied selection criteria;

(2) Assignment of experienced prosecutors to these cases;

(3) Individualized case preparation (vertical prosecution with initiating prosecutor remaining with the case throughout entire process);

(4) A policy of limited or no charge or sentence bargaining;

(5) Enhanced victim/witness coordination and notification at each critical stage of the prosecution process;

(6) Representation of the State at all critical stages in the juvenile process; and

(7) Assignment of a quantitatively trained program analyst to the project to collect and analyze project data for assessment of project performance, in conjunction with the National Evaluation.

Specific strategies to be implemented in the courts include:

(1) Priority case docketing; and

(2) Expeditious preparation of pre-sentence investigation reports.

Each of the programs is to incorporate key services articulated in the U.S. Attorney General's "Guidelines for Victims and Witness Assistance," issued in July 1983, and the Final Report of the President's Task Force on Victims of Crime. The following strategies are to be implemented:

(1) Victims are informed of the availability of public or private programs that provide victim counseling, treatment, or support;

(2) Victims are informed of compensation for which they may be entitled under law;

(3) Prosecutors shall consult victims for their views on scheduling changes

and/or continuances affecting their appearances or attendance at judicial proceedings;

(4) Prosecutors shall consult with victims for their views on the proposed terms of any negotiated plea, and notify the court of the victim's views if the victim disagrees with the terms of the plea; and

(5) Prosecutors shall ensure that victims have the opportunity at the time of sentencing to inform the court in writing and in person of the circumstances of the crime and the full impact that the defendant's crime has had on them and their families.

The suggested rehabilitative approach for HSVJOP and OHP is comprised of key components derived from the most promising correctional programs for serious offenders. While considerable local discretion is allowed for jurisdictions to determine how best to enhance the existing juvenile correctional system, the following three critical treatment requirements are specified for adjudicated target youth:

(1) Development and implementation of an enhanced diagnostic assessment process for determination of individual youth's treatment needs in such areas as physical health, mental health, individual behavior and social problems, family involvement and background, educational status, vocational status, recreational and leisure time activities, life skills for community living, and existing community resources;

(2) Development of goal-oriented treatment plans and provision of individualized services which respond to the needs identified in the diagnostic assessment; and

(3) Utilization of the concept of continuous case management to ensure individualized advocacy and care for each youth, continuity of treatment, and a primary focus on community reintegration.

Evaluation Design

The following discussion of the proposed evaluation for HSVJOP and OHP should be considered a preliminary design subject to revision by the evaluation applicants; and subsequent modification by the evaluator to adapt more fully to site-specific needs and constraints.

The overall purpose of the national evaluation is to aid in the design of programs aimed at reducing serious juvenile crime through the assessment of program strategies designed to increase the capacity of the justice system to more effectively prosecute, adjudicate and rehabilitate target youth. In addition, it should contribute to our understanding of the characteristics of habitual offenders and their experiences in the justice system.

The following is a listing of those objectives which are most critical to the national evaluation:

(1) To assess the degree to which the prosecutor offices consistently: identify target cases in accordance with selection criteria; assign experienced prosecutors to handle target cases; utilize vertical prosecution of target cases; reduce the number of decisions made without knowledge of the juvenile's delinquent history; and restrict or eliminate charge or sentence bargaining.

(2) To determine whether the courts reduce pretrial, trial and dispositional delays.

(3) To evaluate how consistently prosecutor offices implement specified program services for the victims of target youth crimes.

(4) To document efforts to enhance the rehabilitative approach for project youth, particularly in terms of utilization of individualized needs assessment, goal-oriented treatment plans, and continuous case management.

(5) To develop and institutionalize a Management Information System (MIS) capacity to enhance identification, record management, processing and follow-up of target youth throughout their involvement in the juvenile and criminal justice system.

The evaluation design is primarily a pre-post comparison of each local site's existing method of handling delinquent youth with the handling of target youth and other cases following the site's initiation of the program. The process evaluation will therefore require the gathering of data on current operations to serve as the baseline for assessment of program enhancement activities. Implementation of mandatory program components would be assessed in terms of: what sequence of events occurred; what time frame was followed; what justice system actors were involved; and what changes occurred in target youth processing throughout their involvement with law enforcement, prosecution, corrections, probation and parole.

The evaluators will be responsible for designing a Management Information System (with site-specific adaptations) which would serve (1) to enhance the capacity of local sites to manage their operations as wells as (2) to provide the national data base for evaluating the implementation of required program strategies for proscecutors, courts, and victim/witness assistance. The evaluators would have primary responsibility for training each local project's data collector to incorporate this MIS into program operations in order to enhance the identification, processing and follow-up of target youth throughout their involvement in the justice system. In addition, the MIS would provide the national evaluators with critical data regarding such factors as target youth's offense history, justice system experiences, and correctional interventions. In the program announcements for HSVJOP and OHP, applicant jurisdictions were informed that they should presently have available a sufficiently sophisticated record-keeping system to allow for: generation of baseline as well as treatment period data, and the incorporation of the MIS into the existing records system.

In order to assess whether program strategies increase the capacity of the justice system to handle offenders efficiently and effectively, the evaluation might include the construction of four offender cohorts similar to those utilized in the LEAA Career Criminal Program National Evaluation (1981). Two cohorts would be constructed from a specified baseline period prior to program initiation, one cohort would be comprised of youthful offenders who would have met the "criteria" for HSVJOP and OHP target offenders, the second cohort would be non-target offenders. The third and fourth cohorts would be identified during the course of the program. They would include target offenders and non-target offenders processed during the time the program is in operation. The basis for analysis would be a comparison of the performance of the justice system in processing these for cohorts of offenders and, if feasible, a comparison of actual rates of recidivism among these four cohorts.

In order to improve our understanding of characteristics of individuals who engage in habitual serious and violent delinquency, it would be useful for the applicant to consider the feasibility of conducting interviews with the youth in the program which could provide self-reported data on such topics as delinquent activity, juvenile or ciminal justice system involvement, family background, educational experience, peer relations, attitudes regarding victims, and gang involvement.

Major Responsibilities of the National Evaluation

The national evaluator will:

(1) Design the evaluation components;

(2) Collect baseline data, and document project structure and process;

(3) Provide training and technical assistance to the projects to help them

in adapting the MIS self-study approach to program management;

(4) Receive and analyze the data;

(5) Provide bimonthly feedback on caseflow statistics to the projects and OJJDP; and

(6) Prepare a series of papers on specific HSVJOP and OHP issues for the purpose of informing program refinement and documenting program activities.

Application requirements

Eligible applicants include public or private agencies or organizations. Applicants must complete all parts of the application of Federal Assistance (Standard Form 424). Particular attention should be paid to the Budget Information and Program Narrative sections. In addition to the requirements set forth under Program Narrative, the following information should be included in the application:

(1) A succinct statement of your understanding of the goals and objectives of the programs (HSVJOP and OHP) and the evaluation.

(2) A review of the theoretical and empirical literature on serious juvenile offenders, gang-related delinquency, and alternative approaches to prosecution, corrections, and victim/witness assistance which are directly related to the evaluation.

(3) A preliminary evaluation design which includes research questions, key concepts and variables, research methodology (sampling procedures and methods of data collection), and a plan for analysis of the data.

(4) A plan for determining which of the potential sixteen HSVJOP and five OHP jurisdictions will be selected as evaluation sites, recognizing the limitations of the evaluation budget.

(5) A plan for delivering training and technical assistance to local project data collectors to assist them in incorporating the MIS into their routine operations and in providing key data for the national evaluation.

(6) A detailed time-task plan for three years which includes the number and types of interim and final products of the evaluation, and the purpose of each.

(7) Funds for the first twelve months should be requested. An estimate of costs to conduct the second and third years of the evaluation should also be provided.

(8) A capability statement which includes relevant organizational experience, staff resources and a proposed staffing plan for this project. Do not include general background brochures. The resumes of key project staff should be included as an appendix to the application. The project director should devote a minimum of sixty percent (60%) of his/her time to this effort.

(9) A Privacy Certificate should be submitted with the application in accordance with funding agency regulations, copies of which are available upon request.

(10) Funds should be included in the budget for a three-person Project Advisory Board to meet once for two days, plus two days of additional consulting time.

In order to maximize open competition in the award of this evaluation grant, "for-profit" organizations are eligible to apply, provided they comply with the requirements of LEAA Instruction 4000.3, "Federal Grant and Cooperative Agreement Act of 1977." Specifically, any "for-profit" applicant organizations must certify compliance with the following two requirements:

(1) The OJJDP grant award must not be used to support the normal profit-making operations of the organization, but must serve to support or stimulate the legislatively authorized research and evaluation objectives of NIJJDP.

(2) For at least of one year following the termination of this award, the recipent will not complete or accept any procurement or assistance award supported by OJJDP funds which may have resulted or been derived from the original award.

Selection Criteria

In general, all applications received in response to this solicitation will be reviewed in terms of the rigor and feasibility of the evaluation design, and innovativeness regarding approaches to evaluation problems. Application reviews will be conducted by funding agency staff and may also involve the utilization of external peer reviewers. Specifically, applications will be rated according to the following criteria and weights:

(1)	Understanding of the scope and goals of the HSVJOP and OHP, and the evaluation component	15
(2)	Evidence of knowledge of related literature, including theoretical and empirical research	10
(3)	Soundness of the evaluation design and methodology	25
(4)	Staff capability, particularly expertise in program evaluation methodology, juvenile justice issues, management of large-scale research projects, and training and technical assistance around program evaluation issues	15
(5)	Appropriateness and potential utility of the interim and final evaluation reports	10
(6)	Adequacy of the time-task plan	15
(7)	Corporate capability	5
(8)	Cost	5

The application which receives the highest total score on the above criteria will be recommended for funding to the Administrator, OJJDP, provided that required changes in the application can be successfully negotiated. The final decision will be made by the OJJDP Administrator.

Submission Requirements

All applicants responding to this solicitation should be aware of the following requirements for submission:

(1) Applicants must submit the original signed application and three copies to NIJJDP/OJJDP. The necessary forms for applications (Standard Form 424) will be provided upon request.

(2) The NIJJDP/OJJDP will notify applicants in writing of the receipt of their application. Subsequently, applicants will be notified, by letter, as to the decision made regarding whether or not their submission will be recommended for funding. It is anticipated that the grant may be awarded as early as March of 1984.

(3) Applications must be received by mail or hand delivered to the NIJJDP/OJJDP by 5:30 p.m. EST on February 10, 1984. Those applications sent by mail should be addressed to Barbara Tatem Kelley, NIJJDP/OJJDP, U.S. Department of Justice, 633 Indiana Avenue, NW., Washington, D.C. 20531. Hand delivered applications must be taken to the NIJJDP/OJJDP, Room 700, 633 Indiana Avenue, NW., Washington, D.C. between the hours of 8:00 a.m. and 5:30 p.m. except Saturdays, Sundays or federal holidays.

Alfred S. Regnery,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

Dated: December 22, 1983.

Charles A. Lauer,

General Counsel, Office of Justice Assistance, Research, and Statistics.

[FR Doc. 84-23 Filed 1-3-84; 8:45 am]

BILLING CODE 4410-18-M

DEPARTMENT OF LABOR

The Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463 as amended), notice is hereby given of a meeting of the Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, time and place: January 10, 1984, 9:30 a.m., Rm. S4215 A & B Frances Perkins, Department of Labor Building,

200 Constitution Avenue NW., Washington, D.C. 20210.

Purpose: To discuss trade negotiations and trade policy of the United States.

This meeting will be closed under the authority of Section 10(d) of the Federal Advisory Committee Act. The Committee will hear and discuss sensitive and confidential matters concerning U.S. trade negotiations and trade policy.

For further information, contact: Fernand Lavallee, Acting Executive Secretary, Labor Advisory Committee, Phone: (202) 523–6565, December 28, 1983.

Signed at Washington, D.C. this 28th day of December 1983.

Robert W. Searby,

Deputy Under Secretary, International Affairs.

[FR Doc. 84–191 Filed 1–3–84; 8:45 am]

BILLING CODE 4510–28–M

NUCLEAR REGULATORY COMMISSION

Proposed Availability of FY 1984 Funds for Financial Assistance to Enhance Technology Transfer and Dissemination of Nuclear Energy Process and Safety Information

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC), Office of Nuclear Regulatory Research announces proposed availability of FY 1984 funds to support professional meetings, symposia, conferences, national and international commissions and publications for the expansion, exchange and transfer of knowledge, ideas and concepts directed toward the research necessary to provide a technology base to assess the safety of nuclear power (hereinafter called project).

Projects will be funded through grants.

EFFECTIVE DATE: October 1, 1983 through September 30, 1984.

ADDRESS: U.S., Nuclear Regulatory Commission, ATTN: Grants Officer, Division of Contracts, Office of Administration, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: The cognizant NRC grant official is Mr. Kellogg Morton, telephone (301) 492–4294.

SUPPLEMENTARY INFORMATION:

A. Scope and Purpose of this Announcement

Pursuant to Section 31.a. and 141.b. of the Atomic Energy Act of 1954, as amended, the NRC, Office of Nuclear Regulatory Research proposes to support educational institutions, nonprofit institutions, state and local Governments, and professional societies through providing funds for expansion, exchange and transfer of knowledge, ideas and concepts directed toward the research program. The program includes, but is not limited to, support of professional meetings, symposia, conferences, national and international commissions, and publications. The primary purpose of this will be to stimulate research to provide a technological base for the safety assessment of systems and subsystems technologies used in nuclear power applications. The results of this program will be to increase public understanding relating to nuclear safety, to enlarge the funds of theoretical and practical knowledge and technical information, and ultimately to enhance the protection of the public health and safety.

B. Eligible Applicants

Educational institutions, nonprofit entities, state and local Governments and professional societies are eligible to apply for a grant under this announcement.

C. Research Proposals

A research proposal should describe: (i) The objectives and scientific significance of the proposed meeting, symposium, conference, or commission; (ii) the methodology to be proposed or discussed, and its suitability; (iii) the qualifications of the participants and the proposing organization; and (iv) the level of financial support required to perform the proposed effort.

Proposals should be as brief and concise as is consistent with communication to the reviewers. Neither unduly elaborate applications nor voluminous supporting docmentation is desired.

State and local Governments shall submit proposals utilizing the standard forms specified in Office of Management and Budget (OMB) Circular A–102, Attachment M. Nonprofit organizations, universities and professional societies shall submit proposals utilizing the standard forms stipulated in OMB Circular A–110, Attachment M.

The format used for project proposals should give a clear presentation of the proposed project and its relation to the specific objectives contained in this notice. Each proposal should follow the format outlined below unless the NRC specifically authorizes exception.

1. Cover Page. The cover Page should be typed according to the following format (submit separate cover pages if the proposal is multi-institutional):

Title of Proposal—To include the term "conference," "symposium," "workshop," or other similar designation to assist in the identification of the project;

Location and Dates of Conference, Symposium, Workshop, etc.;

Name of Principal Participants;

Total Cost of Proposal;

Period of Proposal;

Organization or Institution and Department;

Required Signatures;

Principal Participants:

Name _____
Date _____
Address _____
Telephone Number _____

Required Organization Approval:

Name _____
Date _____
Address _____
Telephone Number _____

Organization Financial Officer:

Name _____
Date _____
Address _____
Telephone Number _____

2. Project Description. Each proposal shall provide, in ten pages or less, a complete and accurate description of the proposed project. This section should provide the basic information to be used in evaluating the proposal to determine its priority for funding.

Applicants must identify other proposed sources of financial support for a particular project.

The information provided in this section must be brief and specific. Detailed background information may be included as supporting documentation to the proposal.

The following format shall be used for the project description:

(a) Project Goals and Objectives:

The project's objectives must be clearly and unambiguously stated.

The proposal should justify the project including the problems it intends to clarify and the development it may stimulate.

(b) Project Outline: The proposal should show the project format and agenda, including a list of principal area or topics to be addressed.

(c) Project Benefits: The proposal should indicate the direct and indirect benefits that the project seeks to achieve and to whom these benefits will accrue.

(d) Project Management: The proposal should describe the physical facilities

required for the conduct of the project. Further, the proposal should include brief biographical sketches of individuals responsible for planning the project.

(e) Project Costs: Nonprofit organizations shall adhere to the cost principles set forth in OMB Circular A–122; Educational Institutions shall adhere to the cost principles set forth in OMB Circular A–21; and state and local Governments shall adhere to the cost principles set forth in OMB Circular A–87.

The proposal must provide a detailed schedule of project costs, identifying in particular:

(1) Salaries—in proportion to the time or effort directly related to the project;

(2) Equipment (rental only);

(3) Travel and Per Diem/subsistence in relation to the project;

(4) Publication Costs;

(5) Other Direct Costs (specify)—e.g., supplies or registration fees;

Note.—Dues to organizations, federations or societies, exclusive or registration fees are not allowed as a charge.

(6) Indirect Costs (attach negotiated agreement/cost allocation plan); and

(7) Supporting Documentation. The supporting documentation should contain any additional information that will strengthen the proposal.

D. *Proposal Submission and Deadline:* This program announcement is valid for the period of October 1, 1983 to September 30, 1984. Proposal submissions shall be one signed original and six copies.

E. *Funds:* For Fiscal Year 1984, the U.S. Nuclear Regulatory Commission, Office of Nuclear Regulatory Research anticipates making $75,000–$100,000 available for funding the project(s) mentioned herein.

The NRC anticipates that approximately 5 to 10 projects will be funded. Further, the NRC anticipates that its average support will be $5,000–$15,000 per project.

F. *Evaluation Process:* All proposals received as a result of this announcement will be evaluated by an NRC review panel.

G. *Evaluation Criteria:* The award of NRC grants is discretionary. Generally, projects are supported in order of merit to the extent permitted by available funds.

Evaluation of proposals will employ the following criteria:

1. Potential usefulness of the proposed project for the advancement of scientific knowledge;

2. Clarity of statement of objectives, methods, and anticipated results;

3. Range of issues covered by the meeting agenda;

4. Qualifications and experience of project speakers; and

5. Reasonableness of estimated cost in relation to anticipated results.

H. *Disposition of Proposals:* Notification of award will be made by the Grants Officer and organizations whose proposals are unsuccessful will be so advised.

I. *Proposal Instructions and Forms:* Questions concerning the preceding information, copies of application forms, and applicable regulations shall be obtained from or submitted to: U.S. Nuclear Regulatory Commission, ATTN: Grants Officer, Division of Contracts, Office of Administration, Washington, DC 20555.

The address for hand-carried applications is: U.S. Nuclear Regulatory Commission, ATTN: Grants Officer, Division of Contracts, Office of Administration, Room 2223, 4550 Montgomery Avenue, Bethesda, MD 20814.

Nothing in this solicitation should be construed as committing the NRC to dividing available funds among all qualified applicants.

Dated at Washington, DC this 22nd day of December 1983.

For the Nuclear Regulatory Commission.

Kellogg V. Morton,

Chief, Technical Contracts Branch, Division of Contracts, Office of Administration.

[FR Doc. 84–145 Filed 1–3–84; 8:45 am]

BILLING CODE 7590–01–M

Carolina Power and Light Co. (H. B. Robinson Steam Electric Plant, Unit No. 2); Availability of Safety Evaluation Report Related to the Steam Generator Repair

Pursuant to the National Environmental Policy Act of 1969 and the United States Nuclear Regulatory Commission's regulations in 10 CFR Part 51, notice is hereby given that the Safety Evaluation Report related to steam generator repair (NUREG–1004) prepared by the Commission's Office of Nuclear Reactor Regulation, related to the proposed operation of the H. B. Robinson Steam Electric Plant Unit 2 located in Darlington County, South Carolina, is available for inspection by the public and in the Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29150. The Safety Evaluation Report is also being made available at the Pee Dee Regional Council of Governments, P.O. Box 5719, Florence, South Carolina 29150.

The notice of availability of the Draft Environmental Statement for the H. B. Robinson Electric Plant Unit 2, and request for comments from interested persons was published in the **Federal Register** on September 16, 1983 (48 FR 41363). The comments received from Federal, State, and local agencies, and interested members of the public have been included as appendices to the Final Environmental Statement. The notice of availability of the Final Environmental Statement was published in the **Federal Register** on December 16, 1983 (48 FR 43317).

Copies may be purchased at current rates directly from NRC by sending check or money order, payable to Superintendent of Documents, to director, Division of Technical Information and Document Control, U.S. NRC, Washington, D.C. 20555. GPO Deposit Account Holders may charge their orders by calling (301) 492–9530. Copies are also available for purchase through the National Technical Information Service, Springfield, Virginia 22161.

Dated at Bethesda, Maryland this 23rd day of December, 1983.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Chief, Operating Reactors Branch No. 1, Division of Licensing.

[FR Doc. 84–133 Filed 1–3–84; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–261–OLA; ASLBP No. 83–484–03LA]

Carolina Power and Light Co. (H. B. Robinson Steam Electric Plant, Unit 2); Further Notice of Hearing

December 27, 1983.

This is to supplement the Notice of Hearing served December 15, 1983. Notice is hereby given that the evidentiary hearing in the captioned proceeding will commence at 9:00 a.m., local time, on February 7, 1984 in the Hartsville County Magistrates Court, Courtroom 300, 404 South 4th Street, Hartsville, South Carolina.

Pursuant to § 2.715(a) of Title 10 of the Code of Federal Regulations, persons not party to the proceeding will be permitted to make a limited appearance, by oral or written statement, on their position on the issues relevant to the application. Oral statements by a person making a limited appearance will be restricted to ten minutes.

The taking of limited appearances is scheduled for February 8, 1983 between the hours of 9:00 a.m. and 12:00 noon. An evening session will be scheduled if

needed. We will give priority to those limited appearances of which advance notice has been given. Those desiring to inform the Licensing Board in advance should write to Morton B. Margulies, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

The public is invited to attend and observe the proceeding.

Dated at Bethesda, Maryland this 27th day of December 1983.

For the Atomic Safety and Licensing Board.

Morton B. Margulies,

Chairman, Administrative Law Judge.

[FR Doc. 84-134 Filed 1-3-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. STN 50-470]

Combustion Engineering Inc.; Combustion Engineering Standard Safety Analysis Report (CESSAR-F System 80 Design); Issuance of Final Design Approval

Notice is hereby given that the staff of the Nuclear Regulatory Commission (NRC staff) has issued Final Design Approval No. FDA-2 dated December 21, 1983, for the System 80 design described in Combustion Engineering Standard Safety Analysis Report (CESSAR-F). CESSAR-F was reviewed by the NRC staff pursuant to Appendix 0 to 10 CFR Part 50.

CESSAR-F contains final design information in accordance with 10 CFR Part 50, Appendix 0, paragraph 3, for the nuclear steam supply system portion of a pressurized water nuclear power plant, designated as System 80, which encompasses the reactor system, reactor coolant system, reactor control system, reactor protective system, engineered safety features actuation system, chemical and volume control system, shutdown cooling system, safety injection system, fuel handling equipment, and related systems and features. The System 80 reference design is for a facility which would operate at a core thermal power level of 3800 megawatts.

The Safety Evaluation Report (SER), and Supplements 1 and 2 thereto, document the results of the NRC staff's review and evaluation of CESSAR-F, including Amendments 1 through 8 thereto. The SER also addresses the comments of the Advisory Committee on Reactor Safeguards (ACRS) as reflected in its report to the Commission dated December 15, 1981. A copy of the ACRS report is included in Appendix F to SER Supplement 1.

FDA-2 provides NRC staff approval of the final System 80 design described in CESSAR-F, including Amendments 1 through 8 thereto. By the issuance of FDA-2, the NRC staff has determined that the design is acceptable for referencing in utility applications for operating licenses for those plants that had previously referenced the Preliminary Design Approval for the CESSAR System 80 design (PDA-2) at the construction permit stage. The System 80 design as described in CESSAR-F, subject to the conditions of the FDA-2, shall be utilized by and relied upon by the NRC staff and the ACRS in their reviews of facility operating license applications incorporating by reference CESSAR-F unless there exists significant new information which substantially affects the determinations in FDA-2 or other good cause.

Issuance of FDA-2 does not constitute a commitment to issue a permit or license, or in any way affect the authority of the Commission, Atomic Safety and Licensing Appeal Board, Atomic Safety and Licensing Boards and other presiding officers in any proceeding under Subpart G of 10 CFR Part 2. This action only approves the design of a facility for use for reference purposes in applications for operating licenses for nuclear power plants that referenced PDA-2 at the construction permit stage. It does not authorize the operation of any nuclear power plant or any other facility. The environmental impacts associated with any facility proposed to be operated utilizing the approved reference design will be considered in accordance with the Commission's regulations in 10 CFR Part 51.

FDA-2 is effective as of its date of issuance.

A copy of (1) Final Design Approval No. FDA-2 dated December 21, 1983; (2) the report of the Advisory Committee on Reactor Safeguards dated December 15, 1981; (3) the NRC staff's Safety Evaluation Report, NUREG-0852, dated November 1981; Supplement 1 thereto dated March 1983; and Supplement 2 thereto dated September 1983; and (4) the Combustion Engineering Standard Safety Analysis Report CESSAR-F and Amendments 1 through 8 thereto are available for public inspection at the Commission's Public Document Room at 1717 H Street NW., Washington, D.C. 20555. A copy of FDA-2 may be obtained upon request to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing. Copies of the Safety Evaluation Report and Supplements 1 and 2 thereto may be purchased at current rates from the National Technical Information Service, Springfield, Virginia 22161.

Dated at Bethesda, Maryland this 21st day of December 1983.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 84-135 Filed 1-3-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-213]

Connecticut Yankee Atomic Power Co.; Granting of Relief From ASME Section XI, Inservice Testing Requirements

The U.S. Nuclear Regulatory Commission (the Commission) has granted relief from certain requirements of the ASME Code, Section XI, "Rules for Inservice Inspection of Nuclear Power Plant Components" to the Connecticut Yankee Atomic Power Company. The relief relates to the inservice testing program at the Haddam Neck Plant (the facility) located in Middlesex County, Connecticut. The ASME Code requirements are incorporated by reference into the Commission's rules and regulations in 10 CFR 50.55a(g). The relief is effective as of its date of issuance.

The relief permits the licensee to test certain designated pumps in a manner or on a schedule different from that prescribed in Section XI of the ASME Boiler and Pressure Vessel Code and applicable Addenda, as required by 10 CFR Part 50, because of inaccessibility, configuration of components, radiation level, or other valid reasons.

The request for relief complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the letter granting relief.

The Commission has determined that the granting of this relief will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of the relief.

For further details with respect to this action, see (1) the application for amendment dated June 29, 1977 and November 4, 1980, and supporting information submitted by letters dated May 26, 1978, May 29, 1978, July 14, 1978,

April 27, 1979, June 29, 1979, March 25, 1980, November 4, 1980, March 15, 1982 and May 26, 1982, (2) Amendment No. 37 to License No. DPR–61, dated February 16, 1981, including the Commission's related transmittal letter, and (3) the Commission's letter and Safety Evaluation related to the granting of relief dated December 29, 1983. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20555 and at the Russell Library, 119 Broad Street, NW., Middletown, Connecticut 06457. A single copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 29th day of December 1983.

Walter A. Paulson,

Acting Chief, Operating Reactors Branch No. 5, Division of Licensing.

[FR Doc. 84–136 Filed 1–3–84; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–369 and 50–370]

Duke Power Co.; Consideration of Issuance of Amendments to Facility Operating Licenses and Proposed no Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–9 and NPF–17, issued to Duke Power Company (the licensee), for operation of the McGuire Nuclear Station, Units 1 and 2, located in Mecklenburg County, North Carolina.

The amendments would (1) reduce by 2% the reactor coolant system (RCS) flow rate required for operation of McGuire Unit 2 at 100% power and revise the limits for safety systems setting to accommodate the RCS flow reduction and (2) provide for a 1% reduction in power for each 1% reduction in the measured RCS flow below the flow requirement for 100% power for McGuire Unit 2.

The operation of McGuire Unit 2 at 90% power, as a part of the unit power ascension program, has identified a low reactor coolant flow condition that, pursuant to the existing technical specification requirement, prevents the unit from operating above 90% power. The first part of the amendment which reduces reactor coolant system flow would not affect the probability of accidents previously evaluated nor create the possibility of a new or different kind of accident; however, lower RCS flow can have some effect on the consequences of accidents previously evaluated. The effects of lower RCS flow have been evaluated for the accidents discussed in the Final Safety Analysis Report (FSAR), Chapter 15. This evaluation shows that adequate thermal margin to Departure from Nucleate Boiling Ratio (DNBR) would be maintained (i.e., DNBR greater than 1.30). Non-DNB-limited transients were also evaluated and the results were determined to be within their respective limits. Therefore, operation under this aspect of the proposed amendments would not involve a significant increase in the consequences of accidents previously evaluated. Similarly, because the evaluation showed that the original analysis results are valid for the DNB-limited transients, the safety margins inherent in the DNBR limit of 1.30 (based on the W–3 correlation) are unaffected. Also, the non-DNB-limited transients remain within their respective limits. Therefore, this aspect of the proposed amendment does not involve a significant reduction in a safety margin. This is in response to the licensee's application for amendments dated November 18, 1983.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility or a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission has provided examples of amendments likely to involve no significant hazards considerations (48 FR 14870). One example of actions likely to involve no significant hazards considerations is an amendment which either may result in some increase to the probability or consequences of a previously-analyzed accident or may reduce a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan. Because the evaluation previously discussed shows that the DNB limit of 1.30 is met (Re: Standard Review Plan Section 4.4, Acceptance Criterion 1) and other design-basis transients would remain within their respective limits, the above example can be applied to this situation.

The second part of the amendment involves a requirement to reduce power by 1% for each 1% reduction in RCS flow below the minimum flow required for 100% power. Thermal-hydraulic sensitivity studies have shown that this power/flow tradeoff is conservative with respect to DNB margin. Therefore, this aspect of the amendment would not: (1) Involve a significant increase in the probability or consequences of an accident, (2) create the possibility of a new or different kind of an accident, and (3) involve a significant reduction in a safety margin.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attn.: Docketing and Service Branch.

By February 3, 1984, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition

should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promprly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700. The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Elinor G. Adensam: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Mr. Albert Carr, Duke Power Company, P.O. Box 33189, 422 South Church Street, Charlotte, North Carolina 28242, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of late petition and/or request. That determination will be based upon a balancing of the 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 amendments which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28242.

Dated at Bethesda, Maryland, this 27th day of December 1983.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Chief Licensing Branch No. 4, Division of Licensing.

[FR Doc. 84–137 Filed 1–3–84; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–369 and 50–370]

Duke Power Co.; Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Prior Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License No. NPF–9 and Facility Operating License No. NPF–17, issued to Duke Power Company (the licensee), for operation of the McGuire Nuclear Station, Units 1 and 2, located in Mecklenburg County, North Carolina.

The amendments would change Technical Specification 3.5.1.2. to allow operation at less than or equal to 46% Rated Thermal Power with the Upper Head Injection Accumulator System inoperable. The system performs no function during normal operation but serves to mitigate accidents after they occur. The change would provide operating flexibility but would not result in exceeding operating limits established by 10 CFR 50.46. These amendments were requested in the licensee's application for amendments dated August 2, 1983.

Prior to issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By February 3, 1984, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above

date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Wester Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Elinor G. Adensam: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Mr. Albert Carr, Duke Power Company, P.O. Box 33189, 422 South Church Street, Charlotte, North Carolina 28242, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the 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 amendments dated August 2, 1983, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28242.

Dated at Bethesda, Maryland this 23rd day of December 1983.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Chief, Licensing Branch No. 4, Division of Licensing.

[FR Doc. 84–138 Filed 1–3–84; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–458 and 50–459]

Gulf States Utilities Co., and Cajun Electric Power Cooperative; Receipt of Additional Antitrust Information

Gulf States Utilities Company, on behalf of itself and Cajun Electric Power Cooperative, has filed additional antitrust information for their application for an operating license in connection with the owners' plans to operate two boiling water reactors in West Feliciana Parish, Louisiana known as the River Bend Station, Units 1 and 2. The data submitted contain antitrust information for review pursuant to NRC Regulatory Guide 9.3 necessary to determine whether there have been any significant changes since the completion of the antitrust review at the construction permit stage. (These data represent an updated response from the applicants' orignial data submission that was noticed in the **Federal Register** on August 6, 1981–Vol. 46, pg. 40111.)

On completion of a staff antitrust review, the Director of Nuclear Reactor Regulation will issue an initial finding as to whether there have been "significant changes" under section 105c(2) of the Atomic Energy Act. A copy of this finding will be published in the **Federal Register** and will be sent to the Washington, DC and local public document rooms and to those persons providing comments or information in response to this notice. If the initial finding concludes that there have not been any significant changes, requests for reevaluation may be submitted for a period of 30 days after the date of the **Federal Register** notice. The results of any reevaluations that are requested will be published in the **Federal Register** and copies sent to the Washington and local public document rooms.

A copy of the general information portion of the application for an operating license and the antitrust information submitted is available for public examination and copying for a fee at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and in the local public document room at the Louisiana State University, Government Document Department, Baton Rouge, Louisiana 70803.

Any person who desires additional information regarding the matter covered in this notice or who wishes to have views considered with respect to significant changes related to antitrust matters which have occurred in the applicants' activities since the construction permit antitrust review should submit such requests for information or views to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, ATTN: Section Leader, Antitrust and Economic Analysis Section, Site Analysis Branch, Office of Nuclear Reactor Regulation on or before February 3, 1984.

Dated at Bethesda, Maryland this 20th day of December 1983.

For the Nuclear Reglatory Commission.

A. Schwencer,

Chief, Licensing Branch No. 2, Division of Licensing.

[FR Doc. 84-139 Filed 1-3-84; 8:45 am]

BILLING CODE 7590-01-M

[ASLBP Docket No. 81-453-03 OL; (NRC Docket No. 50-482)]

Kansas Gas & Electric Co., et al. (Wolf Creek Generating Station, Unit No. 1); Order; Correction

December 22, 1983.

In the matter of correcting a date for the taking of limited appearance statements.

The second to the last sentence in Part II of the Board's Second Amended Notice of Hearing, dated November 30, 1983 should be corrected to read as follows:

"Oral limited appearance statements may be made at the Coffey County Courthouse, Basement Room, Sixth and Neosho Streets, Burlington, Kansas 66839 between 2:00 p.m. and 6:00 p.m. on Tuesday, January 17, 1984 and at the same location between 9:30 a.m. and 6:00 p.m. on January 21, 1984."

Dated at Bethesda, Maryland this 22nd day of December 1983.

For the Atomic Safety and Licensing Board.

Sheldon J. Wolfe,

Chairman, Administrative Judge.

[FR Doc. 84-140 Filed 1-3-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-344; License No. NPF-1; EA 83-85]

Portland General Electric Co. Trojan Nuclear Facility; Order Imposing Civil Monetary Penalty

I

Portland General Electric Company, 121 S.W. Salmon Street, Portland, Oregon 97204 (the "licensee") is the holder of License No. NPF-1 issued by the Nuclear Regulatory Commission (the "Commission" or "NRC") which authorizes the licensee to operate the Trojan Nuclear Facility at Rainier, Oregon in accordance with the conditions specified therein. License No. NPF-1 was issued on November 21, 1975 and has an expiration date of February 8, 2011.

II

An NRC review of the licensee's activities under the license was conducted on June 20-24 and July 26-28, 1983 to assure compliance with 10 CFR 50.48 and, in particular, Sections III.G, III.J, and III.O of Appendix R to 10 CFR Part 50 relating to fire protection. As a result of this review, it appears that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty was served upon the licensee by letter dated September 29, 1983. The Notice states the nature of the violations, the provisions of the Nuclear Regulatory Commission requirements that the licensee had violated, and the amount of civil penalty proposed. An answer dated October 28, 1983 to the Notice of Violation and Proposed Imposition of Civil Penalty was received from the licensee.

III

Upon consideration of the answers received and the statements of fact, explanation and argument for remission or mitigation of the proposed civil penalty contained therein, and as set forth in the Appendix to this Order, the Director of the Office of Inspection and Enforcement has determined that the penalty proposed for the violations designated in the Notice of Violation and Proposed Imposition of Civil Penalty should be mitigated by 50 percent based upon the licensee's prompt and extensive corrective action.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2282, Pub. L. 96-295), and 10 CFR 2.205, it is hereby ordered that:

The licensee pay civil penalties in the amount of Fifty Thousand Dollars ($50,000) within thirty days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director of the Office of Inspection and Enforcement, USNRC, Washington, D.C. 20555.

V

The licensee may, within thirty days of the date of this Order, request a hearing. A request for a hearing shall be addressed to the Director, Office of Inspection and Enforcement. A copy of the hearing request shall also be sent to the Executive Legal Director, USNRC, Washington, D.C. 20555. If a hearing is requested, the Commission will issue an Order designating the time and place of hearing. Upon failure of the licensee to request a hearing within thirty days of the date of this Order, the provisions of this Order shall be effective without further proceedings and, if payment has not been made by that time, the matter may be referred to the Attorney General for collection.

VI

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee violated NRC requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalty; and

(b) Whether, on the basis of such violations, this Order should be sustained.

Dated at Bethesda, Maryland this 19th day of December 1983.

For the Nuclear Regulatory Commission.

Richard C. DeYoung,

Director, Office of Inspection and Enforcement.

Appendix

Statement of Violation A

10 CFR Page 50, Appendix R, Section III.G.1 requires that fire protection features shall be provided for structures, systems, and components important to safe shutdown. These features shall be capable of limiting fire damage so that one train of systems necessary to achieve and maintain hot shutdown conditions from either the control room or emergency control station(s) is free of fire damage.

Sections III.G.2 and III.G.3 specify four alternatives that may be implemented outside of primary containment to assure that one redundant train of equipment, cabling and associated circuits necessary to achieve and maintain hot shutdown remains free of fire damage. The alternatives are:

1. Separation of redundant trains of equipment, cabling and associated circuits by a three-hour rated fire barrier.

2. Enclosure of redundant trains of equipment, cabling and associated circuits by a one-hour rated fire barrier with fire detection and automatic fire suppression systems installed in the area.

3. Separation of redundant trains of equipment, cabling and associated circuits by a horizontal distance of 20 feet with no intervening combustibles and fire detection and automatic fire suppression systems installed in the area.

4. Installation of alternative or dedicated shutdown capability independent of the equipment, cabling and associated circuits under consideration, and installation of fire detection and fixed fire suppression systems in the area under consideration.

Contrary to the above requirments, at the time of the inspection, fire protection features were not provided for certain

redundant trains of equipment and/or cabling necessary to achieve and maintain hot shutdown conditions such that one train would remain free of fire damage. Specifically, regarding the centrifugal charging pumps and associated coolers, none of the alternatives provided by Section III.G.2 and III.G.3 were implemented, and Section III.G.1., a was violated. The two reactor coolant system centrifugal charging pumps and associated coolers necessary to achieve and maintain hot shutdown would not remain free of fire damage in the event of a fire in either of the pump rooms or the adjacent access area. The wall separating the pump rooms had open penetrations and other power supply cables were not protected to preclude loss of both trains of equipment.

Summary of Licensee's Response

The licensee denies this item is a violation of Section III.G.1, III.G.2 or III.G.3. The licensee states that the requirements of III.G.1 are met because the two centrifugal charging pumps (CCP's) are not in the same fire area as defined in Topical Report PGE–1012 which was reviewed and approved by the NRC. The licensee argues that the final NRC rule on fire protection did not provide a new definition of fire area and only an internal NRC clarifying memorandum used by the NRC inspection team indicated that the previously accepted definition of fire area was unacceptable. The licensee argues that the CCP's are twelve feet apart and located in separate rooms, separated by a 13 inch thick wall. In addition, PGE asserts that the fire loading of combustibles is such that a fire in one CCP room would not spread to the other CCP room even though a pipe chase and penetration exist in the separation wall between the two rooms. Finally, the licensee argues that the loss of one or more CCPs could be compensated for by use of either of two safety injection pumps or a positive displacement pump, which could not be realistically expected to fail as a result of a fire in one of the CCP rooms.

NRC Evaluation

The licensee's argument that each CCP room is a separate fire area is incorrect. "Fire Area" is defined in (1) Branch Technical Position APCSB 9.5–1, "Guidelines for Fire Protection for Nuclear Power Plants," dated May 1976, for new plants docketed after July 1, 1976, and in (2) Appendix A to BTP APCSB 9.5–1, "Guidelines for Fire Protection for Nuclear Power Plants Docketed Prior to July 1, 1976," dated August 23, 1976, for plants that were operating or under various stages of design or construction before July 1, 1976. 10 CFR 50.48(a) contains an explicit reference to the BTP and Appendix A so the licensee's assertion that a clear definition of fire area was not available is incorrect. Further, as noted in the licensee's Fire Protection Program, PGE–1012, BTP APCSB 9.5–1 and Appendix A to BTP APCSB 9.5–1 were received by the licensee in 1976.

BTP APCSB 9.5–1, Section B.4, Definitions, defines a "Fire Area" as that portion of a building or a plant that is separated from other areas by boundary fire barriers and "Fire Barriers" as "those components of construction (walls, floors, and their supports), including beams, joists, columns, penetration seals or closures, fire doors, and fire dampers that are rated by approving laboratories in hours of resistance to fire and are used to prevent the spread of fire." Appendix A to BTP APCSB 9.5–1, Section D.1(j) states that penetrations in fire barriers, including conduits and piping, should be sealed or closed to provide a fire resistance rating at least equal to that of the fire barrier itself.

Arguments concerning fire loading notwithstanding, the wall separating the two CCP's had penetrations which were not sealed and did not have a fire rating equal to that of the fire barrier itself. Therefore, the wall cannot be considered a fire barrier and the pumps must be considered to be in the same fire area. The licensee states that fire areas were clarified in Topical Report PGE–1012, that NRC had issued a Safety Evaluation Report (SER) on this document, and that there was no reason to believe that the definition of fire areas in this document was inappropriate. PGE did not provide definitions of "fire area" or "fire barrier" so the NRC was not aware that PGE's interpretation did not take into account penetrations and seals. Furthermore, Topical Report PGE–1012 did not identify the separation wall between the two centrifugal charging pumps as a fire barrier; thus NRC did not review it as such. Finally, as noted in the proposed action, if an adequate technical review had been performed by the licensee, any confusion as to the meaning of the terms used in Appendix R could have been identified and resolved.

Statement of Violation B

10 CFR Part 50, Appendix R, Section III.G.1.b, requires that systems necessary to achieve and maintain could shutdown from the control room or emergency control station(s) can be repaired within 72 hours.

Contrary to the above, at the time of the inspection, the redundant trains of equipment and cabling necessary to achieve cold shutdown conditions were not capable of being repaired within 72 hours as demonstrated by the absence of planning, procedures, and/or materials necessary to implement fire damage repairs. Further, these systems were not sufficiently protected to survive the effects of a single fire as described below:

1. The two residual heat removal (RHR) pumps were located in separate rooms in the auxiliary building at the 5 foot elevation. The wall separating the pumps and other enclosing walls had open penetrations. Also, the access doors to the rooms were constructed with nonclosing ventilation louvers. Transient combustibles consisting of anti-C clothing, paper, tape, etc. were stored on open shelves in the access area outside the RHR rooms. Also, the RHR pump power cables were not protected to preclude the loss of both trains of equipment from a fire in either of the pump rooms or the adjacent access area.

2. The boric acid transfer pumps, Trains A and B, were located on the 65 foot elevation in the fuel building. The pumps were in a common area, within approximately 12 feet of each other, and were not protected by an automatic fire supression system. The pump power cables were also located in the common area and not protected to preclude the loss of both pumps due to a fire in the area.

Licensee's Response

PGE denies the violation. PGE contends that the two systems are not susceptible to damage by fire, but claims that, even if they were damaged, they were capable of being repaired within 72 hours.

The licensee argues that the two trains of RHR equipment and cables are in two separate rooms separated by a 13 inch wall and that the common pipe chase had a two hour fire wall around it. The licensee states that since only one train of cables runs through the corridor, a fire there would not jeopardize safe shutdown.

Further, the licensee argues that the boric acid transfer pumps are not required for safe shutdown or cooldown of the Trojan Plant. Finally, PGE claims that although it does not have specific material for repair of equipment immediately available in one location, the material is available in the warehouse where it is easily available and not subject to deterioration.

NRC Evaluation of Licensee Response

Although the RHR pumps are in separate rooms, for the reasons discussed in the response to Violation A above, the wall between the rooms is not a three hour fire barrier nor are the other separation criteria of Section III.G met. Thus, a fire in the area could cause a loss of both RHR pumps.

The licensee, in PGE–1012, previously identified the Boric Acid Transfer Pumps as necessary "Components Required to Safely Shut down the Plant." Specifically, these pumps were identified as being required for boration which is required to achieve safe shutdown and these pumps were, therefore, included in the inspection. Although the licensee now claims these pumps are not necessary for safe shutdown, having identified them as necessary prior to the inspection, the licensee was obligated to assess compliance with Appendix R for this equipment.

Although it might not be necessary for repair material to be onsite, there was no indication during the inspection, nor has PGE supplied any evidence in its response, of any plans or procedures that would be used to make such repairs. The licensee has not demonstrated that it has: (1) identified what equipment might be damaged by fire; (2) what material would be necessary to repair it; (3) where that material is located; (4) if material out of the general warehouse is to be used, what mechanism is in place to assure it will not be used up in routine repairs or maintenance; or (5) performed any analysis to show that potential damage could be repaired within 72 hours.

Statement of Violation C

10 CFR Part 50, Appendix R, Section III.G.2 requires that inside non-inerted containments one of six (a through f) fire protection means shall be provided such as: separation of cables and equipment and associated non-safety circuits of redundant trains by a horizontal distance of more than 20 feet with no intervening combustibles or fire hazards; or installation of fire detectors and an automatic fire suppression system in the fire area; or separation of cables and equipment and associated non-safety circuits of redundant trains by a noncombustible radiant energy shield.

Contrary to the above, at the time of inspection, the cabling for both safe shutdown trains and associated non-safety circuits were not adequately separated and intervening combustibles (other electrical cable) bypassed the installed radiant energy shields at the electrical penetration area inside containment. No automatic fire suppression system had been installed in this area of containment.

Licensee's Response

PGE denies that a violation exists. PGE says that it did not consider other electrical cables as an intervening combustible. PGE contends that this interpretation of the requirement in Appendix R has only set forth in an internal NRC Memorandum and thus PGE did not take action based on such an understanding of the regulation. PGE had concluded that both trains of safety-related cable in the containment were adequately protected.

NRC Evaluation of Licensee Response

The Statement of Considerations which was published at the time 10 CFR 50.48 and Appendix R were issued (45 FR 62789, September 22, 1980) discussed each of the sections of Appendix R. In the discussion under Section III.G. of separation criteria, it is noted that this means of fire protection may be used "when redundant trains and associated circuits are separated by 20 feet or more of *clear space*," (emphasis added).

Throughout PGE Topical Report 1012, "Trojan Nuclear Plant Fire Protection Program," the fire hazards described for various areas of the plant include combustible materials in the form of electrical cable. (See, e.g., 3.4–4, 3.4–7, Table 3–1.) Thus, PGE itself recognized that cables are intervening combustibles. Moreover, the term "clear space" used to explain the 20 foot separation criteria in the Statement of Considerations is unambiguous.

Statement of Violation D

Section III.G.3 requires that alternate or dedicated shutdown capability and its associated circuit in the area, room or zone under consideration, shall be provided where the protection of systems whose function is required for hot shutdown does not satisfy the requirements of the Section III.G.2.

Section III.L.2 requires that process monitoring function for alternative or dedicated shutdown capability shall be capable of providing direct readings of reactivity and reactor coolant system heat removal functions.

Contrary to the above, for the control room and cable spreading room, the licensee elected to provide alternate shutdown capability in accordance with Section III.G.3 but, at the time of the inspection, alternative or dedicated shutdown system process monitoring instrumentation was not installed outside the control room and the cable spreading room to provide direct reading for source range neutron flux or the hot and cold leg reactor coolant system temperatures.

Licensee's Response

PGE denies that this item is a violation of Sections III.G.2 and III.L.2. PGE asserts that when Appendix R to 10 CFR Part 50 was issued, the Commissioners specificalily said that plants licensed prior to January 1, 1979 were required to meet only Sections III.G, III.J, and III.O. Requiring all such plants to comply with III.L is an NRC staff backfit unsubstantiated and unsupported by the language of 10 CFR 50.48.

Even if III.L.2 were to apply, the licensee's argument continues, there is no specific requirement in this section for source range neutron flux or hot and cold leg Reactor Coolant System temperatures. These specific measurements were only defined in NRC internal memoranda which were not provided in a timely manner to PGE. Trojan does have methods of monitoring both reactivity and RCS heat removal for alternative shutdown.

NRC Evaluation of Licensee Response

While 10 CFR 50.48, when describing those requirements of Appendix R which apply to plants licensed prior to Janurary 1, 1979, listed only III.G, III.J, and III.O, when the rule is read as a whole, it is apparent that Section III.L would serve no purpose if it is not read together with III.G. Section III.G provides that if adequate fire protection features are not provided in a given fire area, an alternative or dedicated shutdown capability must be provided which assumes loss of all shutdown equipment in that area. Section III.L is entitled "Alternative and dedicated shutdown capability," and opens with the words, "Alternative or dedicated shutdown capability provided for a specific fire area shall be able to. . . ." and provides design criteria for alternative or dedicated shutdown systems required by III.G. Since Appendix R applies only to pre-1979 operating plants, one cannot suggest that Section III.L was to be somehow prospective in effect or applied only through "open items" remaining in NRC Staff analyses of plants against Appendix A to Branch Technical Position BTP APCSB 9.5–1. This would result in different criteria applying to some plants for an element of safe shutdown capability which the Commission had specifically determined to backfit. Such an anomalous situation was not intended by the Commission. Indeed, the Utility Group's challenge to

the fire protection requirements and the court's decision upholding the rule both were premised on the assumption that Section III.L was a part of the rule being applied to plants licensed prior to January 1, 1979.

PGE has spare equipment that could be used to provide an alternate source range neutron detector. However, no specific plant administrative procedures existed to prevent the removal of parts from the spare drawer to ensure their readiness for operational use. In addition, facility procedures did not specify the equipment or methods used to accomplish temperature monitoring under post-fire shutdown conditions. Although PGE has stated that they have methods for monitoring both reactivity and RCS heat removal for alternative shutdown, the lack of procedures to implement alternative monitoring of selected parameters, and the lack of control procedures to ensure availability and operability of equipment, does not assure that post-fire monitoring as defined in Section III.L.2 can be met.

Statement of Violation E

10 CFR Part 50, Appendix R, Section III.O. requires that the reactor coolant pump shall be equipped with an oil collection system. Leakage shall be collected and drained to a vented closed container that can hold entire lube oil system inventory.

Contrary to the above, at the time of the inspection, two oil collection tanks had been installed, each with a capacity of 306 gallons. Each tank collects oil leakage from two reactor coolant pumps. A reactor coolant pump lube oil system contains approximately 265 gallons of oil. Therefore, the potential lube oil leakage of two pumps into a tank exceeds collection capacity by approximately 224 gallons.

Summary of Licensee's Response

The licensee denies that this item is a violation of Section III.0 of Appendix R to 10 CFR Part 50. The licensee argues that Section III.0 is ambiguous as to the capacity of the lube oil collection system for the reactor coolant pump (RCP) and the inconsistent mixing of singular and plural words to three different components (reactor coolant pumps, lube oil systems and oil collection system) made Section III.0 extremely difficult to interpret. PGE claims it provided a description of its lube oil collection system in PGE–1012, which the NRC reviewed and approved, which did not indicate that it had a system capable of providing full capacity. PGE claims it was first informed that partial capacity was unacceptable when the NRC fire protection inspection took place. At the time of the NRC fire protection inspection, PGE was made aware of an internal NRC memorandum providing clarification of the lube oil collection system such that full capacity was necessary.

NRC Evaluation

Section III.0 states that if a containment is not inerted during normal operation, an oil collection system shall be designed, engineered and installed so that failure will not lead to fire during normal or design basis accident conditions and that the system will withstand the Safe Shutdown Earthquake. Section III.0 also states that such collection systems shall be capable of collecting lube oil from all potential pressurized and unpressurized leakage sites in the reactor coolant pump lube oil systems, and leakage shall be collected and drained to a vented closed container that can hold the entire lube oil system inventory.

It is clear from the use of the word "entire" that the collection system should have capability of holding the whole inventory. Furthermore, it is clear PGE's description of its collection system in PGE–1012 was approved prior to the effective date of Appendix R and the Commission made it clear when Appendix R took affect that it intended to backfit Section III.0 and that the intent of this section is the capability of collecting any lube oil leakage that could occur which could include the entire inventory of all reactor coolant pumps.

Licensee General Concerns

The licensee states that no breakdown in administrative controls occurred and this item cannot be considered a violation. Furthermore, the licensee states that none of the alleged violations involve a direct noncompliance with any particular provision of applicable law, that the severity level has not been evaluated for each individual violation and that a separate civil penalty has not been assessed for each violation.

NRC Response

The NRC identified the breakdown in administrative controls involving (1) an inadequate reassessment of plant conditions regarding the applicable Appendix R requirements, (2) lack of documentation of reassessments and reviews, and (3) lack of supervisory reviews to assure technical adequacy and accuracy of the reassessments as the root cause of the violations identified in the Notice of Violation. After careful review of the licensee's response, the staff has concluded that the breakdown in administrative controls did occur as stated. The licensee did not devote adequate attention to understanding and implementing the Appendix R requirements. Guidance was available to the licensee and if the licensee's engineering assessment of the status of compliance with Appendix R had been of the quality expected by the NRC, any confusion as to what the new rule required would have been detected and promptly resolved. The NRC did not consider this breakdown in administrative controls to be a separate violation. Rather, the fact that this was the cause of the individual violations resulted in the decision to propose a cumulative civil penalty of $100,000 for the violations.

Each of the violations is a violation of 10 CFR Part 50, Appendix R, a valid regulatory requirement. Each of the violations could have been considered as a separate violation and a separate civil penalty assessed for each. In accordance with the NRC's Enforcement Policy, 10 CFR Part 2, Appendix C, the violations were evaluated in the aggregate as a Severity Level III problem. The Policy provides that, to focus on the fundamental underlying causes of a problem for which enforcement action appears warranted, the cumulative total for all violations which contributed to or were unavoidable consequences of that problem will generally be based on the amount shown in the table, as adjusted. All of the violations stemmed from the same underlying cause—assignificant breakdown in administrative controls of engineering activities. The base civil penalty for one Severity Level III violation is $40,000. In view of the multiplicity of violations and the significance with which the cause of the violations is viewed, the NRC determined that the base civil penalty amount should be adjusted upwards to $100,000.

Licensee Statements Concerning Mitigation

The licensee requested remission or substantial mitigation of the proposed civil penalty based on the mitigation factors stated in Section IV.B of 10 CFR Part 2, Appendix C as follows:

Prompt Identification and Reporting

PGE asserts that mitigation for prompt identification and reporting is appropriate.

NRC Response

The violations of Appendix R were identified during an NRC inspection. Had the licensee done an adequate

assessment of its compliance with Appendix R, it could have avoided the violations by making the necessary modifications or by requesting appropriate exemptions. No credit for prompt identification or reporting is appropriate.

Corrective Action

The licensee asserts that mitigation should be given for the corrective actions it took after the violations were identified by the NRC. With regard to the violation of Section III.G. 1, the licensee took immediate action to seal all pipe penetrations in the separation wall between the CCP rooms with 3-hour seals, seal the opening above the B train CCP room, install a fire damper in the heating and ventilation duct penetration between the CCP rooms and install hatch covers on the hoistway openings in the Auxiliary Building. Additionally, two hour fire watch patrols of the Auxiliary Building with hourly patrols of Elevations 5 feet and 25 feet were established. Long-term corrective actions were described in letters to the NRC dated July 8 and September 28, 1983. An Appendix R Task Force was created the first working day after the NRC inspection exit meeting. Completion of this task force's efforts is expected by April 1, 1984 and schedules for implementation of any necessary corrective action will be provided by June 1, 1984. Full compliance with 10 CFR 50 and Appendix R will be achieved prior to return to power operation from the 1985 refueling outage.

NRC Response

The NRC has review these actions and the ten areas of corrective action identified as items 2.a through 2.j of Attachment 2 to the licensee's response dated October 28, 1983. As a result of this review, the NRC has concluded that the corrective actions taken were prompt and extensive. Accordingly, the civil penalty amount has been mitigated by 50% in accordance with the NRC Enforcement Policy, 10 CFR Part 2, Appendix C.

Enforcement History

The licensee states that it has received no previous enforcement citations in the area of fire protection, has been responsive to NRC's request for information on analyses, and has received a favorable SALP rating in fire protection.

NRC Response

This factor allows the NRC to increase a civil penalty as much as 25% for failure to implement corrective action for prior similar problems. The NRC has not escalated the penalty for this reason in this case.

Prior Notice of Similar Events

The licensee states that based on special fire protection inspections conducted at two other plants prior to the Trojan fire inspection, several changes to plant procedures were implemented

NRC Response

The base civil penalty may be increased as much as 25% for cases where the licensee had prior knowledge of a problem as a result of a licensee audit, or specific NRC or industry notification, and had failed to take effective preventive steps. The NRC has not escalated the civil penalty based upon this factor. The enforcement policy does not provide for mitigation for action taken by the licensee based on prior notice of similar events.

Multiple Occurrences

The licensee states that the civil penalty should not be increased because of multiple occurrences, since the alleged violations can be attributed to differences in interpretation of Appendix R requirements.

NRC Response

The civil penalty proposed by the NRC was based on the licensee's failure to conduct an adequate reassessment of the fire protection features at the Trojan facility after Appendix R became effective. If an adequate reassessment had been conducted, any confusion regarding the correct interpretation of Appendix R could have been resolved. Because the NRC considers this a serious breakdown in the licensee's efforts to ensure compliance with NRC requirements, an escalated civil penalty was assessed.

Conclusions

The violations did occur as originally stated. However, as discussed above, the civil penalty has been mitigated by 50% based upon the licensee's prompt and extensive corrective actions.

[FR Doc. 84-141 Filed 1-3-84; 8:45 am]
BILLING CODE 7590-01-M

[License No. 12-16941-01; EA 83-102]

Professional Service Industries, Inc.; Order Imposing Civil Monetary Penalties

I

Professional Service Industries, Incorporated (the "licensee") 1000 Jorie Boulevard, Suite 34, Oak Brook, IL 60521, is the holder of Byproduct Material License No. 12-16941-01 (the license") issued by the Nuclear Regulatory Commission (the "Commission") which authorizes the use of gauges to measure properties of materials. The license was issued on May 20, 1982 and expires on May 31, 1987.

II

As a result of an inspection conducted on July 20, 26, 29, and August 3 and 4, 1983 by the Nuclear Regulatory Commission's Region III Office, the NRC staff determined that the licensee had not conducted its activities in full compliance with NRC requirements. The NRC served on the licensee a written Notice of Violation and Proposed Imposition of Civil Penalties by letter dated October 20, 1983. The Notice stated the nature of the violations, the provisions of the Nuclear Regulatory Commission's requirements that the licensee had violated and the cumulative amount of the proposed civil penalties. The licensee responded to the Notice of Violation and Proposed Imposition of Civil Penalties with a letter dated November 18, 1983.

III

Upon consideration of the Professional Service Industries, Incorporated response (November 18, 1983) and the statements of fact, explanation, and arguments for remission or mitigation of the proposed civil penalties contained therein as set forth in the Appendix to this Order, the Director of the Office of Inspection and Enforcement has determined that the penalties proposed for the violations designated in the Notice of Violation and Proposed Imposition of Civil Penalties should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2282, Pub. L. 96-295), and 10 CFR 2.205, it is hereby ordered that:

The licensee pay civil penalties in the cumulative amount of Two Thousand Dollars within 30 days of the date of this Order, by check, draft, or money order payable to the Treasurer of the United States and mailed to the Director of the Office of Inspection and Enforcement, USNRC, Washington, D.C. 20555.

V

The licensee may, within 30 days of the date of this Order, request a hearing. A request for a hearing shall be

addressed to the Director, Office of Inspection and Enforcement. A copy of the hearing request shall also be sent to the Executive Legal Director, USNRC, Washington, D.C. 20555. If a hearing is requested, the Commission will issue an Order designating the time and place of hearing.

Should the licensee fail to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings and, if payment has not been made by that time, the matter may be referred to the Attorney General for collection.

VI

In the event the licensee requests a hearing as provided above, the issues to be considered at such a hearing shall be:

(a) Whether the licensee was in violation of the Commission's requirements as set forth in the Notice of Violation and proposed Imposition of Civil Penalties referenced in Section II above, and

(b) Whether on the basis of such violations, this Order should be sustained.

Dated at Bethesda, Maryland, this 19th day of December 1983.

For the Nuclear Regulatory Commission.

Richard C. DeYoung,

Director, Office of Inspection and Enforcement.

APPENDIX—Evaluations and Conclusions

The violations and associated civil penalties are identified in the Notice of Violation and Proposed Imposition of Civil Penalties dated October 20, 1983. The violations generally concerned the improper control, use, possession and shipment of radioactive byproduct material and the failure to prevent and report overexposures to radiation. The Office of Inspection and Enforcement's evaluation and conclusion regarding the licensee's response dated November 18, 1983 are presented below:

A. Evaluation of Licensee's Response

In the response, the licensee admits that each violation occurred as described in the Notice of Violation. The licensee requests mitigation of the proposed civil penalty because corrective actions were taken upon notification of one violation involving unauthorized possession of sealed sources and because two violations involving overexposures occurred more than two years ago under the administration of another Corporate Radiation Safety Officer.

The General Policy and Procedure for NRC Enforcement Actions, 10 CFR Part 2, Appendix C, Section IV. B.2, allows mitigation of a civil penalty for unusually prompt and extensive corrective action. The NRC realizes that the licensee disposed of the unauthorized sources within approximately two weeks after notification by NRC inspectors that possession of two sealed sources was unauthorized. This corrective action is, however, of the type considered by the NRC to be normal and expected, not unusually prompt or extensive.

In addition, the NRC would have expected the licensee to have taken more effective measures to recover the lost source once it was discovered to be missing. Instead, the NRC determined through an inspection that the source was at the home of a Professional Services, Inc. employee.

The NRC also recognizes that the two overexposures discovered by the NRC inspectors occurred before the current Radiation Safety Officer's administration. Although it appears the licensee is now evaluating and reporting overexposures as required, the failures to report the two previous overexposures were violations for which the licensee is responsible. A civil penalty is appropriate for these as well as the other violations specified in the Notice of Violation to deter similar noncompliance in the future.

B. Conclusion

While the NRC encourages corrective actions of the type described in the licensee's response, the licensee has not provided a sufficient basis for mitigation of the proposed civil penalties.

[FR Doc. 84-142 Filed 1-3-84; 8:45 am]
BILLING CODE 7590-01-M

[License No. 37-21014-01; EA 83-112]

Roof Auditing Services; Decision on Order To Show Cause

I

Roof Auditing Services, P.O. Box 22, Oreland, Pennsylvania 19075 (the "Licensee") is the holder of a specific byproduct material license issued by the Nuclear Regulatory Commission (the "Commission") pursuant to 10 CFR Part 30. The license, issued on June 4, 1982 and due to expire on June 30, 1987, authorizes the use, storage, and transfer of byproduct material as stated in the Licensee's application dated March 22, 1982 and letter supplementing that application dated May 27, 1982.

II

On October 13, 1983, the Director of the Office of Inspection and Enforcement issued an "Order to Show Cause and Order Temporarily Suspending License Effective Immediately", 48 FR 48885 (October 21, 1983), to the Licensee on the basis of a number of violations of NRC requirements enumerated in the Order. The violations included failure to store the material in a location prescribed by the license, failure to use film badges, and use of the material by persons other than the named user on the license. The Order required the Licensee to show cause why its license should not be revoked and also suspended the licensee's authority to use the material it holds under NRC license.

The Licensee has provided responses to the matters set forth in the Order in letters to the NRC staff dated November 15 and December 8, 1983. The letters describe in general terms the corrective actions that the Licensee proposes to take to correct the violations identified in the Order. Upon consideration of the Licensee's responses and proposed corrective action, the Director has determined the Licensee has shown adequate cause why the license should not be revoked.

Further corrective action is necessary, however, before licensed activities may be resumed. This corrective action requires an amendment of the license. In this amendment, the Licensee must add an authorized user or users to its license to replace the currently named authorized user who no longer works for the company. Although the Licensee did attach a sketch of a proposed storage area to the December 8, 1983 letter, the Licensee must also request an amendment to the license to include a new storage area for the licensed material in lieu of the storage location currently identified in the license application. The application for an amendment must include a complete description of the method to control access to licensed material when in storage.

Until the Licensee applies for and is granted a license amendment to add an authorized user or users and an approved storage area to its license, it is prohibited from using radioactive material. The suspension of the license and terms of the October 13, 1983 Order, which required the Licensee to place all byproduct material in its possession in locked storage or to transfer such material to an authorized person, shall continue until an appropriate license amendment is issued.

III

Accordingly, the Licensee may not resume licensed activities until it has obtained a license amendment which

identifies approved authorized users and which identifies a current approved location for storage of licensed material. Pending issuance of such an amendment, the suspension imposed by the Order of October 13, 1983, remains in effect and, accordingly, the Licensee shall maintain byproduct material in its possession in locked storage or transfer such material to an authorized recipient. If the Licensee does not apply for a license amendment within five months, the staff will reconsider the question of whether the license should be revoked and may issue an appropriate Order.

For the Nuclear Regulatory Commission.

Dated at Bethesda, Maryland this 27th day of December 1983.

Richard C. DeYoung,

Director, Office of Inspection and Enforcement.

[FR Doc. 84-143 Filed 1-3-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-305]

Wisconsin Public Service Commission, Kewaunee Nuclear Station; Relocation of Local Public Document Room

Notice is hereby given that the Nuclear Regulatory Commission (NRC) has relocated the local public document room (LPDR) for Wisconsin Public Service Corporation's Kewaunee Nuclear Station from the Kewaunee Public Library, Kewaunee, WI to the University of Wisconsin, Green Bay, WI.

Members of the public may now inspect and copy documents and correspondence related to the licensing and operation of the Kewaunee Nuclear Station at the University of Wisconsin, Library Learning Center, 2420 Nicolet Drive, Green Bay, WI 54301. The Library is open on the following schedule: Monday through Thursday 8:00 am to 11:30 pm, Friday 8:00 am to 8:00 pm, Saturday 9:00 am to 6:00 pm and Sunday 1:00 pm to 11:30 pm.

For further information, interested parties in the Green Bay area may contact the LPDR directly through Mrs. Kathy Pletcher, telephone number (414) 456-2547. Parties outside the service area of the LPDR may address their requests for records to the NRC's Public Document Room, 1717 H Street, NW., Washington, DC 20555, telephone number (202) 634-3273.

Questions concerning the NRC's local public document room program or the availability of documents at the Kewaunee LPDR should be addressed to Ms. Jona L. Souder, Chief, Local Public Document Room Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone number (800) 638-8081 toll free.

Dated at Bethesda, Maryland, December 23, 1983.

For the Nuclear Regulatory Commission.

Joseph M. Felton,

Director, Division of Rules and Records Office of Administration.

[FR Doc. 84-144 Filed 1-3-84; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Meeting

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b.), the Advisory Committee on Reactor Safeguards will hold a meeting on January 12-14, 1984, in Room 1046, 1717 H Street, NW, Washington, DC. Notice of this meeting was published in the **Federal Register** on December 27, 1983.

The agenda for the subject meeting will be as follows:

Thursday, January 12, 1984

8:30 A.M.-8:45 A.M.: Opening Remarks (Open)—The ACRS Chairman will report briefly on matters of current interest regarding ACRS activities.

8:45 A.M.-12:30 P.M.: Shearon Harris Nuclear Plant Units 1 & 2 (Open)—The Committee will consider the request for an Operating License for this facility. Members of the NRC Staff and representatives of the applicant will participate as appropriate.

Portions of this session will be closed as necessary to discuss Proprietary Information applicable to this matter.

1:30 P.M.-3:30 P.M.: Probabilistic Risk Assessment (Open)—The members of the Committee will consider the proposed NRC report entitled, "Probabilistic Risk Assessment—Status Report and Guidance for Regulatory Application." Members of the NRC Staff will participate as appropriate.

3:30 P.M.-6:30 P.M.: NRC Safety Research Program and Budget (Closed)—The members will discuss the proposed ACRS report to the U.S. Congress regarding the proposed NRC safety research program and budget for FY 1985-86.

This session will be closed to discuss information the premature release of which would be likely to significantly frustrate the agency in the performance of its function.

Friday, January 13, 1984

8:30 A.M.-10:30 A.M.: National Bureau of Standards Reactor (Open)—The Committee will consider a proposed power increase and extension of the Operating License for this facility. Representatives of the NRC Staff and the Licensee will participate as appropriate.

10:30 A.M.-10:45 A.M.: Future ACRS Activities (Open)—The members will discuss anticipated ACRS subcommittee activities and proposed items for full Committee consideration.

10:45 A.M.-11:30 A.M.: Consideration of Severe Accidents (Open)—The Committee will hear a briefing and hold discussions with representatives of the NRC Staff regarding the proposed decision-making process for consideration of severe nuclear power plant accidents in the regulatory process.

11:30 A.M.-12:30 P.M.: Activities of NRC Office of Inspection and Enforcement (Open)—The Committee will hear reports from and hold discussions with representatives of the NRC Staff regarding proposed changes in NRC enforcement policy and topics related to recent operating experience, such as action taken to correct management deficiencies at the Quad Cities Nuclear Station.

1:30 P.M.-2:30 P.M.: Extreme Environmental Phenomena (Open)—The Committee will consider proposed changes in the NRC Standard Review Plan 2.5.2, Vibratory Ground Motion. Members of the NRC Staff will participate as appropriate.

2:30 P.M.-3:30 P.M.: ACRS Subcommittee Activities (Open)—The members will hear and discuss reports of its Subcommittees regarding ongoing subcommittee activities including seismic design of nuclear facilities, site evaluation and emergency planning, and maintenance practices and procedures at nuclear power plants.

3:30 P.M.-5:30 P.M.: NRC Safety Research Program (Closed)—The Members will discuss the proposed ACRS report to the U.S. Congress regarding the proposed NRC safety research program and budget for fiscal year 1985-86.

This session will be closed to discuss information the premature release of which would be likely to significantly frustrate the agency in the performance of its function.

5:30 P.M.-6:00 P.M.: Activities of ACRS Members (Closed)—The members will discuss proposed ACRS policy regarding the non-government activities of ACRS members.

This session will be closed to discuss information that relates to the internal personnel rules and practices of the agency and information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Saturday, January 14, 1984

8:30 A.M.–12:30 P.M. and 1:30 P.M.–2:30 P.M.: Preparation of ACRS Reports (Open/Closed)—The members will discuss proposed reports to the NRC and the U.S. Congress regarding matters considered during this meeting.

Portions of this session will be closed as necessary to discuss Proprietary Information, information which will be involved in an adjudicatory proceeding, and information the premature release of which would be likely to significantly frustrate the agency in the performance of its statutory function.

2:30 P.M.–3:30 P.M.: Miscellaneous (Open)—The members will complete discussion of items considered during this meeting.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 28, 1982 (48 FR 44291). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a telephone call to the ACRS Executive Director, R. F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with Subsection 10(d) Pub. L. 92–463 that it is necessary to close portions of this meeting as noted above to discuss Proprietary Information (5 U.S.C. 552b(c)(4)), information that involves the internal personnel rules and practices of the agency (5 U.S.C. 552b(c)(2)), information the release of which would involve an unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)), and information the premature release of which would be likely to significantly frustrate the agency in the performance of its function (5 U.S.C. 552b(c)(9)).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 202/634–3265), between 8:15 A.M. and 5:00 P.M. est.

Dated: December 27, 1983.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 84–146 Filed 1–3–84; 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 180 (44 U.S.C. Chapter 35), the 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: Supplemental Doctor's Statement

(2) Form(s) submitted: SI–7, ID–7h

(3) Type of request: Revisions of a currently approved collection

(4) Frequency of use: On occasion

(5) Respondents: Small business or organizations

(6) Annual responses: 50,050

(7) Annual reporting hours: 4,171

(8) Collection description: The RUIA provides for the payment of sickness benefits to qualified railroad employees. The physician's statement will be used for determining whether the applicant meets the requirements for sickness benefits.

Additional information or comments: Copies of the proposed forms and supporting documents may be obtained from Pauline Lohens, the agency clearance officer (312–751–4692). Comments regarding the information collection should be addressed to Pauline Lohens, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Milo Sunderhauf (202–395–6880), Office of Management and Budget, Room 3201, New Executive Office Building, Washington, D.C. 20503.

William A. Oczkowski,

Director of Planning and Information Management.

[FR Doc. 84–20 Filed 1–3–84; 8:45 am]

BILLING CODE 7905–01–M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

White House Science Council (WHSC); Meeting

The White House Science Council, the purpose of which is to advise the Director, Office of Science and Technology Policy (OSTP), will meet on January 19 and 20, 1984, in Room 5026, New Executive Office Building, Washington, D.C. The meeting will begin at 6:00 p.m. on January 19, recess and reconvene at 8:00 a.m. on January 20. Following is the proposed agenda for the meeting:

(1) Briefing of the Council, by the Assistant Directors of OSTP, on the current activities on OSTP.

(2) Briefing of the Council by OSTP personnel and personnel of other agencies on proposed, ongoing, and completed panel studies.

(3) Discussion of composition of panels to conduct studies.

The January 19 session and a portion of the January 20 session will be closed to the public.

The briefing on some of the current activities of OSTP necessarily will involve discussion of material that is formally classified in the interest of national defense or for foreign policy reasons. This is also true for a portion of the briefing on panel studies. As well, a portion of both of these briefings, will require discussion of internal personnel procedures of the Executive Office of the President and information which, if prematurely disclosed, would significantly frustrate the implementation of decisions made requiring agency action. These portions of the meeting will be closed to the public pursuant to 5 U.S.C. 552b(c) (1), (2), and 9(B).

A portion of the discussion of panel composition will necessitate the disclosure of information of a personal nature, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Accordingly, this portion of the meeting will also be closed to the public, pursuant to 5 U.S.C. 552b(c)(6).

The portion of the meeting open to the public will begin at 10:00 a.m. Because of the security in the New Executive

Office Building, persons wishing to attend the open portion of the meeting should contact Anne L. Boyd, Secretary, White House Science Council at (202) 456–7740, prior to 3:00 p.m. on January 18. Ms. Boyd is also available to provide further information regarding this meeting.

Jerry D. Jennings,

Executive Director, Office of Science and Technology Policy.

December 20, 1983.

[FR Doc. 84–86 Filed 1–3–84; 8:45 am]

BILLING CODE 3170–01–M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirement Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of Reporting Requirements Submitted for OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirement to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATE: Comments must be received on or before February 9, 1984. If you anticipate commenting on a submission but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB reviewer and the agency clearance officer of your intent as early as possible.

Copies

Copies of the proposed forms, the request for clearance (S.F. 83), supporting statement, instructions, transmittal letter, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Comments on the item listed should be submitted to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency clearance officer: Elizabeth M. Zaic, Small Business Administration, 1441 L St., NW., Room 200, Washington, D.C. 20416, Telephone: (202) 653–8538

OMB reviewer: J. Timothy Sprehe, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235, New Executive Office Building, Washington, D.C. 20503, Telephone: (202) 395–4814

Forms Submitted for Review

Title: Score/Ace Quarterly Activity Report
Frequency: Quarterly
Description of Respondents: Score Chapters
Annual Responses: 1,600
Annual Burden Hours: 800
Type of Request: New

Title: SBDC Quarterly Financial Reports
Frequency: Quarterly
Description of Respondents: Recipients receiving funding
Annual Responses: 108
Annual Burden Hours: 7,200
Type of Request: New

Title: Small Business Institute Counseling Report
Frequency: On occasion
Description of Respondents: University business students
Annual Responses: 8,000
Annual Burden Hours: 25,000
Type of Request: New

Title: Evaluation of Conference Education Modules
Form No.: SBA 1385
Frequency: On occasion
Description of Respondents: Women business owners
Annual Responses: 23,000
Annual Burden Hours: 2,300
Type of Request: New

Title: PASS—Company Profile and Validation of Registration
Form Nos.: SBA 1167, 1167A, and 1395
Frequency: Annually
Description of Respondents: Small businesses
Annual Responses: 110,000
Annual Burden Hours: 12,500
Type of Request: Revision

Dated: December 29, 1983.

Richard Vizachero,

Acting Chief, Paperwork Management Branch, Small Business Administration

[FR Doc. 84–129 Filed 1–3–84; 8:45 am]

BILLING CODE 8025–01–M

[Application No. 08/08–5062

Bandell Investments, Ltd.; Application for a License To Operate as a Small Business Investment Company

An application for a license to operate as a small business investment company under the provisions of Section 301(d) of the Small Business Investment Act of 1958, as amended (15 U.S.C 661 *et seq.*), has been filed by Bandell Investments, Ltd. with the Small Business Administration (SBA), pursuant to 13 CFR 107/102 (1983).

The officers, directors and stockholders of the Applicant are as follows:

Jimmie W. Lloyd, 529 E. 2nd, Florence, CO 81226—President & Sole Stockholder

Myrna F. Lloyd, 529 E. 2nd, Florence, CO 81226—Secretary

Robert W. Lloyd, 529 E. 2nd, Florence, CO 81226—Vice President

Rosemary A. Scutti, P. O. Box 227, 16 John St., Florence, Co. 81226—Treasurer & General Manager

The applicant, a Colorado corporation, with its principal place of business 119 W. Maine, Florence, Colorado 81226, will begin operations with $1,003,500 of paid-in capital and surplus.

The Applicant will conduct its activities principally in the State of Colorado.

As a small business investment company under Section 301(d) of the Act, the Applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the Small Business Investment Act of 1958, as amended, from time to time, and will provide assistance solely to small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose particiation in the free enterprise system is hampered because of social or economic disadvantage.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the applicant under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is hereby given that any person may, not later than 15 days from the date of publication of this Notice, submit written comments to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, D.C. 20416.

A copy of this notice should be published in a newspaper of general circulation in Florence, Colorado.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: December 23, 1983.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84–128 Filed 1–3–84; 8:45 am]

BILLING CODE 8025–01–M

[License No. 02/02-0463]

County Capital Corp.; Issuance of License To Operate as a Small Business Investment Company

On May 10, 1983, a notice was published in the **Federal Register** (48 FR 21039) stating that County Capital Corp., 25 Main Street, P.O. Box 112, Southampton, New York 11968 had filed an Application with the Small Business Administration pursuant to § 107.102 of the Regulations governing small business investment companies [13 CFR 107.102 (1983)], for a license as a small business investment company (SBIC).

Interested parties were given until the close of business May 25, 1983, to submit their comments. No comments were received.

Notice is hereby given that, having considered the application and all other pertinent information, SBA on December 8, 1983 issued License No. 02/02-0463 to County Capital Corp., pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: December 23, 1983.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84-126 Filed 1-3-84; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 09/09-5338]

Charterway Investment Corporation; Application for a License To Operate as a Small Business Investment Company.

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to Section 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1983)), for a license to operate as a small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958, as amended (the Act), (15 U.S.C. 661 *et seq.*), and the Rules and Regulations promulgated thereunder.

Applicant: Charterway Investment Corporation.

Address: 222 South Hill Street, Suite 800, Los Angeles, California 90012.

The proposed officers, directors and stockholders of the Applicant are as follows:

Harold Hwa Ming Chuang, 32544 Seacliff Drive, Rancho Palos Verdes, Ca. 90274—President, Director, and 30.6% Stockholder

Philip Hwa-Yen Chuang, 19581 Braewood Drive, Tarzana, California 91356—Vice President, Chief Financial Officer, Director and 20.4% Stockholder

Tien H. Chen, 162 South Edinburgh Avenue, Los Angeles, California 90012—Vice President, Director and 17.6%, Stockholder

Edmund C. Lau, 4105 S. Hermitage Drive, Hacienda Heights, California 91745—Vice President, Secretary, Director and 17.0% Stockholder

Hiram Wai Kwan, 5151 Los Encantos Way, Los Angeles, California 90027—Vice President, Director and 15.0% Stockholder

The Applicant, a California corporation with its principal place of business at 222 South Hill Street, Suite 800, Los Angeles, California 90012, will begin operations with $1,000,000 paid-in capital and paid-in suprlus.

The applicant will conduct its activities principally in the State of California.

As a small business investment company under Section 301(d) of the Act, the Applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the Act, as amended from time to time, and will provide assistance solely to small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the applicant under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is hereby given that any person may, not later than 15 days from the date of publication of this Notice, submit written comments to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, D.C. 20416.

A copy of this notice should be published in a newspaper of general circulation in the Los Angeles, California area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: December 23, 1983.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84-123 Filed 1-3-84; 8:45 am]

BILLING CODE 8025-01-M

[License No. 09/09-0301]

HMS Capital, Ltd.; Issuance of a License To Operate as a Small Business Investment Company

On September 14, 1983, a notice was published in the **Federal Register** (48 FR 41263), stating that HMS Capital, Ltd, 1500 Newell Avenue, Suite 702, Walnut Creek, California 74596, has filed an application with the Small Business Administration pursuant to 13 CFR 107.102(1983), for a license to operate as a small business investment company under the provisions of Section 301(c) of the Small Business Investment Act of 1958, as amended.

The period for comment expired on September 29, 1983, and no significant comments were received.

Notice is hereby given that considering the application and other information, SBA has issued License No. 09/09-0301 to HMS Capital, Ltd.

Dated: December 23, 1983.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84-127 Filed 1-3-84; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 08/08-0061]

Rocky Mountain Ventures, Ltd.; Application for a License To Operate as a Small Business Investment Company

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1983)), for a license to operate as a small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958, as amended (the Act), (15 U.S.C. 661 *et seq.*), and the Rules and Regulations promulgated thereunder.

Applicant: Rocky Mountain Ventures, Ltd.

Address: 315 Securities Building, Billings, Montana 59101.

The proposed officers, directors and stockholders of the Applicant are as follows:

Eldon E. Kuhns, 3117 Ramada Drive, Billings, Montana 59102—Chairman and Director, 70 percent
James H. Koessler, 733 Highland Park Drive, Billings, Montana 59102—President and Director, 15 percent
Robert M. Brown, 2231 Ridgeview Drive, Billings, Montana 59105—Vice President, Secretary-Treasurer and Director, 15 percent

The Applicant, a Montana corporation, will begin operations with $525,000 paid-in capital and paid-in surplus.

The Applicant will conduct its activities principally in the State of Montana.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the Applicant under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is hereby given that any person may, not later than 15 days from the date of publication of this Notice, submit written comments to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, D.C. 20416.

A copy of this notice should be published in a newspaper of general circulation in the Billings, Montana area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: December 23, 1983.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84-125 Filed 1-3-84; 8:45 am]

BILLING CODE 8025-01-M

[License No. 06/06-0209]

Rust Capital, Ltd.; Application for Approval of Conflict of Interest Transaction Between Associates

Notice is hereby given that Rust Capital, Ltd. (Rust), 1300 Norwood Tower, 114 West 7th Street, Austin, Texas 78701, a Federal Licensee under the Small Business Investment Act of 1958, as amended, has filed an application with the Small Business Administration pursuant to § 107.903 of the Regulations governing small business investment companies (13 CFR 107.903 (1983)) for approval of a conflict of interest transaction.

Rust proposes to sell its investment in the Chrysostom Corporation to the Norwood Broadcasting, Ltd., (Norwood) for $1,495,000. Frank P. Krasovec, presently a general partner of Rust, will form Norwood as a Texas limited partnership and become its sole general partner.

The conflict of interest arises because of Mr. Krasovec's present affiliation with Rust and the fact that Norwood will issue the licensee a fully secured note in the amount of $1,495,000. Because Mr. Krasovec is deemed an associate, the proposed transaction falls within the purview of Section 107.903(b)(3) of the Regulations and requires prior written approval of SBA.

Notice is hereby given that any person may, not later than fifteen (15) days from the date of publication of this Notice, submit written comments to the Deputy Associated Administrator for Investment, Small Business Administration, 1441 "L" Street NW., Washington, D.C. 20416.

A copy of this notice will be published in a newspaper of general circulation in the Austin, Texas and Casper, Wyoming area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: December 27, 1983.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84-124 Filed 1-3-84; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[FRA Waiver Petition Docket Nos. RSRM-83-2 Through RSRM-83-5]

Petition for Relief From the Requirements for Rear End Marking Device on Trains

In accordance with 49 CFR 211.41 and 211.9, notice is hereby given that four railroads have petitioned the Federal Railroad Administration (FRA) for relief from the requirements of 49 CFR 221.13. Each petition requests that the individual railroads be granted authority to operate trains without the trailing end of the rear car of the train being equipped with a marking device when following movements are prohibited.

Section 221.13 provides that after June 30, 1978, each train that occupies or operates on a main track shall be equipped with marking devices located on the trailing end of the rear car of the train. However § 221.9 contains a provision that permits a railroad to petition the FRA for a waiver of compliance. Each railroad asserts that only one train is operated in the same direction in a given territory and, therefore, a marker device has no safety function as there are no following movements and the threat of a rear end collision is nonexistent. The railroads seeking an exemption are as follows:

The Detroit and Mackinac Railway Company (Waiver Petition Number RSRM-83-2)
Missouri Pacific Railroad Company (Waiver Petition Number RSRM-83-3)
Seaboard System Railroad (Waiver Petition Number RSRM-83-4)
Illinois Central Gulf Railroad Company (Waiver Petition Number RSRM-83-5)

The Detroit and Mackinac Railway operates one train at any given time on each of two separated main tracks extending between Linwood, Michigan and Cheboygan, Michigan and between Cheboygan, Michigan and Mackinac, Michigan. Movements of trains are governed by train orders issued by train dispatcher located at Bay City, Michigan. The Detroit and Mackinac Railroad proposes to operate in a manner that no train would follow another train into the affected territory, thereby eliminating the risk of a rear end collision.

The Missouri Pacific Railroad conducts operations on multiple subdivisions on which no more than one train in the same direction is operated at any given time. In the event a second train is operated on a subdivision at the same time and in the same direction, all trains operating in that direction will be given a train order specifying that flag protection will be provided and the trailing end of the rear car of the train would be equipped with the required marking device. Under the proposed method of operation no train would follow another train into an affected territory unless the first train was equipped with a marking device and protected by flag protection thereby eliminating the risk of a rear collision.

The Seaboard system seeks relief of rear of train marking device on all trains operating in present and future absolute block operations. Carrier Rule 120 restricts the occupancy of an absolute block to one train except in case of failure of communications. Additional trains or on-track equipment may enter and move through an absolute block at restricted speed only when proceeded by a flagman at full flagging distance and flag protection to the rear is provided. As of July 25, 1983, the Seaboard System had 172 segments of track over which operations were conducted by absolute blocks and contemplates additional absolute block

operations on other track segments. If relief is granted the use of markers will be discontinued in absolute block territories. The petitioner contends that the requirement for a marker device was intended to provide a visual warning to any following train to avoid rear end collisions and in the absence of such risk the railroad seeks authority to dispense with the marker.

The Illinois Central Gulf Railroad seeks relief where the railroad will operate not more then one train in an absolute block at any given time. If relief is granted the railroad would institute absolute block systems using timetable special instructions. These instructions prohibit a following train to enter an absolute block until the proceeding train has cleared the block and a report has been made. Under extreme emergency conditions, the proceeding train is notified and flag protection provided. In those territories where trains operate by absolute block operations there would be no following trains, thus the requirement for a rear end marking device is unnecessary, and its elimination would have no measurable effect on safety. If relief is granted the petitioner further proposes to adopt Carrier Operating Rule S–225 to authorize operations by absolute block system operations on any part of its system authorized by timetable special instructions.

Interested persons are invited to participate in these proceedings by submitting written views or comments. FRA has not scheduled an opportunity for oral comment since the facts do not appear to warrant it. Communications concerning these proceedings should identify the docket number, (e.g. Docket Number RSRM–83–2) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590. Communications received before February 15, 1984, will be considered by FRA before final action is taken. Comments received after that will be considered as far as practicable. All comments received will be available for examination both before and after the closing date for comments, during regular business hours in Room 7330, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590.

(Sec. 202 of the Federal Railroad Safety Act of 1970, 84 Stat. 971, 1.49(m) of the regulations of the Office of the Secretary, 49 CFR 1.49(m))

Issued in Washington, D.C., on December 20, 1983.

J. W. Walsh,

Associate Administrator for Safety.

[FR Doc. 84–63 Filed 1–3–84; 8:45 am]

BILLING CODE 4910–06–M

Research and Special Programs Administration

[Docket No. IRA–28]

Arizona Department of Transportation; Application for Inconsistency Ruling; Public Notice and Invitation to Comment

Correction

In FR Doc. 83–32791, beginning on page 55383, in the issue of Monday, December 12, 1983, make the following corrections:

1. On page 55384, in the first column, in the fourth line from the top, "been a" should read "been made a".

2. Also on page 55384, in the third column, after the seventh paragraph, Paragraph D, the following should be inserted:

"E. Requires prenotification;".

3. On page 55384, in the third column, the eighth paragraph, now designated paragraph "E" should read paragraph "F".

BILLING CODE 1505–01–M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 84–13]

Approval of Public Gauger Performing Gauging Under Standards and Procedures Required by Customs

Notice is hereby given pursuant to the provisions of section 151.43 of the Customs Regulations (19 CFR 151.43) that the application of Ipic, Ltd., 1234 West 8th Street, Long Beach, California 90801, to gauge imported petroleum and petroleum products in all Customs districts, in accordance with the provisions of § 151.43, Subpart C, of the Customs Regulations is approved.

Dated: December 27, 1983.

Donald W. Lewis,

Director, Entry Procedures and Penalties Division.

[FR Doc. 84–60 Filed 1–3–84; 8:45 am]

BILLING CODE 4820–02–M

UNITED STATES INFORMATION AGENCY

Reporting and Information Collection Requirements Under OMB Review

AGENCY: United States Information Agency.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed or established reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission. USIA is requesting approval of an information collection for a new University Affiliation Program.

DATE: Comments must be received by January 31, 1984.

COPIES: Copies of the request for clearance (SF–83), supporting statement, instructions, transmittal letter and other documents submitted to OMB for review may be obtained from the USIA Clearance Officer. Comments on the item listed should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention Desk Officer for USIA.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Charles N. Canestro, United States Information Agency, M/M, 301 Fourth Street SW., Washington, D.C. 20547, telephone (202) 485–8676. And OMB Review: David S. Reed, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503, telephone (202) 395–7231.

SUPPLEMENTARY INFORMATION: Title: "University Affiliation Program". Abstract: This information collection is intended to supplement and enhance existing university affiliation programs, and/or assist in the creation of new programs. Eligibility for grants of up to $50,000 will be given to U.S. universities which are affiliated, or agree to affiliate with foreign universities in order to promote mutual understanding and contribute to the academic excellence of participating institutions. This is accomplished through exchanges of faculty and staff members.

Dated: December 29, 1983.

Charles N. Canestro,

Management Analyst, Federal Register Liaison.

[FR Doc. 84-70 Filed 1-3-84; 8:45 am]

BILLING CODE 8230-01-M

President's International Youth Exchange Initiative; Selective Assistance Through Limited Grant Support to Not-for-Profit Organizations

The United States Information Agency (USIA) announces a program of selective assistance through limited grant support to private not-for-profit organizations for programs in support of the President's International Youth Exchange Initiative with the United Kingdom, the Federal Republic of Germany and France.

The primary goal of the program will be to develop collaborative, continuing exchange relationships between eligible U.S. exchange organizations and clearly identified youth groups in the three countries. Such groups in the U.K. may, but need not, be sponsored and assisted by the British Council or the Central Bureau for Educational Visits and Exchanges. In Germany, they must be sponsored by the Ministry for Youth, Family and Health. In France such groups may, but need not, be sponsored and assisted by the French Ministry of Cultural Relations or the French Ministry of Youth and Sports.

Amounts of $400,000 for US-German exchanges, $150,000 for US-UK exchanges, and $150,000 for US-French exchanges have been allocated for all programs within this announcement.

Organizations meeting eligibility requirements and interested in working cooperatively with USIA are invited to submit concept papers for the following program areas to the International Youth Exchange Staff.

Program Proposal Content

The following categories for the program have been established for this competition:

A. U.K. Programs

1. Participant type—Students aged 15 to 19 years; youth leaders, young workers and farm youth aged 15–25.

2. Program Length—Generally, four to six weeks or longer.

3. Accommodations—Homestays for the full period of residency are preferred.

Preference will be given to:

1. Organizations which have established ongoing partnerships with appropriate British youth organizations.

2. Exchanges that involve work, service and other similar projects, which lend themselves to continuing exchanges in future years, not requiring Federal funding.

3. Reciprocal exchanges in which a group of members of a youth organization in the U.S. and a group of members of a similar organization in the United Kingdom exchange visits for the purpose of better understanding of each other's way of life. In each country there should be a program in which both groups take part.

For the U.K., a two-step process of concept paper and full proposal will be employed (See Grant Guidelines section). Organizations whose intended partners in the Kingdom are applying separately to either the British Council or the Central Bureau should include reference to that application for funding (and the amount requested) in their concept papers. The Governments of the U.S. and Great Britain will coordinate on the award of grants. A consultative mechanism consisting of representatives of appropriate US/UK governmental entities will meet to review all applications for grant funding prior to final awards.

B. Federal Republic of Germany (FRG)

1. Participant type—16 to 25 year-olds.

2. Program length—Generally three-six weeks or longer.

3. Homestay—Homestays are preferred.

Preference will be given to:

1. Organizations which have established ongoing partner relationships with appropriate German youth organizations;

2. Exchanges that involve work, service and other similar projects, which lend themselves to continuing exchanges in future years, not requiring Federal funding.

Proposals are invited in fulfillment of the following types of exchanges:

1. A program to enable youth active in social welfare projects to gain practical experience through an exchange with the FRG. Preference will be given to concepts which include work/observation periods in areas of mutual German-American concern. For example, community action, minorities, drug addiction, probation system, the disabled, juvenile delinquency.

2. A program to enable youth active in environmental protection to gain experience through an exchange with the FRG. Preference will be given to concepts which provide broad exposure to the measures which both societies are taking to respond positively to environmental problems.

3. A program to enable youth to observe the political process in the U.S. and the FRG. Preference will be given to concepts which provide maximum exposure to grass-roots political activity and the positive role of youth in political action.

4. A program to enable young trade union leaders and potential leaders to participate in youth-related activities of unions in the U.S. and the FRG. Preference will be given to concepts which will provide well-rounded activities allowing for the participation in all aspects of youth-related union work.

5. A program for young farm youth to intensify organizational contacts between farm youth organizations in the U.S. and the FRG, leading to continued exchange programs.

6. A program to bring together young Germans and Americans who share an appreciation for the arts in fora such as workshops, camps, and other educational activities (excluded are professionals and performing tours of national groups).

For the FRG, organizations whose German partners intend to apply separately to the Ministry of Youth, Family and Health for funding should so indicate in their concept papers. Proposals will be reviewed by a joint US–FRG committee prior to the award of grants.

C. France

1. Participant type—15–22 year-olds.

2. Program length—Generally four weeks or longer.

3. Homestay—Homestays for the full period of residency are preferred.

4. Preference will be given to intercultural learning programs designed specifically for non-academic participants, such as young workers, business interns, and farm youth.

Organizations interested in establishing new partnerships with French organizations should contact the Youth Exchange Staff of USIA at the address below for the list.

For France, a joint US-French panel will be convened in Paris to review all proposals recommended by USIA prior to final approval.

Eligibility

Academic, cultural and not-for-profit exchange-of-persons organizations are eligible to apply. Organizations should be able to demonstrate a proven record (four years) of work in their field.

Not-for-profit organizations which are the offspring of for-profit firms engaged in similar activities will not be eligible for consideration under this program.

Priority will be given to organizations with national or regional volunteers. Organizations must be capable of meeting the "Criteria for Teen-ager

Exchange Visitors Programs" or "Criteria for Practical Trainees", which may be obtained by writing to the USIA address listed at the end of this announcement.

Grant Guidelines

USIA grant assistance should constitute only a portion of total project funding. Continuing projects for which USIA assistance is requested should include an accceptable plan for leading to a self-sustaining status. Under normal circumstances, USIA support is limited to one year.

Concept papers will be judged on the basis of the following criteria:

—The proposed activity should contribute to the sustained, long-term development of youth exchanges.

—The project should show promise of generating additional private exchange activity.

—The project should enhance the quality of the exchange visitors' experience.

—The organization should demonstrate the ability to manage the exchange (adequate field personnel, administrative support mechanisms, etc.).

—Reciprocity of exchange—i.e., two-way flow—is an integral part of this program.

—Reasonable per capita costs, as viewed in comparison with other proposals and with standards for the field.

—Consistency with the thematic emphases described in this announcement.

Under this program USIA will not finance: preparation of research studies; the underwriting of exchange activities already being carried out or of operating costs; any project which is designed to lobby elected officials or promote politically partisan views; projects whose aim is to promote religious activities.

Interested organizations are invited to forward (to the address given below) 10 copies of a brief two to three page concept paper, in the case of the United Kingdom, outlining the objective of their proposed activity and the nature of the project. Please also include: a copy of the organization's charter; a list of the board of directors; a budget which notes the probable contributions of the organization or other sources to the total cost of the proposed project; and curricula vitae on the principal project staff.

In the case of Germany and France, interested organizations are invited to submit 10 copies of a full proposal, which should include the following: (1) A standard USIA cover sheet; (2) project summary; (3) narrative description of the project; (4) work plan/time frame for achieving the project's objectives; (5) a line-item budget; and the other attachments listed above. Organizations may call or write USIA for a copy of the proposal guidelines and cover sheet.

Timetable

United Kingdom—In order to be considered for funding in this competition, concept papers must be received by USIA not later than February 15, 1984. USIA review of the concept papers, on the basis of the criteria listed above, will be completed by March 15 and full proposals invited. Proposals will be due April 15. Final review and approval decisions will be made by May 31. It should be understood that USIA's recommendation to prepare a detailed grant proposal does not necessarily quarantee the approval of the proposal.

Germany—The concept paper stage will not be included in the competition for US-German exchanges. As noted above, interested organizations should request a copy of the Guidelines for Youth Exchange Proposals from the address listed below. Proposals are due in USIA by February 15, 1984. They will be reviewed by March 15 and decisions made by April 1.

France—As in the case of Germany, full proposals are herein solicited. Interested organizations may write or call for the Guidelines and proposals must be received in USIA by February 15. The Youth Exchange Staff will complete initial review of the proposals by March 1.

As stated above, all project ideas will be subjected to review by the joint committees in the U.K., the FRG and France.

Address for all inquiries: The International Youth Exchange Staff, Bureau of Educational and Cultural Affairs (E/YX), U.S. Information Agency, Washingtoon, D.C. 20547 or call (202) 485–7299.

Dated: December 29, 1983.

Charles Canestro,

Federal Register Liaison, United States Information Agency.

[FR Doc. 84–79 Filed 1–3–84; 8:45 am]

BILLING CODE 8230–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Renewal of the Advisory Committee for Trade Negotiations

The United States Trade Representative, pursuant to Section 135(b) of the Trade Act of 1979 (19 U.S.C. 2155(b)), (the Act), the Federal Advisory Committee Act (5 U.S.C. App. I) and Section 4(d) of Executive Order No. 11846 of March 27, 1975, hereby renews the Advisory Committee for trade Negotiations to provide overall policy advice referred to in Title I of the Act.

The Committee shall consist of not more than 45 members including representatives of government, labor, industry, agriculture, small business, service industries, retailers, consumer interest, and the general public. Members of the Committee shall be appointed by the President for a period of two years, and may be reappointed.

The Committee shall provide overall policy advice with respect to negotiating objectives and bargaining positions directed toward trade agreements under Section 102 of the Act, to the operation of trade agreements entered into, and to other matters arising in connection with the administration of the trade policy of the United States. The Committee also shall provide to the President, the Congress and the United States Trade Representative advice on whether and to what extent any agreement entered into under Section 102 of the Act promotes the economic interests of the United States.

Representatives from the private sector wishing further information should contact: the Office of the U.S. Trade Representative, Office of Private Sector Liaison, 600 17th Street, NW., Washington, D.C. 20506, (202) 395–6120.

Phyllis O. Bonanno,

Director, Office of Private Sector Liaison.

[FR Doc. 84–26 Filed 1–3–84; 8:45 am]

BILLING CODE 3190–01–M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 2
Wednesday, January 4, 1984

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).

CONTENTS

	Items
Federal Reserve System	1
Pacific Northwest Electric Power and Conservation Planning Council	2

1

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Monday, January 9, 1984.

PLACE: 20th Street and Constitution Avenue, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: December 30, 1983.

James McAfee,

Associate Secretary of the Board.

[S–1811–83 Filed 12–30–83; 4:18 pm]

BILLING CODE 6210–01–M

2

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

AGENCY HOLDING THE MEETING: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting to be held pursuant to the Government in the Sunshine Act (5 U.S.C. 552b).

STATUS: Open. A portion of this meeting will be closed to the public to discuss pending litigation and other legal matters.

TIME AND DATE: January 11–12, 1984, 9:00 a.m.

PLACE: Federal Building, South Auditorium, Seattle, Washington.

MATTERS TO BE CONSIDERED:

Status Reports on Yakima Basin Workplan
Status Report on Goals Study
Decision on Pend Oreille Hatchery
Status Report on Columbia River Basin Fish and Wildlife Program Amendment Schedule
Staff Presentation on EPA Billing Credits
Public Comment on Proposed Amendments to the Council's Study on Large Thermal Plant Planning and Construction Schedules (Action 23.1)
Status Report on Regional Energy Demand
Review of Model Conservation Standards Material
Council Business
Public Comment

FOR FURTHER INFORMATION CONTACT: Ms. Bess Wong (503) 222–5161.

Edward Sheets,

Executive Director.

[S–1812–83 Filed 12–3–83; 4:26 pm]

BILLING CODE 0000–00–M

federal register

Wednesday
January 4, 1984

Part II

Department of Commerce

Patent and Trademark Office
37 CFR Part 1
Revision of Patent Practice; Final Rule

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. 31-201-229]

Revision of Patent Practice

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The Patent and Trademark Office is amending the rules of practice in patent cases, Part 1 of 37 CFR, to clarify the practice under certain sections of Pub. L. 97-247 of 1982 and to make certain other changes and clarifications in practice which have been found desirable after some experience. The rulemaking changes the practice under §§ 1.27 and 1.28 with regard to subsequently establishing small entity status and qualifying for a refund of fees paid in full. The changes in other rules clarify and improve the practice in certain areas.

EFFECTIVE DATE: April 1, 1984.

FOR FURTHER INFORMATION CONTACT: R. Franklin Burnett by telephone at (703) 557-3054 or by mail marked to his attention and addressed to the Commissioner of Patents and Trademarks, Washington, D.C. 20231.

SUPPLEMENTARY INFORMATION: This rule change is designed primarily to (1) clarify the small entity status of independent inventors, small business concerns and nonprofit organizations having funding agreements with a federal governmental agency as defined in 35 U.S.C. 202(c)(4); (2) rewrite § 1.28 to provide a system for obtaining a refund of a portion of a fee paid in full when small entity status is established within two months of the date of such payment; (3) provide that a separate statement establishing small entity status is not required in an application filed under § 1.62 when such status has been established in the parent application; and (4) modify certain other rules to clarify practice.

New § 1.21(l) establishes a fee for processing and retaining any application which is abandoned for failing to complete the application pursuant to § 1.53(d). This new paragraph, as well as the changes to §§ 1.53 and 1.78, indicate that in order to obtain benefit of a prior U.S. application, either the basic filing fee or the processing and retention fee of § 1.21(1) must be paid. Section 1.53(d) further establishes that the application will be disposed of if the required fee is not paid within a set period. Section 1.56(b) requires submission of copies of foreign patent documents, non-patent publications, or other non-patent items of information disclosed pursuant to the duty to disclose. New § 1.191(d) clarifies that § 1.136 applies in patent applications and that § 1.550(c) applies in reexamination proceedings to all time periods set forth in §§ 1.191-1.194, 1.196 and 1.197.

Discussion of Specific Rules and Significant Differences Between Proposed and Final Rules

Section 1.5, paragraph (a) is amended to remove a reference to § 1.55, which is no longer appropriate and to clarify how letters to the Office are to be identified.

Section 1.6 is amended as proposed to clarify the manner in which letters and papers, including fees, filed in accordance with § 1.10 by "Express Mail" are date stamped when received in the Patent and Trademark Office. Such letters and papers, which comply with § 1.10, will be stamped with the date of deposit as "Express Mail" with the United States Postal Service unless the date of deposit is a Saturday, Sunday or federal holiday within the District of Columbia, in which case the date stamped will be the next succeeding day which is not a Saturday, Sunday, or a federal holiday within the District of Columbia. No papers are received in the Patent and Trademark Office on Saturdays, Sundays, or federal holidays within the District of Columbia.

Section 1.10, paragraphs (a) and (c), are amended to clarify that papers deposited as "Express Mail" on a Saturday, Sunday, or a federal holiday within the District of Columbia will be stamped with the date of the next succeeding day which is not a Saturday, Sunday, or a federal holiday within the District of Columbia. A cross reference to § 1.6(a) has also been added to the rule. This change was not contained in the notice of proposed rulemaking but is being made to avoid confusion and to ensure that the Office's practice in date-stamping of papers is clearly understood. The change was suggested by a comment received on the proposed rules.

Section 1.14 is amended as proposed to revise paragraph (b) to clarify that only complete patent applications as defined in § 1.51(a) which become abandoned will be retained for a period of twenty years from the filing date. Incomplete applications will be retained as provided in §§ 1.21 and 1.53.

Section 1.19, paragraph (b)(3), is amended as proposed to clarify that only copies made from Office records, but not prepared by the Office, will be compared with the original prior to certification of the copies. The Office will not compare copies made from some other copy or record with Office records for purposes of certification. The stated charge of ten cents per page would not be sufficient to make a word-by-word comparison. The requirements of the public appear to still be served by limiting the use of the comparison fee to Office records.

Section 1.21 is amended as proposed to revise paragraph (b)(2) and establish a new paragraph (1). The change in paragraph (b)(2) is in accord with the change in § 1.25(a). New paragraph (1) provides a fee for processing and retaining any application which is abandoned pursuant to § 1.53(d). Such applications have received a filing date pursuant to 35 U.S.C. 111 but have been abandoned for failure to complete the application by filing the oath or declaration, filing fee or surcharge (§ 1.16(e)). The fee covers the handling, filming, processing, data input and storage required to retain an application. The fee is not due in any application in which the basic filing fee was paid.

Section 1.25 is amended as proposed to revise paragraph (a) to set the minimum deposit for a deposit account at $1000 and to clarify that an amount sufficient to cover all fees as well as services, copies, etc., requested must always be on deposit. This minimum amount is considered necessary and proper in view of the substantial increase in the amounts of fees being charged to deposit accounts and the processing costs of handling overdrawn accounts. Paragraph (b) clarifies that fees may be charged against a deposit account only where sufficient funds are on deposit to cover the entire amount of the fees. Paragraph (b) also clarifies that an authorization to charge a fee to a deposit account will not be considered payment on the date the authorization to charge is effective as to that fee unless sufficient funds are present in the account to cover the fee.

Section 1.27 is amended as proposed to revise paragraphs (b), (c) and (d) to provide clearly that an independent inventor, small business concern, or nonprofit organization, which is otherwise qualified as a small entity for purposes of paying reduced patent fees under 37 CFR 1.9 and 1.27, is not disqualified therefrom because of a license to a federal agency pursuant to 35 U.S.C. 202(c)(4). Section 1.27 is amended to state that such a license does not constitute a license or a conveyance of rights which would preclude qualifying for small entity status. The amendment is necessary for clarification and to avoid frustrating the

intent of Pub. L. 97-247 and Pub. L. 96-517 when taken together.

The text of Title 35, United States Code, section 202(c)(4) reads as follows:

Section 202. Disposition of rights

(c) Each funding agreement with a small business firm or nonprofit organization shall contain appropriate provisions to effectuate the following:

* * * * *

(4) With respect to any invention in which the contractor elects rights, the Federal agency shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States any subject invention throughout the world, and may, if provided in the funding agreement, have additional rights to sublicense any foreign government or international organization pursuant to any existing or future treaty or agreement.

Section 1.28 is amended as proposed to revise paragraph (a) to clarify that a separate verified statement is not required to be filed in a file wrapper continuing application filed pursuant to § 1.62, if status as a small entity has been established in the parent application and is still proper. Section 1.28(a) also permits a refund of a fee timely paid in the full amount if within two months of the date of the full timely payment: (1) Small entity status is properly established, and (2) a refund is requested. Under § 1.28(a), no request for a refund filed later than two months after the date on which a full fee has been paid will be entertained even if additional time is sought to file the request. The two-month period referred to in § 1.28(a) is not a period for response under § 1.136 and cannot be extended. Section 1.28(a) provides for, in somewhat modified form, the practice presently in effect pursuant to a waiver of § 1.28 published at 1023 O.G. 77 on October 26, 1982 and extended at 1027 O.G. 115 on February 15, 1983. The revised refund procedures in § 1.28(a) will apply to any fees timely paid in full on or after the effective date of the final rule. The refund procedures set forth in the Patent and Trademark Office *Official Gazette* Notice entitled "Filing of Verified Statements Claiming Small Entity Status" published at 1023 O.G. 77 on October 26, 1982, and the *Official Gazette* Notice entitled "Requirement for Filing Verified Statements Claiming Small Entity Status" published at 1027 O.G. 115 on February 15, 1983, continue in effect until the effective date of the final rule.

Section 1.52(d) is amended as proposed to clarify that the verified English translation of a non-English language application and the fee set forth in § 1.17(k) can be filed with the application or within such time as may be set by the Office.

Section 1.53, paragraphs (b) and (d), are amended to clarify in paragraph (b) that the application for patent must be filed in the name of the actual inventor or inventors by giving all their names as required by § 1.41. Paragraph 1.53(d) states that if a correspondence address is provided, notice will be provided to that address where the appropriate filing fee or oath or declaration does not accompany the application. Paragraph 1.53(d) also provides that if the required filing fee is not paid, or the processing and retention fee is not paid, within one year of the date of mailing of notification pursuant to § 1.53(d) or within one year from the filing date if no correspondence address is included in the application, the application will be disposed of. The paragraph further indicates that no copies will be provided or certified by the Office of an application which has been disposed of or in which neither the basic filing fee nor the processing fee has been paid. Finally, § 1.53(d) specifies that if no correspondence address is included in the application, applicant will have two months from the filing date to file the fee, oath or declaration and to pay the surcharge set forth in § 1.16(e) in order to prevent abandonment of the application.

Section 1.55, paragraph (b), is amended as proposed to correct an error in referring to paragraph (a) of this section.

Section 1.56 is amended as proposed to revise paragraph (b) and add a new paragraph (j). Paragraph 1.56(b) requires that a copy of each foreign patent document, non-patent publication, or other non-patent item of information in written form being disclosed pursuant to § 1.56 accompany such disclosures unless the copy is not in the possession of the person making the disclosure. In such a situation, a statement to that effect is required. Paragraph 1.56(b) also adds "or her" to refer to both genders. New § 1.56(j) states that applicant will be notified if a copy or statement required pursuant to § 1.56(b) is not submitted and that applicant will be given a time period within which to file the copy or a statement that the copy is not in the possession of the person making the disclosure. Such a time period would be extendable under § 1.136. Failure to respond in a proper and timely manner would result in abandonment of the application.

Section 1.59 is amended as proposed to clarify that the Office will furnish copies of papers received in the Office at the usual cost only if the basic filing fee or the processing and retention fee has been paid.

Section 1.60 is amended to break the section into paragraph (a) and new paragraph (b). Paragraph (a) adds a reference to amended § 1.78(a) to clarify the conditions under which continuation or divisional applications may be filed. New § 1.60(b) provides that the signing of the oath or declaration can be omitted if the prior application was complete as set forth in § 1.51(a). New § 1.60(b) also requires that a true copy of the prior complete application be filed. The final rule also clarifies that the copy of the oath or declaration filed must show the applicant's signature or contain an indication it was signed. Paragraph 1.60(b) also provides that only amendments reducing the number of claims or adding a reference to the prior application will be entered before calculating the filing fee and granting the filing date.

Section 1.62 is amended as proposed to revise paragraphs (a) and (d). Paragraph 1.62(a) provides that the file wrapper continuing procedure is applicable only to prior complete applications under § 1.51(a). Paragraph 1.62(d) clarifies that the filing fee referred to is the basic filing fee.

Section 1.78 is amended as proposed to change the title to more explicitly define the contents of the section. Paragraph 1.78(a) specifies that in order for an application to claim the benefit of a prior filed copending national application, the prior application must be complete as set forth in § 1.51(a) or be entitled to a filing date as set forth in § 1.53(b) and include the basic filing fee set forth in § 1.16, or be entitled to a filing date as set forth in § 1.53(b) and have paid the processing and retention fee set forth in § 1.21(1) within the time period set forth in § 1.53(d).

Section 1.121 is amended as proposed to revise paragraph (e) to specify how amendments to the description and claims are to be made in reissue applications.

Section 1.123 is amended as proposed to clarify that the sketch showing proposed amendments to the drawing with its cover letter should be a separate paper.

Section 1.135 is amended as proposed to remove paragraph (d) since it is not necessary in view of the ability to obtain extensions of time under § 1.136(a) by petition and payment of fee.

Section 1.136 is amended as proposed to clarify in paragraphs (a) and (b) that the extension of time practice under this section does not apply in interference proceedings or in reexamination

proceedings. Extension of time practice in interference proceedings, including extension of time for appeal or civil action (§ 1.304), is subject to § 1.245. Extension of time practice in reexamination proceedings, including extension of time for appeal or civil action (§ 1.304), is subject to § 1.550(c).

Section 1.191 is amended as proposed to add a new paragraph (d) to provide that the time periods for appeal and review set forth in §§ 1.191–1.194, 1.196 and 1.197 are subject to the provisions of § 1.136 for patent applications or § 1.550(c) for reexamination proceedings.

Section 1.192 is amended as proposed to revise paragraph (a) to delete the reference to § 1.136 since it is provided for in new § 1.191(d).

Section 1.197 is amended as proposed to revise paragraph (b) to delete the reference to § 1.136 since it is provided for in new § 1.191(d).

Section 1.304 is amended as proposed to clarify that extensions of time periods set forth therein are subject to the provisions of § 1.245 for interferences or § 1.550(c) where reexamination proceedings are involved rather than to § 1.136 which applies in all other cases.

Section 1.550 is amended as proposed to revise paragraph (c) to clarify that the time for taking any action, including appeal, by a patent owner in a reexamination proceeding is governed solely by this section.

Section 1.555 is amended to revise paragraphs (a) and (b). In § 1.555(a) "prior art" statement has been changed to "information disclosure" statement to conform to the language of § 1.98. Paragraph 1.555(b) requires that disclosures pursuant to this paragraph be accompanied by a copy of each foreign patent document or non-patent printed publication which is being disclosed and which is in the possession of the person making the disclosure.

Responses To Comments on the Rules

Specific comments were received on a number of the sections. Thirty-five letters presenting written comments were received. No oral testimony was presented at the public hearing conducted on October 18, 1983. All of the comments were considered in adopting the changes set forth herein. Comments appear below with responses thereto.

Comments From Associations

Comment: The American Patent Law Association commented that they were in full accord with most of the proposed changes. They submitted comments and suggestions from some members. The Patent, Trademark and Copyright Section of the American Bar Association did not render an official section position on the proposed rule changes but polled its members and found the majority of the members responding either to favor the proposed rule changes or to view them as acceptable. They also submitted comments and suggestions from some members. The United States Trademark Association commented on the proposed rules concerning deposit accounts.

Reply: The efforts and input of these organizations are appreciated. Specific comments and suggestions from individual members of the organizations are covered below.

Comments From Individuals

Comment: One comment was received that the proposed amendment to § 1.6 was unnecessary and possibly improper.

Reply: The amendment to § 1.6 has been adopted as proposed. The amended rule sets out the Patent and Trademark Office practice which has been in effect. No papers are stamped as having arrived in the Office on Saturday, Sunday, or a federal holiday within the District of Columbia no matter how the papers are filed. Article 4, C(3) of the Paris Convention says that the period of priority shall be extended until the first following working day "when the Office is not open for the filing of applications in the country where protection is claimed". To accept papers through use of "Express Mail" or some other way on Saturdays, Sundays or federal holidays within the District of Columbia would raise the possibility that the Office would be viewed as open for the filing of papers on such days and thereby remove the current ability to file a priority claiming application on the first working day if the priority year ended on a non-working day. The final rule avoids this implication.

Comment: One comment indicated that the change to § 1.6 should not be applied retroactively to papers filed before the clarifying language was placed in the rule.

Reply: Any such fact situation will be reviewed through the normal petition procedure.

Comment: One comment suggested that § 1.10 be amended rather than § 1.6 with regard to papers deposited as "Express Mail" on a Saturday, Sunday, or federal holiday within the District of Columbia.

Reply: This comment has been adopted in that both §§ 1.6 and 1.10 have been amended to avoid any possible confusion.

Comment: One comment suggested that § 1.19(b)(3) be changed to permit the Office to certify material not copied from the records of the Office when reproduction of Office records is not feasible or possible.

Reply: This comment has not been adopted. The Office will only certify that material is a copy of an Office record if, in fact, the material was reproduced from the Office record.

Comment: One person commented that the $100 processing and retention fee under § 1.21 was excessive and unnecessary.

Reply: The fee is considered proper and necessary in view of the cost to the Office in handling, filming, processing and storage required to retain an application which has a filing date but in which no basic filing fee has been paid. If this expense is not covered by the applicant, it must be recovered from other sources.

Comment: Twenty-seven comments were received on the proposal to amend § 1.25 to raise to $1000 the minimum balance required in a deposit account. The amount is also referred to in § 1.21(b)(2). These comments generally suggested that the $1000 amount was too high for account holders who did not use their accounts for charges other than small fees such as for patent copies. Several comments received acknowledged that the minimum balance for deposit accounts should be raised and suggested various amounts less than the proposed $1000. Several comments suggested a separate account category for persons who do not use their accounts for other than small fees. Two comments suggested that the Office accept credit cards for payment of fees.

Reply: These comments and suggestions have not been adopted. The fees for filing, processing and issuing of patent and trademark applications have increased so as to make the present $40 minimum balance for deposit accounts totally inadequate. A number of persons objecting to the $1000 minimum balance acknowledged that they used their deposit accounts as a safeguard against failure to calculate or to submit proper fees by a check. An account with a very low balance obviously cannot be effective as a safeguard when a patent filing fee is $300 and a patent issue fee is $500. Dealing with overdrawn accounts causes administrative problems for the Patent and Trademark Office. An authorization to charge an account without sufficient funds to cover a charge will not be effective as payment and may result in loss of rights to an applicant. Also, unnecessary expense will be incurred by an applicant if an insufficient balance in an account results in abandonment of an application and the necessity of filing a

petition to revive under 37 CFR 1.137(b) with the requisite $500 fee. Experience has shown that many single practitioners and small firms have failed to have sufficient funds in their accounts when needed. The increase of the minimum balance in deposit accounts to $1000 is seen to be necessary and proper. A failure to raise the minimum balance in deposit accounts to $1000 would serve as an incorrect indication that the Patent and Trademark Office views a minimum balance of less than $1000 as acceptable. If it is not possible for a small firm or individual to maintain a minimum balance of $1000, the deposit account could still be retained and used by paying the service charge set forth in § 1.21(b)(2) for any month in which the balance at the end of the month is below $1000. The use of credit cards is not considered viable since legislation would be required to do so.

Comment: Two comments were received suggesting that a license to a federal agency in an invention made by a federal employee should not preclude the employee from qualifying as a small entity and that § 1.27 should be amended to cover this situation.

Reply: These comments have not been adopted. Such an amendment was not proposed and the public has not had an opportunity to comment on it.

Comment: One comment suggested that the time for filing a verified statement claiming small entity status to obtain a refund of a filing fee pursuant to § 1.28 should run from the date of mailing of the filing receipt due to difficulty in identifying the new application before the filing receipt is received. Three persons suggested that the period for establishing small entity status and requesting a refund should be three months rather than two months as proposed.

Reply: These comments have not been adopted. An application may be identified before the filing receipt is issued in a number of ways including title, inventor's name, filing date and attorney docket number. Also, a postcard may be included with filing of the application to learn the application serial number. The two month period for obtaining a refund is seen to be adequate since the small entity practice is no longer new and the public has had time to become familiar with it. It allows sufficient time to have a small entity statement executed and sent to the Patent and Trademark Office.

Comment: One comment suggested that it should be made clear that an application filed in a foreign language (§ 1.52(d)) without including a signed oath or declaration can receive a filing date under the provisions of § 1.53(b).

Reply: The regulations permit and this reply makes it clear that an application filed in a language other than English can receive a filing date by complying with § 1.53(b).

Comment: Three comments were received suggesting that the proposed language not be added to § 1.53(b). One comment alleged that the requirement to name the inventors upon filing a patent application is not required or even authorized by statute.

Reply: 35 U.S.C. 111 says that application for patent "shall be made, or authorized to be made, by the inventor". The rules of practice (§ 1.41(a)) contain the same requirement. The amendment to § 1.53(b) is only clarifying the rules by also placing the requirement in the section. Further, United States patent practice has long required that the inventors be named at the time of filing.

Comment: One person commented that the language of § 1.53(d) should be changed to reflect that only one of the filing fee or processing and retention fee must be paid to prevent the application being disposed of.

Reply: The language of the rule is seen to be unambiguous in this regard.

Comment: One person commented that the language of § 1.53(d) should be changed to establish a time within which the processing and retention fee may be paid to prevent the application being disposed of when no correspondence address has been provided.

Reply: The suggestion has been adopted.

Comment: One person suggested that § 1.56(b) which states that copies of disclosed documents must be filed is inconsistent with § 1.56(j) which provides that such copies must be filed unless they are not in the possession of the person making the disclosure.

Reply: The language of § 1.56(b) has been modified to clarify this point.

Comment: Three persons commented that the requirement of § 1.56(b) that copies of disclosed documents be supplied was an unnecessary burden. One person commented similarly on the requirement of § 1.555 that copies of disclosed documents be supplied. Another person suggested that the proposed amendment to § 1.56(b) would require submission of a complete document even if only a small portion were relevant.

Reply: The Office agrees with another person who commented that the "requirement that disclosers in application and reexamination proceedings provide copies of disclosed documents which they have is fair and reasonable and should aid the Examiner in making an informed as possible decision in any given proceeding". The portion of a document required to be submitted under § 1.56(b) is the portion which is material to the examination of the application under § 1.56(a).

Comment: One person commented that the proposed amendment to § 1.78(a) would appear to require that a petition for correction of inventorship under § 1.48 be filed in a parent application as well as in the continuing application in which the inventorship was corrected.

Reply: The amendment to § 1.78 does not change the practice regarding the filing of petitions under § 1.48.

Comment: One person commented that § 1.123 is unclear as amended in not referring to the paper requesting that amendments to the drawing be made.

Reply: The Patent and Trademark Office no longer makes amendments to the drawings. Applicants must submit new drawings with the changes or use bonded draftmen to make the amendments. A paper requesting that the Office make the amendments is therefore inappropriate.

Comment: Four persons commented that § 1.135(d) should not be deleted since they thought it desirable to be able to ratify unsigned papers without paying any fee.

Reply: The statute and rules now provide for obtaining extensions of time through simple petition and payment of fee and for revival through a simple statement that the abandonment was unintentional and the payment of a fee. Further, a filing date can now be obtained on filing an application without the oath or declaration. The handling of unsigned papers by the Patent and Trademark Office causes administrative problems and expense to the Office and delays the processing of applications. The emergency-type situations involving loss of rights which the previous practice was intended to cover have been substantially eliminated by the changes in the law and rules.

Comment: One person commented that § 1.191(d) was undecipherable in that it refers to a number of other rules.

Reply: This section was intended to serve as a point of summerization for the applicable extension of time rules in appeals before the Board of Appeals. The section is seen to adequately serve that purpose.

Comment: One person commented that the final sentence of § 1.555(b) needs clarification.

Reply: This sentence was not changed by the proposed rules and is seen to be clear as written.

Comment: One person commented that proposed § 1.555(b) requires copies

and does not make any exceptions or qualifications on this requirement.

Reply: The language of § 1.555(b) has been clarified to require filing of a copy of each foreign patent document or non-patent printed publication which is being disclosed and which is in the possession of the person making the disclosure.

Environmental, energy, and other considerations: The rule change will not have a significant impact on the quality of the human environment or the conservation of energy resources.

The rule change is in conformity with the requirements of the Regulatory Flexibility Act (Pub. L. 96–354), Executive Order 12291, and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

The General Counsel of the Department of Commerce certified to the Small Business Administration that the rule change will not have a significant adverse economic impact on a substantial number of small entities (Regulatory Flexibility Act. Pub. L. 96–354). Public Laws 96–517 and 97–247 have both taken into consideration the impact they may have on small entities.

The Patent and Trademark Officer has determined that this rule change is not a major rule under Executive Order 12291. The annual effect on the economy will be less than $100 million. There will be no major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions. There will be 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.

This rule change will not impose a burden under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, since no significant additional recordkeeping or reporting requirements are placed upon the public. In fact, some paperwork, especially that related to filing of small entity statements in applications filed under § 1.62 will be reduced.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Authority delegations (government agencies), Conflict of interests, Courts, Inventions and patents, Lawyers.

Notice is hereby given that, pursuant to the authority granted to the Commissioner of Patents and Trademarks by 35 U.S.C. 6 and Pub. L. 97–247, the Patent and Trademark Office is amending Title 37 of the Code of Federal Regulations as set forth below.

PART 1—[AMENDED]

37 CFR, Part 1, is amended as follows:

1. Section 1.5 is amended by revising paragraph (a) to read as follows:

§ 1.5 Identification of application, patent or registration.

(a) When a letter concerns an application for patent, it should state the name of the applicant, the title of the invention, the serial number or international application number of the application, the date of filing the same, and, if known, the group art unit or other unit within the Patent and Trademark Office responsible for considering the letter and the name of the examiner or other person to which it has been assigned.

* * * * *

2. Section 1.6 is amended by revising paragraph (a) to read as follows:

§ 1.6 Receipt of letters and papers.

(a) Letters and other papers received in the Patent and Trademark Office are stamped with the date of receipt except where such letters and papers are filed in accordance with § 1.10. Any such letters and papers filed in accordance with § 1.10 will be stamped with the date of deposit as "Express Mail" with the United States Postal Service unless the date of deposit is a Saturday, Sunday, or federal holiday within the District of Columbia in which case the date stamped will be the next succeeding day which is not a Saturday, Sunday, or federal holiday within the District of Columbia. No papers are received in the Patent and Trademark Office on Saturdays, Sundays or federal holidays within the District of Columbia.

* * * * *

3. Section 1.10 is amended by revising paragraphs (a) and (c) to read as follows:

§ 1.10 Filing of papers and fees by "Express Mail" with certificate.

(a) Any paper or fee to be filed in the Patent and Trademark Office can be filed utilizing the "Express Mail Post Office to Addressee" service of the United States Postal Service and be considered as having been filed in the Office on the date the paper or fee is shown to have been deposited as "Express Mail" with the United States Postal Service unless the date of deposit is a Saturday, Sunday, or federal holiday within the District of Columbia. See § 1.6(a).

* * * * *

(c) The Patent and Trademark Office will accept the certificate of mailing by "Express Mail" and accord the paper or fee the certificate date under 35 U.S.C. 21(a) (unless the certificate date is a Saturday, Sunday, or federal holiday within the District of Columbia—see § 1.6(a)) without further proof of the date on which the mailing by "Express Mail" occurred unless a question is present regarding the date of mailing. If more than a reasonable time has elapsed between the certificate date and the Patent and Trademark Office receipt date or if other questions regarding the date of mailing are present, the person mailing the paper or fee may be required to file a copy of the "Express Mail" receipt showing the actual date of mailing and a statement from the person who mailed the paper or fee averring to the fact that the mailing occurred on the date certified. Such statement must be a verified statement if made by a person not registered to practice before the Patent and Trademark Office.

4. Section 1.14 is amended by revising paragraph (b) to read as follows:

§ 1.14 Patent applications preserved in secrecy.

* * * * *

(b) Except as provided in § 1.11(b) abandoned applications are likewise not open to public inspection, except that if an application referred to in a U.S. patent, or in an application which is open to inspection pursuant to § 1.139, is abandoned and is available, it may be inspected or copies obtained by any person on written request, without notice to the applicant.

Complete applications (§ 1.51(a)) which are abandoned may be destroyed after 20 years from their filing date, except those to which particular attention has been called and which have been marked for preservation. Abandoned applications will not be returned.

* * * * *

5. Section 1.19 is amended by revising paragraph (b)(3) to read as follows:

§ 1.19 Document supply fees.

* * * * *

(b) * * *

(3) For comparing copies, made from Patent and Trademark Office records but not prepared by the Patent and Trademark Office, with the original, prior to certification of the copies, per page—$0.10

* * * * *

6. Section 1.21 is amended by revising paragraph (b)(2) and by adding a new paragraph (l) to read as follows:

§ 1.21 Miscellaneous fees and charges.

* * * * *

(b) * * *

(2) Service charge for each month when the balance at the end of the month is below $1,000—$2.00

* * * * *

(l) For processing and retaining any application abandoned pursuant to § 1.53(d) unless the required basic filing fee has been paid—$100.00.

7. Section 1.25 is revised to read as follows:

§ 1.25 Deposit accounts.

(a) For the convenience of attorneys, agents, and the general public in paying any fees due, in ordering services offered by the Office, copies of records, etc., deposit accounts may be established in the Patent and Trademark Office upon payment of the fee for establishing a deposit account (§ 1.21(b)(1)). A minimum deposit of $1,000 or more, depending on the activity of the individual account, is required. At the close of each month's business, a statement will be rendered. A remittance must be made promptly upon receipt of the statement to cover the value of items or services charged to the account and thus restore the account to its established normal deposit value. An amount sufficient to cover all fees, services, copies, etc., requested must always be on deposit. A service charge (§ 1.21(b)(2)) will be assessed for each month that the balance at the end of the month is below $1,000.

(b) Filing, issue, appeal, international-type search report, international application processing, petition, and post-issuance fees may be charged against these accounts if sufficient funds are on deposit to cover such fees. A general authorization to charge all fees, or only certain fees, set forth in §§ 1.16 to 1.18 to a deposit account containing sufficient funds may be filed in an individual application, either for the entire pendency of the application or with respect to a particular paper filed. An authorization to charge to a deposit account the fee for a request for reexamination pursuant to § 1.510 and any other fees required in a reexamination proceeding in a patent may also be filed with the request for reexamination. An authorization to charge a fee to a deposit account will not be considered payment of the fee on the date the authorization to charge the fee is effective as to the particular fee to be charged unless sufficient funds are present in the account to cover the fee.

8. Section 1.27 is amended by revising paragraphs (b), (c) and (d) to read as follows:

§ 1.27 Statement of status as small entity.

* * * * *

(b) Any verified statement filed pusuant to paragraph (a) of this section on behalf of an independent inventor must be signed by the independent inventor except as provided in §§ 1.42, 1.43, or 1.47 of this part, and must aver that the inventor qualifies as an independent inventor in accordance with § 1.9(c) of this part. Where there are joint inventors in an application, each inventor must file a verified statement establishing status as an independent inventor in order to qualify as a small entity. Where any rights have been assigned, granted, conveyed, or licensed, or there is an obligation to assign, grant, convey, or license, any rights to a small business concern, a nonprofit organization, or any other individual, a verified statement must be filed by the individual, the owner of the small business concern, or an official of the small business concern or nonprofit organization empowered to act on behalf of the small business concern or nonprofit organization averring to their status. For purposes of a verified statement under this paragraph, a license to a federal agency resulting from a funding agreement with that agency pursuant to 35 U.S.C. 202(c)(4) does not constitute a license as set forth in § 1.9 of this part.

(c) Any verified statement filed pursuant to paragraph (a) of this section on behalf of a small business concern must (1) be signed by the owner or an official of the small business concern empowered to act on behalf of the concern; (2) aver that the concern qualifies as a small business concern as defined in § 1.9(d); and (3) aver that exclusive rights to the invention have been conveyed to and remain with the small business concern, or if the rights are not exclusive, that all other rights belong to small entities as defined in § 1.9. Where the rights of the small business concern as a small entity are not exclusive, a verified statement must also be filed by the other small entities having rights averring to their status as such. For purposes of a verified statement under this paragraph, a license to a federal agency resulting from a funding agreement with that agency pursuant to 35 U.S.C. 202(c)(4) does not consititute a license as set forth in § 1.9 of this part.

(d) Any verified statement filed pursuant to paragraph (a) of this section on behalf of a nonprofit organization must (1) be signed by an official of the nonprofit organization empowered to act on behalf of the organization; (2) aver that the organization qualifies as a nonprofit organization as defined in § 1.9(e) of this part specifiying under which one of § 1.9 (e)(1), (e)(2), (e)(3), or (e)(4) of this part the organization qualifies; and (3) aver that exclusive rights to the invention have been conveyed to and remain with the organization or if the rights are not exclusive, that all other rights belong to small entities as defined in § 1.9 of this part. Where the rights of the nonprofit organization as a small entity are not exclusive, a verified statement must also be filed by the other small entities having rights averring to their status as such. For purposes of a verified statement under this paragraph, a license to a federal agency resulting from a funding agreement with that agency pursuant to 35 U.S.C. 202(c)(4) does not constitute a conveyance of rights as set forth in this paragraph.

9. Section 1.28 is amended by revising paragraph (a) to read as follows:

§ 1.28 Effect on fees of failure to establish status, or change status, as a small entity.

(a) The failure to establish status as a small entity (§§ 1.9(f) and 1.27 of this part) in any application or patent prior to paying, or at the time of paying any fee precludes payment of the fee in the amount established for small entities. A refund pursuant to § 1.26 of this part, based on establishment of small entity status, of a portion of fees timely paid in full prior to establishing status as a small entity may only be obtained if a verified statement under § 1.27 and a request for a refund of the excess amount are filed within two months of the date of the timely payment of the full fee. The two-month time period is not extendable under § 1.136. Status as a small entity is waived for any fee by the failure to establish the status prior to paying, at the time of paying, or within two months of the date of payment of, the fee. Status as a small entity must be specifically established by a verified statement filed in each application or patent in which the status is available and desired, except those applications filed under § 1.60 or § 1.62 of this part where the status as a small entity has been established in a parent application and is still proper. Once status as a small entity has been established in an application or patent, the status remains in that application or patent without the filing of a further verified statement pursuant to § 1.27 of this part unless the Office is notified of a change in status. Status as a small entity in one application or patent does not affect any other application or patent, including applications or patents which are directly or indirectly dependent upon the application or patent in which the

status has been established, except those filed under §1.60 or § 1.62 of this part. Applications filed under § 1.60 or § 1.62 of this part must include a reference to a verified statement in a parent application if status as a small entity is still proper and desired.

* * * * *

10. Section 1.52 is amended by revising paragraph (d) to read as follows:

§ 1.52 Lanaguage, paper, writing, margins.

* * * * *

(d) An application may be filed in a language other than English. A verified English translation of the non-English-language application and the fee set forth in § 1.17(k) are required to be filed with the application or within such time as may be set by the Office.

11. Section 1.53 is amended by revising paragraphs (b) and (d) to read as follows:

§ 1.53 Serial number, filing date, and completion of application.

* * * * *

(b) The filing date of an application for patent is the date on which (1) a specification containing a description pursuant to § 1.71 and at least one claim pursuant to § 1.75, and (2) any drawing required by § 1.81(a), are filed in the Patent and Trademark Office in the name of the actual inventor or inventors as required by § 1.41. No new matter may be introduced into an application after its filing date (§ 1.118).

* * * * *

(d) If an application which has been accorded a filing date pursuant to paragraph (b) of this section does not include the appropriate filing fee or an oath or declaration by the applicant, applicant will be so notified, if a correspondence address has been provided, and given a period of time within which to file the fee, oath, or declaration and to pay the surcharge as set forth in § 1.16(e) in order to prevent abandonment of the application. If the required filing fee is not timely paid, or if the processing and retention fee set forth in § 1.21(l) is not paid within one year of the date of mailing of the notification required by this paragraph, the application will be disposed of. No copies will be provided or certified by the Office of an application which has been disposed of or in which neither the required basic filing fee nor the processing and retention fee has been paid. The notification pursuant to this paragraph may be made simultaneously with any notification pursuant to paragraph (c) of this section. If no correspondence address is included in the application, applicant has two months from the filing date to file the fee, oath or declaration and to pay the surcharge as set forth in § 1.16(e) in order to prevent abandonment of the application or one year from the filing date to pay the processing and retention fee set forth in § 1.21(l) to prevent disposal of the application.

* * * * *

12. Section 1.55 is amended by revising paragraph (b) to read as follows:

§ 1.55 Claim for foreign priority.

* * * * *

(b) An applicant may under certain circumstances claim priority on the basis of an application for an inventor's certificate in a country granting both inventor's certificates and patents. When an applicant wishes to claim the right of priority as to a claim or claims of the application on the basis of an application for an inventor's certificate in such a country under 35 U.S.C. 119, last paragraph (as amended July 28, 1972), the applicant or his or her attorney or agent, when submitting a claim for such right as specified in paragraph (a) of this section, shall include an affidavit or declaration including a specific statement that, upon an investigation, he or she has satisfied himself or herself that to the best of his or her knowledge the applicant, when filing his or her application for the inventor's certificate, had the option to file an application either for a patent or an inventor's certificate as to the subject matter of the identified claim or claims forming the basis for the claim of priority.

13. Section 1.56 is amended by revising paragraph (b) and by adding a new paragraph (j) to read as follows:

§ 1.56 Duty of disclosure; fraud; striking or rejection of applications.

* * * * *

(b) Disclosures pursuant to this section must be accompanied by a copy of each foreign patent document, non-patent publication, or other non-patent item of information in written form which is being disclosed or by a statement that the copy is not in the possession of the person making the disclosure and may be made to the Office through an attorney or agent having responsibility for the preparation or prosecution of the application or through an inventor who is acting in his or her own behalf. Disclosure to such an attorney, agent or inventor shall satisfy the duty, with respect to the information disclosed, of any other individual. Such an attorney, agent or inventor has no duty to transmit information which is not material to the examination of the application.

* * * * *

(j) If any disclosure pursuant to this section does not include a copy of each foreign patent document, non-patent publication, or other non-patent item of information in written form which is being disclosed or a statement that a copy thereof is not in the possession of the person making the disclosure, applicant will be so notified and given a period of time within which to file the copy or a statement that a copy is not in the possession of the person making the disclosure. The time period set may be extended under § 1.136.

14. Section 1.59 is revised to read as follows:

§ 1.59 Papers of application with filing date not to be returned.

Papers in an application which has received a filing date pursuant to § 1.53 will not be returned for any purpose whatever. If applicants have not preserved copies of the papers, the Office will furnish copies at the usual cost of any application in which either the required basic filing fee (§ 1.16) or the processing and retention fee (§ 1.21(l)) has been paid.

15. Section 1.60 is revised to read as follows:

§ 1.60 Continuation or divisional application for invention disclosed in a prior application.

(a) A continuation or divisional application (filed under the conditions specified in 35 U.S.C. 120 or 121 and § 1.78(a)), which discloses and claims only subject matter disclosed in a prior application may be filed as a separate application before the patenting or abandonment of or termination of proceedings on the prior application.

(b) An applicant may omit signing of the oath or declaration in a continuation or divisional application if (1) the prior application was a complete application as set forth in § 1.51(a) and (2) applicant files a true copy of the prior complete application as filed including the specification (including claims), drawings, oath or declaration showing the applicant's signature or an indication it was signed, and any amendments referred to in the oath or declaration filed to complete the prior application. The copy of the prior application must be accompanied by a statement that the application papers filed are a true copy of the prior application and that no amendments referred to in the oath or declaration

filed to complete the prior application introduced new matter therein. Such statement must be by the applicant or applicant's attorney or agent and must be a verified statement if made by a person not registered to practice before the Patent and Trademark Office. Only amendments reducing the number of claims or adding a reference to the prior application (§ 1.78(a)) will be entered before calculating the filing fee and granting the filing date.

16. Section 1.62 is amended by revising paragraphs (a) and (d) to read as follows:

§ 1.62 File wrapper continuing procedure.

(a) A continuation, continuation-in-part, or divisional application, which uses the specification, drawings and oath or declaration from a prior complete application (§ 1.51(a)) to be abandoned, may be filed before the payment of the issue fee, abandonment of, or termination of proceedings on the prior application. The filing date of an application filed under this section is the date on which a request is filed for an application under this section including identification of the Serial Number, filing date, and applicant's name of the prior complete application.

* * * * *

(d) If an application which has been accorded a filing date pursuant to paragraph (a) of this section does not include the appropriate basic filing fee pursuant to paragraph (b) of this section, or an oath or declaration by the applicant in the case of a continuation-in-part application pursuant to paragraph (c) of this section, applicant will be so notified and given a period of time within which to file the fee, oath, or declaration and to pay the surcharge as set forth in § 1.16(e) in order tp prevent abandonment of the application. The notification pursuant to this paragraph may be made simultaneously with any notification of a defect pursuant to paragraph (a) of this section.

* * * * *

17. Section 1.78 is amended by revising the heading and paragraph (a) to read as follows:

§ 1.78 Claiming benefit of earlier filing date and cross-references to other applications.

(a) An application may claim an invention disclosed in the same applicant's prior filed copending national application or international application designating the United States of America. In order for an application to claim the benefit of a prior filed copending national application, the prior application must be (1) complete as set forth in § 1.51, or (2) entitled to a filing date as set forth in § 1.53(b) and include the basic filing fee set forth in § 1.16; or (3) entitled to filing date as set forth in § 1.53(b) and have paid therein the processing and retention fee set forth in § 1.21(l) within the time period set forth in § 1.53(d). Any application claiming the benefit of a prior filed copending national or international application must contain or be amended to contain in the first sentence of the specification following the title a reference to such prior application, identifying it by serial number and filing date or international application number and international filing date and indicating the relationship of the applications. Cross-references to other related applications may be made when appropriate. (See § 1.14(b)).

* * * * *

18. Section 1.121 is amended by revising paragraph (e) to read as follows:

§ 1.121 Manner of making amendments.

* * * * *

(e) In reissue applications, both the descriptive portion and the claims are to be amended by either (1) submitting a copy of a portion of the description or an entire claim with all matter to be deleted from the patent being placed between brackets and all matter to be added to the patent being underlined, or (2) indicating the exact word or words to be stricken out or inserted and the precise point where the deletion or insertion is to be made. Any word or words to be inserted must be underlined. See § 1.173.

* * * * *

19. Section 1.123 is revised to read as follows:

§ 1.123 Amendments to the drawing.

No change in the drawing may be made except by permission of the Office. Permissible changes in the construction shown in any drawing may be made only by bonded draftsmen, at applicant's expense, or by the submission of substitute drawings by applicant. A sketch in permanent ink showing proposed changes, to become part of the record, must be filed for approval by the examiner and should be a separate paper.

§ 1.135 [Amended]

20. Section 1.135 is amended by removing paragraph (d).

21. Section 1.136 is revised to read as follows:

§ 1.136 Filing of timely responses with petition and fee for extension of time and extensions of time for cause.

(a) If an applicant is required to respond within a non-statutory or shortened statutory time period, applicant may respond up to four months after the time period set if a petition for an extension of time and the fee set in §1.17 are filed prior to or with the response, unless (1) applicant is notified otherwise in an Office action or (2) the application is involved in an interference declared pursuant to § 1.207. The date on which the response, the petition, and the fee have been filed is the date of the response and also the date for purposes of determining the period of extension and the corresponding amount of the fee. The expiration of the time period is determined by the amount of the fee paid. In no case may an applicant respond later than the maximum time period set by statute, or be granted an extension of time under paragraph (b) of this section when the provisions of this paragraph are available. See § 1.245 for extension of time in interference proceedings and § 1.550(c) for extension of time in reexamination proceedings.

(b) When a response with petition and fee for extension of time cannot be filed pursuant to paragraph (a) of this section, the time for response will be extended only for sufficent cause, and for a reasonable time specified. Any request for such extension must be filed on or before the day on which action by the applicant is due, but in no case will the mere filing of the request effect any extension. In no case can any extension carry the date on which response to an Office action is due beyond the maximum time period set by statute or be granted when the provisions of paragraph (a) of this section are available. See § 1.245 for extension of time in interference proceedings and § 1.550(c) for extension of time in reexamination proceedings.

22. Section 1.191 is amended by adding a new paragraph (d) to read as follows:

§ 1.191 Appeal to Board of Appeals.

* * * * *

(d) The time periods set forth in §§ 1.191 through 1.194, 1.196 and 1.197 are subject to the provisions of § 1.136 for patent applications or § 1.550(c) for reexamination proceedings.

23. Section 1.192 is amended by revising paragraph (a) to read as follows:

§ 1.192 Appellant's brief.

(a) The appellant shall, within 2 months from the date of the notice of appeal under § 1.191 in an application, reissue application, or patent under reexamination, or within the time allowed for response to the action appealed from, if such time is later, file a brief in triplicate. The brief must be accompanied by the requisite fee set forth in § 1.17(f) and must set forth the authorities and arguments on which the appellant will rely to maintain the appeal. The brief must include a concise explanation of the invention which should refer to the drawing by reference characters, and a copy of the claims involved.

* * * * *

24. Section 1.197 is amended by revising paragraph (b) to read as follows:

§ 1.197 Action following decision.

* * * * *

(b) A single request for rehearing or reconsideration, or modification of the decision, may be made if filed within thirty days from the date of the original decision, unless that decision is so modified as to become, in effect, a new decision, and the Board of Appeals so states.

* * * * *

25. Section 1.304 is amended by revising paragraph (a) to read as follows:

§ 1.304 Time for appeal or civil action.

(a) The time for filing the notice and reasons of appeal to the U.S. Court of Appeals for the Federal Circuit (§ 1.302) or for commencing a civil action (§ 1.303) is sixty days from the date of the decision of the Board of Appeals or the Board of Patent Interferences. If a request for rehearing or reconsideration, or modification of the decision, is filed within the time provided pursuant to § 1.197(b) or § 1.256(b), the time for filing an appeal or commencing a civil action shall expire at the end of the sixty-day period or thirty days after action on the request, whichever is later. The time periods set forth herein are subject to the provisions of § 1.136 or § 1.550(c) as to decisions of the Board of Appeals, or § 1.245 as to decisions of the Board of Patent Interferences.

* * * * *

26. Section 1.550 is amended by revising paragraph (c) to read as follows:

§ 1.550 Conduct of reexamination proceedings.

* * * * *

(c) The time for taking any action by a patent owner in a reexamination proceeding will be extended only for sufficient cause, and for a reasonable time specified. Any request for such extension must be filed on or before the day on which action by the patent owner is due, but in no case will the mere filing of the request effect any extension.

* * * * *

27. Section 1.555 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1.555 Duty of disclosure in reexamination proceedings.

(a) A duty of candor and good faith toward the Patent and Trademark Office rests on the patent owner, on each attorney or agent who represents the patent owner, and on every other individual who is substantively involved on behalf of the patent owner in a reexamination proceeding. All such individuals who are aware, or become aware, of patents or printed publications material to the reexamination which have not been previously made of record in the patent file must bring such patents or printed publications to the attention of the Office. An information disclosure statement, preferably in accordance with § 1.98, should be filed within two months of the date of the order for reexamination, or as soon thereafter as possible in order to bring such patents or printed publications to the attention of the Office.

(b) Disclosures pursuant to this section must be accompanied by a copy of each foreign patent document or non-patent printed publication which is being disclosed or by a statement that the copy is not in the possession of the person making the disclosure and may be made to the Office through an attorney or agent having responsibility on behalf of the patent owner for the reexamination proceeding or through a patent owner acting in his or her own behalf. Disclosure to such an attorney, agent or patent owner shall satisfy the duty of any other individual. Such an attorney, agent or patent owner has no duty to transmit information which is not material to the reexamination.

* * * * *

Dated: November 30, 1983.

Gerald J. Mossinghoff,

Commissioner of Patents and Trademarks.

[FR Doc. 84-111 Filed 1-3-84; 8:45 am]

BILLING CODE 3510-16-M

Reader Aids

Federal Register

Vol. 49, No. 2

Wednesday, January 4, 1984

INFORMATION AND ASSISTANCE

SUBSCRIPTIONS AND ORDERS

Subscriptions (public)	202-783-3238
Problems with subscriptions	275-3054
Subscriptions (Federal agencies)	523-5240
Single copies, back copies of FR	783-3238
Magnetic tapes of FR, CFR volumes	275-2867
Public laws (Slip laws)	275-3030

PUBLICATIONS AND SERVICES

Daily Federal Register

General information, index, and finding aids	523-5227
Public inspection desk	523-5215
Corrections	523-5237
Document drafting information	523-5237
Legal staff	523-4534
Machine readable documents, specifications	523-3408

Code of Federal Regulations

General information, index, and finding aids	523-5227
Printing schedules and pricing information	523-3419

Laws

Indexes	523-5282
Law numbers and dates	523-5282
	523-5266

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the President	523-5230
Weekly Compilation of Presidential Documents	523-5230

United States Government Manual 523-5230

Other Services

Library	523-4986
Privacy Act Compilation	523-4534
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, JANUARY

1-340.....3
341-556.....4

CFR PARTS AFFECTED DURING JANUARY

At the end of each month, the Office of the Federal Register publishes separately a list of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Executive Orders:
12369 (Continued by EO 12455).....345
12382 (Continued by EO 12454).....343
12387 (Superseded by EO 12456).....347
12454.....343
12455.....345
12456.....347

Proclamations:
5133 (Amended by Proc. 5142).....341
5142.....341

7 CFR

6.....361
932.....1
1430.....2, 361

Proposed Rules:
770.....409
989.....413
1540.....414

9 CFR

81.....368

10 CFR

463.....5

Proposed Rules:
2.....414
72.....414

12 CFR

5.....52
544.....53
552.....53

Proposed Rules:
563b.....415

14 CFR

11.....53
21.....53
39.....369, 370
43.....53
45.....53
71.....371
91.....53

Proposed Rules:
39.....415-417
71.....419

15 CFR

Proposed Rules:
17.....420

17 CFR

211.....53
271.....55

Proposed Rules:
240.....421

18 CFR

271.....56

Proposed Rules:
2.....70
154.....70
201.....70
270.....70
271.....70

21 CFR

73.....372
74.....61
81.....61
82.....61
452.....373
510.....62
558.....62, 00

24 CFR

200.....375-377

26 CFR

35a.....62

28 CFR

524.....190, 192

Proposed Rules:
511.....195
548.....194
551.....195

29 CFR

2610.....63
2622.....63

30 CFR

917.....65
926.....66
938.....379

37 CFR

1.....348

40 CFR

52.....67
86.....68
162.....380
180.....388-390

Proposed Rules:
52.....78, 79
87.....421
162.....423
180.....426
261.....427
721.....82, 99
799.....108, 430-456

42 CFR

405.....234, 408
409.....234
489.....234

47 CFR

73.....391–396

Proposed Rules:

73.....465–467

49 CFR

1152.....396

50 CFR

611.....396
655.....402
675.....396
681.....407

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last Listing December 19, 1983.