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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, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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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

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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.

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Presidential Documents

Title 3—

The President

Proclamation 5239 of September 24, 1984

National Historically Black Colleges Week, 1984

By the President of the United States of America

A Proclamation

The one hundred and three historically black colleges and universities in the United States have contributed substantially to the growth and enrichment of the Nation. These institutions have a rich heritage and tradition of providing the challenging higher education so essential to an individual's full participation in our complex technological society.

Historically black colleges and universities bestow forty percent of all degrees earned by black students. They have awarded degrees to eighty-five percent of the country's black lawyers and doctors and fifty percent of its black business executives. Throughout the years, these institutions have helped many underprivileged students to attain their full potential through higher education.

In recognition of the fact that the achievements and goals of these historically black colleges and universities deserve national attention, the Congress, by Senate Joint Resolution 340, has designated the week of September 23, 1984, as "National Historically Black Colleges Week" and authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of September 23, 1984, as National Historically Black Colleges Week. I urge all Americans to observe this week with appropriate ceremonies and activities to express our respect and appreciation for the outstanding academic and social accomplishments of the Nation's black institutions of higher learning.

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

Ronald Reagan

[FR Doc. 84-25755
Filed 9-25-84; 10:57 am]
Billing code 3195-01-M

Editorial note: For the President's remarks of Sept. 24, 1984, on signing Proclamation 5239, see the *Weekly Compilation of Presidential Documents* (vol. 20, no. 39).

Rules and Regulations

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

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 1

Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This amendment will expand the scope and applicability of the Department's uniform rules of practice governing adjudicatory proceedings to include actions initiated under the Potato Research and Promotion Act, as amended (7 U.S.C. 2611, amended Pub. L. 97–244, 96 Stat. 310, effective August 26, 1982). The Potato Research and Promotion Act was amended on August 26, 1982, to authorize assessment of civil penalties and issuance of cease and desist orders by the Secretary of Agriculture against any person found to be in violation of the Act, the Potato Research and Promotion Plan (7 CFR 1207.301 *et seq.*) or the Regulations thereunder (7 CFR 1207.500 *et seq.*). Accordingly, this action will make the Department's uniform rules applicable to the administrative adjudications now authorized under the Act, and will thus permit the orderly conduct of any such adjudications as may be initiated by the Secretary.

EFFECTIVE DATE: September 26, 1984.

FOR FURTHER INFORMATION CONTACT: Charles W. Porter, Chief, Vegetable Branch, F&V, AMS, USDA, Washington, D.C. 20250; telephone (202) 447–2615.

SUPPLEMENTARY INFORMATION: This action has been determined to be exempt from the procedure under Executive Order 12291 because it is administrative in nature.

Effective August 26, 1982, the Potato Research and Promotion Act was amended to authorize administrative adjudications to enforce the provisions of the Act, the Plan, and the regulations thereunder, against any person found to be in violation, through the imposition of civil penalties and the issuance of cease and desist orders by the Secretary. The amendments to the Act provide that before any penalty or cease and desist order can be issued the affected person shall be provided with an opportunity for a hearing. Prior to August 26, 1982, the enforcement of violations of the Act and Plan was limited to actions prosecuted in the Federal District Courts. Thus, there was no need for administrative rules of practice before that date.

The Department's uniform rules of practice (7 CFR Part 1, Subpart H), which govern the conduct of adjudicatory proceedings under numerous statutes, have been in effect since February 1, 1977. Accordingly, to insure consistency and uniformity in the conduct of the Department's administrative proceedings, it has been determined that proceedings initiated under the amended Potato Research and Promotion Act should also be governed by these uniform procedures.

Since 5 U.S.C. 553 does not apply to the promulgation of agency rules of procedure and since existing rules of practice are simply being adopted for this new statutory authority, it has been determined that it is unnecessary to provide an opportunity for the submission of comments on this action. For these same reasons it has been determined that good cause exists to make this action effective upon publication in the Federal Register.

In consideration of the foregoing, 7 CFR Part 1, subpart H, is amended as follows:

PART 1—ADMINISTRATIVE REGULATIONS SUBPART H—RULES OF PRACTICE GOVERNING FORMAL ADJUDICATORY PROCEEDINGS INSTITUTED BY THE SECRETARY UNDER VARIOUS STATUTES

§ 1.131 [Amended]

Section 1.131(a) is amended by inserting the following statutory reference in the list of statutes in alphabetical order.

Potato Research and Promotion Act, as amended, 7 U.S.C. 2621, Pub. L. 97–244, 96 Stat. 310.

(7 U.S.C. 2611 *et seq.*, as amended, Pub. L. 97–244, 96 Stat. 310, effective August 26, 1982)

Dated: September 20, 1984.

C. W. McMillan,
Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 84–25536 Filed 9–25–84; 8:45 am]
BILLING CODE 3410–02–M

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 84–335]

Pink Bollworm Quarantine and Regulations

AGENCY: Animal and Plant Health Inspections Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: This document affirms the interim rule which amended the "Pink Bollworm Quarantine and Regulations" by quaranting the States of Arkansas and Mississippi because of the pink bollworm, and by designating certain areas in Desha County, Arkansas and Washington County, Mississippi as suppressive areas. This action is necessary in order to prevent the artificial spread of the pink bollworm through the interstate movement of regulated articles. The effect of this action is to impose certain conditions on regulated articles moved interstate from suppressive areas.

EFFECTIVE DATE: September 26, 1984.

FOR FURTHER INFORMATION CONTACT: Michael J. Shannon, Staff Officer, Field Operations Support Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, 6505 Belcrest Road, Room 663, Federal Building, Hyattsville, MD 20782, (301) 436–8295.

SUPPLEMENTARY INFORMATION:

Background

A document published in the Federal Register on June 27, 1984 (49 FR 26187–26188) set forth an interim rule amending §§ 301.52(a) and 301.52–2a of the Pink Bollworm Quarantine and Regulations (7 CFR 301.52 *et seq.*; hereinafter known as regulations). The document amended the regulations by quarantining the States of

Arkansas and Mississippi because of the pink bollworm, and by designating certain areas in Desha County, Arkansas and Washington County, Mississippi as suppressive areas.

The amendment became effective on the date of publication. The document provided that the amendment was necessary as emergency measure in order to prevent the artificial spread of the pink bollworm through the interstate movement of regulated articles.

Comments were solicited for 60 days after publication of the amendment. No comments were received in response to the amendment. The factual situations which were set forth in the document of June 27, 1984, still provide a basis for the amendment.

Executive Order 12291 and Regulatory Flexibility Act

The amendment has been issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that the amendment will have an estimated annual effect on the economy of less than $30,000; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause 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.

Mr. Bert W. Hawkins, Administrator of the Animal and Plant Health Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities. This action affects the interstate of regulated articles from specified areas in Desha County in Arkansas and Washington County in Mississippi. There are hundreds of small entities that move such articles interstate from nonregulated areas in the United States. However, based on information compiled by the Department, it has been determined that fewer than 20 small entities move such articles interstate from the affected areas in Desha County, Arkansas, and Washington County, Mississippi. Further, the overall economic impact from this action is estimated to be less than $30,000.

For this rulemaking action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases, Plant pests, Plants (agriculture), Quarantine, Transportation, Pink bollworm.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, the interim rule published at 49 FR 26187–26188 on June 27, 1984, is adopted as a final rule.

(Sec. 106, 71 Stat. 33; (7 U.S.C. 150ee); Secs. 8, 9, 37 Stat. 318 as amended; (7 U.S.C. 161, 162); 7 CFR 2.17, 2.51, 371.2(c))

Done at Washington, D.C., this 21st day of September 1984.

William F. Helms,

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

[FR Doc. 84-25455 Filed 9-25-84; 8:45 am]

BILLING CODE 3410-34-M

Commodity Credit Corporation

7 CFR Part 1430

Milk Diversion Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The interim rule published in the **Federal Register** on May 16, 1984 (49 FR 20642) is adopted as a final rule without change. Under the provisions of this rule, the Administrator, Agricultural Stabilization and Conservation Service (ASCS), may approve the transfer of dairy cows by a participant in the Milk Diversion Program, which is conducted by the Commodity Credit Corporation, if it is determined that the transfer will not adversely affect the goals of the program.

DATE: Effective September 26, 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 under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as "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 and local governments, or geographical 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.

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since the Commodity Credit Corporation (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.

An Environmental Evaluation with respect to this action 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 Assessment is needed.

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.

This program activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June, 1983).

The Milk Diversion Program is authorized by section 201(d) of the Agricultural Act of 1949, as amended. The regulations which implemented the program restrict the transfer of dairy cows from the contract unit by a program participant. These regulations provide at 7 CFR 1430.410 that a producer participating in the program cannot sell, lease, or otherwise transfer dairy cows unless the cows: (1) are sold for slaughter, (2) are sold, leased, or transferred to another program participant or (3) are sold and delivered for export.

An interim rule was published in the **Federal Register** on May 16, 1984 (49 FR 20642) which amended § 1430.410 to permit the transfer of dairy cows, in addition to those transfers already authorized in § 1430.410, if the Administrator, ASCS, or his designee, determines that such transfers will not defeat the goals of the Milk Diversion Program. Six comments were received from the general public regarding the

interim rule—three of which were from state agricultural organizations and three from individuals. All of these commenters supported the provisions of the interim rule, including one who suggested that an exemption from the transfer restrictions of § 1430.410 should be granted with regard to the transfer of pure-bred cattle by breeders. Based upon a review of the comments received from the general public, it has been determined that the interim rule should be adopted as a final rule without change.

List of Subjects in 7 CFR Part 1430

Milk, Agriculture, Price support programs, Dairy products.

Final Rule

Accordingly, the interim rule which was published on May 16, 1984 (49 FR 20642) is hereby adopted as a final rule without change.

Authority: Sec. 201(d) of the Agricultural Act of 1949, as amended (7 U.S.C. 1466(d)); sec. 102(b) of the Dairy and Tobacco Adjustment Act of 1983; and the Commodity Credit Corporation Charter Act (15 U.S.C. 714 *et seq.*)

Signed at Washington, D.C. on September 14, 1984.

Richard E. Lyng,

Acting Secretary.

[FR Doc. 84-25543 Filed 9-25-84; 8:45 am]
BILLING CODE 3410-05-M

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7 CFR Part 1446

General Regulations Governing 1982 Through 1985 Crops; Peanut Warehouse Storage Loans and Handler Operations (Amendment 2)

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule.

SUMMARY: This interim rule revises 7 CFR 1446.50 *et seq.*, with respect to: (1) The handling of quota peanuts which are substituted for contract additional peanuts used in the domestic edible market; (2) offsets of losses in marketing pools for quota loan peanuts; and (3) the definitions of net weight, fragmented peanuts, peanut products, and raw peanuts. The principal revisions are made to allow for screen size variation and to change the definition of net weight to adopt a uniform excess moisture level for all production areas.

DATES: This rule is effective as of the beginning of the 1984 marketing year for peanuts. Comments must be received on or before November 26, 1984 in order to be assured of consideration.

ADDRESSES: Send comments to the Director, Tobacco and Peanuts Division, ASCS, Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013. Comments received may be inspected at Room 5750 South Building, USDA, between 8:15 a.m. and 4:45 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: David L. Kincannon (ASCS), 202–382–0154. A Final Regulatory Impact Analysis has been prepared and is available upon request.

SUPPLEMENTARY INFORMATION: This Interim Rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512–1 and has been classified "not major". It has been determined that the provisions of 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 and local governments, or geographical 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 title and number of the Federal assistance program to which this rule applies are: Commodity Loans and Purchases, 10.051, as found in the Catalog of Federal Domestic Assistance.

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

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. In addition, this action will not adversely affect enviromental factors such as wildlife habitat, water quality, air quality, or land use and appearance. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

Substitution of Quota and Additional Peanuts

Section 358 of the Agricultural Adjustment Act of 1938, as amended, defines quota peanuts as any peanuts produced on a farm having a farm poundage quota that are eligible for domestic edible use, that are marketed or considered marketed from a farm, and that do not exceed the farm poundage quota established for such farm. Additional peanuts are defined by Section 358 as all other peanuts. Except under special circumstances, additional peanuts must be marketed by a handler only for (1) crushing into oil or meal or (2) export.

Current regulations allow handlers, under certain conditions, to export quota peanuts and earn export credits prior to establishing an export obligation. The export obligation is derived from contract additional peanut kernels that are graded by screen size to meet export edible standards and are required to be exported under the supervision of an area marketing association. Also, contract additional peanuts may be used in the domestic market beyond earned credits if the handler provides a letter of credit to assure that the export obligations will be satisfied at a later date. A letter of credit is an agreement between a handler and a lending institution whereby the lending institution guarantees payment on behalf of the handler of any penalties assessed against the handler for failure to export a like quantity of quota peanuts in substitution for contract additional peanuts which are used in the domestic market. In either substitution situation, the substituted quota and additional peanuts must be of the same type, from the same crop, from the same production area and have the same grade screen sizes.

Producers usually market their quota peanuts prior to marketing contract additional peanuts, since quota peanuts usually return the highest dollar per ton. Handlers may have export buyers available prior to the delivery of contract additional peanuts. If substitution were not permitted, the handler might be forced to postpone export sales until contract additional peanuts are available. In order to avoid unnecessary hardship upon the handler, § 1446.58(d) allows the handler to use quota peanuts for the export sale. If quota peanuts are used in the sales transaction, the handler may be given credits for the export sale. At a later date, the handler may sell additional peanuts for domestic uses to the extent there are credits earned on quota peanuts which were used in the export market. On the other hand, a handler may have an opportunity to sell contract additional peanuts into the domestic market prior to having sufficient quantities of quota peanuts available to make the sale. In such cases, § 1446.58(d) permits the handler to use additional peanuts for the domestic sale after a letter of credit has been posted. If additional peanuts are used in such a

domestic sales transaction, the handler must then substitute an equivalent amount of quota peanuts for the additional peanuts by marketing quota peanuts for export.

Section 1446.58(d) currently provides that if quota and additional peanuts are substituted for one another, they must be of the same grade screen size. The grade screen size requirement has been the source of complaint from handlers on the ground it is too restrictive. Due to the normal variation in shelled lots of peanuts when substituting quota and additional peanuts, it is difficult, if not impossible, to match each export obligation for each screen size thereby resulting in, at the end of the year, a handler having a small shortage in one or more screen sizes. As a result, in order to meet the requirement that the export obligation be met for each individual screen size, a handler may have to export another complete lot of quota peanuts to make up the small shortage in a particular screen size. A lot contains between 40,000 to 100,000 pounds of shelled peanuts. Since peanuts are required to be marketed by handlers in lot sizes, exporting an additional lot causes the total poundage to far exceed the poundage in the screen size for which there was a shortage. This becomes an added expense to the handler and, to a lesser extent, a drawdown on domestic quota supplies. For these reasons, handlers have requested tolerances in screen sizes if a shortage of peanuts in one screen size is offset by excess export credits of peanuts of a larger, more valuable screen size.

It has been determined that additional flexibility should be permitted to avoid undue restrictions on handlers. This interim rule specifically amends § 1446.58(d) to allow a variance tolerance of 1 percent of the export obligation on certain screen sizes. The screen size for which a tolerance will be allowed are the second and third largest screen sizes for Virginia-type peanuts, Spanish-type peanuts and Runner-type peanuts. The screen sizes for which the 1 percent variance tolerance allowance will be permitted are: (1) for Virginia-type peanuts, $^{15}/_{64}$ x 1 inch and $^{15}/_{64}$ x 1 inch; (2) for Runners, $^{15}/_{64}$ x $^{3}/_{4}$ inch and $^{15}/_{64}$ x 1 inch; and (3) for Spanish peanuts, $^{15}/_{64}$ x $^{3}/_{4}$ inch and $^{15}/_{64}$ x $^{3}/_{4}$ inch.

The fourth type of peanuts grown in the United States are Valencia-type peanuts. Handlers do not normally substitute quota and additional peanuts of the Valencia-type. When substitution of this type of peanuts does occur, they are treated as Spanish peanuts.

The tolerance is not an absolute tolerance, i.e., the export obligation for a particular screen size is not considered to be met just because the credits for export of that screen size are within 1 percent of the export obligation. Rather, any shortages in the applicable screen sizes must be made up by exporting a greater or equal quantity of quota peanuts of a larger screen size. This is to avoid having a handler achieve a competitive or financial advantage through the use of the tolerance in screen sizes. The limitation to larger screen sizes is also designed to minimize any adverse impact on handlers in areas where, due to marketing opportunities and apparent variation in demand for peanuts by screen size, substitution between quota and additional peanuts may not be practical.

The amount of the letter of credit which is required by § 1446.58(d)(2) is not affected by the tolerances for screen size variation which are permitted by this amendment to the regulations. Moreover, in computing penalties, no deduction will be made for the tolerance if the tolerance is exceeded. Thus, for example, if there is a shortfall of 1.5 percent of the export obligation in a screen size for which a tolerance is allowed, the full 1.5 percent shortfall will be subject to a penalty in order to assure maximum program compliance.

This rule, in addition, amends § 1446.58(d) to clarify that the final export date for additional peanuts also applies to quota peanuts which are substituted for additional peanuts for marketing purposes.

Net Gains

The provisions of § 1446.61 whereby losses in a quota pool are offset with certain gains in additional pools have been revised to avoid any suggestion of a limitation as to the extent of any such offsets. The handling of net gains is covered by agreements between peanut area marketing associations and CCC. Section 108A of the Agricultural Act of 1949, as amended, requires a full offset of quota losses from profits from the sales of additional peanuts for domestic food and related uses.

Definition Changes

As set forth in § 1446.52(ee), the definition of "net weight" for peanuts provides for a non-uniform moisture deduction from the gross weight of peanuts when peanuts are marketed in different geographical locations (i.e., 7 percent for peanuts in some location and 8 percent elsewhere). This distinction effectively made Virginia-type peanuts, unlike other peanut types, subject to an 8 percent moisture level in most cases. This has been the source of complaint since it has been argued that this distinction, together with other price support distinctions made between peanut types, has resulted in a competitive disadvantage for Virginia-type peanuts with other peanut types for certain end uses of peanuts. It has been determined that a uniform moisture level of 7 percent for peanuts marketed from all geographic areas should be adopted: (1) Since USDA data indicates that moisture levels for each peanut type tend to be uniform in all areas; (2) since changes in marketing practices have tended to diminish the importance of moisture differences between types; and (3) because of price considerations set forth in the determination of the 1984-crop price differentials (49 FR 23424). The adoption of a deduction of a uniform moisture level of 7 percent is in response to the request for change in the moisture level from the Virginia-Carolina marketing areas (i.e., the former 8 percent area) and will, as a change from past practice, affect the least quantity of peanuts. Most U.S. peanuts are grown in the regions where a-7 percent moisture level has been applicable in prior years.

In order to improve the administration of the peanut price support regulations, this interim rule amends several other definitions of terms which are found in Part 1446. First, the definition of "fragmented peanuts" in § 1446.52(u) has been amended to incorporate by reference the definition used in the Marketing Agreement for Peanuts (No. 146) which is administered by the Peanut Administrative Committee for the applicable crop year. Thus, if the Peanut Administrative Committee changes its definition of fragmented peanuts, as it did in 1983 by increasing the maximum percent of whole kernels to qualify as fragmented peanuts from 20 to 30 percent, the regulations at 7 CFR Part 1446 will not have to be further amended to reflect such a change for the purpose of consistency in definition.

Also, in § 1446.52(gg), the definition of "peanut products" has been clarified to specifically include in that definition treated seed peanuts and roasted shelled or inshell peanuts. Further, the definition of "raw peanuts" in § 1446.52(mm) has also been clarified to include in that definition pressed peanuts and any other classification of peanuts which is approved by CCC if certain conditions are met.

The interim rule also makes corrections to the list of authorities preceding 7 CFR 1446.50.

Since the marketing of the 1984 crop of peanuts has begun, it has been determined that the provisions of this interim rule must be made effective as of the beginning of the 1984 marketing year. However, comments on this interim rule are requested and must be received no later than 60 days from the date of publication of this interim rule in the **Federal Register** in order to be assured of consideration. A final rule will be published discussing the comments received together with any amendments which are determined to be necessary.

List of Subjects in 7 CFR Part 1446

Loan programs—Agriculture, Peanuts, Price Support Programs, Warehouses.

Interim Rule

Accordingly, 7 CFR Part 1446, is amended as follows:

1. The citation of authorities immediately preceding 7 CFR 1446.50 is revised to read as follows:

Authority: Secs. 4 and 5, 62 Stat. 1070, as amended (15 U.S.C. 714 b and c); Secs. 101, 108A, 401, 63 Stat. 1051, as amended, (95 Stat. 1254, 63 Stat. 1054, as amended (7 U.S.C. 1441, 1445c–1, 1421); Secs. 359, 375, 52 Stat. 31, as amended, 64, as amended (7 U.S.C. 1359, 1375), unless otherwise noted.

2. Section 1446.52 is amended by revising paragraphs (u), (ee), (gg), and (mm) to read as follows:

§ 1446.52 Definitions.

* * * * *

(u) *Fragmented peanuts.* Peanuts as defined in the outgoing quality regulations of the Marketing Agreement for Peanuts (No. 146) applicable to the crop year in which the peanuts were produced.

* * * * *

(ee) *Net weight.* That weight of farmers stock peanuts obtained by deducting from the gross scale weight of the peanuts: (1) Foreign material; and (2) moisture in excess of 7 percent.

* * * * *

(gg) *Peanut products.* Any products, other than peanut oil and meal, manufactured or derived from peanuts such as, but not limited to, peanut candy, peanut butter, treated seed peanuts, roasted shelled or inshell peanuts, and peanut granules.

* * * * *

(mm) *Raw peanuts.* Inshell peanuts, shelled peanuts, pressed peanuts, blanched peanuts or any other classification of peanuts as designated by CCC which have not passed through any other processing operations.

* * * * *

3. Section 1446.58 is amended by revising the fourth sentence of paragraph (d)(2) as follows and adding a new paragraph (d)(4) to read as follows:

§ 1446.58 Supervision and handling of contract additional peanuts.

* * * * *

(d) * * *

(2) *Use of additional peanuts for domestic edible uses prior to substitution.* * * * Such evidence must be submitted no later than 30 days after the final date for export as established in §1446.57(e)(2) or § 1446.57(e)(3), or 15 days prior to the expiration of the letter of credit, whichever occurs first. * * *

(3) * * *

(4) *Screen size variation tolerance.* (i) *Screen size variation tolerance and substitution.* For eligible screen sizes, a variation tolerance will be permitted in order to satisfy the substitution requirements for milled peanuts of identical screen size as set forth in paragraphs (d) (1)(ii) and (d) (2) of this section, if: (A) The export credits earned from the exportation of whole kernel quota peanuts are equal to or exceed the total obligation for export of whole kernels from contract additional peanuts; and (B) for eligible whole kernel screen sizes listed in paragraph (d)(4)(ii) of this section, the quantity of export obligation is greater than the export credits by an amount not exceeding 1 percent of the export obligation for that screen size. If the requirements of the preceding paragraphs (d)(4)(i) (A) and (B) of this section are satisfied, excess export credits for peanuts of one or more larger screen sizes may be applied, to the extent available, to offset shortages in a smaller screen sizes for which a tolerance is permitted in paragraph (d)(4)(ii) of this section.

(ii) *Screen size variation tolerance and eligible screen sizes.* Screen size variation and offset of export obligations with excess export credits as provided in paragraph (d)(4)(i) of this section shall be applicable only for the whole kernels that will ride the following slotted screen size openings by type;

Spanish type: $^{15}/_{64}$ x $^{3}/_{4}$ inch (+18), or $^{15}/_{64}$ x $^{3}/_{4}$ inch (+15)

Runner type: $^{15}/_{64}$ x $^{3}/_{4}$ inch (+18), or $^{15}/_{64}$ x $^{3}/_{4}$ inch (+16)

Virginia type: $^{15}/_{64}$ x 1 inch (+18), or $^{15}/_{64}$ x 1 inch (+15).

(iii) *Screen size variation tolerance and letter of credit.* For the purpose of establishing a letter of credit for contract additional peanuts used in the domestic market under paragraph (d)(2) of this section, allowances for screen size variation shall not be considered in determining the dollar amount of the letter of credit.

(iv) *Screen size variation tolerance and penalties.* Should the export obligation exceed the export credits for an eligible screen size listed in paragraph (d)(4)(ii) of this section by an amount greater than 1 percent of the export obligation for that screen size, the handler shall be liable for a failure to export under the provisions of § 1446.59 and the penalty shall be calculated on the total quantities involved in the violation without adjustment for screen size variation tolerances.

* * * * *

4. Section 1446.61 is amended by revising paragraphs (a)(2) and (b)(2) to read as follows:

§ 1446.61 Pooling and distribution of net gains.

* * * * *

(a) * * *

(2) An amount from the net gains on additional peanuts sold for domestic food and related uses which is equal to the losses incurred in disposing of quota peanuts of the same type and segregation in the same production area.

(b) * * *

(2) An amount of the net gains from the additional pool allocated to the quota pool pursuant to paragraph (a)(2) of this section to offset quota pool losses.

Signed at Washington, D.C. on September 20, 1984.

Everett Rank,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 84–25457 Filed 9–25–84; 8:45 am]

BILLING CODE 3410–05–M

Office of the Secretary

7 CFR Part 2900

Certification of Essential Agricultural Uses and Requirements; Natural Gas Policy Act of 1978

AGENCY: Office of the Secretary , USDA.

ACTION: Final rule.

SUMMARY: In response to a petition, the Department of Agriculture amends its regulations certifying essential agricultural uses and requirements under the Natural Gas Policy Act of 1978 (NGPA). This amendment adds the production of food-grade citric acid and food-grade enzymes to the list of essential agricultural uses certified by the Secretary of Agriculture.

EFFECTIVE DATE: This amendment will become effective on September 26, 1984.

FOR FURTHER INFORMATION CONTACT: Earle E. Gavett, Director, Office of Energy, USDA, 14th Street and Independence Avenue, SW., Washington, D.C. 20250; Telephone Number: 202–447–2634.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1512–1 which implements Executive Order 12291 and has been determined to be "nonmajor".

Under section 401 of the NGPA, the Secretary of Agriculture is required to certify to the Secretary of Energy and the Federal Energy Regulatory Commission (FERC) essential agricultural uses of natural gas and the amounts of natural gas for such essential agricultural uses necessary for full food and fiber production.

A final rule containing such certification was issued by the Secretary of Agriculture on May 17, 1979 (44 FR 28782).

The Secretary of Energy and the FERC have incorporated the USDA certification in their rule promulgating and implementing agricultural priority in curtailment plans of interstate pipelines in accordance with the NGPA.

In accordance with 7 CFR 2901.5(b) on June 4, 1984 (49 FR 23061) the Secretary, USDA, issued a proposed rule which would amend USDA certification of essential agricultural uses and requirements to include under 7 CFR 2900.3, SIC Code 2869—Industrial Organic Chemicals (Food-grade Citric Acid and Food-Grade Enzymes) as essential agricultural uses. This proposed amendment is in response to a petition submitted by Miles Laboratories, Inc. (hereinafter "Miles").

Miles proposed that the manufacture of food-grade citric acid and food-grade enzymes, classified in SIC Code 2869—industrial organic chemicals, be certified as an essential agricultural use of natural gas under Section 401(f)(1)(A)—that is, to the extent of all natural gas used in its manufacture whether for process, feedstock or boiler fuel uses. Currently, food grade citric acid and food-grade enzymes are certified under section 401(f)(1)(B) which gives priority for only the process and feedstock natural gas requirements, 44 FR 28786. Boiler fuel use is not protected from curtailment under this section.

The public was invited to participate in any aspect of the proposed amendment by submitting data, views, or arguments with respect to the inclusion of food-grade enzymes in USDA's certification as essential agricultural uses of natural gas. No comments or requests that USDA convene a public hearing were received from the public.

Food-Grade Citric Acid—Food-grade acid is produced by two domestic manufacturers, although Miles states that it alone uses natural gas. At its two plants, Miles uses a maximum of 2,500 Mcf of natural gas per day as boiler fuel. This certification will add, therefore, a maximum of 910 million cubic feet to the total agricultural gas use of 1,392 billion cubic feet per year, less than one-tenth of 1 percent of the interstate gas component identified as essential agricultural use in the May 14, 1979 combined Environmental Impact Statement and Final Impact Statement.

Food-Grade Enzymes—Food-grade enzymes are produced by four major domestic manufacturers who use about 210 million cubic feet of natural gas per year. This certification would add this 210 million cubic feet to the total agricultural gas use of 1,392 billion cubic feet, only about 1 one-hundredth of 1 percent of the interstate gas component identified as essential agricultural use in the May 15, 1979 combined Environmental Impact Statement and Final Impact Statement. This quantity could increase over the next year or two as new plants come on line or old ones convert to natural gas.

Based on the foregoing, USDA has determined that the use of natural gas in the production of food-grade citric acid and food-grade enzymes is a use of natural gas for food processing which is necessary for full food and fiber production.

Earle. E. Gavett, Director, Office of Energy has determined that this action will not have a significant economic impact on a substantial number of small entities since only about 1.1 billion cubic feet of natural gas per year are involved. Small commercial establishments are protected from curtailments by the NGPA which defines them as "high priority users", a priority category above essential agricultural users. Small manufacturing concerns have a priority lower than essential agricultural users but, depending on the pipeline concerned, generally have priorities higher than many other, larger users.

List of Subjects in 7 CFR Part 2900

Agricultural commodities, Alcohol and alcoholic beverages, Animals, Chemicals, Crop services (SIC Code 072), Farm-product raw materials—grain (SIC Code 5153), Fertilizers, Food stores (SIC Code 54), Foods, Forests and forest products, Groceries and related products (SIC Code 514), Irrigation, Leather tanning and finishing (SIC Code 3111), Natural gas, Packaging and containers, Pesticides and pests, Salt, Textiles, Warehouses.

PART 2900—ESSENTIAL AGRICULTURAL USES AND VOLUMETRIC REQUIREMENTS—NATURAL GAS POLICY ACT

§ 2900.3 [Amended]

Accordingly, Chapter XXIX of Title 7, § 2900.3 Code of Federal Regulations is amended by changing, at the end of the "Food and Natural Fiber Processing—Food" list: 2869—Industrial Organic Chemicals (Monosodium Glutamate only) to: 2869—Industrial Organic Chemicals (Monosodium Glutamate, Food-grade Citric Acid and Food-grade Enzymes only).

(Pub. L 95–621, November 8, 1979, 92 Stat. 3350.15, 15 U.S.C 3301 et seq.)

Dated: September 20, 1984.

John R. Block,

Secretary of Agriculture.

[FR Doc. 84–25456 Filed 9–25–84; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 84–ASW–26; Amdt. 39–4895 (Predecessor Docket No. 74–NE–38)]

Airworthiness Directives; Sikorsky Aircraft Models S–61L, S–61N, S–61NM, and S–61R Series Helicopters Certificated in all Categories, and S–61A and S–61V Helicopters Certificated in the Restricted Category

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the Federal Register and makes effective as to all persons an amendment amending an existing airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of certain Sikorsky S–61 series helicopters by individual letters. The amended AD requires stringent inspection of the required blade pressure indicators and limits the time in service of any flight to 3 hours for helicopters not equipped with an in-cockpit blade inspection system, or if equipped, with the system inoperative. The AD also extends time in service of any flight to 8 hours for helicopters equipped with an operative in-cockpit blade inspection system, and removes from service main rotor blades which do

not incorporate approved blade pressure indicators. The amended AD is needed to prevent operation with fatigue cracks in the main rotor blade spar which could result in loss of the blade and consequent loss of control of the helicopter.

DATES: Effective September 26, 1984 as to all persons including those persons to whom part was made immediately effective by priority letter AD 74-20-07 R4, issued December 30, 1983, which contained part of this amendment.

Compliance schedule—As prescribed in body of AD.

The Director of the Federal Register approved the incorporation by reference of certain publications in 14 CFR 39.13 effective on September 26, 1984.

ADDRESSES: A copy of the referenced service bulletins may be obtained from United Technologies Corporation, Sikorsky Aircraft Division, North Main Street, Stratford, Connecticut 06601, Attn: S-61 Commercial Product Support Department.

A copy of each of the service bulletins is contained in the Rules Docket at the Office of the Regional Counsel, Federal Aviation Administration, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas 76106.

FOR FURTHER INFORMATION CONTACT: Richard B. Noll, Airframe Branch, Boston Aircraft Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Part, Burlington, Massachusetts 01803, telephone number (617) 273-7329.

SUPPLEMENTARY INFORMATION: On December 30, 1983, priority letter AD 74-20-07 R4 was issued and made effective immediately as to all known U.S. owners and operators of Sikorsky Models S-61L, S-61N, S-61NM, and S-61R series helicopters certificated in all categories, and S-61A (aircraft serial numbers (S/N) 61083, 61087, 61094, and 61161) and S-61V (aircraft S/N 61271) helicopters certificated in the restricted category. This amendment further amends Amendment 39-1971 (39 FR 33791), AD 74-20-07, as amended by Amendments 39-1989 (39 FR 36856), 39-2152 (39 FR 15384), and 39-2439 (39 FR 54424) which required inspection of the main rotor blade for evidence of fatigue cracks in the spar and repair or replacement, as necessary, on Sikorsky Models S-61L, S-61N, S-61NM, and S-61R series helicopters. This amendment was prompted by a report of a recent in-flight fatigue crack of a main rotor blade spar. The amended AD requires an aircraft maintenance record entry for the required blade pressure indicator inspections and limits the time in service of any flight to 3 hours for helicopters not equipped with an in-cockpit blade inspection system, or if equipped, with the system inoperative. These procedural changes were required to reduce the possibility of a missed detection. For helicopters equipped with an operative in-cockpit blade inspection system which supplements the visual inspection system, inspection of the blade pressure indicators and transducers is conducted prior to the first flight of the day with subsequent functional checks of the system electrical circuit every 3 hours' time in service and of the blade pressure indicators and transducers every 8 hours' time in service. In addition, main rotor blades which do not incorporate approved blade pressure indicators are removed from service. Furthermore, the AD, as amended, adds Sikorsky Models S-61A and S-61V by serial numbers to the effectivity paragraph because these models were added to the civil aviation fleet since the issuance of AD 74-20-07.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to public interest, and good cause existed to make the AD effective immediately by individual priority letters issued December 30, 1983, to all known U.S. owners and operators of certain Sikorsky Models S-61L, S-61N, S-61NM, and S-61R series helicopters certificated in all categories, and S-61A (aircraft S/N's 61083, 61087, 61094, and 61161) and S-61V (aircraft S/N 61271) helicopters certificated in the restricted category. These conditions still exist and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations to make it effective as to all persons.

List of Subjects in 14 CFR Part 39

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

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 further amended by amending Amendment 39-1971 (39 FR 33791), AD 74-20-07, as amended by Amendments 39-1989 (39 FR 36856), 39-2152 (39 FR 15384) and 39-2439 (39 FR 54424) as follows:

1. By revising the product application statement to read as follows:

Sikorsky Aircraft: Applies to S-61L, S-61N, S-61NM, and S-61R, helicopters certificated in all categories, and S-61A (aircraft S/N's 61083, 61087, 61094, and 61161) and S-61V (aircraft S/N 61271) helicopters certificated in the restricted category.

2. By revising the compliance statement to read as follows: Compliance is required as indicated (unless already accomplished).

3. By revising paragraphs (a), (b), (c), (d), (e), (f), and (g) to read as follows:

(a) Remove from service within the next 10 hours' time in service from the effective date of this amended AD:

(1) Any main rotor blade which does not comply with Sikorsky Service Bulletin No. 61B15-6P, or later FAA-approved revisions, excluding section 2, Accomplishment Instructions, Part II, Operation, Pilot Information. For main rotor blades which are in compliance, the service life limits are:

(i) 6,000 hours' total time in service for S6117-20101 series blades;

(ii) 9,400 hours' total time in service for S6115-20501, S6115-20601, S6188-15001, and 61170-20201 series blades;

(2) Any military main rotor blade installed on a helicopter certificated in the restricted category which is not equipped with a visual blade pressure inspection system equivalent to that specified in Sikorsky Service Bulletin No. 61B15-6P, or later FAA-approved revisions. For military blades which are in compliance, the service life limits shall be those specified in the restricted category approval.

(b) Inspect main rotor blades equipped with approved visual blade pressure indicators but not equipped with an in-cockpit blade inspection system, or if equipped, with the system inoperative, in accordance with paragraphs (c) and (d). For helicopters equipped with an operative in-cockpit blade inspection system, inspect the main rotor blades in accordance with paragraphs (e) and (f).

(c) Within the next 3 hours' time in service after the effective date of this amended AD, unless already accomplished, inspect the visual blade pressure indicators of the following blades of helicopters not equipped with an in-cockpit blade pressure monitoring system (see Sikorsky Service Bulletin No. 61B15-20D), or equipped with such system inoperative:

S6115-20501 Series
S6115-20601 Series
S6117-20101 Series
S6188-15001 Series
61170-20201 Series
61170-20201-062 (S-61A aircraft S/N's 61083 and 61094)
S6115-20201-2 (S-61A aircraft S/N's 61087 and 61161)
S61170-20201-060 (S-61V aircraft S/N 61271),

according to the procedures set forth in Section 2, Part IV, of Sikorsky Service Bulletin No. 61B15-6P, or later FAA-approved revisions, and as supplemented by paragraph (d) of this AD.

(1) Conduct visual inspections or checks of blade-mounted pressure indicators from the transmission work platform of the helicopter to ensure that an accurate visual check is conducted.

(2) The visual inspections or checks of blade-mounted pressure indicators shall be conducted by an individual who holds a pilot

certificate with appropriate rating or a mechanic certificate with airframe rating or by a certificated maintenance entity. The person performing this inspection or check shall make entries of the results in the aircraft maintenance record including a description and date of the inspection and the name of the individual performing the inspection along with the certificate number, kind of certificate, and signature.

(3) Each blade with any black or red indication visible in the blade pressure indicator is considered to be unsafe and is restricted from further flight until the cause of the indication is determined and corrected in accordance with the procedures given in Sikorsky Service Bulleting No. 61B15–6P, or later FAA-approved revisions.

Note.—The inspections that are required by paragraph (c) to be performed and recorded may be considered to be "airworthiness checks."

If preventive maintenance action in accordance with Sikorsky Service Bulletin No. 61B15–6P, or later FAA-approved revisions, is required as a result of these inspections (airworthiness checks), the subsequent inspections required are considered preventive maintenance that may be performed by persons authorized to perform preventive maintenance under Part 43 of the FAR.

(d) After the initial inspections in accordance with paragraph (c), conduct further inspections in accordance with paragraph (c) prior to the first flight of each day and at intervals not to exceed 3 hours' time in service from the last inspection, except for blades identified with yellow or white circles which are limited to inspection intervals of 1 and 2 hours, respectively.

Helicopter time in service for any single flight in excess of the specified inspection interval is not permitted, and if the time in service since the last inspection will exceed the specified interval during the next flight, the visual inspection must be conducted prior to the flight.

Yellow or white circles and attendant speed restrictions of AD 74–25–05 may be removed if the main rotor blade is refurbished by Sikorsky in accordance with FAA-approved procedures of June 16, 1975.

(e) Prior to the first flight of the day and every 8 hours' time in service thereafter for helicopters equipped with an operable in-cockpit blade pressure monitoring system (see Sikorsky Service Bulletin No. 61B15–20D), and with main rotor blades with serial numbers of 61M–6350–6105 or greater, or which have been refurbished by Sikorsky in accordance with FAA-approved procedures of June 16, 1975, inspect the main rotor blades pressure indicators and pressure transducers of the blade specified in paragraph (c) according to the procedures set forth in Section 2, Part IV of Sikorsky Service Bulletin No. 61B15–6P, or later FAA-approved revisions.

(1) The visual inspections or checks of blade-mounted pressure indicators are to be conducted from the transmission work platform of the helicopter to ensure that an accurate visual check is conducted.

(2) The required functional tests and visual checks shall be conducted by an individual who holds a pilot certificate with appropriate rating or a mechanic certificate with airframe rating or by a certificated maintenance entity. The person performing these tests and checks shall make entries of the results of the inspections in the aircraft maintenance record including a description and date of the inspection and the name of the individual performing the inspection along with the certificate number, kind of certificate, and signature.

(3) Each blade with any black or red indication visible in the blade pressure indicator or whose transducer activates the cockpit warning light is considered to be unsafe and is restricted from further flight until the cause of the indication is determined and corrected in accordance with procedures given in Sikorsky Service Bulletin No. 61B15–6P, or later FAA-approved revisions.

(f) After the initial inspections in accordance with paragraph (e):

(1) Conduct functional tests in accordance with the procedures of paragraph (e) of all visual blade pressure indicators and in-cockpit blade inspection system transducers every 8 hours' time in service.

(2) Check the in-cockpit blade inspection system electrical circuit every 3 hours' time in service by use of the system test switch located in the cockpit. An in-flight indication of a failure of the system electrical circuit must be treated in the same manner as an in-cockpit system warning light indication as provided in the Emergency Procedures section of the Rotocraft Flignt Manual.

(g) Alternate inspections, repairs, modifications, or other means of compliance which provide an equivalent level of safety to this AD must be approved by the Manager, Boston Aircraft Certification Office, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803. In accordance with FAR § 21.197, flight is permitted to a base where the requirements of this AD may be accomplished.

The manufacturer's specifications and procedures (Sikorsky Service Bulletin No. 61B15–6P Revision No. 16, 12/3/81 including Revision No. 12, 6/2/77 & Revision No. 15, 4/21/80; Sikorsky Service Bulletin No. 61B15–20 Revision No. 4, 11/9/77) identified in this directive are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to United Technologies Corporation, Sikorsky Aircraft Division, North Main Street, Straford, Connecticut, 06601, Attn: S–61 Commercial Product Support Dept. These documents also may be examined in the Rules Docket at the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, Room 156, Building 3B, 4400 Blue Mound Road, Fort Worth, Texas, 76106.

This amendment becomes effective September 26, 1984 as to all persons including those persons to whom part was made immediately effective by priority letter AD 74–20–07 R4 issued December 30, 1983, which contained part of this amendment.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); 14 CFR 11.89)

Note.—The FAA has determined that this regulation is an emergency regulation that is not considered to be 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 action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

Issued in Fort Worth, Texas, on July 27, 1984.

Note.—The incorporation by reference provisions of this document were approved by the Director of the Federal Register on September 26, 1984. The referenced documents are available at the **Federal Register.**

F.E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 84–25625 Filed 9–25–84; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 84–CE–13–AD; Amdt. 39–4922]

Airworthiness Directives; Cessna 402C, 404, 414A, 421C, 425 and 441 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to Cessna Models 402C, 404, 414A, 421C, 425 and 441 airplanes which requires replacement of nose landing gear actuator rod ends which may be understrength. Failure of these rod ends has resulted in nose gear collapse accidents and airplane damage. Replacement of these rod ends with stronger parts will prevent these occurrences.

EFFECTIVE DATE: November 1, 1984.

Compliance: Required within 200 hours time-in-service after the effective date of this AD.

ADDRESSES: Cessna Multi-engine Customer Care Service Information Letter ME84–10 dated March 9, 1984, pertaining to this subject on Models 402C, 404, 414A, and 421C airplanes and applicable to this AD may be obtained from Cessna Aircraft Company, Piston

Aircraft Marketing Division, Wichita, Kansas 67201; Telephone (316) 658–9111. Cessna Conquest Customer Care Service Information Letter PJ84–10 dated March 2, 1984, pertaining to this subject on Models 425 and 441 airplanes and applicable to this AD may be obtained from Cessna Aircraft Company, Conquest Marketing Division, Wichita, Kansas 67277; Telephone (316) 946–7550. A copy of this information is also contained in the Rules Docket, FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Lawrence S. Abbott, Aerospace Engineer, FAA, Aircraft Certification Office, ACE–120W, Room 100, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946–4409.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring replacement of the Nippon Micro Bearing, Ltd. rod end in the P/N 9910139 nose gear actuators on certain Cessna Model 400 series airplanes was published in the **Federal Register** on May 21, 1984 (48 FR 21349–21350). Replacement of these potentially understrength rod ends is necessary to prevent failure and subsequent nose gear collapse, loss of aircraft control, and aircraft damage. The cause of the failure is suspected to be high stress-low cycle fatigue, aggravated by faulty rod ends manufactured by one vendor, Nippon Micro Bearing, Ltd. (NMB). The rod ends (MS 21242S–4K) made by NMB fail to incorporate a critical dimension from the Military Standard Data Sheet, which results in an undersized area of the bearing housing, at the most highly loaded section of the rod end. To correct this condition, Cessna has issued two Service Information Letters: PJ84–10 for Models 441 and 425 airplanes and ME84–10 for Models 421C, 414A, 404, and 402C airplanes. These Service Information Letters recommend replacement of the rod ends on P/N 9910139 actuators on all airplanes. Only MIL–B–81935 rod ends made by New Hampshire Bearing, Inc. (NHB) under their P/N ADNE 4JW are acceptable as replacement.

Since the condition described above is likely to exist or develop in other Cessna 400 series airplanes of the same type design, the AD requires replacement or existing rod end bearings with increased strength parts per Cessna Service Information Letters PJ84–10 or ME84–10 as applicable on certain Cessna Model 441, 425, 421C, 414A, 404 and 402C airplanes.

Interested persons have been afforded an opportunity to comment on the proposal. The only commentor concurred with the proposed AD.

Accordingly, the proposal is adopted without change.

Note.—The FAA has determined that this regulation only involves 2,727 airplanes at an approximate one-time cost of $157 for each aircraft or a total one-time fleet cost of $423,039. Few, if any, small entities under the definition of the Regulatory Flexibility Act, will operate more than one of the affected airplanes and the cost thereof, to anyone will not be a significant amount. Therefore, I certify that this action (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) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket.

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 the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new AD.

Cessna: Applies to Models 402C (S/Ns 402C0001 thru 402C0802); 404 (S/Ns 404–0001 thru 404–0859); 414A (S/Ns 414A0001 thru 414A1003); 421C (S/Ns 421C0001 thru 421C1402); 425 (S/Ns 425–0002 thru 425–0190); 441 (S/Ns 441–0001 thru 441–0333) airplanes certificated in any category.

Compliance: Required within the next 200 hours time-in-service after the effective date of this AD, unless already accomplished.

To preclude collapse of the nose landing gear:

(a) Replace the nose landing gear actuator rod ends on Models 425 and 441 airplanes in accordance with Cessna Service Information Letter (CSIL) PJ84–10 dated March 2, 1984, and on Models 402C, 404, 414A and 421C airplanes in accordance with CSIL ME84–10 dated March 9, 1984.

(b) The aircraft may be flown in accordance with Federal Aviation Regulation 21.197 to a location where this AD can be accomplished.

(c) An equivalent means of compliance with this AD may be used if approved by the Manager, Aircraft Certification Office, Federal Aviation Administration, Room 100, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946–4400.

(Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421 and 1423); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); Sec. 11.89 of the Federal Aviation Regulations (14 CFR 11.89))

This amendment becomes effective on November 1, 1984.

Issued in Kansas City, Missouri, on September 14, 1984.

John E. Shaw,

Acting Director, Central Region.

[FR Doc. 84-25428 Filed 9-25-84; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 154

[Docket Nos. RM84–6–000, RM84–6–001, and RM84–6–002; Order No. 399]

Refunds Resulting From Btu Measurement Adjustments

Issued: September 20, 1984.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending and finalizing its regulations that establish refund procedures for overcharges resulting from Btu measurement adjustments. The rule implements a decision of the United States Court of Appeals for the District of Columbia Circuit. This refund is due November 5, 1984, or in the case of "small" first sellers, May 3, 1985. The first seller and pipeline may choose whether the refund should be paid in a lump-sum cash payment or in billing adjustments over the refund period. However, offsets of this refund and production related costs permitted under section 110 of the Natural Gas Policy Act are prohibited.

This rule provides that interstate pipelines must pass through refunds in a lump-sum cash payment to those customers actually overcharged. Subject to clearance by the Office of Management and Budget, the Commission is also requiring interstate and intrastate pipelines to file refund reports with the Commission describing those refunds received and those refunds still outstanding.

EFFECTIVE DATE: September 20, 1984, except for the refund report requirements (set forth in Ordering Paragraph Nos. E, F, and G and §§ 154.38(h)(3) (vi), (vii), and (viii) of this rule which will become effective December 1, 1984. If OMB's approval and control number have not been received by this effective date, the Commission will issue a notice temporarily suspending the effective

date of the refund reporting requirements.

FOR FURTHER INFORMATION CONTACT:

Leslie J. Lawner, Office of General Counsel, Producer Regulation Division, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, (202) 357–8511

Joseph R. Hartsoe, Office of General Counsel, Rulemaking and Environmental Law Division, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, (202) 357–5775

SUPPLEMENTARY INFORMATION

Final Rule and Order Denying Rehearing of Interim Rule

Before Commissioners: Raymond J. O'Connor, Chairman; Georgiana Sheldon, A. G. Sousa, Oliver G. Richard III and Charles G. Stalon.

In the matter of refunds resulting from Btu measurement adjustments; Docket Nos. RM84–6–000, RM84–6–001, and RM84–6–002; Order No. 399.
Issued September 20, 1984.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is amending and finalizing its regulations that establish refund procedures for overcharges resulting from adjustments to the calculation of the energy content of natural gas (measured in terms of British thermal units (Btu's)) [1] sold pursuant to the Natural Gas Policy Act of 1978. In so doing, the Commission is implementing the decision in *Interstate Natural Gas Association of America v. Federal Energy Regulatory Commission* (*INGAA*).[2]

As a result of the *INGAA* decision, the Commission issued an interim rule on May 3, 1984, requiring refunds of Btu overcharges.[3] Briefly stated, the interim rule requires first sellers to refund the Btu measurement overcharges by November 5, 1984, or in the case of small first sellers, by May 3, 1985. First sellers and pipelines may choose whether the refund should be paid in a lump-sum cash payment or in billing adjustments over the refund period. In either case, the refund obligation is subject to the Commission's interest regulations in §§ 154.67(c) and 154.102(c) and (d). Interstate pipelines must then pass the refunds through in a lump-sum cash payment to those customers actually overcharged. The interim rule also requires both intrastate and interstate pipelines to file refund reports with the Commission describing those refunds received and those refunds still outstanding.

This final rule adopts the requirements of the interim rule with major clarifications or modifications in five areas. First, the rule prohibits offsets of the Btu measurement overcharges (Btu refunds) and production-related costs permitted under section 110 of the Natural Gas Policy Act of 1978 (NGPA). Second, first sellers may defer payment of Btu refund amounts attributable to royalty interest owners until the first seller receives payment from the royalty interest owner, or November 5, 1986, whichever occurs first. First sellers that defer payment of that portion of the Btu refund attributable to royalty interest owners must notify the pipelines of the deferral before the end of the applicable 6- or 12-month refund period. Third, additional reports will be required from intrastate and interstate pipelines in order to monitor these deferred refund amounts. Fourth, the interest owed on Btu refund amounts that were placed in escrow is limited to that interest which accrued in the escrow account on the amount required to be refunded. Finally, a small first seller must notify pipelines if that first seller is going to use the 12-month refund period.

II. Background

In *INGAA*, the court vacated the Commission's regulations that prescribed the method used to calculate the energy content of natural gas for purposes of applying the maximum lawful prices under the NGPA.[4] Those regulations provided that the Btu content of a given volume of natural gas is determined by assuming that the volume of natural gas was under standard test conditions when delivered to a pipeline. Once the Btu content of the natural gas was determined assuming standard test conditions, an adjustment was permitted to reflect the number of Btu's actually delivered to the pipeline system (dry rule).[5]

In vacating these rules, the court held that the Commission's dry rule was fundamentally at odds with the Congressional intent under the NGPA. Specifically, when the NGPA was passed in 1978, it established maximum lawful prices for several categories of natural gas and incorporated in sections 104 and 106(a) of that act area rates that the Commission had established under the Natural Gas Act (NGA). Pursuant to the Commission's NGA regulations (wet rule), the Btu content to a given volume of gas was measured under standard test conditions (saturated) instead of actual delivery conditions. Although this derivation of Btu content tended to overstate the water vapor content which, in turn, caused an understatement in the number of Btu's assumed to be in a given volume of natural gas delivered to a pipeline, it enjoyed widespread industry acceptance and consistent Commission implementation.[6] Hence, the court reasoned that the wet rule was the only method Congress knew for measuring Btu content; and, therefore, it held that Congress incorporated the Btu measurement technique used under the NGA, *i.e.*, the wet rule, into the pricing structure of the NGPA.

The Commission issued a Notice of Inquiry in this docket on January 19, 1984.[7] The interim rule was issued on May 3, 1984, and a public hearing was held on May 24, 1984. The Commission received two petitions for rehearing of the interim rule and it granted rehearing solely for the purpose of further consideration of those petitions.[8] In response to its request for comments in the interim rule, the Commission received seventy written comments.

Numerous commenters generally support the interim rule and urge that it be adopted as the final rule. One commenter urges the Commission to reconsider all of its options to be sure that a refund rule is necessary. Other commenters complain that it will be impossible to comply at reasonable cost with the interim rule's collection and reporting timetable and that the problems created by the interim rule are insurmountable for small producers. Finally, one commenter states that the realities of the natural gas industry and

[1] Each Btu represents the amount of energy needed to raise the temperature of one pound of water one degree Fahrenheit.

[2] 716 F.2d 1 (D.C. Cir. 1983), *cert. denied*, 104 S. Ct. 1616 (1984).

[3] Refunds Resulting from Btu Measurement Adjustments, 49 FR 19,203 (May 7, 1984).

[4] These regulations were adopted in Order Nos. 93 and 93–A. Rules Generally Applicable to Regulated Sales of Natural Gas, 45 FR 49,077 (July 23, 1980) (Order No. 93); Order Denying Rehearing and Clarifying Order No. 93, 46 FR 24,537 (May 1, 1981) (Order No. 93–A).

[5] An adjustment was permitted because 1) the gas delivered to a pipeline is seldom saturated with water vapor, as required under standard test conditions; and 2) water vapor contains no available heat energy, and its presence in any given volume of natural gas would reduce the Btu content of the gas by displacing energy-producing hydrocarbons. *See* 18 CFR 270.204 (1983).

[6] Prices were established under the NGA in dollars per thousand cubic feet ($/Mcf). The Commission then permitted adjustments to the area or national rate for the Btu content of gas measured under the wet rule.

[7] Refunds Resulting From Btu Measurement Adjustments, 49 FR 3198 (Jan. 26, 1984).

[8] Refunds Resulting From Btu Measurement Adjustments; Order Granting Rehearing for the Purpose of Further Consideration, 49 FR 27935 (July 9, 1984).

fundamental fairness warrant changes in the rule.

When the Commission promulgated the dry rule, it believed that the dry rule as an appropriate method permitted by Congress for measuring the Btu content of natural gas under the NGPA. The court in *INGAA* disagreed. We are now left with the task of implementing the court's decision. After careful consideration of the written comments, the views and arguments expressed at the public hearing on May 24, 1984, and the decision in the *INGAA* case, the Commission believes that the interim rule, as modified by this rule, fairly balances the interests of sellers, purchasers, and consumers of natural gas.

III. Producer Refunds to Pipeline

The *INGAA* decision held that the maximum lawful prices under the NGPA must be calculated using the wet rule. The Commission decided in the interim rule that any person who received a price for the first sale of gas in excess of the NGPA ceiling prices calculated using the wet rule must refund the overcharges. Specifically, any first seller that collected revenues in excess of the product of (a) the applicable maximum lawful price established by the NGPA, and (b) the quantity of MMBtu's (million Btu's) determined on the basis of the wet rule (*i.e.*, under standard test conditions), must refund any such excess revenues.[9] To the extent that revenues collected for gas sold in a first sale under the NGPA are less than or equal to the level of revenues thus calculated, and are contractually authorized, no excess revenues would have been collected, and no refunds are due.[10]

[9] Section 270.101(e) imposes a general refund obligation on any person that receives a price in excess of the maximum lawful price under the NGPA 18 CFR 270.101(e) (1983).

[10] For purposes of determining the maximum permissible level of revenues for sales of natural gas subject to section 105(b)(1) of the NGPA, the terms of the contract control, *unless* those terms result in revenues in excess of the level of revenues that would have been collected based on the product of (a) the NGPA section 102 price, and (b) the quantity of MMBtu's determined on the basis of the wet rule (*i.e.* under standard test conditions). In any instance where revenues were collected in excess of the level of revenues determined by the product of (a) and (b), those excess revenues must be refunded. In those instances where the level of revenues collected was less than or equal to the level of revenues determined by the product of (a) and (b), and are contractually authorized, no excess revenues would have been collected, and no refunds are due. In some instances, no refund may be due under this rule but a party may believe a refund is due under the contract. The Commission believes that these disputes are a matter of State law to be resolved in State court.

Commenters argue that the Commission has the discretion not to order refunds because refunds are not explicitly required by either the NGPA or *INGAA*. These commenters assert that the Commission must weigh equity and the public interest in its retroactive application of the *INGAA* decision and they argue that these considerations render full refunds inappropriate for several reasons. First, commenters argue that seller made countless investment decisions in good faith reliance on the Commission's rules adopted in Order Nos. 93 and 93–A. Second, the *status quo* cannot be restored since insufficient records are available to determine refund liabilities because the records were destroyed, were never kept, or are unorganized. Third, individual consumers will not receive the benefit of the refunds because restitution is not possible. Fourth, the administrative cost of recouping the refunds will be burdensome on first sellers and pipelines. Finally, refunds will discourage new drilling and production and further depress the natural gas production market. In addition, one commenter states that there is a serious question whether the Commission has the power to order these refunds because first sellers relied on the Commission's rules.

The Commission disagrees with these comments. Under the *INGAA* decision, the NGPA, and the Commission's implementing NGPA regulations, the Commission believes that it is legally required to order refunds in this situation. Specifically, the NGPA establishes ceiling prices and makes it unlawful for a first seller to receive a price in excess of the maximum lawful price. If the Commission did not make the measurement rule retroactive and did not require refunds, it would effectively be establishing a ceiling price higher than the maximum lawful prices prescribed in the NGPA. Since the NGPA does not contain any provision allowing the Commission to change the maximum lawful prices except in very limited circumstances,[11] it cannot waive the refund obligation. While the Commission recognizes that there are administrative costs associated with the refund process and that perfect restitution to overcharged customers may not be possible, it believes that the overriding legal considerations require the Commission to establish a refund mechanism that attempts to substantially refund overcharges to consumers.

Commenters assert that the *de minimis* principle for pipeline refunds in the interim rule should be expanded and applied to first sellers and royalty interest owners so as to waive the refund obligation for *de minimis* Btu refund amounts. These commenters suggest *de minimis* amounts of $500 and $2,000 per individual royalty interest owner to significantly reduce the inequities of any refund obligation. Although the Commission is sympathetic to these requests, the Commission believes, for the reasons discussed above, that the NGPA does not provide any legal mechanism for the Commission to waive the refund requirement.

A. Refund Period

The interim rule established two refund periods. Specifically, a 12-month refund period was established for those first sellers who sold a total of ten million Mcf (10 Bcf) or less of gas in both the intrastate and interstate markets in 1983 (small first sellers), and a 6-month refund period was established for all other first sellers.

While many commenters support the 6-month and 12-month refund periods, other commenters argue that these periods were too long. In contrast, some commenters argue that these refund periods are too short to generate refund calculations or to permit verification of the refund obligation and that these refund periods will cause cash flow problems. Commenters also suggest alternative refund periods, such as, expanding the deadlines to two years for all producers, but requiring the payment of estimated refunds within 6 months and final adjustments within 24 months.

The Commission has carefully balanced the need to refund overcharges to consumers as expeditiously as possible against the administrative burdens and potential cash flow problems associated with the refund process. The Commission believes that the 6-month and 12-month refund schedule is an appropriate compromise between these competing interests. First, the natural gas industry has been aware of the pending decision in *INGAA*, and

[11] The Commission does have the authority to establish a higher just and reasonable rate—in other words, a new maximum lawful price—for gas sold under NGPA sections 104, 108, and 109. In addition, the Commission has the authority under NGPA section 107(c)(5) to establish a special price necessary to provide reasonable incentives for producing high-cost gas. However, in order to use these sections as a means of not requiring refunds, the Commission must meet the statutory requirement of demonstrating that the new price is just and reasonable, in the case of sections 104, 108, and 109, or necessary to provide incentives under section 107(c)(5).

certainly has had the opportunity to prepare for this contingency, for some time. For example, some first sellers and their purchasers escrowed these funds pending review by the U.S. Court of Appeals and the Supreme Court. Second, the refund periods provide the first seller and the pipeline sufficient time to agree on a repayment schedule and to make the payment, if a schedule has not already been worked out.

With respect to "large" first sellers, such sellers generally should have sufficient cash flow from all operations to pay their refund liability within six months, and should generally be able to borrow funds to the extent their operations do not generate sufficient cash flow. However, in order to accommodate problems unique to many "small" first sellers, an extended 12-month refund period was provided for first sellers who sold a total of ten million Mcf (10 Bcf) or less of gas in both the intrastate and interstate markets in 1983. The Commission believes that, on balance, these considerations justify the 6-month and 12-month refund periods.

With respect to the definition of small first seller, several commenters support using the test used under the NGA as opposed to the one defined in the interim rule. They argue that the NGA test is well established, is easy to monitor, and would reduce the administrative burden on pipelines and producers. Another commenter notes that, under the interim rule definition, fewer first sellers will qualify for the 12-month refund period than under the NGA definition because the interim rule definition includes sales made in both interstate and intrastate markets. This commenter suggests raising the threshold to 12.5 Bcf to compensate for the inclusion of intrastate sales in the definition.

The Commission notes that the NGA definition of small producer and the definition used in the interim rule are intended to serve different purposes. The NGA definition of small producer is used to waive filing requirements under the Commission's NGA regulations. In contrast, the definition of small first seller in the interim rule is used to determine those first sellers that are most likely to have cash flow problems if required to meet a 6-month refund deadline. This definition, unlike the NGA definition, also includes sales in the intrastate market because the Btu refund obligation applies to intrastate as well as interstate sales. Since the NGA definition and the interim rule definition are intended to serve different purposes, the interim rule definition applies to a different group of sellers, *i.e.*, first sellers who sold a total of ten million Mcf (10 Bcf) or less of gas in both the intrastate and interstate markets in 1983.[12] The commenters do not offer any compelling reasons why the interim rule definition would not serve those purposes.

Commenters suggest that the Commission permit pipelines to assume a seller is large, unless the first seller notifies the pipeline otherwise. The Commission has adopted this suggestion because it will facilitate the refund process and help pipelines complete their refund reports without imposing an undue burden on small first sellers. Hence, the rule requires small first sellers who are not making refunds within the 6-month refund period to notify pipelines in writing of their small first seller status by November 5, 1984.

B. Method of Payment

Under the interim rule, first sellers are required to make lump-sum cash payments of the overcharged amounts, unless both the first seller and the pipeline agree to payment through billing adjustments. This approach was taken because both repayment methods have merit and it permits pipelines and first sellers a degree of flexibility in deciding the most advantageous method to refund the Btu overcharges.

One commenter argues that first sellers do not need flexibility because first sellers have had long term use of the money, and have been aware of the pending refund obligation for some time. In addition, another commenter argues that the Commission should permit pipelines flexibility to withhold payments they owe first sellers in order to retire the refund obligation, because a right to withhold guarantees that all refunds are paid.

Although the Commission is aware that first sellers have long term use of the refund money and that first sellers have been aware of a potential refund obligation for some time, it believes that first sellers should have sufficient flexibility to prevent excessive cash flow problems. Similarly, the Commission will not permit pipelines unilaterally to decide to withhold payments because this procedure may unnecessarily cause first sellers to experience severe cash flow problems. Hence, this rule permits the parties to determine which of these methods of payment is best suited to their financial situations.

C. Section 110 Offsets

Since 1983, the Commission has permitted first sellers to retroactively collect production-related cost authorized by contract under section 110 of the NGPA (section 110 costs.[13]) Since the Btu refund period and the surcharge period for section 110 costs are approximately the same, some commenters propose that the Commission should require, or alternatively, permit, first sellers and pipelines to offset Btu refunds and section 110 costs.

Seven commenters oppose the allowance of offsets and nine commenters favor it. In addition one commenter argues that first sellers have a right to offset section 110 costs and Btu refunds. Those commenters favoring offsets argue that it will prevent financial difficulties, that it provides an excellent match between those overcharged for Btu refund amounts and those responsible for the section 110 costs, and that section 110 costs and Btu refunds accrued over the same time period. Those commenters opposing offsets argue that the Btu refund question is final while the section 110 cost issue is in litigation, that the time periods affected by these orders are different, and that section 110 costs are decided on a case-by-case basis.

The Commission intended the procedures for collecting section 110 costs to be self-implementing. In contrast, the Commission has decided that specific refund procedures are necessary for Btu refunds and that this refund procedure should be closely monitored. Because of the strict timetables and other requirements established for the payment of Btu refunds, the Commission is concerned that offsets could undermine contract disputes as to whether a pipeline owes

[12] For the purpose of determining eligibility as a small first seller, a first seller need not include sales made as a royalty interest owner or by affiliated entities. The Commission is concerned that an operator may not qualify as a small first seller for refund purposes, but that one or more of the sellers that designated that operator may have qualified as a small first seller as defined in the rule. In this situation, the operator may wait until May 3, 1985, to pay that portion of the Btu refund attributable to those small sellers, but the operator must notify pipelines of this deferral by November 5, 1984.

[13] *See* Regulations Implementing Section 110 of the Natural Gas Policy Act of 1978 and Establishing Policy Under the Natural Gas Act, 48 FR 5152 (Feb. 3, 1983) (Order No. 94–A) (Final Rule and Order on Rehearing of Order No. 94); 48 FR 24,039 (May 31, 1983) (Order No. 94–C); (Order Denying Rehearing and Denying Petitions for Stay); 49 FR 585 (Jan. 5, 1984) (Order No. 94–E) (Clarification of Order No. 94). *See also*, Delivery Allowances Under Section 110 of the Natural Gas Policy Act of 1978, and Compression Allowances Under Section 110 of the Natural Gas Policy Act of 1978, 48 FR 5180 (Feb. 3, 1983) (Interim Rule); 48 Fed. Reg. 44,495 (Sept. 29, 1983) (Order No. 334, Final Rule and Order Granting in Part and Denying in Part Rehearing of Interim Rule); 49 FR 56 (Jan. 3, 1984) (Order No. 334–A, Order Denying Application for Rehearing Of Order No. 334 and Denying Requests for Stay of Order No. 334).

section 110 costs to a first seller. The Commission also believes that permitting offsets of section 110 costs and Btu refunds would complicate an already difficult process and would make Commission monitoring of Btu refunds more difficult. In addition, the Commission is concerned that permitting pipelines and first sellers to offset section 110 costs and Btu refunds could prevent the Btu refunds from reaching as many of the customers actually overcharged as possible. Considering that the section 110 orders are also subject to judicial review, the Commission believes it is more appropriate to segregate the collection of section 110 costs from the Btu refunds. For these reasons, the Commission is prohibiting the offset of section 110 costs and Btu refunds.

D. Interest

The interim rule adopted the Commission's refund policy, codified in § 270.101(e) (general refund obligation) that requires the first seller to calculate the refund plus interest under § 154.102(c) of its regulations. The interim rule also continued a longstanding Commission policy of waiving the interest payment for that portion of a refund attributable to payment of royalties or taxes to Federal or State governmental authorities unless those governmental authorities make interest payments on those refunds.[14] In addition, a first seller's refund obligation is not satisfied until the interest obligation is satisfied.

Commenters argue that the Commission should waive the entire interest requirement because first sellers were not unjustly enriched, and the overcharged amounts were reinvested in exploration, drilling, and production. These commenters characterize the interest obligation as a tremendous burden and the State that the interest obligation will drive companies out of business. Other commenters argue that the rate of interest is too high, and one commenter suggests using the interest rate on 90-day treasury notes.

The Commission is not persuaded that a valid reason exists for waiving the interest requirement entirely or generally revising the interest rates. In addition, the Commission believes that fairness to consumers and pipelines dictates that first sellers pay interest on the Btu refund amounts at the rate established in the interim rule. As stated in the interim rule, interest charges reflect a reimbursement to the rightful owner of the value of the use of funds held by first sellers. The Commission's existing regulations for calculating interest are used because the Commission believes that these regulations have already balanced the interests of sellers and purchasers.[15]

Some commenters suggest that the Commission limit the interest on Btu refund amounts which were paid into escrow to the interest that accrued in the escrow account, because money held in escrow earned a rate of return different from the prime rate. The Commission agrees that the only interest which should be refunded on escrowed amounts should be the accrued interest in the escrow account, since first sellers did not have use of this money and since an escrow procedure protects the interests of both the consumer and the seller. The Commission believes these are valid reasons for limiting the interest obligation for money paid into escrow to that interest which accrued in the escrow account on the amount required to be refunded. Moreover, this procedure is consistent with § 273.302(e)(2)(ii) of our regulations for interim collections of maximum lawful prices by first sellers pending NGPA well category determinations.[16]

Commenters request clarification on the date interest begins to accrue. Under this rule, interest begins to accrue on the date that the overcharged amount was received by the first seller, except for Btu payments that were paid into escrow and for refunds attributable to payment of royalties or taxes to Federal or State governmental authorities. In the latter situation, interest begins to accure on the date that the first seller receives the refund from the governmental royalty interest owner.

E. Refunds for Section 107(c)(5) Gas

Under NGPA section 107(b), the Commission has the authority to prescribe a higher incentive price for any first sale of high-cost gas to the extent a higher price is necessary to provide reasonable incentive to produce that gas. The Commission has issued such regulations for high-cost tight formation gas,[17] and production enhancement gas.[18]

In the interim rule, the Commission declined to make the necessary section 107(c)(5) finding for raising the ceiling price for such gas to compensate for Btu overcharges. Commenters state that the section 107(c)(5) price should not be reduced because of *INGAA*. They argue that the Commission chose the section 103 price as a convenient marker for setting the price for section 107(c)(5) gas and is not bound to that price.

The Commission believes it has the authority to establish a maximum lawful price for section 107(c)(5) gas based on the Btu content of the gas as delivered provided the statutory finding in section 107(b) is met. However, in establishing incentive prices, the Commission determined that the incentive ceiling price for tight formation gas is the lesser of the negotiated contract price or 200 percent of the section 103 price and that the incentive ceiling price for production enhancement gas is the lesser of the renegotiated price or the section 109 price. Since the section 107 prices were based on sections 103 and 109, the rules applicable to those sections should apply to the section 107 rates that are pegged to those other ceiling rates. Commenters do not offer any compelling reasons to justify a higher ceiling price for section 107(c)(5) gas or any factual data to support the statutory requirements in section 107(b). Accordingly, if a first seller has collected these maximum lawful prices based on the dry rule, refunds are due. Of course, if the contract price is less than the ceiling price, then the contract price is not changed by this rule. To the extent that contract-related rates are set on a dry basis, they must be converted to a wet basis solely for purposes of making the comparison to ensure that the ceiling rate is not breached.

F. Generation of Refund Information

Commenters argue that the rule should require pipelines to supply first sellers a full and complete data sheet of the information necessary to determine the Btu refund amounts. Commenters notes that most first sellers cannot calculate the Btu refunds without information from the pipelines, and they argue that purchasers are in the best position to supply that information. One commenter notes that without an

[14] *See* 18 CFR 273.302(e)(2)(i) (1983); and 49 FR 19293, 19299 (May 7, 1984) (to be codified at 18 CFR 154.102(d)). In the interim rule, the Commission amended § 154.102 to include a new paragraph (d) that was inadvertently removed by Order No. 47. *See* 49 FR 19293, 19295 n.10 (May 7, 1984). The Commission is finalizing this amendment.

[15] A table showing the interest rates applicable to the Btu refund is available from the Commission's Division of Public Information, Rm. 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426, (202) 357-8118. (Ask for "Btu Refund Interest Rate Table").

[16] 18 CFR 273.302(e)(2)(ii) (1983).

[17] Regulations Covering High-Cost Natural Gas Produced From Tight Formations, 45 FR 56034 (Aug. 22, 1980).

[18] High-Cost Natural Gas: Production Enhancement Procedures, 45 FR 77421 (Nov. 24, 1980); 48 FR 45097 (Oct. 3, 1983) (Order Granting Rehearing in Part and Denying Rehearing in Part).

information exchange, the computation and verification of refunds will be a difficult and burdensome task that will cause considerable delay and make the 6-month deadline unrealistic. Other commenters opposed a standard form mandated by the Commission because any data exchange should be left to the parties.

One commenter argues that the rule should require that the amount of Btu overcharge be determined by the party responsible for submitting the invoices that includes Btu adjustments. In addition, one commenter argues that purchasers should be required to provide the necessary information in sufficient time to meet deadlines. One pipeline states it will invoice its producers, but argues that first sellers must continue to bear the legal obligation to assure that the calculations are accurate and refunds properly paid. Another pipeline states that it will cooperate with first sellers to determine the correct refund amounts owed plus interest.

The Commission realizes that pipelines typically do the paperwork necessary to prepare the invoices for the gas taken from first sellers. However, we believe that the parties are in the best position to decide who should determine the amounts owed because, in some instances, pipelines require the first seller to do the paperwork to invoice for the gas taken; and, in other instances, the first seller may not have sufficient information to calculate the refund obligation without additional information from the pipeline. The Commission also believes that pipelines and first sellers should cooperate. Specifically, first sellers are liable for the refunds, but pipelines have an obligation under the NGA as part of prudent management to ensure that first sellers pay these refunds, promptly and properly.

G. Refund Payments by Royalty Owners

Many first sellers of natural gas have a contractual agreement with a landowner to pay that owner a royalty payment based on a certain percentage of the proceeds the first seller receives for the natural gas. The interim rule provided that a seller incurs a refund liability for all the proceeds received in a first sale, and that he must refund the entire overpayment, including that percentage originally paid to the royalty owner. However, in those cases where several sellers have designated an operator to both collect revenues and disburse payments covering working interests and royalty interests, the interim rule designates the operator as the one responsible for repayment of the entire refund.

Some commenters argue that operators should not be responsible for refunds attributable to royalty interest owners. Other commenters argue that it is unclear whether royalty interest owners must pay this refund. One commenter asserts that the refund obligation should be placed on the royalty interest owners where it belongs.

Commenters also complain that collecting refunds from royalty interest owners will be impossible because royalty interest owners may have become judgment-proof, the well may have changed ownership, or the well may have been plugged. Other commenters suggest that first sellers and operators should be required to collect refunds on a "best-efforts" basis, and that operators should not be responsible for refunds if the royalty interest owner is unable to pay, if the refund is uncollectible by law, or if the refund is not otherwise collectible from a royalty interest owner.

Two commenters complain that while the amount they are owed by royalty interest owners is large, the cost of collection may exceed this amount. Another commenter argues that operators should be permitted an offset for the costs of collection. Finally, commenters note that one State, Wyoming, is refusing to make any refunds of overpayments of royalties; and that the Department of Interior has time-consuming procedures and may refuse to pay portions of the overpayments of royalties. These commenters argue that the rule should exempt or defer refund amounts attributable to States and the Department of Interior until they pay the royalty amounts they owe.

The Commission recognizes the problems that first sellers may have in recovering money from royalty interest owners. However, receipt of a first sale price in excess of the statutorily-set maximum lawful price is a violation of the NGPA, and the Commission has no authority to adjust these ceilings, except in certain limited circumstances not applicable here.[19] Numerous first sellers collected first sale prices in excess of the maximum lawful prices under the NGPA, since they priced gas based on the Btu content of the gas delivered to the pipeline. Therefore, these sellers incurred a refund liability, and it is their responsibility to refund the entire overpayment, including that percentage paid to royalty interest owners. Some sellers may have placed the Btu overcharge amounts in escrow pending a decision in *INGAA*, and do not face the task of securing refunds from royalty interest owners. For other sellers who failed to foresee this contingency, the Commission believes that securing refunds is a part of doing business. In addition, the Commission does not have jurisdiction over royalty interest owners, and, therefore, it cannot order royalty interest owners to make refunds.[20] Hence, the Commission is not changing the requirement that first sellers are responsible for the entire Btu refund.[21] However, the Commission is aware that operators change and working interests in wells are assigned to others. Therefore, the Commission is clarifying that an operator is responsible for refunds only during that period of time he operated a well and a first seller is responsible for refunds only during that period of time he owned an interest in a well, except as provided otherwise by contract, deed or lease.

While the Commission is not relieving first sellers of their responsibility for the entire Btu refund, the Commission is concerned that first sellers may have difficulty making timely collection of that portion of the Btu refund amounts attributable to some royalty interest owners, including some States and the Department of the Interior. In order to permit first sellers sufficient time to collect these monies, the Commission is permitting first sellers to defer that portion of the Btu refund attributable to royalty interest owners until the first seller receives payment from the royalty interest owner or November 5, 1986, whichever occurs first. However, the Commission stresses that first sellers should make every effort to collect and pay the entire Btu refund within the appropriate 6- or 12-month time limits. The Commission expects that the Department of the Interior will make most of the refunds it owes in a timely manner, especially those refund amounts attributable to the period after November 9, 1981.[22] Those first sellers

[19] *See* n.11, *supra*.

[20] *See* Mobil Oil Corp. v. FPC, 483 F.2d 256 (D.C. Cir. 1972), *cert. denied*, 406 U.S. 976 (1972), *reh'g denied*, 409 U.S. 902 (1972), and *reh'g denied* 409 U.S. 903 (1972).

[21] In addition, the Commission has also held single parties responsible for all refunds in other circumstances under the NGA. *See* Tenneco Oil Company v. FPC, 422 F.2d 489 (5th Cir. 1971); and Sauder v. DOE, 648 F.2d 1341 (Temp. Emer. Ct. App. 1981).

[22] *See* Refund Procedures and Order to Pay Royalties, 49 FR 31,779 (Aug. 8, 1984). *See also* 86 Int. Dec. 1090 (1981).

Commission staff will also initiate talks with the Department of the Interior to help facilitate payment of the refunds owed by the Interior Department.

who defer the royalty interest owner portion of the Btu refund must notify pipelines of the deferral before the end of the applicable 6- or 12-month refund period.

The Commission realizes that a few first sellers who are diligently seeking refunds from royalty interest owners will be unable to meet the November 5, 1986, time limit. In these situations, a first seller may always seek a further deferral of the refund under section 502(c) of the NGPA. However, the Commission is not inclined to grant such applications unless the circumstances and inequities require it. In any event, the first seller must pay interest under the provisions of this rule until the entire Btu refund is paid to the purchaser.

H. Refund Reports by Interstate and Intrastate Pipelines

The interim rule requires interstate and intrastate pipelines that are purchasers in a first sale to file two refund reports. These reports describe the status of the first seller's refund obligation by detailing (1) those first sellers that have made refunds and the amount of refunds received, and (2) those first sellers that have not made refunds, the amount owed, and the reasons for nonpayment. The first report would be filed by December 18, 1984, which is 45 days after the last day of the six-month first seller refund period. The second report would be filed by July 3, 1985, which is 60 days after the last day of the 12-month refund period. Because the State regulatory agencies will be interested in monitoring the refund process, the interim rule requires intrastate pipelines to file a copy of their report with the State agency having jurisdiction over intrastate sales. The interim rule requests comments on the reporting requirements imposed on intrastate pipelines.

Most commenters addressing the intrastate reporting requirements support these requirements because they properly balance the interests of the States, participants and the public. Due to the magnitude of the refunds, the complexity associated with monitoring them, and the long term nature of the overcharges, the Commission is adopting the interim rule reporting requirements for interstate and intrastate pipelines already discussed with the modifications discussed below.[23] Specifically, the Commission recognizes that it would be administratively infeasible to monitor refunds from all natrual gas first sellers without the aid of refund reports from interstate and intrastate pipelines. In addition, the Commission intends to institute a comprehensive audit program for all refunds that are still unpaid at the end of the appropriate refund period.

The interim rule also requests comments on the Commission's decision not to require refund reports from all first sale purchasers. Commenters argue that reporting requirements should not be expanded to Hinshaw pipelines or local distribution companies (LDCs). They state that most State commissions already have strict requirements for refunds by LDCs and that the Commission lacks jurisdiction over LDCs to order refund reports. In addition, these commenters assert that refund reports by Hinshaw pipelines and LDCs would impose unnecessary costs and serve no valid purpose, since pipeline reports and Commission audits are sufficient to monitor compliance; and that refund reports would place duplicative and perhaps conflicting demands on LDCs. In contrast, other commenters argue that the final rule should require refund reports from all first sale purchasers in order to monitor the flow of refund monies.

The Commission does not believe that reports from every first sale purchaser are necessary to properly monitor this refund process. In addition to those reasons stated by the commenters, the Commission believes that refund reports from all first sale purchasers are unnecessary because sales of natural gas which are not made to interstate and intrastate pipelines comprise a small proportion of the total sales made in the natural gas market.

One commenters argues that the refund reports should be expanded to include a statement of the total amount due from each first seller with amounts broken down by principal and interest. The Commission believes that the refund reports should separately state principal and interest and that this information is necessary to properly monitor the refund process. Consequently, the reporting requirements are modified to require that refund reports show the amounts of principal and interest received.

As discussed previously, this rule extends the period during which sellers may pay refunds from royalty interest owners. In view of this extension, an additional report will be necessary at the end of that two-year deferral period in order to facilitate the monitoring by the Commission of the refund process. Hence, intrastate and interstate pipelines must file a third and final refund report by January 5, 1987, detailing (1) those first sellers from whom refunds have been received since May 3, 1985, and (2) those first sellers from whom refunds have not been recovered and the reason for the nonpayment.[24]

One commenter argues that any reports by intrastate pipelines should be made only to the appropriate State regulatory agency and not the Commission. Other commenters suggest removing the requirement to give reasons for nonpayment by producers, since the pipeline may not know and finding out will be burdensome and pointless. These arguments are rejected because the Commission needs refund reports from intrastate pipelines to ensure that first sellers comply with this rule. Similarly, the Commission requires pipelines to provide the reasons for nonpayment by a first seller because that information is necessary to monitor Btu refunds and pipelines are in the best position to obtain that information from the first seller.

IV. Pipeline Refunds to Customers

Under the NGA, the Commission has jurisdiction over the rates that interstate pipelines charge to their customers. This rule expands and clarifies the regulations promulgated by the interim rule to pass through any refunds pipelines receive from first sellers and other pipelines.

A. Refund Period and Method of Payment for Interstate Pipelines

The interim rule notes that each pipeline has a mechanism in its purchase gas adjustment clause (PGA) to pass through refunds received from first sellers by reducing the pipeline's unrecovered purchased gas costs, which costs would normally be recovered from the pipeline's customers over the next 6-month period. But, because the Btu refund was accrued over a 5-year period and because the refund amounts are large, the interim rule requires interstate pipelines to make lump-sum cash payments to those customers actually overcharged from December 1, 1978, instead of adjusting their current rates.

Commenters argue that, in addition to those reasons stated in the interim rule, the Commission should use the PGA

[23] The authority to require these reports is encompassed within the Commission's general authority in section 501(a) of the NGPA "to perform any and all acts * * * as it may find necessary or appropriate to carry out its functions" under the NGPA, which functions include ensuring that the maximum lawful prices are not exceeded in any first sale transaction.

[24] This report will be due 60 days after November 5, 1986, or January 5, 1987. But, the second report will be due by June 17, 1985, which is 45 days, instead of 60 days, from May 3, 1985, because the second report is no longer the final refund report.

mechanism for several reasons. First, the PGA mechanism permits pipelines to retain markets by reducing current costs. Second, it reduces accounting and administrative burdens, since pipelines need not establish new procedures to verify, allocate and distribute the Btu refunds. In contrast, other commenters argue that passing the refunds through the PGA mechanism will distort the current and future costs of gas, will cause serious inequities (especially to past customers who do not currently purchase gas), and will delay signals to producers that the market cannot bear the high gas prices already being charged.

Similarly, some commenters support the lump-sum refund mechanism based on historical purchases. They argue that lump-sum refunds avoid allocation problems, prevent unfairness, are more accurate, avoid market distortions and provide State commissions with maximum flexibility. Other commenters describe the lump-sum method as fair, equitable and reasonable. In addition, one commenter notes that the lump-sum mechanism will benefit those customers whose conservation efforts decreased their use of gas.

The Commission believes that the use of the PGA mechanism to pass through these refunds could result in inequities. For example, customers which do not now purchase gas from an interstate pipeline would not receive a refund with a PGA passthrough, and it would be unfair if the customers actually overcharged did not receive a refund in the same proportion to their overcharges, given the magnitude and long-term nature of the overcharges.

In contrast, the Commission believes that the lump-sum mechanism is a fair and equitable procedure. Specifically, the lump-sum mechanism ensures that refunds will be made to those customers who overpaid the pipelines, and this mechanism will return the refunds to the ultimate consumer more quickly. Finally, the Commission recognizes that the Btu refund may temporarily disrupt the current gas market. But, the Commission believes that a lump-sum cash payment requirement will disrupt the current natural gas market less than the use of the PGA mechanism, since a lump-sum cash payment is made to those overcharged and does not adjust current prices. For these reasons and for the reasons stated in the interim rule, this rule requires interstate pipelines to make lump-sum cash payments to those customers actually overcharged from December 1, 1978.

The interim rule also requires interstate pipelines to pay Btu refunds to those customers actually overcharged within 15 days of receipt of the refunds from a first seller, or pay interest from the first day the refund was received from the first seller until paid. In order to reduce the administrative burden on pipelines, the interim rule permits pipelines to defer lump-sum payment to its customers until it has accumulated refunds equivalent to one mill per Mcf or Dkt for the pipelines's 1983 annual sales. In no event could the pipeline defer payments for more than 120 days or 30 days after the last refund period. If the pipeline defers payment more than 15 days, the pipeline is liable for interest from the date it receives the refunds from the first seller until the pipeline paid its jurisdictional customers.

The interim rule also notes that, to the extent a pipeline's refunds are *de minimis*, it may request a waiver of the lump-sum payment requirement. In addition, if a pipeline has already paid the first seller the Order No. 93 costs, but has not yet amortized those paid costs, then the interim rule permits the pipeline to offset these unamortized amounts against the jurisdictional portion of the refunds received. Because of the magnitude of the refunds, and for the reasons discussed below, the Commission is adopting these requirements with minor modification.

The Commission notes that pipelines were apparently confused about how to allocate refunds to their customers actually overcharged. Specifically, two commenters argue that pipelines must allocate refunds based on the historical sales made by a pipeline during the period of Order No. 93 overpayments. One commenter will base a customer's refund on the customer's *pro rata* portion of total purchases during the PGA periods in which Order No. 93 amounts were collected.[25] Another commenter asks whether each customer's share of refunds may be based on sales during a representative period compared to total sales during that period. Similarly, commenters are apparently confused on the method for processing refunds received from other pipelines. Specifically, three commenters state that the Commission should clarify or prescribe standards for processing refunds received from other pipelines.

Some commenters argue that the Commission intended for pipelines to refund amounts received from other pipelines in lump sums within 15 days of receipt. One commenter suggests arriving at this result by defining funds received from down-stream pipelines from another pipeline as within the definition of Btu refunds. Another commenter argues that second pipelines are not exempt from lump-sum refunds because the administrative burden is no greater than for first seller refunds. Another commenter asserts that the interim rule is silent on the proper manner to handle refunds received from other pipelines and argues that the PGA mechanism is the best method because it avoids the administrative hardship of continuous lump-sum refunds. In contrast, one commenter argues that using the PGA mechanism for refunds received from other pipelines is contrary to the Commission's goal of distributing refunds to those customers actually overcharged.

The Commission believes that a pipeline and its jurisdictional customers are in the best position to work out a procedure that (1) determines the portion of the aggregate amount of Btu refunds which are due a pipeline's jurisdictional customers actually overcharged based on the proportion of the total Btu refunds originally paid by those jurisdictional customers; and (2) refunds this amount to each jurisdictional customer in the same proportion that each jurisdictional customer originally paid the Btu refund amounts. For example, it may be appropriate for a pipeline to allocate the aggregate of all Btu refunds received from both first sellers and other pipelines based on each customer's purchases during the PGA periods in which Order No. 93 amounts were collected compared to the total sales during that period. Pipelines would then pay this refund to those customers in a lump-sum cash payment. In any event, pipelines are to process Btu refunds received from other pipelines in the same manner as Btu refunds received from first sellers because this procedure

[25] Texas Eastern Transmission Corporation (Texas Eastern) requested clarification, or in the alternative, rehearing of the interim rule (Docket No. RM84-6-002). Specifically, Texas Eastern asked whether the interim rule permits pipelines to spread the Btu refunds among customers based on each customers *pro rata* share of purchases, for the period that significant amounts of Order No. 93-A dollars were included in the PGA. If the interim rule did not permit this approach, Texas Eastern requested that the Commission grant rehearing and issue rules in conformity with Texas Eastern's interpretation of the interim rule. Since Texas Eastern's interpretation is a permissible procedure for determining the refunds owned to its jurisdictional customers, the Commission is not treating its filing as a rehearing request. The specifics of Texas Eastern's proposed refund plan which was filed by Texas Eastern in Docket No. RP84-89-000 will be addressed by a separate order to be issued by the Commission in Docket No. RP84-89-000.

will return the Btu refund amounts to those customers actually overcharged.

Pipelines characterize the 15-day refund period as burdensome, unrealistically brief, impractical, intolerable, and an unreasonable burden. Other commenters argue that 15 days is insufficient time to verify, allocate and distribute the refunds. Commenters suggest several alternative payment schedules that provided longer refund periods. These schedules ranged from 20 days to 12 months.

The Commission is not persuaded by these comments. Fifteen days should be sufficient time to determine the proportion of the aggregate amount of the Btu refunds which are due the pipeline's jurisdictional customers actually overcharged based on the proportion of the total Btu refunds originally paid by those jurisdictional customers and to pay the necessary refund amount. Pipelines that meet this 15-day refund period will have use of this money without reimbursing the rightful owner of the value of the use of these funds. Alternatively, pipelines may always take longer than the 15-day refund period (subject to a maximum 120-day holding period), but they must pay interest from the date of receipt until payment is made to its jurisdictional customers. The Commission believes the requirement that pipelines pay interest from the date of receipt until payment is made, if payment is not made within 15 days, fairly balances the competing interests of consumers and pipelines.

One commenter suggests that the rule permit pipelines to flow through the principle amount of any *de minimis* refunds without interest because the interest calculations are so complex. This rule does not adopt this suggestion. The Commission believes that it would be unfair to consumers to waive interest on *de minimis* amounts, since the Commission does not believe that these interest calculations will be overly burdensome on the pipelines.

Finally, while the Commission does not intend to treat pipelines as guarantors of refunds, the Commission urges the interstate pipelines to actively pursue any refunds owed by first sellers. The Commission believes that these pipelines have an obligation under the Natural Gas Act as part of prudent management to ensure that these refunds are paid promptly and properly.

B. Refund Reports

In addition to those refund reports described earlier, the interim rule requires interstate pipelines to file two additional reports describing the refund payments made to interstate pipeline customers by detailing (1) the actual amounts received, and (2) the total amount the interstate pipeline paid its customers and the basis used to apportion the Btu refund amount among those customers. These reports are due December 18, 1984, and July 3, 1985. These reporting requirements are necessary to ensure that all interstate pipeline customers have received their refunds. In addition, these reports will assist the Commission as well as the interstate pipeline customers in reviewing the refund payments.[26]

Commenters argue that the final rule should require refund reports from every person purchasing gas for resale in order to monitor the flow of refund monies and to assure that refunds have been properly and fairly allocated. In contrast, other commenters argue that reporting requirements should not be expanded to LDCs. In addition, one commenter argues that refund reports concerning customers should show the total amount paid each of the pipeline's customers and the interest due each of the customers as of the date of the report.

The Commission believes it can monitor the flow of Btu refunds without requiring reports from every person purchasing gas for resale. In addition, the Commission believes that the States are in a better position to monitor the LDCs. Hence, the Commission is adopting the interim rule reporting requirements with two modifications. First, the reporting requirements are modified to require that refund reports show the amounts of principal and interest paid. Second, the Commission is requiring an additional refund report from interstate pipelines because first sellers may defer payment of the Btu refund amounts attributable to royalty interest owners. This report is necessary to monitor the refund process to its completion. Thus, interstate pipelines must file refund reports by December 18, 1984, June 17, 1985, and January 5, 1987, detailing (1) the actual Btu refund amounts received by the pipeline and (2) the total Btu refund amounts that the interstate pipeline paid its jurisdictional customers and the basis used to apportion the refund amounts among those customers.[27] The Commission believes that this approach provides the Commission sufficient information to track the refund process without unduly interfering with the traditional jurisdiction of the States over retail sales of natural gas.

V. Refunds at the State Level

Although the Commission stresses its intention that refunds should reach the ultimate consumer, the interim rule only requires refunds as far as intrastate pipelines and interstate pipeline's jurisdictional customers.[28]

One commenter argues that the Commission has the authority and should exercise that authority to return refunds, subject to a rule of reason, to the consumers actually overcharged in the same proportion that those customers were overcharged. Another commenter argues that the absence of State rate regulation over the interstate pipelines' direct sale transactions underscores the need for the Commission to ensure that refunds are paid to direct sale end-users. Other commenters argue that, if States are allowed to determine the methods, procedures, and timing of refunds, there are no assurances that the ultimate consumer will benefit. Alternatively, commenters suggest that the Commission strongly advise the States or provide guidance to the States on how intrastate pipelines and LDCs should refund overcharges to the ultimate consumer. In contrast, commenters argue that the Commission lacks jurisdiction to order refunds by LDCs. Other commenters argue that refunds by LDCs are best left to State agencies.

While the commission stresses that these Btu refunds should be passed through to the ultimate consumer, it has decided against establishing specific refund procedures for LDCs to flow through these refunds. States are better attuned to the needs of its consumers and to local market conditions, and are better equipped to establish and monitor the local refund procedures necessary for the different problems facing a particular State. In addition, establishing specific procedures to flow through

[26] The authority to require these reports is section 501(a) of the NGPA. *See* n.28, *supra*.

[27] The last report is due 60 days after November 5, 1986. The second report is due by June 17, 1985, which is 45 days, instead of 60 days, from May 3, 1985, because the second report is no longer the final report.

[28] The Process Gas Consumers Group, the American Iron and Steel Institute, the Council of Industrial Boiler Owners, The Brick Institute of America, and Kimberly-Clark Corporation (Docket No. RM84-6-001) requested rehearing. Specifically, they requested that the Commission modify the interim rule, pursuant to the authority delegated in NGPA section 501 and 504, to require that all Btu adjustment refunds be flowed through to end-users in the same proportion that such users were originally overcharged due to the implementation of the "dry" rule. The Commission denies their petition for rehearing for those reasons discussed in the text that follows.

refunds at the State level would unnecessarily and unreasonably interfere with the traditional jurisdiction of State commissions over retail sales of natural gas, while imposing significant administrative burdens on this Commission. The Commission has also decided not to establish refund procedures for refunding monies to an interstate pipelines' direct sale customers because it believes that these customers have sufficient direct contact with the pipeline to negotiate a refund schedule.

VI. Miscellaneous

A. Section 502(c) Adjustments

Commenters note that while relief from provisions of this refund order is available under section 502(c) of the NGPA, the Commission should not view the theoretical possibility of this relief as a remedy for any special hardships or inequities which could result from this refund order, but rather, should amend the interim rule to remove such hardships or inequities.

The Commission has sought to implement a refund mechanism that will minimize hardships and inequities. However, it recognizes that, given the amount of refunds and the extensive number of buyers and sellers involved in the refund process, hardships or inequities may occur. The Commission believes that section 502(c) will provide an appropriate mechanism to remedy any hardships and inequities, which may occur, on a case-by-case basis. Although the Commission may not use section 502(c) to change statutory requirements, such as the maximum lawful prices under the NGPA or to reduce the Btu refund amount owed, parties may seek relief under section 502(c) from provisions of these refund procedures which they believe cause special hardships, inequities, or an unfair distribution of burdens. However, the Commission expects few applications of this type and is not inclined to grant them unless the applicant's claim for relief is supported by compelling reasons.

B. Identity of First Seller

One commenter suggests that whenever there are two consecutive "first sales" or an accounting for gas for payment purposes after processing, any Btu refunds should be based on the *second* "first sale." Specifically, the one delivering the residue gas at the tailgate of the plant to the pipeline-purchaser should be responsible for the refunds because of the difficulty of tracing revenues from the wellhead. Another commenter asserts that the rule should be clarified to apply to every kind of "first sale."

The Commission recognizes that in some instances there may be a string of consecutive first sales because of gathering, processing, and transportation agreements. In these situations, the Commission has decided that the refund obligation applies to every kind of first sale, as a first sale is defined under the NGPA,[39] since the Commission has jurisdiction over all first sellers and it would be unfair to hold one first seller responsible for the refund from a string of first sales. Hence, if the seller in a first sale receives revenues in excess of the product of the applicable maximum lawful price under the NGPA and the quantity of MMBtu's determined on the basis of the wet rule, a refund is owed.

VII. Paperwork Reduction Act

The refund reports required under Ordering Paragraph Nos. E, F, and G and §§ 154.38(h)(3)(vi), (vii), and (viii) are information collection requirements that are being submitted to the Office of Management and Budget (OMB) for its approval under the Paperwork Reduction Act, 44 U.S.C. 3501–3520 (1982) and OMB's regulations, 5 CFR Part 1320 F(1984). Comments on these provisions should be sent to the Office of Information and Regulatory Affairs of OMB (Attention: Desk Officer for the Federal Energy Regulatory Commission). Interested persons can obtain information on the information collection provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426 (Attention: Joseph Hartsoe, (202) 357–8033).

VIII. Effective Date

The Commission incorporates the reasoning and findings in the interim rule that good cause exists under the Administrative Procedure Act (APA), 5 U.S.C. 553(b) (1982), for finding that a notice of proposed rulemaking is unnecessary, impracticable and contrary to the public interest. Because this rule adopts and modifies the interim rule and the interim rule is already in effect, the Commission is concerned that, if this final rule were not effective upon issuance, first sellers and pipelines might apply the interim rule in a manner inconsistent with this final rule before this rule becomes effective. Therefore, the Commission finds that good cause exists under the APA, 5 U.S.C. 553(d) (1982), to make this rule effective upon issuance, except for the requirements to file 6-month, 12-month, and 30-month refund reports. These refund reports are information collection requirements under the Paperwork Reduction Act and are subject to OMB approval. Accordingly, the refund report requirements (set forth in Ordering Paragraph Nos. E, F, and G and §§ 154.38(h)(3) (vi), (vii) and (viii) of this rule) will become effective December 1, 1984. If OMB's approval and control number have not been received by this effective date, the Commission will issue a notice temporarily suspending the effective date of the refund reporting requirements.

In consideration of the foregoing, The Commission Orders:

(A) Any first seller that collected revenues in excess of the product of (a) the applicable maximum lawful price established by the NGPA, and (b) the quantities of MMBtu's determined on the basis of § 270.204, shall refund any such excess revenues. This refund shall be paid in full by November 5, 1984, unless the first seller is a small first seller, *i.e.*, a first seller that sold a total of ten million Mcf or less of gas, in both the interstate and intrastate markets, during 1983. A small first seller shall pay the refunds in full by May 3, 1985, but must notify in writing any pipeline to which he owes refunds that he is a small first seller by November 5, 1984, to qualify for this extension. To the extent that revenues for gas sold in a first sale under the NGPA are less than or equal to the level of revenues based on the product of (a) and (b), and are contractually authorized, no refunds are due.

(B) First sellers may defer payment of that portion of the Btu refund attributable to royalty interest owners until the first seller receives payment from the royalty interest owner or November 5, 1986, whichever occurs first. Those first sellers that defer payment of that portion of the Btu refund attributable to royalty interest owners must notify pipelines that some royalty payments are deferred before the end of the applicable 6- or 12-month refund period.

(C) The parties to the first sale transaction may choose the method of payment of this refund except that pipelines and first sellers may not offset Btu refunds and production-related costs permitted under section 110 of the NGPA. Those pipelines that have already begun to collect refunds by using billing adjustments without the consent of the seller can continue this method of payment only if the seller agrees. If the parties cannot agree,

[39] *See* section 2(21) of the NGPA, 15 U.S.C. 3301(21) (1982).

payment shall be made in a lump-sum cash payment.

(D) Interest shall be calculated in accordance with § 154.102 (c) and (d) of the Commission's regulations for refunds except that the interest obligation for money paid into escrow is that interest which accrued in the escrow account on the amount required to be refunded.

(E) By December 18, 1984, intrastate and interstate pipelines shall file a refund report with the Commission detailing (1) those first sellers that have made refunds, and the refund amounts that have been received by the pipeline by separately stating the principal and interest received from each first seller; and (2) those first sellers that have not made refunds, and the refund amounts that have not been received by the pipeline by separately stating the principal and interest due from each first seller, and the reasons for such nonreceipt. Of those first sellers who are small first sellers, as defined in this order, only those who have paid the refund amounts in full need to be identified. Intrastate pipelines shall also file a copy of the report with the State regulatory agency having jurisdiction over such pipeline.

(F) By June 17, 1985, intrastate and interstate pipelines shall file a refund report with the Commission detailing (1) those small first sellers not previously identified that have made refunds, and the refund amounts that have been received by the pipeline by separately stating the principal and interest received from each small first seller, and (2) those small first sellers that have not made refunds, and the refund amounts that have not been received by the pipeline by separately stating the principal and interest due from each small first seller, and the reasons for such nonreceipt. Additionally, any payments received since the date of the pipeline's last report from other than small first sellers shall be included in this report by providing the information required in paragraph (E) above. Intrastate pipelines shall also file a copy of this report with the State regulatory agency having jurisdiction over such pipeline.

(G) By January 5, 1987, intrastate and interstate pipelines shall file a refund report with the Commission detailing (1) those first sellers that have made refunds after May 3, 1985, and the refund amounts received by the pipeline by separately stating the principal and interest received from each first seller, and (2) those first sellers that have not made refunds, the refund amounts that have not been received by the pipeline by separately stating the principal and interest due from each first seller, and the reason for such nonreceipt. In addition, intrastate pipelines shall file a copy of this report with the State regulatory agency having jurisdiction over such pipeline.

List of Subjects in 18 CFR Part 154

Natural gas.

(H) The regulations in Part 154, Subchapter E, Chapter I, Title 18, Code of Federal Regulations are amended as set forth below.

By the Commission. Commissioner Richard dissented in part, with a separate statement to be issued later.

Kenneth F. Plumb,

Secretary.

PART 154—[AMENDED]

1. The authority citation for Part 154 is revised to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); EO 12,009, 3 CFR 142 (1978); Administrative Procedure Act, 5 U.S.C. 551–537 (1982); Natural Gas Act, 15 U.S.C. 717–717w (1982); Federal Power Act, 16 U.S.C. 791a–828c (1982); Natural Gas Policy Act, 15 U.S.C. 3301–3432 (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1982); Interstate Commerce Act, 49 U.S.C. 1–27 (1976).

2. Section 154.38(h) is revised to read as follows:

§ 154.38 Composition of rate schedule.

* * * * *

(h) *Pipeline recovery of the Btu Measurement Adjustments.*

(1) A pipeline which receives Btu refunds shall make refunds in accordance with the provisions of this paragraph, notwithstanding any pipeline tariff provisions to the contrary.

(2) For the purposes of this paragraph, "Btu refunds" means those monies held in escrow accounts and those monies received by the pipeline which are attributable to refunds and interest accrued thereon due in accordance with the August 9, 1983, Court of Appeals decision in *Interstate Natural Gas Association of America* v. *Federal Energy Regulatory Commission*, 716 F.2d 1 (D.C. Cir. 1983), *cert. denied*, 104 S. Ct. 1616 (1984).

(3) A pipeline subject to paragraph (h)(1) shall refund Btu refunds to those jurisdictional customers actually overcharged from December 1, 1978, in accordance with the following:

(i) The pipeline shall first determine the portion of the aggregate amount of the Btu refunds which are due its jurisdictional customers actually overcharged based on the proportion of the total Btu refunds originally paid by those jurisdictional customers;

(ii) The pipeline shall then refund the amount determined in paragraph (h)(3)(i) to each jurisdictional customer actually overcharged in the same proportion that each jurisdictional customer originally paid the Btu refund amounts;

(iii) This refund shall be made in a lump-sum payment to each jurisdictional customer;

(iv) Interest shall be computed in accordance with § 154.67(c) of the Commission's regulations from the date of receipt from a first seller or supplying pipeline to the date the amount is disbursed to its jurisdictional customers, if a pipeline fails to refund the jurisdictional portion of the Btu refunds within 15 days after receipt from a first seller or supplying pipeline;

(v) The pipeline may defer the payment of the jurisdictional portion of any Btu refunds refunded to it until it has accumulated such Btu refunds which cumulatively equal one mill per Mcf (or Dkt) for the pipeline's annual sales during calendar year 1983, at which point the pipeline shall refund the jurisdictional portion of all Btu refunds received in accordance with paragraphs (h)(3) (i), (ii), and (iii) of this section. However, in no event may the pipeline hold such Btu refunds for a period greater than the earlier of 120 days from the date of receipt or 30 days after November 5, 1986. Such deferral shall be subject to the interest requirement in paragraph (h)(3)(iv) of this section;

(vi) The pipeline shall submit to the Commission no later than December 18, 1984, a refund report showing, for each source from which Btu refunds are obtained, the following information:

(A) The total amount of the Btu refunds the pipeline received;

(B) The total amount of interest the pipeline received;

(C) The date(s) the pipeline received the refund(s);

(D) The total amount the pipeline paid to each of its jurisdictional customers;

(E) The total amount of interest the pipeline paid to each of its jurisdictional customers;

(F) The date(s) of the payment(s);

(G) The basis used to determine the payment(s) for each of the pipeline's jurisdictional customers.

(vii) The pipeline shall submit, no later than June 17, 1985, a refund report describing, for each source from which Btu refunds are obtained, those refunds received or paid (including deferred amounts paid) since filing the report under paragraph (h)(3)(vi) of this section. For those refunds subject to this

paragraph, this report should show all the information enumerated in paragraph (h)(3)(vi).

(viii) The pipeline shall submit, no later than January 5, 1987, a final refund report describing, for each source from which Btu refunds are obtained, those refunds received or paid (including deferred amounts paid) since filing the reports under paragraphs (h)(3) (vi) and (vii) of this section. For those refunds subject to this paragraph, this report should show all the information enumerated in paragraph (h)(3)(vi).

3. In § 154.102, paragraph (d) as added in the interim rule published May 7, 1984 (49 FR 19299) is made final and republished to read as follows:

§ 154.102 Suspended changes in rate schedules; motions to make effective at end of period of suspension; procedure.

* * * * *

(d) No interest is required to be paid on any portion of a refund which represents payments of royalties or taxes to Federal or State governmental authorities, except to the extent that such authorities pay interest to the first seller when refunding overpayments of royalties or taxes.

[FR Doc. 84-25408 Filed 9-25-84; 8:45 am]

BILLING CODE 6717-01-M

18 CFR Part 282

[Docket No. RM 79-14]

Order Prescribing Natural Gas Incremental Pricing Thresholds

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order Prescribing Incremental Pricing Thresholds.

SUMMARY: The Director of the Office of Pipeline and Producer Regulation is issuing the incremental pricing acquisition cost thresholds prescribed by Title II of the Natural Gas Policy Act and 18 CFR 282.304. The Act requires the Commission to compute and publish the threshold prices before the beginning of each month for which the figures apply. Any cost of natural gas above the applicable threshold is considered to be an incremental gas cost subject to incremental pricing surcharging.

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: Kenneth A. Williams, Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, D.C. 20426, (202) 357-8500.

SUPPLEMENTARY INFORMATION:

Publication of prescribed incremental pricing acquisition cost threshold of the NGPA of 1978 (Docket No. RM79-14). Order of the Director, OPPR.

Issued: September 21, 1984.

Section 203 of the NGPA requires that the Commission compute and make available incremental pricing acquisition cost threashold prices prescribed in Title II before the beginning of any month for which such figures apply.

Pursuant to that mandate and pursuant to § 375.307(1) of the Commission's regulations, delegating the publication of such prices to the Director of the Office of Pipeline and Producer Regulation, the incremental pricing acquisition cost theshold prices for the month of October 1984 is issued by the publication of a price table for the applicable month. The incremental pricing acquisition cost threshold prices for months prior to January 1984 are found in the tables in § 282.304.

List of Subjects in 18 CFR Part 282

Natural gas.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

TABLE I—INCREMENTAL PRICING ACQUISITION COST THRESHOLD PRICES

	January	February	March	April	May	June	July	August	September	October
	Calendar Year 1984									
Incremental pricing threshold	$2.283	$2.291	$2.299	$2.307	$2.315	$2.323	$2.331	$2.338	$2.345	$2.352
NGPA section 102 threshold	3.586	3.609	3.632	3.656	3.680	3.705	3.730	3.752	3.774	3.797
NGPA section 109 threshold	2.359	2.367	2.375	2.383	2.391	2.399	2.407	2.414	2.421	2.428
130% of No. 2 fuel oil in New York City threshold	7.730	7.570	7.570	8.550	8.590	7.670	7.930	7.740	7.650	7.230

[FR Doc. 84-25556 Filed 9-25-84; 8:48 am]

BILLING CODE 6717-01-M

18 CFR Part 375

[Docket No. RM84-18-000]

Delegation to the Director of the Office of Hydropower Licensing and the Director of the Office of Electric Power Regulation

Issued: September 6, 1984.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; correction.

SUMMARY: On July 13, 1984, the Federal Energy Regulatory Commission issued a final rule in Docket No. RM84-18-000 concerning delegations to the director of the Office of Hydropower Licensing and the Director of the Office of Electric Power Regulation. This notice corrects an error in the codification of that rule, which appeared in the Federal Register of Friday, July 20, 1984, 49 FR 29369.

EFFECTIVE DATE: July 13, 1984.

FOR FURTHER INFORMATION CONTACT: Fred A. Wolgel, Rulemaking and Legislative Analysis Division, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357-8033.

SUPPLEMENTARY INFORMATION: The Federal Energy Regulatory Commission issued a final rule in Docket No. RM84-18-000 on July 13, 1984, 49 FR 29369 (July 20, 1984), that erroneously placed subsection (w) under § 375.314 instead of under § 375.308. In addition, a typographical omission occurred in the text of § 375.308(r).

Therefore, the following corrections are made in FR Doc. 84-19164 appearing on 29369 in the Federal Register issue of July 20, 1984:

1. In § 375.308(r), the words "small power production and" are inserted immediately following the words "qualifying status for".

2. In § 375.314, paragraph (w) is redesignated as new paragraph (u) in § 375.308.

3. In § 375.314, paragraphs (x) through (ff) are redesignated as paragraphs (w) through (ee).

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25428 Filed 9-25-84; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 177 and 178

[Docket No. 84F-0049]

Indirect Food Additives; Polymers; Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of hydrogen peroxide in the sterilization of food contact surfaces prepared from ionomeric resins, ethylene-vinyl acetate copolymers, and certain polyethylene phthalate polymers. FDA is also amending the food additive regulations to provide for the safe use of the potassium partial salt of the ionomeric resins. This action responds to a petition filed by E. I. duPont de Nemours & Co.

DATES: Effective September 26, 1984; objections by October 26, 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: Vir Anand, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St., SW., Washington, D.C. 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a noticed published in the **Federal Register** of April 26, 1984 (49 FR 18044), FDA announced that a petition (FAP 4B3783) had been filed by E. I. duPont de Nemours & Co., 1007 Market St., Wilmington, DE 19898, proposing that the food additive regulations be amended in 21 CFR 178.1005 to provide for the safe use of hydrogen peroxide for sterilizing food-contact surfaces prepared from ionomeric resins complying with 21 CFR 177.1330, ethylene-vinyl acetate copolymers complying with 21 CFR 177.1350, and certain polyethylene phthalate polymers complying with 21 CFR 177.1630, and to amend 21 CFR 177.1330 to provide for the safe use of the potassium partial salt of the ionomeric resins in addition to the ammonium, calcium, magnesium, sodium, and/or zinc partial salts.

FDA has evaluated data in the petition and other relevant material and concludes that the proposed food additive use is safe and that the regulations should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), 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 Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), 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 carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above), between 9 a.m. and 4 p.m. Monday through Friday.

List of Subjects

21 CFR Part 177

Food additives, Polymeric food packaging.

21 CFR Part 178

Food additives, Food packaging, Sanitizing solutions.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director of the Center for Food Safety and Applied Nutrition (21 CFR 5.61), Parts 177 and 178 are amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. Part 177 is amended in § 177.1330 by revising the introductory paragraph to include the potassium partial salt of the ionomeric resins to read as follows:

§ 177.1330 Ionomeric resins.

Ionomeric resins manufactured from either ethylene-methacrylic acid copolymers (and/or their ammonium, calcium, magnesium, potassium, sodium, and/or zinc partial salts), ethylene-methacrylic acid-vinyl acetate copolymers (and/or their ammonium, calcium, magnesium, potassium, sodium, and/or zinc partial salts,), or methacrylic acid polymers with ethylene and isobutyl acrylate (and/or their potassium, sodium and/or zinc partial salts) may be safely used as articles or components of articles intended for use in contact with food, in accordance with the following prescribed conditions:

* * * * *

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

2. Part 178 is amended in § 178.1005 by revising the introductory paragraph and paragraph (e) to read as follows:

§ 178.1005 Hydrogen peroxide solution.

Hydrogen peroxide solution identified in this section may be safely used to sterilize polymeric food-contact surfaces identified in paragraph (e)(1) of this section.

* * * * *

(e) *Conditions of use.* Hydrogen peroxide solution identified in and complying with the specifications in this section may be used by itself or in combination with other processes to treat food-contact surfaces prepared from ionomeric resins complying with § 177.1330 of this chapter, ethylene-vinyl acetate copolymers complying with § 177.1350 of this chapter, olefin polymers complying with § 177.1520 of this chapter, and polyethylene phthalate polymers complying with § 177.1630 of this chapter (excluding polymers described in § 177.1630(c)) to attain commercial sterility at least equivalent to that attainable by thermal processing for metal containers as provided for in Part 113 of this chapter.

(2) The packaging materials identified in paragraph (e)(1) of this section may be used for packaging all commercially sterile foods except that the olefin polymers may be used in articles for packaging foods only of the types identified in § 176.170(c) of this chapter, Table 1, under Categories I, II, III, IV-B, V, and VI.

(3) Processed foods packaged in the materials identified in paragraph (e)(1) of this section shall conform with Parts 108, 110, 113, and 114 of this chapter as applicable.

Any person who will be adversely affected by the foregoing regulation may at any time on or before October 26, 1984 submit to the Dockets Management Branch (address above) written objections thereto and may make a

written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation is effective September 26, 1984.

(Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348))

Dated: September 17, 1984.

Sanford A. Miller,

Director, Center for Food and Safety and Applied Nutrition.

[FR Doc. 84–25433 Filed 9–25–84; 8:45 am]

BILLING CODE 4160–01–M

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21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Monensin, Roxarsone, 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 supplement to a new animal drug application (NADA) filed by SmithKline Animal Health Products, Division of SmithKline Beckman Corp., providing for an increased level of virginiamycin in the preparation of complete broiler chicken feeds containing combinations of monensin, roxarsone, and virginiamycin.

EFFECTIVE DATE: September 26, 1984.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for 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, has submitted a supplement to its approved NADA 120–724. The NADA provides for the use of a combination of three individually approved premixes for the preparation of complete broiler chicken feeds containing monensin, roxarsone, and virginiamycin. The approved premixes used for the preparation of the complete broiler chicken feeds are Coban® (monensin sodium), 3-Nitro (roxarsone), and Stafac® (virginiamycin). The supplement provides for an increased level (i.e., range) of virginiamycin. The application 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 Center for 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 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

§ 558.355 [Amended]

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 Center for Veterinary Medicine (21 CFR 5.83), Part 558 is amended in § 558.355 *Monensin* in paragraph (f)(1)(xx) by revising the number "10" to read "15".

Effective date. September 26, 1984.

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

Dated: September 14, 1984.

Marvin A. Norcross,

Acting Associate Director for Scientific Evaluation.

[FR Doc. 84–25439 Filed 9–25–84; 8:45 am]

BILLING CODE 4160–01–M

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21 CFR Part 558

New Animal Drugs for use in Animal Feeds; Pyrantel Tartrate

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 new animal drug application (NADA) filed for Custom Feed Services Corp., providing for safe and effective use of a 48-gram-per-pound pyrantel tartrate premix in making 9.6- and 19.2-gram-per-pound pyrantel tartrate intermediate premixes. The intermediate premixes are subsequently used to make complete swine feeds.

EFFECTIVE DATE: September 26, 1984.

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

SUPPLEMENTARY INFORMATION: Custom Feed Services Corp., 2100 North 13th St., Norfolk, NE 68701, is sponsor of NADA 137–484 submitted on its behalf by Pfizer, Inc. The NADA provides for use of a 48-gram-per-pound pyrantel tartrate premix in making 9.6- and 19.2-gram-per-pound pyrantel tartrate intermediate premixes. The intermediate premixes are for making complete swine feeds used for aid in prevention of migration and establishment, and for removal and control, of large roundworm (*Ascaris suum*) infections; and for aid in prevention of establishment, and for removal and control, of nodular worm (*Oesophagostomum* spp.) infections.

The NADA is approved and the regulations are amended to reflect this approval. 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 Center for 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 statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, 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 Center for Veterinary Medicine (21 CFR 5.83), § 558.485 is amended by adding new paragraph (a)(22) to read as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

§ 558.485 Pyrantel tartrate.

(a) * * *

(22) To 017473: 9.6 and 19.2 grams per pound, paragraph (e) (1) through (3) of this section.

* * * * *

Effective date. September 26, 1984.

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

Dated: September 14, 1984.

Lester M. Crawford,

Director, Center for Veterinary Medicine.

[FR Doc. 84-25441 Filed 9-25-84; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 881

[Docket No. R-84-981; FR-1599]

Definition of Income, Income Limits, Rent and Reexamination of Family Income for the Section 8 Housing Assistance Payments Programs; Correction

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

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule published in the Federal Register on Thursday, May 10, 1984 (49 FR 19925) the implemented changes made by the Housing and Urban-Rural Recovery Act of 1983 and the Housing and Community Development Amendments of 1981 relating to the establishment of income limits for eligibility, definition of income, calculation of rent, and reexamination of income in the Section 8 Housing Assistance Payments Programs and related programs. Another correction document was published in the Federal Register on Friday, June 29, 1984 (49 FR 26718). This correction is necessary to insert three words that were omitted from the rule as previously published.

FOR FURTHER INFORMATION CONTACT: James J. Tahash, Director, Program Planning Division, Office of Multifamily Management, Department of Housing and Urban Development, Washington, D.C. 20410, (202) 755-5654. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION: Accordingly, the Department is correcting 24 CFR Part 881, as published at 49 FR 19925, as follows:

On page 19944, column three, in the sixth line of § 881.603(c)(2), the words "income between regularly" are added after the word "in".

Dated: September 19, 1984.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 84-25419 Filed 9-25-84; 8:45 am]

BILLING CODE 4210-27-M

24 CFR Part 888

[Docket No. R-84-1154; FR-1904]

Section 8 Housing Assistance Payment Program: Fair Market Rent Schedules for Existing Housing and Moderate Rehabilitation; Correction

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

ACTION: Interim rule; correction.

SUMMARY: On July 5, 1984, HUD published interim Fair Market Rent Schedules for its Existing Housing and Moderate Rehabilitation Programs, including space rentals by owners of manufactured homes. (see 49 FR 27658) This interim rule contained two errors, which today's document corrects.

EFFECTIVE DATE: October 1, 1984, retroactive to March 29, 1984 for purposes of calculating the Public Housing Agency earned administrative fee.

FOR FURTHER INFORMATION CONTACT: Ellis V. St. Clair, Economic and Market Analysis Division, Office of Economic Affairs. Telephone (202) 755-5590. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: In the interim rule published on July 5, 1984, one jurisdiction (Columbia, MD) was inadvertently omitted and one jurisdiction (Hockley County, TX), contained rents that were lower than they should have been because of a calculating error.

Accordingly, the Department makes the following corrections to FR Doc. 84-17696 appearing on p. 27658 in the issue of July 5, 1984:

1. On page 27663, under Region—3, Baltimore, Maryland Office, add to the end of the list the following entry:

	0 Bedrooms	1 Bedroom	2 Bedrooms	3 Bedrooms	4 Bedrooms
Columbia, (U)	379	457	531	654	724

2. On page 27681, under Region—6, Lubbock, Texas Office, the entry for Hockley County is corrected to read as follows:

	0 Bedrooms	1 Bedroom	2 Bedrooms	3 Bedrooms	4 Bedrooms
Hockley County, TX	208	254	300	371	414

Authority: Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)); sec. 8, U.S. Housing Act of 1937 (42 U.S.C. 1437(f)).

Dated: September 20, 1984.

Donald A. Franck,

Acting Assistant General Counsel for Regulations.

[FR Doc. 84-25425 Filed 9-25-84; 8:45 am]

BILLING CODE 4210-27-M

Office of Assistant Secretary for Public and Indian Housing

24 CFR Part 905

[Docket No. N-84-1122; FR 1908]

Indian Preference Statement of Policy

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

ACTION: Indian Preference Statement of Policy.

SUMMARY: This statement of policy provides guidance concerning the Department's implementation of its regulations governing the preferential employment and training of Indians and the preferential use of Indian contractors and subcontractor on HUD-funded Indian housing projects.

EFFECTIVE DATE: This statement of policy is effective on September 26, 1984. The information collection

requirements contained in the statement have been submitted to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act. No person may be subject to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when it is assigned, will be announced by separate notice in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Cyrus Toll, Office of Indian Housing, Room 4232, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410, (202) 755–2989. This is not a toll free number.

SUPPLEMENTARY INFORMATION: The Department is currently developing a proposed rule implementing Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)) (the Act) for the Department's Indian housing program. After publication of the proposed rule in the **Federal Register** any public comments received will be considered in developing a final rule which will also be published in the **Federal Register.** The final rule, when effective, will supplant the Department's current Indian housing Indian preference regulations at 24 CFR 905.106, 905.204, and 905.309. Pending issuance of these new regulations, the Department has decided to publish this statement of policy on the implementation of Indian preference in the Indian housing program.

The purpose of this statement is to provide guidance to Indian Housing Authorities (IHAs) and other persons concerned with the implementation of the Department's current Indian preference rules. The statement is intended to respond to questions that have been raised about the implementation of the Department's Indian housing Indian preference requirements, as well as to ensure that Indian preference is implemented uniformly and thoroughly within the Indian housing program.

The Department believes that it is crucial that section 7(b) be implemented in the context of: (1) The purpose of the Indian housing program to provide as many decent, safe, and sanitary housing units as possible, within budget limitations, for families who are ill-housed; and, (2) the self-determination principles of the Act. The policy guidance provided herein is consistent with those principles and with the Department's existing regulations.

This statement clarifies options for IHAs regarding the methods they may use to provide preference. Methods other than those described in the regulations must be recommended for approval by the appropriate HUD Indian Field Office and submitted to the Assistant Secretary for Public and Indian Housing for review. If no adverse action is taken by the Assistant Secretary within 10 working days of receipt, the proposed method is automatically approved and can be implemented. Some options may require a regulatory waiver in accordance with 24 CFR 999.101 as a part of HUD approval. Waivers of regulations require a finding of good cause, must not violate statutory requirements, and may only be granted on a case-by-case basis by the Assistant Secretary for Public and Indian Housing. An IHA could request approval of a method for multiple uses (e.g., to use a given method in the award of the prime construction contract on more than one separate and identifiable projects), but an approved method must be resubmitted for HUD approval if an IHA wishes to use it with respect to a project for which it was not previously approved. The Department's current regulations regarding Indian preference are cited below for ready reference. Following each excerpt are specific policy statements intended to provide guidance concerning appropriate action consistent with the quoted language.

24 CFR 905.204(a)

(a) Preference in the Award of Contracts. (1) An IHA shall to the greatest extent feasible under this Part give preference in the award of contracts in connection with a Project to Indian Organizations and Indian-owned Economic Enterprises. The following method of providing preference may be used with HUD approval: (i) Advertise for bids or proposals limited to qualified Indian Organizations and Indian-owned Economic Enterprises, or (ii) Use a two-stage procedure: Stage 1. Publish a prior invitation for Indian-owned Economic Enterprises to submit a Statement of Intent to respond to such a limited advertisement when published, and to furnish with the Statement of Intent or within a specified period of time, evidence sufficient to establish their qualifications as an Indian Organization or an Indian-owned Economic Enterprise in accordance with paragraph (a)(3) of this section. Stage 2. If responses are received from one or more Indian enterprises who are found to be qualified, advertise for bids or proposals limited to qualified Indian Organizations and Indian-owned Economic Enterprises. (2) If an IHA has proceeded in accordance with paragraphs (a)(1)(i) or (a)(1)(ii) of this section and has failed to receive any Statement of Intent or approvable bid or proposal from one or more qualified Indian enterprises, the IHA may advertise for bids or proposals without limiting the advertisement to Indian Organizations and Indian-owned Economic Enterprises and as in all cases shall accept the lowest. (3) A prospective contractor seeking to qualify as an Indian Organization or Indian-owned Enterprise shall submit with or prior to submission of his bid or proposal: (i) Evidence showing fully the extent of Indian ownership and interest. (ii) Evidence of structure, management and financing affecting the Indian character of the enterprise, including major subcontracts and purchase agreements; material or equipment supply arrangements; and management, salary or profit-sharing arrangements; and evidence showing the effect of these on the extent of Indian ownership and interest. (iii) Evidence sufficient to demonstrate to the satisfaction of the IHA and HUD that the prospective contractor has the technical, administrative and financial capability to perform contract work of the size and type involved and within the time provided under the proposed contract (see § 905.211(c)).

(1) Questions have been raised concerning the extent of applicability of the Indian preference requirements; e.g., whether professional service contracts awarded by IHAs are subject to the preference requirements. The Act requires that Indian preference be provided in the award of contracts and subcontracts. Accordingly, the regulatory requirements for providing preference to the greatest extent feasible apply to all contracts and subcontracts in connection with a project, including, but not limited to, contracts for construction, architectural and engineering services, legal services, and materials and supplies. The provision of preference is not a local option.

(2) The methods of providing preference in the award of contracts delineated in 24 CFR 905.204(a)(1)(i), 905.204(a)(1)(ii), or 905.204(a)(2) are appropriate for use for any contract executed by an IHA (e.g., construction, professional services, consultant, materials and supplies). In addition, an IHA could also require that these methods be used by contractors in the award of subcontracts.

(3) Sections 905.204(a)(1) and 905.204(a)(2) describe methods of providing preference in the award of contracts. However, these methods are not the only approvable means of providing a preference. IHAs may use another method of providing preference in the award of Indian housing contracts (see examples A and B below), and also may require a contractor or subcontractor to use such method, provided that the alternate method has been approved by HUD before its use. In determining whether to approve an alternate method, HUD will consider whether the proposed method provides preference to the "greatest extent feasible". In addition, the IHA must first

submit the proposed method to the appropriate unit of Indian local government (e.g., the tribe, the community, the nation, the village) for review and comment and, in reaching its decision, HUD shall consider that body's comments.

Example A: An IHA could propose to require "at least two" Statements of Intent, approvable bids, or approvable proposals, in lieu of the "one or more" provision of §§ 905.204(a)(1)(ii) and 905.204(a)(2). Presumably, such a change would be made in an effort to encourage greater competition. However, whatever the rationale, the IHA's proposed change must be accompanied by an explanation by the IHA of why the use of the "one or more" requirement would be infeasible.

Example B: An IHA could provide for open competition (i.e., not restricting bids or proposals only to Indian organizations and Indian-owned economic enterprises). In this case, Indian respondents would be provided preference in the determination of contract award. For example, a conventional bid contract determination of the lowest responsible bid could provide a price differential for Indian bidders, or a turnkey proposal evaluation could provide extra points for proposals submitted by Indian developers and for the use of Indian subcontractors and Indian employees.

(4) Questions have been raised about whether enterprises need only be 51 percent or more Indian-owned to receive preference, or whether they must also be substantially Indian operated and controlled. The Indian preference requirement is intended to benefit bona fide Indian-owned enterprises. HUD encourages IHAs to establish criteria upon which to determine whether an Indian-owned enterprise bidder or proposer is in fact a bona fide Indian-owned contractor. Section 905.204(a)(3)(ii) sets out several examples of the types of evidence that Indian-owned enterprises must submit to establish their "Indian character". An IHA could require an enterprise seeking Indian preference to establish, to the satisfaction of the IHA, not only that it is 51 percent or more Indian-owned, but also evidence of operation and control showing a substantial Indian involvement in the day-to-day management and business activities of the enterprise, and (as with all enterprises seeking contracts with an IHA) its technical, administrative, and financial capability to perform contract work of the size and type involved, within the time provided under the proposed contract. As IHAs can establish reasonable criteria for evaluating contractors' ability to perform the work and for rejecting those that are not qualified, they can establish reasonable criteria for evaluating contractors' Indian participation, rejecting those who do not qualify for Indian preference.

24 CFR 905.204(b)

(b) Required Contract Clause. The IHA shall incorporate the following clause (referred to as a section 7(b) clause) in each contract awarded in connection with a Project:

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

(2) The parties to this contract shall comply with the provisions of said section 7(b) and all HUD requirements pursuant thereto.

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

(4) The contractor shall include this section 7(b) clause in every subcontract in connection with the project, and shall, at the direction of the IHA, take appropriate action pursuant to the subcontract upon a finding by the IHA or HUD that the subcontractor is in violation of the section 7(b) clause.

(1) An IHA could require a statement from all prospective contractors or developers concerning how they will implement the requirements for Indian preference in subcontracting, employment, and training. On a conventional bid contract the IHA could reject any bid that fails to include such a statement, or that fails to provide a statement determined by the IHA to be adequate. On a turnkey solicitation the IHA could reject proposals which fail to provide an adequate statement or the IHA could include the quality of the statement and the merit of the statement's provisions in its overall evaluation of the proposal. In any case, the IHA must describe, in its bid or proposal specifications, what provisions it expects the statement to include, and the factors to be used in judging the adequacy of the statement. An IHA could also require that such statements be provided by subcontractors to their contractors, and an IHA may require a contractor to reject any bid or proposal by a subcontractor that fails to include an adequate statement, as specified by the IHA in the bid or proposal specifications.

In the proposed rule on Indian preference now under development by the Department, further procedural direction will be provided concerning the steps to be taken to ensure that Indian preference is provided in contracting, subcontracting, employment, and training. In the interim, the Department strongly urges each IHA to develop procedures to assure that the preferences will be provided, and that such mechanisms are spelled out in the bid or proposal solicitation and the contract documents.

(2) The Indian preference law is not, in itself, a directive requiring subcontracting, employment, or training but instead requires that, when such activity is necessary as a part of developing or managing HUD-assisted Indian housing, Indian preference be provided.

(3) To ensure that section 7(b) of the Act is implemented in the award of subcontracts, an IHA could provide lists of pre-qualified Indian-owned economic enterprises and Indian organizations, by specialty (e.g., plumbing, electrical, foundations, supply), which should be given consideration by contractors and subcontractors in meeting their responsibilities for providing preference in their award of subcontracts. The IHA may wish to consider adopting a requirement that, in each specialty area listed, one of the listed entities (or some other Indian entity) be selected by the contractor, provided that at least one Indian entity is capable and has proposed to do the job for a reasonable price as previously defined by the IHA (e.g., not more than five percent greater than the lowest price proposed by a non-Indian entity for the same work).

(4) To ensure that the provisions of section 7(b) are implemented with regard to employment, an IHA could require contractors and subcontractors to hire Indians exclusively in other than "core crew" positions as defined by the IHA, unless, for any given position, the contractor or subcontractor can show that he or she notified the relevant tribe or tribes of the position and otherwise adequately advertised the position, and that no qualified Indians would accept the job.

An example of a definition of "core crew" that an IHA could use is:

(a) An individual who is a paid employee of the contractor or subcontractor at the time the project is bid, or

(b) An individual: (1) who is not currently employed by the contractor or subcontractor but who is regularly

employed by the contractor or subcontractor when work is available, and (2) who is employed in a supervisory or other key skilled position.

If an IHA chooses to use a core crew concept, the IHA could require the contractor and subcontractors to list all positions to be included in the core crew in the statement submitted by the contractor or subcontractor (see paragraph 1 of this section) with justification for each of the positions listed for inclusion in the core crew.

24 CFR 905.204(c)

(c) Additional Indian Preference Requirements. An IHA may, with HUD approval, provide for Indian preference requirements in addition to those under § 905.204(a) and the section 7(b) clause requirement under § 905.204(b), as conditions for the award of, or in the terms of, any contract in connection with a Project if the additional Indian preference requirements are consistent with the objectives of the section 7(b) clause. Such Indian preference requirements or (sic) in addition to § 905.204 (a) and (b) may not result in a higher cost or greater risk of non-performance or longer period of performance.

If an IHA has proposed an Indian preference method that provides for additional Indian preference and the method has the potential for increasing cost, risk of non-performance, or period of performance, a waiver of § 905.204(c) must be obtained before the method may be approved and implemented. However, Indian preference methods that are either approved in lieu of the methods listed in the regulation at §§ 905.204(a)(1) or developed to ensure enforcement of the regulatory requirements at 905.204(a)(3) and § 905.204(b) are not considered to be "additional Indian preference requirements" and are not covered by § 905.204(c). Further, Indian preference requirements imposed by an appropriate entity other than an IHA are not subject to the provisions of § 905.204(c).

24 CFR 905.204(d)

(d) Inclusion of All Preference Requirements in Information for Prospective Contractors. With respect to any contract, the information for prospective contractors shall set forth all Indian preference requirements affecting award of, or to be included in the terms of the contract.

All Indian preference-related provisions that will bear upon the award of a contract must be set forth in the bid or proposal specifications. All requirements for the provision of Indian preference with which a contractor or subcontractor will be expected to comply should be set forth in the bid or proposal specifications and in the terms of the contract. An IHA should not impose new or additional requirements (Indian preference or other) which have not been communicated to contractors or developers before the closing date for submission of their bids or proposals. It is advisable for the IHA to cite any applicable local laws in the appropriate solicitation documents; however, the contractor has the ultimate reponsibility for determining and adhering to local requirements (including, but not limited to, any Indian preference requirements) and should contact the appropriate unit of local government directly as to those requirements.

24 CFR 905.309

The provisions of § 905.204 shall apply to contracts in connection with the operation of a Project.

The Indian preference provisions contained in this policy statement shall apply to contracts in connection with the operation of the Indian housing units which are in management.

Other Indian Preference-Related Matters

(1) An IHA may contract or otherwise agree to arrange for its Indian preference oversight responsibilities for the Indian housing program to be handled by an agency of the tribe or other entity. However, final decision making responsibilities are retained by the IHA. If an IHA chooses to assign its Indian perference oversight responsibilities, the IHA shall remain fully responsible for assuring compliance with its Indian preference obligations under the law, the regulations, and the Annual Contributions Contract.

(2) HUD will recognize the applicability of Indian preference requirements, other than those imposed under part 905, which are proposed for use in the HUD-assisted Indian housing program. To the extent that these requirements are properly imposed by an appropriate entity, other than an IHA, and are consistent with Federal law, HUD regulations, and the ACC, HUD will not intervene or disapprove the applicability of such requirements, except in exceptional circumstances as determined by the Assistant Secretary for Public and Indian Housing.

(Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d))

Dated: September 18, 1984.

Warren T. Lindquist,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 84-25421 Filed 9-25-84; 8:45 am]
BILLING CODE 4210-33-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-8-FRL-2680-6]

Approval and Promulgation of State Implementation Plans; South Dakota

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: This notice approves two minor revisions to the air pollution requirements to the South Dakota State Implementation Plan (SIP) which were submitted by the Governor on May 4, 1984. This includes a requirement for significant new sources of lead to meet the Ambient Air Quality Standard for lead and the elimination of the South Dakota ambient hydrocarbon standard. The lead part of this SIP in conjunction with other existing lead monitoring and source data requirements constitutes a complete lead regulation.

DATES: This action will be effective on November 26, 1984 unless notice is received by October 26, 1984 that someone wishes to submit adverse or critical comments.

ADDRESSES: Copies of the revision are available for public inspection between 8:00 a.m. and 4:00 p.m. Monday through Friday at the following offices:

Environmental Protection Agency, Region VIII, Air Programs Branch, 1860 Lincoln Street, Denver, Colorado 80295.

Environmental Protection Agency, Public Information Reference Unit, Waterside Mall, 401 M Street, SW., Washington, D.C. 20460.

The Office of the Federal Register, 110 L Street, NW., Room 8401, Washington, D.C. 20408.

FOR FURTHER INFORMATION CONTACT: William Bernardo, Air Programs Branch, Environmental Protection Agency, 1860 Lincoln Street, Denver, Colorado 80295. (303) 844-3763.

SUPPLEMENTARY INFORMATION: On May 4, 1984, the Governor of South Dakota submitted a SIP that includes a requirement for significant new sources of lead to meet the Ambient Air Quality Standard for lead prior to receiving a construction permit, and the elimination of the ambient hydrocarbon standard. The lead part of this SIP in conjunction with other existing lead monitoring and source data requirements constitutes a complete State Implementation Plan for lead.

The main change in the South Dakota Air Quality regulations insures that all

new sources that emit lead will be required to predict the maximum air quality impact and if necessary control the emissions to insure the lead standard will not be violated. This new regulation in combination with the existing lead monitoring requirements and the certification that no existing lead sources exist or are planned to be built in South Dakota fulfill the requirements of a lead SIP. Upon reviewing the existing lead monitoring data, no violations of the standard were found. EPA concurs with the State of South Dakota action and finds that the submittal meets the requirement for a lead plan.

In addition, the State of South Dakota has eliminated the hydrocarbon Ambient Air Quality Standard and the methods for monitoring hydrocarbons. The hydrocarbon standard was previously dropped by EPA because there are no health effects from hydrocarbons at the level of the standard. Hydrocarbons have been used as an indicator for ozone, for which the standard is retained.

The public is advised that this action will be effective November 26, 1984. However, if we receive written notice October 26, 1984 that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw this final action and another will begin a new rulemaking by announcing a proposal of this action and establishing a comment period.

Under Section 307(1) of the Clean Air Act, petitions for review of this action must be filed in the United States Court of Appeals for the appropriate circuit by 60 days from date of publication. This action may not be challenged later in proceedings to enforce its requirements (See Sec. 307(b)(2)).

Under 5 U.S.C. 605(b), I certify that SIP approvals do not have a significant economic impact on a substantial number of small entities (See 46 FR 8709).

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

List of Subjects in 40 CFR Part 52

Air pollution control, Lead, Incorporation by reference.

Dated: September 19, 1984.

This rulemaking is issued under the authority of Section 110 of the Clean Air Act (42 U.S.C. 7410).

William D. Ruckelshaus,

Administrator.

Note.—Incorporation by reference of the State Implementation Plan for the State of South Dakota was approved by the Director of the Federal Register on July 1, 1984.

PART 52—[AMENDED]

Title 40 CFR Part 52 of the Code of Federal Regulation is amended as follows:

Subpart QQ—South Dakota

1. In Section 52.2170 paragraph (c)(10) is added as follows:

§ 52.2170 Identification of plan.

* * * * *

(c) * * *

(10) On May 4, 1984, the Governor submitted a plan revision for lead and repealed the hydrocarbon standard.

[FR Doc. 84-25500 Filed 9-25-84; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 81

[A-6-FRL-2681-1]

State of Arkansas; Designation Areas for Air Quality Planning Purposes

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: The purpose of this notice is to approve the State of Arkansas Department of Pollution Control and Ecology (ADPCE) May 3, 1984, request to change Pulaski County's existing non-attainment designation for ozone to attainment. The revision was submitted in order to satisfy the requirements of Section 107 of the Clean Air Act (CAA) and 40 CFR 50.9.

EFFECTIVE DATE: This action is effective on November 26, 1984 unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: Written comments on this action should be addressed to EPA Region 6, Air Branch (address below). Copies of the State's submittal may be examined during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region 6, Air Branch, 1201 Elm Street, Dallas, Texas 75270

U.S. Environmental Protection Agency, Public Information Reference Unit, EPA Library, 401 M. Street, SW., Washington, D.C. 20460

The Office of the Federal Register, 1100 L Street, NW, Room 8401, Washington, D.C. 20460

Arkansas Department of Pollution Control and Ecology, Air Division, 8001 National Drive, Little Rock, Arkansas 72209

FOR FURTHER INFORMATION CONTACT: Jill Lyons, State Implementation Plan Section, Air and Waste Management Division, EPA, Region 6, 1201 Elm Street, Dallas, Texas 75270, (214) 767-9832.

SUPPLEMENTARY INFORMATION: On May 3, 1984, the ADPCE submitted a State Implementation Plan revision requesting redesignation of Pulaski County to attainment for ozone. EPA developed an evaluation report[1] based on conformance with criteria from the Clean Air Act, as amended, Section 107(d)(5); 40 CFR 50.9, National primary and secondary ambient air quality standards for ozone; and, April 21, 1983 Policy Memorandum—Section 107 Designation Policy Summary. This evaluation report is available for inspection during normal business hours at the EPA Region 6 Office and the other addresses listed above.

A county may be redesignated to attainment if the following three conditions have been met: (1) In eight (8) consecutive quarters, the ambient ozone standard has not been exceeded, (2) at least 75% data capture has been achieved, and (3) a control strategy demonstrating attainment has been developed and implemented.

For Pulaski County, the ozone standard has not been exceeded in the eight (8) consecutive quarters for 1982 and 1983. Based on the National Aerometric Data Bank Quick Look Report, there are no exceeded exceedances of the ozone standard for Pulaski County. EPA review verified the data capture figures (greater than 75%) reported by the ADPCE in its redesignation request. The State had also developed and implemented an EPA approved control strategy (Regulations for the Control of Volatile Organic Compounds) which demonstrated attainment of the standard for ozone (August 15, 1980—45 FR 54336).

Since all conditions have been met for the years 1982 and 1983, EPA is redesignating Pulaski County from non-attainment to attainment.

Since this action is considered to be non-controversial and routine, EPA is approving it without prior proposal. The action will become effective 60 days from the date of this Federal Register

[1] Evaluation Report for Redesignation of Pulaski County, Arkansas to Attainment for Ozone (O_3).

notice. However, if notice is received within 30 days that someone wishes to submit critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 26, 1984. This action may not be challenged later in proceedings to enforce its requirements. [See 307(b)(2).]

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this proposal will not have a significant economic impact on a substantial number of small entities. This action only approves State actions. It imposes no new requirements.

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

This notice of final rulemaking is issued under the authority of section 107(d) of the Clean Air Act, as amended 42 U.S.C. 7407(d).

List of Subjects in 40 CFR Part 81

Intergovernmental relations, Air pollution control, National parks, Wilderness areas.

Dated: September 19, 1984.

William D. Ruckelshaus,

Administrator.

PART 81—[AMENDED]

Subpart C of Part 81 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

1. In § 81.304 Arkansas, the attainment status designation table for Oxidant (O_x) is amended by revising the designation for Pulaski County from "does not meet primary standards" to "cannot be classified or better than national standards." The amended portion of the Arkansas O_x Table for Section 81.304 reads as set forth below.

§ 81.304 Arkansas.

ARKANSAS—O_x

Designated Area	Does not meet primary standards	Cannot be classified or better than national standards
AQCR 016:		
Pulaski County	X	
Remainder of AQCR	X	

(Sec. 107(d) of the Clean Air Act, as amended; (42 U.S.C. 7407(d))).

[FR Doc. 84-25497 Filed 9-25-84; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 81

[A-5-FRL-2679-5]

Designations of Areas for Air Quality Planning Process; Attainment Status Designations: Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: On October 5, 1978, USEPA designated portions of Summit County, Ohio, as not attaining the primary National Ambient Air Quality Standards (NAAQS) for Sulfur Dioxide (SO_2) (See 43 FR 45993). Subsequently, the United States Court of Appeals for the Sixth Circuit overturned a portion of USEPA's nonattainment designation of Summit County and remanded it to the Agency for further development of the record. This action, in response to the Court's remand and requests from the State of Ohio and PPG Industries, Inc., designates part of that area of Summit County affected by the remand as attainment for SO_2.

EFFECTIVE DATE: This final rulemaking becomes effective on October 26, 1984.

ADDRESSES: Copies of the redesignation request and the supporting air quality data are available at the following addresses:

U.S Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 S. Dearborn Street, Chicago, Illinois 60604

Ohio Environmental Protection Agency, Office of Air Pollution Control, 361 East Broad Street, Columbus, Ohio 43216

FOR FURTHER INFORMATION CONTACT: Debra A. Marcantonio (312) 886-6088.

SUPPLEMENTARY INFORMATION: Under Section 107(d) of the Clean Air Act (the Act), the Administrator has designated the NAAQS attainment status for each area of every state. See 43 FR 8962 (March 3, 1978) and 43 FR 45993 (October 5, 1978). These area designations may be revised whenever the data warrants.

On October 5, 1978, USEPA designated two primary nonattainment areas for Sulfur Dioxide (SO_2) in Summit County, Ohio. On September 30, 1980, the United States Court of Appeals for the Sixth Circuit overturned USEPA's designation of Summit County and remanded it to the Agency for futher development of the record. [See *PPG Industries, Inc.* v. *Costle, 630 F. 2d 462 (6th Cir. 1980).*] Although the Court accepted USEPA's use of computer dispersion modeling to determine the attainment/nonattainment status of Summit County, it remanded the designation to USEPA because the proper modeling analysis had not been included in the administrative record at the time of USEPA's action. The analysis consisted of remodeling voluntarily undertaken by the Agency to correct data base errors. The remodeling was completed by the time of the final attainment status designations (October 5, 1978), but was not explicitly included in the record for the promulgation.[1] USEPA was satisfied that the modeling analysis supported the original nonattainment status designation and has included the remodeling analysis in the record of today's rulemaking action.

Since the October 5, 1978 attainment status designation, new data have become available that support a revision of the original nonattainment area boundaries. On December 30, 1981, a request to designate part of Summit County as attainment for SO_2, among other things, was submitted to USEPA on behalf of PPG Industries, Inc. (PPG). On May 17, 1982, the Ohio Environmental Protection Agency (OEPA) also requested that USEPA redesignate a portion of Summit County as attainment for SO_2. PPG's request was based on both Section 307(d)(7)(B) of the Act and Section 4(d) of the Administrative Procedure Act (APA). Because Section 307(d)(7)(B) applies only to certain enumerated actions, not including designations under Section

[1] USEPA's remodeling and hence, the Court's remand, applies only to one area in the center of Summit County. Today's action only concerns the portion of that area surrounding the PPG facility. The other area affected by the Court's remand is being addressed in a separate action. A second area, in the Northwest corner, was designated nonattainment on the basis of USEPA's modeling for the Cleveland metropolitan area. This modeling was included in the original record, and is not directly affected by today's notice.

107(d) of the Act, USEPA treated the request as a petition for revision of a rule under Section 4(d) of the APA [5 U.S.C. 553(e).] [See *Oljato Chapter of the Navajo Tribe* v. *Train*, 515 F.2d 654 (D.C. Cir. 1975), and *WEPCO* v. *Costle*, 715 F.2d 323, 325 (7th Cir. 1983).] On July 7, 1982, USEPA responded to PPG's petition (47 FR 20572) and agreed to reconsider the nonattainment designation for a portion of Summit County. USEPA indicated that it would take action on the designation after it had had an opportunity to review OEPA's redesignation request for Summit County.

USEPA's Redesignation Policy

USEPA's redesignation criteria, which are summarized in an April 21, 1983, memorandum "Section 107 Designation Policy Summary" from Sheldon Meyers, Director Office of Air Quality Planning and Standards and a December 23, 1983, memorandum "Section 107 Questions and Answers" from G.T. Helms, Chief Control Programs Operation's Branch, include the following requirements: (1) The most recent eight consecutive quarters of quality assured representative ambient air quality data plus evidence of an implemented control strategy that has been federally approved or, (2) the most recent four quarters of representative monitoring data showing no violations and a reference modeling analysis showing that the basic SIP control strategy is sound and is responsible for the recent air quality improvement.

USEPA's Review of Monitoring and Modeling Data

Along with its redesignation request, OEPA submitted ambient air quality data collected during 1981 at eight monitoring sites around the PPG Barberton plant. USEPA has determined that the monitoring network provides adequate spatial resolution in the vicinity of PPG, the dominant source in the Barberton area. The network was designed using all available relevant modeling and monitored data, as well as consideration of on-site meteorology. These data indicate that the maximum impacts from PPG are expected to occur in the northeast quadrant within 2 kilometers (km) of the plant. As a result, several monitors were located within this area. Two monitors were sited on a radial extending to the north, two on a radial to the northeast, and three on a radial to the east. The use of multiple monitors within 2 km on radials in multiple directions provides good spatial coverage of the expected high concentraton area. An eighth monitor, located slightly more than 1 km to the southwest, was established primarily for background purposes.

The 1981 data show that the highest second high 24-hour average concentrations, recorded at PPG Pumphouse and Barberton High School, are 325 and 307 micrograms per cubic meter, respectively, reported as midnight-to-midnight "block" averages.[3] All ambient monitoring data and modeling studies indicate that the constraining standard, in this case, is the 24-hour standard. Ambient monitoring data further indicate no violations of either the 3-hour or annual NAAQS.

Because only four quarters of data are available from the eight-station network near the PPG Barberton plant (and no emission reduction data is available), these 1981 data are not sufficient by themselves to support a redesignation to attainment. However, the extensive 1981 monitoring network showed that the higher constraining concentrations occurred at Barberton High School and PPG Pumphouse, sites which have been in operation for at least three years. Thus, the eight-station network, in addition to providing at least four quarters of quality assured data, demonstrate the "worst-case" representativeness at the monitoring sites where more than eight quarters of data are available. In addition, in 1982 and 1983 the Barberton High School monitor recorded no violations of the SO_2 NAAQS.

It should also be noted that in the last twelve months PPH Industries, Inc., has shutdown the majority of its operations at its Barberton plant. This shutdown has resulted in further reduction of SO_2 emissions in the Barberton area.

In addition to the monitoring data, USEPA considered dispersion modeling analyses performed by USEPA and PPG, the latter was submittedd to USEPA by OEPA on August 27, 1982. These analyses demonstrate that the status quo and allowable emission levels will protect the NAAQS. USEPA's review of the modeling analyses is discussed in detail in the Technical Support Documents available at the regional USEPA Office listed in the **ADDRESSES** section of this notice.

Consequently, the 1981 data from the eight-station network together with the multi-year record from Barberton High School and the PPG Pumphouse monitoring site as well as the modeling data and status quo and allowable emissions, support the redesignation of the area surrounding the PPG Barberton plant in Summit County to attainment for SO_2.

On November 23, 1982, USEPA proposed to designate a larger portion of Summit County, Ohio as primary nonattainment for SO_2 and the following area as attainment for SO_2:

North—Interstate 76
East—Route 93
South—Vanderhoof Road
West—Summit County Line

Six comments requested that the entire County be designated attainment. The comments raised questions about the compliance status of SO_2 sources located in the remaining nonattainment area of the County. On July 17, 1984, (49 FR 28888) USEPA proposed to designate the remaining portion of Summit County affected by the court remand as nonattainment and to redesignate the remaining portions of the County as attainment. USEPA will address those portions of Summit County in a separate final rulemaking action.

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

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by 60 days from today. This action may not be challenged later in proceedings to enforce its requirements. (See Sec. 307(b)(2).)

List of Subjects in 40 CFR Part 81

Intergovernmental relations, Air pollution control, National Parks, Wilderness areas.

(Sec. 107(d) of the Act, as amended (42 U.S.C. 740(d)))

Dated: September 19, 1984.

William D. Ruckelshaus,

Administrator.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

Part 81 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

§ 81.336 [Amended]

1. Section § 81.336 is amended by revising the Table for Ohio Sulfur Dioxide and by adding footnotes 2 and 3 as follows:

[3] USEPA set forth its policy on the use of midnight-to-midnight block averages and running averages for implementation of the SO_2 NAAQS in a memorandum from Kathleen N. Bennett, Assistant Administrator for Air, Noise, and Radiation, to Valdas V. Adamkus, Regional Administrator, Region V entitled, "Use of Running Averages for Determining Compliance with the 24-hour Sulfur Dioxide Standard, (March 24, 1982).

OHIO—SULFUR DIOXIDE (SO_2)

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than National Standards
• • • • •				
Summit:				
Area bounded by the following lines—North—Interstate 76, East—Route 93, South—Vanderhoof Rd., West—Summit County line.				X
Area bounded by the following lines—North—Bath Rd., (48 east to Route 8, Route 8 north to Barlow Rd., Barlow Rd east to county line, East—Summit/Portage County line, South—Interstate 76 to Route 93, Route 93 south to Route 619, Route 619 east to county line, West—Summit/Medina County line.	X[2]			
The remainder of summit County				X[3]
• • • • •				

[1] • • •
[2] This area remains undesignated at this time as a result of a Sixth Circuit Court remand.
[3] This area was not affected by the court remand.

[FR Doc. 84-25380 Filed 9-25-84; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 81

[Docket No. 107PA-18; A-3-FRL-2663-1]

Designation of Areas for Air Quality Planning Purposes; Approval of Redesignation of Attainment Status for the Commonwealth of Pennsylvania

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This notice announces the Administrator's approval in changing the air quality designation for Area #4 within Allegheny County, Pennsylvania from does not meet primary standards to does not meet secondary standards for Total Suspended Particulates (TSP).

This change is based on eight consecutive calendar quarters of air quality data showing primary attainment.

DATES: This action will be effective on November 26, 1984, unless notice is received by October 26, 1984, that someone wishes to submit adverse or critical comments.

ADDRESSES: Written comments should be addressed to Mr. Glenn Hanson, at the EPA, Region III address shown below. Copies of the request for redesignation may be examined during normal business hours at the following locations:

U.S. Environmental Protection Agency Region III, Air Programs Branch, Curtis Building—6th and Walnut Streets, Philadelphia, PA 19106, ATTN: Patricia Gaughan (3AM11)

Bureau of Air Quality Control, Pennsylvania Department of Environmental Resources, Fulton Bank Building, Third and Locust Streets, Harrisburg, PA 17120, ATTN: Gary L. Triplett

Allegheny County Health Department, Bureau of Air Pollution Control, 301 Thirty-Ninth Street, Pittsburgh, PA 15201, ATTN: Roger C. Westman.

FOR FURTHER INFORMATION CONTACT: Michael C. Giuranna at the EPA Region III address shown above or telephone (215) 597-9189.

SUPPLEMENTARY INFORMATION: The Pennsylvania Department of Environmental Resources has submitted to the U.S. Environmental Protection Agency (EPA) a request for redesignation of Area #4 within Allegheny County to does not meet secondary standards for TSP under Section 107 of the Clean Air Act and 40 CFR Part 81. Area #4 is part of the Southwest Pennsylvania Intrastate Air Quality Control Region (AQCR).

The air quality data for the first quarter of 1982 through the fourth quarter of 1983 from Allegheny County's two monitoring sites in Area #4, named Flag Plaza and Pittsburgh 8, show no primary violations of the TSP air quality standards. The improvement in air quality in Area #4 is due to the general improvement of industries upwind of the area. These improvements resulted from an EPA approved SIP strategy for the area. Since the primary air quality standards for TSP have been attained for the last eight quarters, this area is being redesignated to "does not meet secondary standards" in accordance with Section 107 of the Clean Air Act and EPA policy requirements for Section 107 redesignations.

EPA has examined the air quality data collected from the sites used to demonstrate primary attainment and found that the data was collected in accordance with all EPA requirements. Accordingly, EPA is approving the Department's request for redesignation to primary attainment.

EPA is today changing the Section 107 attainment status designation for Area #4 within Allegheny County to "does not meet secondary standards" for TSP without prior proposal. The public is advised that this action will be effective 60 days from the date of this **Federal Register** notice. However, if notice is received within 30 days from today that someone wishes to submit adverse or critical comments, this action will be withdrawn and a subsequent notice will be published before the effective date. This subsequent notice will withdraw the final action and begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Conclusion

The Administrator's decision to approve the redesignation was based on a determination that it meets the requirements of Section 107 of the Clean Air Act and 40 CFR Part 81, Designation of Areas for Air Quality Planning Purposes.

§ 81.339 [Amended]

As a result of EPA's decision to approve this redesignation, 40 CFR Part 81, § 81.339 is amended by revising entry V.(B)(1)(c) to read as follows:

PENNSYLVANIA—TSP

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
V. * * *				
(A) * * *				
(B) Allegheny County Air Basin				
(1) * * *				
(a) * * *				
(b) * * *				
(c) McKees Rocks Bridge to the Birmingham Bridge on the Ohio and Monongahela Rivers.			X	
* * * * * * *				

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

Under 5 U.S.C. 605(b), the Administrative has certified that redesignations do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by 60 days from today. This action may not be challenged later in proceedings to enforce its requirements (See Sec. 307(b)(2).)

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas, Intergovernmental relations.

(Sec. 107 of the Clean Air Act (42 U.S.C. 7407))

Dated: August 27, 1984.

William D. Ruckelshaus,

Administrator.

[FR Doc. 84-25581 Filed 9-25-84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 180

[PP 4E3034, 4E2991, 3E2914/R896; FRL-2674-8]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: These rules establish tolerances for residues of certain pesticide chemicals in or on various raw agricultural commodities. These regulations, permitting maximum levels for residues of the chemicals, were requested by the Interregional Research Project and certain State agricultural experiment stations.

EFFECTIVE DATE: Effective on September 26, 1984.

ADDRESS: Written objections, identified by the document control number [PP 4E3034, 4E2991, 3E2914/R896] 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: Donald Stubbs, Emergency Response and Minor Use Section (TS-767C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 716B, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1192).

SUPPLEMENTARY INFORMATION: EPA issued proposed rules establishing tolerances for certain pesticide chemicals, published in the Federal Register as follows, which announced that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, on behalf of IR-4 and certain State Agricultural Experiment Stations (AES), had submitted the following pesticide petitions (PP).

1. PP 4E3034. (49 FR 29110, July 18, 1984). AES, Florida. Proposed amending 40 CFR 180.121 by establishing a tolerance for residues of the insecticide *O,O*-dimethyl-*O*-*p*-nitrophenyl thiophosphate (the methyl homolog of parathion) in or on the raw agricultural crop group *Brassica* (cole) leafy vegetables as defined in 40 CFR 180.34(f) at 1.0 part per million (ppm).

2. PP 4E2991. (49 FR 29111, July 18, 1984). AES, Florida. Proposed amending 40 CFR 180.153 by establishing a tolerance for residues of the insecticide *O,O*-diethyl-*O*-(2-isopropyl-6-methyl-4-pyrimidinyl)phosphorothioate in or on the raw agricultural crop group *Brassica* (cole) leafy vegetables as defined in 40 CFR 180.34(f) at 0.7 ppm.

3. PP 3E2914. (49 FR 29112, July 18, 1984). AES's of Indiana, Massachusetts, Michigan, North Carolina, and Washington. Proposed amending 40 CFR 180.378 by establishing a tolerance for the combined residues of the insecticide permethrin [(3-phenoxy-phenyl)methyl 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropane carboxylate] and its metabolites 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropane carboxylic acid (DCVA) and (3-phenoxyphenyl) methanol (3-PBA) calculated as the parent in or on asparagus at 1 ppm.

No comments or requests for referral to an advisory committee were received in response to the notices of proposed rulemaking.

The data submitted in the petitions and other relevant material have been evaluated and discussed in the proposed rules. The pesticides are considered useful for the purposes for which the tolerances are sought. There are no regulatory actions pending against the continued registration of the pesticides. Based on the information provided and evaluated, the Agency has determined that the establishment of the tolerances will protect the public health and are established as set forth below.

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

List of Subjects in 40 CFR Part 180

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

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

Dated: September 10, 1984.

Steven Schatzow,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR Part 180 is amended as follows:

1. In § 180.121(b), by adding and alphabetically inserting the raw agricultural crop group *Brassica* (cole) leafy vegetables, to read as follows:

§ 180.121 Parathion or its methyl homolog; tolerances for residues.

* * * * *

(b) * * *

Commodities	Parts per million
* * * * *	
Vegetables, leafy, *Brassica* (cole)	1.0

2. In § 180.153, by removing the commodities broccoli, brussels sprouts, cabbage, Chinese cabbage, cauliflower, collards, kale, and mustard greens and adding and alphabetically inserting the raw agricultural commodity crop group *Brassica* (cole) leafy vegetables, to read as follows:

§ 180.153 O,O-Diethyl O-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate; tolerances for residues.

* * * * *

Commodities	Parts per million
* * * * *	
Broccoli	[1] 0.7
Brussels sprouts	[1] 0.7
Cabbage	[1] 0.7
Cabbage, Chinese	[1] 0.7
* * * * *	
Cauliflower	[1] 0.7
* * * * *	
Collards	[1] 0.7
* * * * *	
Kale	[1] 0.7
* * * * *	
Mustard greens	[1] 0.7
Vegetables, leafy, *Brassica* (cole)	0.7
* * * * *	

[1] [Removed].

3. In § 180.378(b), by adding and alphabetically inserting the raw agricultural commodity asparagus to read as follows:

§ 180.378 Permethrin; tolerances for residues.

* * * * *

(b) * * *

Commodities	Parts per million
* * * * *	
Asparagus	1.0
* * * * *	

[FR Doc. 84-24516 Filed 9-25-84; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 2F2690/R682; FRL-2681-2]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for residues of the herbicide dicamba in or on soybeans at 0.05 part per million (ppm), soybean forage at 0.1 ppm, and soybean hay at 0.1 ppm. This regulation was requested in a petition submitted by the Velsicol Chemical Corp.

EFFECTIVE DATE: Effective on September 26, 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: Robert J. Taylor, Product Manager (PM) 25, Registration Division (TS-767C), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 245, CM #2, Registration Division (TS-767C), Environmental Protection Agency, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703-557-1800).

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule for dicamba, published in the **Federal Register** of May 9, 1984 (49 FR 19683), which announced that Velsicol Chemical Corp., 341 East Ohio St., Chicago, IL, had submitted pesticide petition PP 2F2690 requesting establishment of tolerances for residues of the herbicide dicamba (3,6-dichloro-*o*-anisic acid) and its metabolite 3,6-dichloro-2-hydroxybenzoic acid in or on the raw agricultural commodities soybeans at 0.05 part per million (ppm), soybean forage at 0.1 ppm, and soybean hay at 0.1 ppm.

The Agency received a comment letter from Mr. Olav Messerschmidt of Velsicol Chemical Corp. suggesting that the Agency revise its potential risk calculations to reflect the proposed use pattern and the known properties of DMNA. In light of (1) the rapid volatilization of DMNA, (2) the rapid breakdown of DMNA in the presence of ultraviolet light, (3) the initial low concentration of DMNA found as an impurity in the dimethylamine salt formulation, and (4) the long period of time between herbicide application and crop planting, any potential for DMNA in soybeans, soybean forage, or soybean hay is virtually nonexistent. By including these additional factors it can be concluded with even greater certainty that any potential risk posed by the presence of the DMNA contaminant clearly presents no public health or safety concern. No further comments were received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Dicamba is considered useful for the purpose for which the tolerances are sought. It is concluded that the tolerances would protect the public health and 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 objection. A hearing will be granted if the objections are 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.

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

List of Subjects in 40 CFR Part 180

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

Dated: September 12, 1984.

Steven Schatzow,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR 180.227(b) is amended in the table by alphabetically adding and inserting the following raw agricultural commodities, to read as follows:

§ 180.227 Dicamba; tolerances for residues.

* * * * *

(b) * * *

Commodities	Parts per million
. . . . .	
Soybeans	0.05
Soybeans, forage	0.1
Soybeans, hay	0.1

[FR Doc. 84-25516 Filed 9-25-84; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6567

[M-40731]

Partial Revocation of Secretarial Order of May 21, 1906; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a Secretarial order insofar as it affects 35 acres of land withdrawn for the Bureau of Reclamation for the Huntley Project. This action will restore the lands to surface entry and restore all mineral interest to the Crow Tribe as provided by the Act of August 14, 1958, 72 Stat. 575.

EFFECTIVE DATE: October 23, 1984.

FOR FURTHER INFORMATION CONTACT: James Binando, BLM State Office, P.O. Box 36800, Billings, Montana 59107, 406-657-6090.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. The Secretarial Order dated May 21, 1906, is hereby revoked insofar as it affects the following described land:

Montana Principal Meridian

T. 2 N., R. 27 E.,
Sec. 35, NE¼NE¼SE¼, SE¼NW¼NE¼SE¼, SW¼NE¼SE¼ and S½SE¼NW¼SE¼;
Sec. 36, NE¼SW¼SW¼NW¼ and S½SW¼SW¼NW¼.

The area described contains 35 acres in Yellowstone County.

2. At 8 a.m. on October 23, 1984, the public lands will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 8 a.m. on October 23, 1984, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. All mineral interests in the above described lands are vested with the Crow Tribe as provided by the Act of August 14, 1958 (72 Stat. 575), and the minerals in the lands are owned by the United States in trust for the Crow Tribe and leasable "under the laws and regulations relating to Indian lands."

Dated: September 17, 1984.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

[FR Doc. 84-25485 Filed 9-25-84; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 6568

[I-18880]

Partial Revocation of Public Land Order No. 2588; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a public land order insofar as it affects 120 acres withdrawn by the Bureau of Reclamation for the Southwest Idaho Water Management Study Area. This action will open the land to surface entry and mining. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: October 23, 1984.

FOR FURTHER INFORMATION CONTACT: Larry Lievsay, BLM Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706, 208-334-1735.

SUPPLEMENTARY INFORMATION: By virtue of the authority contained in Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Public Land Order No. 2588 dated January 15, 1962, is hereby revoked insofar as it affects the following described land:

Boise Meridian

T. 1 N., R. 3 W.,
Sec. 27, SE¼SW¼;
Sec. 28, E½SE¼.

The area described contains a total of 120 acres in Owyhee County.

2. At 9 a.m. on October 23, 1984, the land shall be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on October 23, 1984, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 9 a.m. on October 23, 1984, the land will be opened to location under the United States mining laws. Appropriation of lands under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: September 17, 1984.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

[FR Doc. 84-25487 Filed 9-25-84; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 6569

[OR-36191, OR-36192, OR-36193]

Public Land Order No. 6463; Correction; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order will correct an error in the land discription of Public Land Order No. 6463 of September 14, 1983.

EFFECTIVE DATE: October 23, 1984.

FOR FURTHER INFORMATION CONTACT: Champ C. Vaughan, Jr., Oregon State Office, 503-231-6905.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

The land description in Public Land Order No. 6463 of September 14, 1983, in FR Doc. 83-25820 published at page 43175, in the issue of Thursday, September 22, 1983, is corrected as follows: In the legal description on page 43175, under T. 3 S., R. 6 W., "Sec. 10, NE½NE¼," is corrected to read "Sec. 10, NE¼NE¼," and "Sec. 15, NW½NE¼," is corrected to read "Sec. 15, NW¼NE¼."

Dated: September 17, 1984.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

[FR Doc. 84-25488 Filed 9-25-84; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 6570

[OR-15667, I-18188]

Public Land Order No. 6391; Correction; Oregon and Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order will correct errors in the land description, acreages, and national forest designation of Public Land Order No. 6391 of May 27, 1983.

EFFECTIVE DATE: September 26, 1984.

FOR FURTHER INFORMATION CONTACT: Champ C. Vaughan, Jr. (Telephone 503–231–6905), Oregon State Office, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

In FR Doc. 83–14999 published at pages 25205 and 25206 in the issue of Monday, June 6, 1983, make the following corrections:

On page 25205, the heading should read "Oregon and Idaho; Transfer of Jurisdiction; Addition to Wallowa-Whitman National Forest."

On page 25205, the third line of the Summary should read "and an additional 6,353 acres of Federal * * *"

On page 25205, the seventh line of the Summary should read "also become part of the Wallowa-Whitman * * *"

On page 25205 in paragraph 2 under T. 6 N., R. 47 E., Sec. 21, as reads "E½, SE¼NW¼, and NW¼SW¼" should read "E½, SE¼NW¼, and NE¼SW¼;"

On page 25205 in paragraph 2 under T. 30 N., R. 4 W., Sec. 6, as reads "lots 5, 14, 15, 18, 19, and that portion of lot 4 lying within the Hells Canyon National Recreation Area" should read "lots 4, 5, 6, 14, 15, 16, 18, and 19 and SW¼SE¼;"

On page 25205 in paragraph 2, the acreage for lands in Idaho as reads "1,415 acres" should read "1,556.03 acres * * *"

On page 25205, paragraph 3 should read "Subject to valid existing rights, the lands described in paragraphs 1 and 2 that are in Idaho and in T. 6 N., R. 47 E., W.M., Oregon, are hereby made a part of the Wallowa National Forest, and the lands described in paragraphs 1 and 2 that are in T. 7 S., R. 47 E., T. 6 S., R. 48 E., and T. 7 S., R. 48 E., W.M., Oregon, are hereby made a part of the Whitman National Forest. All the lands described in paragraphs 1 and 2 shall be administered as the Wallowa-Whitman National Forest and shall hereafter be subject to all laws and regulations applicable thereto."

Dated: September 17, 1984.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

[FR Doc. 84-25484 Filed 9-25-84; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 6571

[ES-31023]

Revocation of Executive Order No. 4963; Michigan

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes an Executive order which withdrew approximately 3,500 acres of public land pending a determination as to suitability for inclusion in a national forest. The land was made a part of the Hiawatha National Forest in 1962. This action will open the land to appropriate forms of surface disposition only since the Mining Law of 1872 does not apply to the State of Michigan. The land has been and remains open to mineral leasing.

EFFECTIVE DATE: October 23, 1984.

FOR FURTHER INFORMATION CONTACT: Bettie C. Coombs, Bureau of Land Management, Eastern States Office, 350 South Pickett Street, Alexandria, Virginia 22304, (703) 235–2855.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714, it is ordered as follows:

1. Executive Order No. 4963 of September 17, 1928, which withdrew 3,500 acres in Marquette County, is hereby revoked.

2. The land will remain under the jurisdiction of the Forest Service, in accord with the provisions of the Presidential Proclamation of February 12, 1931 (land transferred to the Hiawatha National Forest by Executive Order No. 10993 of February 9, 1962).

3. At 8 a.m. on October 23, 1984, the land will be opened to such forms of disposition as may by law be made of national forest land subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 8 a.m. on October 23, 1984, will be considered as simultaneously filed at that time. Those received thereafter will be considered in order of filing. The land has been and will remain open to the mineral leasing laws.

Dated: September 17, 1984.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

[FR Doc. 84-25481 Filed 9-25-84; 8:45 am]

BILLING CODE 4310-84-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 21, 74, 78, and 94

[Gen. Dockets 82–334 and 79–188; FCC 84–389]

Establishment of Spectrum Utilization Policy and Amendment to Commission Rules Regarding Digital Termination Systems

AGENCY: Federal Communications Commission.

ACTION: Final rules.

SUMMARY: This document contains the Commission's actions in response to *Petitions for Reconsideration* filed in Dockets 82–334 (First Report and Order) and 79–188 (Second Report and Order) both adopted September 9, 1983. These Orders contained various Rules concerning the channeling plan for the 18 GHz frequency band and the reaccommodation of 12 GHz microwave links. This document sets out changes to some of these Rules and also makes various editorial corrections.

EFFECTIVE DATE: August 17, 1984.

FOR FURTHER INFORMATION CONTACT: Donald Draper Campbell (202–653–8177) or James Vorhies (202–653–9097), Office of Science and Technology, 2025 "M" Street, NW., Washington, D.C. 20554.

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Part 21

Communication common carriers, Point-to-point microwave, Point-to-multipoint microwave, Transmission.

47 CFR Part 74

Point-to-point microwave, Transmissions.

47 CFR Part 78

Point-to-point microwave, Transmissions.

47 CFR Part 94

Point-to-point microwave, Point-to-multipoint microwave, Transmissions.

Memorandum Opinion and Order

In the matter of establishment of a spectrum utilization policy for the fixed and

mobile services' use of certain bands between 947 MHz and 40 GHz. (Gen. Doc. 82-334) and, amendment of Parts 2, 21, 74 and 94 of the Commission's rules to allocate spectrum at 18 GHz for, and to establish other rules and policies pertaining to, the use of radio in digital termination systems and in point-to-point microwave radio systems for the provision of digital electronic message services, and for other common carrier, private radio, and broadcast auxiliary services; and to establish rules and policies for the private radio use of digital termination systems at 10.6 GHz. (Gen. Doc. 79-188).

Adopted: August 8, 1984.
Released: August 17, 1984.

By the Commission: Commissioner Rivera Absent.

Table of Contents

Purpose

1. In this *Memorandum Opinion and Order* we are considering the issues raised in the Petitions for Reconsideration filed in regard to the Reports and Orders in the above two captioned proceedings. Since the issues raised in the petitions relate in some respects to issues in both of the captioned Dockets, we are addressing all issues in this single *Order*. The principal issues raised on reconsideration which must be resolved concern the channeling plan and technical standards adopted for the 18 GHz band and certain aspects of the 12 GHz band fixed service reaccommodation procedure. Additionally, we have found it appropriate to clarify some of the rules adopted in the dockets and we are taking the opportunity to do so at this time.

Background

2. On September 9, 1983, the Commission adopted a *Second Report and Order* in General Docket 79-188, 48 FR 50322 (1983) and a *First Report and Order* in General Docket 82-334, 48 FR 50722 (1983). The purpose of the *Second Report and Order* in Docket 79-188 was to provide spectrum in a segment of the 18 GHz band (specifically, 18.36-19.04 GHz) for use by private and common carrier Digital Termination Systems (DTS) and by private, common carrier and broadcast auxiliary point-to-point operations. The *Second Report and Order* also reallocated part of the 10.6 GHz band, previously allocated exclusively for common carrier DTS, for use by private DTS and by the private operational-fixed service for point-to-point operations.

3. The purpose of the *First Report and Order* in Docket 82-334 was to provide spectrum for the reaccommodation of existing 12 GHz fixed microwave users who must vacate the band in order to permit the implementation of broadcasting-satellite services. Also, this *First Report and Order* completed the allocation of the remaining segments of the 18 GHz band (17.7-19.7 GHz) for private, common carrier, broadcast auxiliary and cable operations.

4. The Commission has received timely filed Petitions for Reconsideration in the above proceedings (*First Report and Order* and *Second Report and Order)* from Association of Maximum Service Telecasters, Inc. (AMST); Ericsson, Inc. (Ericsson); Gill Industries, and Western Communications, Inc. (Gill); Harris Corporation—Farinon Division (Harris); Hughes Aircraft Company—Microwave Communications Products (Hughes-MCP); M/A-COM, Inc. (M/A-COM); Microband Corporation of America (Microband); National Association of Broadcasters (NAB); National Cable Television Assocation, Inc. (NCTA); and Tymnet (Tymnet). The issues raised in these petitions can be grouped into four general categories: (1) Digital Termination Systems (DTS) at 10.6 GHz, (2) 18 GHz channeling plan, (3) 18 GHz technical standards, and (4) reaccommodation of the 12 GHz displaced licensees.

5. Timely filed Comments to the Petitions for Reconsideration were received from Association of American Railroads (AAR); American Petroleum Institute—Central Committee on Telecommunications (API); Cox Communications, Inc. (Cox); County of Los Angeles, California (Los Angeles); Daniels & Associates, Inc., United Artists Cablesystems Corporation and United Cable Television Corporation (Daniels); Ericsson; Harris; Heritage Communications, Inc. (Heritage); Hughes-MCP; Magnum Microwave Corporation (Magnum); Multimedia, Inc. and Channel Two Television Company (Multimedia); Satellite Television Corporation (STC); and Utilities Telecommunications Council (UTC).[1]

6. On January 16, 1984, Ericsson, Harris, Hughes-MCP, M/A-COM, and NCTA filed a *Joint Motion for Extension Of Time* in order that they might be given additional time to design an 18 GHz channeling plan that would satisfy the concerns of each of them while also meeting the objectives of the Commission for the 18 GHz band. In response to this joint motion, the Chief Scientist adopted an *Order Granting Extension Of Time to file Replies* (Memo 1939, Released January 19, 1984) which extended time To File Replies to February 2, 1984. Replies were received from AAR, Ericsson, Harris, Hughes-MCP, Gill, M/ACOM and NCTA. Included in these replies was a suggested "consensus" channeling plan for the 18 GHz band submitted by Ericsson, Harris, Hughes-MCP, M/A-COM and NCTA.

7. In order to obtain additional views on the 18 GHz consensus channeling

[1] Comments were also received from Hughes Communications Galaxy, Inc. (Hughes-Galaxy) on January 31, 1984, concerning the need for planning to ensure workable arrangements for both satellite and terrestrial users in the 18 GHz band. In response to these Comments, API filed a *Motion to Strike Comments of Hughes Communications Galaxy, Inc.*, stating that the Hughes-Galaxy Comments should be dismissed as an untimely filed Petition for Reconsideration of the Reports and Orders. RCA Network Services, Inc. (RCA) submitted Comments in response to the pleading of Hughes-Galaxy. As Hughes Communications Galaxy comments were improperly filed, we have treated them in the nature of an informal comment. (*cf.* Westinghouse Broadcasting Co., 84 FCC 2d 938, 939 n. 2, 1981.)

plan, the Chief Scientist adopted an *Order Requesting Additional Comments On Specific Technical Matters In Re Petitions For Reconsideration*, 49 FR 7287 (1984). Comments on the consensus channeling plan were received from American Telephone and Telegraph Company (AT&T), Hughes-Galaxy and NCTA. Replies were received from AT&T; Citibank, N.A. (Citibank); Daniels; Ericsson; Hughes-Galaxy; NCTA; Multimedia and Viacom International, Inc. (Viacom).

8. On April 5, 1984, the Commission issued a *Public Notice: Commission Suspends Filing of Applications for 18 GHz Band*, 49 FR 14579 (1984), which stated that no new applications for facilities in the 18 GHz band would be accepted for filing or pending applications processed, pending resolution of the outstanding Petitions for Reconsideration in these two proceedings.[2]

9. Since the issues raised in several petitions in each docket are in several respects interrelated and since some petitions were addressed to both dockets, we have decided to address all issues in this single *Memorandum Opinion and Order*. The issues are discussed according to four categories: Digital Termination Systems; 18 GHz Allocation Plan; 18 GHz Technical Standards; and 12 GHz Reaccommodation Procedure. Findings and decisions on reconsideration follow immediately after the discussion of each issue. Additionally, in reviewing the adopted rules we believe it is appropriate to clarify some existing rules. We are taking the opportunity at this time to make needed changes on our own motion. Several issues have been raised in the Petitions and Comments filed on Reconsideration which cannot be resolved in this item. These issues, along with more general issues already outstanding in Docket 82-334, will be treated in future phases of the Docket, as noted in the following discussion. Appendix A describes the various alternative channeling plans for the 18 GHz band; Appendix B summarizes all rule changes adopted by this Order; and Appendix C contains the actual changes to the rules.

Digital Termination System (DTS) Issues

Private DTS Allocation at 10.6 GHz

10. In the *Second Report and Order* in Docket 79-188, the Commission reallocated DTS channels 4, 7, 9 and 19/20 at 10.6 GHz (i.e., 10.55-10.68 GHz) from common carrier use, in areas where they have not been assigned, to private use according to the following table.

Channel No.	Frequency band (MHz)		Network type
	Nodal	User	
4	10,580.0-10,585.0	10,645.0-10,650.0	Extended
19/20	10,585.0-10,590.0	10,650.0-10,655.0	Do.
7	10,605.0-10,607.5	10,670.0-10,672.5	Limited.
9	10,610.0-10,612.5	10,675.0-10,677.5	Do.

11. Tymnet, in its Petition, opposes the immediate reallocation of the extended network channels from common carrier to private usage and urges the Commission to delay for 18 months the authorization of private use of Digital Electronic Message Service (DEMS) extended network spectrum in the 10.6 GHz band. It argues that common carriers operating DEMS extended networks will not be able to fulfill the "Commission's expectation of national DEMS offerings" due to a lack of spectrum. Also, Tymnet states that 18 GHz spectrum cannot be substituted for that at 10.6 GHz for common carrier purposes due to the vastly different propagation characteristics at 18 GHz. Accordingly, Tymnet states that serious cost penalities may be imposed on extended network carriers that would have to use 18 GHz in lieu of the reallocated 10.6 GHz channels. Tymnet's position received no support in the Comments and Replies.

12. On the other hand, the M/A-COM Petition states that insufficient spectrum has been allocated for private DTS systems at 10.6 GHz. M/A-COM states that although DTS channels 4, 7, 9, 19, and 20 were reallocated to private from common carrier, very little private use will be achieved since these channels are no longer available in any of the larger markets. Thus, M/A-COM proposes that the Commission reallocate, for private DTS use, the spectrum at 10,550-10,565 and 10,615-10,639 MHz. M/A-COM states that although these bands were allocated for point-to-point operations, no manufacturers have produced point-to-point equipment for these channels and, in its opinion, there is little likelihood that such equipment will be manufactured. Since there is a demand for private DTS systems, M/A-COM feels this spectrum should be reallocated for that use.

13. The Commission continues to believe that the public interest will be served by enabling private entities to use DTS frequencies in the 10.6 GHz band. We note that Tymnet has filed construction permit application for DTS facilities using Channel 4 in approximately 49 service areas; 44 of these have been granted. Tymnet and other common carries had ample time to apply for DTS facilities in as many cities as they believed necessary prior to the time of the Commission reallocation of the subject channels for private use. We believe that the benefits of making these channels available for private use outweigh the advantages of continuing to hold this spectrum for common carrier use. In addition, we believe that further common carrier DTS requirements can be filled at 18 GHz, if necessary. However, the eventual private need for DTS channels at 10.6 GHz remains uncertain enough that we are not prepared to make an additional allocation for private DTS, as proposed by M/A-COM.

14. As of this time the internodal link allocation at 10.6 GHz has not been used because few of the initial DTS systems are employing multiple nodes. Other bands, for which equipment is already available, have been used for internodal links instead. DTS operators may have need for the spectrum in the future, however. Consequently, we will not change the DTS or the point-to-point allocations made in the 10.6 GHz bands.

Point-to-Point Emission Mask for DTS Internodal Links

15. Sections 21.106 and 94.71 of the Commission's Rules contain a specific emission mask requirement [3] for 10.6 GHz DTS internodal links. M/A-COM states that with the reallocation of the bands 10,550-10,565 and 10,615-10,630 MHz to other point-to-point services, it is not clear whether the emission mask specified in §§ 21.106 and 94.71 for DTS links continues to apply, since the point-to-point services have a different emission mask. M/A-COM suggests that the Commission should not apply the DTS internodal mask to the 10.6 GHz

[2] The Commission has received several petitions asking for a limited modification of the suspension order to permit the Commission to continue accepting and processing applications for the point-to-point channels in the 18 GHz band from the following: Harris (*Emergency Petition for Relief from Suspension of Filing and Processing of Applications for 18 GHz Band and for Expedited Action*, April 12, 1984). Ericsson (*Petition for Emergency Relief to Narrow Scope of 18 GHz Suspension Order and for Expedited Action*, April 16, 1984), and TOR Broadcasting Company (TOR) (*Petition for Relief from Suspension of Filing and Processing of Applications for 18 GHz Band*, April 19, 1984). In response to these petitions, the Commission staff issued a *Public Notice: Partial Relaxation of 18 GHz Band Suspension*, 49 FR 19118 (1984), granting in part the requests of Harris, Ericsson and TOR. The effect of this Public Notice was to allow applications to be granted on a secondary basis to point-to-point systems which may be approved pursuant to the revised channeling plan under consideration in this proceeding.

[3] Emission mask requirements generally refer to the Commission's Rules for reducing power from radio equipment on frequencies away from the center of the assigned frequency of operation.

channels which can be used for either internodal or other point-to-point operations.[4]

16. The Commission agrees with M/A-COM that it is unnecessary to continue to have different technical standards for DTS internodal links, as they operate identically to other point-to-point systems. Therefore, we are modifying Parts 21 and 94 to change the emission mask and other technical standards for internodal links in the 10.6 GHz band to conform with the requirements for other point-to-point links.

18 GHz Allocation Plan Issues

Channeling Plan

17. By the combined action of the *First Report and Order* and the *Second Report and Order*, the Commission channelized the 18 GHz band (17.7–19.7 GHz) in accordance with the figure labeled "Adopted Plan" in Appendix A. This plan provided for DTS systems, narrow band channels of several bandwidths for various services, two blocks of channels of 6 MHz bandwidth for cable relay and other compatible systems, and wider band channels of several bandwidths for various services.

18. The Hughes-MCP Petition requests modification of the 18 GHz channeling plan to provide contiguous spectrum for cable operations (i.e., the spectrum composed of 6 MHz wide channels) instead of the two blocks of 36 channels allocated in the *First Report and Order*. Hughes–MCP claims this would cause no impact on DTS operations. To accomplish this, Hughes–MCP presented an alternative channeling plan that moved the cable relay blocks to the upper end of the band so that they would be adjacent to each other.

19. The NCTA Petition notes that in cases where sufficient channel capacity could not be accommodated in a single block of 36 channels, additional sets of equipment would be needed for the additional cluster of frequencies used. This would result in a cost increase for the microwave link. NTCA also presented a channeling plan intended to provide contiguous frequencies for cable operations without affecting existing users or potential point-to-point and DTS users.

20. The M/A-COM Petition states that the channeling plan adopted for point-to-point operations in the 18.46 to 18.94 GHz portion of the band will impose unnecessary costs because the transmit and receive segments are adjacent. Because of this lack of transmit/receive frequency separation, very sharp filters must be used. M/A–COM argues that this type of filter is expensive and that by separating the transmit and receive segments less expensive filters could be used. M/A–COM suggests modifying the channeling plan to provide for a common transmit/receive separation for all point-to-point operations in the 18 GHz band to further reduce equipment costs. M/A–COM presented a channeling plan to accomplish this with the additional benefit of providing contiguous spectrum for cable users.

21. The Comments of both Daniel and Heritage support the need for a contiguous set of 6 MHz channels as proposed by Hughes–MCP, NCTA and M/A–COM. Ericsson's original Comments opposed the Hughes–MCP, NCTA and M/A–COM. Erisson's original Comments opposed Hughes–M/A–COM and NCTA rechanneling plans, stating that the 780 MHz transmit/receive separation suggested by M/A–COM would create more costs, not less, because narrow band filters would still be required. Further, while the plan proposed by Hughes–MCP and NCTA would cause less impact, both plans would require Ericsson to redesign its radios and those costs would have to be passed on to the public.

22. Harris, on the other hand, states that the channeling plan as adopted does not meet the objective important to the cable television interests. Harris also believes the spectrum used by cable systems needs to be contiguous, and thus some modification to the adopted plan is justified. However, Harris states the plans proposed in the Petitions need some modification to accommodate existing equipment and licensees and suggests a compromise plan.

Consensus Plan

23. Several of the petitioners asked for an extension of time to file Replies so that they might design an alternative plan which would satisfy the needs of all concerned parties. The Commission granted that request and, as a result, an 18 GHz consensus channeling plan was submitted during the reply period by Ericsson, Harris, Hughes–MCP, M/A–COM and NCTA (Ericsson, *et al*). These entities claim that they have devised a consensus channel plan which they believe will best serve microwave users and the larger public interest. They state that this consensus plan achieves significant advantages over the 18 GHz channeling plan adopted by the *First Report and Order* and the *Second Report and Order*. These advantages are that narrowband equipment, i.e., using 5, 10 and 20 MHz channels, and DTS radios can be built with a common transmit/receive separation allowing joint use of components—thus reducing costs to users. The plan allows for frequency separations of 120 MHz and 340 MHz for the narrow band channels. Also, cable television systems using 18 GHz to deliver modern high capacity cable service can do so in a contiguous block of 6 MHz channels up to 73 channels; this will mean lower cost, greater reliability, and higher quality service to cable subscribers.

24. The five respondents claim that the consensus channel plan does not change the total bandwidth assigned to any channel group, nor change the impact on sharing with other services listed in the Table of Allocations, nor disrupt existing or prospective users. This consensus channeling plan is also shown in Appendix A, labeled "Consensus Plan."

25. The Commission placed the consensus plan on public notice so that interested parties would have an opportunity to comment. Comments were received from a number of parties and are discussed in the following paragraphs.

26. American Telephone and Telegraph Company's (AT&T) comments state that the consensus plan offers some advantages but also has a serious flaw due to its impact on wide band, i.e., 220 MHz, channel use. AT&T notes that the introduction of DTS service in any geographical area would preclude the future use of 220 MHz channels numbered 5 and 6 (i.e., 18250/19150 MHz vertical and horizontal, respectively) in the same area. AT&T proposed its own alternative channel plan, shown in Appendix A as "AT&T Plan". This plan would permit the continued use of these two 220 MHz channels using the existing pairing arrangement, but it would reduce the spectrum available for 6 MHz channels by 80 MHz while increasing the spectrum available for narrow band channels by 80 MHz. AT&T's plan would also reduce the separation of the transmit and receive frequencies of the

[4] M/A–COM also states that it is no longer clear that a separate emission mask should apply to DTS nodal and user channels and suggests that the point-to-point emission mask in §§ 21.106(a)(2)(i) and 94.71(c)(2)(i) may well be appropriate for DTS nodal and user transmitters. M/A–COM states that the point-to-point emission mask is more suitable for the wider bandwidths actually being used by DTS transmitters. On April 15, 1984, Local Digital Distribution Company (LDD), a subsidiary of M/A–COM, filed a *Petition for Waiver* requesting waiver of §§ 21.106(a) and 21.120 to permit the installation and use of DTS transmitters which may not meet the emission mask specified in and required by § 21.106(a). On April 23, 1984, NEC America, Inc. (NEC) filed an *Opposition to Petition for Waiver*. The Commission does not feel that a sufficient record has been established to act upon the question of changing the emission mask at this time. This issue will be addressed in a future proceeding.

DTS channels. The spectrum allocated to narrow band and DTS operations would be shifted within the 18 GHz band.

27. AT&T's Reply states that when it filed its comments to the consensus plan, it understood that the 220 MHz channels 5 and 6 would be eliminated. However, NCTA indicated that the consensus plan would actually reposition channels 1B [19590(V) to 18450(V) MHz], 2B [19590 (H) to 18450 (H) MHz], 5B [19150 (V) to 19590 (V) MHz], and 6B [19150 (V) to 19590 (V) MHz]. By such repositioning, the consensus plan would keep channels 5 and 6 available for wide band uses. AT&T maintains that this repositioning has serious adverse technical consequences, since rearrangement of these channels would create intolerable interference problems for the design and operation of high capacity, spectrum efficient, multi-channel, two-way radio relay systems.

28. Ericsson's Reply opposes the AT&T alternative channeling plan, noting that virtually no use has been made of the wide band channels. Further, it believes that new technology for high capacity systems, such as fiber optics, makes it unlikely that demand for these channels will increase greatly. Additionally, the AT&T plan would not fully meet the objectives of the consensus plan.

29. The Commission agrees with the petitioners that even though the adopted channel plan is workable the channeling plan at 18 GHz could be improved to provide a common transmit/receive separation for DTS and narrowband point-to-point operations. In addition by relocating one of the 220 MHz channel pairs contiguous spectrum can be provided for cable television operations at the same time. The Commission believes it would be in the public interest to modify the 18 GHz channeling plan that was adopted in the *First Report and Order* and *Second Report and Order* to provide these benefits. The Commission has before it two alternative plans, the Ericsson *et al* consensus plan and the AT&T plan, both of which meet some of these objectives. The AT&T plan, however, reduces by 80 MHz the spectrum available for cable television operation while, in return, it provides only the possibility of creating one more usable 220 MHz channel pair. AT&T does not present any particular information as to expected usage of 220 MHz channels or as to how AT&T is currently using the band for 220 MHz channel operations.[5] The channeling plan adopted in the *First Report and Order* and the *Second Report and Order* was based partly on the consideration of maintaining three 220 MHz channel pairs. However there has yet to be any significant use of these types of systems and recent technical trends, for example, the increasing use of fiber optics for these high capacity applications, would seem to make their future usefulness questionable. Further, the consensus plan does not eliminate this third channel pair, although the equipment used for the third channel will be more costly. The consensus plan does allow the cable channels to be contiguous, a significant improvement over the adopted arrangement.

30. A key element to the Ericsson *et al* consensus plan is a dual separation plan, i.e., both 120 MHz and 340 MHz, for narrow band operations in the middle portion of the 18 GHz band. This appears to be inconsistent with one of the primary reasons for considering modifying the adopted channeling plan, namely the expected equipment cost reduction which would result from having a standard channel separation for narrow band and DTS channels.[6] Given the cost savings indicated from the 340 MHz separation, it is presumed that all manufacturers will build equipment with this frequency separation. On the other hand, by allowing 120 MHz separated pairs, unpairable channels may result. This situation could potentially result in half the total number of channels being unusable in some geographic areas.

31. We believe that the consensus plan, without the provision for 120 MHz frequency separation, will provide the greatest benefit in consolidating spectrum available for cable relay systems and providing uniform transmit/receive frequency separation for narrowband point-to-point and DTS channels. This channeling arrangement is shown in Appendix A as the "Revised Plan."

32. The negative aspects of revising the channeling plan for 18 GHz include the non-compliance of Ericsson's currently authorized equipment with the revised plan and the treatment of applications already received for DTS systems under the adopted channel scheme. As described below provisions have been made to allow Ericsson to continue marketing equipment that is not in compliance with the existing channeling plan. The revised plan does not change this situation and a grandfathering period will be appropriate under the revised channeling plan as well. The problem of the pending applications can also be resolved without burdening the applicants by using the procedure described in the following paragraphs. Therefore, we are modifying the channeling arrangement for the 18 GHz band in accordance with the revised plan. Changes to Parts 21, 74, 78 and 94 to implement the revised arrangement are contained in Appendix C.

33. The Ericsson *Petition for Reconsideration and Request for Partial Stay* requested that a two year grandfathering period be granted for marketing 18 GHz equipment that does not comply with the frequency separation of the channeling plan adopted in the *Second Report and Order*. The Commission, in an *Order* released December 6, 1983, granted Ericsson a waiver to market equipment that is not in compliance with the adopted channeling plan until December 6, 1985.[7] In response to the Commission's *Order*, Ericsson submitted a *Petition for Reconsideration of Waiver and for Further Relief* on January 5, 1984. Ericsson requested a 10-year period to market its non-complying 18 GHz equipment. Because of the probability of creating unusable channels by the use of such non-complying equipment, we believe it is inappropriate to permit continued long term marketing. We are, therefore, denying Ericsson's request for a 10-year grandfathering period. However, since the issue of marketing non-complying equipment has been pending since December 1983, we think it is equitable to allow Ericsson a full two years to continue market this equipment.[8] Therefore we will extend the marketing period for Ericsson's authorized equipment until two years after this *Memorandom Opinion and Order* is released, in lieu of the December 6, 1985 date.[9]

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[5] The Commission data base reveals that the only licensee of any 220 MHz channel systems is the New York Telephone Company (an operating company of NYNEX) which currently operates a five hop system in Westchester and Rockland Counties, New York using the channel pairs 17,810/19,590 MHz and 18,030/19,370 MHz.

[6] As far as the Commission knows, the provision for 120 MHz separated channels would only be useful for the particular equipment now being manufactured by Ericsson.

[7] *Order Denying Request for Partial Stay and Granting Waiver in Part* in Docket 79-188, 48 FR 55740 (1983).

[8] We recognize that there is little use being made of the 18 GHz band at present. As it is our desire to have equipment available to accommodate the 12 GHz licensees at 18 GHz, we believe it is in the public interest to allow equipment already in production to continue to be available while equipment which does comply with the channeling plan is being developed.

[9] While we are extending the date for marketing, the special licensing conditions imposed in the grant of Ericsson's waiver request remain in effect.

Pending DTS Applications

34. The Commission currently has pending about 600 applications for private DTS systems and about 700 applications for common carrier systems, which would be operated using 18 GHz band frequencies. None of these applications has been granted. The frequencies applied for in these applications are in accordance with the provisions of the *Second Report and Order*. Changes to the adopted channeling plan would normally require modification of these 1,300 pending applications. Sections 1.227(b)(4), 1.962 and 21.23(c) state that if an applicant amends the proposed operating frequency, such an amendment is a "major amendment" and, thus, the application would be considered as newly filed.

35. With regard to this point, Citibank in its comments on the consensus plan has stated that any item reallocating spectrum for DTS use should make clear that the application process will not begin anew for the newly designated channels, nor will pending DTS applications be subjected to an additional public notice period during which competing applications might be filed. It contends that to fail to "grandfather" already pending applications would unfairly penalize those applicants who diligently and properly prepared and filed applications in accordance with the *Second Report and Order*. NCTA agrees with Citibank that if the Commission adopts the consensus plan, applications for DTS frequencies that have already been filed pursuant to the plan previously adopted by the Commission should still be deemed to be valid and accepted applications against which competing applications may not be filed.

36. None of the other commenters objected to this suggestion, and we see no need to reopen the cut-off and public comment periods with respect to the applications already received merely to modify the frequencies to conform to the new channeling plan. The revised plan would only have the effect of realigning the spectrum previously allocated, and it appears that the rechanneling would not cause interference to the operation of any existing stations.[10] Therefore, we will modify pending applications received prior to the release of this *Memorandom Opinion and Order* in the following manner:

[10] An analysis of the Commission's data bases shows that no licenses or construction permits have been granted for operations in the affected band segments of 18,820–18,920 and 19,160–19,260 MHz.

From			To		
Channel No.	Nodal (MHz)	User (MHz)	Channel No.	Nodal (MHz)	User (MHz)
1	18360–18370	18940–18950	25	18820–18830	19160–19170
2	18370–18380	18950–18960	26	18830–18840	19170–19180
3	18380–18390	18960–18970	27	18840–18850	19180–19190
4	18390–18400	18970–18980	28	18850–18860	19190–19200
5	18400–18410	18980–18990	29	18860–18870	19200–19210
6	18410–18420	18990–19000	30	18870–18880	19210–19220
7	18420–18430	19000–19010	31	18880–18890	19220–19230
8	18430–18440	19010–19020	32	18890–18900	19230–19240
9	18440–18450	19020–19030	33	18900–18910	19240–19250
10	18450–18460	19030–19040	34	18910–18920	19250–19260

Note.—The 18 GHz channels have been renumbered so that all DTS channels are now sequentially numbered, starting with the 10.6 GHz frequencies.

Sharing of the 18 GHz Band by the Fixed and Fixed-Satellite Services

37. Hughes-Galaxy's comments on the consensus plan state that, with the filing of its application to construct and operate a fixed-satellite system in the 17.7–20.2 GHz band, the Commission must now make provisions to accommodate this new service by planning workable arrangements for both satellite and terrestrial users in the 18 GHz band. The Table of Frequency Allocations currently provides for operation of the fixed-satellite service in the 18 GHz band on a co-equal basis with terrestrial services and Part 25 of the Rules contains a coordination procedure for shared band use by the services. Hughes-Galaxy proposes that a portion of the 18 GHz band should be allocated exclusively for fixed-satellite operations in order to avoid the need to coordinate individual earth stations and to insure users on-site access to its satellite system. Hughes-Galaxy states that the public interest concerns raised regarding shared use of the 18 GHz band must be addressed prior to implementation of any channel plan for terrestrial microwave use of the band.

38. AT&T contends that if the Commission determines that it is appropriate to investigate the issue Hughes-Galaxy raises with respect to the sharing of the 18 GHz spectrum by the fixed and the fixed-satellite services, the Commission should do so in a separately established proceeding designed to explore that issue fully. AT&T is opposed to Hughes-Galaxy's *a priori* solution, i.e., splitting the 18 GHz band to guarantee fixed-satellite access to exclusive spectrum.

39. Ericsson claims that Hughes-Galaxy has not presented evidence in its filings as to why its proposal could not have been presented at any time earlier during the reconsideration phase of these proceedings or even in the original phases of these proceedings. Thus, it feels that the Hughes-Galaxy comments are procedurally deficient and should not be considered.

40. Harris also opposes consideration of the Hughes-Galaxy comments as being beyond the scope of the *Order* requesting additional comments only on the consensus channeling plan. It believes the Commission should proceed with implementing the fixed service in this band, leaving the fixed-satellite proposal for a later decision that might include some sharing of spectrum at 18 GHz. In the meantime, Harris states, the public interest requires spectrum for terrestrial fixed users because of the disruptive loss of the 12.2–12.7 GHz band to DBS.

41. While we agree that the Hughes-Galaxy comments are procedurally deficient, and raise points not entirely properly at issue in the reconsideration phase of this proceeding, we have considered them in light of their potential significance. Under the present allocation, which we are not disturbing, the entire 18 GHz band is shared among the fixed (terrestrial) and various satellite services. Terrestrial users expected in the near future will include many of the 12 GHz licensees who must be reaccommodated after vacating that band for DBS, as well as cable and broadcast auxiliary users seeking to distribute FM-video and users of DTS. Hughes-Galaxy asks that the Commission maintain the possibility of a set of frequencies exclusively for fixed-satellite service within the band. This request could be met by delaying licensing of terrestrial stations in part of the band or placing a condition on licenses issued in the band pending a further allocation for satellite use of the band. However, we lack a sufficient basis or record to delay licensing and the uncertainty attendant on a conditioned license would be an unreasonable burden on the displaced 12 GHz licensees, cable and broadcast auxiliary licensees and other terrestrial users for whom the 18 GHz band is allocated. We believe that the channeling plan described above must be implemented, at this time, to

accommodate immediate demand for spectrum by terrestrial services.

Multipoint Distribution Service Return Links

42. The Microband Petition asks for reconsideration of § 21.901 and 21.903, that require all return channels to terminate at only the Multipoint Distribution Service (MDS) transmitting location. Because of different propagation characteristics at 18 GHz, Microband claims that a single hop link will not be adequate in many cases. Microband requests that the rules should be made flexible enough to permit a licensee to either establish multiple links dedicated to a subscriber or to establish local collection centers. These centers would receive return messages from multiple subscribers and trunk them to a desired terminating point, which may not necessarily be that of the MDS transmitter.

43. Microband also requests reconsideration of the requirement that these 18 GHz return links be licensed under Part 21 point-to-point rules. It claims that the additional time and expense involved in conducting frequency coordination for each link may seriously limit the viability of two-way MDS systems. It suggests that MDS return links from user locations should be handled like return links from a DEMS user station to a nodal station. Accordingly, it desires to be licensed like a DEMS operator, in that a DEMS licensee may install as many user stations as it desires, up to an authorized maximum, without additional Commission authorizations.

44. Hughes-MCP's comments state concern about the proposal by Microband for relaxed coordination requirements, i.e., clearing a channel for a whole geographic area rather than on a link-by-link basis, for 18 GHz MDS return links. Hughes-MCP goes on to state that it appears that Microband is requesting *de facto* exclusive use of a channel in a given geographical area by treating the return links as an omni-directional service. It points out that even with an extensive set of return links in a metropolitan area, it still may be possible for other users to reuse the same point-to-point channels in the same area when the paths involved have sufficient angular separation.

45. We believe that MDS return links can appropriately be implemented using point-to-point channels in the 18 GHz band. We do not believe that providing explicit frequencies for MDS return links is necessary. As Microband points out, the configuration using 18 GHz links will probably be more complex than a single return channel per out-bound channel. This could mean more than one frequency would have to be made available for each MDS operation. Because point-to-point spectrum in the 18 GHz band is coequally available to Parts 21, 25, 74, 78 and 94 licensees, users must coordinate their usage with all other licensees and applicants. We believe that individually coordinated links will not only ensure equitable access but will improve spectrum utilization over the long run. Thus, we believe it would be inappropriate to permit un-coordinated operations or to make area-wide assignments of 18 GHz point-to-point spectrum for MDS return links. Microband has, however, correctly pointed out that the language of the *Second Report and Order* concerning the allowed use of 18 GHz frequencies for MDS return links implies that these links can only be terminated at the MDS transmitter site. We have made editorial changes to §§21.901 and 21.903 to reflect the fact that MDS licensees may use the 18 GHz frequencies for return links in any way allowed in Subpart 1 of Part 21 governing the point-to-point services.

18 GHz Technical Standards Issues

Spectral Efficiency

46. In the *Second Report and Order* the Commission imposed a long term spectral efficiency standard of 1.0 bits per second per Hertz (bps/Hz) to be effective December 1, 1988 for digital equipment operating in the 18,360–19,040 segment of the 18 GHz band. In the interim, the Commission imposed a standard of 0.6 bps/Hz, effective immediately.

47. Ericsson contends that a spectral efficiency goal at 18 GHz of 1.0 bps/Hz imposes costs in terms of equipment design without a significant offsetting gain in spectrum efficiency. Ericsson believes it would be more reasonable to adopt a standard of 0.7 bps/Hz as a long-term goal, at least for medium-capacity radios providing up to 6.3 Mbps. The design for its Mini-Link 18 transmitter with a 0.7 bps/Hz performance accommodates one 6.3 Mbps stream in a 10 MHz channel. The 0.7 bps/Hz performance, together with the actual frequency stability achieved with this unit, makes it possible to transmit the 6.3 Mbps in the 10 MHz of bandwidth with some margin. There would be very little improvement in this performance if the equipment were to be redesigned to meet the Commission's long-term spectral efficiency standard of 1.0 bps/Hz. For example, probably a more complex modulation scheme would be necessary, and it would be necessary to use bigger antennas, booster amplifiers, or shorter hops. These adjustments would increase the cost of the radio substantially, without any meaningful improvement in system performance.

48. The Harris Petition states that increasing the number of bps/Hz per channel does not increase the number of RF channels available, and in fact, may have a negative impact on frequency reuse. If larger carrier to interference protection ratios are needed for systems employing higher spectral efficiencies, then other uses of these channels may have to be reduced to avoid interference. Harris requests that there be no efficiency requirement before December 1, 1988. It recommends that after December 1, 1988, the requirement for bandwidths of 10 MHz and less should be 0.3 bps/Hz; for bandwidths 10 MHz and greater, the requirement should be 1.0 bps/Hz.

49. Ericsson's comments oppose the Harris proposal of a spectrum efficiency standard of 0.3 bps/Hz, combined with a 0.03% frequency stability, since these standards would not achieve a reasonable degree of frequency efficiency in the band. Hughes-MCP's comments state that bps/Hertz performance is only one small component of overall spectrum efficiency and attempts to regulate this one part will frequently produce unfortunate results, as the several Petitions show.

50. The M/A–COM Petition states that the language governing the change from a 0.6 bps/Hz efficiency standard to a 1 bps/Hz standard on December 1, 1988 could cause substantial confusion and unnecessary costs, and therefore must be clarified. It notes that there is a significant difference between the text of the *Second Report and Order* and the language actually adopted in the Rules to implement the standard, i.e., the text discusses stations authorized while the rules refer to equipment installed and operating. M/A–COM notes this distinction is particularly important for DTS, since a complete system is likely to be only partially installed and operating by December 1, 1988, even though it will be fully authorized.

51. M/A–COM believes that the December 1, 1988 date should not apply to networks and systems that are only partially installed by that time. It points out that under the adopted rules, new DTS subscriber stations installed after December 1, 1988 would have to meet the 1 bps/Hz standard, even if the central node of the system operates at 0.6 bps/Hz. Thus, the rule would have the result of requiring technical incompatibility within the system.

Further, M/A–COM requests clarification as to whether or not the spectrum use standard will be applied to 18 GHz DTS in the same way that is applied to 10 GHz DTS, namely, that frequency reuse is a permissible way to satisfy the standard.

52. We find the manufacturers arguments persuasive that it will be difficult to meet the short term 0.6 bps/Hz standard given the design of existing equipment. Since we are anticipating significant development of new 18 GHz equipment over the next few years, it would be reasonable to not require manufacturers to redesign existing equipment in the near term in order to meet the interim efficiency standard.[11] Therefore, we believe that it is appropriate to postpone the implementation of a specific spectrum efficiency standard until 1988. Hence, we are removing this requirement from the rule.[12] We do not find arguments for loosening or delaying the 1.0 bps/Hz standard, which becomes effective December 1, 1988, persuasive. In fact, based on comments received in the Reconsideration Petitions, we believe that it would be reasonable to apply the future spectrum efficiency standard for digital systems to the entire band.[13] The systems operating in the other portions of the band will have wider bandwidths, and thus should be able to meet the 1.0 bps/Hz transmitter standard, given the five year lead-time.[14] The 1.0 bps/Hz standard, then, will apply for all digital equipment in the 18 GHz band as of December 1, 1988.

53. However, the issue of achievable efficiency for point-to-point communications for lower-speed links may be of concern. For example, if only a low data rate is required and if the minimum practical bandwidth is 5 MHz, the 1 bps/Hz standard may not be achievable; or it may not be desirable from a user's standpoint because he may have to purchase capacity in excess of his actual needs. This particular issue may be addressed again in further phases of Docket 82–334. The related issues of comparable efficiency standards for other (non-digital) modulation may also be examined.

54. On the issue of applying the 1 bps/Hz standard to new nodes on already existing 18 GHz DTS systems after 1988, we believe that some special provisions are needed.[15] The construction authorization for a DTS system is five years. Since additional individual user stations, which must be technically compatible with the already installed nodal station, and nodal stations are often installed some years after the initial facilities, we will allow any facilities authorized before December 1988 to install equipment after 1988 which does not meet the new standard.

55. M/A–COM's comment regarding frequency reuse as a means of achieving the 1 bps/Hz standard appears to confuse the intent of §§ 21.122 and 94.94 with § 21.511 of the rules. Section 21.511 requires that the DTS application include an overall frequency use plan including the total bits/second per unit bandwidth used. Sections 21.122 and 94.94 establish a standard which all transmitters must meet in order to be authorized. The 1 bps/Hz standard applies regardless of how the transmitter is employed in a communication system. We are adding a sentence to §§ 21.122 and 94.94 to clarify that the 1 bps/Hz standard applies independent of the antenna configuration employed or of other factors.

Frequency Tolerance

56. In the *Second Report and Order* the Commission imposed a frequency stability standard of 0.001% for DTS nodal transmitters and a standard of 0.003% for DTS user transmitters operating in the 18 GHz band. For all other 18 GHz uses, a standard of 0.003% was imposed by the *Second Report and Order* and *First Report and Order*. However, the Commission permitted the continued marketing of existing authorized equipment (with a frequency tolerance of 0.03%) until December 1, 1988. Equipment put into operation prior to that date could continue to be used indefinitely.

57. The Harris Petition states that there is no need to impose a frequency tolerance of 0.003% for the 18.36–19.04 GHz band. It believes a frequency tolerance of 0.005% is a more realistic goal and should be an objective for equipment designers after December 1, 1988 for the entire 18 GHz band (i.e., 17.7–19.7 GHz). Harris contends that tight frequency stability does not improve co-channel frequency reuse. Further, since adjacent channel carrier to interference ratios for digitally modulated signals are on the order of 0.0 dB or better, improving stability also has little effect on adjacent channel sharing. For analog modulated signals, Harris notes that the co-channel carrier beat interference determines co-channel sharing possibilities. In lower frequency bands such as 2 or 6 GHz, higher frequency stability may assist in frequency coordination. However, at 18 GHz a 0.005% frequency stability would probably not change the C/I ratio requirement for co-channel frequency coordination.[16]

58. While one manufacturer believes that little spectrum utilization improvement results from requiring a 0.003% tolerance over a 0.005% tolerance, we think that in the longer term the tighter tolerance will lead to improved spectrum utilization. Although Harris states that they believe that the cost penalty of meeting the new standard is significant, no cost data has been provided to us. We note that recently authorized equipment meets the tighter standard. The fact that existing authorized equipment can continue to be marketed until 1988 protects investments in existing equipment production sufficiently and this period provides an adequate length of time for equipment redesign. Therefore, no change is necessary in the frequency stability standards adopted.

Point-to-Point Emission Mask for Parts 74 and 78 Systems

59. M/A–COM's Petition also notes that the Commission did not precisely replicate the digital emission mask previously established in Part 21 for point-to-point operations when it established similar provisions for the emission mask for Part 74 (*Second Report and Order*, Appendix B, p. 13) and Part 78 (*First Report and Order*, Appendix B, p. 17) for transmitters. In particular § 21.106(a)(2)(ii) specifies that attenuation greater than 56 dB is not required for point-to-point operations, but this is not included in §§ 74.535(e)(2)

[11] Manufacturers have pointed out that modifying existing equipment to meet the 0.6 bps/Hz interim standard would cause equipment to have to be reauthorized. This would also require the manufacturers to meet the new frequency tolerance standard immediately, even though the Commission currently allows marketing of already authorized equipment not meeting the frequency tolerance standard until 1988. Postponing the implementation of a digital efficiency standard until 1988 will avoid this double redesign problem.

[12] The Harris Petition requested a 5-year period in which to market its equipment that does not meet the 0.6 bps/Hz spectral efficiency factor. The Commission stayed the spectral efficiency requirement in an *Order* in Docket 79–188, 48 FR 55741 (1983), pending the outcome of the Petitions for Reconsideration, to allow marketing existing authorized equipment in the meantime. Since we are staying the implementation of the spectral efficiency requirement until 1988, the Harris request is satisfied in this point.

[13] The standard presently applies only to the center portion of the band.

[14] We make note that some 18 GHz equipment manufacturers are meeting the 1.0 bps/Hz standard on wider channel equipment today.

[15] 10.6 GHz DTS systems are already subject to the 1 bps/Hz requirement, however.

[16] Frequency stability also affects the capacity of the channel, e.g., a looser frequency stability also reduces the number of bps/Hz which can be achieved. Therefore, it is important that standards covering these aspects of a transmitter be established in concert with one another.

or 78.103(c)(2). M/A–COM states full compliance with the language in these sections of Parts 74 and 78 would be impossible with today's test equipment. Harris supports M/A–COM on this issue.

60. The Commission agrees that it is not necessary for the digital emission mask requirements for Parts 74 and 78 to be attenuated more than 56 dB. Parts 74 and 78 are hereby changed to be consistent with the standards set forth in Part 21.

EIRP Limit

61. In the *First Report and Order* the Commission imposed a maximum Equivalent Isotropic Radiated Power (EIRP) of +50 dBW for services under Parts 74, 78 and 94 operating in the 18 GHz bands. No EIRP limit has been imposed for Part 21 services. The Hughes-MCP Petition states that the EIRP for all 18 GHz band systems should be raised from +50.0 dBW to +55.0 dBW, as provided for internationally.[17]

62. The Commission Rules have limited power into the antenna for microwave systems. In the bands above 10 GHz, this limit is +10 dBW for all services. In addition the Private, Broadcast and Cable services have had an antenna output limit, EIRP, imposed. An EIRP limit has also been imposed for common carrier terrestrial systems operating in bands shared with satellite services. In the 18 GHz band, due to propagation losses, an EIRP of +55 dBW will provide for better operation compared to the current +50 dBW limit because larger antennas could be used. As the commenters point out, the +55 dBW EIRP limit on terrestrial systems has been used internationally as a baseline parameter for coordination between fixed and fixed satellite services. In order to be consistent with the international Radio Regulations, we believe it appropriate to impose the +55 dBW limit for Part 21 systems and to raise the allowed EIRP to +55 dBW for other services in the 18 GHz band. We do not believe that this higher limit will substantially affect sharing possibilities between the fixed and fixed-satellite services. Consequently, the rules for Part 21, 74, 78 and 94 systems in the 18 GHz are modified to add an EIRP limit of +55 dBW.

[17] The international Radio Regulations specify that the maximum EIRP for fixed terrestrial stations in bands shared with the fixed-satellite services above 1 GHz is limited to +55 dBW (EIRP). Article 27, § 2, 2505. In addition there is a limit of +10 dBW on power delivered to an antenna. *Id.* 2508. Limits for the band segment 17.7–18.1 GHz, shared with feeder links for broadcasting-satellites are being further studied. *Id.* 2511.

63. With the adoption of the *Second Report and Order* in Docket 80–739,[18] § 2.106 (The Table of Frequency Allocations) of the Commission's Rules was modified to include the domestic implementation of International Footnote 871 by adopting United States Footnote, US254. This imposed a limit on radiated power in the band segment 18.6–18.8 GHz of +35 dBW and limited power into the antenna to −3 dBW.[19] The changes listed in Appendix C add these limits, already in effect, to Parts 21, 74, and 78 and 94 of the Commission's Rules.

Minimum Antenna Gain Requirements

64. In the *Second Report and Order* and *First Report and Order* the Commission imposed a minimum antenna gain of +38 dBi at 18 GHz for Category "A" antennas. This standard would apply to all point-to-point services requiring a Category "A" antenna.

65. The Harris Petition recommends a reduction in the minimum required antenna main lobe gain from 38 dBi to 36 dBi. It says the 38 dBi gain antenna may prove too expensive to allow 18 GHz DTS applications to become cost effective alternatives to 10.6 GHz band assignments. The M/A-COM Petition also requests the antenna gain standard be reduced from 38 dBi gain to 36 dBi for point-to-point systems, since 36 dBi antennas would be less costly.

66. We believe antenna performance is a critical, and generally very cost effective, element in the efficient use of the spectrum. As no substantive new arguments in the form of cost data from antenna manufacturers were presented to justify a change in the adopted rules, relaxation of the antenna standard is not warranted.

12 GHz Reacommodation Procedure Issues

Continued Use of the 12 GHz Band by the Fixed Service

67. In establishing the Direct Broadcasting Satellite (DBS) service,[20] the Commission decided that sufficient spectrum must be made available quickly to DBS if the public interest goals in authorizing the broadcasting-satellite service in this country are to be fully realized. The 12 GHz band (12.2–12.7 GHz) offered the only means of accomplishing this end since it is the only spectrum suitable for satellite communications for which the necessary equipment would be readily available and in which DBS service was already authorized in the international Table of Allocations. The Commission considered extensively the issues raised by its DBS allocation action with respect to current users of the 12 GHz band. The Commission determined that this 12 GHz spectrum would be available on a protected basis for DBS from the data of adoption of a Report and Order in Docket 82–334. Licensees authorized after this date would be required to protect operating DBS systems from harmful interference; however, licensees authorized as of the date of adoption would not have to provide protection for a period of five years and would be allocated other frequencies. Interference could be avoided, or corrected, through adjustments in system design or technical parameters, such as use of site shielding, power reduction, antenna improvements and rerouting, as well as through changes in operating frequencies. The *First Report and Order* was adopted on September 9, 1983, thus the five year transition period ends as of September 9, 1988.

68. The Harris Petition requests that since it believes there is no realistic alternative spectrum for many potential 12 GHz applicants, as a minimum, all applications at the Commission being processed before the September 9, 1983 cut-off date established by the *First Report and Order* should be granted status entitling them to the special reaccommodation provisions. Harris also states that there is a need to provide a longer transition period than five years to vacate the 12 GHz band.

69. API comments support the Harris position on the need for a longer transition period and go on to state that the Commission should continue to license additional facilities in the 12 GHz band on a primary basis through September 9, 1988. However, it is opposed to expanding the number of stations eligible for the reaccommodation provisions beyond those stations licensed on or before September 9, 1983.

70. In response to the comments of API, Harris states that those links licensed after September 9, 1983 need not be accorded special reaccommodation rights. STC opposes providing primary status to an expanded class of 12 GHz users.

71. The principal of a cut-off date was established by the Commission in

[18] *Amendment of Part 2 of the Commission's Rules Regarding Implementation of the Final Acts of the World Administrative Radio Conference, Geneva, 1979*, 49 FR 2257 (1984).

[19] US254: In the band 18.6–18.8 GHz the fixed and mobile services shall be limited to a maximum equivalent isotropically radiated power of +35 dBW and the power delivered to the antenna shall not exceed −3 dBW.

[20] *Report and Order* in Docket 80–603, 47 FR 31555 (1982).

Docket 80–603 when the direct broadcasting satellite (DBS) service was established and was reaffirmed by the Commission during reconsideration.[21] We continue to believe, for the reasons set forth in the *Report and Order* in Docket 80–603, that the September 9, 1983 cut-off date for determining a fixed licensee's status is appropriate and that a five year transition period will be sufficient for 12 GHz band licensees. This does not mean, of course, that we are insensitive to particular consequences of our actions, nor that we are unwilling to consider requests for special relief where appropriate. Where auitable spectrum is not available in the 13 and 18 GHz bands, waivers will be granted, upon proper showing, to allow use of the 6 GHz band. See the discussion below under "Access to the Private 1.8 GHz and 6 GHz Bands". Taken together, these provisions should provide appropriate remedies for 12 GHz licensees who must relocate. In addition, we are mindful of our special duty to preserve the integrity of public safety needs. *See,* 47 U.S.C. 332(a); section 9 of the Federal Communications Commission Authorization Act of 1983, Pub. L. 98–214, 97 Stat. 1467; *National Association of Broadcasters* v. *Federal Communications Commission et al.,* No. 82–1926, —— F.2d. —— (D.C. Cir., July 24, 1984) slip opinion at 41–42. In our DBS Reconsideration Order, we acknowledged that we have both the duty and the means to address specific safety problems created by proposed relocations from the 12 GHz band. As we stated, this relief could include acceptance of interference to DBS services in specific locations, reimbursement from DBS operators for relocation costs, and extension of the transition period. Accordingly, our decision here is subject to the additional caveat that special relief will be considered upon appropriate request by a public safety entity.

Reaccommodation at 13 GHz

72. In the *First Report and Order* the Commission provided access to the 13 GHz band for displaced 12 GHz private fixed service links licensed prior to September 9, 1983. It provided a channeling plan for use of the 12.7–13.15 GHz segment along with cable and broadcast auxiliary users. The Commission concluded in the *First Report and Order* that the 13 GHz band was technically and economically the best alternative band for the 12 GHz fixed users.

73. The AMST Petition states that permitting the displaced 12 GHz private operational-fixed microwave users to access the 13 GHz band dooms the growth of broadcast auxiliary services. It states that the 13 GHz band is the principal spectrum where growth of the broadcast auxiliary services is both economically and operationally feasible. This spectrum is needed to support electronic new gathering (ENG) as well as studio-to-transmitter link (STL) operations. AMST states that the 13 GHz band should only be used as a last resort, on a case-by-case basis and that displaced 12 GHz users should go to 18 GHz, to channels at 2.5 GHz (2500–2690 MHz), or to other lower spectrum before being permitted access to 13 GHz.

74. The Gill Petition states that the 13 GHz band is saturated, containing 83,000 links by the Commission's own count, and that introduction of the displaced 12 GHz users will disrupt future growth of cable systems. It believes the 12 GHz users should be encouraged not to change frequencies until actual interference to DBS services occurs, and then should move to the 6 GHz band, as a first choice, or to the 18 GHz band.

75. Cox's comments support the petitions of NAB and AMST, claiming that the introduction of additional users in the 13 GHz band would only increase the prospect of congestion and that the displaced 12 GHz licensees' use of the 13 GHz spectrum would be incompatible with the broadcast auxiliary licensees use of the spectrum. Multimedia's comments also support the Petitions of AMST and NAB. On the other hand, the County of Los Angeles' comments oppose any restrictions on the 12 GHz displaced licensees' access to the 13 GHz band.

76. The Commission continues to believe that sufficient spectrum exists in the 13 GHz band for many of those licensees who may wish to use these frequencies to replace 12 GHz systems. These private fixed service links can coexist with cable and broadcast auxiliary stations in the 13 GHz band.[22]

Access to the Private 1.8 and 6 GHz Bands

77. In the *First Report and Order* the Commission also provided access to the private 6 GHz band (6525–6875 MHz) for displaced 12 GHz links licensed prior to September 9, 1983. The issue of access to this band to accommodate future growth requirements and 20 MHz channeling was deferred pending additional studies to be presented in Docket 82–334.

78. The Harris Petition requests that the Commission clarify exactly what spectrum is available for reaccommodation under waiver, as discussed in paragraph 36 of the *First Report and Order,* and to be positive about the granting of waivers to Business Radio Service licensees and 20 MHz channel users for use of the 6 GHz band.

79. The M/A–COM Petition states that increased sharing and wider channels are needed at 6 GHz. It notes Business Radio Service eligibles and other private microwave eligibles with long path length requirements and FM video (20 MHz-wide channel) transmission requirements, whose needs could previously have been met at 12 GHz, now have no spectrum available to satisfy these needs. M/A–COM says that the 18 GHz band does not support adequate path lengths for some applications. The lower frequency private bands do not currently allow channel bandwidths sufficient for FM video. It notes that the Commission has never before adopted a spectrum reallocation plan that would totally deprive a user group of the ability to meet its spectrum needs. Thus, M/A–COM recommends allowing access to the 6 GHz band for these types of users and suggests that it is reasonable to impose a minimum path length requirement on 20 MHz video channels to assure that shorter path lengths are implemented at 18 GHz or higher. M/A–COM suggests that Business Radio Service eligibles should not be permitted to use the 6 GHz band for non-video transmission since other business service needs can be met in already available bands.

80. AAR opposes opening up the 6 GHz band for 20 MHz-wide video channels and Business Radio Service licensees and states that the Commission should defer action on this issue until the congestion study referenced in the *First Report and Order* has been completed. API and UTC oppose opening up the 1.8 GHz (1850–1990 MHz) and 6 GHz bands to Business Radio licensees and the introduction of 20 MHz channel operations because they claim the non-Business Radio licensees need what is left of this spectrum to support long term requirements.

81. Hughes-MCP states that Business Radio Service eligibles should be permitted to transmit video in the 6 GHz band upon showing that 18 GHz is unsuitable; however, applicants should

[21] *Memorandum Opinion and Order* in Docket 80–603, 94 FCC 2d 741.

[22] While the Commission is continuing its examination of the utilization of the 13 GHz band, and other bands, it is not possible to determine in advance of a specific engineering study whether a particular link can be implemented satisfactorily in a particular frequency band.

be permitted to use 6 MHz bandwidth vestigal sideband AM modulation as well as FM-video modulation.

82. We believe that the question of providing additional access to the 1.8 GHz and 6 GHz bands for Business Radio Service use and providing for 20 MHz-wide channels are part of the larger question of future growth of private services. In the *First Report and Order* we stated that we might take additional actions in Docket 82–334 in the future with regard to spectrum for new private microwave systems. With regard to Harris' request that the waiver approach described in the *First Report and Order* needs to be clarified, we believe that the language in the *First Report and Order* describes the waiver conditions sufficiently for the staff to make the necessary case-by-case determinations.[23] Therefore it does not appear necessary to amplify the conditions for the grant of future waivers.

Frequency Coordination

83. The *First Report and Order* requires that all proposed systems in the 13 GHz band be coordinated with other users in accordance with a uniform procedure that applies to all services.

84. The AMST Petition requests that the coordination procedure outlined in the *First Report and Order* not be imposed on the broadcast auxiliary service stations operating in the 13 GHz band. It states that there is no need to impose this requirement on mobile electronic news gathering (ENG) operations since they are obligated not to cause interference to fixed users. The NAB Petition states that the adopted 13 GHz frequency coordination procedure is unworkable for mobile operations and should only be applicable to fixed operations. It also notes that since mobile stations are secondary to fixed stations in the band segment 12.7 to 13.15 GHz, there is no need for a formal coordination procedure.

85. Cox's comments state that should additional sharing of the 13 GHz band be reaffirmed by the Commission, then the coordination procedure established in the *First Report and Order* must be clarified and adjust to take into account mobile ENG operations.

86. The fact that mobile operations are secondary to fixed operations at 12.7–13.15 GHz does not mean that mobile operations should not be required to coordinate or announce their presence to fixed operations with whom they are sharing the spectrum. A more formal coordination procedure has not been required for the exclusive broadcast auxiliary bands, 1990–2110 MHz and 6875–7125 MHz, because the broadcast industry has been successful in coordinating fixed and mobile use of these bands among affected broadcast entities. However, the 13 GHz band is now shared among several services and we believe that the presence of these additional types of users requires that more formal coordination procedure be followed. We believe the procedure adopted in the *First Report and Order* is not burdensome and, in the absence of demonstrated problems with its application, it need not be changed.

Interference Criteria

87. The Harris Petition requests clarification of the meaning of such terms as "provided no interference is caused to operating Direct Broadcast Satellite systems" and "secondary status" when referring to the relative status of DBS and fixed operations at 12 GHz. It points out that only "harmful interference" is defined in Part 2 of the FCC Rules, and thus it is unclear as to what constitutes interference in this instance.[24] Harris also wants the Commission to define harmful interference in exact mathematical terms.

88. STC supports the Harris request that the Commission establish interference criteria between the fixed service and the broadcasting-satellite service in the 12 GHz band. However, STC feels that this should be done in a separate rule making proceeding.

89. On the issue of clarification of interference between terrestrial and DBS systems, Harris is correct in stating that the *First Report and Order* does not define precisely what the characteristics of any allowable interfering signal could be between these services. It is the Commission's understanding that a subcommittee of the FCC Advisory Committee on Technical Standards for Direct Broadcast Satellite (DBS) Systems is addressing the issue of interference to DBS receivers in the 12.2–12.7 GHz band and will be developing related technical standards.[25] The implementation of such standards will be the subject of future rule making.

90. The Gill Petition states that if the 13 GHz band must be opened up to the 12 GHz users, then specific interference standards (i.e., C/I ratios) should be established by the Commission. With regard to establishment of specific interference criteria for any microwave band, the Commission believes that industry is better equipped to develop standards after considering such issues as required reliability and other factors. The Electronic Industries Association (EIA) has in the past developed such standards for private microwave systems.[26] It is the Commission's understanding that the EIA is currently expanding the scope of its effort to include systems operating in the 13 and 18 GHz bands and that this revision should be completed by the end of 1984. The coordination procedure adopted for the 13 GHz band refers to the EIA standards for appropriate interfernce criteria.

Other issues

Operating Rules for 31 GHz

91. The M/A–COM Petition states that allowing uncoordinated use of the 31 GHz band is urgently needed. It notes that although there was substantial support for the proposals regarding the 31 GHz band in the *NPRM* in Docket 82–334, the Commission took no action. It requested that the Commission adopt necessary rules to permit immediate access to this band on an uncoordinated basis. M/A–COM suggests the following technical standards be imposed: 50 MHz channels with a 0.03% frequency stability. No other comments were received on this issue. The 31 GHz band, as we indicated in the *First Report and Order*, will be addressed in a further item. Therefore the Commission is not taking action at this time concerning the 31 GHz band.

Mobile Only Use in the Band Segment 13.20–13.25 GHz

92. In commenting on the broad issue of mobile ENG use at 13 GHz, the NAB's *Petition for Reconsideration* requests that the band segment 13.20–13.25 GHz be allocated to mobile-only use and that

[23] Two waivers have been granted to allow 20 MHz-wide video and digital non-Business Radio Service systems in the 6 GHz band, to date, see: EXXON Communications Corporation, WHK401, granted November 25, 1983, file number 707253, *et al* and State of South Carolina, WHK266, granted December 9, 1983, file number 708549, *et al*. Additionally, a waiver has been granted to allow a 10 MHz-wide digital Business Radio Service system access to the 6 GHz band, see: Banco Popular de Puerto Rico, WNEF383, granted April 27, 1984, file number 804561, *et al*.

[24] Part 2, as revised by the *Second Report and Order* in Docket 80-739, now defines interference as "[t]he effect of unwanted energy due to one or a combination of emissions, radiations, or inductions upon reception in a radiocommunication system, manifested by any performance degradation, misinterpretation, or loss of information which could be extracted in the absence of such unwanted entry. (RR)"

[25] *Public Notice: Establishment of Industry Advisory Committee on Technical Standards for DBS Service*, Memo 6080, released August 22, 1983.

[26] Electronic Industries Association, *Interference Criteria for Microwave Systems in the Private Radio Services*, Telecommunications Systems Bulletin No 10D, August 1983.

existing fixed operations be grandfathered. It contends this is needed to support a growing ENG requirement and would be consistent with the allocation for the adjacent band 13.15–13.20 GHz.

93. The band segment 13.20–13.25 GHz was not at issue in the *First Report and Order*. NAB's petition to reallocate this band is, therefore inappropriate for consideration here. We have not examined the merits of such a reallocation. Accordingly that portion of the NAB request concerning 13.20–13.25 GHz is being dismissed for the purposes of this *Memorandum Opinion and Order*. However, we will retain the NAB petition as a comment in the docket to be considered at the appropriate time.

Rule Part Clarifications [27]

Digital Termination Systems

94. In our *First Report and Order* in Docket 79–188 we provided for two categories of networks at 10.6 GHz, classified by size.[28] Extended networks consist of DTS facilities in 30 or more SMSAs, while Limited networks contain 29 or fewer SMSAs. The rules governing Extended networks differ in several ways from those for Limited networks. The maximum period of construction for an Extended network is 60 months, while that for a Limited network is 30 months. 47 CFR 21.43(c) (1), (2) and 94.187 (a), (b). The channel width for DTS channels allocated for Extended networks is 5 MHz, while it is only 2.5 MHz for Limited networks. *Id.* § 21.502(a) and 94.189(a); *see* 86 F.C.C. 2d at 371–75. Finally, to obtain a second channel in a given SMSA, an Extended network licensee must show that it has operated its initial channel "at or near capacity," while a Limited network applicant may simultaneously apply for more than one channel on a showing that the service to be provided "will fully utilize all spectrum requested."[29] *Id.* § 21.502(a)(1) and 94.189(a)(iii).

95. When we allocated the additional spectrum at 18 GHz, we did so with the intention that assignments in that band would be "for all DEMS applicants regardless of the size of any intended network an applicant chooses to construct." 47 CFR 21.502(a) and 94.189(a). Our intention was to avoid a dual system at 18 GHz; a network applicant may chose to fashion a network of DTS facilites at these frequencies, composed of as many or a few SMSA's as desired. In addition, an Extended or Limited network applicant or licensee may supplement its network with DTS at 18 GHz for one or more SMSAs. Such supplementation, however, must be done in accordance with the rules governing the network to be supplemented. An Extended network licensee who applies for a second channel at 18 GHz must show that its first channel is operating "at or near capacity."[30] A Limited network licensee or applicant who seeks to add a second channel at 18 GHz must show that the proposed service "will fully utilize all spectrum requested."[31] Of course, these showings must be made at the time of the application for the second channel, whether at 10.6 GHz or at 18 GHz. *See National Microwave Interconnect Co.*, 88 F.C.C. 2d at 1716, 1730 (1982).

96. We note that our rules are open to misinterpretation regarding the showing needed in a second channel application by a licensee or applicant whose initial network consists entirely of 18 GHz DTS facilities. If that network contains 30 or more SMSAs, then it is an Extended network and is governed by the applicable rules for Extended networks, including §§ 21.502 and 94.189(a)(4). Conversely, if that network consists of 29 or fewer SMSAs, then the network is a Limited network subject to all applicable Limited network requirements. By refusing to designate network requirements for 18 GHz channels, we intended to permit each applicant to decide for itself whether to fashion an Extended or Limited network. It must, however, be one or the other.

97. Thus, the Commission will process applications for DTS facilities at 18 GHz in accordance with the representations for the applicant describing the network with which the proposed DTS will be associated. An example will make this clear. Assume that an Extended network licensee applies for a number of 18 GHz DTS facilities, some of which are located in the same cities as DTS facilities in the applicant's 10.6 GHz network. To be eligible in those cities, the applicant must show that its 10.6 GHz facilities in those cities are in fact operating "at or near capacity."[32] Assuming that such a showing is made and a construction permit is granted, the maximum construction time for the DTS facilities will be governed by the associated network. If, for example, the applicant intends to supplement its Extended network with the 18 GHz facilities, they will be considered part of the applicant's original Extended network, and thus the construction period will be set for some period not to exceed 60 months.[33] If, on the other hand, the 18 GHz applications are intended to constitute a separate network, then the maximum construction period will be determined by whether that network is a Limited or Extended network, a distinction that itself will be determined by the number of SMSAs in the 18 GHz network.[34]

98. Finally, we take this opportunity to emphasize that an applicant must co-ordinate its frequency use with adjacent channel users, whether those users are in the point-to-point, private DTS or common carrier DTS services. It must also, of course, co-ordinate with cochannel users to assure that harmful electrical interference is avoided. For example, under § 21.504(c), an applicant must include with its application an interference analysis demonstrating that there will be no unacceptable interference with any other existing or previously proposed TDS whose nodal station is located within 80 kilometers (50 miles) of the co-ordinates of the

[27] In this section and the following section entitled "Editorial Changes to the Rules" several rules are being amended. These rule changes are not subject to the notice and comment requirements of the Administrative Procedure Act, 5 U.S.C. 553. Several of these amendments are either clarifications of existing rules or simply editorial changes to rules previously amended in either the *First Report and Order* or the *Second Report and Order*. While other rules are being amended for the first time in these proceedings in this Order, we find that those rules are either procedural or that good cause exists to excuse compliance with the Administrative Procedure Act, 5 U.S.C. 553(b) (A) and (B). With regard to the latter, we note that the changes are minor and noncontroversial, and in some instances eliminate obsolete provisions. Other rules are being amended in order that they will better reflect current practices.

[28] The *First Report and Order* in Docket 79–188 addressed only common carrier DTS. However, in the *Second Report and Order* we provided for private use of 10.6 and 18 GHz frequencies for DTS, as well, under rules similar to those applying to common carrier. The discussion below, applies to both common carrier and private systems.

[29] To make such a showing, a common carrier Limited network applicant "must at a minimum specify the exact nature of the service(s) to be provided including both the bit and band rate for the channel (or subchannel) used to supply the service and an assessment of the market demand on a city by city basis". National Microwave Interconnect Co., 86 F.C.C. 2d 1716, 1730 (1982).

[30] 47 CFR 21.502(a) and 94.189(a). This would be true whether or not the first channel happened to be in the 10.6 GHz or the 18 GHz band, because it is the nature of the service that governs, and not the frequency of the first channel.

[31] *Id.*

[32] If the applicant's 10.6 GHz network were a Limited one, then it would need to show that the service it will be providing "will fully utilize all spectrum." As noted, however, that showing must be a detailed and specific one."

[33] If the 10.6 GHz network were a Limited one, the maximum period for construction would be 30 months.

[34] The proposed 18 GHz network application must, of course, contain all information necessary for the granting of a network authorization, including that information required by § 21.15(i). We also note that petitions filed by subsidiary companies of companies under common carrier control will be deemed to be filed by the same applicant.

applicant's proposed nodal station. 47 CFR 21.504(c) and 94.193(b).

99. Sections 94.189(e)(i), 94.189(g) and 21.502 (b), (c), e(i) and (e)(ii) discuss a sequence for assigning DTS channels. In practice the Commission has not been able to follow this assignment sequence because applicants must specify in their applications the specific frequency for which they are applying. *See National Microwave Interconnect Co.*, 88 F.C.C. 2d at 1721–24. Therefore, these rule sections are amended to delete the reference to assigning channels in sequential order. Section 94.185 is modified to clarify application submission requirements. The term "interconnected" in § 94.185(c) is changed to "linked" to avoid the connotation of a required connection to the public telephone network.

Editorial Changes to the Rules

Rule Part 21

100. The provision of footnote US256 of the Table of Frequency Allocations are added to § 21.107. This footnote limits EIRP for stations in the 10.6–10.68 GHz band to +40 dbW.

101. When Part 22 of our Rules was created, several of the provisions of Part 21 became obsolete but were not removed. We are therefore deleting from § 21.701 paragraphs (b), (c), (d), (e), (f), (g) and (h). In addition, we are deleting paragraphs (a), (b), (c), (d), (e) and (f) from § 21.703. These changes reflect the fact that only Part 22 Domestic Public Land Mobile licensees are eligible to operate Fixed Systems on the referenced frequencies.

Rule Part 78

102. The *First Report and Order* inadvertantly failed to amend paragraphs (e) and (f) of § 78.18 to reflect changes made in paragraph (a)(4) concerning channels for use with 6 MHz amplitude modulation (AM). These changes are hereby made.

Rule Part 94

103. The *Second Report and Order* inadvertently deleted some wording in § 94.71(b) which was added as part of the *Memorandum Opinion and Order* in Docket 19671, 48 FR 32578 (1983). This omission is hereby corrected. Also the center frequencies listed for the 13 GHz band in § 94.93 contained a typographical error which is hereby corrected. In addition editorial changes are made to § 94.63, 94.185, 94.189 and 94.193 to delete obsolete rule provisions, correct errors in the rules previously adopted for DTS and to re-number subsections.

104. Section 94.3 use the term "Effective Radiated Power (ERP)" and its associated definition: "The product of the antenna power input and the antenna power gain in a given direction over that of an isotropic radiator." On the other hand § 2.1[c] of the Commission's Rules defines ERP as "The product of the power supplied to the antenna and its gain relative to a half-wave dipole in a given direction." The difference between the two definitions is the reference antenna used, isotropic versus half-wave dipole. The current definition used for ERP is correct in the context of Part 94. However, to be consistent with § 2.1(c), the term ERP should be changed to "Equivalent Isotropically Radiated Power (EIRP). We are taking this opportunity to amend § 94.3 to bring it into compliance with § 2.1 by substituting the term EIRP for ERP.

Administrative

105. Accordingly, it is ordered, that pursuant to the authority of sections 4(i), 301 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 4(i), 301 and 303(r), that the *Petitions for Reconsideration* filed by Ericsson, Harris, Hughes-MCP, M/A–COM, Microband and NCTA are granted in part and denied in part for the reasons stated above.

106. Accordingly, it is ordered, that pursuant to the authority of sections 4(i), 301 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 4(i), 301 and 303(r), that the *Petitions for Reconsideration* filed by AMST, Gill, and Tymnet are denied, and the *Petition for Reconsideration* filed by NAB is denied in part and dismissed in part, for the reasons stated above.

107. It is ordered, that pursuant to the authority of sections 4(i), 301 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 4(i), 301 and 303(r), that the *Petitions for Reconsideration of Waiver and for Further Relief*, filed by Ericsson is denied for the reasons stated above.

108. It is ordered, that pursuant to the authority of sections 4(i), 301 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 4(i), 301 and 303(r), that Parts 21, 74, 78 and 94 of Chapter 1 of Title 47 of the Code of Federal Regulations are amended as specified in Appendix C. These amendments become effective upon release of this *Memorandum Opinion and Order* by the Commission.[35]

109. It is ordered, that pursuant to the authority of sections 4(i), 301 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 4(i), 301 and 303(r), that the freeze on the filing and processing of applications for the 18 GHz band is lifted upon release of this *Memorandum Opinion and Order* by the Commission.

110. For further general information contact Donald Draper Campbell, (202–653–8177), or James Vorhies, (202–653–9097). With respect to common carrier issues, contact Stephen Thompson, (202–634–1854); for private radio issues contact Frederick Day (202–634–2443).

Federal Communications Commission.

William Tricarico,

Secretary.

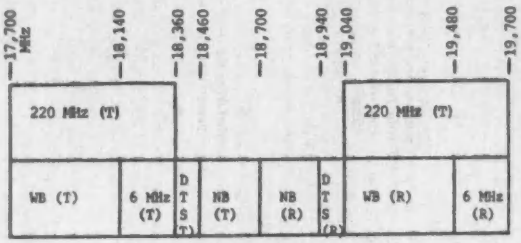
BILLING CODE 6712-01-M

[35] Pending our consideration of the 18 GHz band channel arrangement, the Commission imposed a "freeze" on the acceptance and processing of new applications. *See Public Notice*, Memo 3401, April 5, 1984. Because we do not wish to maintain the freeze any longer than is necessary, we find good cause to make the rule amendments implementing the revised plan effective without further delay. *See* 5 U.S.C. 553(d)(3). This will enable us to end the freeze and begin accepting and processing applications immediately. Additionally with the action taken in the *Memorandum Opinion and Order*, the petitions of Harris, Ericsson and TOR requesting speical relief from the freeze on application filing suspension (see footnote 2, above) are now moot.

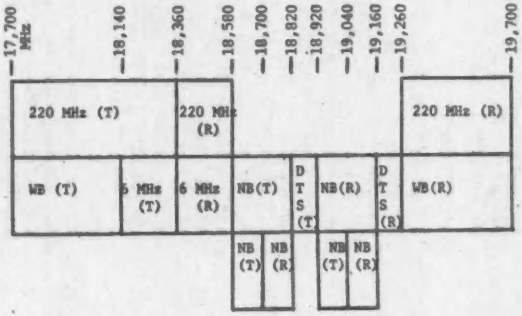
BILLING CODE 6712-01-C

APPENDIX A

18 GHz Channeling

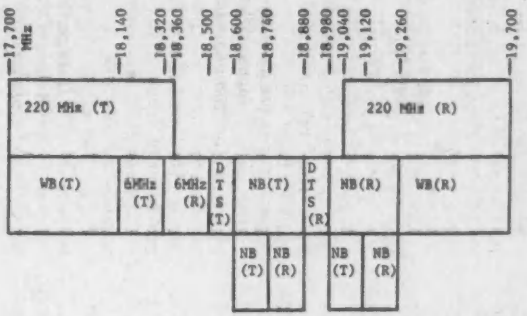


Adopted Plan
(1st R&O Doc. 82-334 and 2nd R&O Doc. 79-188)

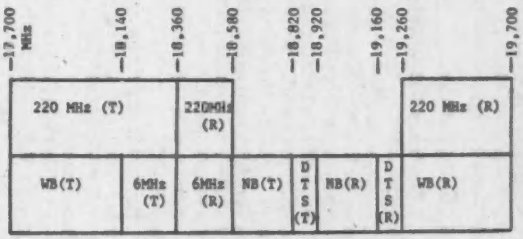


Consensus Plan

APPENDIX A con't



AT&T Plan



Revised Plan
(Adopted in this MO&O)

KEY:

DTS	= Digital Termination Systems	(T)	= Transmit frequencies
220 MHz	= 220 MHz channels	(R)	= Receive frequencies
WB	= 10, 20, 40 & 80 MHz channels		
NB	= 5, 10 & 20 MHz channels		
6 MHz	= 6 MHz channels		

Appendix B.—Summary of Rule Changes Resulting From This Action

A. Part 21 Changes

1. Section 21.101—Frequency tolerance:

Revised to reflect revised channeling plan for the 18 GHz band. There is no change in the frequency tolerance values.

2. Section 21.106—Emission limitations:

Modified to show change of emission limitations for 10.6 GHz point-to-point links.

3. Section 21.107—Transmitter power:

Revised to reflect the implementation of the allocation footnote US254 limiting EIRP in the 18.6–18.8 GHz band segment and to add a limit of +55 dBW in the remainder of the 18 GHz band. Also the point-to-point stations at 10.6 GHz are limited to +40 dBW by the allocations footnote US265.

4. Section 21.122—Microwave digital modulation:

Revised to specify that this standard applies to a transmitter and that the calculation of the bps/Hz is independent of the antenna, frequency reuse, or system configuration. The note applying to the 18 GHz band is modified to remove the 0.6 bps/Hz interim standard.

5. Section 21.502—Frequencies:

Modified to reflect revised channeling plan for the 18 GHz band and to indicate that channels used for internodal link assignments are to be made in accordance with the provisions of Subpart I of Part 21, which apply to point-to-point operations. The channel numbers for DTS channels are revised to run sequentially with the DTS channels in the 10.6 GHz band.

6. Section 21.503—Frequency stability:

Revised to delete redundant frequency stability requirements for DTS internodal links.

7. Section 21.507—Radiated power limitation in the 10,600–10,680 MHz band;

Removes separate emission restriction on point-to-point internodal links.

8. Section 21.701—Frequencies:

Modified to reflect revised channeling plan for the 18 GHz band. Also modified to eliminate provisions now covered under Part 22 of the Rules.

9. Section 21.703—Bandwidth and emission limitations:

Modified to reflect revised channeling plan for the 18 GHz band. Also modified to eliminate provisions now covered under Part 22 of the Rules.

10. Section 21.901—Frequencies:

Modified to reflect revised channeling plan for the 18 GHz band and to clarify that licensing of return links is under the fixed service rules in Subpart I of Part 21.

11. Section 21.903—Purpose and permissible service:

Modified to reflect revised channeling plan for the 18 GHz band and the fact that multiple links are permissible.

B. Part 74 Changes

1. Section 74.502—Frequency assignment:

Modified to reflect revised channeling plan for the 18 GHz band.

2. Section 74.534—Power limitations:

Revised to reflect implementation of allocation footnote US254 limiting EIRP in the 18.6–18.8 GHz band segment to +35 dBW and to add an EIRP limit of +55 dBW for the remaining portion of the 18 GHz band.

3. Section 74.535—Emission and bandwidth:

Revised to correct omission of maximum required attenuation.

4. Section 74.602—Frequency assignment:

Modified to reflect revised channeling plan for the 18 GHz band.

5. Section 74.636—Power limitations:

Revised to reflect implementation of allocation footnote US254, limiting EIRP in the 18.6–18.8 GHz band segment to +35 dBW and to raise the allowed EIRP in the remainder of the 18 GHz band from +50 dBW to +55 dBW.

6. Section 74.637—Emission and bandwidth:

Revised to correct omission of maximum required attenuation.

7. Section 74.641—Antenna systems:

Modified to reflect revised channeling plan for the 18 GHz band.

C. Part 78 Changes

1. Section 78.18—Frequency assignments:

Modified to reflect revised channeling plan for the 18 GHz band and amended to make paragraphs (e) and (f) consistent with paragraph (a)(4) of this same section.

2. Section 78.101—Power limitations:

Revised to reflect implementation of allocation footnote US254, limiting EIRP in the 18.6–18.8 GHz band segment to +35 dBW and to raise the allowed EIRP in the remainder of the 18 GHz band from +50 dBW to +55 dBW.

3. Section 78.103—Emission and bandwidth:

Revised to correct omission of maximum required attenuation.

4. Section 78.105—Antenna systems:

Modified to reflect revised channeling plan for the 18 GHz band.

D. Part 94 Changes

1. Section 94.3—Definitions:

Revised to replace the term ERP with the term EIRP; however, the definition used in Part 94 remains unchanged.

2. Section 94.61—Applicability:

Modified to reflect revised channeling plan for the 18 GHz band.

3. Section 94.63—Interference protection criteria for operation-fixed stations:

Modified to reflect revised channeling plan for the 18 GHz band.

4. Section 94.65—Frequencies:

Modified to reflect revised channeling plan for the 18 GHz band and to list the point-to-point channels available in the 10.6 GHz band.

5. Section 94.67—Frequency tolerance:

Modified to reflect revised channeling plan for the 18 GHz band and modified to reflect that internodal links are provided in accordance with the provisions of Subpart C of Part 94.

6. Section 94.71—Emission and bandwidth limitations:

Modified to reflect revised channeling plan for the 18 GHz band and to delete separate requirements for point-to-point channels. Also language reserving the Commission's right to assign bandwidths based on actual requirement, which was inadvertently omitted, is restored.

7. Section 94.73—Power limitations:

Modified to reflect revised channeling plan for 18 GHz and to change ERP (dBm) to EIRP (dBW).

8. Section 94.93—Provisions for Private Operational-Fixed Use of the 12,200–12,700 MHz band:

Revised to correct typographical error in channel center frequencies in table of subparagraph (d)(2), 12.5 MHz channels.

9. Section 94.94—Microwave digital modulation:

Revised to specify that this standard applies to a transmitter and the calculation of the bps/Hz is independent of the antenna, frequency reuse, or how a system is configured. The note applying to the 18 GHz band is modified to remove the 0.6 bps/Hz interim standard.

10. Section 94.185—Applications:

Modified to clarify application requirements.

11. Section 94.189—Frequencies:

Modified to reflect revised channeling plan for the 18 GHz band and to indicate that internodal link assignments are to be made in accordance with the provisions of Subpart C of Part 94. The channel numbers for DTS channels are revised to run sequentially with the DTS channels in the 10.6 GHz band.

12. Section 94.191—Frequency tolerance:

Modified to reflect revised channeling plan for the 18 GHz band.

13. Section 94.193—Interference:

Modified to clarify requirements for interference analysis.

14. Section 94.197—Radiated power limitation in the 10,600–10,680 MHz band:

Revised to indicate the removal of separate EIRP requirement for internodal links.

15. Section 94.15—Policy governing the assignment of frequencies:

Modified to indicate that internodal link assignments are to be made in accordance with the provisions of Subpart C of Part 94.

Appendix C

Chapter I, Parts 21, 74, 78 and 94 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 21—DOMESTIC PUBLIC FIXED RADIO SERVICE

1. Section 21.101 is amended by revising entries between 25 and 40,000 MHz the table in paragraph (a) and its footnote 4 as follows:

§ 21.101 Frequency tolerance.

(a) * * *

Frequency range (MHz)	Frequency tolerance (percent)		
	All fixed and base stations	Mobile stations over 3 watts	Mobile stations 3 watts or less [1]
25 to 50	0.002	0.002	0.005
50 to 450	0.0005	0.0005	0.005
450 to 512	0.00025	0.0005	0.0005
512 to 1,000 [3]	0.0005	0.0005	0.005
2,110 to 2,200	0.001		
2,200 to 12,200 [2] [4]	0.005	0.005	0.005
12,200 to 17,700	0.03	0.03	0.03
17,700 to 18,820	0.003		
18,820 to 18,920	0.001		
18,920 to 19,700	0.003		
19,700 to 40,000	0.03	0.03	0.03

[1] * * *
[2] * * *
[3] * * *
[4] See § 21.503 for the stability requirements for transmitters used in the Digital Electronic Message Service.

* * * * *

2. Section 21.106 is amended by revising the introductory text of paragraph (a)(3) to read as follows:

§ 21.106 Emission limitations.

(a) * * *

(3) For Digital Termination System channels used in the Digital Electronic Message Service:

* * * * *

3. Section 21.107 is amended by revising the Table in paragraph (b) and adding footnote 3 as follows:

§ 21.107 Transmitter power.

* * * * *

(b) * * *

Frequency range (MHz)	Power (W)
Below 30	50
30 to 50	350
50 to 76	50
76 to 512	[1] 250
512 to 10,000	[2] 20
Above 10,000	[2] [3] 10

[1] * * *
[2] * * *
[3] In the band segments 17.7 to 18.6 GHz and 18.8 to 19.7 GHz, band the EIRP is limited to +55 dBW, while in the band segment 18.6 to 18.8 GHz, the EIRP is limited to +35 dBW. In the band segment 18.6 to 18.8 GHz the power delivered to the antenna is limited to −3 dBW. In the band segment 10.60–10.68 GHz the maximum EIRP is limited to +40 dBW.

4. Section 21.122 is amended by revising paragraph (e) including the note as follows:

§ 21.122 Microwave digital modulation.

* * * * *

(e) Microwave transmitters employing digital modulation techniques in the band 17,700–19,700 MHz shall transmit at a bit rate, in bits per second (bps), equal to or greater than the authorized bandwidth in Hertz (e.g., to be acceptable, equipment transmitting at a 20 Mbps rate must not require a authorized bandwidth greater than 20 MHz). This bps/Hz standard is independent of the antenna (polarization) used, frequency reuse, or how the system is configured.

Note.—Until December 1, 1988, no minimum bit rate shall apply to the 17,700–19,700 MHz band. Systems authorized prior to that date may install equipment after that date with no minimum bit rate.

5. Section 21.502 is amended by removing Note (2) of paragraph (a); by removing the last sentence of paragraph (d), and revising paragraphs (g) and (h) as follows:

§ 21.502 Frequencies.

* * * * *

(g) Digital Termination System assignments in the 18 GHz band shall be made according to the following plan:

Channel No.	Nodal station frequency band (MHz)	User station frequency band (MHz)
30	18,870–18,880	19,210–19,220
31	18,880–18,890	19,220–19,230
32	18,890–18,900	19,230–19,240
33	18,900–18,910	9,240–19,250
34	18,910–18,920	19,250–19,260

These channel pairs will be assigned in each SMSA and may be subdivided as desired by the licensee.

(h) Internodal link assignments are to be made in accordance with the provisions of Subpart I of Part 21, applying to point-to-point operations.

* * * * *

6. Section 21.503 is amended by revising paragraphs (a) and (b) as follows:

§ 21.503 Frequency stability.

(a) In the frequency band 10,550–10,680 MHz the frequency stability of each Digital Termination Nodal Station transmitter authorized for this service shall be ±0.0001%. The frequency stability of each Digital Termination User Station transmitter authorized for this service shall be ±0.0003%.

(b) In the frequency band 17,700–19,700 MHz the frequency stability of each Digital Termination Nodal Station transmitter authorized for this service shall be ±0.001%. The frequency stability of each Digital Termination User Station transmitter authorized for this service shall be ±0.003%.

7. Section 21.507 is revised to read as follows:

§ 21.507 Radiated power limitation in the 10,600–10,680 MHz band.

The EIRP of stations in the 10,600–10,680 MHz band must not exceed +40 dBw.

8. Section 21.701 is amended by revising the introductory text of paragraph (a); revising the entries in the table between 17,700 and 19,700 MHz in paragraph (a); revising footnote 10, removing and reserving footnote 14 and removing footnote 16 in paragraph (a); removing paragraphs (b), (c), (d), (e), (f), (g), (h), (j), (k) and (m); by redesignating paragraph (i) as new paragraph (b); by redesignating paragraph (l) as new paragraph (e); and by adding new paragraphs (c) and (d) as follows:

§ 21.701 Frequencies.

* * * * *

(a) Frequencies in the following bands are available for assignment to fixed radio stations in the Point-to-Point Microwave Radio Service.

* * * * *

17,700–18,820 [5] [10] [15]
18,920–19,160 [9] [10] [15]
19,260–19,700 [5] [10] [15]

* * * * *

[10] This band is co-equally shared with stations in the fixed services under Parts 21, 74, 78 and 94 of the Commission's Rules.

* * * * *

[14] [Reserved]

* * * * *

(c) 10,550 to 10,680 MHz.

(1) 2.5 MHz authorized bandwidth channels, 65 MHz separation:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
10551.25	10616.25
10553.75	10618.75
10556.25	10621.25
10558.75	10623.75

(2) 1.25 MHz authorized bandwidth channels, 65 MHz separation:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
10560.625	10625.625
10561.875	10626.875
10563.125	10628.125
10564.375	10629.375

(d) 17,700 to 19,700 MHz. Applicants may use either a two-way link or one frequency of a frequency pair for a one-way link and shall coordinate proposed operations pursuant to the procedures required in § 21.100(d). [Note, however, that stations authorized as of September 9, 1983 to use frequencies in the band 17.7–19.7 GHz may, upon proper application, continue to be authorized for such operations.]

(1) 2 MHz maximum authorized bandwidth channel:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
18141.0	n/a

(2) 5 MHz maximum authorized bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
340 MHz Separation	
18762.5	19102.5
18767.5	19107.5
18772.5	19112.5
18777.5	19117.5
18782.5	19122.5
18787.5	19127.5
18792.5	19132.5
18797.5	19137.5
18802.5	19142.5
18807.5	19147.5
18812.5	19152.5
18817.5	19157.5

(3) 6 MHz maximum authorized bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
216 MHz Separation	
18145.0	n/a
18151.0	18367.0
18157.0	18373.0
18163.0	18379.0
18169.0	18385.0
18175.0	18391.0
18181.0	18397.0
18187.0	18403.0
18193.0	18409.0
18199.0	18415.0
18205.0	18421.0
18211.0	18427.0
18217.0	18433.0
18223.0	18439.0
18229.0	18445.0
18235.0	18451.0
18241.0	18457.0
18247.0	18463.0
18253.0	18469.0
18259.0	18475.0
18265.0	18481.0
18271.0	18487.0
18277.0	18493.0
18283.0	18499.0
18289.0	18505.0
18295.0	18511.0
18301.0	18517.0
18307.0	18523.0
18313.0	18529.0
18319.0	18535.0
18325.0	18541.0
18331.0	18547.0
18337.0	18553.0
18343.0	18559.0
18349.0	18565.0
18355.0	18571.0
18361.0	18577.0

(4) 10 MHz maximum authorized bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
1560 MHz Separation	
17705.0	19265.0
17715.0	19275.0
17725.0	19285.0
17735.0	19295.0
17745.0	19305.0
17755.0	19315.0
17765.0	19325.0
17775.0	19335.0
17785.0	19345.0
17795.0	19355.0
17805.0	19365.0
17815.0	19375.0
17825.0	19385.0
17835.0	19395.0
17845.0	19405.0
17855.0	19415.0
17865.0	19425.0
17875.0	19435.0
17885.0	19445.0
17895.0	19455.0
17905.0	19465.0
17915.0	19475.0
17925.0	19485.0
17935.0	19495.0
17945.0	19505.0
17955.0	19515.0
17965.0	19525.0
17975.0	19535.0
17985.0	19545.0
17995.0	19555.0
18005.0	19565.0
18015.0	19575.0
18025.0	19585.0
18035.0	19595.0
18045.0	19605.0
18055.0	19615.0
18065.0	19625.0
18075.0	19635.0
18085.0	19645.0
18095.0	19655.0
18105.0	19665.0
18115.0	19675.0
18125.0	19685.0
18135.0	19695.0
340 MHz Separation	
18585.0	18925.0
18595.0	18935.0
18605.0	18945.0
18615.0	18955.0
18625.0	18965.0
18635.0	18975.0
18645.0	18985.0
18655.0	18995.0
18665.0	19005.0
18675.0	19015.0
18685.0	19025.0
18695.0	19035.0
18705.0	19045.0
18715.0	19055.0
18725.0	19065.0
18735.0	19075.0
18745.0	19085.0
18755.0	19095.0
18765.0	19105.0
18775.0	19115.0
18785.0	19125.0
18795.0	19135.0
18805.0	19145.0
18815.0	19155.0

(5) 20 MHz maximum authorized bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
1560 MHz Separation	
17710.0	19270.0
17730.0	19290.0
17750.0	19310.0
17770.0	19330.0
17790.0	19350.0
17810.0	19370.0
17830.0	19390.0
17850.0	19410.0
17870.0	19430.0
17890.0	19450.0
17910.0	19470.0
17930.0	19490.0
17950.0	19510.0
17970.0	19530.0
17990.0	19550.0
18010.0	19570.0
18030.0	19590.0
18050.0	19610.0
18070.0	19630.0
18090.0	19650.0
18110.0	19670.0
18130.0	19690.0
340 MHz Separation	
18590.0	18930.0
18610.0	18950.0
18630.0	18970.0
18650.0	18990.0
18670.0	19010.0
18690.0	19030.0
18710.0	19050.0
18730.0	19070.0
18750.0	19090.0
18770.0	19110.0
18790.0	19130.0
18810.0	19150.0

(6) 40 MHz maximum authorized bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
1560 MHz Separation	
17720.0	19280.0
17760.0	19320.0
17800.0	19360.0
17840.0	19400.0
17880.0	19440.0
17920.0	19480.0
17960.0	19520.0
18000.0	19560.0
18040.0	19600.0
18080.0	19640.0
18120.0	19680.0

(7) 80 MHz maximum authorized bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
1560 MHz Separation	
17740.0	19300.0
17820.0	19380.0
17900.0	19460.0
17980.0	19540.0
18060.0	19620.0

(8) 220 MHz maximum authorized bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
17810.0	18470.0
18030.0	19370.0
18250.0	19580.0

9. Section 21.703 is amended by removing paragraphs (a), (b), (c), (d), (e) and (f); by redesignating paragraph (g) as new paragraph (a) and paragraph (h) as new paragraph (b); and by revising all the entries between 6,425 MHz and 19,700 MHz in the Table in new paragraph (a) as follows:

§ 21.703 Bandwidth and emission limitations.

(a) * * *

10,550 to 10,680	5.0
10,700 to 11,700	40.0
13,200 to 13,250	25.0
17,700 to 18,580	220.0
18,580 to 18,820	20.0
18,820 to 18,920	10.0
18,920 to 19,160	20.0
19,160 to 19,260	220.0

* * * * *

10. Section 21.901 is amended by revising paragraph (e) with as follows:

§ 21.901 Frequencies.

* * * * *

(e) Frequencies in the band segments 18,580–18,820 MHz and 18,920–19,160 MHz are available for assignment to fixed stations in this service for a point-to-point return links from a subscriber's location. Assignments in the 18 GHz band for these return links will be made in accordance with the provisions of Subpart I of Part 21.

11. Section 21.903 is amended by revising the second sentence which begins with "A point-to-point return" in paragraph (a) with the following:

§ 21.903 Purpose and permissible service.

(a) * * * Point-to-point radio return links from a subscriber's location to a MDS operator's facilities may be authorized in the 18,580–18,820 MHz and 18,920–19,160 MHz bands.

* * * * *

PART 74—EXPERIMENTAL, AUXILIARY AND SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTION SERVICES

1. Section 74.502 is amended by revising paragraph (b) as follows:

§ 74.502 Frequency assignment.

* * * * *

(b) The frequency bands 18,760–18,820 and 19,100–19,160 MHz are available for assignment to aural broadcast STL and intercity relay stations and are shared on a co-primary basis with other fixed services under Parts 21, 78 and 94 of the Commission's Rules.

(1) 5 MHz maximum authorized bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
340 MHz Separation	
18762.5	19102.5
18767.5	19107.5
18772.5	19112.5
18777.5	19117.5
18782.5	19122.5
18787.5	19127.5
18792.5	19132.5
18797.5	19137.5
18802.5	19142.5
18807.5	19147.5
18812.5	19152.5
18817.5	19157.5

Applicants may use either a two-way link or one frequency of a frequency pair for a one-way link and shall coordinate proposed operations pursuant to the procedures required in § 21.100(d).

* * * * *

2. Section 74.534 is amended by adding the following to paragraph (b):

§ 74.534 Power limitations.

(a) * * *

(b) * * * For stations operating in the band 17.7–19.7 GHz, the transmitter output power shall not be greater than necessary to accomplish the function of the system and in any case shall not be greater than 10 watts (peak envelope power); the maximum EIRP shall be limited to +55 dBw except in the band segment 18.6–18.8 GHz were it shall be limited to +35 dBw.

3. Section 74.535 is amended by adding the following to the end of paragraph (e)(2)(i):

§ 74.535 Emission and bandwidth.

* * * * *

(e) * * *

(2) * * *

(i) * * *

[Attenuation greater than 56 decibels is not required.]

* * * * *

4. Section 74.602 is amended by revising the introductory text in paragraph (a) revising paragraph (i) and the associated Tables as follows:

§ 74.602 Frequency assignment.

(a) The following frequencies are available for assignment to television pickup, television STL, television relay and television translator relay stations. The band segments 17,700–18,580 and 19,260–19,700 MHz are available for broadcast auxiliary stations as described in paragraph (i) of this section. Additionally, the band 38.6–40.0 GHz is available for assigment without channel bandwidth limitation to TV pickup stations on a secondary basis to fixed stations.

* * * * *

(i) The following frequencies are available for assignment to television STL, television relay stations and television translator relay stations. The provisions of Section 74.604 do not apply to the use of these frequencies. These frequencies are shared on a co-equal basis with other stations in the fixed service (see Parts 21, 78 and 94). Applicants may use either a two-way link or one or both frequencies of a frequency pair for a one-way link and shall coordinate proposed operations pursuant to procedures required in § 21.100(d).

(1) 2 MHz maximum authorized bandwidth channel:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
18141.0	n/a

(2) 6 MHz maximum authorized bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
216 MHz Separation	
18145.0	n/a
18151.0	18367.0
18157.0	18373.0
18163.0	18379.0
18169.0	18385.0
18175.0	18391.0
18181.0	18397.0
18187.0	18403.0
18193.0	18409.0
18199.0	18415.0
18205.0	18421.0
18211.0	18427.0
18217.0	18433.0
18223.0	18439.0
18229.0	18445.0
18235.0	18451.0
18241.0	18457.0
18247.0	18463.0
18353.0	18469.0
18259.0	18475.0
18265.0	18481.0
18271.0	18487.0
18277.0	18493.0
18283.0	18499.0

Transmit (receive) (MHz)	Receive (transmit) (MHz)
18289.0	18505.0
18295.0	18511.0
18301.0	18517.0
18307.0	18523.0
18313.0	18529.0
18319.0	18535.0
18325.0	18541.0
18331.0	18547.0
18337.0	18553.0
18343.0	18559.0
18349.0	18565.0
18355.0	18571.0
18361.0	18577.0

(3) 10 MHz maximum authorized bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
1560 MHz Separation	
17705.0	19265.0
17715.0	19275.0
17725.0	19285.0
17735.0	19295.0
17745.0	19305.0
17755.0	19315.0
17765.0	19325.0
17775.0	19335.0
17785.0	19345.0
17795.0	19355.0
17805.0	19365.0
17815.0	19375.0
17825.0	19385.0
17835.0	19395.0
17845.0	19405.0
17855.0	19415.0
17865.0	19425.0
17875.0	19435.0
17885.0	19445.0
17895.0	19455.0
17905.0	19465.0
17915.0	19475.0
17925.0	19485.0
17935.0	19495.0
17945.0	19505.0
17955.0	19515.0
17965.0	19525.0
17975.0	19535.0
17985.0	19545.0
17995.0	19555.0
18005.0	19565.0
18015.0	19575.0
18025.0	19585.0
18035.0	19595.0
18045.0	19605.0
18055.0	19615.0
18065.0	19625.0
18075.0	19635.0
18085.0	19645.0
18095.0	19655.0
18105.0	19665.0
18115.0	19675.0
18125.0	19685.0
18135.0	19695.0

(4) 20 MHz maximum authorized bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
1560 MHz Separation	
17710.0	19270.0
17730.0	19290.0
17750.0	19310.0
17770.0	19330.0
17790.0	19350.0
17810.0	19370.0
17830.0	19390.0
17850.0	19410.0
17870.0	19430.0
17890.0	19450.0

Transmit (receive) (MHz)	Receive (transmit) (MHz)
17910.0	19470.0
17930.0	19490.0
17950.0	19510.0
17970.0	19530.0
17990.0	19550.0
18010.0	19570.0
18030.0	19590.0
18050.0	19610.0
18070.0	19630.0
18090.0	19650.0
18110.0	19670.0
18130.0	19690.0

(5) 40 MHz maximum authorized bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
1560 MHz Separation	
17720.0	19280.0
17760.0	19320.0
17800.0	19360.0
17840.0	19400.0
17880.0	19440.0
17920.0	19480.0
17960.0	19520.0
18000.0	19560.0
18040.0	19600.0
18080.0	19640.0
18120.0	19680.0

(6) 80 MHz maximum authorized bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
1560 MHz Separation	
17740.0	19300.0
17820.0	19380.0
17900.0	19460.0
17980.0	19540.0
18060.0	19620.0

5. Section 74.636 is amended by revising paragraph (b) as follows:

§ 74.636 Power limitations.

* * * * *

(b) For operations in the 17.7–19.7 GHz band, the transmitter of a broadcast auxiliary station will be licensed with a peak envelop power ouput not in excess of that necessary to render service and shall in no event shall exceed 10 watts. In the band segments 17.7–18.6 GHz and 18.8–19.7 GHz the EIRP is limited to a maximum of +55 dBw, while in the band segment 18.6–18.8 GHz the EIRP is limited to +35 dBW.

* * * * *

6. Section 74.637 is amended by adding the following to the end of paragraph (c)(2)(i):

§ 74.637 Emission and bandwidth.

* * * * *

(c) * * *

(2) * * *

(i) * * *

[Attenuation greater than 56 decibels is not required.]

* * * * *

7. Section 74.641 is amended by revising the introductory of (a) and the table in paragraph (a)(1) as follows:

§ 74.641 Antenna systems.

(a) For fixed stations operating in the 12,700–13,200 and 17,700–19,700 MHz bands, the following rules apply:

(1) * * *

ANTENNA STANDARDS

Frequency (GHz)	Category	Maximum beamwidth to 3 dB points (included angle in degrees)	Minimum antenna gain (dBi)	Minimum radiation suppression to angle in degrees from centerline of main beam in decibels						
				5° to 10°	10° to 15°	15° to 20°	20° to 30°	30° to 100°	100° to 140°	140° to 180°
12.7 to 13.25	A	1.0	n/a	23	28	35	39	41	42	50
	B	2.0	n/a	20	25	28	30	32	37	47
17.7 to 19.7	A	n/a	38.0	25	29	33	36	42	55	55
	B	n/a	38.0	20	24	28	32	35	36	36

PART 78—CABLE TELEVISION RELAY SERVICE

1. Section 78.18 is amended by replacing the phrase "Groups C, D, E or F" with the the phrase "Groups C, D, E or F and those frequencies listed in paragraph (a)(4)(ii) of this section" in paragraphs (e) and (f); and revising subparagraph (a)(4) as follows:

§ 78.18 Frequency assignments.

(a) * * *

(4) The Cable Television Relay Service is also assigned the following frequencies in the 17,700 to 19,700 MHz band. These frequencies are co-equally

shared with stations in fixed service under Parts 21, 74 and 94 of the Commission's Rules. Applicants may use either a two-way link or one or both frequencies of a frequency pair for a one-way link and shall coordinate proposed operations pursuant to procedures required in § 21.100(d). These bands may be used for analog or digital modulation.

(i) 2 MHz maximum authorized bandwidth channel:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
18141.0	n/a

(ii) 6 MHz maximum authorized bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
216 MHz Separation	
18145.0	n/a
18151.0	0118367.0
18157.0	18373.0
18163.0	18379.0
18169.0	18385.0
18175.0	18391.0
18181.0	18397.0
18187.0	18403.0
18193.0	18409.0
18199.0	18415.0
18205.0	18421.0
18211.0	18427.0
18217.0	18433.0
18223.0	18439.0
18229.0	18445.0
18235.0	18451.0
18241.0	18457.0
18247.0	18463.0
18253.0	18469.0
18259.0	18475.0
18265.0	18481.0
18271.0	18487.0
18277.0	18493.0
18283.0	18499.0
18289.0	18505.0
18295.0	18511.0
18301.0	18517.0
18307.0	18523.0
18313.0	18529.0
18319.0	18535.0
18325.0	18541.0
18331.0	18547.0
18337.0	18553.0
18343.0	18559.0
18349.0	18565.0
18355.0	18571.0
18361.0	18577.0

(iii) 10 MHz maximum authorized bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
1560 MHz Separation	
17705.0	19265.0
17715.0	19275.0
17725.0	19285.0
17735.0	19295.0
17745.0	19305.0
17755.0	19315.0
17765.0	19325.0
17775.0	19335.0
17785.0	19345.0
17795.0	19355.0
17805.0	19365.0
17815.0	19375.0
17825.0	19385.0
17835.0	19395.0
17845.0	19405.0
17855.0	19415.0
17865.0	19425.0
17875.0	19435.0
17885.0	19445.0
17895.0	19455.0
17905.0	19465.0
17915.0	19475.0
17925.0	19485.0
17935.0	19495.0
17945.0	19505.0
17955.0	19515.0
17965.0	19525.0
17975.0	19535.0
17985.0	19545.0
17995.0	19555.0
18005.0	19565.0
18015.0	19575.0
18025.0	19585.0
18035.0	19595.0
18045.0	19605.0
18055.0	19615.0
18065.0	19625.0
18075.0	19635.0
18085.0	19645.0
18095.0	19655.0
18105.0	19665.0
18115.0	19675.0
18125.0	19685.0
18135.0	19695.0

(iv) 20 MHz maximum authorized bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
1560 MHz Separation	
17710.0	19270.0
17730.0	19290.0
17750.0	19310.0
17770.0	19330.0
17790.0	19350.0
17810.0	19370.0
17830.0	19390.0
17850.0	19410.0
17870.0	19430.0
17890.0	19450.0
17910.0	19470.0
17930.0	19490.0
17950.0	19510.0
17970.0	19530.0
17990.0	19550.0
18010.0	19570.0
18030.0	19590.0
18050.0	19610.0
18070.0	19630.0
18090.0	19650.0
18110.0	19670.0
18130.0	19690.0

(v) 40 MHz maximum authorized bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
1560 MHz Separation	
17720.0	19280.0
17760.0	19320.0
17800.0	19360.0
17840.0	19400.0
17880.0	19440.0
17920.0	19480.0
17960.0	19520.0
18000.0	19560.0
18040.0	19600.0
18080.0	19640.0
18120.0	19680.0

(vi) 80 MHz maximum authorized bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
1560 MHz Separation	
17740.0	19300.0
17820.0	19380.0
17900.0	19460.0
17980.0	19540.0
18060.0	19620.0

* * * * *

2. Section 78.101 is amended by revising the paragraph (d) as follows:

§ 78.101 Power limitations.

* * * * *

(d) For stations operating in the band segments 17.7–19.7 GHz, the transmitter output power shall not be greater than necessary to accomplish the function of the system and in any case shall not be greater than 10 watts (peak envelop power); the maximum EIRP shall be limited to +55 dBW except in the band segment 18.6–18.8 GHz where it shall be limited to +35 dBW.

* * * * *

3. Section 78.103 is amended by adding the following to the end of paragraph (c)(2)(i):

§ 78.103 Emission and bandwidth.

* * * * *

(c) * * *

(1) * * *

(i) * * *

[Attenuation greater than 56 decibels is not required.]

* * * * *

4. Section 78.105 is amended by revising the table in paragraph (a)(1) as follows:

§ 78.105 Antenna system.

(a) * * *

(1) * * *

ANTENNA STANDARDS

Frequency (GHz)	Category	Maximum beamwidth to 3 dB points (included angle in degrees)	Minimum antenna gain (dBi)	Minimum radiation suppression to angle in degrees from centerline of main beam in decibels: 5° to 10°	10° to 15°	15° to 20°	20° to 30°	30° to 100°	100° to 140°	140° to 180°
12.7 to 13.25	A	1.0	n/a	23	28	35	39	41	42	50
	B	2.0	n/a	20	25	28	30	32	37	47
17.7 to 19.7	A	n/a	38.0	25	29	33	36	42	55	55
	B	n/a	38.0	20	24	28	32	35	36	36

* * * * *

PART 94—PRIVATE OPERATIONAL-FIXED MICROWAVE SERVICE

1. Section 94.3 is amended by revising the term, "Effective Radiated Power (ERP)" and its definition as follows:

§ 94.3 Definitions.

* * * * *

Equivalent Isotropically Radiated Power (EIRP). The product of the power supplied to the antenna and the antenna gain in a given direction relative to an isotropic antenna. For purpose of this part, EIRP is expressed in decibels referenced to 1 milliwatt (dBm) in the direction of the main beam.

2. Section 94.61 is amended by revising the introductory text and the entries between 17700 and 19700 MHz in the table in paragraph (b) as follows:

§ 94.61 Applicability.

* * * * *

(b) Frequencies in the following bands are available for assignment to stations in the Private Operational-Fixed Service:

* * * * *

17700 to 18580	(6) (8) (10) (21) (27).
18580 to 18820	(10) (17) (21).
18820 to 18920	(21) (24).
18920 to 19160	(10) (17) (21).
19160 to 19260	(21) (24).
19260 to 19700	(10) (21) (27).

* * * * *

3. Section 94.63 is amended by removing paragraph (b)(4); and by revising paragraph (a) as follows:

§ 94.63 Interference protection criteria for operational fixed stations.

(a) Before filing an application for new or modified facilities under this part, the applicant must perform a frequency engineering analysis to assure that the proposed facilities will not cause interference to existing or previously applied-for stations in this service of a magnitude greater than that specified in the criteria set forth in paragraph (b) of this section, unless otherwise agreed to in accordance with § 94.15(b). As an exception to the above requirement, when the proposed facilities are to be operated in the bands 10,550–10,680 MHz, 17,700–19,700 MHz, 21,200–21,800 MHz, 22,400–23,000 MHz, 31,000–31,200 MHz or 38,600–40,000 MHz (excluding those frequencies set out in § 94.189), applicants shall follow the prior coordination procedure specified in § 21.100(d) of this chapter. In addition, when the proposed facilities are to be operated in the bands 2655–2690 MHz or 12,500–12,700 MHz, applications shall also follow the procedures in § 21.706(c) and (d) and the technical standards and requirements of Part 25 of this chapter as regards licensees in the Communication-Satellite Service. See also § 94.77.

* * * * *

4. Section 94.65 is amended by removing paragraph (l) and revising paragraphs (i) and (j) as follows:

§ 94.65 Frequencies.

* * * * *

(i) *10,550–10,680 MHz.* (1) 2.5 MHz maximum authorized bandwidth channels, 65 MHz separation:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
10551.25	10616.25
10553.75	10618.75
10556.25	10621.25
10558.75	10623.75

(2) 1.25 MHz maximum authorized bandwidth channels, 65 MHz separation:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
10560.625	10625.625
10561.875	10626.875
10563.125	10628.125
10564.375	10629.375

(j) *17700–19700 MHz.* (Note, however, that stations authorized as of September 9, 1983 to use frequencies in the band 17.7–19.7 GHz may, upon proper application, continue to be authorized for such operations.)

(1) 2 MHz maximum authorized bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
18141.0	n/a

(2) 5 MHz maximum authorized bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
340 MHz Separation	
18762.5	19102.5
18767.5	19107.5
18772.5	19112.5
18777.5	19117.5
18782.5	19122.5
18787.5	19127.5
18792.5	19132.5
18797.5	19137.5
18802.5	19142.5
18807.5	19147.5
18812.5	19152.5
18817.5	19157.5

(3) 6 MHz maximum authorized bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
216 MHz Separation	
18145.0	n/a
18151.0	18367.0
18157.0	18373.0
18163.0	18379.0
18169.0	18385.0
18175.0	18391.0
18181.0	18397.0
18187.0	18403.0
18193.0	18409.0
18199.0	18415.0
18205.0	18421.0
18211.0	18427.0
18217.0	18433.0
18223.0	18439.0
18229.0	18445.0
18235.0	18451.0
18241.0	18457.0
18247.0	18463.0
18253.0	18469.0
18259.0	18475.0
18265.0	18481.0
18271.0	18487.0
18277.0	18493.0
18283.0	18499.0
18289.0	18505.0
18295.0	18511.0
18301.0	18517.0
18307.0	18523.0
18313.0	18529.0
18319.0	18535.0
18325.0	18541.0
18331.0	18547.0
18337.0	18553.0
18343.0	18559.0
18349.0	18565.0
18355.0	18571.0
18361.0	18577.0

(4) 10 MHz maximum authorized bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
1560 MHz Separation	
17705.0	19265.0
17715.0	19275.0
17725.0	19285.0
17735.0	19295.0
17745.0	19305.0
17755.0	19315.0
17765.0	19325.0
17775.0	19335.0
17785.0	19345.0
17795.0	19355.0
17805.0	19365.0
17815.0	19375.0
17825.0	19385.0
17835.0	19395.0
17845.0	19405.0
17855.0	19415.0
17865.0	19425.0
17875.0	19435.0
17885.0	19445.0
17895.0	19455.0
17905.0	19465.0
17915.0	19475.0
17925.0	19485.0
17935.0	19495.0
17945.0	19505.0
17955.0	19515.0
17965.0	19525.0
17975.0	19535.0
17985.0	19545.0
17995.0	19555.0
18005.0	19565.0
18015.0	19575.0
18025.0	19585.0
18035.0	19595.0
18045.0	19605.0
18055.0	19615.0
18065.0	19625.0
18075.0	19635.0
18085.0	19645.0
18095.0	19655.0
18105.0	19665.0
18115.0	19675.0
18125.0	19685.0
18135.0	19695.0
340 MHz Separation	
18585.0	18925.0
18595.0	18935.0
18605.0	18945.0
18615.0	18955.0
18625.0	18965.0
18635.0	18975.0
18645.0	18985.0
18655.0	18995.0
18665.0	19005.0
18675.0	19015.0
18685.0	19025.0
18695.0	19035.0
18705.0	19045.0
18715.0	19055.0
18725.0	19065.0
18735.0	19075.0
18745.0	19085.0
18755.0	19095.0
18765.0	19105.0
18775.0	19115.0
18785.0	19125.0
18795.0	19135.0
18805.0	19145.0
18815.0	19155.0

(5) 20 HMz maximum authorized bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
1560 MHz Separation	
17710.0	19270.0
17730.0	19290.0
17750.0	19310.0
17770.0	19330.0
17790.0	19350.0
17810.0	19370.0
17830.0	19390.0
17850.0	19410.0
17870.0	19430.0
17890.0	19450.0
17910.0	19470.0
17930.0	19490.0
17950.0	19510.0
17970.0	19530.0
17990.0	19550.0
18010.0	19570.0
18030.0	19590.0
18050.0	19610.0
18070.0	19630.0
18090.0	19650.0
18110.0	19670.0
18130.0	19690.0
340 MHz Separation	
18590.0	18930.0
18610.0	18950.0
18630.0	18970.0
18650.0	18990.0
18670.0	19010.0
18690.0	19030.0
18710.0	19050.0
18730.0	19070.0
18750.0	19090.0
18770.0	19110.0
18790.0	19130.0
18810.0	19150.0

(6) 40 MHz maximum authorized bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
1560 MHz Separation	
17720.0	19280.0
17760.0	19320.0
17800.0	19360.0
17840.0	19400.0
17880.0	19440.0
17920.0	19480.0
17960.0	19520.0
18000.0	19560.0
18040.0	19600.0
18080.0	19640.0
18120.0	19680.0

(7) 80 MHz maximum authorized bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
1560 MHz Separation	
17740.0	19300.0
17820.0	19380.0
17900.0	19460.0
17980.0	19540.0
18060.0	19620.0

5. Section 94.67 is amended by revising the table in paragraph (a) between 10,550 and 19,700 MHz as follows:

§ 94.67 Frequency tolerance.

(a) * * *

10,500 to 10,680	[6] 0.0003
12,200 to 13,150	0.005
13,200 to 13,250	0.03
17,700 to 18,820	[7] 0.003
18,820 to 18,920	0.001
18,920 to 19,700	[7] 0.003

* * * * *

6. Section 94.71 is amended by revising the introductory text and the entries in the Table between 10,550 and 19,700 MHz in paragraph (b) and revising paragraph (c)(3) as follows:

§ 94.71 Emission and bandwidth limitations.

* * * * *

(b) The maximum bandwidth which will be authorized per frequency assigned is set out in the table which follows. Regardless of the maximum authorized bandwidth specified for each frequency band, the Commission reserves the right to issue a license for less than the maximum bandwidth if it appears that a lesser bandwidth would be sufficient to support an applicant's intended communications.

* * * * *

10,550 to 10,680	5
12,200 to 12,700	10 or 20 [9]
13,200 to 13,250	25
17,700 to 18,140	80
18,140 to 18,142	2
18,142 to 18,580	6
18,580 to 18,820	20
18,820 to 18,920	10
18,920 to 19,160	20
19,160 to 19,280	10
19,280 to 19,700	60

(c) * * *

(3) For Digital Transmission System channels:

* * * * *

7. Section 94.73 is amended by replacing the phrase "effective radiated power (ERP)" with the phrase "equivalent isotropically radiated power (EIRP)" in paragraph (a); replacing the phrase "ERP" in footnote 4 with the phrase "EIRP", revising the entries between 928 and 40,000 MHz in the table in paragraph (a)(2) and removing its footnote 7 as follows:

§ 94.73 Power limitations.

(a) * * *

(2) * * *

Frequency band (MHz)	Maximum allowable EIRP [1] (dBW)
928–929	17.
952–960	40. [5]
1,850–2,690	45. [3] [4]
6,525–10,550	50.
10,550–10,680	40. [2]
10,680–13,250	50. [3] [4]
17,700–18,600	55.
18,600–18,800	35.
18,800–19,700	55.
19,700–40,000	40. [8]
Above 40,000	As specified in authorization.

* * * * *

8. Section 94.93 is amended by revising the Table in paragraph (d)(1) as follows; and renumbering the existing tables in (d) as (i), (ii), and (iii):

§ 94.93 Provisions for private operational-fixed use of the 12,200–12,700 MHz band.

* * * * *

(d) * * *

(1) *Available frequencies.* (i) 6,525 to 6,875 MHz, 10 MHz channels.

* * * * *

(ii) 12,700 to 13,150 MHz, 25 MHz channels.

* * * * *

(iii) 12,700 to 13,150 MHz, 12.5 MHz channels.

Transmit (receive) (MHz)	Receive (transmit) (MHz)
12,706.25	12,931.25
12,718.75	12,943.75
12,731.25	12,956.25
12,743.75	12,968.75
12,756.25	12,981.25
12,768.75	12,993.75
12,781.25	13,006.25
12,793.75	13,018.75
12,806.25	13,031.25
12,818.75	13,043.75
12,831.25	13,056.25
12,843.75	13,068.75
12,856.25	13,081.25
12,868.75	13,093.75
12,881.25	13,106.25
12,893.75	13,118.75
12,906.25	13,131.25
12,918.75	13,143.75

* * * * *

9. Section 94.94 is revised as follows:

§ 94.94 Microwave digital modulation.

Microwave transmitters employing digital modulation techniques in the bands 10,550–10,680 and 17,700–19,700 MHz shall transmit at bit rate, in bits per second (bps), equal to or greater than the authorized bandwidth in Hertz (e.g., to be acceptable, equipment transmitting at a 20 Mbps rate must not require an authorized bandwidth greater than 20 MHz). In the 17,700–19,700 MHz band, this bps/Hz standard is independent of the antenna (polarization) used, frequency reuse, or how the system is configured.

Note.—Until December 1, 1988, no minimum bit rate shall apply to the 17,700–19,700 MHz band. Systems authorized prior to that date may install equipment after that date with no minimum bit rate.

10. Section 94.185 is amended by removing paragraph (d) and revising paragraphs (a) and (c) to read as follows:

§ 94.185 Applications.

(a) A separate application form must be filed for each Digital Termination Nodal Station. No separate authorization is required for User Stations associated with a licensed Nodal Station. Each Nodal Station application must specify the service area that will be served by the station in terms of a distance radius or other geographical specification, and, if applicable, the Standard Metropolitan Statistical Area (SMSA) being served.

* * * * *

(c) Only those applications which state an intent to provide linked service to users in at least 30 Standard Metropolitan Statistical Areas (SMSA) within 60 months of the granting of the application will be eligible for assignment of any of the frequencies designed as Extended network frequencies in § 94.189(b). All other applications will be eligible for assignment of the frequencies designated for Limited network frequencies in § 94.189(c) or of the frequencies designated for all DTS applicants in § 94.189(e).

11. Section 94.189 is amended by revising paragraph (a); removing paragraphs (d), (g) and (h); removing the last sentence of both paragraphs (e)(1) and (e)(2); redesignating paragraph (e) as paragraph (d); redesignating paragraph (f) as paragraph (e); add new paragraphs (f) and (g) as follows:

§ 94.189 Frequencies.

(a) Each assignment in the 10,550–10,680 MHz band will be for either Extended network or Limited network operation. Assignments in the 17,700–19,700 MHz band will be for all applicants regardless of the size of the network that an applicant intends to construct.

(1) In the 10,550–10,680 MHz band, assignments for Extended network operations will consist of a pair of 5 MHz channels as set out in paragraph (b) of this section. Assignments for Limited network operations will consist of a pair of 2.5 MHz channels as set out in paragraph (c) of this section.

Note.—Application for the assignment of frequencies in the 10,550–10,680 MHz band will only be accepted for channel number 4, 7, 9, and 19/20. These channels are also used by common carrier licenses or are proposed for use by existing permittees and pending applicants under common carrier rules in Part 21.

(2) In the 17,700–19,700 MHz band, assignments for either Extended or Limited network operations will consist of a pair of 10 MHz channels as set out in paragraph (f) of this section.

(3) A Limited network applicant or an applicant for assignment in the 17,700–19,700 MHz band may:

(i) Simultaneously apply for more than one channel pair per SMSA or service area upon a showing that the service to be provided will fully utilize the spectrum requested: and/or

(ii) Simultaneously apply for more than one Nodal Station per frequency per SMSA or service area if such multiple stations are necessary to efficiently provide adequate service coverage.

(4) Extended network licensees may not apply for an additional channel pair until such time as the licensee is operating its initial channel pair at or near capacity.

(5) The same Nodal, or User frequencies may be assigned to more than one licensee in the same SMSA or service area so long as the interference protection criteria of § 94.63 are met.

* * * * *

(f) Digital Termination System assignments in the 18 GHz band shall be made according to the following plan:

Channel No.	Nodal Station frequency band (MHz)	User station frequency band (MHz)
25	18,820–18,830	19,160–19,170
26	18,830–18,840	19,170–19,180
27	18,840–18,850	19,180–19,190
28	18,850–18,860	19,190–19,200
29	18,860–18,870	19,200–19,210

These channel pairs may be subdivided in bandwidth as desired by the licensee.

(g) Internodal link assignments are to be made in accordance with the provisions of Subpart C of Part 94, applying to point-to-point operations.

12. Section 94.191 is amended by revising paragraphs (a) and (b) as follows:

§ 94.191 Frequency tolerance.

(a) In the frequency band 10,550–10,680 MHz, the frequency tolerance of each Digital Termination Nodal Station transmitter authorized for this service shall be ±0.0001%. The frequency tolerance of each Digital Termination User Station transmitter authorized for this service shall be ±0.0003%.

(b) In the frequency band 17,700–19,700 MHz, the frequency tolerance of each Digital Termination Nodal Station transmitter authorized for this service shall be ±0.0001%. The frequency tolerance of each Digital Termination User Station transmitter authorized for this service shall be ±0.0003%.

13. Section 94.193 is revised to read as follows:

§ 94.193 Interference.

(a) All applicants and licensees for Digital Termination Systems shall comply with the interference protection criteria set out in § 94.63.

(b) Each application for a new or modified Digital Termination Nodal Station shall include an analysis of the potential for harmful interference to all other licensed and previously applied for co-channel and adjacent channel stations located within 80 km (50 miles) of the location of the proposed station. Applicants must certify the copies of this analysis have been served on all parties which might reasonably be expected to receive interference above the levels set out in § 94.63 within 5 days of the date the subject application is filed with the Commission.

(c) Each licensee and applicant is expected to engineer their system to be as compatible as reasonably possible with nearby co-channel and adjacent channel systems and to co-operate fully and in good faith to resolve whatever potential incompatabilities may arise.

14. Section 94.197 is revised to read as follows:

§ 94.197 Radiated power limitations in the 10.6 GHz band.

The EIRP of stations in the band segment 10,600–10,680 MHz shall not exceed +40 dBw.

15. Section 94.15 is amended by revising paragraph (i) to read as follows:

§ 94.15 Policy governing the assignment of frequencies.

* * * * *

(i) Licensees and applicants for Digital Termination Systems will not be subject to the provisions of paragraphs (a) through (h) of this section. They shall comply with the frequency assignment policies and procedures prescribed for Digital Termination Systems in Subpart F of this part.

(Secs. 4(i), 301 and 303(r), Federal Communications Act of 1934, as amended, 47 U.S.C. 4(i), 301 and 303(r))

[FR Doc. 84-24597 Filed 9-25-84; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 40917-4122]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon and California

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

ACTION: Interim emergency rule.

SUMMARY: NOAA issues an energency rule to close the territorial sea off the coast of Oregon between Cape Falcon and Cape Blanco to commerical fishing for salmon other than coho until September 30, 1984. This action is taken to implement a decision by the Secretary of Commerce to preempt the State of Oregon's ocean salmon management authority. This action is intended to conserve ocean salmon stocks and to protect the integrity of the regional fishery management system.

DATES: The emergency rule is effective from 2400 hours local time, September 21, 1984, through 2400 hours local time, September 30, 1984.

FOR FURTHER INFORMATION CONTACT: Dr. Thomas E. Kruse (Acting Regional Director, NMFS), 206–392–6150.

SUPPLEMENTARY INFORMATION: Section 306(b) of the Magnuson Fishery Conservation and Management Act (Magnuson Act), authorizes the Secretary of Commerce (Secretary) to regulate a fishery within State boundaries if he makes two findings: (1) Fishing in the fishery is engaged in predominately within and beyond the fishery conservation zone (FCZ); (2) a State has taken action, the results of which will substantially and adversely affect the carrying out of the fishery management plan (FMP) for the fishery.

NOAA published emergency regulations (49 FR 18853, May 3, 1984) to govern the 1984 ocean salmon fishery. During its deliberations on management measures for the 1984 season, the Pacific Fishery Management Council considered but rejected proposals to increase harvest levels off Oregon.

On August 30, 1984, the Oregon Fish and Wildlife Commission decided to deviate from the management regime established by the FMP by opening Oregon waters between Cape Blanco and Cape Falcon for a September commercial "other than coho" troll salmon fishery. The season in the FCZ closed as scheduled on August 31, 1984.

On September 7, 1984, the Assistant Administrator for Fisheries, NOAA, served notice on the State of Oregon of initiation of a proceeding to preempt Oregon's fishery management authority with respect to commercial fishing in the territorial sea off the coast of Oregon. The proposed rule appears at 49 FR 35815, September 12, 1984.

On September 13, 1984, a hearing was held under 50 CFR Part 619. The portion of the proceedings affecting the area between Cape Falcon and Cape Blanco was expedited in order to close that area promptly and minimize the adverse effects of fishing. The Administrative Law Judge, after considering submissions from the State of Oregon and the Assistant Administrator for Fisheries recommended that the Secretary preempt Oregon's authority between Cape Falcon and Cape Blanco until September 30, 1984. The Secretary has made the requisite statutory findings and issues this emergency rule closing Oregon's waters between Cape Falcon and Cape Blanco until September 30, 1984. The record of the hearing remains open for submission of supplementary evidence, and the Administrative Law Judge will issue at a later date a second set of findings regarding the issue of whether Oregon's departure from the Federal regulations for 1984 warrants preemptive action by the Secretary beyond the area between Cape Falcon and Cape Blanco and beyond September 30, 1984.

This rule is issued under the authority of section 305(e) of the Magnuson Act to respond to the emergency created by Oregon's decision to open its waters for a September commercial fishery. The rule will prevent hooking mortality on coho and undersized chinook that would have been taken incidental to the "other than coho" commercial fishery in Oregon's territorial waters.

Classification

The Assistant Administrator finds that the reasons for preemption and for issuing this emergency rule under section 305(e) of the Magnuson Act also make it impracticable and contrary to the public interest to provide advance notice and opportunity for comment or to delay for 30 days the effective date of this emergency rule, under sections 553 (b) and (d) of the Administrative Procedure Act.

The Administrator of NOAA has determined that this rule is not "major" under Executive Order 12291, and that the situation justifying issuance of this rule under section 305(e) of the Magnuson Act constitutes an emergency situation under section 8(a)(1) of the Executive Order. NOAA has transmitted a copy of this emergency rule and the regulatory impact review prepared on the 1984 emergency regulations to the Director of the Office of Management and Budget.

This emergency rule does not entail any Federal collection of information for purposes of the Paperwork Reduction Act. Because the rule is issued without opportunity for prior public comment, it is exempt from the regular procedures of the Regulatory Flexibility Act.

List of Subjects in 50 CFR Part 661

Fisheries, Indians.

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

Dated: September 21, 1984.

A.J. Calio,

Deputy Administrator, National Oceanic and Atmospheric Administration.

PART 661—OCEAN SALMON FISHERIES OFF THE COASTS OF WASHINGTON, OREGON, AND CALIFORNIA

For the reasons set out in the preamble, 50 CFR Part 661 is amended as follows:

1. The authority citation for Part 661 is as follows:

Authority: 16 U.S.C. 1801 *et seq.*

§ 661.3 [Amended]

2. For the reasons set out in the preamble, 50 CFR 661.3 is amended by adding the following sentence to the end of the definition of the term "Fishery Management Area":

* * * * *

* * * In addition, the Fishery Management Area includes the territorial sea off the coast of Oregon between Cape Falcon and Cape Blanco until 2400 hours local time, September 30, 1984.

* * * * *

[FR Doc. 84-25552 Filed 9-25-84; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 49, No. 188
Wednesday, September 26, 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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

Federal Employees Health Benefits Program; Miscellaneous Amendments

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: The Office of Personnel Management proposes to revise its Federal Employees Health Benefits (FEHB) regulations to make the effective dates for belated open season enrollments and changes in enrollment retroactive when filed late because of causes beyond an individual's control. This revision would alleviate the financial hardship suffered by individuals who must meet deductibles of two plans in the same calendar year for medical expenses incurred before and after the effective date of the belated change.

DATE: Comments must be received on or before October 26, 1984.

ADDRESS: Send comments to Lucretia F. Myers, Assistant Director for Pay and Benefits Policy, Office of Personnel Management, P.O. Box 57, Washington, D.C. 20044; or deliver to Office of Personnel Management, Room 4351, 1900 E Street, NW, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Barbara Myers, (202) 632–9677.

SUPPLEMENTARY INFORMATION: Regulations now allow belated enrollments and changes in enrollment when individuals are unable, for causes beyond their control, to file within the open season time limits. Such actions are effective on a prospective basis. The regulations also require individuals who incur medical expenses before and after the effective date of the belated change to meet deductibles of two plans in that same calendar year.

OPM is therefore amending its regulations to avoid an adverse impact on individuals and to ensure consistent treatment. The amended regulations would provide that an open season enrollment or change in enrollment, which is filed late because of causes beyond the individual's control, takes effect as if it had been timely filed. The effective date will be either January 1 or the first day of the first pay period in January, if different. (See § 890.306(c) of the current FEHB regulations.) An individual whose employing office accepts his or her reasons for belatedly filing will be required to meet only one deductible for the calendar year.

E.O. 12291, Federal Regulation

OPM has determined that this is not a major rule as defined under Section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they primarily affect Federal employees and annuitants.

List of Subjects in 5 CFR Part 890

Administrative practice and procedure, Claims, Government employees, Health insurance, Retirement.

Office of Personnel Management.

Donald J. Devine,

Director.

Accordingly, OMP proposes to amend Part 890 of Title 5 of the Code of Federal Regulations as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

1. In § 890.201, paragraph (a)(10) is revised, to read as follows:

§ 890.210 Minimum standards for health benefits plans.

(a) * * *

(10) Provide that any covered expenses incurred from January 1 to the effective date of an open season change count toward the losing carrier's prior year deductible. If the prior year deductible or family limit on deductibles of the losing carrier had previously been met, the enrolled individual (and eligible family members) shall be eligible for reimbursement by the losing carrier for covered expenses incurred during the current year. Reimbursement of covered expenses shall apply only to covered expenses incurred from January 1 to the effective date of the open season change. This section shall not apply to any other permissible changes made during a contract year.

* * * * *

2. In § 890.306, paragraph (e) is redesignated as paragraph (f) and a new paragraph (e) is added, to read as follows:

§ 890.306 Effective dates.

* * * * *

(e) *Belated open season registrations.* When a belatedly filed enrollment registration under § 890.301(d)(1) or an enrollment change under § 890.301(d)(2) is accepted by the employing office under § 890.301(b), it takes effect the same day a timely filed enrollment would.

* * * * *

(5 U.S.C. 8913)

[FR Doc. 84–25560 Filed 9–25–84; 8:45 am]
BILLING CODE 6325–01–M

DEPARTMENT OF ENERGY

Office of the Assistant Secretary for Defense Programs

10 CFR Part 1017

Identification and Protection of Unclassified Controlled Nuclear Information

AGENCY: Department of Energy.

ACTION: Proposed rule; extension of the comment period.

SUMMARY: The Department of Energy (DOE) hereby extends the comment period thirty days from the date of this publication on proposed rules regarding identification and protection of Unclassified Controlled Nuclear Information. This action is in response to a number of requests that an extension be granted to provide additional time to review the proposed rule of August 3, 1984 (49 FR 31236) and to develop comments for submission to DOE.

DATE: Comments in connection with the proposed rule must be received on or before October 26, 1984.

ADDRESSES: Written comments should be sent to the Assistant Secretary for Defense Programs, U.S. Department of Energy, Room 4A–014, Washington, D.C. 20585, Attention: Paul R. Laplante, DP–6. Six copies should be submitted. Copies

of comments received may be examined at the DOE Reading Room, 1E–190, James Forrestal Building, 1000 Independence Ave., SW., Washington, DC 20585 between the hours of 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Paul R. Laplante, Office of Policy and Planning (DP–6), Office of the Assistant Secretary for Defense Programs, U.S. Department of Energy, Washington, D.C. 20585, (202) 252–1870 or Ms. Jo Ann Williams, Office of the General Counsel (GC–31), U.S. Department of Energy, Washington, DC 20585, (202) 252–6975.

Issued in Washington, DC, this 14th day of September, 1984.

William W. Hoover,

Assistant Secretary for Defense Programs.

[FR Doc. 84–25513 Filed 9–25–84; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 84–CE–26–AD]

Airworthiness Directives; Beech Models 65–88, 65–90, 65–A90, B90, C90, E90, 100, A100 and B100 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This Notice proposes to adopt a new Airworthiness Directive (AD), applicable to Beech Models 65–88, 65–90, 65–A90, B90, C90, E90, 100, A100 and B100 airplanes. It would supersede AD 81–12–01 and require replacement of all cast acrylic cabin windows with stretched acrylic windows. Failures of cast acrylic windows continue to occur although they have been inspected per AD 81–12–01. Since the inspections required by this AD are inadequate to prevent window failures, removel of the cast acrylic windows from service will preclude the safety hazards associated with these failures.

DATE: Comments must be received on or before November 16, 1984.

Compliance: As prescribed in the body of the AD.

ADDRESSES: Beech Service Bulletin No. 2011 applicable to this AD may be obtained from Beech Aircraft Corporation, Wichita, Kansas 67201 or the Rules Docket at the addresses below.

Send comments on the proposal in duplicate to Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 84–CE–26–AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Don Campbell, Aerospace Engineer, Airframe Branch, ACE–120W, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946–4409.

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 or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. 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 NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 84–CE–26–Ad, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

AD 81–12–01, Amendment 39–4126 (46 FR 29995, 29926) requires inspection of cast acrylic windows on Beech Models 65–88, 65–90, 90, and 100 Series airplanes to prevent failures of these windows. Despite the inspections required by this AD, there have been five additional failures. Cabin window blowouts are hazardous. In addition to the danger of flying plexiglass, there exists the physiological distress of rapid decompression, both to passengers and crew. Loss of airplane control due to pilot incapacitation may result. To prevent such a failure, Beech has issued Mandatory Service Bulletin No. 2011 which calls for replacement of all cast acrylic windows with stretched acrylic within one year. In view of the service history, the FAA finds that AD 81–12–01 is not effective in preventing cast acrylic window failures on the affected airplanes. Since the condition described herein, is likely to exist or develop in other Beech Models 65–88, 65–90, 90 and 100 Series aircraft of the same type design, the proposed AD would supersede AD 81–12–01 and require continual inspection and eventual replacement of all cast acrylic windows in accordance with Beech Service Bulletin 2011.

There are approximately 1,134 airplanes affected by the proposed AD. Labor, material, and downtime for replacing all the cast acrylic windows is estimated to be $2,700 per airplane for a total cost of $3.06 million. The cost per airplane is less than the threshold significant cost amount for those small entities operating one airplane and the FAA has determined, on the basis of the aircraft registration records, that less than 5% of the owners of the affected airplanes own more than one of the affected aircraft and may incur a cost greater than the significant amount threshold.

Therefore, I certify that this proposed action: (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) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regualtory docket. A copy of it may be obtained by contacting the Rules Docket at the location given under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend Section 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new AD:

Beech: Applies to Models 65–88, (S/Ns LP–1 through LP–26, LP–28 and LP–30 through LP–47); 65–90, 65–A90, B90, and C90 (S/Ns LJ–1 through LJ–660); E90, (S/Ns LW–1 through LW–178); 100 and A100, (S/Ns B–1 through B–226); and B100 (S/Ns BE–1 through BE–8) certificated in any

category in which *all* cast acrylic windows have not been replaced with stretched acrylic windows.

Compliance: Required as indicated, unless already accomplished.

To prevent failures of a cast acrylic window and resulting decompression and possible occupant injury, accomplish the following:

(a) Within 50 hours time-in-service (TIS) after the effective date of this AD or 300 hours TIS after the last inspection per AD 81–12–01 whichever occurs later, and each 300 hours TIS thereafter, and within 50 hours TIS after any stripping and repainting in the area of the window;

(1) Visually inspect each cast acrylic window in accordance with Beech Service Bulletin No. 2011 (SB 2011).

(2) If the above inspeciton discloses any crack, fissure, stress craze or scratch in any window, prior to further pressurized flight, replace this window with a stretched acrylic window of the appropriate part number specified in paragraph (b).

(b) Within one calendar year after the effective date of the AD, replace each cast acrylic window with one of the stretched acrylic windows listed below.

Window	Beech Part No.
Oval, baggage area	50–440014–837 or –838.
Cockpit, side, standard	50–420066–317 or –318.
Cockpit, side, oversize	50–420066–353 or –354.
Round, Cabin	50–420013–1053.

Note: After installing a stretched acrylic window make an appropriate entry in the Aircraft Maintenance Record which, along with previous entries, clearly shows each location at which a stretched acrylic window has been installed.

(c) Upon installation of all stretched acrylic windows per paragraph (b) above this AD is no longer applicable.

(d) Compliance with Paragraphs (a) and (b) of this AD is not required if the pressurization system is deactivated as follows, and the aircraft is operated in accordance with this limitation:

(1) Secure the "Test/Dump" switch in the "Dump" position; and

(2) Fabricate a placard, "CABIN PRESSURIZATION PROHIBITED" of 3/16-inch or larger letters and install it on the control panel adjacent to pressurization system controls; and

(3) Insert a copy of this AD in the "Limitations" section of the airplane flight manual.

(4) Make an appropriate entry in the Aircraft Maintenance Record showing compliance with this paragraph.

(5) The provisions of this paragraph may be accomplished by the holder of at least a private pilot certificate issued under Part 61 of the Federal Aviation Regulations on any airplane owned or operated by that person, provided the airplane is not used in air carrier service.

(e) Aircraft may be flown unpressurized in accordance with FAR 21.197 to a location where the inspections/repairs required by this AD can be performed.

(f) An equivalent method of compliance with this AD may be used when approved by the Manager, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-continent Airport, Wichita, Kansas 67209 Telephone (316) 946–4400.

This AD supersedes AD 81–12–01, Amendment 39–4128.

(Secs. 313(a), 601 and 603, of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 and 1423); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and Section 11.85 of the Federal Aviation Regulations (14 CFR 11.85))

Issued in Kansas City, Missouri, on September 14, 1984.

John E. Shaw,

Acting Director, Central Region.

[FR Doc. 84–25430 Filed 9–25–84; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 215, 880, 881, 882, 883, 884, 886, 904, 905 and 960

[Docket No. R–84–1187; FR–1597]

Preference in the Provision of Housing for Families Who Are Occupying Substandard Housing, Are Involuntarily Displaced, or Are Paying More Than Fifty Percent of Income for Rent

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement a statutory directive to give preference in the provision of housing to families eligible for assistance under the Public Housing, Section 8 or Rent Supplement programs who are living in substandard housing, who are involuntarily displaced, or who are paying more than 50 percent of family income for rent. The Congress has determined that these families, because they have the most urgent housing needs, should be treated preferentially in the tenant selection process.

DATE: Comments must be received by November 26, 1984.

ADDRESS: Interested persons are invited to submit comments regarding this rule to the Office of General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: James Tahash, Office of Multifamily Housing Development, Room 6178, Department of Housing and Urban Development, Telephone (202) 755–5654; Madeline Hastings, Office of Existing and Moderate Rehabilitation, Room 4204, Department of Housing and Urban Development, Telephone (202) 755–5597; and Edward Whipple, Office of Public Housing, Room 6236 Department of Housing and Urban Development, 451 Seventh Street, S.W. Washington, D.C. 20410, Telephone (202) 426–0744. These are not toll-free telephone numbers.

SUPPLEMENTARY INFORMATION:

Statutory Basis

Section 206 of the Housing and Community Development Amendments of 1979 ("HCDA") (Pub. L. 96–153) amended the Public Housing and section 8 Programs under the United States Housing Act of 1937 to provide, in substantially identical language, that tenant selection criteria used by an owner or PHA, as the case may be, must give "preference to families which occupy substandard housing or are involuntarily displaced at the time they are seeking" housing assistance. Section 203 of the Housing and Urban-Rural Recovery Act of 1983 (Pub. L. 98–181 (1983 Act) subsequently amended these authorities to provide that the tenant selection criteria used must give a preference to a third category of families—those who "are paying more than 50 per centum of family income for rent."

Section 203(a)(4) of the HCDA also amended section 101 of the Housing and Urban Development Act of 1965 (Rent Supplement), 12 U.S.C. 1701s, by adding a new subsection (k), which provides that "in making assistance available under this section, the Secretary shall give priority to individuals or families who are occupying substandard housing or are involuntarily displaced at the time they are seeking housing assistance." In addition, section 203(b)(3) of the 1983 Act amended section 101(e)(1)(B) of the Rent Supplement authority by including substantially identical language with respect to families paying more than 50 percent of income for rent. As amended, paragraph (B), now states: "The Secretary shall issue, * * *, certificates as to * * * (B) whether the individual was occupying substandard housing, was paying more than 50 percent of family income for rent, or was involuntarily displaced at the time it was seeking assistance under this section."

Although the rent burden preference is appropriately included in the Rent Supplement provision, the amendment

adding the preference affected section 101(e)(1)(B) only, and not section 101(k), the section that Congress had originally enacted to create the preference for those persons occupying substandard housing or involuntarily displaced. *See* section 203(a)(4) of the HCDA. The Department would, however, under this rule, extend the rent burden preference to persons who qualify for assistance under the Rent Supplement program. In doing so, the Department believes the rule would be carrying out the intent of Congress, notwithstanding the failure to include the language in section 101(k) of the Rent Supplement statute.

The amendments to the Public Housing and Section 8 Programs made by section 206 of the HCDA provide for a "preference" to certain classes of families. The comparable amendment by section 203(a)(4) of the HCDA to the Rent Supplement Program provides for a "priority" to the same classes of families. The Department has studied the legislative history to determine whether the Congress intended to impart a meaning to the word "priority" different from that intended by use of the word "preference." Our research has shed no light on the legislative intent in this regard. In view of the apparent unified intent of the several amendments (notwithstanding that they affect different programs), the Department has treated the words synonymously. To avoid ambiguity, the word "preference," and not "priority," is used throughout the rule.

The statutory directive is that the function of selecting tenants, including the giving of the statutory preferences, is the responsibility of the owner or PHA. This responsibility is so fixed under present regulations, and was reaffirmed in the Conference Report accompanying the legislation establishing the original two preferences. The report states in part:

> The priority [or preference] is intended to guide the owner of PHA in determining which potential tenants to select * * * The priority is not intended nor should it be used to allow the Department to direct an owner or PHA to select certain tenants. * * * This provision is not intended to alter the basic responsibility over tenant selection which, under current law, rests solely with the PHA and owner. It is simply intended to have owners and PHAs give priority to meeting the urgent housing needs of those families living in substandard conditions or being involuntarily displaced. [H.R. Rep. No. 706, 96th Cong., 1st Sess. 55, *reprinted in* [1979] U.S. Code Cong. & Ad. News 2414.]

The rule has been drafted to give owners full discretion and authority to select tenants, verify their status, give the preferences, and generally implement all aspects of the rule with minimal Departmental involvement. However, if an owner in the Rent Supplement program requests it, the Secretary will issue a certificate with respect to whether a family is occupying substandard housing, is involuntarily displaced, or is paying more than 50 percent of family income for rent. The Secretary's action here is consistent with section 101(e)(1)(B) of the Rent Supplement Program.

In drafting this proposed rule, the Department has sought to accommodate the statutory demand of the preference provisions within the existing regulatory framework of the Rent Supplement, Public Housing, and section 8 Programs. Thus, although the statutory imperative is to give preference to families who are involuntarily displaced, who are living in substandard housing, or who are paying more than 50 percent of family income for rent, the rule limits the preferences to those families who are "qualified tenants" under 24 CFR 215.20 or "eligible families" under the various section 8 and Public Housing regulations.

The Department has limited the preferences in this manner to ensure that available assisted housing is not denied to "qualified" or "eligible families" as a result of the creation of a separate class of beneficiaries (i.e., families involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent) who, being neither otherwise eligible nor qualified, are nonetheless treated preferentially. The rule is specific that, irrespective of a family's preference, if that family did not satisfy the condition precedent of being "qualified" or "eligible", as defined in the relevant programs, the family cannot qualify for admission to a project.

Time for Implementing the Rule

The Department is specifically requesting comment on how much time PHAs and private owners should be given to implement the final rule, which will be published for effect after HUD has reviewed the public comments received on this proposed rule. HUD is considering delaying the effective date for up to 180 days after publication of the final rule. The proposed delay in the implementation of the final rule may be necessary because of administrative problems arising from the final rule's implementation. For example, private owners and PHAs may already have a hierarchical waiting list of qualified and eligible families—a list which would have been prepared without regard to these preferences. These owners and PHAs may need some time to factor in the new preferences, which may result in applicants' positions on the waiting list changing. Or, tenants who may qualify for a preference may not readily be able to furnish the documentation necessary to verify their status. In addition, in the interest of fairness and to ensure that all applicant's are fully informed of the preferences, it may be necessary to delay the effective date of the final rule to allow for the widest dissemination of information regarding the preferences.

Primacy of the Preferences

This rule would implement these three preferences so as to give them primacy over all non-Federal preferences. Therefore, the Department is also specifically requesting comment on the effect and propriety of implementing the three preferences so as to accord such qualifying applicants an absolute preemptive right and a preeminence in the tenant selection process over other applicants holding or entitled to other preferences currently recognized by PHAs and some private owners. For example, present practice followed by most PHAs and sanctioned in existing regulations, allows for some categories of tenents (e.g., veterans) to be preferred over others in the tenant selection process. With the issuance of this proposed rule and its adoption as a final rule, however, non-Federal preferences (i.g., preferences not mandated by Federal law) will be subordinated to these three preferences.

The Department recognizes that it may be administratively unsettling to some PHAs and private owners to change established tenant selection procedures to make them consistent with this rule. However, in view of the explicit statutory creation of these three classes of preferred applicants, the Department believes that it is constrained to provide that these three classes should be chosen over other applicants, irrespective of how many non-Federal preferences other applicants may qualify to receive. Moreover, such a provision, in HUD's view, is fairly responsive to the Congressional solicitude, evidenced in the above-cited language of the Conference Report, for families in the preferred categories.

Accordingly, it is the Department's position that, in the weighting process, an applicant qualifying for any one of these three preferences would outweigh, and therefore be chosen before, another applicant who does not qualify for one of the three preferences, regardless of the combination or aggregation of other (i.e., State- or locally created)

preferences enjoyed by the other applicant, and without regard to which applicant applied first, or the length of time the first applicant was on the waiting list.

The rule would not preempt those classes of tenants accorded specific preferential treatment under other Federal regulatorey or statutory authorities. For example, sections 221(f) and 231(f) of the National Housing Act (NHA), 12 U.S.C. 17151(f) and 1715v(f), respectively, authorize the Secretary to adopt procedures to assure that housing provided under these sections "is available to displaced families" (section 221(f)) or to prescribe procedures to secure for handicapped families "preference or priority of opportunity to rent the living units specially designed for their use and occupancy)" (section 231(f)). These statutory requirements are implemented by regulatory provisions at 24 CFR 221.537(c), giving a preference to displacees, and at 24 CFR 231.9, giving a preference to elderly or handicapped persons.

No Double Preference

Because of those preexisting preference provisions (e.g., the preferences under 24 CFR 221.537(c) and 231.9), it is theoretically possible that an applicant may qualify as a displacee under 24 CFR 211.537(c) or under proposed 24 CFR 215.22, since "displacee" may be, in part, defined identically in both sections. Also, it is possible that an applicant will qualify for more than one of the preferences contained in this rule. For example, a person who has been involuntarily displaced may be living in replacement housing that is substandard. There is, however, no "double" preference in such instances. Thus, a displacee who may qualify under either 24 CFR 221.537(c) or proposed 24 CFR 215.22(b) would be treated equally in the tenant selection process with a displacee who qualified under proposed § 215.22(b) only.

Changing From one Preference Category to Another

An applicant who qualifies for a preference but who, before securing assisted housing, loses his ore her qualification for that preference will still be entitled to exercise a preference at the time a unit becomes available if he or she is eligible for another of the statutory preferences at that time. For example, if an applicant originally qualifies for a preference on grounds of involuntary displacement, and as a result of that displacement moves into replacement housing while on the waiting list for housing assistance for which he or she pays more than 50 percent of income for rent, the applicant may demonstrate his or her continuing qualification for a preference by virtue of his or her rent burden. Similarly, an applicant who is occupying substandard housing will not lose his or her preference status if, while on the waiting list, the applicant moves into a standard unit but is forced thereby to pay more than fifty percent of income for rent.

Relationship to Other Statutes

The statutory language is unambiguous that these preferences must be given to eligible applicants, but these preferences are not intended to be applied so as to vitiate other regulatory and statutory objectives. For example, 24 CFR 860.204(c) makes it clear that tenant selection policies shall be in compliance with, among other things, "the nondiscrimination requirements of Title VI of the Civil Rights Act of 1964". Owners and PHAs are, thus, under a continuing obligation to observe all pertinent Federal regulatory and statutory requirements while giving the preference to eligible applicants. *See also* 24 CFR 880.603(d), 881.603(b) and 883.704(b).

Verification Procedures—PHAs and Private Owners

This rule provides procedures that PHAs and owners would follow to verify an applicant's entitlement to a claimed preference. PHAs, because of their experience in administering these programs, and preferences in particular, may adopt their own verification procedures to determine an applicant's eligibility for one of the three preferences. Alternatively, a PHA may opt to use the verification procedures set forth in this rule. Private owners, in contrast, who may have, in most instances, comparatively limited experience in managing assisted housing, are bound to use the verification procedures described in the rule.

However, to avoid unnecessary duplication of effort for both private owners and PHAs, this rule would reference and adopt, where appropriate, the procedures in place for verifying an applicant's eligibility for assisted housing. There are established procedures that would be easily adaptable for application to this rule. For example, HUD Handbook 4350.3, *Occupancy Requirements of Subsidized Multifamily Housing Programs*, and the recently promulgated regulations affecting the definition and examination of family income under the Section 8 Housing Assistance Payments and related programs, and the Public and Indian Housing programs (*see* 49 FR 19926, May 10, 1984 and 49 FR 21476, May 21, 1984, respectively) contain provisions for the verification of family income. Moreover, family income is a criterion for selection and admission to a project. Therefore, since PHAs and owners have to verify a family's gross income for this purpose, they may simultaneously accomplish the companion task of verifying a family's eligibility for a preference for paying more than 50 percent of the family's gross income for rent without HUD's imposing a separate set of procedures.

PHAs and owners would have no obligation under this rule to determine whether there was, at any time, a hiatus in an applicant's status. The Department believes that to impose such a requirement would serve no useful purpose and would be an unnecessary burden on owners and PHAs. Moreover, the relevant HCDA provisions state that the preference is to be given "at the time a family is seeking housing assistance." *See, e.g.*, section 206(b)(1), 42 U.S.C. 1437f(d)(1)(A). Although this language may be susceptible to other interpretations, a fair interpretation is that assistance is sought from the time when a family applies for a unit to the point when housing is actually made available, but that the critical point is when housing is actually made available. Thus, it is legally proper to isolate this critical point in that continuum and to provide that it is at the time when housing is to be made available that the family's entitlement to a preference is to be verified.

The rule would provide, however, significant flexibility in the timing of the required verification. Thus, applicants may claim qualification for a preference at the time they make application for admission to a project (or thereafter until the time that they are offered a unit) by certifying that they are eligible for one of the preferences. The owner would have to accept this certification unless the owner verifies that the applicant is not qualified for the preference. This provision is designed to save the time and expense involved in the production and review of proof of qualification for the preference where the length of time on a waiting list could necessitate subsequent verification before a unit was provided on the basis of the preference. Owners would be permitted, however, to require verification at any time before offering a unit to an applicant. In such a case, the applicant would not be required to verify such qualification again unless, as determined by the owner, such a long time has elapsed since verification as to make reverification desirable, or the

owner has reasonable ground to believe that the applicant no longer qualifies for a preference.

Definitions

Involuntary displacement would be defined to include private and government action, as well as a disaster, resulting in an applicant's vacating his or her unit (but not a proper election not to renew a lease, nor an eviction as a result of a tenant's refusal to accept a transfer in accordance with law). Similarly, under specified circumstances, conversion, sale or closing of an applicant's building (but not a rental increase) would be justifiable reasons for an applicant's leaving his or her building. An applicant who has been involuntarily displaced would qualify for the preference only if he or she is not living in standard replacement housing at the point of certification or verification. Standard replacement housing would be defined as decent, safe, and sanitary housing, not including transient facilities such as motels and hotels. A person would also be considered involuntarily displaced if the displacement will occur within six months of the certification or verification. An applicant's involuntary displacement would be verifiable by documentation from an owner or governmental agency evidencing one of these actions or reasons.

The definition of substandard housing would be written to include, among other things, dilapidated housing or housing without indoor plumbing or a kitchen. Applicants who are living in substandard housing would have this condition verified by a statement from a government entity, such as a code enforcement or public health agency, to the effect that any one of the defects or deficiencies noted in the definition exists.

For purposes of this rule, family income would be defined in terms of "annual income" as defined in the Parts affected by this rule (*see, e.g.*, 24 CFR 215.20(c) and 913.105).

Rent would be defined as the amount, calculated on a monthly basis, that a family pays its landlord or is obligated to pay under its lease plus utilities (excluding telephone) and other housing services (e.g., trash removal). In calculating a family's monthly rent (i.e., rent plus utilities), owners would use a family's average monthly utility costs based on the family's utility bills, furnished by the family, for the most recent 12-month period, or where these bills are not obtainable, for an appropriate recent period, to determine whether a family qualifies for the preference based on the rent burden preference.

PHAs would have the option of using locally derived definitions of "standard replacement housing", "involuntary displacement", "substandard housing", "family income," and "rent", if they are submitted to HUD for approval. If alternate definitions are not approved, the definitions contained in this rule would have to be used.

Miscellaneous

Owners and PHAs would have to inform all applicants, including those on their waiting list, about the availability of the preferences. Applicants already on a waiting list would be considered part of the pool from which tenants would be selected and must be given adequate opportunity to show that they qualify for a preference.

This proposed rule would also amend §§ 880.603(b)(2), 881.603(b)(2), and 883.704(b)(2) to provide that if a family is entitled to a preference, an owner must accept a family's application, notwithstanding that the waiting list is so long that the family may not be offered a unit for the next 12 months. The Department believes that so long as an applicant qualifies for one of these preferences, the length of the waiting list should not deny the applicant the opportunity to be considered at all times for available housing. These sections currently allow an owner to decline taking additional applications if an applicant is not likely to be admitted to the project for the next 12 months.

The rule would also be applicable to the Turnkey III Program under 24 CFR Part 904 and to Indian Housing programs under part 905.

Other Findings

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 23 CFR Part 50, which implement 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

This rule would not constitute a "major rule" as that term is defined in 1(b) of the Executive Order of Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it would 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.

Under 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. The rule would merely provide for a preferential selection process among assisted tenants, and would not significantly increase the administrative burden on small landlords or PHAs, since documentation of entitlement to the preference would be largely the responsibility of the applicant.

This rule was listed as RIN 2502–AA34 (H–22–80; FR 1597) under the Office of Housing, in the Department's Semiannual Agenda of Regulations published on April 19, 1984 (49 FR 15926) in accordance with Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program numbers are 14.103, 14.105, 14.149, and 14.156.

List of Subjects in 24 CFR

Part 215

Grant programs: housing and community development, Rent subsidies.

Part 880

Grant programs: housing and community development, Rent subsidies, Low and moderate income housing.

Part 881

Grant programs: housing and community development, Rent subsides, Low and moderate income housing.

Part 882

Grant programs: housing and community development, Housing, Manufactured homes, Rent subsidies.

Part 883

Grant programs: housing and community development, Rent subsidies, New construction and substantial rehabilitation.

Part 884

Grant programs: housing and community development, Rent subsidies, Rural areas, Low and moderate income housing.

Part 886

Grant programs: housing and community development, Low and moderate income housing, Rent subsidies.

Part 904, 905, 960

Public housing.

Accordingly, the Department proposes to amend 24 CFR Parts 215, 880, 881, 882, 883, 884, 886, 904, 905, and 960 as follows:

PART 215—RENT SUPPLEMENT PAYMENTS

1. In part 215, add a new § 215.22, to read as follows:

§ 215.22 Preference for applicants involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent.

(a) *General.* In selecting from among applicants for admission to projects assisted under this part, housing owners shall give preference to applicants who are otherwise qualified for assistance and who, at the time they are seeking housing assistance, are involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent. Only qualified tenants, as defined in § 215.20, are eligible to receive a preference. As part of the tenant selection process, owners shall inform applicants, including those on the waiting list, of the availability of the preferences, and give these persons an opportunity to show that they qualify for one of the preferences.

(b) *Primacy of the preferences.* An applicant who qualified for any of the preferences under this section is to be selected for admission to a project assisted under this part before any other applicant who is not so qualified, without regard to the other applicant's qualification for one or more locally created preferences or priorities (i.e., preferences or priorities not created pursuant to Federal law), or place on the waiting list, or the time of submission of his or her application for admission to an assisted project.

(c) *Qualifying for a preference.* (1) An applicant qualifies for a preference under this section if (i) the applicant has been involuntarily displaced and is not living in standard replacement housing or, within no more than six months from the date of certification under paragraph (c)(2) of this section or verification under paragraph (c)(3) of this section, as appropriate, the applicant will be involuntarily displaced; (ii) the applicant is living in substandard housing; or (iii) the applicant is paying more than 50 percent of family income for rent.

(2) Applicants may claim qualification for a preference at the time they make application for admission to a project (or thereafter until the time that they are offered a unit in the project) by certifying to the owner that they are eligible for one of the preferences described in paragraph (c)(1) of this section. An owner shall accept this certification unless the owner verifies that the applicant is not qualified for the preference.

(3) Before executing a lease or rental agreement with an applicant who has been offered a unit on the basis of a preference, the owner shall require that the applicant provide verification that he or she qualifies for a preference described in paragraph (c)(1) of this section by virtue of his or her current status (without regard to whether there was a change in the applicant's preferred status between the certification under paragraph (c)(2) of this section and execution of a rental agreement, including a change from one preference category to another).

(4) If an applicant's qualification for a preference under paragraph (c)(1) of this section has once been verified, an owner need not require the applicant to verify such qualification again unless, as determined by the owner, such a long time has elapsed since verification as to make reverification desirable, or the owner has reasonable grounds to believe that the applicant no longer qualifies for a preference.

(5) For purposes of this paragraph (c), standard replacement housing is housing that is decent, safe and sanitary, and is adequate for the family size, but does not include transient facilities such as motels and hotels.

(d) *Definition of involuntary displacement.* An applicant is or will be involuntarily displaced if he or she has vacated or will have to vacate his or her housing unit as a result of one or more of the following actions:

(1) A disaster, such as a fire or flood, that results in the uninhabitability of an applicant's unit;

(2) Activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with a public improvement or development program; or

(3) Action by a housing owner that results in an applicant's having to vacate his or her unit, where:

(A) The reason for the owner's action is beyond an applicant's ability to control or prevent;

(B) The action occurs despite an applicant's having met all previously imposed conditions of occupancy; and

(C) The action taken is other than a rent increase.

For purposes of this paragraph (d)(3), reasons for an applicant's having to vacate a housing unit include, but are not limited to, conversion of an applicant's housing unit to non-rental or non-residential use; closure of an applicant's housing unit for rehabilitation or for any other reason; notice to an applicant that he or she must vacate a unit because the owner wants the unit for the owner's personal or family use or occupancy; sale of a housing unit in which an applicant resides under an agreement that the unit must be vacant when possession is transferred; or any other legally authorized act that results or will result in the withdrawal by the owner of the unit or structure from the rental market. Such reason shall not include an owner's election not to renew a rental agreement or lease, if the election is legally proper, or the eviction of a tenant who refuses to accept a transfer to another housing unit in accordance with a court decree or HUD-approved desegregation plan.

(e) *Verification procedures for applicants involuntarily displaced.* Verification of an applicant's involuntary displacement is established by the following documentation:

(1) Written notice from a unit or agency of government that an applicant has been or will be displaced as a result of a disaster, as defined in paragraph (d)(1) of this section;

(2) Written notice from a unit or agency of government that an applicant has been or will be displaced by government action, as defined in paragraph (d)(2) of this section; or

(3) Written notice from an owner or owner's agent that an applicant had to or will have to vacate a unit by a date certain because of an owner action referred to in paragraph (d)(3) of this section.

(f) *Definition of substandard housing.* A unit is substandard if it:

(1) Is dilapidated;

(2) Does not have operable indoor plumbing;

(3) Does not have a usable flush toilet inside the unit for the exclusive use of a family;

(4) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;

(5) Does not have electricity, or has inadequate or unsafe electrical service;

(6) Does not have a safe or adequate source of heat;

(7) Should, but does not, have a kitchen; or

(8) Has been declared unfit for habitation by an agency or unit of government.

For purposes of this paragraph (f), a housing unit is dilapidated if it does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family, or it has one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect or lack of repair or from serious damage to the structure.

(g) *Verification procedures for applicants living in substandard housing.* Verification that an applicant is living in substandard housing shall consist of a written statement or notice from a unit or agency of government or from an applicant's present landlord that the applicant's unit has one or more of the deficiencies listed in, or the unit's condition is as described in, paragraph (f) of this section.

(h) *Definition of family income.* For purposes of this section, family income is one twelfth of Annual Income, as determined in accordance with § 215.20(c) through (f) of this part.

(i) *Defintion of rent.* For purposes of this section, rent is defined as the actual amount due, calculated on a monthly basis, under a lease or rental agreement between a family and the family's current landlord, plus any monthly payments that a family makes toward tenant-purchased utilities (except telephone) and other housing services. In calculating a family's payments toward utilities and other housing services, the owner must use the family's average monthly utility costs, based on the family's utility bills furnished by the family, for the most recent 12-month period, or, where bills are not obtainable for the entire period, for an appropriate recent period.

(j) *Verification of an applicant's income, rent, and utilities payments.* Verification that an applicant is paying more than 50 percent of family income for rent shall consist of documentation supplied by the family of the amounts due to the family's landlord under the lease or rental agreement and the amounts the family pays for utilities and other housing services, and of the family's income.

(1) An owner shall verify a family's income in accordance with appropriate regulatory and HUD handbook provisions. As part of this process, the owner shall require the family head and other such family members as it designates to execute a HUD-approved release and consent authorizing any depository or private source of income, or any Federal, State or local agency to furnish or release to the owner and to HUD such information as the owner or HUD determines to be necessary. The owner shall also require the family to submit directly documentation determined to be necessary. Information or documentation shall be determined to be necessary if it is required for purposes of determining a family's eligibility for a preference for paying more than 50 percent of its income for rent. The use or disclosure of information obtained from a family or from another source pursuant to this release and consent shall be limited to purposes directly connected with determining eligibility for the preference.

(2) An owner shall verify the amount due to the family's landlord under the lease or rental agreement by requiring the family to furnish copies of its most recent rental receipts or a copy of the family's current lease or rental agreement.

(3) To verify the amount a family pays for utilities and other housing services, an owner shall require the family to provide copies of the family's most recent bills or receipts for such services (as provided in paragraph (j)(l) of this section).

(k) *Additional verification for applicants receiving Rent Supplemental payments.* If an applicant is to receive financial assistant under section 101 of the Housing and Urban Development Act of 1965, an owner may, at the owner's option, request from HUD verification in the form of a certificate that an individual or family is occupying substandard housing or was (or will be) involuntarily displaced, or is paying more than 50 percent of family income for rent, as those terms are defined in this section. This certification by HUD is issued only when requested by an owner, and only when Rent Supplement assistance is involved.

PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR NEW CONSTRUCTION

2. In § 880.603, paragraph (b)(2) is revised to read as follows:

§ 880.603 Selection and admission of assisted tenants.

* * * * *

(b) * * *

(2) If the owner determines that the family is eligible and is otherwise acceptable and units are available, the owner will assign the family a unit of the appropriate size in accordance with HUD standards. If no suitable unit is available, the owner will place the family on a waiting list for the project and notify the family of when a suitable unit may become available. If the waiting list is so long that the applicant would not be likely to be admitted for the next 12 months, the owner may advise the applicant that no additional applications are being accepted for that reason, except that if a family is entitled to a preference for being involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent, an owner must accept the family's application and place the family on the waiting list, notwithstanding that there already exists a 12-month waiting period for all or some applicants.

* * * * *

3. In part 880, add a new § 880.603a, to read as follows:

§ 880.603a Preference for applicants involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent.

(a) *General.* In selecting from among applicants for admission to projects assisted under this part, housing owners shall give preference to applicants who are otherwise qualified for assistance and who, at the time they are seeking housing assistance, are involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent. As part of the tenant selection process, owners shall inform applicants, including those on the waiting list, of the availability of the preferences, and give these persons an opportunity to show that they qualify for one of the preferences.

(b) *Primacy of the preferences.* An applicant who qualifies for any of the preferences under this section is to be selected for admission to a project assisted under this part before any other applicant who is not so qualified, without regard to the other applicant's qualification for one or more locally created preferences or priorities (i.e., preferences or priorities not created pursuant to Federal law), or place on the waiting list, or the time of submission of his or her application for admission to an assisted project.

(c) *Qualifying for a preference.* (1) An applicant qualifies for a preference under this section if (i) the applicant has been involuntarily displaced and is not living in standard replacement housing or, within no more than six months from the date of certification under paragraph (c)(2) of this section or verification under paragraph (c)(3) of this section, as appropriate, the applicant will be involuntarily displaced; (ii) the applicant is living in substandard housing; or (iii) the applicant is paying more than 50 percent of family income for rent.

(2) Applicants may claim qualification for a preference at the time they make application for admission to a project (or thereafter until the time that they are offered a unit in the project) by certifying to the owner that they are eligible for one of the preferences described in paragraph (c)(1) of this section. An owner shall accept this certification unless the owner verifies that the applicant is not qualified for the preference.

(3) Before executing a lease or rental agreement with an applicant who has been offered a unit on the basis of a preference, the owner shall require that the applicant provide verification that he or she qualifies for a preference described in paragraph (c)(1) of this section by virtue of his or her current status (without regard to whether there was a change in the applicant's preferred status between the certification under paragraph (c)(2) of this section and execution of a rental agreement, including a change from one preference category to another).

(4) If an applicant's qualification for a preference under paragraph (c)(1) of this section has once been verified, an owner need not require the applicant to verify such qualification again unless, as determined by the owner, such a long time has elapsed since verification as to make reverification desirable, or the owner has reasonable grounds to believe that the applicant no longer qualifies for a preference.

(5) For purposes of this paragraph (c), standard replacement housing is housing that is decent, safe and sanitary, and is adequate for the family size, but does not include transient facilities such as motels and hotels.

(d) *Definition of involuntary displacement.* An applicant is or will be involuntarily displaced if he or she has vacated or will have to vacate his or her housing unit as a result of one or more of the following actions:

(1) A disaster, such as a fire or flood, that results in the uninhabitability of an applicant's unit;

(2) Activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with a public improvement or development program; or

(3) Action by a housing owner that results in an applicant's having to vacate his or her unit, where:

(A) The reason for the owner's action is beyond an applicant's ability to control or prevent;

(B) The action occurs despite an applicant's having met all previously imposed conditions of occupancy; and

(C) The action taken is other than a rent increase.

For purposes of this paragraph (d)(3), reasons for an applicant's having to vacate a housing unit include, but are not limited to, conversion of an applicant's housing unit to non-rental or non-residential use; closure of an applicant's housing unit for rehabilitation or for any other reason; notice to an applicant the he or she must vacate a unit because the owner wants the unit for the owner's personal or family use or occupancy; sale of a housing unit in which an applicant resides under an agreement that the unit must be vacant when possession is transferred; or any other legally authorized act that results or will result in the withdrawal by the owner of the unit or structure from the rental market. Such reasons shall not include an owner's election not to renew a rental agreement or lease, if the election is legally proper, or the eviction of a tenant who refuses to accept a transfer to another housing unit in accordance with a court decree or HUD-approved desegregation plan.

(e) *Verification procedures for applicants involuntarily displaced.* Verification of an applicant's involuntary displacement is established by the following documentation:

(1) Written notice from a unit or agency of government that an applicant has been or will be displaced as a result of a disaster, as defined in paragraph (d)(1) of this section;

(2) Written notice from a unit or agency of government that an applicant has been or will be displaced by government action, as defined in paragraph (d)(2) of this section; or

(3) Written notice from an owner or owner's agent that an applicant had to or will have to vacate a unit by a date certain because of an owner action referred to in paragraph (d)(3) of this section.

(f) *Definition of substandard housing.* A unit is substandard if it:

(1) Is dilapidated;

(2) Does not have operable indoor plumbing;

(3) Does not have a usable flush toilet inside the unit for the exclusive use of a family;

(4) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;

(5) Does not have electricity, or has inadequate or unsafe electrical service;

(6) Does not have a safe or adequate source of heat;

(7) Should, but does not, have a kitchen; or

(8) Has been declared unfit for habitation by an agency or unit of government.

For purposes of this paragraph (f), a housing unit is dilapidated if it does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family, or it has one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect or lack of repair or from serious damage to the structure.

(g) *Verification procedures for applicants living in substandard housing.* Verification that an applicant is living in substandard housing shall consist of a written statement or notice from a unit or agency of government or from an applicant's present landlord that the applicant's unit has one or more of the deficiencies listed in, or the unit's condition is as described in, paragraph (f) of this section.

(h) *Definition of family income.* For purposes of this section, family income is monthly income, as defined in § 813.102.

(i) *Definition of rent.* For purposes of this section, rent is defined as the actual amount due, calculated on a monthly basis, under a lease or rental agreement between a family and the family's current landlord, plus any monthly payments that a family makes toward tenant-purchased utilities (except telephone) and other housing services. In calculating a family's payments toward utilities and other housing services, the owner must use the family's average monthly utility costs, based on the family's utility bills furnished by the family, for the most recent 12-month period, or, where bills are not obtainable for the entire period, for an appropriate recent period.

(j) *Verification of an applicant's income, rent, and utilities payments.* Verification that an applicant is paying more than 50 percent of family income for rent shall consist of documentation supplies by the family of the amounts due to the family's landlord under the lease or rental agreement and the amounts the family pays for utilities and other housing services, and of the family's income.

(1) An owner shall verify a family's income in accordance with appropriate regulatory and HUD handbook provisions. As part of this process, the owner shall require the family head and other such family members as it designates to execute a HUD-approved release and consent authorizing any

depository or private source of income, or any Federal, State or local agency to furnish or release to the owner and to HUD such information as the owner or HUD determines to be necessary. The owner shall also require the family to submit directly documentation determined to be necessary. Information or documentation shall be determined to be necessary if it is required for purposes of determining a family's eligibility for a preference for paying more than 50 percent of its income for rent. The use or disclosure of information obtained from a family or from another source pursuant to this release and consent shall be limited to purposes directly connected with determining eligibility for the preference.

(2) An owner shall verify the amount due to the family's landlord under the lease or rental agreement by requring the family to furnish copies of its most recent rental receipts or a copy of the family's current lease or rental agreement.

(3) To verify the amount a family pays for utilities and other housing services, an owner may require the family to provide copies of the family's most recent bills or receipts for such services (as provided in paragraph (j)(l) of this section.)

PART 881—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR SUBSTANTIAL REHABILITATION

4. In § 881.603 paragraph (b)(2) is revised to read as follows:

§ 881.603 Selection and admission of assisted tenants.

* * * * *

(b) * * *

(2) If the owner determines that the family is eligible and is otherwise acceptable and units are available, the owner will assign the family a unit of the appropriate size in accordance with HUD standards. If no suitable unit is available, the owner will place the family on a waiting list for the project and notify the family of when a suitable unit may become available. If the waiting list is so long that the applicant would not be likely to be admitted for the next 12 months, the owner may advise the applicant that no additional applications are being accepted for that reasons, except that if a family is entitled to a preference for being involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent, an owner must accept the family's application and place the family on the waiting list, notwithstanding that there already exists a 12-month waiting period for all or some applicants.

* * * * *

5. In Part 881, add a new § 881.603a, to read as follows:

§ 881.603a. Preference for applicants involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent.

(a) *General.* In selecting from among applicants for admission to projects assisted under this part, housing owners shall give preference to applicants who are otherwise qualified for assistance and who, at the time they are seeking housing assistance, are involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent. As part of the tenant selection process, owners shall inform applicants, including those on the waiting list, of the availability of the preferences, and give these persons an opportunity to show that they qualify for one of the preferences.

(b) *Primacy of the preferences.* An applicant who qualifies for any of the preferences under this section is to be selected for admission to a project assisted under this part before any other applicant who is not so qualified, without regard to the other applicant's qualification for one or more locally created preferences or priorities (i.e., preferences or priorities not created pursuant to Federal law), or place on the waiting list, or the time of submission of his or her application for admission to an assisted project.

(c) *Qualifying for a preference.* (1) An applicant qualifies for a preference under this section if (i) the applicant has been involuntarily displaced and is not living in standard replacement housing or, within no more than six months from the date of certification under paragraph (c)(2) of this section or verification under paragraph (c)(3) of this section, as appropriate, the applicant will be involuntarily displaced; (ii) the applicant is living in substandard housing; or (iii) the applicant is paying more than 50 percent of family income for rent.

(2) Applicants may claim qualification for a preference at the time they make application for admission to a project (or thereafter until the time that they are offered a unit in the project) by certifying to the owner that they are eligible for one of the preferences described in paragraph (c)(1) of this section. An owner shall accept this certification unless the owner verifies that the applicant is not qualified for the preference.

(3) Before executing a lease or rental agreement with an applicant who has been offered a unit on the basis of a preference, the owner shall require that the applicant provide verification that he or she qualifies for a preference described in paragraph (c)(1) of this section by virtue of his or her current status (without regard to whether there was a change in the applicant's preferred status between the certification under paragraph (c)(2) of this section and execution of a rental agreement, including a change from one preference category to another).

(4) If an applicant's qualification for a preference under paragraph (c)(1) of this section has once been verified, an owner need not require the applicant to verify such qualification again unless, as determined by the owner, such a long time has elapsed since verification as to make reverification desirable, or the owner has reasonable grounds to believe that the applicant no longer qualifies for a preference.

(5) For purposes of this paragraph (c), standard replacement housing is housing that is decent, safe and sanitary, and is adequate for the family size, but does not include transient facilities such as motels and hotels.

(d) *Definition of involuntary displacement.* An applicant is or will be involuntarily displaced if her or she has vacated or will have to vacate his or her housing unit as a result of one or more of the following actions:

(1) A disaster, such as a fire or flood, that results in the uninhabitability of an applicant's unit;

(2) Activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with a public improvement or development program; or

(3) Action by a housing owner that results in an applicant's having to vacate his or her unit, where:

(A) The reason for the owner's action is beyond an applicant's ability to control or prevent;

(B) The action occurs despite an applicant's having met all previously imposed conditions of occupancy; and

(C) The action taken is other than a rent increase.

For purposes of their paragraph (d)(3), reasons for an applicant's having to vacate a housing unit include, but are not limited to, conversion of an applicant's housing unit to non-rental or non-residential use; closure of an applicant's housing unit for rehabilitation or for any other reason; notice to an applicant that he or she must vacate a unit because the owner wants the unit for the owner's personal or family use or occupancy; sale of a housing unit in which an applicant resides under an agreement that the unit

must be vacant when possession is transferred; or any other legally authorized act that results or will result in the withdrawal by the owner of the unit or structure from the rental market. Such reasons shall not include an owner's election not to renew a rental agreement or lease, if the election is legally proper, or the eviction of a tenant who refuses to accept a transfer to another housing unit in accordance with a court decree or HUD-approved desegregation plan.

(e) *Verification procedures for applicants involuntarily displaced.* Verification of an applicant's involuntary displacement is established by the following documentation:

(1) Written notice from a unit or agency of government that an applicant has been or will be displaced as a result of a disaster, as defined in paragraph (d)(1) of this section;

(2) Written notice from a unit or agency of goverment that an applicant has been or will be displaced by government action, as defined in paragraph (d)(2) of this section; or

(3) Written notice from an owner or owner's agent that an applicant had to or will have to vacate a unit by a date certain because of an owner action referred to in paragraph (d)(3) of this section.

(f) *Definition of substandard housing.* A unit is substandard if it:

(1) Is dilapidated;

(2) Does not have operable indoor plumbing;

(3) Does not have a usable flush toilet inside the unit for the exclusive use of a family;

(4) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;

(5) Does not have electricity, or has inadequate or unsafe electrical service;

(6) Does not have a safe or adequate source of heat;

(7) Should, but does not, have a kitchen; or

(8) Has been declared unfit for habitation by an agency or unit of government.

For purposes of this paragraph (f), a housing unit is dilapidated if it does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family, or it has one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect or lack of repair or from serious damage to the structure.

(g) *Verification procedures for applicants living in substandard housing.* Verification that an applicant is living in substandard housing shall consist of a written statement or notice from a unit or agency of government or from an applicant's present landlord that the applicant's unit has one or more of the deficiencies listed in, or the unit's condition is as described in, paragraph (f) of this section.

(h) *Definition of family income.* For purposes of this section, family income is monthly income, as defined in accordance with § 813.102.

(i) *Definition of rent.* For purposes of this section, rent is defined as the actual amount due, calculated on a monthly basis, under a lease or rental agreement between a family and the family's current landlord, plus any monthly payments that a family makes toward tenant-purchased utilities (except telephone) and other housing services. In calculating a family's payments toward utilities and other housing services, the owner must use the family's average monthly utility costs, based on the family's utility bills furnished by the family, for the most recent 12 month period, or, where bills are not obtainable for the entire period, for an appropriate recent period.

(j) *Verification of an applicant's income, rent, and utilities payments.* Verification that an applicant is paying more than 50 percent of family income for rent shall consist of documentation supplied by the family of the amounts due to the family's landlord under the lease or rental agreement and the amounts the family pays for utilities and other housing services, and of the family's income.

(1) An owner shall verify a family's income in accordance with appropriate regulatory and HUD handbook provisions. As part of this process, the owner shall require the family head and other such family members as it designates to execute a HUD-approved release and consent authorizing any depository or private source of income, or any Federal, State or local agency to furnish or release to the owner and to HUD such information as the owner or HUD determines to be necessary. The owner shall also require the family to submit directly documentation determined to be necessary. Information or documentation shall be determined to be necessary if it is required for purposes of determining a family's eligibility for a preference for paying more than 50 percent of its income for rent. The use or disclosure of information obtained from a family or from another source pursuant to this release and consent shall be limited to purposes directly connected with determining eligibility for the preference.

(2) An owner shall verify the amount due to the family's landlord under the lease or rental agreement by requiring the family to furnish copies of its most recent rental recipts or a copy of the family's current lease or rental agreement.

(3) To verify the amount a family pays for utilities and other housing services, an owner shall require the family to provide copies of the family's most recent bills or recipts for such services (as provided in paragraph (j) (1) of this section).

PART 882—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—EXISTING HOUSING

6. In Part 882, add a new § 882.209a, to read as follows:

§ 882.209a Preference for families involuntarily displaced, living in substandand housing, or paying more than 50 percent of family income for rent.

(a) *General.* When issuing certificates of family participation under § 882.209, a PHA shall give preference to families who are otherwise eligible for a certificate and who, at the time they are seeking housing assistance, are involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent. As part of the process of awarding certificates, the PHA shall inform applicants, including those on the waiting list, of the availability of the preferences, and give these persons an opportunity to show that they quality for one of the preferences. PHAs must apply the definitions of "standard replacement housing", "substandard housing", "involuntary displacement", "family income", and "rent" set forth in paragraphs (c)(5), (d), (f), (h), and (i), respectively, of this section unless the PHA submits alternative definitions for the Secretary's review and approval. If the Secretary disapproves a PHA's alternative definitions, the PHA shall apply the definitions contained in this section. PHAs may apply the verification procedures contained in paragraphs (e), (g), and (j) of this section or a PHA may adopt verification procedures of its own.

(b) *Primacy of the preferences.* An applicant who qualifies for any of the preferences under this section is to be given a Certificate of Family Participation before any other applicant who is not so qualified, without regard to the other applicant's qualification for one or more locally created preferences or priorities (i.e., preferences or

priorities not created pursuant to Federal law), or place on the waiting list, or the time of submission of his or her application for a Certificate.

(c) *Qualifying for a preference.* (1) An applicant qualifies for a preference under this section if (i) the applicant has been involuntarily displaced and is not living in standard replacement housing, or within no more than six months from the date of certification under paragraph (c)(2) of this section or verification under paragraph (c)(3) of this section, as appropriate, the applicant will be involuntarily displaced; (ii) the applicant is living in substandard housing; or (iii) the applicant is paying more than 50 percent of family income for rent.

(2) Applicants may claim qualification for a preference at the time they make application for a Certificate of Family Participation (or thereafter until the time that the Certificate is issued) by certifying to the PHA that they are eligible for one of the preferences described in paragraph (c)(1) of this section. A PHA shall accept this certification unless the PHA verifies that the applicant is not qualified for the preference.

(3) In the case of an applicant who qualifies to receive a Certificate of Family Participation on the basis of a preference, before issuing the Certificate of Family Participation, the PHA shall require that the applicant provide verification that he or she qualifies for a preference described in paragraph (c)(1) of this section by virtue of his or her current status (without regard to whether there was a change in the applicant's preferred status between application for and issuance of a Certificate, including a change from one preference category to another).

(4) If an applicant's qualification for a preference under paragraph (c)(1) of this section has once been verified, a PHA need not require the applicant to verify such qualification again unless, as determined by the PHA, such a long time has elapsed since verification as to make reverification desirable, or the PHA has reasonable grounds to believe that the applicant no longer qualifies for a preference.

(5) For purposes of this paragraph (c), standard replacement housing is housing that is decent, safe and sanitary, and is adequate for the family size, but does not include transient facilities such as motels and hotels.

(d) *Definition of involuntary displacement.* An applicant is or will be involuntarily displaced if he or she has vacated or will have to vacate his or her housing unit as a result of one or more of the following actions:

(1) A disaster, such as a fire or flood, that results in the uninhabitability of an applicant's unit;

(2) Activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with a public improvement or development program; or

(3) Action by a housing owner that results in an applicant's having to vacate his or her unit, where:

(A) The reason for the owner's action is beyond an applicant's ability to control or prevent;

(B) The action occurs despite an applicant's having met all previously imposed conditions of occupancy; and

(C) The action taken is other than a rent increase.

For purposes of this paragraph (d)(3), reasons for an applicant's having to vacate a housing unit include, but are not limited to, conversion of an applicant's housing unit to non-rental or non-residential use; closure of an applicant's housing unit for rehabilitation or for any other reason; notice to an applicant that he or she must vacate a unit because the owner wants the unit for the owner's personal or family use or occupancy; sale of a housing unit in which an applicant resides under an agreement that the unit must be vacant when possession is transferred; or some other legally authorized act that results or will result in the withdrawal by the owner of the unit or structure from the rental market. Such reasons shall not include an owner's election not to renew a rental agreement or lease, if the election is legally proper, or the eviction of a tenant who refuses to accept a transfer to another housing unit in accordance with a court decree or HUD-approved desegregation plan.

(e) *Verification procedures for applicants involuntarily displaced.* Verification of an applicant's involuntary displacement is established by the following documentation:

(1) Written notice from a unit or agency of government that an applicant has been or will be displaced as a result of a disaster, as defined in paragraph (d)(1) of this section;

(2) Written notice from a unit or agency of government that an applicant has been or will be displaced by government action, as defined in paragraph (d)(2) of this section; or

(3) Written notice from an owner or owner's agent that an applicant had to or will have to vacate a unit by a date certain because of an owner action referred to in paragraph (d)(3) of this section.

(f) *Definition of substandard housing.* A unit is substandard if it:

(1) Is dilapidated;

(2) Does not have operable indoor plumbing;

(3) Does not have a usable flush toilet inside the unit for the exclusive use of a family;

(4) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;

(5) Does not have electricity, or has inadequate or unsafe electrical service;

(6) Does not have a safe or adequate source of heat;

(7) Should, but does not, have a kitchen; or

(8) Has been declared unfit for habitation by an agency or unit of government.

For purposes of this paragraph (f), a housing unit is dilapidated if it does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family, or it has one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect or lack of repair or from serious damage to the structure.

(g) *Verification procedures for applicants living in substandard housing.* Verification that an applicant is living in substandard housing shall consist of a written statement or notice from a unit or agency of government or from an applicant's present landlord that the applicant's unit has one or more of the deficiencies listed in, or the unit's condition is as described in, paragraph (f) of this section.

(h) *Definition of family income.* For purposes of this section, family income is monthly income, as defined in § 813.102.

(i) *Definition of rent.* For purposes of this section, rent is defined as the actual amount due, calculated on a monthly basis, under a lease or rental agreement between a family and the family's current landlord, plus any monthly payments that a family makes toward tenant-purchased utilities (except telephone) and other housing services. In calculating a family's payments toward utilities and other housing services, the PHA must use the family's average monthly utility costs, based on the family's utility bills furnished by the family, for the most recent 12-month period, or, where bills are not obtainable for the entire period, for an appropriate recent period.

(j) *Verification of an applicant's income, rent, and utilities payments.*

Verification that an applicant is paying more that 50 percent of family income for rent shall consist of documentation supplied by the family of the amounts due to the family's landlord under the lease or rental agreement and the amounts the family pays for utilities and other housing services, and of the family's income.

(1) A PHA shall verify a family's income in accordance with appropriate regulatory and HUD handbook provisions. As part of this process, the PHA shall require the family head and other such family members as it designates to execute a HUD-approved release and consent authorizing any depository or private source of income, or any Federal, State or local agency, to furnish or release to the PHA and to HUD such information as the PHA or HUD determines to be necessary. The PHA shall also require the family to submit directly documentation determined to be necessary. Information or documentation shall be determined to be necessary if it is required for purposes of determining a family's eligibility for a preference for paying more than 50 percent of the family's income for rent. The use or disclosure of information obtained from a family or from another source pursuant to this release and consent shall be limited to purposes directly connected with determining eligibility for the preference.

(2) A PHA shall verify the amount due to the family's landlord under the lease or rental agreement by requiring the family to furnish copies of its most recent rental receipts or a copy of the family's current lease or rental agreement.

(3) To verify the amount a family pays for utilities and other housing services, the PHA shall require the family to provide copies of the family's most recent bills or receipts for such services (as provided in paragraph (1) of this section).

7. In Part 882, add a new § 882.514a, to read as follows:

§ 882.514a Preference for families involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent.

(a) *General.* When issuing certificates of family participation under this subpart, a PHA shall give perference to families who are otherwise eligible for a certificate and who, at the time they are seeking housing assistance, are involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent. As part of the process of awarding certificates, the PHA shall inform applicants, including those on the waiting list, of the availability of the preferences, and give these persons an opportunity to show that they qualify for one of the preferences. PHAs must apply the definitions of "standard replacement housing", "substandard housing", "involuntary displacement", "family income", and "rent" set forth in paragraphs (c)(5), (d), (f), (h), and (i), respectively, of this section unless the PHA submits alternative definitions for the Secretary's review and approval. If the Secretary disapproves a PHA's alternative definitions, the PHA shall apply the definitions contained in this section. PHAs may apply the verification procedures contained in paragraphs (e), (g), and (j) of this section or a PHA may adopt verification procedures of its own.

(b) *Primary of the preferences.* An applicant who qualifies for any of the preferences under this section is to be given a Certificate of Family Participation before any other applicant who is not so qualified, without regard to the other applicant's qualification for one or more locally created preferences or priorities (i.e., preferences or priorities not created pursuant to Federal law), or placed on the waiting list, or the time of submission of his or her application for a Certificate.

(c) *Qualifying for a preference.* (1) An applicant qualifies for a preference under this section if (i) the applicant has been involuntarily displace and is not living in standard replacement housing, or within no more than six months from the date of certification under paragraph (c)(2) of this section or verfication under paragraph (c)(3) of this section, as appropriate, the applicant will be involuntarily displaced; (ii) the applicant is living in substandard housing; or (iii) the applicant is paying more than 50 percent of family income for rent.

(2) Applicants may claim qualification for a preference at the time they make application for a Certificate of Family Participation (or thereafter until the time that the Certificate is issued) by certifying to the PHA that they are eligible for one of the preferences described in paragraph (c)(1) of this section. A PHA shall accept this certification unless the PHA verifies that the applicant is not qualified for the preference.

(3) In the case of an applicant who qualifies to receive a Certificate of Family Participation on the basis of a preference, before issuing the Certificate of Family Participation, the PHA shall require that the applicant provide verification that he or she qualifies for a preference described in paragraph (c)(1) of this section by virtue of his or her current status (without regard to whether there was a change in the applicant's preferred status between application for and issuance of a Certificate, including a change from one preference category to another).

(4) If an applicant's qualification for a preference under paragraph (c)(1) of this section has once been verified, a PHA need not require the applicant to verify such qualification again unless, as determined by the PHA, such a long time has elapsed since verification as to make reverification desirable, or the PHA has reasonable grounds to believe that the applicant no longer qualifies for a preference.

(5) For purposes of this paragraph (c), standard replacement housing is housing that is decent, safe and sanitary, and is adequate for the family size, but does not include transient facilities such as motels and hotels.

(d) *Definition of involuntary displacement.* An applicant is or will be involuntarily displaced if he or she has vacated or will have to vacate his or her housing unit as a result of one or more of the following actions:

(1) A disaster, such as a fire or flood, that results in the uninhabitability of an applicant's unit;

(2) Activity carried on by an agency of the United States or by any State or local government body or agency in connection with a public improvement or development program; or

(3) Action by a housing owner that results in an applicant's having to vacate his or her unit; where:

(A) The reason for the owner's action is beyond an applicant's ability to control or prevent;

(B) The action occurs despite an applicant's having met all previously imposed conditions of occupancy; and

(C) The action taken is other than a rent increase.

For purposes of this paragraph (d)(3), reasons for an applicant's having to vacate a housing unit include, but are not limited to, conversion of an applicant's housing unit to non-rental or non-residential use; closure of an applicant's housing unit for rehabilitation or for any other reason; notice to an applicant that he or she must vacate a unit because the owner wants the unit for the owner's personal or family use or occupancy; sale of a housing unit in which an applicant resides under an agreement that the unit must be vacant when possession is transferred; or some other legally authorized act that results or will result in the withdrawal by the owner of the unit or structure from the rental market. Such reasons shall not include an

owner's election not to renew a rental agreement or lease, if the election is legally proper, or the eviction of a tenant who refuses to accept a transfer to another housing unit in accordance with a court decree or HUD-approved desegregation plan.

(e) *Verification procedures for applicants involuntarily displaced.* Verification of an applicant's involuntary displacement is established by the following documentation:

(1) Written notice from a unit or agency of government that an applicant has been or will be displaced as a result of a disaster, as defined in paragraph (d)(1) of this section;

(2) Written notice from a unit or agency of government that an applicant has been or will be displaced by government action, as defined in paragraph (d)(2) of this section; or

(3) Written notice from an owner or owner's agent that an applicant had to or will have to vacate a unit by a date certain because of an owner action referred to in paragraph (d)(3) of this section.

(f) *Definition of substandard housing.* A unit is substandard if it:

(1) Is dilapidated;

(2) Does not have operable indoor plumbing;

(3) Does not have a unable flush toilet inside the unit for the exclusive use of a family;

(4) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;

(5) Does not have electricity, or has inadequate or unsafe electrical service;

(6) Does not have a safe or adequate source of heat;

(7) Should, but does not, have a kitchen; or

(8) Has been declared unfit for habitation by an agency or unit of government.

For purposes of this paragraph (f), a housing unit is dilapidated if it does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family, or it has one or more criticial defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair, or rebuilding. The defects may involve original construction, or they may result from continued neglect or lack of repair or from serious damage to the structure.

(g) *Verification procedures for applicants living in substandard housing.* Verification that an applicant is living in substandard housing shall consist of a written statement or notice from a unit or agency of government or from an applicant's present landlord that the applicant's unit has one or more of the deficiencies listed in, or the unit's condition is as described in, paragraph (f) of this section.

(h) *Definition of family income.* For purposes of this section, family income is monthly income, as defined in § 813.102.

(i) *Definition of rent.* For purposes of this section, rent is defined as the actual amount due, calculated on a monthly basis, under a lease or rental agreement between a family and the family's current landlord, plus any monthly payment that a family makes toward tenant-purchased utilities (except telephone) and other housing services. In calculating a family's payments toward utilities and other housing services, the PHA must use the family's average monthly utility costs, based on the family's utility bills furnished by the family, for the most recent 12-month period, or, where bill are not obtainable for the entire period, for an appropriate recent period.

(j) *Verification of an applicant's income, rent, and utilities payments.* Verification that an applicant is paying more than 50 percent of family income for rent shall consist of documentation supplied by the family of the amounts due to the family's landlord under the lease or rental agreement and the amounts the family pays for utilities and other housing services, and of the family's income.

(1) A PHA shall verify a family's income in accordance with appropriate regulatory and HUD handbook provisions. As part of this process, the PHA shall require the family head and other such family members as it designates to execute a HUD-approved release and consent authorizing any depository or private source of income, or any Federal, State or local agency, to furnish or release to the PHA and to HUD such information as the PHA or HUD determines to be necessary. The PHA shall also require the family to submit directly documentation determined to be necessary. Information or documentation shall be determined to be necessary if it is required for purposes of determining a family's eligibility for a preference for paying more than 50 percent of the family's income for rent. The use of disclosure of information obtained from a family or from another source pursuant to this release and consent shall be limited to purposes directly connected with determining eligibility for the preference.

(2) A PHA shall verify the amount due to the family's landlord under the lease or rental agreement by requiring the family to furnish copies of its most recent rental receipts or a copy of the family's current lease or rental agreement.

(3) To verify the amount a family pays for utilities and other housing services, the PHA shall require the family to provide copies of the family's most recent bills or receipts for such services (as provided in paragraph (j)(1) of this section).

PART 883—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—STATE HOUSING AGENCIES

8. In § 883.704, paragraph (b)(2) is revised, to read as follows:

§ 883.704 Selection and admission of tenants.

* * * * *

(b) * * *

(2) If the owner determines that the family is eligible and is otherwise acceptable and units are available, the owner will assign the family a unit of the appropriate size in accordance with HUD standards. If no suitable unit is available, the owner will pace the family on a waiting list for the project and notify the family of when a suitable unit may become available. If the waiting list is so long that the applicant would not be likely to be admitted for the next 12 months, the owner may advise the applicant that no additional applications are being accepted for that reason, except that if a family is entitled to a preference for being involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent, an owner must accept the family's application and place the family on the waiting list, notwithstanding that there already exists a 12-month waiting period for all or some applicants.

9. In part 883, add a new § 883.704a, to read as follows:

§ 883.704a Preference for families involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent.

(a) *General.* In selecting from among applicants for admission to projects assisted under this part, housing owners shall give preference to applicants who are otherwise qualified for assistance and who, at the time they are seeking housing assistance, are involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent. As part of the tenant selection process, owners shall inform applicants, including those on the waiting list, of the availability of the preferences, and give these persons an

opportunity to show that they qualify for one of the preferences.

(b) *Primacy of the preferences.* An applicant who qualifies for any of the preferences under this section is to be selected for admission to a project assisted under this part before any other applicant who is not so qualified, without regard to the other applicant's qualification for one or more locally created preferences or priorities (i.e., preferences or priorities not created pursuant to Federal law), or place on the waiting list, or the time of submission of his or her application for admission to an assisted project.

(c) *Qualifying for a preference.* (1) An applicant qualifies for a preference under this section if (i) the applicant has been involuntarily displaced and is not living in standard replacement housing or, within no more than six months from the date of certification under paragraph (c)(2) of this section or verification under paragraph (c)(3) of this section, as appropriate, the applicant will be involuntarily displaced; (ii) the applicant is living in substandard housing; or (iii) the applicant is paying more than 50 percent of family income for rent.

(2) Applicants may claim qualification for a preference at the time they make application for admission to a project (or thereafter until the time they are offered a unit in the project) by certifying to the owner that they are eligible for one of the preferences described in paragraph (c)(1) of this section. An owner shall accept this certification unless the owner verifies that the applicant is not qualified for the preference.

(3) Before executing a lease or rental agreement with an applicant who has been offered a unit on the basis of a preference, the owner shall require that the applicant provide verification that he or she qualifies for a preference described in paragraph (c)(1) of this section by virtue of his or her current status (without regard to whether there was a change in the applicant's preferred status between the certification under paragraph (c)(2) of this section and execution of a rental agreement, including a change from one preference category to another).

(4) If an applicant's qualification for a preference under paragraph (c)(1) of this section has once been verified an owner need not require the applicant to verify such qualification again unless, as determined by the owner, such a long time has elapsed since verification as to make reverification desirable, or the owner has reasonable grounds to believe that the applicant no longer qualifies for a preference.

(5) For purposes of this paragraph, standard replacement housing is housing that is decent, safe and sanitary, and is adequate for the family size, but does not include transient facilities such as motels and hotels.

(d) *Definition of involuntary displacement.* An applicant is or will be involuntarily displaced if he or she has vacated or will have to vacate his or her housing unit as a result of one or more of the following actions:

(1) A disaster, such as a fire or flood, that results in the uninhabitability of an applicant's unit;

(2) Activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with a public improvement or development program; or

(3) Action by a housing owner that results in an applicant's having to vacate his or her unit, where:

(A) The reason for the owner's action is beyond an applicant's ability to control or prevent;

(B) The action occurs despite an applicant's having met all previously imposed conditions of occupancy; and

(C) The action taken is other than a rent increase.

For purposes of this paragraph (d)(3), reasons for an applicant's having to vacate a housing unit include, but are not limited to, conversion of an applicant's housing unit to non-rental or non-residential use; closure of an applicant's housing unit for rehabilitation or for any other reason; notice to an applicant that he or she must vacate a unit because the owner wants the unit for the owner's personal or family use or occupancy; sale of a housing unit in which an applicant resides under an agreement that the unit must be vacant when possession is transferred; or any other legally authorized act that results or will result in the withdrawal by the owner of the unit or structure from the rental market. Such reasons shall not include an owner's election not to renew a rental agreement or lease, if the election is legally proper, or the eviction of a tenant who refuses to accept a transfer to another housing unit in accordance with a court decree or HUD-approved desegregation plan.

(e) *Verification procedures for applicants involuntarily displaced.* Verification of an applicant's involuntary displacement is established by the following documentation:

(1) Written notice from a unit or agency of government that an applicant has been or will be displaced as a result of a disaster, as defined in paragraph (d)(1) of this section;

(2) Written notice from a unit or agency or government that an applicant has been or will be displaced by government action, as defined in paragraph (d)(2) of this section; or

(3) Written notice from an owner or owner's agent that an applicant had to or will have to vacate a unit by a date certain because of an owner action referred to in paragraph (d)(3) of this section.

(f) *Definition of substandard housing.* A unit is substandard if it:

(1) Is dilapidated;

(2) Does not have operable indoor plumbing;

(3) Does not have a usable flush toilet inside the unit for the exclusive use of a family;

(4) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;

(5) Does not have electricity, or has inadequate or unsafe electrical service;

(6) Does not have a safe or adequate source of heat;

(7) Should, but does not, have a kitchen; or

(8) Has been declared unfit for habitation by an agency or unit of government.

For purposes of this paragraph (f), a housing unit is dilapidated if it does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family, or it has one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect or lack of repair or from serious damage to the structure.

(g) *Verification procedures for applicants living in substandard housing.* Verification that an applicant is living in substandard housing shall consist of a written statement or notice from a unit or agency of government or from an applicant's present landlord that the applicant's unit has one or more of the deficiencies listed in, or the unit's condition is as described in, paragraph (f) of this section.

(h) *Definition of family income.* For purposes of this section, family income is monthly income, as defined in § 813.102.

(i) *Definition of rent.* For purposes of this section, rent is defined as the actual amount due, calculated on a monthly basis, under a lease or rental agreement between a family and the family's current landlord, plus any monthly

payments that a family makes toward tenant-purchased utilities (except telephone) and other housing services. In calculating a family's payments toward utilities, the owner must use the family's average monthly utility costs, based on the family's utility bills furnished by the family, for the most recent 12-month period, or, where bills are not obtainable for the entire period, for an appropriate recent period.

(j) *Verification of an applicant's income, rent, and utilities payments.* Verification that an applicant is paying more than 50 percent of family income for rent shall consist of documentation supplied by the family of the amounts due to the family's landlord under the lease or rental agreement and the amounts the family pays for utilities and other housing services, and of the family's income.

(1) An owner shall verify a family's income in accordance with appropriate regulatory and HUD handbook provisions. As part of this process, the owner shall require the family head and other such family members as it designates to execute HUD-approved release and consent authorizing any depository or private source of income, or any Federal, State or local agency to furnish or release to the owner and to HUD such information as the owner or HUD determines to be necessary. The owner shall also require the family to submit directly documentation determined to be necessary. Information or documentation shall be determined to be necessary if it is required for purposes of determining a family's eligibility for a preference for paying more than 50 percent of its income for rent. The use or disclosure of information obtained from a family or from another source pursuant to this release and consent shall be limited to purposes directly connected with determining eligibility for the preference.

(2) An owner shall verify the amount dur to the family's landlord under the lease or rental agreement by requiring the family to furnish copies of its most recent rental receipts or a copy of the family's current lease or rental agreement.

(3) To verify the amount a family pays for utilities and other housing services, an owner shall require the family to provide copies of the family's most recent bills or receipts for such services (as provided in paragraph (j)(1) of this section).

PART 884—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM, NEW CONSTRUCTION SET-ASIDE FOR SECTION 515 RURAL RENTAL HOUSING PROJECTS

10. In part 884, add a new § 884.214a, to read as follows:

§ 884.214a Preference for applicants involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent.

(a) *General.* In selecting from among applicants for admission to projects assisted under this part, housing owners shall give preference to applicants who are otherwise qualified for assistance and who, at the time they are seeking housing assistance, are involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent. As part of the tenant selection process, owners shall inform applicants, including those on the waiting list, of the availability of the preferences, and give these persons an opportunity to show that they qualify for one of the preferences.

(b) *Primacy of the preferences.* An applicant who qualifies for any of the preferences under this section is to be selected for admission to a project assisted under this part before any other applicant's qualification for one or more locally created preferences or priorities (i.e., preferences or priorities not created pursuant to Federal law), or place on the waiting, or the time of submission of his or her application for admission to an assisted project.

(c) *Qualifying for a preference.* (1) An applicant qualifies for a preference if (i) the applicant has been involuntarily displaced and is not living in standard replacement housing or, within no more than six months from the date of certification under paragraph (c)(2) of this section or verification under paragraph (c)(3) of this section, as appropriate, the applicant will be involuntarily displaced; (ii) the applicant is living in substandard housing; or (iii) the applicant is paying more than 50 percent of family income for rent.

(2) Applicants may claim qualification for a preference at the time they make application for admission to a project (or thereafter until the time that they are offered a unit in the project) by certifying to the owner that they are eligible for one of the preferences described in paragraph (c)(1) of this section. An owner shall accept this certification unless the owner verifies that the applicant is not qualified for the preference.

(3) Before executing a lease or rental agreement with an applicant who has been offered a unit on the basis of a preference, the owner shall require that the applicant provide verification that he or she qualifies for a preference described in paragraph (c)(1) of this section by virtue of his or her current status (without regard to whether there was a change in the applicant's preferred status between the certification under paragraph (c)(2) of this section and execution of a rental agreement, including a change from one preference category to another).

(4) If an applicant's qualificatin for a preference under paragraph (c)(1) of this section has once been verified, an owner need not require the applicant to verify such qualification again unless, as determined by the owner, such a long time has elapsed since verification as to make reverification desirable, or the owner has reasonable grounds to believe that the applicant no longer qualifies for a preference.

(5) For purposes of this paragraph (c), standard replacement housing is housing that is decent, safe and sanitary, and is adequate for the family size, but does not include transient facilities such as motels and hotels.

(d) *Definition of involuntary displacement.* An applicant is or will be involuntarily displaced if he or she has vacated or will have to vacate his or her housing unit as a result of one or more of the following actions:

(1) A disaster, such as a fire or flood, that results in the uninhabitability of an applicant's unit;

(2) Activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with a public improvement or development program; or

(3) Action by a housing owner that results in an applicant's having to vacate his or her unit, where:

(A) The reason for the owner's action is beyond an applicant's ability to control or prevent;

(B) The action occurs despite an applicant's having met all previously imposed conditions of occupancy; and

(C) The action taken is other than a rent increase.

For purposes of this paragraph (d)(3), reasons for an applicant's having to vacate a housing unit include, but are not limited to, conversion of an applicant's housing unit to non-rental or non-residential use; closure of an applicant's housing unit for rehabilitation or for any other reason; notice to an applicant that he or she must vacate a unit because the owner wants the unit for the owner's personal or family use or occupancy; sale of a housing unit in which an applicant

resides under an agreement that the unit must be vacant when possession is transferred; or any other legally authorized act that results or will result in the withdrawal by the owner of the unit or structure from the rental market. Such reasons shall not include an owner's election not to renew a rental agreement or lease, if the election is legally proper, or the eviction of a tenant who refuses to accept a transfer to another housing unit in accordance with a court decree or HUD-approved desegregation plan.

(e) *Verification procedures for applicants involuntarily displaced.* Verification of an applicant's involuntary displacement is established by the following documentation:

(1) Written notice from a unit or agency of government that an applicant has been or will be displaced as a result of a disaster, as defined in paragraph (d)(1) of this section;

(2) Written notice from a unit or agency of government that an applicant has been or will be displaced by government action, as defined in paragraph (d)(2) of this section; or

(3) Written notice from an owner or owner's agent that an applicant had to or will have to vacate a unit by a date certain because of an owner action referred to in paragraph (d)(3) of this section.

(f) *Definition of substandard housing.* A unit is substandard if it:

(1) Is dilapidated;

(2) Does not have operable indoor plumbing;

(3) Does not have a usable flush toilet inside the unit for the exclusive use of a family;

(4) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;

(5) Does not have electricity, or has inadequate or unsafe electrical service;

(6) Does not have a safe or adequate source of heat;

(7) Should, but does not, have a kitchen; or

(8) Has been declared unfit for habitation by an agency or unit of government.

For purposes of this paragraph (f), a housing unit is dilapidated if it does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family, or it has one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect or lack of repair or from serious damage to the structure.

(g) *Verification procedures for applicants living in substandard housing.* Verification that an applicant is living in substandard housing shall consist of a written statement or notice from a unit or agency of government or from an applicant's present landlord that the applicant's unit has one or more of the deficiencies listed in, or the unit's condition is as described in, paragraph (f) of this section.

(h) *Definition of family income.* For purposes of this section, family income is monthly income, as defined in § 813.102.

(i) *Definition of rent.* For purposes of this section, rent is defined as the actual amount due, calculated on a monthly basis, under a lease or rental agreement between a family and the family's current landlord, plus any monthly payments that a family makes toward tenant-purchased utilities (except telephone) and other housing services. In calculating a family's payments toward utilities and other housing services, the owner must use the family's average monthly utility costs, based on the family's utility bills furnished by the family, for the most recent 12-month period, or, where bills are not obtainable for the entire period, for an appropriate recent period.

(j) *Verification of an applicant's income, rent, and utilities payments.* Verification that an applicant is paying more than 50 percent of family income for rent shall consist of documentation supplied by the family of the amounts due to the family's landlord under the lease or rental agreement and the amounts of family pays for utilities and other housing services, and of the family's income.

(1) An owner shall verify a family's income in accordance with appropriate regulatory and HUD handbook provisions. As part of this process, the owner shall require the family head and other such family members as it designates to execute a HUD-approved release and constant authorizing any depository or private source of income, or any Federal, State or local agency to furnish or release to the owner and to HUD such information as the owner or HUD determines to be necessary. The owner shall also require the family to submit directly documentation determined to be necessary. Information or documentation shall be determined to be necessary if it is required for purposes of determining a family's eligibility for a preference for paying more than 50 percent of its income for rent. The use or disclosure of information obtained from a family or from another source pursuant to this release and consent shall be limited to purposes directly connected with determining eligibility for the preference.

(2) An owner shall verify the amount due to the family's landlord under the lease or rental agreement by requiring the family to furnish copies of its most recent rental receipts or a copy of the family's current lease or rental agreement.

(3) To verify the amount a family pays for utilities and other housing services, an owner shall require the family to provide copies of the family's most recent bills or receipts for such services (as provided in paragraph (j)(1) of this section).

PART 886—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—SPECIAL ALLOCATIONS

11. In Part 886 a new § 886.121a is added, to read as follows:

§ 886.121a Preference for families involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent.

(a) *General.* In selecting from among applicants for admission to projects assisted under this subpart, housing owners shall give preference to applicants who are otherwise qualified for assistance and who, at the time they are seeking housing assistance, are involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent. As part of the tenant selection process, owners shall inform applicants, including those on the waiting list, of the availability of the preferences, and give these persons an opportunity to show that they qualify for one of the preferences.

(b) *Primacy of the preferences.* An applicant who qualifies for any of the preferences under this section is to be selected for admission to a project assisted under this part before any other applicant who is not so qualified, without regard to the other applicant's qualification for one or more locally created preferences or priorities (i.e., preferences or priorities not created pursuant to Federal law), or place on the waiting list, or the time of submission of his or her application for admission to an assisted project.

(c) *Qualifying for a preference.* (1) An applicant qualifies for a preference under this section if (i) the applicant has been involuntarily displaced and is not living in standard replacement housing or, within no more than six months from the date of certification under paragraph (c)(2) of this section or verification under paragraph (c)(3) of this section, as

appropriate, the applicant will be involuntarily displaced; (ii) the applicant is living in substandard housing; or (iii) the applicant is paying more than 50 percent of family income for rent.

(2) Applicants may claim qualification for preference at the time they make application for admission to a project (or thereafter until the time that they are offered a unit in the project) by certifying to the owner that they are eligible for one of the preferences described in paragraph (c)(1) of this section. An owner shall accept this certification unless the owner verifies that the applicant is not qualified for the preference.

(3) Before executing a lease or rental agreement with an applicant who has been offered a unit on the basis of a preference, the owner shall require that the applicant provide verification that he or she qualifies for a preference described in paragraph (c)(1) of this section by virtue of his or her current status (without regard to whether there was a change in the applicant's preferred status between the certification under paragraph (c)(2) of this section and execution of a rental agreement, including a change from one preference category to another).

(4) If an applicant's qualification for a preference under paragraph (c)(1) of this section has once been verified, an owner need not require the applicant to verify such qualification again unless, as determined by the owner, such a long time has elapsed since verification as to make reverification desirable, or the owner has reasonable grounds to believe that the applicant no longer qualifies for a preference.

(5) For purposes of this paragraph (c), standard replacement housing is housing that is decent, safe and sanitary, and is adequate for the family size, but does not include transient facilities such as motels and hotels.

(d) *Definition of involuntary displacement.* An applicant is or will be involuntarily displaced if he or she has vacated or will have to vacate his or her housing unit as a result of one or more of the following actions:

(1) A disaster, such as a fire or flood, which results in the uninhabitability of an applicants unit;

(2) Activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with a public improvement or development program; or

(3) Action by a housing owner that results in an applicant's having to vacate his or her unit, where:

(A) The reason for the owner's action is beyond an applicant's ability to control or prevent;

(B) The action occurs despite an applicant's having met all previously imposed conditions of occupancy; and

(C) The action taken is other than a rent increase.

For purposes of this paragraph (d)(3), reasons for an applicant's having to vacate a housing unit include, but are not limited to, conversion of an applicant's housing unit to non-rental or non-residential use, closure of an applicant's housing unit for rehabilitation or for any other reason; notice to an applicant that he or she must vacate a unit because the owner wants the unit for the owner's personal or family use or occupancy; sale of a housing unit in which an applicant resides under an agreement that the unit must be vacant when possession is transferred; or any other legally authorized act that results or will result in the withdrawal by the owner of the unit or structure from the rental market. Such reasons shall not include an owner's election not to renew a rental agreement or lease, if the election is legally proper, or the eviction of a tenant who refuses to accept a transfer to another housing unit in accordance with a court decree or HUD-approved desegregation plan.

(e) *Verification procedures for applicants involuntarily displaced.* Verification of an applicant's involuntary displacement is established by the following documentation:

(1) Written notice from a unit or agency of government that an applicant has been or will be displaced as a result of a disaster, as defined in paragraph (d)(1) of this section;

(2) Written notice from a unit or agency of government that an applicant has been or will be displaced by government action, as defined in paragraph (d)(2) of this section; or

(3) Written notice from an owner or owner's agent that an applicant had to or will have to vacate a unit by a date certain because of an owner action referred to in paragraph (d)(3) of this section.

(f) *Definition of substandard housing.* A unit is substandard if it:

(1) Is dilapidated;

(2) Does not have operable indoor plumbing;

(3) Does not have a usable flush toilet inside the unit for the exclusive use of a family;

(4) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;

(5) Does not have electricity, or has inadequate or unsafe electrical service;

(6) Does not have a safe or adequate source of heat;

(7) Should, but does not, have a kitchen, or

(8) Has been declared unfit for habitation by an agency or unit of government.

For purposes of this paragraph (d), a housing unit is dilapidated if it does not provide safe and adequate shelter and in its present condition endangers the health, safety, or well-being of a family, or if it has one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect or lack of repair or from serious damage to the structure.

(g) *Verification procedures for applicants living in substandard housing.* Verification that an applicant is living in substandard housing shall consist of a written statement or notice from a unit or agency of government or from an applicant's present landlord that the applicant's unit has one or more of the deficiencies listed in, or the unit's condition is as described in, paragraph (f) of this section.

(h) *Definition of family income.* For purposes of this section, family income is monthly income, as defined in § 813.102.

(i) *Definition of rent.* For purposes of this section, rent is defined as the actual amount due, calculated on a monthly basis, under a lease or rental agreement between a family and the family's current landlord, plus any monthly payments that a family makes toward tenant-purchased utilities (except telephone) and other housing services. In calculating a family's payments toward utilities and other housing services, the owner must use the family's average monthly utility costs, based on the family's utility bills furnished by the family, for the most recent 12-month period, or, where bills are not obtainable for the entire period, for an appropriate recent period.

(j) *Verification of an applicant's income, rent, and utilities payments.* Verification that an applicant is paying more that 50 percent of family income for rent shall consist of documentation supplied by the family of the amounts due to the family's landlord under the lease or rental agreement and the amounts the family pays for utilities and other housing services, and of the family's income.

(1) An owner shall verify a family's income in accordance with appropriate regulatory and HUD handbook provisions. As part of this process, the owner shall require the family head and other such family members as it

designates to execute a HUD-approved release and consent authorizing any depository or private source of income, or any Federal, State or local agency to furnish or release to the owner and to HUD such information as the owner or HUD determines to be necessary. The owner shall also require the family to submit directly documentation determined to be necessary. Information or documentation shall be determined to be necessary if it is required for purposes of determining a family's eligibility for a preference for paying more than 50 percent of its income for rent. The use or disclosure of information obtained from a family or from another source pursuant to this release and consent shall be limited to purposes directly connected with determining eligibility for the preference.

(2) An owner shall verify the amount due to the family's landlord under the lease or rental agreement by requiring the family to furnish copies of its most recent rental receipts or a copy of the family's current lease or rental agreement.

(3) To verify the amount a family pays for utilities and other housing services, an owner shall require the family to provide copies of the family's most recent bills or receipts for such services (as provided in paragraph (1) of this section).

12. In Part 886 a new § 886.321a is added, to read as follows:

§ 886.321a Preference for families involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rents.

(a) *General.* In selecting from among applicants for admission to projects assisted under this subpart, housing owners shall give preference to applicants who are otherwise qualified for assistance and who, at the time they are seeking housing assistance, are involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent. As part of the tenant selection process, owners shall inform applicants, including those on the waiting list, of the availability of the preferences, and give these persons an opportunity to show that they qualify for one of the preferences.

(b) *Primacy of the preferences.* An applicant who qualifies for any of the preferences under this section is to be selected for admission to a project assisted under this part before any other applicant who is not so qualified, without regard to other applicant's qualification for one or more locally created preferences or priorities (i.e., preferences or priorities not created pursuant to Federal law), or place on the waiting list, or the time of submission of his or her application for admission to an assisted project.

(c) *Qualifying for a preference.* (1) applicant qualifies for a preference under this section if (i) the applicant has been involuntarily displaced and is not living in standard replacement housing or, within no more than six months from the date of certification under paragraph (c)(2) of this section or verification under paragraph (c)(3) of this section, as appropriate, the applicant will be involuntarily displaced; (ii) the applicant is living in substandard housing; or (iii) the applicant is paying more than 50 percent of family income for rent.

(2) Applicants may claim qualification for a preference at the time they make application for admission to a project (or thereafter until the time that they are offered a unit in the project) by certifying to the owner that they are eligible for one of the preferences described in paragraph (c)(1) of this section. An owner shall accept this certification unless the owner verifies that the applicant is not qualified for the preference.

(3) Before executing a lease or rental agreement with an applicant who has been offered a unit on the basis of a preference, the owner shall require that the applicant provide verification that he or she qualifies for a preference described in paragraph (c)(1) of this section by virtue of his or her current status (without regard to whether there was a change in the applicant's preferred status between the certification under paragraph (c)(2) of this section and execution of a rental agreement, including a change from one preference category to another).

(4) If an applicant's qualification for a preference under paragraph (c)(1) of this section has once been verified, an owner need not require the applicant to verify such qualification again unless, as determined by the owner, such a long time has elapsed since verification as to make reverification desirable, or the owner has reasonable grounds to believe that the applicant no longer qualifies for a preference.

(5) For purposes of this paragraph (c), standard replacement housing is housing that is decent, safe and sanitary, and is adequate for the family size, but does not include transient facilities such as motels and hotels.

(d) *Definition of involuntary displacement.* An applicant is or will be involuntarily displaced if he or she has vacated or will have to vacate his or her housing unit as a result of one or more of the following actions:

(1) A disaster, such as a fire or flood, that results in the uninhabitability of an applicant's unit;

(2) Activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with a public improvement or development program; or

(3) Action by a housing owner that results in an applicant's having to vacate his or her unit, where:

(A) The reason for the owner's action is beyond an applicant's ability to control or prevent;

(B) The action occurs despite an applicant's having met all previously imposed conditions of occupancy; and

(C) The action taken is other than a rent increase.

For purposes of this paragraph (d)(3), reasons for an applicant's having to vacate a housing unit include, but are not limited to, conversion of an applicant's housing unit to non-rental or non-residential use; closure of an applicant's housing unit for rehabilitation or for any other reason; notice to an applicant that he or she must vacate a unit because the owner wants the unit for the owner's personal or family use or occupancy; sale of a housing unit in which an applicant resides under an agreement that the unit must be vacant when possession is transferred; or any other legally authorized act that results or will result in the withdrawal by the owner of the unit or structure from the rental market. Such reasons shall not include an owner's election not to renew a rental agreement or lease, if the election is legally proper, or the eviction of a tenant who refuses to accept a transfer to another housing unit in accordance with a court decree or HUD-approved desegregation plan.

(e) *Verification procedures for applicants involuntarily displaced.* Verification of an applicant's involuntary displacement is established by the following documentation:

(1) Written notice from a unit or agency or government that an applicant has been or will be displaced as a result of a disaster, as defined in paragraph (d)(1) of this section;

(2) Written notice from a unit or agency of government that an applicant has been or will be displaced by government action, as defined in paragraph (d)(2) of this section; or

(3) Written notice from an owner or owner's agent that an applicant had to or will have to vacate a unit by a date certain because of an owner action referred to in paragraph (d)(3) of this section.

(f) *Definition of substandard housing.* A unit is substandard if it:

(1) Is dilapidated;

(2) Does not have operable indoor plumbing;

(3) Does not have a usable flush toilet inside the unit for the exclusive use of a family;

(4) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;

(5) Does not have electricity, or has inadequate or unsafe electrical service;

(6) Does not have a safe or adequate source of heat;

(7) Should, but does not, have a kitchen; or

(8) Has been declared unfit for habitation by an agency or unit of government.

For purposes of this paragraph (f), a housing unit is dilapidated if it does not provide safe and adequate shelter and in its present condition endangers the health, safety, or well-being of a family, or it has one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect or lack of repair or from serious damage to the structure.

(g) *Verification procedures for applicants living in substandard housing.* Verification that an applicant is living in substandard housing shall consist of a written statement or notice from a unit or agency of government or from an applicant's present landlord that the applicant's unit has one or more of the deficiencies listed in, or the unit's condition is as described in, paragraph (f) of this section.

(h) *Definition of family income.* For purposes of this section, family income is monthly income, as defined in § 813.102.

(i) *Definition of rent.* For purposes of this section, rent is defined as the actual amount due, calculated on a monthly basis, under a lease or rental agreement between a family and the family's current landlord, plus any monthly payments that a family makes toward tenant-purchased utilities (except telephone) and other housing services. In calculating a family's payments toward utilities and other housing services, the owner must use the family's average monthly utility costs, based on the family's utility bills furnished by the family, for the most recent 12-month period, or, where bills are not obtainable for the entire period, for an appropriate recent period.

(j) *Verification of an applicant's income, rent, and utilities payments.* Verification that an applicant is paying more than 50 percent of family income for rent shall consist of documentation supplied by the family of the amounts due to the family's landlord under the lease or rental agreement and the amounts the family pays for utilities and other housing services, and of the family's income.

(1) An owner shall verify a family's income in accordance with appropriate regulatory and HUD handbook provisions. As part of this process, the owner shall require the family head and other such family members as it designates to execute a HUD-approved release and consent authorizing any depository or private source of income, or any Federal, State or local agency to furnish or release to the owner and to HUD such information as the owner or HUD determines to be necessary. The owner shall also require the family to submit directly documentation determined to be necessary. Information or documentation shall be determined to be necessary if it is required for purposes of determining a family's eligibility for a preference for paying more than 50 percent of its income for rent. The use or disclosure of information obtained from a family or from another source pursuant to this release and consent shall be limited to purposes directly connected with determining eligibility for the preference.

(2) An owner shall verify the amount due to the family's landlord under the lease or rental agreement by requiring the family to furnish copies of its most recent rental receipts or a copy of the family's current lease or rental agreement.

(3) To verify the amount a family pays for utilities and other housing services, an owner shall require the family to provide copies of the family's most recent bills or receipts for such services (as provided in paragraph (j)(1) of this section).

PART 904—LOW RENT HOUSING HOMEOWNERSHIP OPPORTUNITIES

13. In § 904.104, add a new paragraph (f)(3), to read as follows:

§ 904.104 Eligibility and selection of homebuyers.

* * * * *

(f) * * *

(3) The LHA, in selecting from among applicants determined to have a potential for homeownership, shall give a preference to applicants who are otherwise eligible for assistance and who, at the time they are seeking housing assistance, are involuntarily displaced, living in substandard housing, or paying more than fifty percent of family income for rent. In carrying out this paragraph, the LHA shall follow the procedures set out in § 960.204a of this chapter.

* * * * *

PART 905—INDIAN HOUSING

14. In § 905.406, add a new paragraph (e), to read as follows:

§ 905.406 Selection of MH homebuyers.

* * * * *

(e) The IHA, in selecting from among applicants for MH housing, shall give a preference to applicants who are otherwise eligible for assistance and who, at the time they are seeking housing assistance, are involuntarily displaced, living in substandard housing, or paying more than fifty percent of family income for rent. In carrying out this paragraph, the IHA shall follow the procedures set out in § 960.204a of this chapter.

PART 960—ADMISSION TO, AND OCCUPANCY OF, PUBLIC HOUSING

15. In Part 960, add a new § 960.204a, to read as follows:

§ 960.204a Preference for applicants involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent.

(a) *General.* In selecting from among applicants for admission to its projects, each PHA shall give preference to applicants who are otherwise eligible for assistance and who, at the time they are seeking housing assistance, are involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent. As part of the tenant selection process, the PHA shall inform applicants, including those on the waiting list, of the availability of the preferences, and give these persons an opportunity to show that they qualify for one of the preferences. A PHA must apply the definitions of "standard replacement housing", "involuntary displacement", "substandard housing", "family income", and "rent" set forth in paragraphs (c) (5), (d), (f), (h), and (i), respectively, of this section unless the PHA submits alternative definitions for the Secretary's review and approval. If the Secretary disapproves a PHA's alternative definitions, the PHA shall apply the definitions contained in this section. A PHA may apply the verification procedures found in paragraphs (e), (g), and (j) of this section or may adopt verfication procedures of its own.

(b) *Primacy of the preferences.* An applicant who qualifies for any of the preferences under this section is to be selected for admission to a project assisted under this part before any other applicant who is not so qualified, without regard to the other applicant's qualification for one or more locally created preferences or priorities (i.e., preferences or priorities not created pursuant to Federal law), or place on the waiting list, or the time of submission of his or her application for admission to an assisted project.

(c) *Qualifying for a preference* (1) An applicant qualifies for a preference under this section if (i) the applicant has been involuntarily displaced and is not living in standard replacement housing, or within no more than six months from the date of certification, under paragraph (c)(2) of this section or verification under paragraph (c)(3) of this section, is appropriate, the applicant will be involuntarily displaced; (ii) the applicant is living in substandard housing; or (iii) the applicant is paying more than 50 percent of family income for rent.

(2) Applicants may claim qualification for a preference at the time they make application for admission to a project (or thereafter until the time that they are offered a unit in a project) by certifying to the PHA that they are eligible for one of the preferences described in paragraph (c)(1) of this section. A PHA shall accept this certification unless the PHA verifies that the applicant is not qualified for the preference.

(3) Before executing a lease or rental agreement with an applicant who has been offered a unit on the basis of a preference, the PHA shall request that the applicant provide verification that he or she qualifies for a preference described in paragraph (c)(1) of this section by virtue of his or her current status (without regard to whether there was a change in the applicant's preferred status between the certification under paragraph (c)(2) of this section and execution of a rental agreement, including a change from one preference category to another).

(4) If an applicant's qualification for a preference under paragraph (c)(1) of this section has once been verified, a PHA need not require the applicant to verify such qualification again unless, as determined by the PHA, such a long time has elapsed since verification as to make reverification desirable, or the PHA has reasonable grounds to believe that the applicant no longer qualifies for a preference.

(5) For purposes of this paragraph (c), standard replacement housing is housing that is decent, safe and sanitary and is adequate for the family size, but does not include transient facilities such as motels and hotels.

(d) *Definition of involuntary displacement:* An applicant is or will be involuntarily displaced if he or she was vacated or will have to vacate his or her housing unit as a result of one or more of the following actions:

(1) A disaster, such as a fire or flood, that results in the uninhabitability of an applicant's unit;

(2) Activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with a public improvement or development program; or

(3) Action by a housing owner that results in an applicant's having to vacate his or her unit, where:

(A) The reason for the owner's action is beyond an applicant's ability to control or prevent;

(B) The action occurs despite an applicant's having met all previously imposed conditions of occupancy; and

(C) The action taken is other than a rent increase.

For purposes of this paragraph (d)(3), reasons for an applicant's having to vacate a housing unit include, but are not limited to, conversion of an applicant's housing unit to non-rental or non-residential use; closure of an applicant's housing unit for rehabilitation or for any other reason; notice to an applicant that he or she must vacate a unit because the owner wants the unit for the owner's personal or family use or occupancy; sale of a housing unit in which an applicant resides under an agreement that the unit must be vacant when possession is transferred; or some other legally authorized act that results or will result in the withdrawal by the owner of the unit or structure from the rental market. Such reasons shall not include an owner's election not to renew a rental agreement or lease, if the election is legally proper, or the eviction of a tenant who refuses to accept a transfer to another housing unit in accordance with a court decree or HUD-approved desegregation plan.

(e) *Verification procedures for applicants involuntarily displaced.* Verification of an applicant' involuntary displacement is established by the following documentation:

(1) Written notice from a unit or agency of government that an applicant has been or will be displaced as a result of a disaster, as defined in paragraph (d)(1) of this section;

(2) Written notice from a unit or agency of government that an applicant has been or will be displaced by government action, as defined in paragraph (d)(2) of this section; or

(3) Written notice from an owner or owner's agent that an applicant had to or will have to vacate a unit by a date certain because of an owner action referred to in paragraph (d)(3) of this section.

(f) *Definition of substandard housing.* A unit is substandard if it:

(1) Is dilapidated;

(2) Does not have operable indoor plumbing;

(3) Does not have a usable flush toilet inside the unit for the exclusive use of a family;

(4) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;

(5) Does not have electricity, or has inadequate or unsafe electrical service;

(6) Does not have a safe or adequate source of heat;

(7) Should, but does not, have a kitchen; or

(8) Has been declared unfit for habitation by an agency or unit of government.

For purposes of this paragraph (f), a housing unit is dilapidated if it does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family, or it has one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect or lack of repair or from serious damage to the structure.

(g) *Verification procedures for applicants living in substandard housing.* Verification that an applicant is living in substandard housing shall consist of a written statement or notice from a unit or agency of government or from an applicant's present landlord that the applicant's unit has one or more of the deficiencies listed in, or the unit's condition is as described in, paragraph (f) of this section.

(h) *Definition of family income.* For purposes of this section, family income is monthly income, as determined in accordance with Part 913 of this chapter.

(i) *Definition of rent.* For purposes of this section, rent is defined as the actual amount due, calculated on a monthly basis, under a lease or rental agreement between a family and the family's current landlord, plus any monthly payments that a family makes toward tenant-purchased utilities (except telephone) and other housing services. In calculating a family's payments toward utilities and other housing services, the PHA must use the family's

average monthly utility costs, based on the family's utility bills furnished by the family, for the most recent 12-month period, or, where bills are not obtainable for the entire period, for an appropriate recent period.

(j) *Verification of an applicant's income, rent, and utilities payments.* Verification that an applicant is paying more than 50 percent of family income for rent shall consist of documentation supplied by the family of the amounts due to the landlord under the lease or rental agreement and the amounts the family pays for utilities and other housing services, and of the family's income.

(1) A PHA shall verify a family's income in accordance with appropriate regulatory and HUD handbook provisions. As part of this process, the PHA shall require the family head and other such family members as it designates to execute a HUD-approved release and consent authorizing any depository or private source of income, or any Federal, State or local agency, to furnish or release to the PHA and to HUD such information as the PHA or HUD determines to be necessary. The PHA shall also require the family to submit directly documentation determined to be necessary. Information or documentation shall be determined to be necessary if it is required for purposes of determining a family's eligibility for a preference for paying more than 50 percent of the family's income for rent. The use or disclosure of information obtained from a family or from another source pursuant to this release and consent shall be limited to purposes directly connected with determining eligibility for the preference.

(2) A PHA shall verify the amount due to the family's landlord under the lease or rental agreement by requiring the family to furnish copies of its most recent rental receipts or a copy of the family's current lease or rental agreement.

(3) To verify the amount a family pays for utilities and other housing services, a PHA shall require the family to provide copies of the family's most recent bills or receipts for such services (as provided in paragraph (j) (1) of this section).

Authority: Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d); Sections 203(a) and 206 of the Housing and Community Development Amendments of 1979, 12 U.S.C. 1701z, and 42 U.S.C. 1437d and 1437f, respectively; section 208 of the Housing and Urban-Rural Recovery Act of 1983, Pub. L. 98-181, 97 Stat. 1153, approved November 30, 1983.

Dated: July 31, 1984.

Samuel R. Pierce, Jr.,

Secretary.

[FR Doc. 84-25422 Filed 9-25-84; 8:45 am]

BILLING CODE 4210-32-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 20 and 25

[L R-211-76]

Change in Limitations on Gift and Estate Tax Marital Deductions

Correction

In FR Doc. 84-13523, beginning on page 21350 in the issue of Monday, May 21, 1984, make the following corrections:

1. On page 21351, column two, tenth line, "Status" should read "State".

2. On page 21352, column three, second paragraph, thirteenth line, remove the word "gross" .

§ 20.2013-4 [Corrected]

3. On page 21353, column two, in Par. 3, last line, "20.20056(c)-2" should read "20.2056(c)-2".

§ 20.2014-13 [Corrected]

4. On the same page, same column, in § 20.2014-3(b), lines three and six "material" should read "marital".

5. And also on the same page, column three, line one, "material" should read "marital".

§ 20.2056(b)-1 [Corrected]

6. On page 21355, column three, line one, "a" should read "as".

§ 20.2056(b)-7 [Corrected]

7. On page 21358, column two, in Example (10), line 6, "installation" should read "installments".

8. On the same page, column three, in Example (14), next to the last line, "if" should read "is".

§ 20.2056(c)-1A [Corrected]

9. On page 21360, column one, in Example (4), line eight, "or" should read "of".

§ 20.2056(c)-2A [Corrected]

10. On page 21361, column two, in § 20.2056(c)-2A, paragraph (a)(1)(ii), line one, remove "any".

11. On the same page, column three, in § 20.2056(c)-2A, paragraph (a)(2), in line six, "if" should read "of"; also in line seventeen, "products" should read "product"and in lines eighteen and nineteen, in the equation, remove "gross estate less".

12. On page 21362, column one, first full paragraph, last line, "the" should read "that".

§ 20.6018-3 [Corrected]

13. On the same page, column three, just before Par. 19, "§ 20.618-3" should read "§ 20.6018-3".

§ 25.2523(b)-1 [Corrected]

14. On page 21366, column one, in § 25.2523(b)-1, paragraph (a)(1), third from the last line, "0" should read "to".

§ 25.2523(e)-1 [Corrected]

15. On the same page, column two, in § 25.2523(e)-1, in the heading, "Martial" should read "Marital"; also on the same page, column three, same section, in paragraph (c)(3) sixth from the last line, "and" should read "any".

§ 25.2523(f)-1 [Corrected]

16. On page 21367, column three, in § 25.2523(f)-1, paragraph (c)(1), third line, "trem" should read "term"; also in paragraph (c)(1)(i), line two, "form" should read "from"; and on page 21368, column two, the paragraph preceding (f) should be correctly designated as "(e)".

17. On page 21369, column two, line eight, "six" should read "four".

§ 25.6019-1 [Corrected]

18. On the same page, column two, in § 25.6019-1, paragraph (a)(2), line seven, delete the period and insert a comma.

BILLING CODE 1505-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL-2680-6]

Approval and Promulgation of Implementation Plans; Wisconsin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: USEPA is proposing rulemaking on a revision to the Wisconsin State Implementation Plan (SIP). The revision pertains to Chapter NR 410 of the Wisconsin Administrative Code (WAC), and establishes an air permit fee system for Wisconsin. USEPA's action is based on a SIP revision request that was submitted by the State of Wisconsin. The intent of today's rulemaking is to present a discussion of the material submitted by the State, and to provide an opportunity for public comment on the revision and on USEPA's proposed action.

DATE: Comments on this revision and on USEPA's proposed action must be received by October 26, 1984.

ADDRESSES: Copies of the SIP revision are available for review at the following addresses: (It is recommended that you telephone Colleen W. Comerford, at (312) 886–6034, before visiting the Region V office.)

Environmental Protection Agency, Air and Radiation, Region V, 230 South Dearborn Street, Chicago, Illinois 60604

Wisconsin Department of Natural Resources, Bureau of Air Management, 101 South Webster Street, Madison, Wisconsin 53707

Comments on this proposed rule should be addressed to (please submit an original and five copies, if possible): Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Colleen W. Comerford, (312) 886–6034.

SUPPLEMENTARY INFORMATION:

Background

Section 110 of the Clean Air Act (Act) requires that each state establish a plan to implement the National Ambient Air Quality Standards (NAAQS). It further requires that each plan include, among other provisions, a requirement that the state permitting authority charge permit fees (Section 110(a)(2)(K)). These fees must cover the reasonable costs of reviewing and acting upon a permit application, and of implementing and enforcing issued permits. The permit fee requirement applies to any permit issued to any major stationary source under the various programs of the Act.

Section 144.399 of the Wisconsin Statutes authorizes the Wisconsin Department of Natural Resources (WDNR) to establish air permit fees. Public hearings on this issue were held in Wausau, Wisconsin, on December 6, 1983, and in Waukesha, Wisconsin, on December 7, 1983. This new rule was codified under Chapter NR 410 of the WAC, was enacted in Wisconsin by means of Natural Resources Board Order Number A–45–83, and became effective in Wisconsin on May 1, 1984.

Chapter NR 410

On May 25, 1984, the WDNR requested that USEPA incorporates Chapter NR 410 of the WAC, which establishes an air permit fee system for Wisconsin, as a revision to the Wisconsin SIP. Air permit fees would recover the costs of reviewing and acting upon air permit applications, as well as implementing and enforcing the terms and conditions of such permits.

The application fee consists of a basic fee plus any additional fee required for a specific review action (e.g., review of two or more basic emission units, review of nonattainment area sources, review of emissions offset sources). The basic application fee is as follows:

$1,050 construction/replacement of minor source

$800 modification of minor source

$2,550 construction/reconstruction/replacement of major source

$1,400 modification of major source

The additional fee varies, depending on the applicable review action, but ranges from $150 to $1,500. The implementation and enforcement fee is charged on an annual basis. This fee is $500 for a major source and $200 for a minor source.

Conclusion

This proposed revision to the SIP meets the requirement of Section 110(a)(2)(K) of the Clean Air Act, and has been adopted by the State after reasonable notice and public hearing. Although Section 110 of the Act only requires permit fees for major stationary sources, it does not prohibit the State from collecting fees from minor sources. Therefore, USEPA is proposing to approve this revision to the Wisconsin SIP on the basis of Section 116 of the Act, which restricts USEPA from interfering with State measures that go beyond the requirements of the Act (49 FR 13174; April 3, 1984).

Interested persons are invited to submit comments on this action. USEPA will consider all comments received by October 26, 1984.

Under 5 U.S.C. Section 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

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

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations.

(Secs. 110, 172 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7410, 7502, and 7601(a))

Dated August 23, 1984.

Robert Springer,

Acting Regional Administrator.

[FR Doc. 84-25408 Filed 9-25-84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 81

[A–5–FRL–2680–7]

Designation of Areas for Air Quality Planning Purposes; Attainment Status Designations; Wisconsin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: USEPA proposes to revise the Total Suspended Particulates (TSP) designation for the City of Milwaukee from primary and secondary nonattainment to secondary nonattainment. The proposed revision would narrow the boundaries of the secondary nonattainment area, and would eliminate the designation of primary nonattainment. This proposed revision is based on a redesignation request from the Wisconsin Department of Natural Resources (WDNR), and on supporting technical data submitted by the Department. Under the Clean Air Act, attainment status designations can be changed if warranted by the available data.

DATE: Comments on this redesignation and on USEPA's proposed action must be received by October 26, 1984.

ADDRESSES: Copies of the redesignation request, the technical support documents, and the supporting air quality data are available at the following addresses (It is recommended that you telephone Colleen W. Comerford, at (312) 886–6034, before visiting the Region V office):

Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

Wisconsin Department of Natural Resources, Bureau of Air Management, 101 South Webster, Madison, Wisconsin 53707.

Comments on this proposed rule should be addressed to (please submit an original and five copies, if possible): Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Colleen W. Comerford, (312) 886–6034.

SUPPLEMENTARY INFORMATION: Under Section 107(d) of the Clean Air Act, the

Administrator of USEPA has promulgated a National Ambient Air Quality Standards (NAAQS) attainment status designation for each area of Wisconsin. See 43 FR 8962 (March 3, 1978) and 43 FR 45993 (October 5, 1978). These area designations may be revised whenever the available data warrant such revisions.

USEPA's criteria for Section 107 redesignations are summarized in two policy memoranda: (1) An April 21, 1983, memorandum from Sheldon Meyers, then Director of the Office of Air Quality Planning and Standards, entitled "Section 107 Designation Policy Summary"; and (2) a December 23, 1983, memorandum from G.T. Helms, Chief of the Control Programs Operation Branch, entitled "Section 107 Questions and Answers." In general, all available information relative to the attainment status of the area should be reviewed. The information should include the most recent eight consecutive quarters of quality-assured, representative ambient air quality data, plus evidence of an implemented EPA-approved control strategy. Any available supplemental information, including air quality modeling, emissions data, and any other pertinent information, should be used to determine whether the monitoring data accurately characterized the worst case air quality in the area.

Background—City of Milwaukee

Section 107 of the Clean Air Act Amendments of 1977 required all States to determine the attainment/nonattainment status of all air quality control regions within the respective States with respect to the NAAQS (42 U.S.C. § 7407). During 1977, Wisconsin recommended to USEPA that parts of the City of Milwaukee be designated as primary and secondary nonattainment areas for TSP. On March 3, 1978 (43 FR 8962), USEPA designated portions of the City of Milwaukee as primary and secondary nonattainment for TSP. USEPA made this determination based on monitoring data showing violations of the TSP NAAQS. These violations were caused primarily by emissions from industrial facilities located within the Milwaukee area. As a result of the nonattainment designation, a construction ban was imposed on Milwaukee pursuant to Section 110(a)(2)(I) of the Clean Air Act.

On March 14, 1983, the Wisconsin Department of Natural Resources (WDNR) requested that USEPA revise the air quality attainment status designation for the City of Milwaukee, from primary and secondary nonattainment to secondary nonattainment only of the TSP NAAQS. The State also requested that the secondary nonattainment area be narrowed to the approximate size of the current primary nonattainment area, and that the designation of primary nonattainment be eliminated.

The WDNR also submitted a Technical Support Document (January 1983) with summaries of the TSP ambient air monitoring data collected from 19 sites during the period 1979–1983. Additional technical information was submitted on May 12, July 29, and September 13, 1983. On March 13, 1984, the WDNR revised its redesignation request, enlarging the size of the proposed secondary nonattainment area. The boundaries of the new secondary nonattainment area would be as follows:

N—Michigan Avenue from corner of 35th Street to Lake Michigan
W—35th Street S from Michigan Avenue to National Avenue, east on National Avenue to 6th Street, S on 6th Street to Becher Street
S—Becher Street E from 6th Street to Lake Michigan
E—Lake Michigan.

These documents, and the reults of USEPA's review of these documents, are available for public inspection at the Region V office listed above.

Air Quality Data

The ambient air quality data show attainment of the primary TSP NAAQS, but not the secondary TSP NAAQS. Eight consecutive quarters of recent data, showing no violations of the primary TSP NAAQS, are available from 19 sites in the Milwaukee area. Based on available monitoring, emissions, meteorological, and modeling data, USEPA has determined that these monitors provide adequate spatial coverage of the area, so the data from these sites are representative of the TSP levels in Milwaukee.

According to information supplied by WDNR, TSP emissions in Milwaukee have been reduced due to control measures that have been implemented by TSP sources in the Milwaukee area, in accordance with the federally approved SIP (48 FR 9860; March 9, 1983). The WDNR stated in a September 13, 1983, letter to USEPA, that most sources were in compliance with the federally approved control strategy. Another reason for the reduction in TSP emissions is the permanent shut-down of Milwaukee Solvay Coke, Marquette Cement, and Minerals Reclamation, which were all large TSP sources located in, or near, the original primary nonattainment area. USEPA believes that these plant closures, and the resulting emission reductions, are a necessary condition of the redesignation.

Consequently, if these sources were to resume operation, then they would have to satisfy the applicable new source review requirements.

Regulatory Issues

On March 9, 1983 (48 FR 9860), USEPA partially approved a Part D TSP State Implementation Plan (SIP) for Wisconsin. The March 9, 1983, rulemaking action did not lift the Section 110(a)(2)(I) major source construction moratorium in the Milwaukee County primary nonattainment area due to USEPA's disapproval of that portion of the plan pertaining to Milwaukee coke battery emissions. USEPA disapproved that portion of the plan because it did not contain an enforceable RACT-level numerical visible emission limitation for charging operations.

As noted above, on March 14, 1983, Wisconsin requested that USEPA redesignate a portion of the City of Milwaukee as secondary nonattainment only. The State has submitted evidence that the TSP levels in this area have decreased due to compliance with the federally approved control strategy (48 FR 9860), and to the permanent shutdown of several large TSP sources, including the only coke battery in the State (Milwaukee Solvay Coke). Final approval of the proposed redesignation would lift the TSP construction moratorium in Milwaukee, because the construction moratorium only applies in primary nonattainment areas.

Conclusion

The ambient air monitoring data show no violations of the primary TSP NAAQS from 1981–1983. The improvement in ambient TSP levels can be attributed to control strategies that have been implemented at the industrial sources located within the Milwaukee area, and to the permanent closure of several major particulate sources. Therefore, USEPA is proposing to approve the redesigation of Milwaukee from primary and secondary nonattainment to secondary nonattainment for TSP.

All interested persons are invited to submit written comments on the proposed redesigation. Written comments received by the date specificed above will be considered in determining whether USEPA will approve the redesignation. After reviewing all the comments submitted, the Administrator of USEPA will publish

the Agency's final action on the redesignation in the **Federal Register**.

Under 5 U.S.C. Section 605(b), the administrator has certified that redesignations do not have a significant economic impact on a substantial number of small entities (See 46 FR 8709).

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

List of Subjects in 40 CFR Part 81

Intergovernmental relations, Air pollution control, National parks, Wilderness areas.

(Sec. 107(d) of the Act, as amended (42 U.S.C. 7407)).

Dated: August 22, 1984.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 84-25400 Filed 9-25-84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 180

[OPP-300100; FRL-2674-6]

Definitions and Interpretations; Proposed Technical Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that 40 CFR 180.1(h) be amended by adding certain general crop categories to column A, corresponding specific raw agricultural commodities to column B, and by adding further definitive crops to column B in the case of some general crop categories already listed in column A. This proposal was submitted by the University of California Cooperative Extension Program at Davis, California. These amendments will expand the number of commodities to be covered whenever a tolerance is established for one of the general crop categories listed in column A of 40 CFR 180.1(h).

DATE: Written comments, identified by the document control number [OPP-300100], must be received on or before October 26, 1984.

ADDRESS: Written comments by mail to:

Information Service Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, bring comments to: Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Donald Stubbs, Emergency Response and Minor Use Section (TS-767C), Registration Division, 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 22202, (703-557-1192).

SUPPLEMENTARY INFORMATION: The University of California Cooperative Extension Program, 116, B Street, Davis, CA 95616, has submitted an amendment proposed to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, amend 40 CFR 180.1(h) by adding two general crop categories (cabbage and broccoli) to column A, corresponding specific raw agricultural commodities to column B, and by adding further definitive crops to column B in the case of "celery" already listed in column A.

The requestor has indicated the need for clarification of the status of certain specialty crops with respect to existing residue clearances, in order that such crops may be included on pesticide labeling or treated in accordance with existing labeling directions. In some cases, the vegetable in question may be grown and marketed under a different or specialty name which is economically and culturally preferable to the more common name.

The Administrator concurs with the petitioner on the proposed revision of 40 CFR 180.1(h) to: (1) Add the general category "broccoli" to column A and the corresponding specific raw agricultural commodities "broccoli" and "Chinese broccoli (gai lon, white flowering broccoli)" to column B; (2) add the general category "cabbage" to column A and the corresponding specific raw agricultural commodities "cabbage" and "Chinese cabbage (tight-heading varieties only)" to column B; and (3) amend the current definition of "celery" to include "Florence fennel (sweet anise, sweet fennel, finochio) (fresh leaves and stalks only)." These revisions will expand the tolerances and exemptions established for residues of pesticide chemicals in or on the general categories to include the specific raw agricultural commodities.

Therefore, the Administrator proposes that 40 CFR 180.1(h) be amended to reflect these changes, as set forth below.

Interested persons are invited to submit written comments on the proposed regulation amendment. Comments must bear a notation indicating the document control number [OPP-300100]. All written comments filed pursuant to this notice will be available in the Information Services Section at address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24959).

List of Subjects in 40 CFR Part 180

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

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

Dated: September 4, 1984.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, it is proposed that 40 CFR 180.1(h) be amended by adding and alphabetically inserting definitions for "broccoli" and "cabbage" in Column A and the respective definitive crops in Column B and revising the list of definitive crops for "celery" in column B to read as follows:

§ 180.1 Definitions and interpretations.

* * * * *

(h) * * *

A	B
•	•
Broccoli	Broccoli, Chinese Broccoli (gai lon, white flowering broccoli).
Cabbage	Cabbage, Chinese cabbage (tight-heading varieties only).
Celery	Celery, Florence Fennel (sweet anise, sweet fennel, finochio) (fresh leaves and stalks only).
•	•

[FR Doc. 84-24929 Filed 9-25-84; 8:45 am]
BILLING CODE 4550-50-M

40 CFR Part 180

[OPP-300102; FRL-2675-1]

Definitions and Interpretations; Proposed Technical Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that 40 CFR 180.1(h) be amended by redefining the crop term "tangerine" to include various related citrus hybrids and by adding definitions for "caneberries" and "squash." These proposed amendments, which will clarify and update the current definition of "tangerines" and which will allow a number of closely-related commodities to be covered whenever a tolerance is established for the agricultural commodity groups "caneberries" and "squash," were submitted by the Interregional Research Project No. 4 (IR-4).

DATE: Written comments, identified by the document control number [OPP-300102], must be received on or before October 26, 1984.

ADDRESS: Written comments by mail to: Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, bring comments to: Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Donald Stubbs, Emergency Response and Minor Use Section (TS-767C), Registration Division, 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 22202, (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 requests to EPA on behalf of the IR-4 Technical Committee.

First, that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose that 40 CFR 180.1(h) be amended by revising the current definition of tangerines to include mandarins, tangelos, tangors, tangerines and hybrids of these. Currently tangerines is defined to include only tangelos and tangerines. According to IR-4, tangerines, or mandarins, are characterized by a loose skin that separates readily from the pulp, and by segments which separate readily from each other; they are grown in all citrus areas of the U.S. The tangor is a citrus hybrid resulting from cross-breeding mandarins and sweet oranges and is somewhat intermediate in characteristics. The tangelo is a cross of mandarin and grapefruit or pummelo.

Second, that the Administrator amend 40 CFR 180.1(h) by adding the general crop category loganberries, raspberries, youngberries, and "varieties of these" to column B.

The IR-4 supports this request by pointing out that each of these specific crops is a species of the genus *Rubus* in the family Rosaceae and that they are all very similar physiologically and by virtue of cultivation patterns. Canes may be erect, semi-erect, or trailing. Blackberries are usually heavily-thorned but some thornless varieties are known. Dewberries (sometimes called trailing blackberry) and related varieties (including boysenberry, loganberry, and youngberry) are generally less thorny than blackberries but very similar otherwise. Raspberries are nearly thornless. Fruits are borne in loose clusters on laterals that grow from canes. They consist of numerous small seeds, each imbedded in a juicy pulp, and all adhering to a fleshy base. The base separates from the plant when the fruit in harvested in all cases except for raspberries, in which the base or receptacle is retained on the plant.

Third, that the Administrator amend 40 CFR 180.1(h) by adding the general crop category "squash" to column A and the corresponding specific raw agricultural commodities pumpkins, summer squash, and winter squash to column B. The IR-4 supports this request by pointing out that each of these specific crops is a species of the genus *Cucurbita* in the family *Cucurbitaceae* and that varieties of several species of *Cucurbita* carry the name "pumpkin." Generally, pumpkin is the edible fruit of cucurbits used for feed or food when ripe, and having somewhat coarse, strongly-flavored flesh; winter squash has finer texture and less strongly flavored flesh. Summer squashes are commonly harvested while the rinds on the fruit are soft and tender; otherwise, the plants are essentially similar to those of winter squash and pumpkin.

The Administrator concurs with IR-4 that the revised and new definitions would be appropriate. Therefore, it is proposed that 40 CFR 180.1(h) be amended to reflect these changes, as set forth below.

Interested persons are invited to submit written comments on the proposed regulation amendment. Comments must bear a notation indicating the document control number [OPP-300102]. All written comments filed pursuant to this notice will be available in the Information Services Section at address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24959).

List of Subjects in 40 CFR Part 180

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

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

Dated: September 4, 1984.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR 180.1(h) be amended by adding and alphabetically inserting definitions for "caneberries" and "squash" in column A and the respective definitive crops in column B and revising the list of definitive crops in column B for "tangerines" to read as follows:

§ 180.1 Definitions and interpretations.

* * * * *

(h) * * *

A	B
* * * * *	
Caneberries	Blackberries, boysenberries, dewberries, longanberries, raspberries, youngberries, and varieties of these.
* * * * *	
Squash	Pumpkins, summer and winter squash.
Tangerines	Tangerines (mandarins or mandarin oranges); tangelos, tangors, and other hybrids of tangerine with other citrus.
* * * * *	

[FR Doc. 84-24917 Filed 9-25-84; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[OPP-300101; FRL-2674-7]

Definitions and Interpretations; Proposed Technical Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes an amendment to the definition of "beans" found in 40 CFR 180.1(h). The proposed amendment, which would delete *Glycine* sp. (including soybeans) from the definition, is being presented upon the initiative of the Administrator.

DATE: Written comments, identified by the document control number [OPP-300101], must be received on or before October 26, 1984.

ADDRESSES: Written comments by mail to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, bring comments to: Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Donald Stubbs, Emergency Response and Minor Use Section (TS-767C), Registration Division, 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 22202, (703-557-1192).

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the **Federal Register** of January 6, 1982 (47 FR 623), which was intended to clarify and update the definition of "beans" as it appears in 40 CFR 180.1(h). The revised definition of beans included the names of five genera of beans: *Cicer, Glycine, Phaseolus, Vicia,* and *Vigna* spp.

It was subsequently determined that *Glycine* sp. should not have been included in a broad and general definition of "beans" since soybeans, the predominant species of the genus, is an oil seed and may require oil processing studies before a tolerance can be established. Certain pesticides will tend to concentrate in the oil seed processed products. If residues in processed products exceed those in the raw agricultural commodity, separate food additive regulations would have to be established under 21 CFR Parts 193 and 561. Therefore, in order to avoid the possibility of illegal pesticide residues in soybean processed products, "*Glycine* sp. (including soybeans)" needs to be deleted from the definition of "beans" in 40 CFR 180.1(h). The remaining genera of beans are not considered as oil seeds, thus require no oil seed processing studies not food or feed additive regulations.

In examining the definitions in column B for "Beans (dry)" and "Beans (succulent)" in column A, some ambiguity exists as to what "beans" are intended. In order to clarify that beans (dry) and beans (succulent) pertain to those bean crops listed above in column B, the two definitions should be amended by adding the qualifier "above" to the column B definitions.

Based on the information considered by the Agency, it is concluded that the regulation established by revising 40 CFR Part 180 will protect the public health, is necesaary to clarify the intention of the definition, and will preclude resulting illegal residues. Therefore, it is proposed that the regulation be amended as set forth below.

Interested persons are invited to submit written comments on the proposed regulation amendment. Comments must bear a notation indicating the document control number [OPP-300101]. All written comments filed pursuant to this notice will be available in the Information Services Section at address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24959).

List of Subjects in 40 CFR Part 180

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

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

Dated: September 4, 1984.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, it is proposed that 40 CFR 180.1(h) be amended by revising the list of definitive crops in column B for "Beans", "Beans (dry)", and "Beans (succulent)" to read as follows:

§ 180.1 Definitions and interpretations.

* * * * *

(h)* * *

A	B
•	• • • •
Beans	*Cicer arietinum* (chickpeas, garbanzo beans; *Phaseolus* spp. (including kidney beans, lima beans, mung beans, navy beans, pinto beans, snap beans, and wax beans); *Vicia faba* (broad beans, fava beans); *Vigna* spp. (including asparagus beans, blackeyd peas, and cowpeas).
Beans (dry	All beans above in dry form only.
Beans (succulent).	All beans above in succulent form only.
•	• • • •

[FR Doc. 84-24019 Filed 9-25-84; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 180

[PP 4E3028/P357; FRL-2681-3]

Acephate; 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 insecticide acephate and its cholinesterase-inhibiting metabolite in or on the raw agricultural commodity macadamia nuts. The proposed regulation to establish a maximum permissible level for residues of the insecticide in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

DATE: Comments identified by the document control number [PP 4E3028/P357], must be received on or before October 26, 1984.

ADDRESS: Written comments by mail to: Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

In person, bring comments to: Rm 236, CM #2 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:
By mail:
Donald Stubbs, Emergency Response and Minor Use Section (TS-767C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.
Office location and telephone number: Rm. 716B, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1192).

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 4E3028 to EPA on behalf of the IR-4 National Director, Dr. Robert H. Kupelian, and the Agricultural Experiment Station of Hawaii.

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 insecticide acephate (*O,S*-dimethyl acetylphosphoramidothioate) and its cholinesterase-inhibiting metabolite *O,S*-dimethyl phosphoramidothioate in or on the raw agricultural commodity macadamia nuts at 0.05 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 NOEL of 30.0 ppm (0.75 mg/kg), based on the inhibition of plasma, RBC, and brain cholinesterase activity, and a NOEL of 100.0 ppm (2.5 mg/kg) for systemic toxicity; a 28-month rat feeding/oncogenic study with a NOEL of 5.0 ppm (0.25 mg/kg), based on the inhibition of cholinesterase activity in plasma, RBC and brain; a rabbit teratology study with a NOEL of 10.0 mg/kg (highest dose tested); a rat teratology study with a NOEL of 200.0 mg/kg (highest dose tested); and a supplemental acute delayed neurotoxicity study with no effects observed (no leg paralysis) at the 375 mg/kg level.

In a recently conducted micronucleus test (mouse bone marrow), acephate did not display mutagenic activity. There are studies available, however, in which acephate did display such activity (gene mutations in mocroorganisms and DNA repair).

Studies which are lacking but considered desirable include a rat reproduction study, and a delayed neurotoxicity study. A mouse oncogenic study has been submitted and is currently under review. Although there are data gaps for the chemical, the available toxicity data are adequate to support the proposed tolerances because the proposed use will result in an insignificant increase (0.004 percent) in the TMRC to the human diet. As stated in the Federal Register of May 11, 1979 (44 FR 27932), the Agency will generally consider as insignificant an increase in the TMRC of 1.0 percent on less.

The acceptable daily intake (ADI), based on the rat feeding study (NOEL of 0.25 mg/kg/day) and using a 10-fold safety factor, is calculated to be 0.25 mg/kg of body weight (bw)/day. The maximum permitted intake (MPI) for a 60-kg human is calculated to be 1.5 mg/day. The theoretical maximum residue contribution (TMRC) from existing tolerances for a 1.5-kg daily diet is calculated to be 0.4592 mg/day; the current action will increase the TMRC by 0.00002 mg/day (0.004 percent). Published tolerances utilize 30.61 percent of the ADI; the current action will utilize an additional 0.001 percent.

The nature of the residues is adequately understood and an adequate analytical method, gas chromatography with a thermionic detector, is available for enforcement purposes. There are presently no actions pending against the continued registration of this chemical. Macadamia nuts are not considered animal feed items and, therefore, there is no reasonable expectation of residues in eggs, meat, milk or poultry from this tolerance. There is a restriction against feeding cover crops from treated areas to livestock or allowing animals to graze in treated areas.

Based on the above information considered by the Agency, the tolerance established by amending 40 CFR 180.108 would protect the public health. It is proposed, therefore, that the tolerance be established as set forth below.

Any person who have registered or submitted on 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 4E3028/P357]. 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 a.m. to 4 p.m., Monday through Friday, except legal holidays.

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

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

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

List of Subjects in 40 CFR Part 180

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

Dated: September 13, 1984.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, it is proposed that 40 CFR 180.108 be amended by adding and alphabetically inserting the raw agricultural commodity macadamia nuts to read as follows:

§ 180.108 Acephate; tolerances for residues.

* * * * *

Commodities	Parts per million
* * * * *	
Macadamia nuts	0.05
* * * * *	

[FR Doc. 84-25517 Filed 9-25-84; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 84-09; Notice 1]

Federal Motor Vehicle Safety Standards; Door Locks and Door Retention Components

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The purpose of this notice is to propose an amendment to Federal Motor Vehicle Safety Standard (FMVSS) No. 206, *Door Locks and Door Retention Components*, that would expand the list of doors that need not conform to the requirements of the standard. Added to the list would be doors with wheelchair lifts that are provided with an audible alarm which would signal the driver when the door is unsecured and the ignition is in the "on" position. When in its stowed position, a wheelchair lift barricades the door and prevents occupant ejection from the vehicle if the door were to open while the vehicle is in motion or involved in a collision. The alarm ensures that the wheelchair lift is in its retracted position and the door is shut while the vehicle is in operation. This proposal is being issued pursuant to a request from a manufacturer for an exemption from FMVSS No. 206.

DATE: *Comment closing dates:* November 26, 1984. *Proposed effective date:* 30 days after publication of the final rule in the Federal Register.

ADDRESS: Comments should refer to the docket number and notice number and be submitted to: Docket Section, Room 5109, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590 (Docket hours 8 a.m. to 4 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: William Smith, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590 (202–426–2242).

SUPPLEMENTARY INFORMATION: Thomas Built Buses, Inc. (hereinafter referred to as "Thomas"), has requested an amendment to Federal Motor Vehicle Safety Standard (FMVSS) No. 206, *Door Locks and Door Retention Components*. Thomas requests that the Standards exclude from its requirements mulitpurpose passenger vehicles which are equipped with wheelchair lifts and which are designed for wheelchair occupants. NHTSA has tentatively decided that this proposal has merit, and is considering amending FMVSS No. 206 to exclude doors with wheelchair lift equipment that are provided with an audible alarm from the standard's requirements.

In May 1982, Thomas asked NHTSA to reconsider the procedure of classifying vehicles as multipurpose passenger vehicles or buses based on designated seating postions. The definition of a bus if found in Title 49 CFR Part 571.3, *Definitions*. In that section, a bus is defined as a passenger motor vehicle designed to carry more than 10 persons. The agency determines passenger carrying capacity by the number of designated seating positions for passengers. When seats on a bus are removed so that the designated seating positions for passengers on the vehicle are reduced to 9 or fewer, the classification of the vehicle changes to a multipurpose passenger vehicle.

Thomas stated that often some of the seats on their buses are removed in order to accommodate wheelchair occupants. The removal of the bus seats results in the passenger seating capacity being reduced to less than 10. Since the vehicle's passenger capacity is less than 10 passengers, the vehicle would be classified as a multipurpose passenger vehicle. However, Thomas argued that the removal of the seats should not affect the vehicle's classification as a bus, since the vehicle was originally "designed" as a bus and resembled a conventional bus. The company also argued that it would be preferable if the vehicle were to remain classified as a bus since it would be subject to the Federal Motor Vehicle Safety Standards applicable to buses, which include the comprehensive school bus safety standards.

Thomas was especially concerned about FMVSS No. 206, *Door Locks and Door Retention Components*. FMVSS No. 206 specifies requirements for side door locks and retention components which apply to passenger cars, multipurpose passenger vehicles, and trucks. This standard does not apply to buses, but does apply to Thomas' vehicles which seat 9 or fewer passengers, since these are multipurpose passenger vehicles. Therefore, Thomas asked in the alternative that Standard No. 206 be amended to exclude multipurpose passenger vehicles which accommodate wheelchair occupants from the Standard's requirements.

The agency has decided to consider amendment FMVSS No. 206 to exclude from its requirments doors which contain wheelchair lifts that are provided with an audible alarm which would signal the driver when the door is unsecured and the ignition is in the "on" position. The proposed amendment

would exclude from the requirements of Standard No. 206 such doors on passenger cars, multipurpose passenger vehicles, such as vans, and trucks. Paragraph S4 of Standard No. 206 already excludes from its requirements components on folding doors, roll-up doors and doors that are designated to be easily attached to or removed from motor vehicles manufactured for operation without doors. The agency has tentatively decided to expand this list to include side doors equipped with wheelchair lifts and audible alarms since the wheelchair lifts barricade the door of the vehicle when the door is closed. The lift would prevent occupant ejection from the vehicle if the door were to open while the vehicle is in motion or involved in a collision. The agency has tentatively determined that it is unnecessary to require these doors equipped with wheelchair lifts to comply with the requirments of the Standard since the lifts would prevent ejections of the vehicle's occupants, and since there would be an alarm which would ensure that the door is closed and the lift is in its retracted position. Therefore, the agency believes that an equivalent level of safety is provided by such vehicles.

In the case of passenger cars and vans it is probable that a higher level of safety would be provided as manufacturers would be unlikely to modify their assembly lines for the few vehicles to be equipped with wheelchair lifts and thus these vehicles would continue to comply with the current FMVSS No. 206 requirements as well as having the lift provide protection. Further, the agency has proposed this amendment in order to facilitate the transportation of handicapped or convalescent individuals by removing disincentives, such as that mentioned by the petitioner, in vehicle production for use by such individuals.

Wheelchair lifts are designed so that they are secured in the retracted position by either hydraulic pressure in the extension/retraction cylinders and mechanical latches, or by electrically-operated drive mechanisms. Metal grate floors of lifts are stowed in a vertical position parallel to and in close proximity with the interior surface of the door of the vehicle. In its retracted position, the wheelchair lift could prevent occupant ejection from the vehicle if the door were to open while the vehicle is in motion or involved in a collision. An audible alarm system which is activated if the door is opened while the ignition is in the "on" position would ensure that the wheelchair lift is in its retracted position and the door is shut while the vehicle is in operation. NHTSA proposes that Standard No. 206 exclude wheelchair lift doors when these doors contain such an alarm system. The audible alarm must be loud enough to be heard by the driver.

The agency considered whether Standard No. 206 should be amended to require that each door equipped with a wheelchair lift also be equipped with a barricade to prevent ejection from the vehicle. It was tentatively decided that it was unnecessary to require a separate barricade to the door since the floors of wheelchair lifts are stowed vertically in close proximity to the lift door and can effectively act as a barricade against ejection. The design of the wheelchair lift floors would not be regulated by this amendment because the agency believes that current designs of wheelchair lifts are sufficient to prevent occupant ejection from the vehicle. This amendment would permit the continued use of current wheelchair lift designs and encourage the development of alternative designs. The agency considers the possibility that some wheelchair lift doors may not provide adequate barriers to ejection to be remote, but comments are requested on the issue of whether the level of protection provided by lift doors ought to be regulated.

NHTSA has considered this proposal and has determined that it is neither major within the meaning of Executive Order 12291 "Federal Regulation" nor significant under Department of Transportation regulatory policies and procedures, and that neither a regulatory impact analysis nor a full regulatory evaluation is required. The proposal would exclude certain doors from the standard while imposing requirements which are minimal. The agency estimates that many if not all vehicles equipped with wheelchair lift doors already have alarm systems installed which signal the driver when the door is unsecured.

Amending FMVSS No. 206 as proposed in this notice could result in some slight cost savings to the purchasers of vehicles equipped with wheelchair lifts. Manufacturers of these vehicles would be relieved from complying with the requirements of the Standard for the doors that contain the lifts, and accordingly the costs to comply with the requirements would be eliminated. Further, companies which manufacture multipurpose passenger vehicles designed to accommodate wheelchair occupants could be primarily manufacturers of buses. For example, to accommodate wheelchair passengers Thomas alters its buses by installing a wheelchair lift and removing some of the seats on the vehicle. Since buses are exempt from Standard No. 206 while multipurposes passenger vehicles are not, companies such as Thomas would have to maintain a separate inventory of door locks and door retention components for the doors of their multipurpose passenger vehicles equipped with the lifts. Amending FMVSS No. 206 as proposed in this notice would relieve these manufacturers from the burden of maintaining separate inventories. As these and other restrictions are relieved, it is also possible that more manufacturers would be willing to produce vehicles which are designed to accommodate wheelchair passengers. If this were achieved, the goal of the agency to facilitate the transportation of handicapped passengers would be furthered.

NHTSA has analyzed this proposal for the purposes of the National Environmental Policy Act. The proposal would have no effect on the human environment since the type, weight, and quantity of materials used in the manufacture of wheelchair lifts and doors equipped with wheelchair lifts would not be significantly changed. No adverse impact on safety is anticipated.

The agency has also considered the impacts of this proposal in relation to the Regulatory Flexibility Act. I certify that this proposal would not have a significant economic impact on a substantial number of small entities. Accordingly, no initial regulatory flexibility analysis has been prepared. Manufacturers of vehicles equipped with wheelchair lifts are generally not small businesses within the meaning of the Regulatory Flexibility Act. Governmental jurisdictions and small organizations such as hospitals, school systems, and nursing homes, might purchase vehicles equipped with wheelchair lifts. These purchasers would not be significantly affected by this amendment.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted. All comments must be limited not to exceed 15 pages in length. (49 CFR 553.21) Necessary attachments may be appended to these submissions without regard to the 15 page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential information, should be submitted to the Chief

Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation (49 CFR Part 512).

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after the date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. NHTSA will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

§ 571.206 [Amended]

In consideration of the foregoing, it is proposed that 49 CFR 571.206, *Door Locks and Door Retention Components*, be amended as follows:

S4 would be revised to read:

* * * * *

S4. *Requirements.* Components on any side door leading directly into a compartment that contains one or more seating accommodations shall conform to this standard. However, components on folding doors, roll-up doors, doors that are designed to be easily attached to or removed from motor vehicles manufactured for operation without doors, and side doors which are equipped with wheelchair lifts and which are linked to an alarm system audible to the driver when the door is open, need not conform to this standard.

* * * * *

(Secs. 103, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegations of authority at 49 CFR 1.50 and 501.8)

Issued: September 20, 1984.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 84-25514 Filed 9-25-84; 8:45 am]

BILLING CODE 4910-59-M

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49 CFR Parts 571 and 574

[Docket No. 84-10; Notice 1]

New Pneumatic Tires for Motor Vehicles Other Than Passenger Cars

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Grant of petition for rulemaking and notice of proposed rulemaking.

SUMMARY: This notice responds to a petition for rulemaking filed by Michelin Tire Corporation asking the agency to amend its standard applicable to tires for use on motor vehicles other than passenger cars, to permit the required markings to appear at some point other than between the maximum section width and the bead of the tire. Michelin made this request because it has developed a tire where the maximum section width is at the bead. Accordingly, it cannot mark these tires in the location currently required by the standard. The rationale for the requirement that the markings be located in that area was that the agency wanted to ensure that these safety markings were not scuffed off when the sidewall of the tire hit curbs and other objects, and so that accurate information would remain on the sidewall after the tire has been retreaded. Neither of these concerns appears substantial enough to deny a new technology introduction onto the market. Therefore, this notice proposes to require that, for tires where the maximum section width falls within an area not more than one fourth of the distance from the bead to the tire shoulder, the markings appear between the tire bead and the circle formed by all the points half the distance between the tire bead and the tire shoulder. The shoulder is the part of the tire where the sidewall meets the tread.

DATES: Comment Closing Date: Comments on this notice must be received on or before November 13, 1984.

EFFECTIVE DATE: If adopted as a final rule, this amendment would be effective as of the date of publication of the final rule in the **Federal Register.**

ADDRESS: All comments on this notice should refer to the docket and notice numbers for this rulemaking action and be submitted to Docket Section, Room 5109, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Docket hours are 8:00 am to 4:00 pm Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Arturo Casanova, Office of Vehicle Safety Standards, NHTSA, 400 Seventh Street, SW., Washington, DC 20590 (202-426-1715).

SUPPLEMENTARY INFORMATION: This notice proposes to amend Federal Motor Vehicle Safety Standard No. 119, *New pneumatic tires for motor vehicles other than passengers cars* (49 CFR 571.119) and 49 CFR Part 574, *Tire Identification and Recordkeeping.* Both these sections set forth requirements for marking certain safety information on the sidewall of new tires for use on motor vehicles other than passenger cars.

This action is being taken pursuant to a petition for rulemaking filed by Michelin Tire Corporation (Michelin). In its petition, Michelin stated that it has developed a new tire for truck tires. This single tire would replace the dual tires currently used on the rear axles of truck tractors and trailers. However, to give the single tire the load carrying capability to replace two separate tires, Michelin developed a new profile for the tire. The profile of a normal tire has a maximum section width about halfway down the sidewalls of the tire, and the profile narrows as one moves toward either the bead or the tread of the tire. For this new tire, the maximum section width is at the bead and the tire narrows as one moves from the bead toward the tread.

This agency does not directly regulate the profile of tires, so there was no requirement that Michelin notify this agency of the unique profile of these tires. However, Michelin stated in its petition that the language of Standard No. 119 in effect precludes the introduction of this new tire design. That result arises from the language of section 56.5 of Standard No. 119 which mandates that the necessary safety markings "shall be placed between the maximum section width (exclusive of sidewall decoration or curb ribs) and the bead on at least one sidewall." Since the maximum section width of this new Michelin tire design is at the bead, there is no way to place the safety markings in the required location, and therefore Michelin cannot certify that these tires comply with Standard No. 119.

In response to this Michelin petition, NHTSA has reexamined the reasons that the safety markings are required to appear in this location on the tires. The

location requirements for the safety markings in Standard No. 119 were drawn directly from the requirements contained in Standard No. 109, *New pneumatic tires—passenger cars* (49 CFR 571.109). In the preambles to the final rules establishing the location requirements for the safety information to be molded on the sidewall of the tires, the agency explained that it was establishing location requirements for two reasons.

First, the agency stated that the labeling on retreaded tires should use original casing labeling as much as possible, since this reduces the chances of incorrect labeling. Accordingly, the agency required that new tire labeling appear in an area where it would not be buffed off the tire during recapping and similar retreading (37 FR 23536; November 4, 1972).

Second, the agency wanted the safety information to be located in an area where it would not be scuffed off the tire if the tire were rubbed against a curb or other object while parking, loading, etc. By requiring that the safety information appear between the widest part of the tire (the maximum section width) and the bead, NHTSA believed that the information would be less likely to ever be scuffed off the tire, and thus would be available to the user of the tire.

Both these reasons are still valid and to some extent militate against granting the Michelin petition. However, neither of these concerns alone or together is significant enough to justify prohibiting the introduction of a new idea in tires. With respect to the concern that the labeling not be buffed off during standard retreading operations, the agency has always permitted bead-to-bead retreading. In bead-to-bead retreading, the entire sidewall areas and the tread are buffed, and new rubber is applied. The effect of using this retreading process is that *all* of the information labeled on the casing is removed, and the retreader must relabel all of the safety information. While this does raise the possibility that the information could be incorrect, this possibility was not sufficient reason to prohibit a safe and effective retreading process.

Further, it is important to remember that section S6.5 of Standard No. 119 requires that the specified safety information appear on *both* sidewalls of most tires subject to that Standard. On *one* of the sidewalls, the safety information must appear in the specified location. Hence, even if the safety information were scuffed off the outboard sidewall of the tire by curbs or loading docks, that information would still be molded on the inboard sidewall, so that persons servicing or replacing the tire would have the necessary safety information available for inspection.

The agency has tentatively determined that the rationale permitting bead-to-bead retreading should also be applied to this petition. Allowing the safety information to be labeled at a point between the maximum section width and the tread area does give rise to the possibility that some or all of the safety information could be scuffed off the tire if the tire is often rubbed against curbs or loading docks. However, the possibility that the safety information will be scuffed off some of these tires is not sufficient reason for this agency to prohibit the introduction of a new tire concept, which in all other respects can be certified as meeting the requirements of Standard No. 119. Accordingly, this notice proposes to amend our tire regulations to permit these new Michelin tires to have the required safety information labeled on some part of the tire other than between the maximum section width and the bead.

Michelin asked in its petition that Standard No. 119 be amended to specify that when the tire's maximum section width is so close to the bead as to make it impractical to label the safety information between those areas, the manufacturer be required to label the safety information between the tire bead and a point halfway between the bead and the tire shoulder. The tire shoulder is the area where the sidewall meets the tread. The reason for specifying that the safety information appear nearer the bead than the tread is that when a retreading process other than bead-to-bead is used, the safety information from the casing will not be buffed off during the retreading process. Hence, those tires which do not have the safety information scuffed off will have the information available after most retreading operations.

NHTSA agrees that the safety information should be located in an area which maximizes the chances that it will be retained on the sidewall if the tire is retreaded. However, it would be inappropriate and difficult to enforce if the Standard were amended to specify that the safety information need not be labeled between the maximum section width and the bead "if the maximum section width is so close to the bead as to make it impractical" to label the information in that area. Accordingly, this notice proposes to require that when the maximum section width of a tire falls within an area that is between the bead of the tire and one-fourth of the distance from the bead to the shoulder of the tire, the safety information shall be labeled in the area between the bead and one-half of the distance from the bead to the shoulder of the tire.

Further, while Michelin's petition asked for an amendment only to Standard No. 119, NHTSA is also proposing that Figure 1 following 49 CFR 574.5 be amended by the same language, since that Figure also specifies that the tire identification number, which must be molded on each new tire, be located between the maximum section width and the bead of the tire. Without such an amendment, each of Michelin's new tires would violate Part 574.

The agency is also proposing that this amendment become effective on the date of publication of the final rule in the **Federal Register.** This proposed change imposes no obligation on any party. Hence, no leadtime is required for any party to prepare for compliance with the amended language of the Standard and the regulation. The only parties which will be affected by these amendments are those manufacturers which produce a tire with a maximum section width at or near the bead of the tire, and to the best of this agency's knowledge, the ony manufacturer producing such a tire is the petitioner. If adopted, these amendments would simply remove an impediment to the introduction of a new tire design. NHTSA has tentatively determined this constitutes good cause for specifying an effective date sooner than 180 days after publication of the final rule, and proposes that these amendments take effect on the date of publication of the final rule.

NHTSA has analyzed the impacts of this proposal and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. As noted above, the anticipated impacts of this proposal if adopted as a final rule would be to remove a burden on those manufacturers wishing to introduce new tire designs. Those manufacturers not wishing to produce such tires will not be affected by this proposal. No impacts are foreseen for tire dealers or the public. Accordingly, a full regulatory evaluation has not been prepared for this proposal.

The agency has also considered the impacts of this proposal as required by the Regulatory Flexibility Act. I hereby certify that this proposal would not have a significant economic impact on a substantial number of small entities. The agency believes that few, if any, of the tire manufacturers qualify as small entities. To the extent that some tire manufacturers may be small entities,

those wishing to produce this new tire design will be free to do so, and those which do not choose to produce these tires will be unaffected by this proposal. Small organizations and small governmental units would not be affected by this proposal if adopted as a final rule, nor would tire dealers.

Finally, the agency has considered the environmental implications of this proposal in accordance with the National Environmental Policy Act and determined that it will not significantly affect the human environment.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must be limited not to exceed 15 pages in length. [49 CFR 553.21] Necessary attachment may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation (49 CFR Part 512).

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The NHTSA will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects

49 CFR 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

49 CFR Part 574

Labeling, Motor vehicle safety, Motor vehicles, Reporting and recordkeeping requirements, Rubber and rubber products, Tires.

In consideration of the foregoing, it is proposed that Title 49 of the Code of Federal Regulations be amended by amending § 571.119 and Part 574 to read as follows:

PART 571—[AMENDED]

1. Section S6.5 of §571.119 would be revised to read as follows:

§ 571.119 Standard No. 119; New pneumatic tires for motor vehicles other than passenger cars.

* * * * *

S6.5 *Tire marking.* Except as specified below, each tire shall be marked on each sidewall with the information specified in paragraphs (a) through (j) of this section. The markings shall be placed between the maximum section width (exclusive of sidewall decoration or curb ribs) and the bead on at least one sidewall, unless the maximum section width of the tire is located in an area which is not more than one fourth of the distance from the bead to the shoulder of the tire. If the maximum section width falls within that area, the markings shall appear between the bead and a point one half the distance from the bead to the shoulder of the tire, on at least one sidewall. The marking shall be in letters and numerals not less than 0.078 inches high and raised above or sunk below the tire surface not less than 0.015, except that the marking depth shall be not less than 0.010 inches in the case of motorcycle tires. The tire identification and the DOT symbol labeling shall comply with Part 574 of this chapter. Markings may appear on only one sidewall and the entire sidewall area may be used in the case of motorcycle tires and recreational, boat baggage, and special trailer tires.

* * * * *

PART 574—[AMENDED]

2. Figure 1 in § 574.5 of Part 574 is revised to appear as follows:

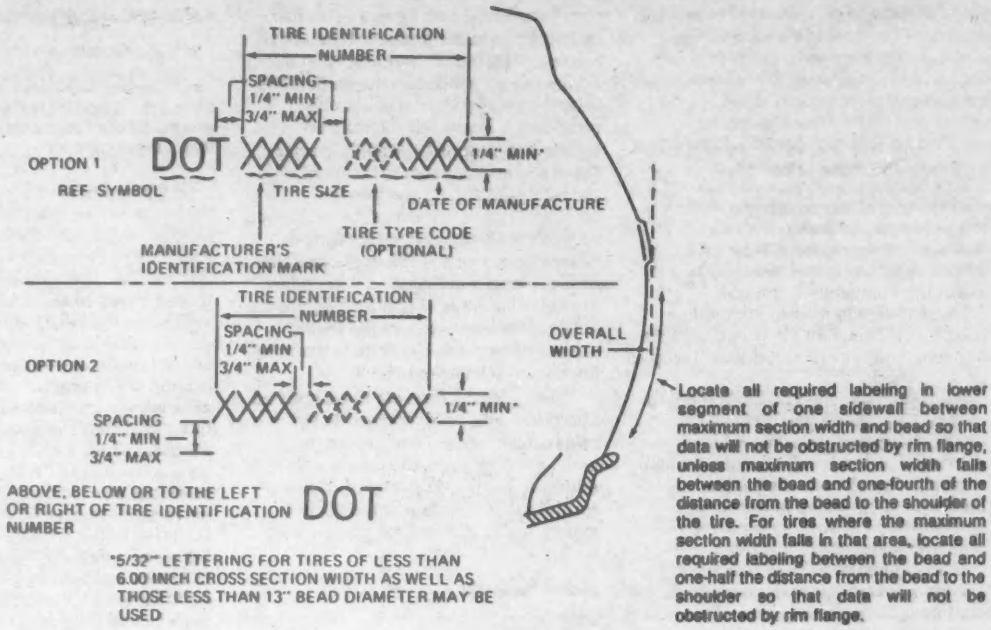

FIGURE 1 IDENTIFICATION NUMBER FOR NEW TIRES

Notes:

1. Tire identification number shall be in Futura Bold, Modified Condensed or Gothic characters permanently molded (0.020 to 0.040" deep, measured from the surface immediately surrounding characters) into or onto tire at indicated location on one side. (See Note 4)
2. Groups of symbols in the identification number shall be in the order indicated. Deviation from the straight line arrangement shown will be permitted if required to conform to the curvature of the tire.
3. When Type Code il ommited, or partially used, place Date of Manufacture in the unused area.
4. Other print type will be permitted if approved by the administration.

(Secs. 103, 119, and 201, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1407, and 1421); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on September 21, 1984.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 84-25555 Filed 9-25-84; 8:45 am]

BILLING CODE 4910-59-M

Notices

Federal Register
Vol. 49, No. 188
Wednesday, September 26, 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

Forms Under Review by Office of Management and Budget

September 21, 1984.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Papework Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), If applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provided the information; (8) An indication of whether section 3504(h) of P.L. 96–511 applies: (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, D.C. 20250, (202) 447–2118.

Comments on any of the items listed should be submittee directly to: Office of Information and Regulatory Affair, Office of Management and Budget, Washington, D.C. 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promtly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

- Agricultural Cooperative Service
Annual Survey of Farmer Cooperatives
ACS–14 (A, B, & C)
Annually
Businesses or other for-profit; Small businesses of organizations;
5,883 responses; 1,642 hours; not applicable under 3504 (h)
Ralph M. Richardson (202) 447–8955

Revision

- Agricultural Stabilization and Conservation Service
7 CFR, Part 1430 Dairy Products, Milk Diversion Program ASCS–142, ASCS–143, ASCS–146, ASCS–147, CCC–150, ASCS–148, ASCS–36, ASCS–143–1, ASCS–143–3
Weekly, Quarterly
Individuals or households; 268,500 responses; 86,175 hours; not applicable under 3504(h)
Clarence B. Domire (202) 447–7673

Jane A. Benoit,
Acting Departmental Clearance Officer.

[FR Doc. 84–25534 Filed 9–25–84; 8:45 am]
BILLING CODE 3410–01–M

CIVIL AERONAUTICS BOARD

[Order 84–9–53]

Proposed Revocation of Air Carrier Certificates; Air Chicago, Inc., et al.

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order to Show Cause, Order 84–9–53.

SUMMARY: The Board is proposing to revoke the air carrier certificates of Air Chicago, Inc.; Airgo, Inc.; Colonial Airlines, Inc.; Columbia Air, Falcon Airways, Inc.; Great Western Airlines, Inc.; JFC Enterprises, Inc. d.b.a. Concord International Airlines; Sun Pacific Airlines; Sundance International, Inc. d.b.a. Sundance International; Swift Air Charter, Inc.; TRA Airlines, Inc.; and Transwest Air Express for noncompliance with the insurance, reporting, and continuing fitness requirements for certificated air carriers.

DATES: All interested persons having objections to the Board issuing an order making final the tentative findings, shall file their objections with the Board and serve them upon the carrier or carriers involved, no later than October 12, 1984.

ADDRESS: Objections should be filed in Docket 42498, and sent to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428.

FOR FURTHER INFORMATION CONTACT: Nicholas S. Collins, Regulatory Analysis Division, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428 (202) 673–5216.

SUPPLEMENTARY INFORMATION: The complete text of Order 84–9–53 is available from the Distribution Section, Room 100, 1825 Connecticut Avenue, NW., Washington, D.C. Persons outside the metropolitan area may send a postcard request for Order 84–9–53 to the Distribution Section, Civil Aeronautics Board, Washington, D.C. 20428.

By the Civil Aeronautics Board: September 18, 1984.

Phyllis T. Kaylor,
Secretary.

[FR Doc. 84–25592 Filed 9–25–84; 8:45 am]
BILLING CODE 6320–01–M

[Docket 42385]

United States-Saudi Arabia; All-Cargo Exemption Proceeding; Oral Argument

The Flying Tiger Line Inc. and Transamerica Airlines, Inc., have requested the Board to hold oral argument in this case. By motion filed September 17, 1984, National Airlines, Inc., opposed oral argument on the grounds that it will delay the case. After reviewing all the materials in this case, the Board has concluded that oral argument would be useful in resolving several major issues in the case. Moreover, the Board has concluded that hearing oral argument will not materially delay the proceeding.

Therefore, notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that oral argument in this proceeding is assigned to be heard before the Board on Wednesday, October 3, 1984, at 2:00 p.m. in Room 1027, Universal Building, 1025 Connecticut Avenue, NW., Washington, D.C.

Any party wishing to participate in oral argument shall so advise the Board's Secretary, in writing, *on or*

before Friday, September 28, 1984, together with the name of the person who will represent it at the argument.

Dated at Washington, D.C., September 21, 1984.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-25587 Filed 9-25-84; 8:45 am]

BILLING CODE 6320-01-M

[Order 84-9-27]

Fitness Determinations of Express Air, Inc. & Prime Air, Inc.

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Commuter Air Carrier Fitness Determinations—Order 84-9-27, Order to Show Cause.

SUMMARY: The Board is proposing to find that Express Air, Inc. and Prime Air, Inc. are fit, willing, and able to provide commuter air carrier service under section 419(c)(2) of the Federal Aviation Act, as amended, and that the aircraft used in this service will conform to the applicable safety standards.

Responses: All interested persons wishing to repond to the Board's tentative fitness determinations shall file their responses with the Special Authorities Division, Room 915, Civil Aeronautics Board, Washington, D.C. 20428, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than October 5, 1984.

FOR FURTHER INFORMATION CONTACT: Carolyn S. Kramp, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, (202) 673-5090.

SUPPLEMENTARY INFORMATION: The complete text of Order 84-9-27 is available from the Distribution Section, Room 100, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 84-9-27 to that address.

By the Civil Aeronautics Board: September 11, 1984.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-25591 Filed 9-25-84; 8:45 am]

BILLING CODE 6320-01-M

[Order 84-9-51]

Fitness Determination of Island Airlines, Inc.

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Commuter Air Carrier Fitness Determination—Order 84-9-51, Order to Show Cause.

SUMMARY: The Board is proposing to find that Island Airlines, Inc. is fit, willing, and able to provide commuter air carrier service under section 419(c)(2) of the Federal Aviation Act, as amended, and that the aircraft used in this service conform to applicable safety standards.

Responses: All interested persons wishing to respond to the Board's tentative fitness determination shall file their responses with the Special Authorities Division, Room 915, Civil Aeronautics Board, Washington, D.C. 20428, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than October 9, 1984.

FOR FURTHER INFORMATION CONTACT: Franklin J. McDermott, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428 (202) 673-5105.

SUPPLEMENTARY INFORMATION: The complete text of Order 84-9-51 is available from the Distribution Section, Room 100, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 84-9-51 to that address.

By the Civil Aeronautics Board: September 18, 1984.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-25589 Filed 9-25-84; 8:45 am]

BILLING CODE 6320-01-M

[Order 84-9-50]

Fitness Determination of Lynbird International, Inc.

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Commuter Air Carrier Fitness Determination—Order 84-9-50, Order to Show Cause.

SUMMARY: The Board is proposing to find that Lynbird International, Inc. is fit, willing, and able to provide commuter air carrier service under section 419(c)(2) of the Federal Aviation Act, as amended, and that the aircraft used in this service conform to applicable safety standards.

Responses: All interested persons wishing to respond to the Board's tentative fitness determination shall file their responses with the Special Authorities Division, Room 915, Civil Aeronautics Board, Washington, D.C. 20428, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than October 9, 1984.

FOR FURTHER INFORMATION CONTACT: Barbara P. Dunnigan, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428 (202) 673-5918.

SUPPLEMENTARY INFORMATION: The complete text of Order 84-9-50 is available from the Distribution Section, Room 100, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 84-9-50 to that address.

By the Civil Aeronautics Board: September 18, 1984.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-25590 Filed 9-25-84; 8:45 am]

BILLING CODE 6320-01-M

[Order 84-9-49]

Application of Orion Lift Service, Inc., d.b.a. Orion Air for Certificate Authority

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order to Show Cause (84-9-49).

SUMMARY: The Board is proposing to find Orion Lift Service, Inc., d.b.a. Orion Air fit, willing, and able and to issue it certificates of public convenience and necessity under section 401 of the Federal Aviation Act authorizing it to provide interstate and overseas scheduled air transportation and foreign charter air transportation.

DATES: All interested persons wishing to respond to the Board's tentative determination and proposed certificate awards shall file, and serve upon all persons listed below no later than October 9, 1984, a statement of their response, together with a summary of testimony, statistical data, and other material expected to be relied upon to support any objections raised.

ADDRESS: Responses should be filed in Dockets 42318 and 42319 and addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428, and should be served upon the parties listed in the Attachment to the order.

FOR FURTHER INFORMATION CONTACT: Mary Catherine Terry, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, (202) 673-5088.

SUPPLEMENTARY INFORMATION: The complete text of Order 84-9-49 is available from our Distribution Section, Room 100, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 84-9-49 to that address.

By the Civil Aeronautics Board: September 18, 1984.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-25569 Filed 9-25-84; 8:45 am]

BILLING CODE 6320-01-M

CIVIL RIGHTS COMMISSION

New Jersey Advisory Committee; Changed Date

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights that a meeting of the Advisory Committee to the Commission originally scheduled for October 10, 1984, at North Brunswick, New Jersey (FR Doc. 84-25188 on page 37130) has a new meeting date.

The meeting will be held on October 24, 1984. The address and time will remain the same.

Dated at Washington, D.C., September 21, 1984.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 84-25478 Filed 9-25-84; 8:45 am]

Billing Code 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Issuance of Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Issuance of Export Trade Certificates of Review.

SUMMARY: The Department of Commerce has issued export trade certificates of review to Stone Export Trading Company ("Stonex"), Gerhardt's, Inc. ("Gerhardt's") and Med-Tech International, Inc. ("MTI"). This notice summarizes the conduct for which certification has been granted.

ADDRESS: The Department requests public comments on these certificates. Interested parties should submit their written comments, original and five (5) copies, to : Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, D.C. 20230.

Comments should refer to the certificates as "Export Trade Certificate of Review, application number 84-00023, 84-00024, and/or 84-00025."

FOR FURTHER INFORMATION CONTACT: George Muller, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, 202-377-5131, or Eleanor Roberts Lewis, Assistant General Counsel for Export Trading Companies, Office of General Counsel, 202-377-0937. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. No. 97-290) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing the Act are found at 48 FR 10595-10604 (March 11, 1983) (to be codified at 15 CFR Part 325). A certificate of review protects its holder and the members identified in it from private treble damage actions and government criminal and civil suits under federal and state antitrust laws for the export conduct specified in the certificate and carried out during its effective period in compliance with its terms and conditions.

Standards for Certification

Proposed export trade, export trade activities, and methods of operation may be certified if the applicant establishes that such conduct will:

1. Result in neither a substantial lessening of competition or restraint of trade within the United States nor a substantial restraint of the export trade of any competitor of the applicant;

2. Not unreasonably enhance, stabilize, or depress prices within the United States of the goods, wares, merchandise, or services of the class exported by the applicant;

3. Not constitute unfair methods of competition against competitors engaged in the export of goods, wares, merchandise, or services of the class exported by the applicant; and

4. Not include any act that may reasonably be expected to result in the sale for consumption or resale within the United States of the goods, wares, merchandise, or services exported by the applicant.

The Secretary will issue a certificate if he determines, and the Attorney General concurs, that the proposed conduct meets these four standards. For a further discussion and analysis of the conduct eligible for certification and of the four certification standards, see "Guidelines for the Issuance of Export Trade Certificates of Review," 48 FR 15937-15940 (April 13, 1983).

The Office of Export Trading Company Affairs received an application for an export trade certificate of review from Stonex on June 19, 1984 and an application from Gerhardt's on June 22, 1984. The applications were deemed submitted on June 25, 1984. A summary of the applications was published in the Federal Register on July 9, 1984 (49 FR 27963-27965 (1984)). The MTI application was received on June 25 and deemed submitted on June 29, 1984. Notice of this application was published on July 13, 1984 at 49 FR 28951.

Description of Certified Conduct

Based on analysis of the applications and other information in their possession, the Department of Commerce has determined, and the Department of Justice concurs, that the following export trade, export trade activities, and methods of operation specified by Stonex, Gerhardt's and MTI meet the four standards of the Act:

Stonex—Application No. 84-00023.

Export Trade

Unbleached kraft packaging and industrial converting paper and paperboard, semi-chemical paperboard, and combination furnish paperboard in any grade or weight (the "Products").

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operations

I. Stonex may enter into contracts, each with a single U.S. supplier of the Products, to act as that supplier's exclusive export intermediary. Each such contract may:

(1) Provide that, except for sales abroad to converting plants owned by the supplier or an affiliate of the supplier, the supplier will export Products covered by the contract only through Stonex.

(2) Specify, by grade or weight, the quantity of each Product that the supplier will sell to Stonex to export per calendar quarter.

(3) Establish, or give Stonex the exclusive right to establish, the preliminary price which Stonex will pay the supplier for each Product.

(4) Give Stonex the exclusive right to determine the price at which the Products will be sold in the Export Markets.

(5) Provide for quarterly adjustments in payments, credits or debits to the supplier based on the difference between the average price received by Stonex on its export sales of each

Product and the preliminary price received by the supplier.

(6) Give Stonex the exclusive right to select among the suppliers under contract with Stonex to supply Products for any export sale, to specify the grade and quantity of each Product to be supplied, and to dictate terms of delivery by the supplier(s) selected.

(7) Have an initial term of two years, automatically renewable for one year terms subject to termination by either Stonex or the supplier upon one year's notice; Provided, however, that if the supplier is the terminating party, the supplier may be barred from selling any Product covered by the contract in the Export Markets for up to two years after the date of termination.

II. Stonex may offer the same preliminary price to all suppliers under contract with Stonex.

III. Stonex may, at its sole discretion, contract or refuse to contract with any supplier.

IV. Stonex and its member(s) may meet quarterly to discuss: (a) Information (such as selling strategies, prices, projected demand, and customary terms of sale) solely about the Export Markets, to include but shall not be limited to:

(1) Reports and forecasts of sales, prices, terms, customer needs, and product specifications by geographic area in the Export Markets; and

(2) Reports and forecasts of product specifications by customer in the Export Markets;

(b) Information on expenses specific to exporting to the Export markets (such as ocean freight, inland freight to the terminal or port, terminal or port storage, wharfage and handling charges, insurance, agents' commissions, export sales documentation and service, and export sales financing);

(c) U.S. and foreign legislation and regulations affecting sales to the Export Markets; and

(d) Quarterly results of Stonex's operations, to include but shall not be limited to:

(1) Complaints and quality problems;

(2) Visits by customers in the Export Markets;

(3) Reports by foreign sales representatives;

(4) Selection of new foreign sales representatives;

(5) Introduction of new member(s);

(6) Matters concerning the contract(s) between Stonex and the member(s);

Provided, however, that in the conduct of such meetings with member(s) other than Stone Container Corporation: legal counsel shall be present; legal counsel will maintain and sign an accurate and complete record of all matters discussed at the meeting; Stonex will retain the records for four years from the date of the meeting and make them available to the Department of Commerce or the Department of Justice upon request; and to the extent that any member operates separate domestic and export sales or marketing units, Stonex will meet only with personnel from that member's export unit.

Members: For purposes of this certificate, Stone Container Corporation of Chicago, Illinois is a "member" within the meaning of section 325.2(k) of the Regulations.

Gerhardt's—Application No. 84–00024

Export Trade

1. *Products.* Gerhardt's expects to trade in diesel fuel injection systems; hydraulic, mechanical, pneumatic and electrical governors; generators and alternators; industrial ignition systems; oilfield engines and parts; and engine accessories, instruments and test devices.

2. *Export-Related Services.* To facilitate export trade in the Products, Gerhardt's also intends to provide advice concerning, and/or to arrange for, financing, including letters of credit, insurance, shipping, utilization of brokers, customer requirements, including bidding requirements, as well as, to provide engineering, technical and retrofitting services and training and marketing advice concerning the Products in connection with export transactions.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

1. Gerhardt's may enter into nonexclusive agreements with individual suppliers to act as an Export Intermediary for Products in Export Trade.

2. Gerhardt's may enter into agreements with individual suppliers of Products wherein:

(a) Gerhardt's may agree to serve as the exclusive Export Intermediary for Products in any Export Market and, in addition, may agree not to represent any competitors of such supplier for Products in any Export Market; and/or

(b) the supplier may agree not to sell, directly or indirectly through any other intermediary, into the Export Markets in which Gerhardt's exclusively represents the supplier as an Export Intermediary.

3. Gerhardt's may enter into nonexclusive agreements with individual entities in which those entities agree to act as Export Intermediaries for Gerhardt's for Products in Export Trade.

4. Gerhardt's may enter into agreements with individual Export Intermediaries whereby:

(a) Gerhardt's may agree to deal in Products in Export Markets exclusively through such Export Intermediaries; and/or

(b) such Export Intermediaries may agree not to represent Gerhardt's competitors in the sale of Products in any Export Markets or not to buy Products from Gerhardt's competitors for resale in any Export Markets.

5. Gerhardt's may, in connection with the sale of Products to Export Markets, purchase Products from suppliers at prices at prices lower than those charged by such suppliers to other purchasers of the Products.

6. Gerhardt's may refuse to sell Products to purchasers located in Export Markets.

MTI—Application No. 84–00025

Export Trade

a. *Products.* X-ray and electromedical equipment (SIC number 3693), analytical and scientific instruments (SIC 38326), surgical and medical instruments (SIC number 3841) and electronic computing equipment (SIC number 3573).

b. *Related Services.*

a. International market research
b. Freight forwarding
c. Documentation
d. Consulting
e. Installation of equipment
f. After-sales equipment maintenance
g. Equipment usage instruction
h. Design, engineering, and construction of medical facilities

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

1. MTI may enter into nonexclusive agreements with Suppliers individually to act as a broker and/or sales representative for Products and Related Services in Export Trade.

2 MTI may enter into exclusive agreements with Suppliers individually wherein:

(a) MTI agrees not to represent any competitors of such Supplier for Products and Related Services in Export Trade unless authorized by the supplier; and/or

(b) the Supplier agrees not to sell, directly or indirectly through any other intermediary, into the Export Markets in which MTI exclusively represents the Supplier as sales representative or agent.

3. MTI may enter into exclusive agreements with Export Intermediaries whereby:

(a) MTI agrees to deal in Products and Related Services in the Export Markets only through that Export Intermediary; and/or

(b) that Export Intermediary agrees not to represent MTI's competitors in the Export Markets or not to buy from MTI's competitors for resale in the Export Markets.

4. The agreements described in paragraphs 1 through 3 above may contain price, territorial, quantity, and customer restrictions for the Export Markets.

Definitions

(a) *"Export Intermediary"* means a person who acts as a distributor, sales representative, sales or marketing agent, or broker, or who performs similar functions, including providing or arranging for the provision of Related Services for Export Trade.

(b) "Supplier" means a person who produces, provides, or sells a Product or Related Service for Export Trade.

(c) "Agreements, with Suppliers individually" means that the agreements have been entered into independently of agreements with other Suppliers.

Members: for purposes of this certificate, transNational, Inc. and Robert D. Keezer, II, both of Washington, D.C., are "members" within the meaning of § 325.2(k) of the Regulations.

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.5(c), which requires the Department of Commerce to publish a summary of a certificate in the Federal Register. Under section 305(a) of the Act and 15 CFR 325.10(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

A copy of each certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4001–B, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. The certificates may be inspected and copied in accordance with regulations published in 15 CFR Part 4. Information about the inspection and copying of records at this facility may be obtained from Patricia L. Mann, the International Trade Administration Freedom of Information Officer, at the above address or by calling 202–377–3031.

Dated: September 20, 1984

Richard H. Shay,

Deputy General Counsel.

[FR Doc. 84-25442 Filed 9-25-84; 8:45 am]

BILLING CODE 3510-DR-M

National Bureau of Standards

Appointment of Member to General Performance Review Board

In a notice published in the Federal Register on January 3, 1984 (49 FR 130–131), the National Bureau of Standards (NBS) announced the membership, terms and purpose of the General Performance Review Board (GPRB).

This notice announces a change in the membership of the GPRB through the appointment of Dr. Leslie H. Meredith, Director of Applications, Goddard Space Flight Center, National Aeronautics and Space Administration, Greenbelt, Maryland 20771, in place of Mr. Samuel A. Lawrence who has resigned from the GPRB. Dr. Meredith's appointment is effective immediately and his term of membership is to December 31, 1985.

Persons desiring any further information about the GPRB or its membership may contact Mrs. Elizabeth W. Stroud, Chief, Personnel Division, National Bureau of Standards, Gaithersburg, Maryland, 20899, (301) 921–3555.

Dated: September 20, 1984.

Ernest Ambler,

Director.

[FR Doc. 84-25443 Filed 9-25-84; 8:45 am]

BILLING CODE 3510-13-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting the Import Charges for Certain Cotton Apparel Products Produced or Manufactured in the Republic of the Philippines

September 21, 1984.

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 September 28, 1984. For further information contact Carl Ruths, International Trade Specialist (202) 377–4212.

Background

Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of November 24, 1982, as amended, between the Governments of the Untied States and the Republic of the Philippines, a reconciliation of import data has been undertaken between representatives of the two governments which verified that 2,449 dozen should be charged to the restraint limit for traditional cotton coats in Category 335T instead of the limit for non-traditional cotton coats in Category 335NT. Consequently, in the letter which follows this notice the Chairman of CITA is directing the Commissioner of Customs to deduct 2,449 dozen from import charges to the limit established for Category 335NT and charge it instead to the limit for traditional apparel products in Category 335T. This action will lift an embargo currently affecting imports in Category 335NT.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), and July 16, 1984 (49 FR 28754).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

September 21, 1984.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: To facilitate implementation of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of

November 24, 1982, as amended, between the Governments of the United States and the Republic of the Philippines, I request that, effective on September 28, 1984, you deduct 2,449 dozen from charges made to the import restraint limit established for Category 335NT [1] in the directive of December 22, 1983. This amount should be charged instead to the limit established for Category 335T [2] in the same directive.

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

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textiles and Apparel.

[FR Doc. 84-25537 Filed 9-25-84; 8:45 am]

BILLING CODE 3510-DR-M

CONSUMER PRODUCT SAFETY COMMISSION

Notification of Proposed Collection of Information

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1981 (44 U.S.C. 3501 *et seq.*), the consumer Product Safety Commission has submitted to the Office of Management and budget a request for approval of a proposed collection of information in the form of a consumer usage survey to obtain data on (1) consumer exposure to selected groups of products commonly used in and around the home which contain chlorocarbons and (2) consumer exposure to chemicals (perchloroethylene) from coin-operated dry cleaning facilities.

Many chlorinated hydrocarbons (chlorocarbons) have been shown to be not only carcinogenic but also to be assocated with hepatotoxicity, nephrotoxicity, and central nervous system problems. One of these chlorocarbons, methylene chloride, has been found "to induce a very high incidence of lung and liver tumors in both sexes of mice" in a recently completed National Toxicology Program study. Other chlorinated hydrocarbons, such as methyl chloroform and perchloroethylene, can be substituted for methylene chloride in a number of products. The Commission is concerned about these potential adverse health effects that may be associated with the presence of chlorocarbons in consumer products.

[1] Namesake 333352.

[2] Namesake 333351.

Six categories of consumer products containing chlorocarbon compounds have been identified, and, taking into consideration chlorocarbon content and expected frequency of use, these have been preliminarily ranked in order of importance for consumer exposure as follows:

Product category	Estimated percent of households with product
Paint strippers	5–10
Paint thinners	5–10
Aerosol spray household cleaning agents (for example tub/tile cleaners)	40–60
Aerosol spray paints/varnishes	10–15
Aerosol spray furniture care products	40–50
Aerosol spray laundry treatment products (prewashes/starches, and so forth)	40–50

A contract will be awarded to conduct a survey of a representative sample of consumers who use products in the six groups listed above and also of users of coin-operated dry cleaning establishments. The survey will provide data on how American households use and are exposed to chlorocarbons in consumer products and to perchloroethylene in coin-operated dry cleaning establishments.

The Commission's Directorate for Health Sciences will, at the same time, develop data on the likely exposure to chlorocarbons that would result from use of the identified chlorocarbon-containing products.

The information collected through this survey will enable the Commission staff to do comprehensive exposure modeling and to evaluate the potential household exposures to chlorocarbons in consumer products and to perchloroethylene in dry cleaning establishments. These exposure data are essential for quantitative assessments of potential risks to consumers from the use of consumer products containing these chemicals.

The questionnaires will be administered by telephone to a consumer panel. A screening technique will identify seven separate samples of 173 households for each product category from the panel. Each sample will be balanced to reflect the U.S. population in terms of geography and selected household characteristics. Information about the Proposed Collection of Information:

Agency address: Consumer Product Safety Commission, 1111 18th Street, NW., Washington, D.C. 20207.

Title of information collection: Consumer usage survey to measure exposure of households to (1) selected groups of products containing chlorocarbons and (2) perchloroethylene in coin-operated dry cleaning equipment.

Type of request: Approval of new plan.

Frequency of collection: One time.

General description of respondents: Members of consumer panel.

Estimated number of respondents: 1211.

Estimated average number of hours per response: ½.

Comments: Comments on this proposed collection of information should be addressed to Andy Velez-Rivera, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and budget, Washington, D.C. 20503; telephone (202) 395–7313. Copies of the proposed collection of information requirement are available from Francine Shacter, Office of Budget and Program Implementation, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 492–6529.

This is not a proposal to which 44 U.S.C. 3504(h) is applicable.

Dated: September 19, 1984.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 84-25586 Filed 9-25-84; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Wage Committee; Closed Meetings

September 21, 1984.

Pursuant to the provisions of section 10 of Pub. L. 92–463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, November 6, 1984, Tuesday, November 13, 1984; Tuesday, November 20, 1984; and Tuesday, November 27, 1984 at 10:00 a.m. in Room 1E801, The Pentagon, Washington, D.C.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Manpower, Installations and Logistics) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Pub. L. 92–392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Pub. L. 92–463, meeting may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b.(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 55b(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy & Requirements) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b.(c)(2)), and the detailed wage data considered by the Committee during its meetings have been obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention. Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, Room 3D264, The Pentagon, Washington, D.C. 20301.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84–25458 Filed 9–25–84; 8:45 am]

BILLING CODE 3810–01–M

Department of the Air Force

USAF Scientific Advisory Board; Airlift Cross-Matrix Panel Fact-Finding Trip

September 12, 1984.

The USAF Scientific Advisory Board Airlift Cross-Matrix Panel will make a fact-finding trip to McMurdo Sound, Antarctica on October 28, 1984. The purpose of this trip is to assess the difficulties encountered by the Military Airlift Command when providing support to the National Science Foundation, McMurdo Base, and to assess their similarities to Military Airlift Command operational problems during national emergencies.

The meeting concerns matters listed in Section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202/697–8404.

Norita C. Koritko,

Air Force Federal Register Liaison Officer.

[FR Doc. 84–25464 Filed 9–25–84; 8:45 am]

BILLING CODE 3910–01–M

Department of the Navy

Privacy Act of 1974; Amended Systems of Records

AGENCY: Department of the Navy, DOD.

ACTION: Notice of amendments and deletion of systems of records.

SUMMARY: The Department of the Navy proposes to amend six systems of records and delete three in its inventory of systems of records subject to the Privacy Act of 1974.

DATES: The proposed actions will be effective without further notice October 26, 1984, unless comments are received which would result in a contrary determination.

ADDRESS: Send any comments to the systems managers identified in the systems notices.

FOR FURTHER INFORMATION CONTACT: Mrs. Gwendolyn R. Aitken, Privacy Act Coordinator, Office of the Chief of Naval Operations (Op–09B30), Department of the Navy, The Pentagon, Washington, DC 20350. Telephone: (202) 697–1459.

SUPPLEMENTARY INFORMATION: The Department of the Navy systems notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a) Pub. L. 93–579 were published in the **Federal Register** as follows:

FR Doc. 83–109 (48 FR 26029) June 6, 1983
FR Doc. 84–2616 (49 FR 3901) January 31, 1984
FR Doc. 84–2828 (49 FR 4124) February 2, 1984
FR Doc. 84–4908 (49 FR 6967) February 24, 1984
FR Doc. 84–6893 (49 FR 13350) April 4, 1984
FR Doc. 84–8901 (49 FR 13399) April 4, 1984
FR Doc. 84–10509 (49 FR 15601) April 19, 1984
FR Doc. 84–10681 (49 FR 16777) April 20, 1984
FR Doc. 84–14818 (49 FR 23107) June 4, 1984
FR Doc. 84–16521 (49 FR 25507) June 21, 1984
FR Doc. 84–23495 (49 FR 35172) September 21, 1984

The proposed amendments are not within the purview of the provision of 5 U.S.C. 552a(o) which requires the submission of altered systems reports.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

DELETIONS

N01001–4

System name:

Intelligence Reserve Personnel Management File (48 FR 26032) June 6, 1983.

Reason: This system has been incorporated into Navy system notice #N01001–3, "Naval Reserve Intelligence/Personnel File."

N03810–1

System name: Naval Intelligence Management Information System (NIMIS) (48 FR 26073) June 6, 1983.

Reason: This system has been discontinued.

N05238–1

System name:

ADP Budget (48 FR 26086) June 6, 1983.

Reason: This system has been discontinued.

AMENDMENTS

NO1001–3

System name: Reserve Personnel History File (48 FR 26031) June 6, 1983.

Changes:

System name:

Delete the entire entry and substitute with the following "Naval Reserve Intelligence/Personnel File".

Categories of records in the system:

At the end of the entry, add the following phrase: "* * * qualifications for active military duty assignments and military promotions."

Purpose(s):

Add the following new paragraph: "To determine qualifications for members of the Naval Reserve Intelligence Program and to provide a personnel management device for career development programs, manpower and personnel requirements for program activities, assignment of support projects of the reserve program and mobilization planning requirements.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete the entire entry and substitute with the following: "The Blanket Routine Uses that appear at the beginning of the

Department of the Navy's compilation apply to this system."

Policies and practices for storing, retrieving, accessing, retaining and disposing of records in the system:

Retention and disposal:

Delete the entire entry and substitute with: "Records are maintained as long as the individual is a member of the Naval Reserve Intelligence Program. Records are destroyed when member becomes inactive."

The revised portion of System NO 1001–2 read as follows:

NO1001–3

SYSTEM NAME:

Naval Reserve Intelligence/Personnel File.

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains information relating to the individual's residence history, education, professional qualifications, occupational history, foreign country travel and knowledge, foreign language capabilities, history of active military duty assignments and military reserve active duty training and background investigation, qualifications for active military duty assignments and military promotions.

* * * * *

PURPOSE(S):

To determine qualifications for members of the Naval Reserve Intelligence Program and to provide a personnel management device for career development programs, manpower and personnel requirements for program activities, assignment of support projects of the reserve program and mobilization planning requirements.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

* * * * *

RETENTION AND DISPOSAL:

Records are maintained as long as the individual is a member of the Naval Reserve Intelligence Program. Records are destroyed when member becomes inactive.

* * * * *

NO6150–1

System name:

Medical Department Professional/ Technical Personnel Development (48 FR 26124) June 6, 1983.

Changes:

System location:

In lines 1, 13 and 14, delete: "Bureau of Medicine and Surgery * * *" and substitute with: "Naval Medical Command * * *" In line 20, delete: "* * * BUMED * * *" and substitute with "* * * COMNAVMEDCOM * * *"

Purpose(s):

Add the following new paragraph: "to manage the Naval Medical Command's education and training activities related to procurement, assignments, professional/specialty/technical training, credentialing, promotion, and all other aspects of the health care personnel management; career development; evaluation of candidates for position of lecturer/consultant; mobilization, planning, and verification of reserve service; surgical team contingency planning; management of physical standards; maintenance of safe occupational/environmental protection standards; and to maintain information of adverse actions or revocations of health care providers; clinical credentials for dissemination to the various federal and state licensure boards, professional regulating bodies, and appropriate military and civilian organizations and activities."

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete the entire entry and substitute with the following: "The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Retention and disposal:

In lines 3, 4, 6, 11, 14 and 16, delete the acronym "BUMED" and substitute with: "NAVMEDCOM."

System manager(s) and address:

In lines 1 and 2, delete the phrase: "Chief, Bureau of Medicine and Surgery * * *" and substitute with: "Commander, Naval Medical Command * * *".

Notification procedures:

In line 7, delete the acronym "BUMED" and substitute with "NAVMEDCOM * * *" In line 21, delete the last sentence in the paragraph.

The revised portions of system NO6150–1 read as follows:

SYSTEM NAME:

Medical Department Professional/ Technical Personnel Development.

SYSTEM LOCATION:

Naval Medical Command, Navy Department, Washington, DC 20372; individual's duty station or reserve unit (see Directory of Department of the Navy mailing addresses); Military Sealift Command, Navy Department, Washington, DC 20390; National Personnel Records Center, 9700 Page Boulevard, St. Louis, MO 63132; National Personnel Records Center, 111 Winnebago Street, St. Louis, MO 63118; Naval Medical Command managed education and training activities (see Directory of Department of the Navy mailing addresses); various colleges and universities affiliated with COMNAVMEDCOM managed education and training activities.

* * * * *

PURPOSE(S):

To manage the Naval Medical Command's education and training activities related to procurement, assignments, professional/specialty/ technical training, credentialing, promotion and all other aspects of the health care personnel management; career development; evaluation of candidates for position of lecture/ consultant; mobilization, planning, and verification of reserve service; surgical team contingency planning; management of physical standards; maintenance of safe occupational/environmental protection standards; and to maintain information of adverse actions or revocations of health care providers' clinical credentials for dissemination to the various federal and state licensure boards, professional regulation bodies, and appropriate military and civilian organizations and activities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

* * * * *

RETENTION AND DISPOSAL:

Medical Department personnel professional development and training records; Headquarters, NAVMEDCOM records—retained at NAVMEDCOM for duration of member's service, then retired to NPRC, St. Louis for 10 years retention; NAVMEDCOM field activities retained 5 years, then destroyed.

Radiation exposure records; personnel exceeding exposure limits—retained at NAVMEDCOM 50 years, then destroyed; all others—retained 5 years, then destroyed

Surgical support team records; Headquarters, NAVMEDCOM—destroyed upon termination of active duty service NAVMEDCOM field activities—destroyed upon termination of duty at the Medical Department facility.

Curricula vitae of lecturers/Consultants—destroyed upon termination of status at the Medical Department facility.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Naval Medical Command, Navy Department, Washington, DC 20372; Director, National Personnel Records Center, 9700 Page Boulevard, St. Louis, MO 63132; Director, National Personnel Records Center, 111 Winnebago St., St. Louis, MO 63118; commanding officers of naval activities, ships and stations.

NOTIFICATION PROCEDURES:

Offices where requester may visit to obtain information of records pertaining to the individual; Potomac Annex, 23rd and E Streets, NW, Washington, D.C., Navy medical centers and hospitals; other Navy health care facilities; and NAVMEDCOM managed education and training facilities.

The individual should present proof of identification such as an I.D. card, drivers license, or other type of identification bearing signature and photograph.

Written requests may be addressed as follows:

Active duty Navy members or civilian employees presently working for the Navy should address requests to the commanding officer of the facility or ship where they are stationed or employed.

Former members of the Navy should address requests to Director, National Personnel Records Center, 9700 Page Boulevard, St. Louis, MO 63118.

Former civilian employees of the Navy should address requests to Director, National Personnel Records Center, 111 Winnebago Street, St. Louis, MO 63118.

All written requests should contain full name, rank, SSN, file number (if any), and designator.

* * * * *

NO6150–2

System name:

Health Care Treatment Record System (48 FR 26125) June 6, 1983.

Changes:

Purpose(s):

Add the following new paragraph: "This system is used by officials and employees of the Department of the Navy (and members of the National Red Cross in Navy Health Care Facilities) in the performance of their official duties relating to the health and medical treatment of Navy and Marine Corps individuals; determining physical qualifications and suitability of candidates for various programs; personnel assignments; adjudicating claims and appeals before the Council of Personnel Boards, and the Board for Correction of Naval Records; rendering opinions regarding member's physical fitness for continued naval service; litigation involving medical care provided those categories of individuals covered by this record system; performance of research studies and compilation of statistical data; implementing preventive medicine, dentistry, and communicable disease control programs. Officials and employees of other components of the Department of Defense in the performance of their official duties relating to determining the physical qualifications of applicants; in providing medical care to those categories of individuals covered by this record system; and in the conduct of analyses and research studies."

Routine uses of records maintained in the system, including categories of users and the purpose of such uses:

Delete the entire entry and substitute with the following:

"To officials and employees of the Veterans Administration in the performance of their official duties relating to the adjudication of veterans claims and in providing medical care to members of the Naval Service.

To the Attorney General of the United States or his authorized representatives in connection with litigation, law enforcement, or other matters under the direct jurisdiction of the Department of Justice or carried out as the legal representative of the executive branch agencies.

To officials and employees of other departments and agencies of the Executive Branch of Government upon request in the performance of their official duties related to review of the physical qualifications and medical history of applicants and employees who are covered by this record system and for conduct of research studies.

To private organizations (including educational institutions) and individuals for authorized health research in the interest of the Federal Government and the public. When not considered mandatory, patient identification data shall be eliminated from records used for research studies.

To officials and employees of the National Research Council in cooperative studies of the National History of Disease; of prognosis and of epidemiology. Each study in which the records of members and former members of the Naval Service are used must be approved by the Surgeon General of the Navy.

To officials and employees of local and state governments and agencies in the performance of their official duties pursuant to the laws and regulations governing the local control of communicable diseases, preventive medicine and safety programs, child abuse and other public health and welfare programs. Authorized surveying bodies for professional certification and accreditations.

When required by federal statute, by executive order, or by treaty, medical record information will be disclosed to the individual, organization or government agency, as necessary. Drug/Alcohol and Family Advocacy information maintained in connection with Abuse Prevention Programs shall be disclosed only in accordance with the applicable statutes, 21 U.S.C. 1175, 42 U.S.C. 4582, and 5 U.S.C. 552.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system."

System manager(s) and adddress:

In lines 3, 4, 11 and 12, delete the words: "Chief, Bureau of Medicine and Surgery" and substitute with: "Commander, Naval Medical Command

* * *"

Record Access Procedures:

Delete the entire entry and substitute with the following: "The agency's rules for access to records may be obtained from the system manager."

The revised portions of the System NO6150–2 read as follows:

NO6150-2

SYSTEM NAME:

Health Care Treatment Record System

* * * * *

PURPOSE(S):

This system is used by officials and employees of the Department of the Navy (and members of the National Red Cross in Navy Health Care Facilities) in the performance of their official duties relating to the health and medical treatment of Navy and Marine Corps individuals; determining physical qualifications and suitability of candidates for various programs; personnel assignments; adjudicating claims and appeals before the Council of Personnel Boards, and the Board for Correction of Naval Records; rendering opinions regarding member's physical fitness for continued naval service; litigation involving medical care provided those categories of individuals covered by this record system; performance of research studies and compilation of statistical data; implementing preventive medicine, dentistry, and communicable disease control programs. Officials and employees of other components of the Department of Defense in the performance of their official duties relating to determining the physical qualifications of applicants; in providing medical care to those categories of individuals covered by this record system; and in the conduct of analyses and research studies.

ROUNTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CAGEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To officials and employees of the Veterans Administration in the performance of their official duties relating to the adjudication of veterans claims and in providing medical care to members of the Naval Service.

To the Attorney General of the United States or his authorized representatives in connection with litigation, law enforcement, or other matters under the direct jurisdiction of the Department of Justice or carried out as the legal representative of the executive branch agencies.

To officials and employees of other departments and agencies of the Executive Branch of Government upon request in the performance of their official duties related to review of the physical qualifications and medical history of applicants and employees who are covered by this record system and for conduct of research studies.

To private organizations (including educational institutions) and individuals for authorized health research in the interest of the Federal Government and the public. When not considered mandatory, patient identification data shall be eliminated from records used for research studies.

To officials and employees of the National Research Council in cooperative studies of the National History of Disease; of prognosis and of epidemiology. Each study in which the records of members and former members of the Naval Service are used must be approved by the Surgeon General of the Navy.

To officials and employees of local and state governments and agencies in the performance of their official duties pursuant to the laws and regulations governing and local control of communicable diseases, preventive medicine and safety programs, child abuse and other public health and welfare programs. Authorized surveying bodies for professional certification and accreditations.

When required by federal statute, by executive order, or by treaty, medical record information will be disclosed to the individual, organization or government agency, as necessary. Drug/Alcohol and Family Advocacy information maintained in connection with Abuse Prevention Programs shall be disclosed only in accordance with the applicable statutes, 21 U.S.C. 1175, 42 U.S.C. 4582, and 5 U.S.C. 552.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Service medical (health and dental) records for active duty and reserve, Navy and Marine Corps: Commander, Naval Medical Command, Navy Department, Washington DC 20372; Commanding Officers, Naval Activities, Ships and Stations, Director, National Personnel Records Center, 9700 Page Boulevard, St. Louis, Missouri 64132.

Inpatient and outpatient treatment records: Commander, Naval Medical Command, Navy Department, Washington, DC 20372; Commanding Officer, Naval Medical Centers and Hospitals or activities having Clinics; Director, National Personnel Records Center, St. Louis, Missouri 63118.

* * * * *

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the system manager.

* * * * *

NO6150-3

System name:

Naval Health Research Center Data File (48 FR 26127) June 6, 1983.

Changes:

System name:

After the word "Health", add the word "/Dental". Delete the word "Center".

System location:

Delete the entire entry and substitute with: "Naval Medical Research and Development Command, Naval Medical Research Institute and/or Naval Dental Research Institute to which individual is assigned (see Directory of the Department of the Navy Mailing Addresses)."

Categories of individuals covered by the system:

At the beginning of the entry, add the phrase: "For medical:"

Add a new paragraph as follows: "For dental: Navy and Marine Corps personnel on active duty since 1967 to date."

Categories of records in the system:

In line two, after the word: "* * * medical * * *" add the word "* * * dental * * *" In line two, after the word: "* * * records * * *", add the phrase: "* * * results of dental examinations conducted by staff research scientists * * *" In line five, after the phrase: "* * * relating to * * *", add the phrase: "* * * medical and dental * * *". At the end of the entry, add the phrase: "* * * or prior to active duty."

Authority for the maintenance of the system:

Delete the entire entry and substitute with: "10 U.S.C. 50341".

Purpose(s):

Add the following entry: "To research, monitor and analyze the types and frequency of medical and dental diseases and illnesses in Navy and Marine Corps personnel."

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete the entire entry and substitute with the folowing: "The Blanket Routine

Uses that appear at the beginning of the department of the Navy's compilation apply to this system."

Policies and practices for storing, retrieving, accessing, retaining and disposing of records in the system:

Storage:

Delete the entire entry and substitute with: "Files are maintained on magnetic tape, flexible and hard disks, paper files, punch cards and optically marked cards."

Safeguards:

Delete the entire entry and substitute with: "Access is restricted to personnel having a need to work with the research data stored. Access is controlled by password for health records stored on magnetic tape. Computerized dental research records contain ID numbers that can be matched to SSN's on code sheets maintained by research personnel."

Retention and disposal:

Delete the entire entry and substitute with the folowing: "Research records are permanent. They are maintained for five years at the activity performing the research and then retired to the Federal Records Center, St. Louis, Missouri."

System managers) and address:

Delete the entire entry and substitute with: "Commanding Officer of the activity in question (see Directory of Department of the Navy Mailing Addresses).

The revised portions of System 6150–3 read as follows:

NO6150–3

SYSTEM NAME:

Naval Health/Dental Research Data File.

SYSTEM LOCATION:

Naval Medical Research and Development Command, Naval Medical Research Institute and/or Naval Dental Research Institute to which individual is assigned (see Directory of the Department of the Navy Mailing Addresses).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

For medical: Navy and Marine Corps personnel on active duty since 1960 to date. Civilians taking part in Operation Deep Freeze, 1964 to date.

For dental: Navy and Marine Corps personnel on active duty since 1967 to date.

CATEGORIES OF RECORDS IN THE SYSTEM:

Extracts of information from official medical/dental and personnel records, results of dental examinations conducted by staff research scientists, as well as information dealing with biographical, attitudes, and questions relating to medical and dental health patterns during active service or prior to active duty.

AUTHORITY FOR THE MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5031.

PURPOSE(S):

To research, monitor and analyze the types and frequency of medical and dental diseases and illnesses in Navy and Marine Corps personnel.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Files are maintained on magnetic tape, flexible and hard disks, paper files, punch cards and optically marked cards.

* * * * *

SAFEGUARDS:

Access is restricted to personnel having a need to work with the research data stored. Access is controlled by password for health records stored on magnetic tape. Computerized dental research records contain ID numbers that can be matched to SSN's on code sheets maintained by research personnel.

RETENTION AND DISPOSAL:

Research records are permanent. They are maintained for five years at the activity performing the research and then retired to the Federal Records Center, St. Louis, Missouri.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding Officer of the activity in question (see Directory of Department of the Navy Mailing Addresses).

* * * * *

NO6320–2

System name:

Family Advocacy Program System (48 FR 26129) June 6, 1983.

Changes:

System location:

In lines 1 and 2, delete the words: "Chief, Bureau of Medicine and Surgery * * *" and substitute with: "Commander, Naval Medical Command * * *"

Purpose(s):

Add the following new paragraph: To collect and disseminate (to authorized officials), information pertaining to the identification, evaluation, intervention, treatment, prevention and follow-up of victims and perpetrators of abuse or neglect.

Routine uses of records maintained in the system, including categories of users and the purpose of such uses:

Delete the entire entry and substitute with the following:

"To the Executive Branch of government, in the performance of their official duties relating to the coordination of family advocacy programs, medical care, and research concerning family member abuse and neglect.

To the Attorney General of the United States or his authorized representatives, in connection with litigation or other matters under the direct jurisdicational of the Department of Justice or carried out as the legal representative of the Executive Branch agencies.

To federal, state or local government agencies when it is deemed appropriate to utilize civilian resources in the counseling and treatment of individuals or families involved in abuse or neglect or when it is deemed appropriate or necessary to refer a case to civilian authorities for civil or criminal law enforcement.

To authorized officials and employees of the National Academy of Sciences, and private organizations and individuals for authorized health research in the interest of the federal government and the public; and authorized surveying bodies for professional certification and accreditation.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system."

System manager(s) and address:

In lines 1, 2, 6 and 7, delete the words: "Chief, Bureau of Medicine and Surgery * * *" and substitute with: "Commander, Naval Medical Command * * *"

Notification procedure:

In lines 9 and 10, delete the words: "* * * Chief, Bureau of Medicine and Surgery * * *" and substitute with: "* * * Commander, Naval Medical Command * * *"

The revised portions of System N06320–2 read as follows:

N06320–2

SYSTEM NAME:

Family Advocacy Program System.

* * * * *

SYSTEM LOCATION:

Central Registry—Commander, Naval Medical Command, Navy Department, Washington, DC 20372. Individual Case Files—Naval Regional Medical Centers, naval hospitals and clinics (formerly dispensaries), and duty stations of the military sponsors (see directory of Department of the Navy mailing addresses).

* * * * *

PURPOSE(S):

To collect and disseminate (to authorized officials), information pertaining to the identification, evaluation, intervention, treatment, prevention and follow-up of victims and perpetrators of abuse or neglect.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the Executive Branch of government, in the performance of their official duties relating to the coordination of family advocacy programs, medical care, and research concerning family member abuse and neglect.

To the Attorney General of the United States or his authorized representatives, in connection with litigation or other matters under the direct jurisdiction of the Department of Justice or carried out as the legal representatives of the Executive Branch agencies.

To federal, state or local government agencies when it is deemed appropriate to utilize civilian resources in the counseling and treatment of individuals or families involved in abuse or neglect or when it is deemed appropriate or necessary to refer a case to civilian authorities for civil or criminal law enforcement.

To authorized officials and employees of the National Academy of Sciences, and private organizations and individuals for authorized health research in the interest of the federal government and the public; and authorized surveying bodies for professional certification and accreditation.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilations apply to this system.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Central Registry—Commander, Naval Medical Command, Navy Department, Washington, DC 20372 and commanding officers of medical treatment facilities under the command of the Commander, Naval Medical Command, where the treatment and reporting occurred.

NOTIFICATION PROCEDURE:

Informational requests should be directed to the cognizant system manager(s). Requests should contain the full name of the individual and social security number of the military or civilian sponsor or guardian, date and place of treatment, and alleged reporting of incident. The requester may visit the office of the Commander, Naval Medical Command, 23rd and E Streets, NW., Washington, DC and the commanding officers of the individual medical treatment facilities to obtain information on whether or not the system contains records pertaining to him or her. Armed Forces I.D. card or other type of identification bearing the picture and signature of the requester will be considered adequate proof of identity.

* * * * *

N06320–3

System name:

BUMED Quality Assurance/Risk Management (48 FR 26130) June 6, 1983.

Changes:

System name:

Delete the acronym "BUMED" and substitute with: "NAVMEDCOM"

System location:

In line 1, delete "Bureau of Medicine and Surgery * * *" and substitute with "Naval Medical Command." Delete lines 4, 5 and 6 in their entirety and substitute with the following: "(see directory of Department of the Navy mailing addresses)."

Purpose(s):

Add the following new paragraph: "This system relates to the Navy Medical Command's Quality Assurance/Risk Management Program. It is used to review the quality and appropriateness of care provided; investigate, analyze, and report accidents, injuries, and other incidents; to identify health care providers with known or suspected problems; and to maintain information of adverse actions or revocations of health care providers' clinical credentials for dissemination to the various federal and state licensure boards, professional regulating bodies, and appropriate military and civilian organizations and facilities."

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete the entire entry and substitute with the following: "The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system."

System manager(s) and address:

In lines 1 and 2, delete: "Chief, Bureau of Medicine and Surgery * * *" and substitute with: "Commander, Naval Medical Command * * *". In line 6, after the word "facilities" delete the remainder of the entry and substitute with: "(see directory of Department of the Navy mailing addresses)."

Notification procedures:

In line 2, delete the phrase: "* * * Chief, Bureau of Medicine and Surgery * * *" and substitute with: "* * * Commander, Naval Medical Command * * *" In line 8, delete the acronym "* * * BUMED * * *" and substitute with: "* * * COMNAVMEDCOM * * *"

The revised portions of System NO 6320–3 read as follows:

NO6320–3

SYSTEM NAME:

NAVMEDCOM Quality Assurance/Risk Management.

SYSTEM LOCATION:

Naval Medical Command, Navy Department, Washington, DC 20372; health care treatment facilities (see directory of Department of the Navy mailing addresses).

* * * * *

PURPOSE(S):

This system relates to the Navy Medical Command's Quality Assurance/Risk Management Program. It is used to review the quality and appropriateness of care provided; investigate, analyze, and report accidents, injuries, and other incidents; to identify health care providers with known or suspected problems; and to maintain information of adverse actions or revocations of health care providers' clinical credentials for dissemination to the various federal and state licensure boards, professional regulating bodies,

and appropriate military and civilian organizations and facilities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's Compilation apply to this system.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Naval Medical Command, Navy Department, Washington, DC 20372. Commanding officer or officers in charge of Navy Medical Department health care treatment facilities (see directory of Department of the Navy mailing addresses)."

NOTIFICATION PROCEDURE:

Requests should be addressed to Commander, Naval Medical Command or commanding officers or officers in charge at the addresses indicated, above. Requests should contain the full name, SSN, and signature of the individual. The individual may also visit COMNAVMEDCOM or the health care treatment facility. Visitors must possess proof of identification such as ID card, driver's license, or other identification showing name and a recent photograph of the individual.

* * * * *

[FR Doc. 84-25459 Filed 9-25-84; 8:45 am]
BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

American Society for Environmental Education; Restriction on Eligibility of Grant Award

AGENCY: Procurement and Assistance Management Directorate, DOE.

ACTION: Notice of Restriction of Eligibility for Grant Award.

SUMMARY: DOE announces that, pursuant to 10 CFR 600.7(b), it intends to award on a restricted eligibility basis a grant providing support to the American Society for Environmental Education for partial support of a Conference on California Offshore Petroleum. The DOE support under this grant is valued at $10,000 over a seven-month period.

Procurement request number: 01-84FE60564.000.

Project scope: The objective of this grant award is to support the activities of the American Society for Environmental Education and the California Statewide Energy Consortium to provide a forum for Government (Federal, State and local) and the public to exchange factual information concerning the potential damage to California's coastal environment resulting from offshore oil and gas exploration, development and production activities. Eligibility for this grant award is being limited to the American Society for Environmental Education because the science coordination and information sharing activity is an ongoing activity unique to this organization.

FOR FURTHER INFORMATION CONTACT: Thomas E. Brown, MA-452.1, U.S. Department of Energy, Office of Procurement Operations, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Telephone No.: (202) 252-1026.

Issued in Washington, DC., on September 21, 1984.

Thomas J. Davin, Jr.,

Acting Director Procurement and Assistance Management Directorate.

[FR Doc. 84-25573 Filed 9-25-84; 8:45 am]
BILLING CODE 6450-01-M

Office of Assistant Secretary for International Affairs and Energy Emergencies

International Atomic Energy Agreements; Civil Uses; Proposed Subsequent Arrangement; Japan and Sweden

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation Between the Government of the United States of America and the Government of Japan Concerning Civil Uses of Atomic Energy, as amended, and the Agreement for Cooperation Between the Government of the United States of America and the Government of Sweden Concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above mentioned agreements involves approval for the assignment of uranium enrichment services consisting of 44,413 separative work units in Fiscal Year 1987 and 40,431 separative work units in Fiscal Year 1988, from Svensk Karnbransleforsorjning AB (SKBF) in Sweden to the Japan Atomic Power Company, Japan.

In accordance with section 131 of the Atomic Energy Act of 154, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sonner than fifteen days after the date of publication of this notce.

For the Department of Energy.

Dated: September 21, 1984.

George J. Bradley, Jr.,

Deputy Assistant Secretary for International Affairs.

[FR Doc. 84-25515 Filed 9-25-84; 8:45 am]
BILLING CODE 6450-01-M

Economic Regulatory Administration

[Docket No. ERA-FC-80-011; OFC Case No. 62002-9026-05-12]

Exxon Co., U.S.A.; Modification

AGENCY: Economic Regulatory Administration.

ACTION: Notice and Proposed Modification of an Order Granting Permanent Fuels Mixture Exemption to Exxon Company, U.S.A.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) has commenced a proceeding under 10 CFR Part 501, Subpart G to modify the permanent fuels mixture exemption granted by Order ("Order") to a new major fuel burning installation (MFBI), a field erected boiler identified as Boiler SG-501C owned and operated by Exxon Company, U.S.A. (Exxon) at it Baytown, Texas refinery, under the Powerplant and Industrial fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* ("FUA" or "The Act").

Based upon its review of Exxon's August 20, 1984 modification request, ERA is proposing to modify the Order on the basis of its determination that significantly changed circumstances, as defined in 10 CFR 501.102(b), exist with respect to the applicability of the original exemption. Accordingly, ERA is hereby giving notice to all parties to the original proceeding of their right, pursuant to 10 CFR 501.101(d), to file a written response to ERA's proposal within 30 days of the publication of this Notice in the **Federal Register** (see DATES section, below).

If not responses are received within the established period, the Order modification, as proposed, shall become final upon the expiration of that period without further action by ERA. A detailed discussion of the Order and Exxon's request for modification thereof is provided in the **SUPPLEMENTARY INFORMATION** section below.

DATES: Written responses to ERA's proposed modification of the Exxon Order must be received no later than October 26, 1984.

Unless ERA receives comments adverse to its proposed action within the established comment period, the modification Order shall become final on October 26, 1984; and the modification therein shall become effective on November 26, 1984.

ADDRESS: Written responses are to be addressed to Department of Energy, Economic Regulatory Administration, Office of Fuels Programs, Case Control Unit, GA–007, 1000 Independence Avenue, SW., Washington, D.C. 20585. OFC–62002–9026–05–12 should be printed on the outside of the envelope and the documents contained herein.

FOR FURTHER INFORMATION CONTACT:

Anthony Wayne, Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room CA–073, 1000 Independence Avenue, SW., Washington, D.C. 20585, Telephone (202) 252–1730.

Steven E. Ferguson, Office of the General Counsel, Department of Energy, Forrestal Building, Room 6A–113, 1000 Independence Avenue, SW., Washington, D.C. 20585, Telephone (202) 252–6947.

SUPPLEMENTARY INFORMATION: On September 11, 1980, ERA exempted, by Order, Exxon's new field erected boiler, identified as Boiler SG–501C, at its Baytown, Texas refinery from the prohibitiions of section 202 of FUA.[1] The Order was published in the **Federal Register** on September 18, 1980 (45 FR 62179). Subject to the terms and conditions set forth in the Order, the permanent fuels mixture exemption permitted, in a mixture with fluid catalytic cracking unit (FCCU) regenerator fluid gas, the use of natural gas (a refinery blend gas consisting of both petroleum and natural gas) in the new field erected boiler in an amount not to exceed 25 percent of the total annual Btu heat input of the primary energy sources used in that unit. Exxon's exemption request was filed under the then-effective 10 CFR § 503.38 (45 FR 38276, June 6, 1980) and was granted pursuant to section 212(d) of FUA.

By letter filed with ERA on August 20, 1984, Exxon requested that ERA now modify the Order to delete the annual certification part of the following reporting requirement:

In accordance with the reporting requirements in § 503.38(d), Exxon will submit an annual reprot to the ERA, Case Control Unit (Fuel Use Act), Box 4629, Room 3214, 2000 M Street, NW., Washington, D.C. 20461, each year on the anniversary of the date Boiler SG–501C is placed in service containing the following:

A certified statement of percentage of natural gas used in this MFBI identifying the actual quantities of FCCU regenerator flue gas and natural gas used during the year, as well as the higher hearing value (in BTU's per MCF) of those fuels. The following report format shall be used:

Fuel type	Amount used (MCF)	BTU equivalent	Percent of annual fuel consumption
FCCU regenerator flue gas			
Natural gas (refinery blend gas)			

The certification must be executed by Exxon's duly authorized representative.

Exon based it modification request upon the fact that since the issuance of the Order with its annual reporting requirements, DOE has issued final rules amending § 503.38(g) of the interim rules to delete therefrom reporting requirements for boilers granted fuels mixtures exemptions (46 FR 59872, December 7, 1981).

As requested, ERA has commenced a proceeding pursuant to 10 CFR 501.101(a), for the modification of the above-described exemption Order. The procedures and criteria governing this proceeding are found in 10 CFR Part 501, Subpart G.

Having considered the information contained in Exxon's request, along with the other information of record in this proceeding, ERA proposes to modify the original permanent fuels mixture exemption Order as follows:

Modification Order

To: Exxon Company, U.S.A.

Major fuel burning installation	Location	Docket No.
Boiler SG–501C	Baytown, TX	ERA–FC–80–011 (OFC Case No. 62002–9026–05–12).

Based upon its review of the whole record in the proceeding, ERA has determined that the revision of § 503.38 in the final rules published on December 7, 1981, described supra, constitutes significantly changed circumstances warranting the modification of the original exemption Order, as provided by 10 CFR 501.102 and 501.103.

Accordingly, ERA hereby modifies the Order in Docket Number ERA–FR–80–011 to delete therefrom the annual certification reporting requirement.

Procedures

Parties to the original Order proceeding in Docket No. ERA–FC–80–011, are hereby notified of ERA's proposed modification of the Order exempting Exxon's Boiler SG–501C, Baytown, Texas from the prohibitions in section 202 of FUA and of their right pursuant to 10 CFR 501.101(d) to file a response thereto within 30 days after the publication of this Notice in the **Federal Register.** If ERA receives no adverse responses within the alloted comment period, the Order modification shall become final as proposed, without further ERA action, upon expiration of that period.

Issued in Washington, D.C., September 14, 1984.

Robert L. Davies,

Director, Coal & Electricity Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 84–25476 Filed 9–25–84; 8:45 am]

BILLING CODE 6450–01–M

[Docket No. ERA–FC–84–019; OFC Case No. 52975–9255–20, 21–22]

Turlock Irrigation District; Acceptance of Petition

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Acceptance of Petition from Turlock Irrigation District, Walnut Substation Peakload Powerplant, for Exemption and Availability of Certification.

SUMMARY: On August 15, 1984, Turlock Irrigation District, Walnut Substation Peakload Powerplant (Turlock) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) for an order permanently exempting a new proposed powerplant from the provisions of the Powerplant and Industrial Fuel Use Act of 1978 (FUA or the Act), (42 U.S.C. 8301 *et seq.*) which (1) prohibit the use of petroleum and natural gas as a primary energy source in new electric powerplants and (2) prohibit the construction of a new powerplant without the capability to use an alternate fuel as a primary energy source. The final rule containing the criteria and procedures for petitioning for exemptions from the prohibitions of FUA was published in the **Federal Register** at 46 FR 59872 (December 7, 1981).

Turlock requested a permanent peakload exemption under 10 CFR 503.41 for a simple-cycle combustion turbine installation consisting of two

[1] Section 202 of FUA prohibits the use of natural gas or petroleum as the primary energy source by certain new MFBI's.

25.8 MW combustion turbine-generator systems and appurtenant equipment. The proposed units are units to be installed at the Turlock facility in Stanislaus County, California. The powerplant will be capable of burning natural gas and petroleum.

ERA has determined that the petition and certification for the requested exemption is complete in accordance with the final rules under 10 CFR 501.3 and 501.63. ERA hereby accepts the filing of the petition for the permanent exemption as adequate for filing. ERA retains the right to request additional relevant information from Turlock at any time during these proceedings where circumstances or procedural requirements may so require. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below:

As provided for in section 701 (c) and (d) of FUA and 10 CFR 501.31 and 501.33 of the final rule, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification and other documents and supporting materials on this proceeding is available upon request from DOE, Freedom of Information Reading Room, 1000 Independence Avenue SW., Room 1E-190, Washington, D.C. 20585, Monday through Friday, 8:00 a.m.–4:00 p.m.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the public comment period provided for in this notice, unless ERA extends such period. Notice of any extension, together with a statement of reasons for such extension will be published in the **Federal Register.**

DATES: Written comments are due on or before November 13, 1984. A request for public hearing must also be made within this 45 day public comment period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing should be submitted to the Department of Energy, Economic Regulatory Administration, Office of Fuels, Programs, Case Control Unit, Room GA-007, 1000 Independence Avenue SW., Washington, D.C. 20585.

Docket No. ERA-FC-84-019 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Roland DeVries, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue SW., Room GA-073, Washington, D.C. 20585, Phone (202) 252-6002

Steven E. Ferguson, Office of the General Counsel, Department of Energy, Forrestal Building, Room 6D-033, 1000 Independence Avenue SW., Washington, D.C. 20585, Phone (202) 252-6947.

SUPPLEMENTARY INFORMATION: FUA prohibits the use of natural gas or petroleum in certain new powerplants unless an exemption for such use has been granted by ERA. Turlock has filed a petition for a permanent peakload powerplant exemption to use petroleum or natural gas as a primary energy source in its proposed Stanislaus County, California facility's simple-cycle combustion turbine installation.

Under the requirements of 10 CFR 503.41(a)(2)(ii), if a petitioner proposes to use natural gas or to construct a powerplant to use natural gas in lieu of an alternate fuel as a primary energy source, the Administrator of the Environmental Protection Agency or the director of the appropriate state air pollution control agency must certify to ERA that the use by the powerplant of any available alternate fuel as a primary energy source will cause or contribute to a concentration, in an air quality control region or any area within the region, of a pollutant for which any national air quality standard is or would be exceeded. However, since ERA has determined that there are no presently available alternate fuels which may be used in the proposed powerplant, no such certification can be made. The certification requirement is therefore waived with respect to the Turlock petition.

Turlock submitted a certified statement by a duly authorized officer to the effect that the proposed oil and/or gas fired combustion turbine generator will be operated solely as a peakload powerplant.

Turlock also certified that the maximum electrical generation in kilowatt-hours will not exceed the powerplant gross design capacity, 51,600 kilowatts (48,000 kw net capacity) multiplied by 1,500 hours or 38,700,000 kilowatt-hours during any 12 month period.

On February 23, 1982, DOE published in the **Federal Register** (47 FR 7976) a notice of the amendment to its guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA). Pursuant to the amended guidelines, the grant or denial of certain FUA permanent exemptions, including the permanent exemption for peakload powerplants, is among the classes of actions that DOE has categorically excluded from the requirement to prepare an Environmental Impact Statement or an Environmental Assessment pursuant to NEPA (categorical exclusion).

This classification raises a rebuttable presumption that the grant or denial of the exemption will not significantly affect the quality of the human environment. Turlock has certified that it will secure all applicable permits and approvals prior to commencement of operation of the new units under exemption. DOE's Office of Environment, in consultation with the Office of the General Counsel, will review the completed environmental checklist submitted by Turlock pursuant to 10 CFR 503.13, together with other relevant information. Unless it appears during the proceeding on Turlock's exemption that the grant or denial of the exemption will significantly affect the quality of the human environment, it is expected that no additional environmental review will be required.

As provided in 10 CFR 501.3(b)(4), the acceptance of the petition by ERA does not constitute a determination that Turlock is entitled to the exemption requested. That determination will be made on the basis of the entire record of these proceedings, including any comments received in response to this document.

Issued in Washington, D.C., on September 14, 1984.

Robert L. Davies,

Director, Coal & Electricity Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 84-25214 Filed 9-25-84; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. CP84-674-000]

Columbia Gas Transmission Corp.; Request Under Blanket Authorization

September 21, 1984.

Take notice that on August 29, 1984, Columbia Gas Transmission Corportation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP84-674-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Northwood Stone & Asphalt Company (Northwood) under the certificate issued in Docket No. CP83-76-000 pursuant to

Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia proposes to transport up to 720 MMBtu equivalent of natural gas per day for Northwood through June 30, 1985. Columbia states that the gas to be transported would be purchased from Energy Management, Inc. (EMI), and would be used as process gas in Northwood's Springfield, Ohio, plant.

It is indicated that Columbia has released certain gas supplies of EMI and that these supplies are subject to the ceiling price provisions of Sections 103 and 107 of the Natural Gas Policy Act of 1978. It is further indicated that Northwood has made arrangements to purchase this released gas from EMI. Columbia states that it would receive the gas from EMI and redeliver the gas to Columbia Gas of Ohio, Inc. (COH), the distribution company serving Northwood, near Springfield, Ohio. Further, Columbia states that depending upon whether its gathering facilities are involved, it would charge either (1) 40.11 cents per dt for storage and transmission, exclusive of company-use and unaccounted-for gas, or (2) 44.93 cents per dt for storage, transmission and gathering, exclusive of company-use and unaccounted-for gas, as set forth in Columbia's Rate Schedule TS-1. Columbia states that it would retain 2.85 percent of the total quantity of gas delivered into its system for company-use and unaccounted-for gas, as set forth in Columbia's Rate Schedule TS-1.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25544 Filed 9-25-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP84-47-001]

Equitable Gas Co.; Compliance Filing

September 21, 1984.

Take notice that on September 10, 1984, Equitable Gas Company (Equitable) tendered for filing the following sheets to Rate Schedule GS-1 of its FERC Gas Tariff, First Revised Volume No. 1:

Substitute Sixth Revised Sheet No. 6f (effective date—March 14, 1984)
Seventh Revised Sheet No. 6f (effective date—September 1, 1984).

Equitable states that this filing is made in compliance with the Federal Energy Regulatory Commission's (Commission) order issued March 14, 1984 in the above-captioned docket.

Any person desiring to be heard or to protest said filing 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 September 27, 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 filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25543 Filed 9-25-84 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP72-149-019, et al.]

Mississippi River Transmission Corp., et al.; Filing of Pipeline Refund Reports and Refund Plans

September 21, 1984.

Take notice that the pipelines listed in the Appendix hereto have submitted to the Commission for filing proposed refund reports or refund plans. The date of filing, docket number, and type of filing are also shown on the Appendix.

Any person wishing to do so may submit comments in writing concerning the subject refund reports and plans. All such comments should be filed with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before October 3, 1984. Copies of the respective filings are on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

APPENDIX

Filing date	Company	Docket No.	Type filing
Aug. 9, 1984	Mississippi River Transmission Corp	RP72-149-019	Report.
Aug. 27, 1984	Tennessee Gas Pipeline Co	RP81-38-009	Do.
Aug. 31, 1984	El Paso Natural Gas Co	TA82-2-33-026	Do.
Sept. 5, 1984	Wyoming Interstate Co	CP79-80-034	Do.
Sept. 11, 1984	Midwestern Gas Transmission Co	RP80-23-017	Do.
Sept. 14, 1984	East Tennessee Natural Gas Co	RP81-53-005 and RP82-124-005	Do.
Sept. 17, 1984	South Georgia Natural Gas Co	RP82-46-005 and RP84-18-002	Do.

[FR Doc. 84-25546 Filed 9-25-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP77-135-003, CP77-260-003]

Natural Gas Pipeline Company of America, and Texas Eastern Transmission Corp.; Petitions To Amend

September 21, 1984.

Take notice that on August 13, 1984, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP77-135-003, and that on August 23, 1984, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 2521, Houston, Texas 77252, filed in Docket No. CP77-260-003, petitions to amend the order issued May 23 1977, as amended, in Docket Nos. CP77-135-000 and CP77-260-000, respectively, pursuant to Section 7(c) of the Natural Gas Act so as to authorize the exchange of natural gas between Natural and Texas Eastern at an additional point of delivery in Wharton County, Texas, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Pursuant to an amendment dated September 15, 1983, to the gas exchange agreement, Texas Eastern would deliver exchange gas to Natural at an additional exchange delivery point at the existing point of interconnection between the pipeline facilities of Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), and Natural

near Hungerford, Wharton County, Texas. Receipt of gas by Natural would be accomplished by the reduction of deliveries by Natural to Tennessee, for Texas Eastern's account, under the gas exchange agreement dated July 22, 1977, as amended April 29, 1983.

It is stated that exchange of gas at the Wharton delivery point commenced under authority of Natural's blanket certificate issued in Docket No. CP–80–125 and Texas Eastern's blanket certificate issued in Docket No. CP80–156. It is further stated that the exchange of gas at this additional point will not increase the authorized exchange volume of 7,000 Mcf per day.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before October 11, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–25547 Filed 9–25–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP84–673–000]

Panhandle Eastern Pipe Line Co.; Request Under Blanket Authorization

September 21, 1984.

Take notice that on August 29, 1984, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP84–673–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Kraft, Inc. (Kraft), under the certificate issued in Docket No. CP83–83–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Panhandle proposes to transport an average volume of 4,236 Mcf of natural gas per day on an interruptible basis for Kraft for use in Kraft's Edible Oil Refinery in Champaign, Illinois. Panhandle estimates the peak day volume to be 5,500 Mcf and the annual volume to be 1,546,140 Mcf. Panhandle states that Kraft has entered into a gas purchase contract to purchase gas from Producer's Gas Company (Producer's) to be produced from wells in the State of Oklahoma. It is further stated that Panhandle would receive the gas at existing points of interconnection between Panhandle and Producer's in Custer and Woods Counties, Oklahoma, and redeliver the gas to Illinois Power Company (Illinois) for the account of Kraft at an existing interconnection in Champaign County, Illinois. Illinois would deliver the gas for use in Kraft's facilities. Panhandle also requests that it be granted "flexible authority" to add or delete sources of supply or receipt/delivery points.

Panhandle proposes to charge Kraft a rate based on its currently effective OST tariff.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–25548 Filed 9–25–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TA85–1–38–000 and TA85–1–38–001]

Ringwood Gathering Co., Tariff Filing

September 20, 1984.

Take notice that on August 29, 1984, Ringwood Gathering Company (Ringwood) tendered for filing Thirty-third Revised Sheet to its FERC Gas Tarlff. The proposed effective date for this tariff sheet is October 1, 1984.

Ringwood states this tariff sheet revises its Base Tariff Rate to reflect the increase in the system cost of purchased gas and refund the balance accumulated in the unrecovered purchased gas cost account. Ringwood further states that its projected cost of purchased gas is based on the applicable NGPA rates for October, 1984.

Ringwood indicates that copies of this filing have been mailed to Northwest Central Pipeline Corporation and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before September 26, 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 filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–25549 Filed 9–25–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP84–123–000]

Texas Gas Transmission Corp.; Filing of Revised Tariff Sheets

September 21, 1984.

Take notice that on September 11, 1984 Texas Gas Transmission Corporation (Texas Gas) tendered for filing Substitute Forty-Seventh Revised Sheet No. 7, Substitute Revised Forty-Sixth Revised Sheet No. 7, Second Revised Forty-Fifth Revised Sheet No. 7, Second Revised Sheet No. 16, Second Revised Sheet No. 17, and Second Revised Sheet No. 24 to its FPC Gas Tariff, Third Revised Volume No. 1.

The revised tariff sheets are being filed pursuant to Section 154.111 of the Commission's Rules and Regulations issued in Docket No. RM83–71, Order 380.

Copies of the revised tariff sheets are being mailed to Texas Gas' jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE, Washington, DC 20426, in accordance with Rules 2.11 and 2.14 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such petitions or

protests should be filed on or before September 27, 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 filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25530 Filed 9-25-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-686-000]

Trunkline Gas Co.; Application

September 21, 1984.

Take notice that on September 4, 1984, Trunkline Gas Company (Applicant), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP84-686-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of up to 10,000 Mcf of natural gas per day for Transcontinental Gas Pipe Line Corporation (Transco), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant propose to implement the terms of a transportation agreement between Applicant and Transco dated March 23, 1984, whereby Applicant has agreed to transport, on an interruptible basis, up to 10,000 Mcf of natural gas per day for Transco for a term until January 1, 1986. Applicant proposes a transportation charge of 17.89 cents per Mcf.

Applicant states that the gas to be transported has been purchased by Transco from Shell Oil Company (Shell) in South Timbalier Area Blocks 299, 300, and 301, offshore Louisiana. This gas would be received by Applicant for Transco's account at an existing point of interconnection between Shell and Applicant in Ship Shoal Area Block 241, offshore Louisiana. Applicant would redeliver the gas to Transco at an existing point of interconnection between Applicant and Transco in Beauregard Parish, Louisiana.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 11, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will now serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25551 Filed 9-25-84; 8:45]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Issuance of Decisions and Orders; Week of August 13 Through August 17, 1984

During the week of August 13 through August 17, 1984, the decisions and orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Request for Temporary Exception

Norge, Division of Magic Chef, Inc., 8/15/84, HEL-0099

Norge, Division of Magic Chef, Inc. filed an Application for Temporary Exception from the provisions of 10 CFR Part 430 in which the firm sought to produce 500 clothes washing machines with temperature selections not provided for by the energy usage testing regulations. In considering the request, the DOE found that temporary exception relief was necessary to permit the firm to keep its customer commitments and to operate on August 23, 1984, and that the firm met the criteria for temporary exception relief under 10 CFR § 205.125. Accordingly, the temporary exception relief was granted.

Motion for Discovery

Economic Regulatory Administration, 8/15/84, HRD-0198

On January 11, 1984, the Economic Regulatory Administration (ERA) submitted a Motion for Discovery in connection with a Proposed Remedial Order issued to Gulf Oil Corporation on December 30, 1981. In the Motion for Discovery, the ERA sought answers to 23 interrogatories and the production of the corresponding documents. Additionally, the ERA sought the deposition of Lyle G. Armel, a Gulf corporate official.

The DOE concluded that two of the interrogatories should be granted and the corresponding documents produced, but that all other interrogatory requests be denied. The DOE further denied the ERA's deposition request. Thus, ERA's Motion for Discovery was granted in part.

The important matters discussed in this Decision and Order include the necessity of relevance in discovery requests and the general unwillingness on the part of the Office of Hearings and Appeals to grant discovery pertaining to legal rather than factual issues or disputes.

Interlocutory Order

Economic Regulatory Administration, 8/15/84, HRZ-0209

This Decision and Order involves a Motion for Joinder filed by the Economic Regulatory Administration in connection with a Proposed Remedial Order (PRO) issued to Hudson Oil Co. In the Motion for Joinder, the ERA argued that since Hudson Oil Co. and Hudson Refining Co., Inc. were both involved in the purchase, sale and certification of crude oil which is the subject of the PRO, Hudson Refining Co., Inc. should be joined as a party to the PRO and be held jointly and severally liable for the alleged violations. The Hudson firms did not specifically object to the joinder of Hudson Refining, but did object to the ERA's request that Hudson Refining not be provided an opportunity to comment on the PRO. The DOE concluded that Hudson Refining Co., Inc. should be joined as a party to the PRO, and that the firm be permitted to raise its objections to the PRO. The important issues discussed in the decision and order include (i) the effect of bankruptcy on the joinder motion and (ii) whether the trustee in bankruptcy has a right to raise objections to the PRO.

Dismissals

The following submissions were dismissed:

Name and Case No.

Corpening Enterprises, Inc.; HRO-0136, HRH-0017
Norwegian Oil Corp.; DMR-0050
Traco Petroleum Company; HRT-0044

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of

Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: September 12, 1984.

Thomas O. Mann,

Acting Director, Office of Hearings and Appeals.

[FR Doc. 84-25473 Filed 9-25-84; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of September 3 Through September 7, 1984

During the week of September 3 through September 7, 1984, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

International Systems Marketing, Inc., 9/6/84; HFA–0238

International Systems Marketing, Inc. (ISM) filed an Appeal from a partial denial by the DOE Office of Procurement Operations of a Request for Information which the firm had submitted under the Freedom of Information Act (FOIA). In considering the Appeal the DOE found that a portion of the document which ISM had requested was properly withheld under FOIA Exemption 5. The DOE determined that the withheld material contained pre-decisional evaluations and that release of this material would be contrary to the public interest because such disclosure might inhibit the future exchange of written preliminary evaluations within the DOE.

Remedial Order

Reinauer Petroleum Company, 9/4/84, HRO–0105

Reinauer Petroleum Company objected to a Proposed Remedial Order which the Economic Regulatory Administration issued to the firm on November 19, 1982. In the PRO, the ERA found that Reinauer violated the DOE regulations by overcharging its customers in sales of leaded and unleaded motor gasoline. The primary objections raised by Reinauer were that (i) the equal application (deemed recovery) rule applicable to reseller-retailers is procedurally and substantively invalid, (ii) there was no regulation covering sales of unleaded gasoline during the audit period, (iii) the sequence of recovery of current increased product costs and non-product costs used in the audit is improper, and (iv) the ERA incorrectly calculated Reinauer's pre-audit period banked costs. The Office of Hearings and Appeals rejected Reinauer's arguments with respect to the equal application rule, the regulations governing sales of unleaded gasoline, and the sequence of recovery of current increased product costs and non-product costs. It granted the firm's objections with respect to the ERA's method of calculating the firm's bank of unrecouped increased product costs and indicated that the firm was not required by the regulations to recover all banked costs prior to recovering increased non-product costs. Accordingly, OHA remanded the PRO to ERA for action consistent with the Decision and Order.

Dismissals

The following submissions were dismissed.

Name and Case No.

George's Auto Sales; RF21–11069

Mobil Oil Corp.; HRO–0014, HRO–0022, HRO–0023, HRO–0030, BRO–1148, HRD–0184, HRD–0140, HRD–0139, HRD–0154, HRD–0153, HRD–0220, HRZ–0208, HRH–0140, HRH–0139, HRD–0172, HRH–0154

Copies of the full text of these decisions and order are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: September 12, 1984.

Thomas O. Mann,

Acting Director, Office of Hearings and Appeals.

[FR Doc. 84-25475 Filed 9-25-84; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed; Week of August 17 Through August 24, 1984

During the Week of August 17 through August 24, 1984, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585

Dated: September 19, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Aug. 17 through Aug. 24, 1984]

Date	Name and location of applicant	Case No.	Type of submission
July 19, 1984	Marathon Oil Co., Washington, DC	HRX-0107	Supplemental Order. If Granted: The Office of Hearings and Appeals would issue a Supplemental Remedial Order regarding the "extrapolated overcharges" alleged in the May 1, 1979, Proposed Remedial Order issued to Marathon Oil Co. (Case No. DRO-0195).
July 20, 1984	Economic Regulatory Administration, Washington, DC	HRX-0106	Supplemental Order. If Granted: The Office of Hearings and Appeals would issue a Supplemental Decision to the June 22, 1984, Remedial Order issued to Marathon Oil Co. (Case No. DRO-0195) regarding recalculations relating to the Elnora Central Field Unit and the West Delta Field.
Aug. 17, 1984	J&M Distributing, East Greenwich, RI	HEE-0101	Exception to the Reporting Requirements. If Granted: J&M Distributing would not be required to file form EIA-782B, "Reseller/Retailers' Monthly Petroleum Product Sales Report".
Aug. 20, 1984	Harry Jacobs & Associates, Inc., Chattanooga, TN	HEE-0100	Exception to the Reporting Requirements. If Granted: Harry Jacobs & Associates, Inc. would not be required to file form EIA-782B, "Reseller/Retailers' Monthly Petroleum Product Sales Report".
Do	Lunday-Thagard Co., Washington, DC	HED-0231	Motion for Discovery. If Granted: Discovery would be granted to Lunday-Thagard Oil Co. in connection with the Application for Exception filed by the Department of Interior (Case No. HEE-0096).
Do	do	HEZ-0216	Interlocutory Order. If Granted: Certain Department of Energy employees would be barred from participating in the Department of Interior's Application for Exception proceedings (Case No. HEE-0096).

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of Aug. 17 through Aug. 24, 1984]

Date	Name and location of applicant	Case No.	Type of submission
Do	....do	HEZ-0217	Interlocutory Order. If Granted: The Department of Interior's Application for Exception (Case No. HEE-0096) would be removed from the Office of Hearings and Appeals and referred to the Federal Energy Regulatory Commission for adjudication.
Do	Mobil Oil Corp., Washington, DC	HEF-0508	Implementation of Special Refund Procedures. If Granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR, Part 205, Subpart V, in connection with Apr. 19, 1984, Consent Order with Mobil Oil Corp.
Aug. 21, 1984	John R. Selby, Inc., La Mesa, CA	HFA-0240	Appeal of an Information Request Denial. If Granted: The July 20, 1984, Freedom of Information Request denial issued by the Albuquerque Operations Office would be rescinded, and John R. Selby, Inc. would receive access to all records, reports, correspondence, and memoranda pertaining to Contract No. DE-AC32-82AL18467.
Aug. 22, 1984	Dennis J. Sadowski, Cleveland, OH	HFA-0241	Appeal of an Information Request Denial. If Granted: The July 17, 1984, Freedom of Information Fee Waiver Request Denial issued by the Albuquerque Operations Office would be rescinded, and Dennis J. Sadowski would receive a waiver of fees associated with a request for information regarding the White Train.
Aug. 23, 1984	Texakota, Inc., Houston, TX	HRS-0045 and HRT-0045.	Request for Stay and Temporary Stay. If Granted: Texakota, Inc. would receive a stay and a temporary stay of the firm's obligation to file its Statement of Objections in response to a Proposed Remedial Order issued to Texakota, Inc. (Case No. HRO-0213).
Aug. 24, 1984	Crown Central Petroleum Corp., Washington, DC	HFA-0242	Appeal of an Information Request Denial. If Granted: The Mar. 6, 1984, Freedom of Information Request Denial issued by the Office of Special Counsel would be rescinded, and Crown Central Petroleum Corp. would receive an explanation for the withholding of certain portions of the documents found to be responsive, as well as a more thorough search for documents.

REFUND APPLICATIONS RECEIVED

[Week of Aug. 17 to Aug. 20, 1984]

Date	Name of refund proceeding/name of refund applicant	Case No. assigned
Aug. 20, 1984	Amoco/Utah	RQ21-114.
Do	Gulf/Huval Baking Co	RF40-58.
Do	Gulf/Harlan L. Cook	RF40-59.
Do	Gulf/Roy A. Muegnug	RF40-60.
Do	Amoco, Belridge & Palo Pinto/DC	RQ21-115, RQ6-116, and RQ6-117.
Aug. 21, 1984	Gulf/Grasso's Olneyville Gulf, Inc	RF40-61.
Do	Amoco/E.P. Nist.et	RF21-12356.
Aug. 22, 1984	Gulf/Gainsboro Oil Co., Trust	RF40-62.
Do	Gulf/Arnold P. Freedman	RF40-63.
Do	Willis/Michelak Tire	RF41-3.
Do	Amoco/Howard Brown Oil, Inc	RF21-12357
Do	....do	RF21-12358.
Aug. 23, 1984	Gulf/Reynolds Petroleum Sales	RF40-64.
Do	Gulf/Irene Prisco	RF40-65.
Do	Gulf/Marty's Service	RF40-66.
Do	Gulf/L.R. Voynow	RF40-67.
Do	Gulf/Kenneth H. Mattis, Inc	RF40-68.
Do	Gulf/Elmore Oil Co., Inc	RF40-69.
Do	Gulf/H.S. Sfiuter Co. District	RF40-70.
Aug. 24, 1984	Gulf/ITT Continental Baking Co	RF40-71

[FR Doc. 84-25474 Filed 9-25-84; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed; Week of August 24 Through August 31, 1984

During the Week of August 24 through August 31, 1984, the applications for relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be agrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

Dated: September 18, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Aug. 24 through Aug. 31, 1984]

Date	Name and location of applicant	Case No.	Type of submission
Aug. 27, 1984	Osborne Energy Corp., Los Angeles, CA	HRR-0094	Request for Modification/Rescission. If Granted: The June 21, 1984, Decision and Order (Case No. HRD-0132) issued to Osborne Energy Corp. and E.O. White would be modified regarding the firm's discovery request.
Aug. 28, 1984	Texakota, Inc., Houston, Texas	HRZ-0216	Interlocutory Order. If Granted: The Mar 12, 1984, Proposed Remedial Order issued to Texakota, Inc. (Case No. HRO-0213) would be dismissed.

REFUND APPLICATIONS RECEIVED

[Week of Aug. 24 to Aug. 31, 1984]

Date	Name of refund proceeding/name of refund applicant	Case No. assigned
Aug. 27, 1984	Amoco/Pennsylvania	RQ21-118.
Do	Belridge/Three Affiliated Tribes	RQ8-119.
	Amoco/Three Affiliated Tribes	RQ21-120.
Aug. 28, 1984	Gulf/E. McAfoose	RF40-72.
Do	Gulf/John Mooney	RF40-73.
Do	Gulf/Modern Oil Co., Inc	RF40-74.
Aug. 27, 1984	Texas Oil & Gas Corp./Columbia LNG Corp	RF42-1.
Aug. 29, 1984	Morris Rosenthal	RF40-75.
Do	Gulf/Ever Ready Co	RF40-76.
Aug. 30, 1984	Willis Marina Gas Dock	RF41-4.
Do	Texas Oil & Gas Corp./Amoco	RF42-2.
Do	Gulf/Colonial Tank Transport	RF40-77.
Do	Gulf/Ray Wilderer Motor Lines, Inc	RF40-78.
Aug. 31, 1984	Gulf/H.F. Campbell & Sons, Inc	RF40-81.
Do	Gulf/Lyons Transportation Lines	RF40-79.
Do	Gulf/P. Wajer & Sons Express	RF40-80.

[FR Doc. 84-25470 Filed 9-25-84; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed; Week of Aug. 31 Through Sept. 7, 1984

During the week of August 31 through September 7, 1984, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

Date: September 20, 1984.

Thomas L. Wieker,

Acting Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Aug. 31 through Sept. 7, 1984]

Date	Name and location of applicant	Case No.	Type of submission
Sept. 23, 1983	Gulf Oil Corp., Washington, DC	HRD-0232	Motion for Discovery. If granted: Discovery would be granted to Gulf Oil Corp. in connection with the firm's Statement of Objections to the May 18, 1983, Proposed Remedial Order issued to the firm (Case No. HRO-0171).
Sept. 28, 1983	...do	HRZ-0219	Interlocutory Order. If granted: The May 18, 1983, Proposed Remedial Order issued to Gulf Oil Corp. (Case No. HR-0171) would be dismissed.
Sept. 4, 1984	Daniel Hirsch, Santa Cruz, CA	HFA-0243	Appeal of an Information Request Denial. If granted: Daniel Hirsch would receive access to deleted portions of requested documents regarding nuclear weapons.
Sept. 6, 1984	Daniel D. Yue, Bethesda, MD	HFA-0244	Appeal for an Information Request Denial. If granted: The Aug. 23, 1984, Freedom of Information Request Denial issued by the Oak Ridge Operations Office would be rescinded, and David D. Yue would receive a waiver of fees for all of the documents requested.
Do	Office of Special Counsel/Texaco Inc., Washington, DC	HRZ-0220	Interlocutory Order. If granted: The affidavit of O.R. Carter submitted by Texaco Inc. in August 1982 would be stricken from the record in the Proposed Remedial Order proceeding (Case No. ORO-0199).
Aug. 7, 1984	The Knoxville Journal, Knoxville, TN	HFA-0245	Appeal of an Information Request Denial. If granted: The Aug. 9, 1984, Freedom of Information Request Denial issued by the Oak Ridge Operations Office would be rescinded, and the Knoxville Journal would receive a waiver of fees for the information requested.

REFUND APPLICATIONS RECEIVED

[Week of Aug. 31 to Sept. 7, 1984]

Date	Name of refund proceeding/name of refund applicant	Case No.
Sept. 4, 1984	Gulf/Waldensian Bakeries, Inc	RF40-83.
Aug. 31, 1984	Gulf/R.M. O'Connell, Inc	RF40-82.
Sept. 4, 1984	Gulf/M.W. McRady & Co., Inc	RF40-84.
Do	Gulf/Horn's Motor Express, Inc	RF40-85.
Do	Gulf/CCC Hydraulic Service, Inc	RF40-86.
Do	Gulf/Vern's E-Z-GO Station #17	RF40-87.
Do	Willis/Howard Neon & Plastic Displays	RF41-5.
Do	Amoco/Devil's Lake Sioux Tribe	RQ21-12.
Sept. 5, 1984	Gulf/Schrof Oil Co	RF40-88.
Sept. 6, 1984	Gulf/Don's Gulf Service	RF40-89.
Do	Gulf/W.E. Jersey & Sons, Inc	RF40-90.
Sept. 7, 1984	Gulf/Harvey J. Brenner	RF40-92.
Do	Gulf/H&L Oil, Inc	RF40-91.

[FR Doc. 84-25471 Filed 9-25-84; 8:45 am]

BILLING CODE 6450-01-M

Objection to Proposed Remedial Orders Filed; Period of August 20 through August 31, 1984

During the period of August 20 through August 30, 1984 the notices of objection to proposed remedial orders listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding the Department of Energy will conduct concerning the proposed remedial orders described in the Appendix to this Notice must file a request to participate pursuant to 10 CFR 205.194 within 20 days after publication of this Notice. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All requests to participate in these proceedings should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

Dated: September 18, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

Houston Oil & Refining Company, Houston, Texas, HRO-0245 Crude Oil

On August 27, 1984, the State of Texas filed a Notice of Objection to a Proposed Remedial Order which the DOE Houston District Office of Enforcement issued to Houston Oil & Refining Company (Houston Oil) on July 26, 1984. On September 9, 1984, Houston Oil of Houston, Texas, also filed a Notice of Objection to the PRO. In the PRO the Office of Enforcement found that during the period June 1979 through August 1980, Houston Oil charged prices in excess of its actual purchase prices in violation of 10 CFR 212.186, 210.62(c) and 205.202, and violated 10 CFR 212.183 in the pricing of crude oil. According to the PRO, the violation resulted in $68,581,401.23 of overcharges.

Marion Corporation, Mobile, Alabama, HRO-0246 Crude Oil

On August 27, 1984, the State of Texas filed a Notice of Objection to a Proposed Remedial Order which the DOE Office of Special Counsel of the Economic Regulatory Administration (ERA) issued to Marion Corporation on May 24, 1984. In the PRO, the ERA charges the firm with violations during the reporting period September 1979 through December 1980 in connection with the firm's reporting of its crude oil receipts under the Entitlements Program, 10 CFR 211.67. According to the PRO, the entitlements violation amounted to $57,995,152 plus interest.

United Independent Oil Company Tocoma, Washington, Boise, Idaho; HRO-0249 Crude Oil

On August 27, 1984, the Attorney General of Texas, P.O. Box 12548, Capitol Station, Austin, Texas 78711, filed a Notice of Objection to a Proposed Remedial Order which the DOE Office of Special Counsel of the Economic Regulatory Administration (ERA) issued to the United Independent Oil Company (United) on July 27, 1984. On August 31, 1984, United, Post Office Box 2115, Tacoma, Washington 98401, also filed a Notice of Objection to the Proposed Remedial Order. In the PRO the ERA found that during May 1977, United violated 10 CFR 211.67 (e)(2) and (e)(3) in connection with the reporting of its crude oil receipts and runs to stills under the Entitlements Program. According to the PRO the entitlements violation resulted in $404,323.00 of overcharges.

[FR Doc. 84-25472 Filed 9-25-84; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-30245; FRL-2675-3]

Certain Companies; Applications to Register Pesticide Products; NOR-AM Chemical Co., et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register certain pesticide products containing active ingredients not included in any previously registered products and products involving a changed use pattern pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATE: Comment by October 26, 1984.

ADDRESS: By mail submit comments identified by the document control number [OPP-30245] and the file number, attention Product Manager (PM) named in each application at the following address: Information Services Section (TS-757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, bring comments to: Environmental Protection Agency, Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTRACT: *By mail:* Registration Division (TS-767C), Attn: (Product Manager (PM) named in each registration), Office of Pesticide Programs, 401 M St., SW., Washington, D.C. 20460.

In person: Contact the PM named in each registration at the following office location/telephone number:

Product manager	Office location/ telephone number	Address
PM 17—Timothy Gardner.	Rm. 209, CM#2 (703-557-2690).	EPA, 1921 Jefferson Davis Hwy.—Arlington, VA 22202.
PM 21—Henry Jacoby.	Rm. 229, CM#2 (703-557-1900).	Do.
PM 32—Auturo Castillo.	Rm. 244, CM#2 (703-557-3964).	Do.

SUPPLEMENTARY INFORMATION: EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products and products involving a changed use pattern pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

I. Products Containing Active Ingredients Not Included in any Previously Registered Products

1. File Symbol: 45639-OU. Applicant: NOR-AM Chemical Co., 3509 Silverside Road., PO Box 7495, Wilmington, DE 19803. Product name: Prochloraz Technical. Fungicide. Active ingredient: Prochloraz (N-N propyl-[2-(2,4,6,trichlorophenoxy) ethyl]-1 H-imidazole-1-carboxamide) 95%. Proposed classification/Use: General. For use in formulating fungicides only. (PM 21)

2. File Symbol: 39967-T. Applicant: Mobay Chemical Corp., Penn-Lincoln Parkway West, Pittsburgh, PA 15205. Product name: Preventol A4-S. Fungicide. Active ingredient: *N,N*-Dimethyl-*N'*-phenyl-(*N'*-

fluorodichloromethylithio) Sulfamide 90%. Proposed classification/Use: General. For use in oil, alkyd and resin based paint and primer formulations. (PM 21)

3. File Symbol: 38906–RL. Applicant: Glyco Inc, Williamsport, PA 17701. Product name: Dantobrom P. Disinfectant. Active ingredients: 1-Bromo-3-chloro-5,5-dimethylhydantoin 60.0%, 1,3-dichloro-5,5-dimethylhydantoin 27.4%, and 1,3-dichloro-5-ethyl-5-methylhydantoin 10.6%. Proposed classification/Use: General. For use in swimming pools. Type registration: Conditional. (PM 32)

II. Products Involving a Changed Use Pattern

File Symbol: 50534–RLA. Applicant: SDS Biotech Corp., Animal Health Business, Painesville, OH 44077. Product name: Extrin® WP. Insecticide. Active ingredient: Cyano (3-phenoxyphenyl)methyl-4-chloro-alpha-(1-methylethyl) benzeneacetate 13.9%. Proposed classification/Use: General. To include in its presently registered use new use for agriculture use only. Type registration: Conditional. (PM 17)

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register.** The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice, will be available in the Program Management and Support Division (PMSD) office at the address provided from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the PMSD office (703–557–3262), to ensure that the file is available on the date of intended visit.

(Sec. 3(c)(4) of FIFRA, as amended)

Dated: September 4, 1984.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 84-24924 Filed 9-25-84; 8:45 am]

BILLING CODE 6560-50-M

[OPP–66112; FRL–2674–2]

Certain Pesticide Products; Intent To Cancel Registrations; Hess and Clark, Inc., et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice lists the names of firms requesting voluntary cancellation of registration of their pesticide products in compliance with section 6(a)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended. Distribution or sale of these products after the effective date of cancellation will be considered a violation of the Act unless continued registation is requested.

EFFECTIVE DATE: October 26, 1984.

ADDRESS: *By mail, submit comments to:* Information Services Section, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, bring comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, Excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: *By mail:* Lela Sykes, 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. 718C, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–2126).

SUPPLEMENTARY INFORMATION: EPA has been advised by the following firms of their intent to voluntarily cancel registration of their pesticide products.

Registration No.	Product name	Registrant	Date registered
134–47	Hess and Clark New Dry Fly Killer	Hess & Clark, Inc., 7th and Orange Sts., Ashland, OH 44805	July 7, 1970.
318–39	Russell's Granular Lawn Fungicide	Gerald S. Russell, 25–16 50th St., Woodside, Long Island, NY 11377	Oct. 12, 1964.
352–334	Du Pont Londax G Weed Killer Granules	E.I. du Pont de Nemours & Co., Wilmington, DE 19898	Oct. 24, 1967.
352–345	Du Pont Londax L Weed Killer Emulsifiable Liquid	do	Nov. 10, 1969.
373–95	Residex Direx E.C	Residex Corp., 225 Terminal Ave., Clark, NJ 07066	Nov. 18, 1968.
410–72	Franklin Kilzol Disinfectant for Farm and Ranch Sanitation	Franklin Laboratories, Inc., P.O. Box 669, Amarillo, TX 79105	May 1, 1972.
410–78	Franklin Fly Bait	do	Apr. 23, 1973.
541–190	Puritan #2462	Puritan/Churchill Chemical Co., P.O. Box 2305, Station D, Atlanta, GA 30318	Apr. 8, 1968.
572–211	Lawn-A-Magic "D–KRAB–R Plus Prills"	Rockland Chemical Co., Inc., P.O. Box 809, West Caldwell, NJ 07006	Oct. 16, 1968.
802–423	Miller's Keltmans-Diazinon 44D	The Chas. H. Lilly Co., 7737 NE. Killingsworth, Portland, OR 97218	Oct. 27, 1967.
802–472	Miller's Home and Patio Insect Spray	do	Feb. 14, 1972.
909–71	Cooke Fly-No Insect Spray, Pressurized	Cooke Laboratory Products, 2515 South Yates Ave., Commerce, CA 90040	Feb. 25, 1969.
1057–54	Mintol XL Fragrant Mint Disinfectant	The C.B. Dolge Co., Westport, CT 06880	May 22, 1972.
1145–75	Bovinol Stock Spray with Vapona Insecticide	Amoco Oil Co., 910 South Michigan Ave., Chicago, IL 60680	June 4, 1962.
1145–139	Bovinol Clovap	Amoco Oil Co., 200 East Randolph Dr., Chicago, IL 60601	June 1, 1973.
1157–32	Moorman's Household Insect Killer	Moorman Manufacturing Co., 1000 North 30th St., Quincy, IL 62301	Mar. 16, 1970.
1157–40	Moorman's Fly Bait	do	Oct. 26, 1972.
1266–119	Banish Liquid Concentrated Residual Insecticide	Melter International Corp., P.O. Box 6099, New Orleans, LA 70114	Sept. 4, 1974.
1748–92	Certox P–40 Wood Preserver	York Chemical Co., Inc., 118 Fulton Ave., Garden City Park, NY 11040	May 16, 1967.
1748–94	Certox P–5 Wood Preserver	do	Sept. 6, 1967.
1990–440	Woodbury Back Rubber	Farmland Industries, Inc., P.O. Box 7305, Kansas City, MO 64116	July 26, 1963.
4959–31	Acidyne	West Agro-Chemical, Inc., P.O. Box 1386, Shawnee Mission, KS 66222	June 18, 1969.
5535–84	Gro Well Chinch Bug Killer Diazinon Spray	J. & L. Adikes, Inc., 182–12 93d Ave., Jamaica, NY 11423	Aug. 29, 1972.
5748–3	Hot Shot Fly Bait	Conwood Corp., P.O. Box 217, Memphis, TN 38101	Nov. 4, 1957.
7150–5	DI–BEX For Veterinary Use Only	Amco Drug Products Co., Inc., P.O. Box 10, North Olmsted, OH 44070	Dec. 5, 1968.
7246–7	Watch Ready To Use Roach Spray	Kemco Chemical Co., 313 Lilac St., Houston, TX 77009	June 16, 1966.
7790–1	Kel-San Big K Mint Disinfectant	Kel-San Products Co., P.O. Box 789, Knoxville, TN 37916	Sept. 27, 1962.
7943–13	Lawn Life Chinch Bug Control	Kaiser Agricultural Chemicals, Prospect Plains Rd., Cranbury, NJ 08512	May 31, 1967.
9129–4	Resid-A-Cide	The Southland Corp., Chemical Division, 2841 Pierce St., Dallas, TX 75233	June 14, 1968.
9313–21	Rose Brake	Rose Chemical Products Inc., P.O. Box 23375, Columbus, OH 43223	Mar. 14, 1973.

Registration No.	Product name	Registrant	Date registered
9779-115	Riverside Dithane M-45 Sevin 10 Dust	Riverside Chemical Co., unit of Terra Southern Corp., P.O. Box 171367, Memphis, TN 38117.	June 19, 1968.
9931-18	So-Pro-Co Air-O-Phene	Hanco Manufacturing Co., Inc., P.O. Box 4476, Memphis TN 38104	Apr. 7, 1976.
12310-29	Delete	Misco International Chemicals, Inc., 1021 South Noel Ave., Wheeling, IL 60090	Jan. 20, 1983.
18433-4	LL-7 Super Residual Spray	Lee Chemical Corp., 2800 Taft Ave., Orlando, FL 32804	Mar. 4, 1975.
39686-2	Dexan® SC	CH. Dexter Division, The Dexter Corp., 1 Elm St., Windsor Locks, CT 06096	Feb. 10, 1976.
45967-1	Kill-A-Roach Powder	Pacific Research Associates, Inc., 524 Oakdale Dr., Sierra Madre, CA 91024	Aug. 11, 1981.

The Agency has agreed that each cancellation shall be effective October 26, 1984, unless within this time the registrant, or other interested person with the concurrence of the registrant, requests that the registration be continued in effect. The registrants were notified by certified mail of this action.

The Agency has determined that the sale and distribution of these products produced on or before the effective date of cancellation may legally continue in commerce until the supply is exhausted, or for one year after the effective date of cancellation, whichever is earlier; provided that the use of these products is consistent with the label and labeling registered with EPA. Furthermore, the sale and use of existing stocks have been determined to be consistent with the purposes of FIFRA as amended. Sale or distribution of any quantity of any of these products produced after the effective date of cancellation will be considered to be a violation of the Act.

Requests that the registration of these products be continued may be submitted in triplicate to the Process Coordination Branch, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Comments may be filed regarding this notice. Written comments should bear a notation indicating the document control number "[OPP-66112]" and the specific registration number. Any comments filed regarding this notice will be available for public inspection in Rm. 236, CM#2, at the above address from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

(Sec. 6(a)(1) of FIFRA as amended, 86 Stat. 973, 89 Stat. (751), 7 U.S.C. 136))

Dated: September 8, 1984.

Steven Schatzow,

Director, Office of Pesticide Programs.

[FR Doc. 84-24915 Filed 9-25-84; 8:45 am]

BILLING CODE 6560-50-M

[OPP-180658; FRL-2675-2]

Emergency Exemptions; California Department of Food and Agriculture

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions for the control of various pests in the 10 States listed below, during the period of June 22, 1984 to July 31, 1984. Also listed are eight crisis exemptions initiated by seven States. These exemptions are subject to application and timing restrictions and reporting requirements designed to protect the environment to the maximum extent possible. Information on these restrictions is available from the contact persons in EPA listed below.

DATES: See each specific and crisis exemption for its effective dates.

FOR FURTHER INFORMATION CONTACT: See each specific and crisis exemption for the name of the contact person. The following information applies to all contact people.

By mail: 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. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1192).

SUPPLEMENTARY INFORMATION: EPA has granted specific exemptions to the:

1. California Department of Food and Agriculture for the use of methamidophos on safflowers to control beet armyworm, yellow-striped armyworm and lygus bugs; July 19, 1984 to May 31, 1985. (Gene Asbury)

2. Colorado Department of Agriculture for the use of methidathion on field corn to control Banks grass mites and two-spotted spider mites; July 16, 1984 to September 1, 1984. (Jim Tompkins)

3. Minnesota Department of Agriculture for the use of fenvalerate on sunflowers to control cutworms, sunflower beetles, banded sunflower moths, sunflower moths and seed weevils; July 22, 1984 to August 31, 1984. Minnesota had initiated a crisis exemption for this use. (Jack E. Housenger)

4. Mississippi Department of Agriculture for the use of benomyl on grain sorghum to control fusarium head mold; July 31, 1984 to September 30, 1984. EPA completed a rebuttable presumption against registration (RPAR) on this chemical; the final determination was published in the **Federal Register** of October 20, 1982 (47 FR 46747). (Jack E. Housenger)

5. Missouri Department of Agriculture for the use of methiocarb on wine grapes to control depredating birds; June 22, 1984 to November 30, 1984. (Gene Asbury)

6. Nebraska Department of Agriculture for the use of sethoxydim on potatoes to control annual grasses; July 12, 1984 to August 31, 1984. (Libby Welch)

7. New Jersey Department of Environmental Conservation for the use of sethoxydim on cabbage, cantaloupes, cucumbers, and lettuce to control large crabgrass, fall panicum, barnyardgrass and foxtail spp.; July 16, 1974 to October 1, 1984. New Jersey had initiated a crisis exemption for this use except lettuce. (Jack E. Housenger)

8. New Jersey Department of Environmental Protection for the use of methiocarb on wine grapes to control bird depredation; July 6, 1984 to November 30, 1984. (Gene Asbury)

9. New Mexico Department of Agriculture for the use of monocrotophos on field corn and corn grown for seed to control Banks grass mite; July 6, 1984 to October 31, 1984.

10. Oklahoma Department of Agriculture for the use of monocrotophos on field corn and corn grown for seed to control Banks grass mite; July 6, 1984 to August 31, 1984. (Libby Welch)

11. Texas Department of Agriculture for the use of monocrotophos on field corn and corn grown for seed to control Banks grass mite; July 6, 1984 to November 30, 1984. Texas had initated a crisis exemption for this use. (Libby Welch)

Crisis exemptions were initiated by the:

1. Alabama Department of Agriculture and Industries on June 26, 1984, for the use of anilazine on watercress to control leaf spot. Since it was anticipated that this program would be needed for more than 15 days, Alabama has requested a specific exemption to continue it. The need for this program is expected to last until October 31, 1984. (Libby Welch)

2. Arkansas State Plant Board on July 26, 1984, for the use of methiocarb on

wine grapes to control depredating birds. The need for this program has ended. (Gene Asbury)

3. California Department of Food and Agriculture on July 30, 1984, for the use of carbaryl on home garden crops to control Japanese beetles and gypsy moths. Since it was anticipated that this program would be needed for more than 15 days, California has requested a specific exemption to continue it. The need for this program is expected to last until July 30, 1985. (Jim Tompkins)

4. Michigan Department of Agriculture on June 25, 1984, for the use of sethoxydim on onions to control weeds. The need for this program has ended. (Gene Asbury)

5. Michigan Department of Agriculture on June 25, 1984, for the use of fluazifop-butyl on onions to control weeds. The need for this program has ended. (Gene Asbury)

6. New Mexico Department of Agriculture on July 3. 1984, for the use of sodium chlorate as a dessicant on wheat. The need for this program has ended. (Jim Tompkins)

7. Texas Department of Agriculture on June 29, 1984, for the use of sodium chlorate as a dessicant on wheat. The need for this program has ended. (Jim Tompkins)

8. Wisconsin Department of Agriculture, Trade and Consumer Protection on July 3, 1984, for the use of mancozeb on wild rice to control brown spot. Since it was anticipated that this program would be needed for more than 15 days, Wisconsin has requested a specific exemption to continue it. The need for this program is expected to last until September 30, 1984. (Jim Tompkins)

(Sec. 18, as amended, 92 Stat. 819 (7 U.S.C. 136))

Dated: September 4, 1984.

Steven Schatzow,

Director, Office of Pesticide Programs.

[FR Doc. 84-24916 Filed 9-25-84; 8:45 am]

BILLING CODE 6560-50-M

[OPP-50619A FRL-2675-4]

Issuance of an Experimental Use Permit, Zoecon Industries; Correction

AGENCY: Environmental Protection Agency.

ACTION: Notice; correction.

SUMMARY: This notice corrects an experimental use permit, issued to Zoecon Industries, No. 2724-EUP-39, that was published in the **Federal Register** of June 29, 1984 (49 FR 26805).

FOR FURTHER INFORMATION CONTACT:

By mail: George LaRocca, Product Manager (PM) 15, 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. 204, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-2400).

SUPPLEMENTARY INFORMATION: In FR Doc. 84-17370, appearing at page 26805 in the **Federal Register** of June 29, 1984, EPA issued an experimental use permit to Zoecon Industries. Various data were incorrectly listed. The EUP is corrected to read as follows:

2724-EUP-39

Issuance. Zoecon Industries, 12200 Denton Drive, Dallas, TX 75234. This experimental use permit allows the use of 50 pounds of the insecticide N-(mercaptomethyl)phthalimide S-(O,O-dimethylphosphorodithioate) in ear tags on beef cattle to evaluate the control of Gulf Coast ticks, face flies, horn flies, spinose ear ticks, and stable flies. A total of 5,000 head of cattle are involved; the program is authorized only in the States of California, Florida, Indiana, Kentucky, Mississippi, New Mexico, Oklahoma, Pennsylvania, and Texas. The experimental use permit is effective from May 25, 1984 to May 25, 1986. A permanent tolerance for residues of the active ingredient in or on cattle has been established (40 CFR 180.261).

Dated: September 7, 1984.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 84-24921 Filed 9-25-84; 8:45 am]

BILLING CODE 6560-50-M

[OPP-30000/41]

Linuron; Special Review of Certain Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This Notice announces that EPA is initiating a Special Review of all pesticide products containing the active ingredient linuron [3-(3,4-dicholorophenyl)-1-methoxy-1-methylurea]. EPA has determined that linuron is oncogenic in rats and mice and meets or exceeds the risk criterion as described in 40 CFR 162.11. Accordingly, a Special Review of products containing linuron is appropriate to determine whether registration of these products should be permitted to continue and, if so, under what terms and conditions. During the Special Review process, EPA will carefully examine the risks and benefits of using linuron products and will determine the necessity for regulatory actions.

DATE: Comments, evidence to rebut the presumption in this Notice, and other relevant information must be received on or before November 13, 1984.

ADDRESS: Written comments identified as "OPP-30000/41," by mail to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460

In person, bring comments to: Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment containing material claimed to CBI must be submitted with the CBI portions deleted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Room 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Ingrid M. Sunzanauer, 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. 717, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-7400).

SUPPLEMENTARY INFORMATION: The term "Special Review" is the name now being used by EPA for the process previously called the Rebuttable Presumption Against Registration (RPAR) process. Modifications in the process will be proposed in regulations in the near future. Until other applicable final regulations are adopted, the present Special Review will adhere to RPAR procedures now in effect and set forth in 40 CFR 162.11.

EPA has determined that a Special Review will be conducted for all pesticide products containing linuron as an active ingredient. EPA has also determined that data necessary to refine the Agency's risk assessment must be developed on an accelerated basis, and that interim precautionary labeling is

required to reduce risk during the Special Review process.

Issuance of this Notice means that potential hazards associated with the use of linuron have been identified. These hazards will be examined further to determine the nature and extent of the risk, and considering the benefits of linuron, whether such risks pose an unreasonable adverse effect.

A document entitled "Guidance for the Interim Registration of Pesticide Products Containing Linuron" (Guidance Document) has been issued. (This document is also referred to as a Registration Standard.) The Guidance Document is available to the public from the above-identified contact person. This document explains the basis of EPA's decision to start a Special Review and also contains references, background information, data requirements, and other information pertinent to the continued registration of pesticides containing linuron.

I. Initiation of a Special Review

A. General

A pesticide product may be sold or distributed in the United States only if it is registered or exempt from registration under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136 *et. seq.*). Before a product will be registered, it must be shown that it can be used without "unreasonable adverse effects on the environment" (FIFRA section 3(c)(5)), that is without causing "any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of the pesticide." (FIFRA Section 2(bb)). The burden of proving that a pesticide meets this standard for registration is on the proponent of initial or continued registration. If at any time the Agency determines that a pesticide no longer meets this standard of registration, then the Administrator may cancel the registration under section 6 of FIFRA.

The Agency has created an administrative process for fully evaluating whether a pesticide may no longer satisfy the statutory standard for registration. This Special Review (RPAR) process provides an informal procedure through which EPA may gather and evaluate information about the risks and benefits of a pesticide's use. It also provides a means by which interested members of the public may comment on and participate in EPA's decision making process. The regulations governing this process are set forth at 40 CFR 162.11.

A Special Review (RPAR) is begun when EPA determines that a pesticide meets or exceeds one or more of the risk criteria set out in the regulations (40 CFR 162.11(a)(3)). The Agency announces its commencement of the Special Review by issuing a notice of determination for publication in the Federal Register, which is also called a Position Document (PD) 1. In addition, registrants of affected products will receive notice by certified mail. Registrants and other interested persons are invited to scrutinize the basis for the Agency's decision to initiate the Special Review and may submit data and information to show that the Agency's determination of risk was in error. Registrants and users may also suggest methods to reduce risks of use of the pesticide to acceptable levels. In addition to addressing risk issues, commenters are encouraged to submit evidence and discussions of the biologic, economic, social, and environmental costs and benefits of the use of the pesticide.

Following the initiation of the Special Review, the pesticide use or uses of concern will enter the public participation stage of the Special Review process. Registrants and interested members of the public may submit written comments, information, or request public discussions on the Agency's proposed actions and/or other proposals for additional or alternative actions. Registrants may submit information indicating that linuron does not pose a health risk to man or the environment and/or that the benefits exceed the risks associated with linuron use. Interested members of the public may submit information concerning the risks and benefits associated with the use of linuron. The public participation stage is described in more detail in Unit V.

If risk issues are not satisfactorily resolved, EPA will proceed to evaluate the risks and benefits of linuron and to propose actions in PD 2/3 to reduce the risks. After obtaining comments from the Scientific Advisory Panel, the Secretary of Agriculture, registrants, and the public of the PD 2/3, EPD will issue a PD 4 containing EPA's final regulatory position. If EPA determines that the risks of use exceed the benefits, EPA will issue a notice of intent to cancel the registration of products intended for such use. The notice may propose cancellation or identify for specific uses certain changes in the composition, packaging, application methods and/or labeling of the product which would reduce the risks to acceptable levels.

A notice initiating a Special Review is not a notice of intent to cancel the registration of a pesticide, and a Special Review may or may not lead to cancellation. A notice initiating a Special Review is an announcement of EPA's concern about the safety of a pesticide's use, and only after carefully considering the risks and benefits of a pesticide and determining that the pesticide will cause unreasonable adverse effects on man or on the environment, will EPA issue a notice of intent to cancel.

B. Presumption

EPA has determined that the use of pesticide products containing linuron has exceeded the risk criteria in 40 CFR 162.11(a)(3)(ii)(A). That section provides that a Special Review (RPAR) shall be conducted if the use of a pesticide "induces oncogenic effects in experimental mammalian species or in man as a result of oral, inhalation or dermal exposure. . . ." On the basis of the scientific studies and information summarized in the Guidance Document, EPA has concluded that linuron has exceeded this risk criterion.

Spacifically, data indicate that linuron induces dose-related tumors in rats. In a 2-year study male rats developed interstitial cell testicular adenomas. The frequency of these adenomas increased with the dose, and the increase was statistically significant for the two higher dose groups. Information was insufficient to indicate the extent that these tumors might be related to endocrine changes.

The 2-year study mouse showed a statistically significant increase in hepatocellular adenomas in the highest dose group for female mice, but only borderline statistically significant hepatocellular adenomas for male mice and only for the lowest dose group.

The Agency used the multi-stage model to calculate a preliminary risk analysis based on the rat study. This study was used as a basis for the risk calculations because it contained the most sensitive and the most definitive dose-related increase in tumors.

The Agency calculated three estimates for the potential dietary exposure of linuron. These dietary estimates assume a uniform distribution of treated crops among the U.S. population and an average daily consumption of those crops by individuals. Although an individual's exposure could vary considerably depending upon eating habits and geographic location, the values are considered representative for the total U.S. population over a lifetime.

The first estimate was based on the tolerances and assumed that residues are at 100 percent of these levels. Tolerances are the maximum residue

levels permitted on crops by the Agency. The second estimate used the maximum residues expected and is based on actual residue levels found in the field. The third estimate was based on the maximum residue expected multiplied by a rough estimate of percent crop treated. This resulted in giving a more realistic estimate of the residues which may reach humans through the diet. This estimate resulted in a dietary risk of 2×10^{-5}, which the Agency has determined is significant. The following Table 1 presents the results from all three estimates:

TABLE 1.—ONCOGENIC RISK FROM DIETARY EXPOSURE TO LINURON

Assumption	TMRC [1] (milligram per day)	Risk
100 pct. tolerance	0.3248	1×10^{-3}
MRE [2]	0.0790	4×10^{-4}
MRE [2] × percent of crop treated	0.0027	2×10^{-5}

[1] Theoretical maximum residue contribution.
[2] Maximum residue expected.

The Agency is aware that dietary exposure through water contamination is possible. Limited monitoring data collected in 1983 in northwestern Ohio shows the presence of linuron at low levels in surface and tap water. However, additional data are needed to assess the potential exposure and risk from linuron in drinking water. The Agency will assess this issue during the Special Review.

Non-dietary risk was also calculated. The Agency limited the non-dietary exposure analysis for linuron to the major use site, soybeans. To estimate exposure, the Agency used a surrogate study from Monsanto Company, which was based on alachlor application to soybeans. The type of formulation and method of application of alachlor are the same as for linuron. Thus, the surrogate study should provide adequate information to assess applicator exposure for linuron. The application rate for linuron is one fourth the rate of alachlor in all formulations for soybean application.

The Agency used the following assumption to estimate linuron exposure to a soybean farmer. Potential exposure for a farmer as an applicator, mixer/loader, or both were calculated. Use by commercial applicators was not included.

(1) The farmer is a 70-kg man.

(2) As an applicator, the farmer may treat a 100-acre plot per day and may treat up to 600 acres per year. Consequently, he may be exposed to linuron from 1 to 6 days per year.

(3) As a mixer/loader, the farmer may be exposed for approximately 15 minutes per tank and may be expected to load five tanks per day for 100 acres.

(4) Respiratory exposure is not estimated because the values calculated for the inhalation exposure for alachlor are statistically insignificant compared to those for dermal exposure values.

(5) The Agency assumes a lifetime exposure of 30 working years.

(6) In the absence of data, the Agency assumes 100 percent dermal penetration.

The Agency calculated three exposure estimates. The first estimate represents maximum exposure because it assumes the farmer is not wearing protective clothing. In the surrogate data, dermal exposure was assessed by measuring alachlor residues on gloves or gauze pads.

The second estimate assumes the farmer is wearing protective clothing, including rubber gloves and one-piece coveralls. The Agency assumes the protective clothing reduces exposure 80 percent. Some pesticide will still filter in around the edges of the collar, cuffs, and hems. Based on the surrogate data, the gloves are assumed to reduce exposure 97 percent. Exposure to unprotected areas such as face, back of the neck, front of the neck, and "V" of the chest will also result.

The third estimate assumes the farmer is wearing protective clothing as in the second estimate, but that none of the pesticide filters in. It is assumed that those areas protected by the clothing have 100 percent protection. However, exposure to the unprotected areas still results.

The three applicator exposure estimates are presented in the following Table. 2:

TABLE 2.—LINURON DERMAL EXPOSURE FOR A FARMER DURING GROUND APPLICATION TO SOYBEANS

Estimate	Units mg/kg	mg/hr	mg/kg/hr	mg/kg/lb	mg/kg/day	Annual exposure range [3] (1day/yr to 6 days/yr) mg/kg/yr	Average daily exposure [3] (1day/yr to 6 days/yr), mg/kg/day	
1st estimate:								
Mixer/loader	0.21	61	0.88	0.0093	1.058	1.058—6.336	2.9×10^{-3}	1.7×10^{-2}
Applicator	0.007	0.45	0.0064	0.00032	0.032	0.032—0.192	8.8×10^{-5}	5.3×10^{-4}
Combined [1]					1.066	1.066—6,528	3.0×10^{-3}	1.8×10^{-2}
2d estimate:								
Mixer/loader	0.024	7	0.10	0.0011	0.12	0.12—0.72	3.3×10^{-4}	2.0×10^{-3}
Applicator	0.0013	0.084	0.0012	0.000059	0.0058	0.0058—0.035	1.6×10^{-5}	9.5×10^{-5}
Combined [1]					0.13	0.13—0.76	3.5×10^{-4}	2.1×10^{-3}
3d estimate:								
Mixer/Loader	0.0058	1.7	0.025	0.00026	0.030	0.030—0.18	8.1×10^{-5}	4.9×10^{-4}
Applicator	0.00015	0.0097	0.00014	0.0000068	0.00066	0.00066—0.004	1.8×10^{-6}	1.1×10^{-5}
Combined [1]					0.03	0.03—0.19	8.3×10^{-5}	5.0×10^{-4}

[1] (Applicator mg/kg/day) + (mixer/loaders mg/kg/day).
[2] As an applicator, the farmer may treat a 100-acre plot per day and may treat up to 600 acres per year. Consequently, he may be exposed to linuron from 1 to 6 days per year.
[3] Annual exposure range over 365 days.

Using the multi-stage model, the Agency calculated the non-dietary oncogenic risk to farmers applying linuron. This model is a statistical means to estimate the potential lifetime risk. The figures resulting from the model vary slightly from those in the Guidance Document because they incorporate the label changes concerning protective clothing required by that document. The oncogenic risk to a farmer applying linuron to soybeans

using ground application is presented in the following Table 3:

TABLE 3.—ONCOGENIC RISK TO A FARMER APPLYING LINURON TO SOYBEANS USING GROUND APPLICATION

Estimate	Risk (1 day per year)	Risk (6 days per year)
1st estimate:		
Mixer/loader	4×10^{-4}	2×10^{-3}
Applicator	1×10^{-5}	7×10^{-5}
Combined	4×10^{-4}	3×10^{-3}
2d estimate:		
Mixer/loader	5×10^{-5}	3×10^{-4}
Applicator	2×10^{-6}	1×10^{-5}
Combined	5×10^{-5}	3×10^{-4}
3d estimate:		
Mixer/loader	1×10^{-5}	7×10^{-5}
Applicator	3×10^{-7}	2×10^{-6}
Combined	1×10^{-5}	7×10^{-5}

In the Guidance Document the Agency determined the most reasonable estimate to be the first one, in which the farmer does not wear protective clothing. However, in the Guidance Document the Agency required registrants to revise labeling for all uses to include protective clothing. Thus, the most reasonable estimate for exposure to linuron assumes applicators are wearing protective clothing. Since linuron will likely filter in around the edges of the collar, cuffs, hem, and tops of the gloves, the second estimate is the most realistic one. In addition, it is likely that a farmer will mix, load, and apply linuron. This results in a risk of 5×10^{-5} to 3×10^{-4}. The Agency has determined that this risk is significant.

Because of the Agency's concerns, the Guidance Document also required registrants to change labeling to include a warning statement that linuron causes tumors in laboratory animals, and to indicate that linuron's classification is changed to "restricted use." Under section 4 of FIFRA this means that only certified applicators trained for and familiar with pesticide use, or persons under their direct supervision, will be able to use linuron. This restricted use classification applies to all use patterns and application techniques.

The Guidance Document requires registrants to submit approximately 50 studies which will be used to refine the Agency's risk analysis. Included are toxicology, residue chemistry and applicator exposure studies, as well as environmental fate and product chemistry studies needed to characterize the potential for linuron to contaminate water. EPA is requiring that these studies be conducted within 6 months to 2 years, depending on the test. Most are due within one year or less and will be included in PD 2/3. Once the comments to the PD 2/3 have been analyzed, EPA will determine whether to delay the PD 4 to include the results from the longer term studies. Studies not included in the PD 4 would be reviewed when they are submitted and any necessary changes to the Agency's regulatory position would be proposed, if appropriate.

As discussed in the Guidance Document, all currently registered products will remain registered while the Special Review is in progress. Thus, the Agency is deferring final decisions on the reregistration of any products containing linuron as a sole active ingredient until the Agency concludes the Special Review. The Agency will not register any new uses of linuron until the Special Review is completed. The Agency will also not consider approving the pending requests for tolerances for linuron on sugar and lettuce or issue any new tolerances during the Special Review.

C. Rebuttal Criteria

All registrants, applicants for registration, and other interested members of the public are invited to submit evidence either to support or to rebut the presumption that linuron causes oncogenic effects in rats and may cause such effects in humans. Under 40 CFR 162.11(a)(4)(iii) the presumption initiating a Special Review must be rebutted by proving, in the case of acute and chronic toxicity criteria, "that the determination by the Agency that the pesticide meets or exceeds any of the criteria for risk was in error."

D. Benefits Information

The Agency will perform a benefits analysis for linuron during Special Review. The following information briefly summarizes the benefits of linuron.

E. I. duPont de Nemours, Inc. is the major producer of the technical product. Griffin Corporation and Drexel Chemical Company currently hold the other technical registrations. Estimates of domestic production are considered trade secret or proprietary under section 10 of FIFRA.

Linuron is a herbicide used mainly on soybeans, but is also federally registered for use on carrots, celery, asparagus, corn (field and sweet), cotton, parsnips, potatoes, sorghum, and winter wheat. Registered non-food sites include golf course fairways, golf tee areas, sod fields, fencerows, highway rights-of-way, streets, alleys, and vacant lots. Linuron is currently used in Michigan, under a State local need registration, for weed control in hybrid poplar plantings. In 1982, a FIFRA section 18 emergency exemption was granted to the State of Massachusetts for use of linuron on 300 acres of dry bulb onions to control galinsoga and other broadleaf weeds.

None of the alternative soybean herbicides for linuron control the same spectrum of weeds. If linuron is not used in certain situations, it is claimed that certain weeds may not be controlled or more than one alternative may be needed to obtain equal control. Treatment costs may increase, if linuron is not available.

The most used alternative to linuron on soybeans is the triazine herbicide, metribuzin. The cost per acre for metribuzin is nearly the same. It is claimed that linuron is very effective on weeds in sandy and sandy loam soil with less thn 2 percent organic matter, while metribuzin is restricted from use on such soils. Metribuzin may also not be used on certain varities of soybens. In addition it is claimed that linuron will control the triazine-resistant weeds pigweed and lambsquarter.

The seond most used alternative to linuron on soybeans is bentazon. The cost per treated acre is approximately 52 percent higher than linuron. Acifluorfen is another alternative which costs approximately 24 percent more than linuron per acre. Both of these herbicides are more limited in their weed spectrum than linuron have no residual control, and proper timing of application is more critical. Chloramben and Dyanap® (naptalam plus dinoseb) are the two other alternatives and cost 6 and 11 percent more per are, respetively. Dyanap® must be applied just as soybeans are emerging and offers no residual control. These alternatives control a more limited spectrum of weeds than linuron.

In addition to submitting evidence to rebut the presumptions of risk in the Special Review, 40 CFR 162.11(a)(5)(iii) provides that a registrant or applicant "may submit evidence as to whether the economic, social and environmental benefits of the use of the pesticide subject to the presumption outweigh the risk of use." If the presumption of risk is not rebutted, the benefits evidence submitted by registrants, applicants, and other interested persons will be considered by the Administrator when determining the appropriate regulatory action.

Registrants, applicants or other interested persons who desire to submit benefits information should consider submitting information on the following subjects along with any other relevant information they desire to submit:

1. Identification of the biological and economic importance of linuron uses,

incuding market studies and estimated quantities applied for those uses.

2. Identification of alternative chemical and non-chemical methods for all registered uses and application techniques, including any associated health effects and potential for water contamination.

3. Determination of the change in costs to linuron users of obtaining equivalent pest control with available substitute products or management techniques.

4. Assessment of the expected changes in level of efficacy, crop yield, crop quality, crop injury, harvesting efficiency and environmental impacts associated with the use of alternative control measures.

5. Identification of increased or reduced risks associated with the mixing, loading, applying, and disposing of alternative chemicals, and of other hazards associated with their potential increase in use if linuron were not available. Describe application equipment types, percent use of protective tractor cabs, protective clothing, and mixing/loading/disposing procedures for the alternative chemicals.

6. Identification of cultural practices, spray applications, and other factors that impact on farmworker exposure to linuron and any alternative cultural or Integrated Pest Management practices, which might limit the use of linuron.

II. Additional Grounds for Review

In the Guidane Document EPA is requiring, pursuant to section 3(c)(2)(B) of FIFRA, that additional product chemistry, toxicology, ecological effects, residue chemistry and environmental fate studies of linuron be submitted. Upon receipt of these studies, they will be reviewed to determine the extent to which other adverse effets may be associated with the use of this chemical.

III. Rebuttal Submission Procedures

All registrants and applicants for registration are being notified by certified mail of the Special Review being initiated on their products containing linuron.

The registrants and applicants for registration will have 45 days from the date this notice is received or until November 13, 1984 (whichever is later) to submit evidence in rebuttal to the Agency's presumption. Other interested parties may submit comments during the same period.

IV. Duty To Submit Information on Adverse Effects

Registrants are required by section 6(a)(2) of FIFRA to submit any additional information regarding unreasonable adverse effects on man or the environment which comes to their attention at any time. Registrants of linuron products must immediately submit any published or unpublished information, studies, reports, analyses, or reanalyses regarding any linuron effects in animal species or humans, and claimed or verified accidents to humans, domestic animals, or wildlife which have not been previously submitted to EPA. These data should be submitted with a cover letter specifically identifying the information as being submitted under section 6(a)(2) of FIFRA. Registrants should notify EPA of any studies on linuron currently in progress, their purpose, the protocol, the approximate completion date, a summary of all results observed to date, the name and address of the laboratory performing the studies, and a statement as to whether these studies are being conducted in accordance with the Good Laboratory Practices specified in 48 FR 53946.

V. Public Comment Opportunity

During the time allowed for submission of rebuttal evidence, specific comments are solicited on the presumptions set forth in this Notice and in the Guidance Document. In particular, any documented episodes of adverse effects on humans or domestic animals should be submitted to the Agency as soon as possible. Any information as to any laboratory studies in progress or completed should be submitted to the Agency as soon as possible with a statement as to whether those studies are in compliance with the Good Laboratory Practices specified in 48 FR 53946. Specifically, information on any adverse toxicological effects of linuron, its impurities, metabolites, and degradation products is solicited. Similarly, submission of any studies or comments on the benefits from the use of linuron is requested. All comments and information and analyses, which come to the attention of EPA, may serve as a basis for final determination of regulatory action following the Special Review.

All comments and information should be sent to the address given above, preferrably in triplicate, to facilitate the work of EPA and others interested in inspecting them. The comments and information should bear the identifying notation [OPP-30000/41].

During the comment period, interested members of the public or registrants may request a meeting to discuss the risk issues and methods of reducing risks. Prior to such meetings, the Agency will place an agenda and list of meeting participants in the public docket. Any member of the public interested in obtaining a copy of the agenda prior to the meeting with the Agency to discuss issues in connection with this Special Review should notify the contact person listed in this Notice. Any records pertaining to such meetings, including minutes, agendas, and comments received will be filed under docket number OPP-30000/41.

Dated: September 13, 1984.

Steven Schatzow,

Director, Office of Pesticide Programs.

[FR Doc. 84-25139 Filed 9-25-84; 8:45 am]

BILLING CODE 6560-50-M

[WH-FRL-2671-7]

State and Local Assistance; Grants for Construction of Treatment Works

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of allotment: Fiscal Year 1985.

SUMMARY: This notice sets forth the allotment to the States of the $2.4 billion appropriated on July 18, 1984, by Pub. L. 98-371 for the municipal wastewater treatment works construction grants program.

Section 205(c)(2) of the Clean Water Act (the Act) provides that sums authorized to be appropriated for Fiscal Year 1985 be allotted to the States in accordance with the table added to that section by Pub. L. 97-117.

Through promulgation of this notice, the requirements of the Act are fulfilled and the public is notified of the amounts made available to the States for grants for the construction of municipal wastewater treatment works.

DATE: September 26, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Arnold B. Speiser, Program Policy Branch, Municipal Construction Division, Office of Water Program Operations, (202) 382-7377.

SUPPLEMENTARY INFORMATION: Pub. L. 98-371 appropriated $2.4 billion to fund the construction grants program in Fiscal Year 1985. As required by section 205(c)(2) of the Clean Water Act (the Act), funds appropriated for Fiscal Year 1985 are hereby allotted on the basis of the percentages listed in the table added to section 205(c)(2) by Pub. L. 97-117. The percentages were applied to the $2.4 billion to determine the actual dollar amount allotted to each State.

The table of allotments reflects a revised* formula first used in Fiscal

* The new formula uses the following weights: needs categories I, II and IV b=50%; needs categories I, II, III, IV, and V=25%; 1976 population=25%.

Year 1983 and conforms to section 205(e) of the Act, which requires that no State shall receive less than one half of one percent of a total allotment. The table appears at the end of this notice.

The $2.4 billion is allotted as follows:

FY 1985 State Allotment Based on $2.4 Billion Appropriation

[In thousands]

	Ratio	Dollars
Alabama	.011398	27,355
Alaska	.006101	14,642
Arizona	.006885	16,524
Arkansas	.006668	16,003
California	.072901	174,964
Colorado	.008154	19,569
Connecticut	.012487	29,969
Delaware	.004965	11,916
District	.004965	11,916
Florida	.034407	82,577
Georgia	.017234	41,362
Hawaii	.007895	18,948
Idaho	.004965	11,916
Illinois	.046101	110,643
Indiana	.024566	58,959
Iowa	.013796	33,110
Kansas	.009201	22,082
Kentucky	.012973	31,135
Louisiana	.011205	26,892
Maine	.007788	18,691
Maryland	.024653	59,168
Massachusetts	.034608	83,060
Michigan	.043829	105,191
Minnesota	.018735	44,964
Mississippi	.009184	22,041
Missouri	.028257	67,817
Montana	.004965	11,916
Nebraska	.005214	12,513
Nevada	.004965	11,916
New Hampshire	.010186	24,446
New Jersey	.041654	99,970
New Mexico	.004965	11,916
New York	.113097	271,436
North Carolina	.018396	44,151
North Dakota	.004965	11,916
Ohio	.057383	137,721
Oklahoma	.008235	19,764
Oregon	.011515	27,636
Pennsylvania	.040377	96,906
Rhode Island	.006750	16,200
South Carolina	.010442	25,061
South Dakota	.004965	11,916
Tennessee	.014807	35,537
Texas	.038726	92,943
Utah	.005371	12,890
Vermont	.004965	11,916
Virginia	.020861	50,067
Washington	.017726	42,542
West Virginia	.015890	38,136
Wisconsin	.027557	66,137
Wyoming	.004965	11,916
Samoa	.000915	2,196
Guam	.000662	1,588
N. Marianas	.000425	1,020
Puerto Rico	.013295	31,908
Pac. Tr. Ter	.001305	3,132
Virgin Isles	.000531	1,274
U.S. Totals	.999996	2,400,000

These allotments are available for obligation until September 30, 1986. After that date, unobligated balances will be realloted under section 205(d) of the Act (40 CFR 35.2010). Grants from the allotments may be awarded after October 1, 1984, and following the issuance of advices of allowance to the EPA Regional Administrators by the Comptroller of EPA.

Dated: September 19, 1984.

William D. Ruckelshaus,

Administrator.

[FR Doc. 84-25496 Filed 9-25-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public; Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Notice of Issuance of Certificate [Casualty]

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons On Voyages pursuant to the provisions of Section 2, Pub. L. 89-777 (80 Stat. 1356, 1357) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540): K/S A/S Norske Cruise, A/S Norske Cruise and Helge Naarstad A/S, c/o Sea Goddess Cruises Limited, 5805 Blue Lagoon Drive, Miami, Florida 33126.

Dated: September 21, 1984.

Francis C. Hurney,

Secretary.

[FR Doc. 84-25525 Filed 9-25-84; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License; Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR Part 510.

License No.	Name/address	Date revoked
1025	American Union Transport Florida, Inc., Box 522037, Miami, FL 33152.	Sept. 2, 1984.
2720	Anthony Hayden, d.b.a. World Consultations Co., 33 Rector St., New York, NY 10006.	Sept. 6, 1984.
1738	Transpacific Air Cargo, Inc., 714 South Isis Ave., Inglewood, CA 90301.	Sept. 6, 1984.
1829	Nittler Forwarding, Inc., 426 Route 130, Dayton, NJ 08810.	Sept. 12, 1984.

Robert G. Drew,

Director, Bureau of Tariffs.

[FR Doc. 84-25524 Filed 9-25-84; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Gaylord Bankshares, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conficts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 18, 1984.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Gaylord Bankshares, Inc.*, Gaylord, Kansas; to acquire Valley Insurance Agency, Gaylord, Kansas, thereby engaging in the activity of acting as agent for the sale of general insurance in a town with a population not exceeding 5,000, where the holding company or its

subsidiaries are otherwise engaged in business.

Board of Governors of the Federal Reserve System, September 20, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-25450 Filed 9-25-84; 8:45 am]

BILLING CODE 6210-01-M

The International Commercial Bank of China, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specificially any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 17, 1984.

A. Federal Reserve Bank of New York (A. Marshall Puckett, Vice President), 33 Liberty Street, New York, New York 10045:

1. *The International Commercial Bank of China*, Taipei, Taiwan, Republic of China; to become a bank holding company by acquiring 93.328 percent of the voting shares of The Chinese American Bank, New York, New York.

B. Federal Reserve Bank of Cleveland (Lee S. Adams, Vice President), 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Kingston Bancshares, Inc.*, Kingston, Ohio; to become a bank holding company by acquiring 80 percent of the voting shares of Kingston National Bank, Kingston, Ohio.

C. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President), 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Consolidated Bancshares, Inc.*, Chattanooga, Tennessee; to become a bank holding company by acquiring 80 percent of the voting shares of Volunteer Bank & Trust Company of Hamilton County, Chattanooga, Tennessee.

D. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President), 400 South Akard Street, Dallas, Texas 75222:

1. *Equitable Bancshares, Inc.*, Dallas, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Equitable Bank, Dallas, Texas.

2. *Houston City Bancshares, Inc.*, Houston, Texas; to become a bank holding company by acquiring 80 percent of the voting shares of Citizens National Bank-West, Houston, Texas.

3. *Morton Financial Corporation*, Morton, Texas; to become a bank holding company by acquiring 80 percent of the voting shares of Morton Bancshares, Inc., Morton, Texas, thereby indirectly acquiring First State Bank, Morton, Texas.

Board of Governors of the Federal Reserve System, September 20, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-25451 Filed 9-25-84; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

[GSA Bulletin FPMR A-40, Supp. 11]

Change to Federal Travel Regulations

Corrections

In FR Doc. 84-22610 beginning on page 33937 in the issue of Monday, August 27, 1984, make the following corrections:

1. On page 33938, in the first column, in the second line of the heading preceding the last paragraph, "Allowances" should read "Allowance".

2. On the same page, in the same column, the third line of the last paragraph, "1984" should read "1983".

3. On the same page, in the second column, the last line of the first full paragraph, "1984" should read "1983".

BILLING CODE 1505-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 84P-0297]

Food for Human Consumption; Enriched Bread Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to the Purity Baking Co. to market test a bread enriched to the nutrient levels recommended by the National Academy of Sciences, Food and Nutrition Board (FNB), in 1974 (with the exception that iron will remain at the level required by the standard of identity for enriched bread). The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the food.

DATES: This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but no later than December 26, 1984.

FOR FURTHER INFORMATION CONTACT: F. Leo Kauffman, Center for Food Safety and Applied Nutrition (HFF-214), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0107.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of a standard of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to the Purity Baking Co., Decatur, IL 62525.

The permit covers limited interstate marketing tests of enriched special formula bread. The test product deviates from the standard or identity for enriched bread, 21 CFR 136.115, in that it will contain in each 2-slice (approximately 2 ounces) serving: (1) 6 percent of the U.S. Recommended Daily Allowance (RDA) of vitamin A, (2) 8 percent of the U.S. RDA of vitamin B-6, (3) 8 percent of the U.S. RDA of folic acid, (4) 6 percent of the U.S. RDA of magnesium, and (5) 6 percent of the U.S. RDA of zinc. The test product meets all requirements of § 136.115 with the exception of these deviations.

The permit provides for the temporary marketing of 400,000 pounds per week of the product. The test product will be distributed in the States of Illinois, Indiana, and Missouri. The test product is to be manufactured at the Purity Baking Co. plant, Rockford, IL 61104.

The principal display panel of the label states the product name as "enriched special formula bread", and each of the ingredients used is stated on the label as required by the applicable sections of 21 CFR Part 101. A side-by-side comparison of the percentage of U.S. RDA's for nutrients in the test product and in regular enriched bread is shown on the label for the applicable nutrients. This permit is effective for 15 months, beginning on the date the test product is introduced or caused to be introduced into interstate commerce, but no later than December 26, 1984.

Dated: September 17, 1984.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 84-25440 Filed 9-25-84; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 84F-0285]

Calgon Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Calgon Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of increased levels of 1,2-dibromo-2,4-dicyanobutane as a preservative in the manufacture of paper and paperboard that may contact food.

FOR FURTHER INFORMATION CONTACT: Blondell Anderson, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5740.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 4B3814) has been filed by Calgon Corp., Calgon Center, Box 1346, Pittsburgh, PA 15230, proposing that § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) be amended to provide for the safe use of increased levels of 1,2-dibromo-2,4-dicyanobutane as a preservative in the manufacture of paper and paperboard that may contact food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c) (proposed December 11, 1979; 44 FR 71742).

Dated: September 17, 1984.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 84-25432 Filed 9-25-84; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 84C-0298]

Coopervision, Inc.; Filing of Color Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Coopervision, Inc., has filed a petition proposing that the color additive regulations be amended to provide for the safe use of the colored polymeric reaction products formed by chemically bonding certain dyes, used singly or in combination, with poly(hydroxyethylmethacrylate) for coloring contact lenses.

FOR FURTHER INFORMATION CONTACT: Andrew D. Laumbach, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 706(d)(1), 74 Stat. 402-403 (21 U.S.C. 376(d)(1))), notice is given that a petition (CAP 4C0187) has been filed by Coopervision, Inc., 2801 Orchard Pkwy., San Jose, CA 95134, proposing that the color additive regulations be amended to provide for the safe use of the colored polymeric reaction products formed by chemically bonding certain dyes, used singly or in combination with poly(hydroxyethyl methacrylate) for coloring contact lenses. The dyes are: C.I. Reactive Blue 11, CI. Reactive yellow 86, and C.I. Reactive Blue 163.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c) (proposed December 11, 1979; 44 FR 71742).

Dated: September 17, 1984.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 84-25438 Filed 9-25-84; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 84F-0300]

Ciba-Geigy Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba-Geigy Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of tetrakis [methylene(3,5-di-*tert*-butyl-4-hydroxyhydrocinnamate)] methane as an antioxidant and/or stabilizer in ethylene terephthalate polymers intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Vir Anand, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 4B3822) has been filed by Ciba-Geigy Corp., Three Skyline Dr., Hawthorne, NY 10532, proposing that the food additive regulations be amended to provide for the safe use of tetrakis [methylene(3,5-di-*tert*-butyl-4-hydroxyhydrocinnamate)] methane as an antioxidant and/or stabilizer in ethylene polymers, complying with 21 CFR 177.1630, intended to contact food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c) (proposed December 11, 1979; 44 FR 71742).

Dated: September 17, 1984.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 84-25437 Filed 9-25-84; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 84F-0301]

Celanese Engineering Resins; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Celanese Engineering Resins has filed a petition proposing that the food additive regulations be amended to provide for the safe use of the polyoxymethylene copolymer as an article or component of articles intended for repeated food-contact use.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 4B3784) has been filed by Celanese Engineering Resins, a division of Celanese Corp., 26 Main St., Chatham, NJ 07928, proposing that § 177.2470(c)(2) *Polyoxymethylene copolymer* (21 CFR 177.2470(c)(2)) be changed to provide for the safe use of the polyoxymethylene copolymer with a minimum number average molecular weight of 15,000 for the copolymer rather than the 20,000 as presently listed.

The agency has determined under § 25.24(b)(22) (proposed December 11, 1979; 44 FR 71742) that this action is a technical change to an existing regulation and is categorically exempt from the need to submit an environmental assessment.

Dated: September 17, 1984.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 84-25436 Filed 9-25-84; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 84F-0286]

General Electric Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a petition has been filed on behalf of the General Electric Co., proposing that the food additive regulations be amended to remove the restrictions that limit the use of poly(tetramethylene terephthalate) intended for use in contact with nonalcoholic foods.

FOR FURTHER INFORMATION CONTACT: Patricia J. McLaughlin, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 292-474-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 4B3788) has been filed on behalf of the General Electric Co., c/o 1150 17th St. NW., Suite 1000, Washington, DC 20036, proposing that some limitations in § 177.1660 *Poly(tetramethylene terephthalate)* (21 CFR 177.1660) be removed. The petition would remove the restrictions that limit poly(tetramethylene terephthalate) to use in contact with nonalcoholic foods, and to exposure time and temperature of not more than 180 °F and 24 hours if the food-contact article is over 0.010 inch thick.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c) (proposed December 11, 1979; 44 FR 71742).

Dated: September 17, 1984.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 84-25435 Filed 9-25-84; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 84F-0287]

Radiation Technology, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Radiation Technology, Inc., has filed a peition proposing that the food additive regulations be amended to provide for the safe use of a source of gamma radiation to control insect and microbial contamination in certain dried herbs, dried spices, and dried vegetable seasonings.

FOR FURTHER INFORMATION CONTACT: Clyde A. Takeguchi, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 4M3812) has been filed by Radiation Technology, Inc., Lake Denmark Rd., Rockaway, NJ 07866, proposing that Part 179 (21 CFR Part 179) of the food additive regulations be amended to provide for the safe use of a cobalt 60 or cesium 137 source of gamma radiation to control insect and microbial infestation in certain dried herbs, dried spices, and dried vegetable seasonings at doses not to exceed 1 megarad.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c) (proposed December 11, 1979; 44 FR 71742).

Dated: September 17, 1984.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 84-25434 Filed 9-25-84; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Privacy Act of 1974; Report of New System

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of New System of Records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to establish a new system of records for the completion of State Medicaid quality control (MQC) reviews, HHS/HCFA/BQC No. 09-70-2003. We have provided background information about the proposed system in the "Supplementary Information" section below. HCFA invites public comments, by October 26, 1984, with respect to routine uses of the system.

DATES: HCFA filed a new system report with the Speaker of the House, the President of the Senate, and the Director, Office of Management and Budget (OMB), on September 19, 1984.

The new system of records including routine uses will become effective November 19, 1984, unless HCFA receives comments which would convince us to make a contrary determination.

ADDRESS: The public should address comments to Richard A. DeMeo, Privacy Officer, Office of Management and Budget, Health Care Financing Administration, Room G–Z–N–2, East Low Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207. Comments received will be available for inspection at this location.

FOR FURTHER INFORMATION CONTACT: Stephen A. Synder, Bureau of Quality Control, Health Care Financing Administration, Room 239, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207, telephone 301–597–1309.

SUPPLEMENTARY INFORMATION: HCFA proposes to initiate a new system of records collecting data under the authority of section 1903(u) of the Social Security Act (42 USC 1396b(u)) which was enacted by section 133 of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), Pub. L. 97–248. The implementing regulation is 42 CFR 431.804(c)(6) (48 FR 54224, December 1, 1983). The purpose of this system of records is to provide the data necessary for the HCFA Administrator to project or establish a State's error rate if the State refuses to complete a timely valid MQC sample or individual reviews.

The HCFA Administrator shall establish the error rate directly, contractually, or through such other arrangements as (s)he may find appropriate. The system will contain information on the eligibility of sample case beneficiaries acquired through case record reviews and field investigations and on Medicaid payments for these beneficiaries.

A Basic Ordering Agreement is being prepared. At this time contractors have not been selected.

In order to fulfill the objective and complete tasks in this project, HCFA directly or through its contractor, must have individually identified records. Since we are proposing to establish this system of records in accordance with the requirements and principles of the Privacy Act we do not anticipate that it will have an unfavorable effect on the privacy or other personal rights of individuals.

The Privacy Act permits us to disclose information without the consent of individuals for "routine uses"—that is, disclosures that are compatible with the purpose for which we collected the information. The proposed routine uses in the new system meet the compatibility criteria since the information is collected for administering the Medicaid program for which we are responsible. We anticipate that disclosures under the routine uses will not result in any unwarranted adverse effects on personal privacy.

Dated: September 19, 1984.

Carolyne K. Davis,

Administrator.

SYSTEM NAME:

Completion of State Medicaid Quality Control (MQC) Reviews, HHS/HCFA/BQC.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

HCFA central office or regional offices. (See Attachment A). A contractor site will be determined when and if the contract is executed. Contact the systems manager for the location of the contractor.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Sampled Medicaid beneficiaries in the District of Columbia and all States.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents (e.g., resource, income payment relating to the eligibility, and payment status of Medicaid beneficiaries).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 1903(u) of the Social Security Act (42 USC 1396b(u)) was enacted by section 133 of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), P.L. 97–248.

Implementing regulation 42 CFR 431.804(c)(6) (48 FR 54224, December 1, 1983).

PURPOSE:

To complete State MQC sample reviews for any State that fails to complete: (1) A timely and valid MQC sample, or (2) individual reviews required to make a projection of their error rate or determine their actual error rate.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Disclosures may be made:

1. To the contractor which will use this information to conduct the reviews.

2. To the State Medicaid agency which refused to complete the sample.

3. To collateral contacts to verify client eligibility. Collateral contacts are contacts with third parties that include but are not limited to contacts with private individuals, banks, insurance companies, nursing homes, private businesses, Federal agencies and any entity that can provide information necessary to derive at a definitive eligibility decision and determine the payment status of the beneficiary.

4. To a congressional office, from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

5. In the event of litigation, where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to present an effective defense, provided such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and magnetic tape.

RETRIEVABILITY:

Information will be retrieved by beneficiary name, social security number or other unique identifier by HCFA or the State.

SAFEGUARDS:

HCFA and/or the contractor will maintain all records in secure storage areas accessible only to authorized employees and will notify all employees having access to records of criminal sanctions for unauthorized disclosure of information on individuals. For computerized records, if required, HCFA and/or the contractor will initiate automated data processing (ADP) system security procedures required by DHHS *ADP Systems Manual,* Part 6, ADP Systems Security (e.g., use of passwords), and the National Bureau of Standards Federal Information Processing Standards.

RETENTION AND DISPOSAL:

Hard copy records will be maintained. Disposal occurs three years from the last action on the case.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Bureau of Quality Control, Health Care Financing Administration, Room 200, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

NOTIFICATION PROCEDURE:

To determine if a record exists write to the System Manager at the address indicated above. Specify name, address, and State.

RECORD ACCESS PROCEDURES:

Same as notification procedure. Requestors should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURES:

Contact the System Manager named above and reasonably identify the record and specify the information to be contested. State the reason for contesting it (e.g., why it is inaccurate, irrelevant, incomplete, or not current).

RECORD SOURCE CATEGORIES:

Data is collected from the beneficiary and collateral contacts. Collateral contacts are contacts with third parties that include but are not limited to contacts with private individuals, banks, insurance companies, nursing homes, private businesses, Federal agencies, and any other entity that can provide information necessary to arrive at a definitive eligibility decision and determine the payment status of the beneficiary.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix A—Central and Regional Office Addresses

1. Central Office Address: Bureau of Quality Control, HCFA, 6325 Security Boulevard, Baltimore, Maryland 21207.

2.HCFA Regional Office Addresses:

BOSTON REGION—Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont
John F. Kennedy Federal Building, Room 1309, Boston, Massachusetts 02203

NEW YORK REGION—New Jersey, New York, Puerto Rico, Virgin Islands
26 Federal Plaza, Room 38–130, New York, New York 10007

PHILADELPHIA REGION—Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia
P.O. Box 7760, Philadelphia, Pennsylvania 19101

ATLANTA REGION—Alabama, North Carolina, South Carolina, Florida, Georgia, Kentucky, Mississippi, Tennessee
101 Marietta Street, Suite 602, Atlanta, Georgia 30223

CHICAGO REGION—Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin
Suite A–835, Chicago, Illinois 60604

DALLAS REGION—Arkansas, Louisiana, New Mexico, Oklahoma, Texas
1200 Main Tower Building, Room 2400, Dallas, Texas 75202

KANSAS CITY REGION—Iowa, Kansas, Missouri, Nebraska
New Federal Office Building, Room 235, 601 East 12th Street, Kansas City, Missouri 64106

DENVER REGION—Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming
Federal Office Building, 5th Floor, 1961 Stout Street, Denver, Colorado 80294

SAN FRANCISCO REGION—American Samoa, Arizona, California, Guam, Hawaii, Nevada
Federal Office Building, 100 Van Ness Avenue, 20th Floor, San Francisco, California 94102

SEATTLE REGION—Alaska, Idaho, Oregon, Washington
2901 Third Avenue, Mail Stop 406, Seattle, Washington, 98121.

[FR Doc. 84-25446 Filed 9-25-84; 8:45 am]
BILLING CODE 4120-03-M

Health Resources and Services Administration

Proposed Redesignation of Health Service Area XI in Illinois

AGENCY: Health Resources and Services Administration, Public Health Service, HHS.

ACTION: Notice of extension of dates to apply for health systems agency designation in Illinois health service area XI.

SUMMARY: This notice announces the decision of the Administrator, Health Resources and Services Administration, to extend the dates for applying for designation as the health systems agency for the new southwestern Illinois health service area.

DATE: For entities interested in applying for designation as a health systems agency, the date for filing letters of intent is extended from September 12, 1984 to October 12, 1984 and submission of applications is extended from November 13, 1984 to December 13, 1984.

ADDRESS: Application materials may be obtained from the Regional Health Administrator, HHS Regional Office V, 300 South Wacker Drive, Chicago, Illinois 60606, 312–353–1385.

FOR FURTHER INFORMATION CONTACT: John F. Belin, Director, Division of Agency Operations and Management, BHMORD, 5600 Fishers Lane, Room 9A–19, Rockville, Maryland 20857, 301–443–6680.

SUPPLEMENTARY INFORMATION: On September 5, 1984 Governor James Thompson requested that the Department extend the dates for filing letters of intent and submission of applications by 30 days each to allow additional dialogue in deference to the needs of the citizens in the area, and in the best interest of health planning in Illinois.

Dated: September 21, 1984.

Robert Graham, M.D.,

Administrator, Assistant Surgeon General.

[FR Doc. 84-25520 Filed 9-25-84; 8:45 am]
BILLING CODE 4160-15-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N–84–1452]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Robert Neal, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410, telephone (202) 755–6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is

new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirement is described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Section 8 Housing Assistance Program; Required Annual Contributions/Initial Estimate of Cost/Total
Office: Housing
Form number: HUD–52671, 52672 and 52673
Frequency of submission: On Occasion
Affected public: State or Local Governments
Estimated burden hours: 8,000
Status: Revision
Contact: Myra Newbill, HUD, (202) 755–7707, Robert Neal, OMB, (202) 395–7316.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: August 30, 1984.

Dennis F. Geer,

Director, Office of Information Policies and Systems..

[FR Doc. 84-25424 Filed 9-25-84; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. N–84–1453]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this propsal. Comments should refer to the proposal by name and should be sent to: Robert Neal, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410, telephone (202) 755–6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposed described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the infomation collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirement is described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Rental Rehabilitation Program
Office: Community Planning and Development
Form number: None
Frequency of submission: Annually
Affected public: State or Local Governments
Estimated burden hours: 42,779
Status: Revision
Contact: Frances Bush, HUD (202) 755–6296, Robert Neal, OMB (202) 395–7316.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Delelopment Act, 42 U.S.C. 3535(d).

Dated: August 27, 1984.

Dennis F. Geer,

Directors Office of Information Policies and System,

[FR Doc. 84-25433 Filed 9-25-84; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paper Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and explanatory material may be obtained by contacting the Bureau's Information Collection Clearance Officer at the phone number listed below. Comments and suggestions on the requirements should be made within 30 days directly to the Bureau's clearance officer and the Office of Management and Budget Interior Department Desk Officer, Washington, D.C. 20503, telephone (202) 395–7313.

Title: 25 CFR Part 36, Requests for Waiver of Minimum Academic Standards for the Basic Education of Indian Children and National Criteria for Dormitory Situations.

Abstract: Provide a basis for equitable evaluation of requests from tribal governments and school boards, to waive academic standards for schools providing education to Indian children.

Bureau Form Number: None.

Frequency: On occasion.

Description of Respondents: Tribes and school boards.

Annual Responses: 33.

Annual Burden Hours: 330.

Bureau Clearance Officer: Jim Pinkerton, (202) 343–3574.

Dated: September 14, 1984.

Kenneth L. Smith,

Assistant Secretary—Indian Affairs.

[FR Doc. 84-25416 Filed 9-25-84; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

Colorado; Official Change of address

AGENCY: Bureau of Land Management, Interior.

ACTION: Official Change of Address.

SUMMARY: The official address of the Bureau of Land Management, Colorado State Office, is changed to read as follows: Bureau of Land Management, Colorado State Office, 2020 Arapahoe Streeet, Denver, Colorado 80205.

This change will not affect filing periods, payments applications, or other documents which must still be filed in accordance with Title 43, Code of Federal Regulations, Section 1821.2; 2–1; 2–2; and 1822.1; 1–1; 1–2.

Kannon Richards,

State Director.

[FR Doc. 84-25480 Filed 9-25-84; 8:45 am]

BILLING CODE 4310-JB-M

Idaho; Public Land Sale; Correction

The following corrections are made to a Notice of Realty Action published in the **Federal Register** on August 6, 1984, on page 31343, Column 2, for Public Land Sale I–20705:

In the "Summary" section, the 20th line is corrected to read: and BL–056199.

In the "Date and Address" section, the date is corrected to read: October 9, 1984.

Dated: September 13, 1984.

J. David Brunner,

Associate District Manager.

[FR Doc. 84-25479 Filed 9-25-84; 8:45 am]

BILLING CODE 4310-GG-M

Intent To Amend the Whitewater Management Framework Plan, Grand Junction Resource Area, CO

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Amendment to Whitewater Management Framework Plan, Grand Junction Resource Area, Colorado.

SUMMARY: In accordance with 43 CFR Part 1600 and Pub. L. 94–579, the Bureau of Land Management, Grand Junction District, Grand Junction Resource Area proposes to prepare a planning amendment to the Whitewater Management Framework Plan (MFP). The amendment is in response to the August 12, 1981 land exchange proposed by Ute Water Conservancy District that would affect the following described lands.

Selected Land (public):

Mesa County

T. 10 S., R. 96 W. 6th Principal Meridian
Sec. 9: NE¼SW¼NE¼, SE¼SW¼NE¼, SW¼SW¼NE¼, SE¼NE¼, N½SW¼, SW¼SW¼, N½SE¼;
Sec. 10: W½SW¼NW¼, NE¼NW¼, SW¼NW¼, S½NW¼NW¼, NW¼SW¼;
Sec. 16: NW¼NW¼.

Offered Land (private):

Mesa County

T. 10 S., R. 96 W. 6th Principal Meridian
Sec. 5: SE¼SE¼;
Sec. 6: E½SW¼, W½SE¼, SE¼SE¼; portions within
Sec. 7: N½NE¼; portions within
Sec. 8: N½N½, SW¼NE¼.

Issues identified, and to be addressed in the plan amendment, include loss of public recreational use of the selected lands, Ute's terminal water storage reservoir, and water quality. The scoping process consisted of a Public Notice filed September 2, 1981, public tour of the amendment area on November 21, 1981, and a 30-day comment period on a draft environmental assessment released July 15, 1982. Additional scoping will consist of a 30-day comment period from the date of this notice. Written comments, submitted within this 30-day period, which identify new issues will be considered and incorporated into the final environmental assessment and plan amendment. A 30-day protest period will be held on the final plan amendment prior to implementation.

Planning criteria consist of: (1) Determining whether the selected lands are suitable for disposal by exchange; (2) determining if offered lands will benefit management of public lands if acquired; and (3) determining if the public interest will be served by making the exchange.

The plan amendment is being prepared through the use of an interdisciplinary team with expertise in the following areas: lands, minerals, hydrology, soils, wildlife, recreation, cultural resources, visual resources, and vegetation.

Those wishing to comment on the proposed amendment, or to obtain additional information, should contact: Forest Littrell, Area Manager, Grand Junction Resource Area, 764 Horizon Drive, Grand Junction, CO 81501 within 30 days of this notice. The Whitewater MFP and draft EA are available for public review at the office and address noted above.

Dated: September 17, 1984.

Wright C. Sheldon,

District Manager.

[FR Doc. 84-25483 Filed 9-25-84; 8:45 am]

BILLING CODE 4310-JB-M

Colorado; Filing of Plats of Survey

September 19, 1984.

The plats of survey of the following described lands will be officially filed in the Colorado State Office, Bureau of Land Management, Denver, Colorado, effective 10:00 a.m., September 19, 1984.

The plat, in two sheets, representing the dependent resurvey of the east, west, and north boundaries, the subdivisional lines, certain mineral claims, and the survey of the subdivision of certain sections, T. 2 S., R. 74 W., Sixth Principal Meridian, Colorado, Group No. 694, was accepted September 10, 1984.

The plat representing the dependent resurvey of a portion of the east boundary, subdivisional lines, and subdivision of sections 11U, 12U, and 13U, T. 34 N., R. 4 W., South of the Ute Line, New Mexico Principal Meridian, Colorado, Group No. 744, was accepted September 10, 1984.

These surveys were executed to meet certain administrative needs of the U.S. Forest Service.

The plat representing a dependent resurvey of the Base Line (south boundary), the north and west boundaries, the subdivisional lines, and the survey of the subdivision of certain sections, T. 1 N., R. 99 W., Sixth Principal Meridian, Colorado, Group 562, was accepted September 10, 1984.

The plat representing the dependent resurvey of a portion of the subdivisional lines, a portion of the subdivision of section 14, and the boundaries of Mineral Survey No. 325, Great Arkansas Placer, and the metes-and-bounds survey of certain lots in sections 13 and 14, T. 48 N., R. 12 E., New Mexico Principal Meridian, Colorado, Group 693, was accepted September 10, 1984.

These surveys were executed to meet certain administrative needs of this Bureau.

All inquiries about these lands should be sent to the Colorado State Office, Bureau of Land Management, 2020 Arapahoe Street, Denver, Colorado 80205.

Jack A. Eaves,

Acting Chief Cadastral Surveyor for Colorado.

[FR Doc. 84-25527 Filed 9-25-84; 8:45 am]

BILLING CODE 4310-84-M

Fish and Wildlife Service

Notice of Finding of No Significant Impact on the Program for Evaluation of Mitigation Strategies for Acidified Surface Waters

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Fish and Wildlife Service intends to evaluate five or six of the most promising techniques for mitigating effects of acid precipitation on aquatic systems. These studies are in accordance with the Fish and Wildlife Act of 1956 that directs a program of continuing research and information

services on fish and wildlife matters. Techniques to be tested at about 45 sites include the addition of alkaline materials, creation of refugia within systems and stocking of depleted systems. States cooperating in this program will be given guidelines regarding conduct of the research. Techniques that prove acceptable will be described in guidance manuals to be prepared after the research phase.

Alternatives considered include: (1) Proposed action, (2) fewer techniques at fewer sites, (3) more techniques at more sites, (4) efforts focused on watersheds rather than aquatic systems, (5) literature review and monitoring as a supplement to ongoing mitigation programs, and (6) no action.

Based on a review and evaluation of the information contained in the environmental assessment, we have determined that the proposed program is not a major Federal action that would significantly affect the quality of the human environment within the meaning of section 102(2)(c) of the National Environmental Policy Act of 1969. Our decision will not be final until 30 days following publication of this notice. The environmental assessment can be viewed at 1375 K Street, NW., Room 401, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: David M. Smith, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240 (202/343–5452).

Dated: September 21, 1984.

Robert A. Jantzen,

Director.

[FR Doc. 84-25477 Filed 9-25-84; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

Salem Maritime National Historic Site, Salem, MA; Historic Leasing

AGENCY: Salem Maritime National Historic Site, National Park Service, Interior.

ACTION: Notice of historic leasing.

NOTICE: The National Park Service is seeking proposals from private individuals or firms to lease historic waterfront property at Salem Maritime National Historic Site, Salem, Massachusetts. The property to be leased includes 150, 800, and 2100 foot long wharfs. Interested parties should address inquiries to Historic Property Realty Officer, Land Resources Division, National Park Service, 15 State Street, Boston, Massachusetts 02109, (617) 223–3780. Request for Proposals will be available by September 20, 1984. Phase 1 proposals will be due no later than 5:00 p.m., November 23, 1984.

Dated: September 14, 1984.

Herbert S. Cables, Jr.,

Regional Director, North Atlantic Region.

[FR Doc. 84-25448 Filed 9-25-84; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Public Information Collection Requirements Submitted to OMB for Review

The Agency for International Development submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of the entry no later than October 9, 1984. Comments may also be addressed to, and copies of the submissions obtained from the Reports Management Officer, Ms. Melita E. Yearwood, (202) 632–3378, IRM/PE, Room 708B, SA–12, Washington, D.C. 20523.

Date Submitted: September 14, 1984.

Submitting Agency: Agency for International Development.

OMB No.: 0412–0011.

Form No.: AID 1010–2.

Type of Submission: Extension.

Title: Application for Assistance—American Schools and Hospitals Abroad.

Purpose: This information collection is used by U.S. sponsors in applying for grant assistance from the American Schools and Hospitals Abroad (ASHA). ASHA is a competitive grant program under AID, designed to provide assistance to selected U.S. sponsors for the exclusive benefit of their overseas institutions worldwide. The program receives an annual budget appropriated by Congress under Section 214 of the Foreign Assistance Act, as amended.

Date Submitted: September 14, 1984.

Submitting Agency: Agency for International Development.

OMB No.: None.

Form Nos.: AID 1380–1, 1380–5, 1380–12, 1380–16, 1380–18, 1380–45, 1380–57B, 1380–69, 1380–76, 1380–88, 1381–1, 1381–4.

Type of Submission: New.

Title: Participant Training Data.

Purpose: This collection of forms are required to aid in the implementation of the AID Participant Training Program. They are used to provide data on foreign nationals and their prospective training while in the U.S. Respondents include the AID Missions, U.S. government employees, contractors, and non-profit organizations.

Reviewer: Francine Picoult (202) 395–7231, Office of Management and Budget, Room 3201, New Executive Office Building, Washington, D.C. 20503.

Dated: September 14, 1984.

Fred D. Allen,

Planning and Evaluation Division.

[FR Doc. 84-25480 Filed 9-25-84; 8:45 am]

BILLING CODE 6116-01-M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–221 and 222 (Preliminary)]

Certain Cast-Iron Pipe Fittings From Brazil and India

AGENCY: International Trade Commission.

ACTION: Institution of preliminary countervailing duty investigations and scheduling of a conference to be held in connection with the investigations.

SUMMARY: The United States International Trade Commission hereby gives notice of the institution of investigations Nos. 701–TA–221 and 222 (Preliminary) under section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Brazil and India of non-alloy cast-iron pipe and tube fittings other than for cast-iron soil pipe, provided for in items 610.62, 610.65, 610.70, and 610.74 of the Tariff Schedules of the United States (TSUS), which are alleged to be subsidized by the Governments of Brazil and India.

EFFECTIVE DATE: September 18, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Carpenter, Office of Investigations, U.S. International Trade Commission, 701 E Street, NW., Washington, D.C. 20436, telephone 202–523–0399.

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted in response to petitions filed on September 18, 1984, by the Cast Iron Pipe Fittings Committee.[1]

[1] The 5 member producers of this committee are Stanley G. Flagg & Co., Inc., ITT-Grinnell, Stockham Valves & Fittings Co., U-Brand Corp., and Ward Foundry Div. of Clevepak Corp.

The Commission must make its determinations in these investigations within 45 days after the date of the filing of the petition, or by November 2, 1984 (19 CFR 207.17).

Participation.—Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's Rules of Practice and Procedure (19 CFR 201.11), not later than seven (7) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairwoman, who shall determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service of documents.—The Secretary will compile a service list from the entries of appearance filed in these investigations. Any party submitting a document in connection with the investigations shall, in addition to complying with section 201.8 of the Commission's rules (19 CFR 201.8), serve a copy of each such document on all other parties to the investigations. Such service shall conform with the requirements set forth in § 201.16(b) of the rules (19 CFR 201.16(b)).

In addition to the foregoing, each document filed with the Commission in the course of these investigations must include a certificate of service setting forth the manner and date of such service. This certificate will be deemed proof of service of the document. Documents not accompanied by a certificate of service will not be accepted by the Secretary.

Written submissions.—Any person may submit to the Commission on or before October 16, 1984, a written statement of information pertinent to the subject matter of these investigations (19 CFR 207.15). A signed original and fourteen (14) copies of such statements must be submitted (19 CFR 201.8).

Any business information which a submitter desires the Commission to treat as confidential shall be submitted separately, and each sheet must be clearly marked at the top "Confidential Business Data." Confidential submissions must conform with the requirements of section 201.6 of the Commission's rules (19 CFR 201.6). All written submissions, except for confidential business data, will be available for public inspection.

Conference.—The Director of Operations of the Commission has scheduled a conference in connection with these investigations for 9:30 a.m. on October 12, 1984, at the U.S. International Trade Commission Building, 701 E Street, NW, Washington, D.C. Parties wishing to participate in the conference should contact Robert Carpenter (202–523–0399), not later than October 5, 1984, to arrange for their appearance. Parties in support of the imposition of countervailing duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Public inspection.—A copy of the petition and all written submissions, except for confidential business data, will be available for public inspection during regular hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street, NW., Washington, D.C.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B (19 CFR part 207), and part 201, subparts A through E (19 CFR part 201).

This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

Issued: September 21, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-25508 Filed 9-25-84; 8:45 am]

BILLING CODE 7020-01-M

[Investigation No. 337-TA-195

Certain Cloisonne Jewelry; Commission Decision Not To Review Initial Determination Terminating Respondent on the Basis of a Settlement Agreement

AGENCY: International Trade Commission.

ACTION: The Commission has determined not to review the presiding officer's initial determination (ID) (Order No. 4) terminating the above-captioned investigation with respect to respondent The Answer, Ltd. on the basis of a settlement agreement.

SUPPLEMENTARY INFORMATION: On June 28, 1984, complainant Laurel Burch, Inc., and respondent The Answer, Ltd. filed a joint motion to terminate the investigation as to respondent The Answer, Ltd. on the basis of a settlement agreement. The presiding officer issued an ID granting the joint motion for termination on August 23, 1984. No petitions for review or comments from Government agencies or the public were received.

Copies of the presiding officer's ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

FOR FURTHER INFORMATION CONTACT: Judith Czako, Esq., Office of the General Council, U.S. International Trade Commission, telephone 202–523–3395.

Authority: Section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and 19 CFR 210.51 and 210.53.

Issued: September 20, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-25560 Filed 9-25-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-201 (Preliminary)]

Egg Filler Flats From Canada

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines,[2] pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Canada of molded egg filler flats of pulp (but not of paper or of paperboard), provided for in item 256.70 of the Tariff Schedules of the United States (TSUS), which are alleged to be sold in the United States at less than fair value (LTFV).

Background

On August 3, 1984, a petition was filed with the U.S. International Trade Commission and the U.S. Department of Commerce by Keyes Fibre Co., Stamford, CT., and Packaging Corp. of America, Evanston, IL, alleging that molded egg filler flats of pulp are being sold in the United States at LTFV and that an industry in the United States is materially injured or threatened with material injury by reason of such imports. Accordingly, the Commission

[1] The "record" is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Commissioner Eckes not participating.

instituted a preliminary investigation under section 733(a) of the Tariff Act of 1930 to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of such merchandise.

Notice of the institution of the Commission's investigation and of the public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, D.C., and by publishing the notice in the **Federal Register** on August 15, 1984 (49 FR 32693). The conference was held in Washington, D.C. on August 24, 1984, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its report on this investigation to the Secretary of Commerce on September 17, 1984. A public version of the Commission's report, Egg Filler Flats from Canada, (inv. No. 731–TA–201 (Preliminary), USITC Publication 1577, September 1984) contains the views of the Commission and information developed during the investigation.

Issued: September 17, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-25571 Filed 9-25-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337–TA–187]

Certain Glass Construction Blocks

Notice is hereby given that the prehearing conference in this proceeding scheduled for October 2, 1984, and the hearing scheduled to commence immediately thereafter (49 FR 25319) are cancelled.

The prehearing conference is rescheduled to commence at 9:00 a.m. on October 22, 1984, in Room 6311 at the Interstate Commerce Commission Building at 12th & Constitution Avenue NW., Washington, D.C., and the hearing will commence immediately thereafter.

The Secretary shall publish this Notice in the **Federal Register.**

Issued: September 20, 1984.

Janet D. Saxon,

Administrative Law Judge.

[FR Doc. 84-25567 Filed 9-25-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337–TA–171]

Certain Glass Tempering Systems; Commission Decision Not To Review Initial Determination; Deadline for Filing Written Submissions on Remedy, the Public Interest, and Bonding

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has determined not to review the presiding officer's initial determination (ID) that there is a violation of section 337 of the Tariff Act of 1930 in the above-captioned investigation. The parties to the investigation and interested government agencies are requested to file written submissions on the issues of remedy, the public interest, and bonding.

Authority: The authority for the Commission's action is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and in §§ 210.53–210.56 of the Commission's Rules of Practice and Procedure. 19 CFR 210.53–56.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation in response to a complaint filed by Glasstech, Inc., on October 11, 1983, to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation of certain glass tempering systems including frictionally driven oscillating roller hearth furnaces into the United States, or in their sale, by reason of alleged (1) infringement of claims 39–42 of U.S. Letters Patent 3,806,312 ('312 patent), or (2) infringement of claim 1 of U.S. Letters Patent 3,994,711 ('711 patent), the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The two respondents in the investigation are AB Kyro OY, a corporation of Finland, and Tamglasss, Inc., a Pennsylvania corporation which is a wholly-owned subsidary of AB Kyro OY.

On June 4, 1984, the parties stipulated that issues relating to the '312 patent were dismissed from this investigation with prejudice against complainant as to the respondents, but without prejudice to the introduction by any party of evidence relating to the '312 patent relevant to issues relating to the '711 patent.

On August 16, 1984, the presiding officer issued an ID that there is a violation of section 337 in the importation and sale of the glass tempering systems under investigation. Specifically, the presiding officer determined that the '711 patent is valid, that it is being infringed under the doctrine of equivalents, and that the importation of the infringing product has the effect and tendency of substantially injuring an efficiently and economically operated domestic industry.

Respondents filed a petition for review of the ID with respect to the issues of validity and infringement of the '711 patent and of substantial injury. Complainant filed a reply to respondents' petition for review. No other petitions or agency comments were received.

Written Submissions

Inasmuch as the Commission has found that a violation of section 337 has occurred, it may issue (1) an order which could result in the exclusion of the subject articles from entry into the United States and/or (2) cease and desist orders which could result in one or more respondents being required to cease and desist from engaging in unfair acts in the importation of such articles. Accordingly, the Commission is interested in receiving written submissions which address the form of relief, if any, which should be ordered.

If the Commission contemplates some form of relief, it must consider the effect of that relief upon the public interest. The factors which the Commission will consider include the effect that an exclusion order and/or a cease and desist order would have upon (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) the U.S. production of articles which are like or directly competitive with those which are the subject of the investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions concerning the effect, if any, that granting relief would have on the public interest.

If the Commission orders some form of relief, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving written submissions concerning the amount of the bond, if any which should be imposed.

The parties to the investigation and interested Government agencies are requested to file written submissions on the issues of remedy, the public

interested, and bonding. The complainant and the Commission investigative attorney are also requested to submit a proposed exclusion order and/or a proposed cease and desist order for the Commission's consideration. Persons other than the parties and Government agencies may file written submissions addressing the issues of remedy, the public interest, and bonding. Written submissions on remedy, the public interest, and bonding must be filed not later than the close of business on the day which is fourteen (14) days after publication of this notice in the **Federal Register.**

Commission Hearing

The Commission does not plan to hold a public hearing in connection with final disposition of this investigation.

Additional Information

Persons submitting written submissions must file the original document and 14 true copies thereof with the Office of the Secretary on or before the deadline stated above. Any person desiring to submit a document (or a portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment by the presiding officer. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. Documents containing confidential information approved by the Commission for confidential treatment will be treated accordingly.

Copies of the public version of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

FOR FURTHER INFORMATION CONTACT: Hannelore V. M. Hasl, Esq., Office of General Counsel, United States International Trade Commission, telephone 202–523–0259.

Issued: September 17, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84–25570 Filed 9–25–84; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–163]

Certain Indomethacin; Extension of Time for Commission Decision on Whether To Order Review of Initial Determination

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the date by which the Commission must decide whether to review the presiding officer's initial determination (ID) designating the above-captioned investigation more complicated has been changed from September 19, 1984, to October 11, 1984, so that the Commission can first determine whether to review a subsequent ID granting a motion for summary determination and terminating the investigation.

Authority: 19 U.S.C. 1337 and 1337a; 19 CFR 210.53(h).

SUPPLEMENTARY INFORMATION: The subject investigation is being conducted to determine whether there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337 and 19 U.S.C. 1337a) in the importation or sale of certain indomethacin. See 49 FR 6811 (Feb. 23, 1984). The imported indomethacin allegedly is manufactured abroad by a process that would infringe claims 1, 2, 4, and 7 of U.S. Letters Patent 3,629,284 if the process were practiced in the United States.

On August 20, 1984, the presiding officer issued an ID (Order No. 37) designating the investigation more complicated. The presiding officer determined that a more complicated designation was warranted in light of (1) the number of parties, (2) the complexity of the subject matter, (3) anticipated difficulty in obtaining required information, and (4) due process considerations. On August 24, 1984, complainant Merck & Co. filed a petition for review of the ID. The Commission investigative attorney and four respondents subsequently filed responses opposing Merck's petition.

On August 30, 1984, respondent Mylan Pharmaceuticals, Inc., filed Motion No. 183–59 for summary determination and an order terminating the investigation. Mylan argued that the patent in controversy has expired because of a terminal disclaimer. On September 11, 1984, the presiding officer issued an ID (Order No. 41) granting Mylan's motion and terminating the investigation.

Under § 210.53(h) of the Commission's rules, an ID becomes the determination of the Commission 30 days after the date of service of the ID, unless the Commission orders a review within 30 days of the date of filing of the ID or extends the deadline for deciding whether to order review. The 30-day deadline for the Commission to determine whether to review the ID designating the investigation more complicated is September 19, 1984. The 30-day deadline for the Commission to decide whether to review the ID terminating the investigation is October 11, 1984. In order to first determine whether to review the termination ID, the Commision has decided to change the deadline for determining whether to review the "more complicated" ID to October 11, 1984.

Copies of the IDs and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, Docket Section, 701 E Street NW., Washington, D.C. 20436 telephone 202–523–0471.

FOR FURTHER INFORMATION CONTACT: N. Tim Yaworski, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436; telephone 202–523–0311.

Issued: September 18, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84–25564 Filed 9–25–84; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 731–TA–183 (Final)]

Large Diameter Carbon Steel Welded Pipes From Brazil

AGENCY: International Trade Commission.

ACTION: Institution of a final antidumping investigation and scheduling of a hearing to be held in connection with the investigation.

SUMMARY: As a result of an affirmative preliminary determination by the U.S. Department of Commerce that there is a reasonable basis to believe or suspect that imports from Brazil of carbon steel welded pipes, over 16 inches in outside diameter, provided for in item 610.32 of the Tariff Schedules of the United States, are being, or are likely to be, sold in the United States at less than fair value (LTFV) within the meaning of section 731 of the Tariff Act of 1930 (19 U.S.C. 1673), the United States International Trade Commission hereby gives notice of the institution of investigation No. 731–TA–183 (Final) under section 735(b) of the act (19 U.S.C.

1673d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of such merchandise. Unless the investigation is extended, the Department of Commerce will make its final dumping determination in this case on or before November 13, 1984, and the Commission will make its final injury determination by January 2, 1985 (19 CFR 207.25).

EFFECTIVE DATE: September 5, 1984.

FOR FURTHER INFORMATION CONTACT: Robert Carpenter (202–523–0399), Office of Investigations, U.S. International Trade Commission.

SUPPLEMENTARY INFORMATION:

Background.—On May 7, 1984 the Commission determined, on the basis of the information developed during the course of its preliminary investigation, that there was a reasonable indication that an industry in the United States was materially injured by reason of alleged LTFV imports of large diameter carbon steel welded pipes from Brazil. The preliminary investigation was instituted in response to a petition filed on March 21, 1984, by counsel on behalf of Berg Steel Pipe Corp. of Panama City, Florida.

Participation in the investigation.—Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in §201.11 of the Commission's Rules of Practice and Procedure (19 CFR 201.11), not later than 21 days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairwoman, who shall determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Upon the expiration of the period for filing entries of appearance, the Secretary shall prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation, pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)). Each document filed by a party to this investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service (19 CFR 201.16(c)).

Staff report.—A public version of the staff report containing preliminary findings of fact in this investigation will be placed in the public record on November 5, 1984, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing.—The Commission will hold a hearing in connection with this investigation beginning at 10:00 a.m., on November 20, 1984, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, D.C. 20436. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on November 9, 1984. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 10:00 a.m., on November 15, 1984, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is November 15, 1984.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with 207.22 (19 CFR § 207.22). Posthearing briefs must conform with the provisions of §207.24 (19 CFR 207.24) and must be submitted not later than the close of business on November 27, 1984.

Written submissions.—As mentioned, parties to this investigation may file prehearing and posthearing briefs by the dates shown above. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before November 27, 1984. A signed original and fourteen (14) true copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired shall be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

For further information concerning the conduct of the investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and C (19 CFR Part 207), and part 201, subparts A through E (19 CFR part 201).

This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

Issued: September 21, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84–25569 Filed 9–25–84; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–181]

Certain Meat Deboning Machines; Commission Decision Not To Review Initial Determination Amending Complaint and Notice of Investigation

AGENCY: International Trade Commission.

ACTION: The Commission has determined not to review the initial determination (Order No. 16) (I.D.) amending the complaint and notice of investigation to add allegations of infringement of claim 4 of the patent in controversy in the above-captioned investigation.

SUPPLEMENTARY INFORMATION: The Commission received one petition for review of the I.D. but no comments from Government agencies.

FOR FURTHER INFORMATION CONTACT: Tim Yaworski, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0311

Authority: Section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and §§ 210.22 and 210.53 of the Commission's Rules of Practice and Procedure (19 C.F.R. 210.22 and 210.53).

By order of the Commission.

Issued: September 20, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84–25581 Filed 9–25–84; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337-TA-198]

Certain Portable Electronic Calculators; Commission Decision Not To Review Initial Determination Terminating Respondent on the Basis of a Settlement Agreement

AGENCY: International Trade Commission.

ACTION: The Commission has determined not to review the presiding officer's initial determination (ID) (Order No. 11) terminating the above-captioned investigation with respect to respondent Sears, Roebuck & Co. on the basis of a settlement agreement.

SUPPLEMENTARY INFORMATION: On August 10, 1984, complainant Texas Instruments, Inc., respondent Sears, Roebuck & Co. and the Commission investigative attorney filed a joint motion to terminate the investigation as to respondent Sears, Roebuck & Co. on the basis of a settlement agreement. The presiding officer issued an ID granting the joint motion for termination on August 24, 1984. No petitions for review or comments from Government agencies or the public were received.

Copies of the presiding officer's ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

FOR FURTHER INFORMATION CONTACT: Wayne Herrington, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0480.

Authority: Section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and 19 CFR 210.51 and 210.53.

Issued: September 20, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-25502 Filed 9-25-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-185]

Certain Rotary Wheel Printing Systems; Commission Decision Not To Review Initial Determination Terminating Olympia Werke Aktiengesellschaft and Olympia U.S.A., Inc.

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has determined not to review an initial determination (ID) to terminate Olympia Werke Aktiengesellschaft and Olympia U.S.A., Inc. as respondents in the above-captioned investigation based on a settlement agreement.

SUPPLEMENTARY INFORMATION: Notice of the ID was published in the Federal Register of August 30, 1984, 49 FR 34421. No petition for review was filed, nor were any comments from Government agencies or the public received.

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

FOR FURTHER INFORMATION CONTACT: George Holoch, Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0148.

Authority: 19 U.S.C. 1337; 19 CFR 210.53 (a), (c), and (h).

Issued: September 20, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-25501 Filed 9-25-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-186]

Certain Tennis Rackets; Commission Decision Not To Review Initial Determination Terminating Respondents on the Basis of a Settlement Agreement

AGENCY: International Trade Commission.

ACTION: The Commission has determined not to review an initial determination (ID) to terminate Rossignol Ski Co., Inc., and Skis Rossignol, S.A. (the Rossignol respondents), as respondents in the above-captioned investigation on the basis of a settlement agreement.

SUPPLEMENTARY INFORMATOIN: On July 7, 1984, complainant Prince Manufacturing Co., and the Rossignol respondents filed a motion (Motion No. 186–20) to terminate the Rossignol respondents as respondents in the investigation on the basis of a settlement agreement. The Commission investigative attorney supported the motion.

On August 9, 1984, the presiding officer issued an ID (Order No. 19) granting the motion. The Commission received neither a petition for review of the ID nor comments from the public or other Government agencies.

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

FOR FURTHER INFORMATION CONTACT: William E. Perry, Esq., Office of the General Counsel, telephone 202–523–0499.

Authority: 19 U.S.C. 1337; 19 CFR 210.53 (c) and (h).

Issued: September 18, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-25572 Filed 9-25-84; 8:45 am]

BILLING CODE 7020-02-M

Vitamin K From Spain; Request for Public Comment on Termination of Countervailing Duty Investigation

AGENCY: International Trade Commission.

ACTION: Request for comments on proposed termination of countervailing duty investigation under section 104(b) of the Trade Agreements Act of 1979.

FOR FURTHER INFORMATION CONTACT: Ms. Vera Libeau, Office of Investigations, telephone 202–523–0368.

SUPPLEMENTARY INFORMATION: The Trade Agreements Act of 1979, subsection 104(b)(1), requires the Commission in the case of a countervailing duty order issued under section 303 of the Tariff Act of 1930, upon the request of a government or group of exporters of merchandise covered by the order, to conduct an investigation to determine whether an industry in the United States would be materially injured, or threatened with material injury, or whether the establishment of such industry would be materially retarded, if the order were to be revoked. On June 17, 1982, the Commission received a request from the Government of Spain for the review of the countervailing duty order on vitamin K from Spain (T.D. 76–321). Notice of the countervailing duty order was published on November 16, 1976, in the Federal Register (41 FR 50419).

The Commission received a letter on September 11, 1984, from Heterochemical Corp., the original

petitioner for the countervailing duty order, stating that it withdraws its request for the imposition of countervailing duties under the above-referenced countervailing duty order.

In light of the legislative history of section 704(a) of the Tariff Act of 1930 indicating Congress' expectation that the Commission will permit public comment prior to termination, the Commission requests written comments from persons concerning the proposed termination of the investigation on vitamin K from Spain. These written comments must be filed with the Secretary to the Commission no later than 30 days after publication of this notice in the **Federal Register.**

Issued: September 18, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-25566 Filed 9-25-84; 8:45 am]

BILLING CODE 7020-02-M

[332-194]

World Trade Flows in Major Agricultural Products

AGENCY: International Trade Commission.

ACTION: Institution of an investigation under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1322(g)) for the purpose of gathering and presenting information on world trade flows in major agricultural products.

EFFECTIVE DATE: September 17, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Lowell C. Grant, principal analyst (telephone 202-724-0099), or Mr. David L. Ingersoll, Chief, Agriculture, Fisheries, and Forest Products Division (telephone 202-724-0068), U.S. International Trade Commission, Washington, D.C. 20436.

Background and Scope of Investigation

At the request of the United States Senate Committee on Finance, the Commission has instituted investigation No. 332-194 under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) for the purpose of examining world trade flows involving major U.S. agricultural products to determine trade patterns, what shifts have taken place, and the reasons for the trade patterns and shifts. The study will also examine U.S. and world trade in broad commodity areas (e.g., grains, oilseeds, animal products, fruits, and vegetables).

The Committee requested that the Commission's report on this investigation should include, to the extent possible, information with respect to those factors affecting overall agricultural trade, as well as the position of the United States in world agricultural trade. The study should focus on such factors of competition as commodity cycles, wage rates, exchange rates, transportation costs, trade barriers, government targeting practices, and other pertinent factors. The report should further examine the impact of shifts in world agricultural trade on U.S. trade, and the implications of such shifts.

Written Submissions

Although there is no public hearing scheduled for this study, interested persons are invited to submit written statements concerning the investigation by October 31, 1984. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's *Rules of Practice and Procedures* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. All submissions should be addressed to the Secretary at the Commission's office in Washington, D.C.

Issued: September 18, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-25565 Filed 9-25-84; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-43 (Sub-No. 125X)]

Rail Carriers, Illinois Central Gulf Railroad Company; Abandonment Exemption; Madison County, TN

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of prior approval under 49 U.S.C. 10903 *et seq.*, the abandonment by the Illinois Central Gulf Railroad Company of 6.57 miles of track in Madison County, TN, subject to standard labor protective conditions.

DATES: This exemption shall be effective on October 26, 1984. Petitions for reconsideration must be filed by October 16, 1984. Petitions for stay must be filed by October 9, 1984.

ADDRESSES: Send pleadings referring to Docket No. AB-43 (Sub-No. 125X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative, Richard M. Kamowski, Esq., 233 N. 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: September 18, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett, Gradison, Simmons, Lamboley and Strenio. Commissioners Lamboley and Strenio did not participate.

James H. Bayne,

Secretary.

[FR Doc. 84-25531 Filed 9-25-84; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Lambert N. DePompei, M.D.; Revocation of Registration; Denial of Application

On June 22, 1984, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued to Lambert N. DePompei, M.D. of Detroit Family Practice, 8413 Lake Avenue, Cleveland, Ohio 44102, an Order to Show Cause proposing to revoke Dr. DePompei's DEA Certificate of Registration AD5126873 and to deny his pending application for registration. The Order to Show Cause that was sent by registered mail to Dr. DePompei was returned to DEA unclaimed. However, a copy of the Order to Show Cause was also sent by registered mail to counsel for Dr. DePompei. DEA received the return receipt which indicated that the Order to Show Cause was delivered to and accepted by the lawyers on June 27, 1984. Dr. DePompei failed to respond to the Order to Show Cause within 30 days of its receipt as set forth in the Order to Show Cause. Therefore, Dr. DePompei was deemed to have waived his opportunity for a hearing. 21 CFR 1301.54 (a) and (d). Accordingly, the

Administrator enters his final order in this matter. 21 CFR 1316.67.

The Administrator finds that on August 13, 1982, Dr. DePompei was indicted by the Cuyahoga County Grand Jury on four counts of Trafficking in Drugs in violation of Ohio Revised Code Section 2925.03. These four counts involved the following controlled substances: biphetamine, Eskatrol, methaqualone and Demerol. Dr. DePompei was also indicted on twenty-nine counts of Possession of False or Forged Prescriptions in violation of Ohio Revised Code Section 2925.23. These counts involved the sale by Dr. DePompei of Schedule II prescriptions for controlled substances which were false or forged.

At the state criminal trial in this matter the prosecution offered the testimony of an organized crime figure who described his relationship with Dr. DePompei. The witness testified that Dr. DePompei wrote at least 200 prescriptions for controlled substances using fictitious names. He gave these prescriptions to orgnaized crime members who in turn sold them. At the trial, Dr. DePompei admitted his actions, but said that he was threatened by the organized crime members. This explanation did not excuse Dr. DePompei's illegal activities. Instead of succumbing to these threats, DePompei could have contacted law enforcement authorities, but he did not.

Consequently, after a jury trial, Dr. DePompei was found guilty of all four counts of trafficking in drugs and of twenty-seven of the twenty-nine counts of possession of false or forged prescriptions. Dr. DePompei was sentenced to serve mandatory actual incarceration for seven years at the Columbus Correctional Facility, Columbus, Ohio. He could serve as much as twenty-five years at the facility. These are all felony convictions relating to controlled substances. Therefore, there is a lawful basis for the revocation of Dr. DePompei's registration and for the denial of his pending application for registration. 21 U.S.C. 824(a)(2).

Since Dr. DePompei did not offer evidence of any mitigating circumstances, the Administrator has no choice but to revoke Dr. DePompei's registration and to deny his pending application. Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Cretificate of Registration AD5126873, previously issued to Lambert N. DePompei, M.D., be, and it hereby is, revoked. Any pending applications for registration are hereby denied, effective October 26, 1984.

Dated: September 21, 1984.

Francis M. Mullen, Jr.,

Administrator.

[FR Doc. 84-25308 Filed 9-25-84; 8:45 am]

BILLING CODE 4410-09-M

Gilbert Miller, M.D.; Denial of Application

On June 22, 1984, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Gilbert Miller, M.D. (Respondent) of 1077 Northern Boulevard, Roslyn, New York 11576, proposing to deny Respondent's application for registration under 21 U.S.C. 823(f). The proposed action was predicated on Dr. Miller's controlled substance-related felony conviction. In a letter dated July 20, 1984, Respondent specifically waived his opportunity for a hearing pursuant to 21 CFR 1301.54(c). The Administrator enters this final order on the record as it appears. 21 CFR 1301.54 (d) and (e).

The Administrator finds that on May 3, 1978, Respondent was convicted in the United States District Court for the Southern District of New York of unlawful distribution of Schedule II controlled substances, in violation of 21 U.S.C. 841(a)(1). This is a felony conviction relating to controlled substances. Subsequent to his conviction, Respondent applied for a DEA Certificate of Registration on January 22, 1979. The then Administrator of DEA issued an Order to Show Cause proposing to deny this application. There was a lawful basis for the denial under 21 U.S.C. 824(a)(2). *Serling Drug Company*, Docket No. 74-12, 40 FR 11918 (1975); *Raphael C. Cilento, M.D.*, Docket No. 79-2, 44 FR 30466 (1979); *Thomas W. Moore, Jr., M.D.*, Docket No. 79-13, 45 FR 40743 (1980). Following a hearing on the issues raised by the Order to Show Cause, the then Administrator ordered the denial of Respondent's January 22, 1979, application for registration. This order was published in the **Federal Register**, Volume 45, No. 207, at page 70350, on Thursday, October 23, 1980.

Respondent executed another application for registration on December 5, 1983. It is this application that is the subject of this final order. By waiving his opportunity for a hearing, Respondent has not presented any new evidence that would justify the Administrator granting Respondent's application. The facts remain the same as those previously found to exist by the then Administrator and published in the **Federal Register** on October 23, 1980. Respondent issued prescriptions for controlled substances to a cooperating individual. There was evidence that the Respondent believed that the individual intended to use the prescriptions to obtain drugs for illegal sale to others. Respondent also sold an undercover DEA Agent prescriptions for both methaqualone and Biphetamine. Dr. Gilbert issued these prescriptions after performing a perfunctory physical examination on the agent. The Administrator has not been convinced that Respondent is now more qualified to hold a DEA registration than he was in 1980.

Accordingly, having concluded that there is a lawful basis for the denial of Respondent's application for registration and having further concluded that under the circumstances in this case the application should be denied, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that the application of Gilbert Miller, M.D. for registration under the Controlled Substances Act, be, and it hereby is, denied, effective October 26, 1984.

Dated: September 21, 1984.

Francis M. Mullen, Jr.,

Administrator.

[FR Doc. 84-25309 Filed 9-25-84; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 82-19]

Michael A. Rush, D.P.M.; Denial of Application

On July 12, 1982, the then-acting Administrator of the Drug Enforcement Administration (DEA) issued to Michael A. Rush, D.P.M. (Respondent), of Hollywood, Florida, an Order to Show Cause proposing to deny the Respondent's pending application for registration. The Order to Show Cause was predicated, pursuant to 21 U.S.C. 824(a)(2), on Respondent's conviction of felony offenses relating to controlled substances. The Respondent filed a request for a hearing on the issues raised by the Order to Show Cause and this matter was placed on the docket of Administrative Law Judge Francis L. Young.

Following the hearing in this matter, Judge Young issued his opinion, recommended ruling, findings of fact and conclusions of law, and a recommended decision. Copies of the judge's opinion were sent to the Respondent and to counsel for the

Respondent and for the Government. Neither side filed exceptions to the judge's findings and conclusions. However, the Respondent did file a motion to vacate the Administrative Law Judge's recommended decision. This motion was denied by the Administrative Law Judge.

Subsequently, pursuant to 21 CFR 1316.65(c), the entire record of these proceedings was transmitted to the Administrator. The Administrator now issues his final order in this matter, based on findings of fact and conclusions of law as are hereinafter set forth.

The Administrator finds that the Respondent was a subject of an indictment handed up by a Grand Jury of the United States District Court for the District of Connecticut. The indictment charged that from on or about January 1, 1979, and continuing until on or about April 20, 1979, in the District of Connecticut and elsewhere, Respondent and several other persons conspired, in violation of 21 U.S.C. 846, to import into the United States from the Bahamas a controlled substance, marihuana, a violation of 21 U.S.C. 952; and to possess a controlled substance, marihuana, with intent to distribute it, in violation of 21 U.S. C. 841(a)(1). On November 14, 1980, following a jury trial in the U.S. District Court for the District of Connecticut, Respondent was convicted as charged and was sentenced to a term of imprisonment of three years and was required to pay a committed fine of $15,000. The Respondent served about one year of confinement in the Federal Detention Facility at Elgin Air Force Base, Florida, and then spent 81 days in a half-way house in Fort Lauderdale. While at the half-way house, Respondent began to reestablish himself in the community and in the practice of his profession of podiatry. He was released from the half-way house program in September 1982. Respondent has paid his fine and, in the course of the criminal proceedings, forfeited the sum of $33,000 to the Government.

On March 20, 1981, the United States Court of Appeals for the Second Circuit affirmed the Respondent's conviction. See, *United States* v. *Rush*, 666 F.2d 10. In its *Per Curiam* opinion, the Court of Appeals noted that Respondent had "lent a total of $25,000 in two transactions to his co-conspirators to finance the purchase of marihuana from sources in the Bahamas." Respondent's "co-conspiratiors repaid the principal amount of the loan and $15,000 in interest. The proceeds of the loan were used to import marihuana on at least three occasions. The marihuana was distributed in Florida." During the trial and in the hearing in this matter, Respondent contended that he had no knowledge of the use to which the proceeds of the loan were to be put. On appeal, however, according to the Court's opinion, he conceded that he had such knowledge. According to the appellate opinion, Respondent supplied cash which made the illegal venture possible and he financed this venture at an exorbitant and usurious profit, knowing full well the source of the repayment he received. He acted in a secretive and clandestine fashion, obtaining first a mortgage note reflecting a ten percent rate of interest. That note was recorded. A second mortgage note was prepared for $10,000 which required payment of $20,000 in five days. "For obvious reasons, that [second] note was not recorded." The Court of Appeals further noted that the "surreptitious nature of the loans was evidenced not only by Rush's omission to record the usurious mortgage note but also by his method of withdrawal and replenishment from his bank account. He withdrew a total of $20,000 net to finance the loans, and, although his profits amounted to $40,000, he redeposited only $10,000 so as to show no additional income." The Respondent claimed lack of knowledge of the purpose of the money he loaned was contradicted by the testimony of two of his co-conspirators, it was disbelieved by the jury in his criminal trial and by the Administrative Law Judge in this matter, and it is deemed unworthy of belief by the Administrator.

The Respondent is a practicing podiatrist in Hollywood, Florida. He has published articles and papers and has lectured on sports and health-related topics before diverse audiences. He has appeared on radio and television. He has been active in various professional and civic organizations. He is married and has four children. The record in this matter contains six affadavits attesting to the Respondent's good character and reputation in the community.

The Respondent is a practicing doctor and a highly visible advocate of physical fitness and good health habits. Yet he willingly engaged in a criminal conspiracy whose ultimate goal was to illegally import and distribute marihuana in total disregard of the public health consequences of those criminal acts. It matters not that the Respondent never intended to touch, or even see, the load of contraband. The person who provides financing for such an operation is every bit as culpable as the pilot who flies it into the country or the dealer who sells it on the street.

Furthermore, it is wholly irrelevant that the crimes of which Respondent was convicted were not in any way connected with his activities as a DEA registered practitioner. The governing statute, 21 U.S.C. 824(a) speaks only of a felony relating to any substance defined as a controlled substance. This agency has consistently held that such offenses are grounds for the revocation or denial of a DEA registration. See, *Aaron A. Moss, D.D.S.*, Docket No. 80–2, 45 FR 72850 (1980), where a dentist was denied registration after he was convicted of acting as a courier smuggling cocaine into this country; *Raymond H. Wood, D.D.S.*, Docket No. 82–32, 48 FR 48727 (1983), in which a dentist's registration was revoked after he had been convicted of conspiring to possess with intent to distribute large quantities of marihuana; and *Tilman J. Bentley, D.O.*, Docket No. 82–22, 49 FR 35049 (1984), wherein a physician's registration was revoked as a result of his conviction for conspiring to illegally manufacture methaqualone tablets.

There is a lawful basis for denial of the Respondent's application for registration. As the Administrative Law Judge stated in his opinion in this matter, Respondent's "boldly two-faced approach to his responsibilities as a doctor leaves scant room for confidence that [he] can be trusted with control over abusable drugs . . ." Accordingly, pursuant to the authority delegated to the Administrator of the Drug Enforcement Administration by 21 U.S.C. 823 and 824, and 28 CFR 0.100, the Administrator hereby orders that the application of Michael A. Rush, D.P.M., be, and it hereby is, denied.

The Administrator observes that the Respondent has been without a DEA registration since June, 1981, and that he has been back in practice in his community since September, 1982. Thus, the Respondent has had about two years in which to demonstrate that he has recommitted himself to the professional responsibilities which he previously abandoned. Should the Respondent decide to reapply for registration, he will again be given an opportunity to be heard in support of his application. In such a hearing, the Administrator will be most interested in learning whether the Respondent has publicly repudiated his criminal past and whether he has used his highly-visible position as a health professional to help educate his community with respect to the consequences of drug abuse. Such evidence would greatly assist the Administrator in determining whether

the Respondent can again be entrusted with responsibilities of a registration.

Dated: September 21, 1984.

Francis M. Mullen, Jr.,

Administrator.

[FR Doc. 84-25507 Filed 9-25-84; 8:45 am]

BILLING CODE 4410-09-M

Federal Bureau of Investigation

Advisory Policy Board of the National Crime Information Center; Meeting

The Advisory Policy Board of the National Crime Information Center (NCIC) will meet on October 17 and 18, 1984, from 9 a.m. until 5 p.m. at the Olde Colony Inn, First and North Washington Streets, Alexandria, Virginia.

The major topics to be discussed include:

(1) Status report on the phased testing and future development of the Interstate Identification Index.

(2) Proposed dissemination of missing person data to the National Center for Missing and Exploited Children.

(3) Presentations of proposals recommended by state and local users of the NCIC System to enhance the quality and completeness of records in the System.

(4) Results of the random survey to measure the benefits derived from the use of the NCIC Wanted Person File.

The meeting will be open to the public with approximately 25 seats available for seating on a first-come-first-served basis. Any member of the public may file a written statement with the Advisory Policy Board before or after the meeting. Anyone wishing to address a session of the meeting should notify the Advisory Committee Management Officer, Mr. William A. Bayse, FBI, at least 24 hours prior to the start of the session. The notification may be by mail, telegram, cable, or hand-delivered note. It should contain the name, corporate designation, consumer affiliation, or Government designation, along with a capsulized version of the statement and an outline of the material to be offered. A person will be allowed not more than 15 minutes to present a topic, except with the special approval of the Chairman of the Board.

Inquiries may be addressed to Mr. David F. Nemecek, Committee Management Liaison Officer, NCIC Federal Bureau of Investigation, Washington, DC 20535, telephone number 202-324-2606.

Dated: September 19, 1984.

William H. Webster,

Director.

[FR Doc. 84-25468 Filed 9-25-84; 8:45 am]

BILLING CODE 4410-02-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Forms Under Review by the Office of Management and Budget (OMB); Substituted Guidelines for BLS Approval Number 1220-0029

Background

On July 20, 1984 (49 FR 29484), the Bureau of Labor Statistics (BLS), U.S. Department of Labor, announced in the **Federal Register** in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35) that it was proposing a revision in its recordkeeping package for the Log and Summary of Occupational Injuries and Illnesses (OSHA No. 220) and Supplementary Record of Occupational Injuries and Illnesses (OSHA No. 101). The proposal consisted of revised recordkeeping guidelines, Recordkeeping Guidelines for Occupational Injuries and Illnesses, which BLS made available to the public for comment.

Substitution

After reviewing the public comments, the BLS has decided to substitute the guidelines which have been in effect since 1978, Report 412-3, "What Every Employer Needs to Know About OSHA Recordkeeping", for the proposed guidelines as part of the recordkeeping package. OMB has approved the continued use of the existing log and summary (OSHA No. 200), supplementary record (OSHA No. 101), and Report 412-3. In doing so, OMB has assigned control number 1220-0029 to each of the forms, and to Report 412-3.

The BLS and OMB took this action to assure the quality, continuity, comparability and integrity of the BLS statistical series, while affording the Bureau the time needed to evaluate the comments submitted by the public. With OMB approval of Report 412-3, BLS feels that it can and will provide the public further opportunity to participate in the revision process without disrupting the collection of consistently accurate statistics for 1984 and 1985.

Signed at Washington, D.C. this 24th day of September, 1984.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 84-25716 Filed 9-25-84; 8:45 am]

BILLING CODE 4510-24-M

Employment and Training Administration

Labor Surplus Area Classifications Under Executive Orders 12073 and 10582; Notice of Annual List of Labor Surplus Areas

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

DATE: The annual list of Labor Surplus Areas is effective October 1, 1984.

SUMMARY: The purpose of this notice is to announce the annual list of Labor Surplus Areas.

FOR FURTHER INFORMATION CONTACT: James W. Higgins, United States Employment Service (Attention: TEES), 601 D Street, NW., Washington, D.C. 20213. Telephone: 202-376-6753.

SUPPLEMENTARY INFORMATION: Executive Order 12073 requires executive agencies to emphasize procurement set-asides in Labor Surplus Areas. The Secretary of Labor is responsible under that Order for classifying and designating areas as Labor Surplus Areas.

Under Executive Order 10582 executive agencies may reject bids or offers of foreign materials in favor of the lowest offer by a domestic supplier, provided that the domestic supplier undertakes to produce substantially all of the materials in areas of substantial unemployment as defined by the Secretary of Labor. The preference given to domestic suppliers under Executive Order 10582 has been modified by Executive Order 12260. Federal Procurement Regulations Temporary Regulation 57 (41 CFR Chapter 1, Appendix), issued by the General Services Administration on January 15, 1981 (46 FR 3519), implements Executive Order 12260. Executive agencies should refer to Temporary Regulation 57 in procurements involving foreign businesses or products in order to assess its impact on the particular procurements.

The Department of Labor's regulations implementing Executive Orders 12073 and 10582 are set forth at 20 CFR Part 654, Subparts A and B. Subpart A requires the Assistant Secretary of Labor to classify jurisdictions as Labor Surplus Areas pursuant to the criteria

specified in the regulations and to publish annually a list of Labor Surplus Areas.

Subpart B of Part 654 states that an area of substantial unemployment for purposes of Executive Order 10582 is any area classified as a Labor Surplus Area under Subpart A. Thus, Labor Surplus Areas under Executive Order 12073 are also areas of substantial unemployment under Executive Order 10582.

Pursuant to those regulations the Assistant Secretary of Labor is publishing below the annual list of Labor Surplus Areas for the use of all Federal agencies in directing procurement activities and locating new plants or facilities.

Signed at Washington, D.C., on September 19, 1984.

Patrick J. O'Keefe,

Deputy Assistant Secretary of Labor.

Labor Surplus Areas Eligible for Federal Procurement Preference From Oct. 1, 1984 Through Sept. 30, 1985

Eligible labor surplus areas	Civil jurisdictions included
Alabama	
Autauga County	Autauga County.
Baldwin County	Baldwin County.
Barbour County	Barbour County.
Bibb County	Bibb County.
Birmingham City	Birmingham City in Jefferson County.
Blount County	Blount County.
Bullock County	Bullock County.
Butler County	Butler County.
Calhoun County	Calhoun County.
Chambers County	Chambers County.
Cherokee County	Cherokee County.
Chilton County	Chilton County.
Choctaw County	Choctaw County.
Clarke County	Clarke County.
Clay County	Clay County.
Cleburne County	Cleburne County.
Coffee County	Coffee County.
Colbert County	Colbert County.
Conecuh County	Conecuh County.
Coosa County	Coosa County.
Covington County	Covington County.
Crenshaw County	Crenshaw County.
Cullman County	Cullman County.
Dale County	Dale County.
Dallas County	Dallas County.
De Kalb County	De Kalb County.
Dothan City	Dothan City in Houston County.
Elmore County	Elmore County.
Escambia County	Escambia County.
Etowah County	Etowah County.
Fayette County	Fayette County.
Franklin County	Franklin County.
Geneva County	Geneva County.
Greene County	Greene County.
Hale County	Hale County.
Henry County	Henry County.
Balance of Houston County	Houston County less Dothan City.
Jackson County	Jackson County.
Balance of Jefferson County	Jefferson County less Birmingham City.
Lamar County	Lamar County.
Lauderdale County	Lauderdale County.
Lawrence County	Lawrence County.
Limestone County	Limestone County.
Lowndes County	Lowndes County.
Macon County	Macon County.
Marengo County	Marengo County.
Marion County	Marion County.
Marshall County	Marshall County.
Mobil City	Mobile City in Mobile County.
Balance of Mobile County	Mobile County less Mobile City.
Monroe County	Monroe County.
Montgomery City	Montgomery City in Montgomery County.
Morgan County	Morgan County.
Perry County	Perry County.
Pickens County	Pickens County.
Pike County	Pike County.
Randolph County	Randolph County.
Russell County	Russell County.
Shelby County	Shelby County.
St. Clair County	St. Clair County.
Sumter County	Sumter County.
Talladega County	Talladega County.
Tallapoosa County	Tallapoosa County.
Tuscaloosa City	Tuscaloosa City in Tuscaloosa County.
Balance of Tuscaloosa County	Tuscaloosa County less Tuscaloosa City.
Walker County	Walker County.
Washington County	Washington County.
Wilcox County	Wilcox County.
Winston County	Winston County.
Alaska	
Angoon Division	Angoon Division.
Bethel Division	Bethel Division.
Bristol Bay Borough Division	Bristol Bay Borough Division.
Fairbanks Division	Fairbanks Division.
Haines Division	Haines Division.
Kenai-Cook Inlet Division	Kenai-Cook Inlet Division.
Ketchikan Division	Ketchikan Division.
Kodiak Division	Kodiak Division.
Kuskokwim Division	Kuskokwim Division.
Matanuska-Susitna Division	Matanuska-Susitna Division.
Outer Ketchikan Division	Outer Ketchikan Division.
Prince of Wales Division	Prince of Wales Division.
Seward Division	Seward Division.
Sitka Division	Sitka Division.
Skagway-Yakutat Division	Skagway-Yakutat Division.
Southeast Fairbanks Division	Southeast Fairbanks Division.
Upper Yukon Division	Upper Yukon Division.
Valdez-Chitina-Whittier	Valdez-Chitina-Whittier.
Wade Hampton Division	Wade Hampton Division.
Wrangell-Petersburg Division	Wrangell-Petersburg Division.
Yukon-Koyukuk Division	Yukon-Koyukuk Division.
Arizona	
Apache County	Apache County.
Cochise County	Cochise County.
Coconino County	Coconino County.
Gila County	Gila County.
Graham County	Graham County.
Greenlee County	Greenlee County.
La Paz County	La Paz County.
Mohave County	Mohave County.
Navajo County	Navajo County.
Pinal County	Pinal County.
Santa Cruz County	Santa Cruz County.
Yuma County	Yuma County.
Arkansas	
Ashley County	Ashley County.
Bradley County	Bradley County.
Chicot County	Chicot County.
Clay County	Clay County.
Cleburne County	Cleburne County.
Cleveland County	Cleveland County.
Conway County	Conway County.
Crawford County	Crawford County.
Crittenden County	Crittenden County.
Cross County	Cross County.
Desha County	Desha County.
Drew County	Drew County.
Franklin County	Franklin County.
Fulton County	Fulton County.
Garland County	Garland County.
Grant County	Grant County.
Greene County	Greene County.
Hot Spring County	Hot Spring County.
Jackson County	Jackson County.
Lawrence County	Lawrence County.
Lee County	Lee County.
Lincoln County	Lincoln County.
Logan County	Logan County.
Mississippi County	Mississippi County.
Monroe County	Monroe County.
Montgomery County	Montgomery County.
Nevada County	Nevada County.
Newton County	Newton County.
Ouachita County	Ouachita County.
Perry County	Perry County.
Phillips County	Phillips County.
Pike County	Pike County.
Pine Bluff City	Pine Bluff City in Jefferson County.
Poinsett County	Poinsett County.
Polk County	Polk County.
Pope County	Pope County.
Prairie County	Prairie County.
Randolph County	Randolph County.
Scott County	Scott County.
Searcy County	Searcy County.
Balance of Sebastian County	Sebastian County less Fort Smith City.
Sharp County	Sharp County.
St. Francis County	Francis County.
Stone County	Stone County.
Texarkana City	Texarkana City in Miller County.
Van Buren County	Van Buren County.
White County	White County.
Woodruff County	Woodruff County.
California	
Amador County	Amador County.
Baldwin Park City	Baldwin Park City in Los Angeles County.
Butte County	Butte County.
Calaveras County	Calaveras County.
Colusa County	Colusa County.
Compton City	Compton City in Los Angeles County.
Del Norte County	Del Norte County.
El Cajon City	El Cajon City in San Diego County.
El Dorado County	El Dorado County.
El Monte City	El Monte City in Los Angeles County.
Fairfield City	Fairfield City in Solano County.
Fresno City	Fresno City in Fresno County.
Balance of Fresno County	Fresno County less Fresno City.
Glenn County	Glenn County.
Humboldt County	Humboldt County.
Imperial County	Imperial County.
Inglewood City	Inglewood City in Los Angeles County.
Balance of Kern County	Kern County less Bakersfield City.
Kings County	Kings County.
Lake County	Lake County.
Lancaster City	Lancaster City in Los Angeles County.
Lassen County	Lassen County.
Los Angeles City	Los Angeles City in Los Angeles County.
Lynwood City	Lynwood City in Los Angeles County.
Madera County	Madera County.
Mariposa County	Mariposa County.
Mendocino County	Mendocino County.
Merced County	Merced County.
Modesto City	Modesto City in Stanislaus County.
Modoc County	Modoc County.
Mono County	Mono County.
Balance of Monterey County	MOnterey County less Salinas City.
Napa City	Napa City in Napa County.
National City	National City in San Diego County.
Nevada County	Nevada County.
Oakland City	Oakland City in Alameda County.
Oxnard City	Oxnard City in Ventura County.
Pico Rivera City	Pico Rivera City in Los Angeles County.
Placer County	Placer County.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE FROM OCT. 1, 1984 THROUGH SEPT. 30, 1985—Continued

Eligible labor surplus areas	Civil jurisdictions included
Plumas County	Plumas County.
Pomona City	Pomona City in Los Angeles County.
Richmond City	Richmond City in Contra Costa County.
Riverside City	Riverside City in Riverside County.
Balance of Riverside County	Riverside County less Riverside City.
Sacramento City	Sacramento City in Sacramento County.
Salinas City	Salinas City in Monterey County.
San Benito County	San Benito County.
San Bernardino City	San Bernardino City in San Bernardino County.
Balance of San Bernardino County.	San Bernardino County less Ontario City. Rancho Cucamonga City. San Bernardino City.
Balance of San Joaquin County.	San Joaquin County less Stockton City.
Santa Cruz County	Santa Cruz County.
Shasta County	Shasta County.
Sierra County	Sierra County.
Siskiyou County	Siskiyou County.
Balance of Solano County	Solano County less Fairfield City. Vallejo City.
Balance of Sonoma County	Sonoma County less Santa Rosa City.
South Gate City	South Gate City in Los Angeles County.
Balance of Stanislaus County	Stanislaus County less Modesto City.
Stockton City	Stockton City in San Joaquin County.
Sutter County	Sutter County.
Tehama County	Tehama County.
Trinity County	Trinity County.
Balance of Tulare County	Tulare County less Visalia City.
Tuolumne County	Tuolumne County.
Yolo County	Yolo County.
Yuba County	Yuba County.
Colorado	
Archuleta County	Archuleta County.
Chaffee County	Chaffee County.
Clear Creek County	Clear Creek County.
Conejos County	Conejos County.
Costilla County	Costilla County.
Delta County	Delta County.
Eagle County	Eagle County.
Fremont County	Fremont County.
Garfield County	Garfield County.
Lake County	Lake County.
Las Animas County	Las Animas County.
Mesa County	Mesa County.
Mineral County	Mineral County.
Moffat County	Moffat County.
Montezuma County	Montezuma County.
Montrose County	Montrose County.
Otero County	Otero County.
Ouray County	Ouray County.
Park County	Park County.
Pueblo City	Pueblo City in Pueblo County.
Balance of Pueblo County	Pueblo County less Pueblo City.
Saguache County	Saguache County.
San Juan County	San Juan County.
Connecticut	
Ansonia Town	Ansonia Town.
Bristol City	Bristol City.
Killingly Town	Killingly Town.
Plymouth Town	Plymouth Town.
Putnam Town	Putnam Town.
Thomaston Town	Thomaston Town.
Thompson Town	Thompson Town.
Torrington City	Torrington City.
Winchester Town	Winchester Town.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE FROM OCT. 1, 1984 THROUGH SEPT. 30, 1985—Continued

Eligible labor surplus areas	Civil jurisdictions included
Delaware	
Wilmington City	Wilmington City in New Castle County.
District of Columbia	
Washington, DC City	District of Columbia.
Florida	
Bay County	Bay County.
Calhoun County	Calhoun County.
Collier County	Collier County.
De Soto County	De Soto County.
Franklin County	Franklin County.
Glades County	Glades County.
Gulf County	Gulf County.
Hardee County	Hardee County.
Hendry County	Hendry County.
Hernando County	Hernando County.
Hialeah City	Hialeah City in Dade County.
Indian River County	Indian River County.
Jackson County	Jackson County.
Lake County	Lake County.
Miami Beach City	Miami Beach City in Dade County.
Miami City	Miami City in Dade County.
Okeechobee County	Okeechobee County.
Polk County	Polk County.
Putnam County	Putnam County.
St. John County	St. John County.
St. Lucie County	St. Lucie County.
Sumter County	Sumter County.
Washington County	Washington County.
Georgia	
Albany City	Albany City in Dougherty County.
Atkinson County	Atkinson County.
Bartow County	Bartow County.
Brantley County	Brantley County.
Butts County	Butts County.
Calhoun County	Calhoun County.
Chattooga County	Chattooga County.
Crawford County	Crawford County.
Crisp County	Crisp County.
Elbert County	Elbert County.
Fannin County	Fannin County.
Floyd County	Floyd County.
Glascock County	Glascock County.
Gordon County	Gordon County.
Haralson County	Haralson County.
Lincoln County	Lincoln County.
Macon County	Macon County.
McDuffie County	McDuffie County.
McIntosh County	McIntosh County.
Meriwether County	Meriwether County.
Murray County	Murray County.
Oglethorpe County	Oglethorpe County.
Pierce County	Pierce County.
Polk County	Polk County.
Randolph County	Randolph County.
Spalding County	Spalding County.
Stewart County	Stewart County.
Talbot County	Talbot County.
Taliaferro County	Taliaferro County.
Terrell County	Terrell County.
Turner County	Turner County.
Union County	Union County.
Upson County	Upson County.
Warren County	Warren County.
Wayne County	Wayne County.
Wilcox County	Wilcox County.
Worth County	Worth County.
Idaho	
Adams County	Adams County.
Bear Lake County	Bear Lake County.
Benewah County	Benewah County.
Blaine County	Blaine County.
Boise County	Boise County.
Bonner County	Bonner County.
Boundary County	Boundary County.
Canyon County	Canyon County.
Clearwater County	Clearwater County.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE FROM OCT. 1, 1984 THROUGH SEPT. 30, 1985—Continued

Eligible labor surplus areas	Civil jurisdictions included
Fremont County	Fremont County.
Gem County	Gem County.
Idaho County	Idaho County.
Kootenai County	Kootenai County.
Lemhi County	Lemhi County.
Lewis County	Lewis County.
Power County	Power County.
Shoshone County	Shoshone County.
Valley County	Valley County.
Illinois	
Adams County	Adams County.
Alexander County	Alexander County.
Aurora City	Aurora City in Du Page County, Kane County.
Bond County	Bond County.
Boone County	Boone County.
Bureau County	Bureau County.
Calhoun County	Calhoun County.
Chicago City	Chicago City in Cook County.
Christian County	Christian County.
Cicero City	Cicero City in Cook County.
Clark County	Clark County.
Clay County	Clay County.
Clinton County	Clinton County.
Coles County	Coles County.
Balance of Cook County	Cook County less Arlington Heights City, Chicago City, Cicero City, Des Plaines City, Elgin City, Evanston City, Mount Prospect Village, Oak Lawn City, Oak Park City, and Skokie City.
Crawford County	Crawford County.
Cumberland County	Cumberland County.
De Witt County	De Witt County.
Decatur City	Decatur City in Macon County.
Des Plaines City	Des Plaines City in Cook County.
East St. Louis City	East St. Louis City in St. Clair County.
Edgar County	Edgar County.
Effingham County	Effingham County.
Elgin City	Elgin City in Cook County, Kane County.
Fayette County	Fayette County.
Franklin County	Franklin County.
Fulton County	Fulton County.
Gallatin County	Gallatin County.
Greene County	Greene County.
Grundy County	Grundy County.
Hamilton County	Hamilton County.
Hancock County	Hancock County.
Hardin County	Hardin County.
Henderson County	Henderson County.
Henry County	Henry County.
Jasper County	Jasper County.
Jefferson County	Jefferson County.
Jersey County	Jersey County.
Jo Daviess County	Jo Daviess County.
Johnson County	Johnson County.
Joliet City	Joliet City in Will County.
Kankakee County	Kankakee County.
Kendall County	Kendall County.
Knox County	Knox County.
La Salle County	La Salle County.
Lawrence County	Lawrence County.
Lee County	Lee County.
Logan County	Logan County.
Balance of Macon County	Macon County less Decatur City.
Macoupin County	Macoupin County.
Madison County	Madison County.
Marion County	Marion County.
Marshall County	Marshall County.
Mason County	Mason County.
Massac County	Massac County.
McDonough County	McDonough County.
McHenry County	McHenry County.
Mercer County	Mercer County.
Montgomery County	Montgomery County.
Moultrie County	Moultrie County.
Ogle County	Ogle County.
Peoria City	Peoria City in Peoria County.
Balance of Peoria County	Peoria County Less Peoria City.
Perry County	Perry County.

Labor Surplus Areas Eligible for Federal Procurement Preference From Oct. 1, 1984 Through Sept. 30, 1985—Continued

Eligible labor surplus areas	Civil jurisdictions included
Piatt County	Piatt County.
Pike County	Pike County.
Pope County	Pope County.
Pulaski County	Pulaski County.
Putnam County	Putnam County.
Randolph County	Randolph County.
Richland County	Richland County.
Rock Island County	Rock Island County.
Rockford City	Rockford City in Winnebago County.
Saline County	Saline County.
Scott County	Scott County.
Shelby County	Shelby County.
Balance of St. Clair County	St. Clair County less East St. Louis City.
Stark County	Stark County.
Stephenson County	Stephenson County.
Tazewell County	Tazewell County.
Union County	Union County
Vermilion County	Vermilion County.
Wabash County	Wabash County.
Warren County	Warren County.
Washington County	Washington County.
Waukegan City	Waukegan City in Lake County.
Wayne County	Wayne County.
White County	White County.
Whiteside County	Whiteside County.
Balance of Will County	Will County less Joliet City.
Williamson County	Williamson County.
Woodford County	Woodford County.

Indiana

Adams County	Adams County.
Anderson City	Anderson City in Madison County.
Bartholomew County	Bartholomew County.
Blackford County	Blackford County.
Cass County	Cass County.
Clark County	Clark County.
Clay County	Clay County.
Clinton County	Clinton County.
Crawford County	Crawford County.
Daviess County	Daviess County.
De Kalb County	De Kalb County.
Dearborn County	Dearborn County.
Decatur County	Decatur County.
Balance of Delaware County	Delaware County less Muncie City.
Evansville City	Evansville City in Vanderburgh County.
Fayette County	Fayette County.
Floyd County	Floyd County.
Fountain County	Fountain County.
Franklin County	Franklin County.
Fort Wayne City	Fort Wayne City in Allen County.
Fulton County	Fulton County.
Gary City	Gary City in Lake County.
Gibson County	Gibson County.
Grant County	Grant County.
Greene County	Greene County.
Hammond City	Hammond City in Lake County.
Harrison County	Harrison County.
Henry County	Henry County.
Howard County	Howard County.
Huntington County	Huntington County.
Indianapolis City	Indianapolis City in Marion County.
Jackson County	Jackson County.
Jasper County	Jasper County.
Jay County	Jay County.
Jefferson County	Jefferson County.
Jennings County	Jennings County.
Knox County	Knox County.
La Porte County	La Porte County.
Balance of Lake County	Lake County less Gary City, Hammond City.
Lawrence County	Lawrence County.
Balance of Madison County	Madison County less Anderson City.
Marshall County	Marshall County.
Martin County	Martin County.
Miami County	Miami County.
Muncie City	Muncie City in Delaware County.
Newton County	Newton County.
Noble County	Noble County.
Ohio County	Ohio County.
Orange County	Orange County.
Owen County	Owen County.
Parke County	Parke County.
Perry County	Perry County.
Pike County	Pike County.
Porter County	Porter County.
Randolph County	Randolph County.
Ripley County	Ripley County.
Rush County	Rush County.
Scott County	Scott County.
Shelby County	Shelby County.
South Bend City	South Bend City in St. Joseph County.
Spencer County	Spencer County.
Starke County	Starke County.
Steuben County	Steuben County.
Sullivan County	Sullivan County.
Switzerland County	Switzerland County.
Terre Haute City	Terre Haute City in Vigo County.
Tipton County	Tipton County.
Union County	Union County.
Vermillion County	Vermillion County.
Wabash County	Wabash County.
Warren County	Warren County.
Washington County	Washington County.
Wayne County	Wayne County.
Wells County	Wells County.
White County	White County.
Whitley County	Whitley County.

Iowa

Appanoose County	Appanoose County.
Benton County	Benton County.
Balance of Black Hawk County.	Black Hawk County less Waterloo City.
Buchanan County	Buchanan County.
Butler County	Butler County.
Chickasaw County	Chickasaw County.
Clinton County	Clinton County.
Davenport City	Davenport City in Scott County.
Davis County	Davis County.
Delaware County	Delaware County.
Des Moines County	Des Moines County.
Dubuque City	Dubuque City in Dubuque County.
Balance of Dubuque County	Dubuque County in Dubuque City.
Emmet County	Emmet County.
Fayette County	Fayette County.
Floyd County	Floyd County.
Jackson County	Jackson County.
Lee County	Lee County.
Marshall County	Marshall County.
Monroe County	Monroe County.
Sac County	Sac County.
Van Buren County	Van Buren County.
Wapello County	Wapello County.
Waterloo City	Waterloo City Black Hawk County.

Kansas

Montgomery County	Montgomery County.

Kentucky

Allen County	Allen County.
Barren County	Barren County.
Bath County	Bath County.
Bell County	Bell County.
Boone County	Boone County.
Boyd County	Boyd County.
Boyle County	Boyle County.
Bracken County	Bracken County.
Breathitt County	Breathitt County.
Breckinridge County	Breckinridge County.
Bullitt County	Bullitt County.
Butler County	Butler County.
Caldwell County	Caldwell County.
Carlisle County	Carlisle County.
Carter County	Carter County.
Casey County	Casey County.
Clay County	Clay County.
Clinton County	Clinton County.
Crittenden County	Crittenden County.
Edmonson County	Edmonson County.
Elliott County	Elliott County.
Estill County	Estill County.
Fleming County	Fleming County.
Floyd County	Floyd County.
Fulton County	Fulton County.
Gallatin County	Gallatin County.
Garrard County	Garrard County.
Graves County	Graves County.
Grayson County	Grayson County.
Greenup County	Greenup County.
Harlan County	Harlan County.
Hart County	Hart County.
Henderson County	Henderson County.
Henry County	Henry County.
Hickman County	Hickman County.
Hopkins County	Hopkins County.
Jackson County	Jackson County.
Balance of Jefferson County	Jefferson County less Louisville City.
Johnson County	Johnson County.
Knott County	Knott County.
Knox County	Knox County.
Lawrence County	Lawrence County.
Lee County	Lee County.
Leslie County	Leslie County.
Letcher County	Letcher County.
Lewis County	Lewis County.
Lincoln County	Lincoln County.
Livingston County	Livingston County.
Logan County	Logan County.
Louisville City	Louisville City in Jefferson County.
Magoffin County	Magoffin County.
Marion County	Marion County.
Marshall County	Marshall County.
McCreary County	McCreary County.
McLean County	McLean County.
Meade County	Meade County.
Menifee County	Menifee County.
Mercer County	Mercer County.
Metcalfe County	Metcalfe County.
Monroe County	Monroe County.
Montgomery County	Montgomery County.
Morgan County	Morgan County.
Muhlenberg County	Muhlenberg County.
Nelson County	Nelson County.
Nicholas County	Nicholas County.
Ohio County	Ohio County.
Owensboro City	Owensboro City in Daviess County.
Owsley County	Owsley County.
Pendleton County	Pendleton County.
Perry County	Perry County.
Pike County	Pike County.
Powell County	Powell County.
Pulaski County	Pulaski County.
Robertson County	Robertson County.
Rockcastle County	Rockcastle County.
Rowan County	Rowan County.
Russell County	
Simpson County	Simpson County.
Spencer County	Spencer County.
Todd County	Todd County.
Union County	Union County.
Warren County	Warren County.
Washington County	Washington County.
Wayne County	Wayne County.
Webster County	Webster County.
Whitley County	Whitley County.
Wolfe County	Wolfe County.

Louisiana

Acadia Parish	Acadia Parish.
Alexandria City	Alexandria City in Rapides Parish.
Allen Parish	Allen Parish.
Ascension Parish	Ascension Parish.
Assumption Parish	Assumption Parish.
Avoyelles Parish	Avoyelles Parish.
Beauregard Parish	Beauregard Parish.
Bienville Parish	Bienville Parish.
Balance of Bossier Parish	Bossier Parish less Bossier City. Shreveport City

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE FROM OCT. 1, 1984 THROUGH SEPT. 30, 1985—Continued

Eligible labor surplus areas	Civil jurisdictions included
Balance of Caddo Parish	Caddo Parish less Shreveport City.
Balance of Calcasieu Parish	Calcasieu Parish less Lake Charles City.
Caldwell Parish	Caldwell Parish.
Catahoula Parish	Catahoula Parish.
Claiborne Parish	Claiborne Parish.
Concordia Parish	Concordia Parish.
De Soto Parish	De Soto Parish.
East Carroll Parish	East Carroll Parish.
East Feliciana Parish	East Feliciana Parish.
Evangeline Parish	Evangeline Parish.
Franklin Parish	Franklin Parish.
Grant Parish	Grant Parish.
Iberia Parish	Iberia Parish.
Iberville Parish	Iberville Parish.
Jackson Parish	Jackson Parish.
Jefferson Davis Parish	Jefferson Davis Parish.
La Salle Parish	La Salle Parish.
LaFourche Parish	LaFourche Parish.
Lake Charles City	Lake Charles City in Calcasieu Parish.
Livingston Parish	Livingston Parish.
Madison Parish	Madison Parish.
Monroe City	Monroe City in Ouachita Parish.
Morehouse Parish	Morehouse Parish.
Natchitoches Parish	Natchitoches Parish.
Balance of Ouachita Parish	Ouachita Parish less Monroe City.
Pointe Coupee Parish	Ponte Coupee Parish.
Balance of Rapides Parish	Raides Parish less Alexandria City.
Red River Parish	Red River Parish.
Richland Parish	Richland Parish.
Sabine Parish	Sabina Parish.
Shreveport City	Shreveport City in Bossier Parish. Caddo Parish.
St. Bernard Parish	St. Bernard Parish.
St. Helena Parish	St. Helena Parish.
St. James Parish	St. James Parish.
St. John Baptist Parish	St John Baptist Parish.
St. Landry Parish	St. Landry Parish.
St. Martin Parish	St. Martin Parish.
St. Mary Parish	St. Mary Parish.
St. Tammany Parish	St. Tammany Parish.
Tangipahoa Parish	Tangipahoa Parish.
Tensas Parish	Tensas Parish.
Terrebonne Parish	Terrebonne Parish.
Union Parish	Union Parish.
Vermilion Parish	Vermilion Parish.
Vernon Parish	Vernon Parish.
Washington Parish	Washington Parish.
Webster Parish	Webster Parish.
West Baton Rouge Parish	West Baton Rouge Parish.
West Carroll Parish	West Carrol Parish.
Winn Parish	Winn Parish.

Maine

Androscoggin County	Androscoggin County.
Aroostook County	Aroostook County.
Oxford County	Oxford County.
Somerset County	Somerset County.
Waldo County	Waldo County.
Washington County	Washington County.

Maryland

Allegany County	Allegany County.
Baltimore City	Baltimore City.
Calvert County	Calvert County.
Caroline County	Caroline County.
Dorchester County	Dorchester County.
Garrett County	Garrett County.
Kent County	Kent County.
Somerset County	Somerset County.
Washington County	Washington County.
Worcester County	Worcester County.

Massachusetts

Ashburnham Town	Ashburnham Town in Worcester County.
Ashby Town	Ashby Town in Middlesex County.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE FROM OCT. 1, 1984 THROUGH SEPT. 30, 1985—Continued

Eligible labor surplus areas	Civil jurisdictions included
Athol Town	Athol Town in Worcester County.
Ayer Town	Ayer Town in Middlesex County.
Belcherton Town	Belcherton Town in Hampshire County.
Berkley Town	Berkley Town in Bristol County.
Blandford Town	Blandford Town in Hampden County.
Charlemont Town	Charlemont Town in Franklin County.
Charlton Town	Charlton Town in Worcester County.
Chelsea City	Chelsea City in Suffolk County.
Chester Town	Chester Town in Hampden County.
Chesterfield Town	Chesterfield Town in Hampshire County.
Cummington Town	Cummington Town in Hampshire County.
Dighton Town	Dighton Town in Bristol County.
Eastham Town	Eastham Town in Barnstable County.
Erving Town	Erving Town in Franklin County.
Fall River City	Fall River City in Bristol County.
Falmouth Town	Falmouth Town in Barnstable County.
Fitchburg City	Fitchburg City in Worcester County.
Florida Town	Florida Town in Berkshire County.
Gardner Town	Gardner Town in Worcester County.
Gloucester City	Gloucester City in Essex County.
Hancock Town	Hancock Town in Berkshire County.
Hanson Town	Hanson Town in Plymouth County.
Hardwick Town	Hardwick Town in Worcester County.
Harwich Town	Harwich Town in Barnstable County.
Holland Town	Holland Town in Hampden County.
Hopedale Town	Hopedale Town in Worcester County.
Hubbardston Town	Hubbardston Town in Worcester County.
Hull Town	Hull Town in Plymouth County.
Huntington Town	Huntington Town in Hampshire County.
Lawrence City	Lawrence City in Essex County.
Marion Town	Marion Town in Plymouth County.
Middlefield Town	Middlefield Town in Hampshire County.
Milford Town	Milford Town in Worcester County.
Millbury Town	Millbury Town in Worcester County.
Millville Town	Millville Town in Worcester County.
Monroe Town	Monroe Town in Franklin County.
New Beford City	New Bedford City in Bristol County.
New Salem Town	New Salem Town in Franklin County.
Newbury Town	Newbury Town in Essex County.
North Adams Town	North Adams Town in Berkshire County.
Oakham Town	Oakham Town in Worcester County.
Orange Town	Orange Town in Franklin County.
Oxford Town	Oxford Town in Worcester County.
Phillipston Town	Phillipston Town in Worcester County.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE FROM OCT. 1, 1984 THROUGH SEPT. 30, 1985—Continued

Eligible labor surplus areas	Civil jurisdictions included
Plainfield Town	Plainfield Town in Hampshire County.
Provincetown Town	Provincetown Town in Barnstable County.
Rockport Town	Rockport Town in Essex County.
Royalston Town	Royalston Town in Worcester County.
Salisbury Town	Salisbury Town in Essex County.
Savoy Town	Savoy Town in Berkshire County.
Shirley Town	Shirley Town in Middlesex County.
Sturbridge Town	Sturbridge Town in Worcester County.
Sutton Town	Sutton Town in Worcester County.
Taunton City	Taunton City in Bristol County.
Tolland Town	Tolland Town in Hampden County.
Truro Town	Truro Town in Barnstable County.
Uxbridge Town	Uxbridge Town in Worcester County.
Wales Town	Wales Town in Hampden County.
Ware Town	Ware Town in Hampshire County.
Wareham Town	Wareham Town in Plymouth County.
Warwick Town	Warwick Town in Franklin County.
Webster Town	Webster Town in Worcester County.
Wellfleet Town	Wellfleet Town in Barnstable County.
Wendell Town	Wendell Town in Franklin County.
West Newbury Town	West Newbury Town in Essex County.
Westport Town	Westport Town in Bristol County.
Winchendon Town	Winchendon Town in Worcester County.
Worthington Town	Worthington Town in Hampshire County.

Michigan

Alcona County	Alcona County.
Alger County	Alger County.
Allegan County	Allegan County.
Alpena County	Alpena County.
Antrim County	Antrim County.
Arenac County	Arenac County.
Baraga County	Baraga County.
Barry County	Barry County.
Battle Creek City	Battle Creek City in Calhoun County.
Bay County	Bay County.
Benzie County	Benzie County.
Berrien County	Berrien County.
Branch County	Branch County.
Balance of Calhoun County	Calhoun County less Battle Creek City.
Cass County	Cass County.
Charlevoix County	Charlevoix County.
Cheboygan County	Cheboygan County.
Chippewa County	Chippewa County.
Clare County	Clare County.
Clinton County	Clinton County.
Clinton Township	Clinton Township in Macomb County.
Crawford County	Crawford County.
Dearborn Heights City	Dearborn Heights City in Wayne County.
Delta County	Delta County.
Detroit City	Detroit City in Wayne County.
Dickinson County	Dickinson County.
Balance of Eaton County	Eaton County less Lansing City.
Emmet County	Emmet County.
Farmington Hills City	Farmington Hills City in Oakland County.
Flint City	Flint City in Genesee County.
Balance of Genesee County	Genesee County less Flint City.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE FROM OCT. 1, 1984 THROUGH SEPT. 30, 1985—Continued

Eligible labor surplus areas	Civil jurisdictions included
Gladwin County	Gladwin County.
Gogebic County	Gogebic County.
Grand Rapids City	Grand Rapids City in Kent County.
Grand Traverse County	Grand Traverse County.
Gratiot County	Gratiot County.
Hillsdale County	Hillsdale County.
Houghton County	Houghton County.
Huron County	Huron County.
Ionia County	Ionia County.
Iosco County	Iosco County.
Iron County	Iron County.
Jackson County	Jackson County.
Kalamazoo City	Kalamazoo City in Kalamazoo County.
Kalkaska County	Kalkaska County.
Balance of Kent County	Kent County less Grand Rapids City. Wyoming City.
Keweenaw County	Keweenaw County.
Lake County	Lake County.
Lansing City	Lansing City in Eaton County. Ingham County.
Lapeer County	Lapeer County.
Leelanau County	Leelanau County.
Lenawee County	Lenawee County.
Livingston County	Livingston County.
Luce County	Luce County.
Mackinac County	Mackinac County.
Balance of Macomb County	Macomb County less Clinton Township, Roseville City, St Clair Shores City, Sterling Heights City, and Warren City.
Manistee County	Manistee County.
Marquette County	Marquette County.
Mason County	Mason County.
Mecosta County	Mecosta County.
Menominee County	Menominee County.
Midland County	Midland County.
Missaukee County	Missaukee County.
Monroe County	Monroe County.
Montcalm County	Montcalm County.
Montmorency County	Montmorency County.
Muskegon County	Muskegon County.
Newaygo County	Newaygo County.
Balance of Oakland County	Oakland County less Farmington Hills City, Pontiac City, Royal Oak City, Southfield City, Troy City, and Waterford Township.
Oceana County	Oceana County.
Ogemaw County	Ogemaw County.
Ontonagon County	Ontonagon County.
Osceola County	Osceola County.
Oscoda County	Oscoda County.
Otsego County	Otsego County.
Ottawa County	Ottawa County.
Pontiac City	Pontiac City in Oakland County.
Presque Isle County	Presque Isle County.
Roscommon County	Roscommon County.
Roseville City	Roseville City in Macomb County.
Royal Oak City	Royal Oak City in Oakland County.
Saginaw City	Saginaw City in Saginaw County.
Balance of Saginaw County	Saginaw County less Saginaw City.
Sanilac County	Sanilac County.
Schoolcraft County	Schoolcraft County.
Shiawassee County	Shiawassee County.
Southfield City	Southfield City in Oakland County.
St. Clair Shores City	St. Clair Shores City in Macomb County.
St. Clair County	St. Clair County.
St. Joseph County	St. Joseph County.
Sterling Heights City	Sterling Heights City in Macomb County.
Taylor City	Taylor City in Wayne County.
Tuscola County	Tuscola County.
Van Buren County	Van Buren County.
Warren City	Warren City in Macomb County.
Balance of Washtenaw County	Washtenaw County less Ann Arbor City.
Waterford Township	Waterford Township in Oakland County.
Balance of Wayne County	Wayne County less Dearborn City, Dearborn Heights City, Detroit City, Livonia City, Redford Township, Taylor City, and Westland City.
Westland City	Westland City in Wayne County.
Wexford County	Wexford County.
Wyoming City	Wyoming City in Kent County.

Minnesota

Aitkin County	Aitkin County.
Becker County	Becker County.
Carlton County	Carlton County.
Cass County	Cass County.
Clearwater County	Clearwater County.
Cook County	Cook County.
Crow Wing County	Crow Wing County.
Duluth City	Duluth City in St. Louis County.
Hubbard County	Hubbard County.
Isanti County	Isanti County.
Itasca County	Itasca County.
Kanabec County	Kanabec County.
Koochiching County	Koochiching County.
Lake County	Lake County.
Le Sueur County	Le Sueur County.
Mahnomen County	Mahnomen County.
Marshall County	Marshall County.
Meeker County	Meeker County.
Mille Lacs County	Mille Lacs County.
Morrison County	Morrison County.
Pine County	Pine County.
Red Lake County	Red Lake County.
Roseau County	Roseau County.
Sherburne County	Sherburne County.
Balance of St. Louis County	St. Louis County less Duluth City.
Wadena County	Wadena County.

Mississippi

Adams County	Adams County.
Alcorn County	Alcorn County.
Amite County	Amite County.
Attala County	Attala County.
Benton County	Benton County.
Biloxi City	Biloxi City in Harrison County.
Bolivar County	Bolivar County.
Calhoun County	Calhoun County.
Chickasaw County	Chickasaw County.
Choctaw County	Choctaw County.
Claiborne County	Claiborne County.
Clarke County	Clarke County.
Clay County	Clay County.
Coahoma County	Coahoma County.
Copiah County	Copiah County.
Covington County	Covington County.
George County	George County.
Greene County	Greene County.
Grenada County	Grenada County.
Hancock County	Hancock County.
Balance of Harrison County	Harrison County less Biloxi City.
Holmes County	Holmes County.
Humphreys County	Humphreys County.
Itawamba County	Itawamba County.
Jackson County	Jackson County.
Jasper County	Jasper County.
Jefferson County	Jefferson County.
Jefferson Davis County	Jefferson Davis County.
Jones County	Jones County.
Kemper County	Kemper County.
Lauderdale County	Lauderdale County.
Lawrence County	Lawrence County.
Lee County	Lee County.
Leflore County	Leflore County.
Lincoln County	Lincoln County.
Lowndes County	Lowndes County.
Madison County	Madison County.
Marion County	Marion County.
Marshall County	Marshall County.
Monroe County	Monroe County.
Montgomery County	Montgomery County.
Neshoba County	Neshoba County.
Newton County	Newton County.
Noxubee County	Noxubee County.
Panola County	Panola County.
Pearl River County	Pearl River County.
Perry County	Perry County.
Pike County	Pike County.
Pontotoc County	Pontotoc County.
Prentiss County	Prentiss County.
Quitman County	Quitman County.
Scott County	Scott County.
Sharkey County	Sharkey County.
Simpson County	Simpson County.
Smith County	Smith County.
Stone County	Stone County.
Sunflower County	Sunflower County.
Tallahatchie County	Tallahatchie County.
Tate County	Tate County.
Tippah County	Tippah County.
Tishomingo County	Tishomingo County.
Tunica County	Tunica County.
Union County	Union County.
Walthall County	Walthall County.
Warren County	Warren County.
Washington County	Washington County.
Wayne County	Wayne County.
Webster County	Webster County.
Wilkinson County	Wilkinson County.
Winston County	Winston County.
Yalobusha County	Yalobusha County.
Yazoo County	Yazoo County.

Missouri

Audrain County	Audrain County.
Benton County	Benton County.
Bollinger County	Bollinger County.
Butler County	Butler County.
Carter County	Carter County.
Cedar County	Cedar County.
Clark County	Clark County.
Crawford County	Crawford County.
Dallas County	Dallas County.
Daviess County	Daviess County.
Dent County	Dent County.
Douglas County	Douglas County.
Dunklin County	Dunklin County.
Franklin County	Franklin County.
Grundy County	Grundy County.
Hickory County	Hickory County.
Howell County	Howell County.
Iron County	Iron County.
Jefferson County	Jefferson County.
Kansas City	Kansas City in Clay County. Jackson County. Platte County.
Laclede County	Laclede County.
Lewis County	Lewis County.
Lincoln County	Lincoln County.
Linn County	Linn County.
Livingston County	Livingston County.
Macon County	Macon County.
Madison County	Madison County.
Maries County	Maries County.
Marion County	Marion County.
McDonald County	McDonald County.
Miller County	Miller County.
Mississippi County	Mississippi County.
Moniteau County	Moniteau County.
Montgomery County	Montgomery County.
Morgan County	Morgan County.
New Madrid County	New Madrid County.
Oregon County	Oregon County.
Pemiscot County	Pemiscot County.
Perry County	Perry County.
Pettis County	Pettis County.
Pike County	Pike County.
Ralls County	Ralls County.
Randolph County	Randolph County.
Reynolds County	Reynolds County.
Ripley County	Ripley County.
Scott County	Scott County.
Shannon County	Shannon County.
St. Joseph City	St. Joseph City in Buchanan County.
St. Louis City	St. Louis City.
St. Francois County	St. Francois County.

Labor Surplus Areas Eligible for Federal Procurement Preference From Oct. 1, 1984 Through Sept. 30, 1985—Continued

Eligible labor surplus areas	Civil jurisdictions included
Ste. Genevieve County	Ste. Genevieve County.
Stoddard County	Stoddard County.
Stone County	Stone County.
Texas County	Texas County.
Warren County	Warren County.
Washington County	Washington County.
Wayne County	Wayne County.
Webster County	Webster County.
Wright County	Wright County.
Montana	
Deer Lodge County	Deer Lodge County.
Flathead County	Flathead County.
Glacier County	Glacier County.
Granite County	Granite County.
Jefferson County	Jefferson County.
Lincoln County	Lincoln County.
Meagher County	Meagher County.
Mineral County	Mineral County.
Park County	Park County.
Ravalli County	Ravalli County.
Sanders County	Sanders County.
Silver Bow County	Silver Bow County.
Wibaux County	Wibaux County.
Nebraska	
Box Butte County	Box Butte County.
Colfax County	Colfax County.
Lincoln County	Lincoln County.
McPherson County	McPherson County.
Nevada	
Carson City	Carson City.
Churchill County	Churchill County.
Balance of Clark County	Clark County less Las Vegas City.
Esmeralda County	Esmeralda County.
Eureka County	Eureka County.
Humboldt County	Humboldt County.
Lander County	Lander County.
Las Vegas City	Las Vegas City in Clark County.
Lincoln County	Lincoln County.
Lyon County	Lyon County.
Storey County	Storey County.
White Pine County	White Pine County.
New Hampshire	
Coos County	Coos County.
New Jersey	
Bayonne City	Bayonne City in Hudson County.
Camden City	Camden City in Camden County.
Cape May County	Cape May County.
Balance of Cumberland County.	Cumberland County less Vineland City.
East Orange City	East Orange City in Essex County.
Elizabeth City	Elizabeth City in Union County.
Balance of Hudson County	Hudson County less Bayonne City, Jersey City, Union City.
Jersey City	Jersey City in Hudson County.
Newark City	Newark City in Essex County.
Passaic City	Passaic City in Passaic County.
Paterson City	Paterson City in Passaic County.
Trenton Cty	Trenton City in Mercer County.
Union City	Union City in Hudson County.
Vineland City	Vineland City in Cumberland County.
New Mexico	
Balance of Bernalillo County	Bernalillo County less Albuquerque City.

Labor Surplus Areas Eligible for Federal Procurement Preference From Oct. 1, 1984 Through Sept. 30, 1985—Continued

Eligible labor surplus areas	Civil jurisdictions included
Catron County	Catron County.
Cibola County	Cibola County.
Colfax County	Colfax County.
Eddy County	Eddy County.
Grant County	Grant County.
Luna County	Luna County.
McKinley County	McKinley County.
Mora County	Mora County.
Rio Arriba County	Rio Arriba County.
San Juan County	San Juan County.
San Miguel County	San Miguel County.
Taos County	Taos County.
Valencia County	Valencia County.
New York	
Buffalo City	Buffalo City in Erie County.
Cattaraugus County	Cattaraugus County.
Cayuga County	Cayuga County.
Chautauqua County	Chautauqua County.
Chemung County	Chemung County.
Chenango County	Chenango County.
Clinton County	Clinton County.
Balance of Erie County	Erie County less Amherst Town, Buffalo City, Cheektowaga Town, Hamburg Town, Tonowanda Town, and West Seneca Township.
Essex County	Essex County.
Franklin County	Franklin County.
Fulton County	Fulton County.
Genesee County	Genesee County.
Greene County	Greene County.
Hamburg Town	Hamburg Town in Erie County.
Hamilton County	Hamilton County.
Herkimer County	Herkimer County.
Jefferson County	Jefferson County.
Lewis County	Lewis County.
Montgomery County	Montgomery County.
Balance of Niagara County	Niagara County less Niagara Falls City.
Niagara Falls City	Niagara Falls City in Niagara County.
Orleans County	Orleans County.
Rochester City	Rochester City in Monroe County.
Schuyler County	Schuyler County.
St. Lawrence County	St. Lawrence County.
Steuben County	Steuben County.
Utica City	Utica City in Oneida County.
Warren County	Warren County.
Wayne County	Wayne County.
West Seneca Township	West Seneca Township in Erie County.
Wyoming County	Wyoming County.
North Carolina	
Alamance County	Alamance County.
Anson County	Anson County.
Ashe County	Ashe County.
Avery County	Avery County.
Beaufort County	Beaufort County.
Bertie County	Bertie County.
Bladen County	Bladen County.
Brunswick County	Brunswick County.
Burke County	Burke County.
Caswell County	Caswell County.
Cherokee County	Cherokee County.
Clay County	Clay County.
Cleveland County	Cleveland County.
Columbus County	Columbus County.
Davie County	Davie County.
Duplin County	Duplin County.
Edgecombe County	Edgecombe County.
Franklin County	Franklin County.
Graham County	Graham County.
Halifax County	Halifax County.
Haywood County	Haywood County.
Hoke County	Hoke County.
Hyde County	Hyde County.
Iredell County	Iredell County.
Johnston County	Johnston County.
Lee County	Lee County.
Lincoln County	Lincoln County.
Martin County	Martin County.

Labor Surplus Areas Eligible for Federal Procurement Preference From Oct. 1, 1984 Through Sept. 30, 1985—Continued

Eligible labor surplus areas	Civil jurisdictions included
McDowell County	McDowell County.
Mitchell County	Mitchell County.
New Hanover County	New Hanover County.
Northampton County	Northampton County.
Pender County	Pender County.
Person County	Person County.
Richmond County	Richmond County.
Robeson County	Robeson County.
Rockingham County	Rockingham County.
Rutherford County	Rutherford County.
Sampson County	Sampson County.
Scotland County	Scotland County.
Surry County	Surry County.
Swain County	Swain County.
Tyrrell County	Tyrrell County.
Vance County	Vance County.
Warren County	Warren County.
Washington County	Washington County.
Wayne County	Wayne County.
Wilson County	Wilson County.
Yancey County	Yancey County.
North Dakota	
Rolette County	Rolette County.
Sioux County	Sioux County.
Ohio	
Adams County	Adams County.
Akron City	Akron City in Summit County.
Allen County	Allen County.
Ashland County	Ashland County.
Ashtabula County	Ashtabula County.
Athens County	Athens County.
Auglaize County	Auglaize County.
Belmont County	Belmont County.
Brown County	Brown County.
Balance of Butler County	Butler County less Hamilton City.
Canton City	Canton City in Stark County.
Carroll County	Carroll County.
Champaign County	Champaign County.
Cincinnati City	Cincinnati City in Hamilton County.
Balance of Clark County	Clark County less Springfield City.
Clermont County	Clermont County.
Cleveland City	Cleveland City in Cuyahoga County.
Clinton County	Clinton County.
Columbiana County	Columbiana County.
Columbus City	Columbus City in Franklin County.
Columbus City	Columbus City in Fairfield County.
Coshocton County	Coshocton County.
Crawford County	Crawford County.
Darke County	Darke County.
Dayton City	Dayton City in Greene County. Montgomery County.
Defiance County	Defiance County.
Elyria City	Elyria City in Lorain County.
Erie County	Erie County.
Balance of Fairfield County	Fairfield County less Columbus City.
Fayette County	Fayette County.
Fulton County	Fulton County.
Gallia County	Gallia County.
Geauga County	Geauga County.
Guernsey County	Guernsey County.
Hamilton City	Hamilton City in Butler County.
Hardin County	Hardin County.
Harrison County	Harrison County.
Henry County	Henry County.
Highland County	Highland County.
Hocking County	Hocking County.
Huron County	Huron County.
Jackson County	Jackson County.
Jefferson County	Jefferson County.
Knox County	Knox County.
Lake County	Lake County.
Lawrence County	Lawrence County.
Licking County	Licking County.
Logan County	Logan County.
Lorain City	Lorain City in Lorain County.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE FROM OCT. 1, 1984 THROUGH SEPT. 30, 1985—Continued

Eligible labor surplus areas	Civil jurisdictions included
Balance of Lorain County	Lorain County less Elyria City, Lorain City.
Balance of Mahoning County	Mahoning County less Youngstown City.
Mansfield City	Mansfield City in Richland County.
Marion County	Marion County.
Medina County	Medina County.
Meigs County	Meigs County.
Mercer County	Mercer County.
Miami County	Miami County.
Monroe County	Monroe County.
Morgan County	Morgan County.
Morrow County	Morrow County.
Muskingum County	Muskingum County.
Noble County	Noble County.
Ottawa County	Ottawa County.
Paulding County	Paulding County.
Perry County	Perry County.
Pike County	Pike County.
Portage County	Portage County.
Preble County	Preble County.
Putnam County	Putnam County.
Balance of Richland County	Richland County less Mansfield City.
Ross County	Ross County.
Sandusky County	Sandusky County.
Scioto County	Scioto County.
Seneca County	Seneca County.
Shelby County	Shelby County.
Springfield City	Springfield City in Clark County.
Balance of Stark County	Stark County less Canton City.
Toledo City	Toledo City in Lucas County.
Balance of Trumbull County	Trumbull County less Warren City.
Tuscarawas County	Tuscarawas County.
Union County	Union County.
Van Wert County	Van Wert County.
Vinton County	Vinton County.
Warren City	Warren City in Trumbull County.
Warren County	Warren County.
Washington County	Washington County.
Wayne County	Wayne County.
Williams County	Williams County.
Wood County	Wood County.
Wyandot County	Wyandot County.
Youngstown City	Youngstown City in Mahoning County.
Oklahoma	
Adair County	Adair County.
Atoka County	Atoka County.
Choctaw County	Choctaw County.
Coal County	Coal County.
Haskell County	Haskell County.
Hughes County	Hughes County.
Latimer County	Latimer County.
Le Flore County	Le Flore County.
Lincoln County	Lincoln County.
Love County	Love County.
McCurtain County	McCurtain County.
McIntosh County	McIntosh County.
Nowata County	Nowata County.
Okfuskee County	Okfuskee County.
Okmulgee County	Okmulgee County.
Ottawa County	Ottawa County.
Pawnee County	Pawnee County.
Pittsburg County	Pittsburg County.
Pushmataha County	Pushmataha County.
Seminole County	Seminole County.
Sequoyah County	Sequoyah County.
Oregon	
Baker County	Baker County.
Clatsop County	Clatsop County.
Columbia County	Columbia County.
Coos County	Coos County.
Crook County	Crook County.
Curry County	Curry County.
Deschutes County	Deschutes County.
Douglas County	Douglas County.
Grant County	Grant County.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE FROM OCT. 1, 1984 THROUGH SEPT. 30, 1985—Continued

Eligible labor surplus areas	Civil jurisdictions included
Harney County	Harney County.
Hood River County	Hood River County.
Jackson County	Jackson County.
Jefferson County	Jefferson County.
Josephine County	Josephine County.
Klamath County	Klamath County.
Lake County	Lake County.
Balance of Lane County	Lane County Less Eugene City.
Lincoln County	Lincoln County.
Linn County	Linn County.
Malheur County	Malheur County.
Balance of Marion County	Marion County less Salem City.
Balance of Polk County	Polk County less Salem City.
Portland City	Portland City in Clackamas County, Multnomah County, and Washington County.
Salem City	Salem City in Marion County. Polk County.
Tillamook County	Tillamook County.
Umatilla County	Umatilla County.
Union County	Union County.
Wallowa County	Wallowa County.
Wasco County	Wasco County.
Wheeler County	Wheeler County.
Yamhill County	Yamhill County.
Pennsylvania	
Adams County	Adams County.
Balance of Allegheny County	Allegheny County less Penn Hills Township. Pittsburgh City.
Allentown City	Allentown City in Lehigh County.
Altoona City	Altoona City in Blair County.
Armstrong County	Armstrong County.
Beaver County	Beaver County.
Bedford County	Bedford County.
Bethlehem City	Bethlehem City in Lehigh County. Northampton County.
Balance of Blair County	Blair County less Altoona City.
Bradford County	Bradford County.
Bristol Township	Bristol Township in Bucks County.
Butler County	Butler County.
Cambria County	Cambria County.
Cameron County	Cameron County.
Carbon County	Carbon County.
Centre County	Centre County.
Clarion County	Clarion County.
Clearfield County	Clearfield County.
Clinton County	Clinton County.
Columbia County	Columbia County.
Crawford County	Crawford County.
Elk County	Elk County.
Erie City	Erie City in Erie County.
Balance of Erie County	Erie County less Erie City.
Fayette County	Fayette County.
Forest County	Forest County.
Franklin County	Franklin County.
Fulton County	Fulton County.
Greene County	Greene County.
Huntingdon County	Huntingdon County.
Indiana County	Indiana County.
Jefferson County	Jefferson County.
Juniata County	Juniata County.
Balance of Lackawanna County	Lackawanna County less Scranton City.
Lawrence County	Lawrence County.
Lebanon County	Lebanon County.
Balance of Lehigh County	Lehigh County less Allentown City. Bethlehem City.
Balance of Luzerne County	Luzerne County less Wilkes-Barre City.
Lycoming County	Lycoming County.
McKean County	McKean County.
Mercer County	Mercer County.
Mifflin County	Mifflin County.
Monroe County	Monroe County.
Balance of Northampton County	Northampton County less Bethlehem City.
Northumberland County	Northumberland County.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE FROM OCT. 1, 1984 THROUGH SEPT. 30, 1985—Continued

Eligible labor surplus areas	Civil jurisdictions included
Penn Hills Township	Penn Hills Township in Allegheny County.
Pittsburgh City	Pittsburgh City in Allegheny County.
Potter County	Potter County.
Reading City	Reading City in Berks County.
Schuylkill County	Schuylkill County.
Snyder County	Snyder County.
Somerset County	Somerset County.
Sullivan County	Sullivan County.
Tioga County	Tioga County.
Union County	Union County.
Venango County	Venango County.
Warren County	Warren County.
Washington County	Washington County.
Westmoreland County	Westmoreland County.
Wilkes-Barre City	Wilkes-Barre City in Luzerne County.
Wyoming County	Wyoming County.
York County	York County.
Puerto Rico	
Adjuntas Municipio	Adjuntas Municipio.
Aguada Municipio	Aguada Municipio.
Aguadilla Municipio	Aguadilla Municipio.
Aguas Buenas Municipio	Aguas Buenas Municipio.
Aibonito Municipio	Aibonito Municipio.
Anasco Municipio	Anasco Municipio.
Arecibo Municipio	Arecibo Municipio.
Arroyo Municipio	Arroyo Municipio.
Barceloneta Municipio	Barceloneta Municipio.
Barranquitas Municipio	Barranquitas Municipio.
Bayamon Municipio	Bayamon Municipio.
Cabo Rojo Municipio	Cabo Rojo Municipio.
Caguas Municipio	Caguas Municipio.
Camuy Municipio	Camuy Municipio.
Canovanas Municipio	Canovanas Municipio.
Carolina Municipio	Carolina Municipio.
Catano Municipio	Catano Municipio.
Cayey Municipio	Cayey Municipio.
Ceiba Municipio	Ceiba Municipio.
Ciales Municipio	Ciales Municipio.
Cidra Municipio	Cidra Municipio.
Coamo Municipio	Coamo Municipio.
Comerio Municipio	Comerio Municipio.
Corozal Municipio	Corozal Municipio.
Dorado Municipio	Dorado Municipio.
Fajardo Municipio	Fajardo Municipio.
Florida Municipio	Florida Municipio.
Guanica Municipio	Guanica Municipio.
Guayama Municipio	Guayama Municipio.
Guayanilla Municipio	Guayanilla Municipio.
Guaynabo Municipio	Guaynabo Municipio.
Gurabo Municipio	Gurabo Municipio.
Hatillo Municipio	Hatillo Municipio.
Hormigueros Municipio	Hormigueros Municipio.
Humacao Municipio	Humacao Municipio.
Isabela Municipio	Isabela Municipio.
Jayuya Municipio	Jayuya Municipio.
Juana Diaz Municipio	Juana Diaz Municipio.
Juncos Municipio	Juncos Municipio.
Lajas Municipio	Lajas Municipio.
Lares Municipio	Lares Municipio.
Las Marias Municipio	Las Marias Municipio.
Las Piedras Municipio	Las Piedras Municipio.
Loiza Municipio	Loiza Municipio.
Luquillo Municipio	Luquillo Municipio.
Manati Municipio	Manati Municipio.
Maunabo Municipio	Maunabo Municipio.
Mayaguez Municipio	Mayaguez Municipio.
Moca Municipio	Moca Municipio.
Morovis Municipio	Morovis Municipio.
Naguabo Municipio	Naguabo Municipio.
Naranjito Municipio	Naranjito Municipio.
Orocovis Municipio	Orocovis Municipio.
Patillas Municipio	Patillas Municipio.
Penuelas Municipio	Penuelas Municipio.
Ponce Municipio	Ponce Municipio.
Quebradillas Municipio	Quebradillas Municipio.
Rincon Municipio	Rincon Municipio.
Rio Grande Municipio	Rio Grande Municipio.
Sabana Grande Municipio	Sabana Grande Municipio.
Salinas Municipio	Salinas Municipio.
San German Municipio	San German Municipio.
San Juan Municipio	San Juan Municipio.
San Lorenzo Municipio	San Lorenzo Municipio.
San Sebastian Municipio	San Sebastian Municipio.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE FROM OCT. 1, 1984 THROUGH SEPT. 30, 1985—Continued

Eligible labor surplus areas	Civil jurisdictions included
Santa Isabel Municipio	Santa Isabel Municipio.
Toa Alta Municipio	Toa Alta Municipio.
Toa Baja Municipio	Toa Baja Municipio.
Trujillo Alto Municipio	Trujillo Alto Municipio.
Utuado Municipio	Utuado Municipio.
Vega Alta Municipio	Vega Alta Municipio.
Vega Baja Municipio	Vega Baja Municipio.
Vieques Municipio	Vieques Municipio.
Villalba Municipio	Villalba Municipio.
Yabucoa Municipio	Yabucoa Municipio.
Yauco Municipio	Yauco Municipio.
Rhode Island	
Bristol Town	Bristol Town.
Central Falls City	Central Falls City.
Coventry Town	Coventry Town.
East Providence City	East Providence City.
Johnston Town	Johnston Town.
New Shoreham Town	New Shoreham Town.
Pawtucket City	Pawtucket City.
Providence City	Providence City.
Warren Town	Warren Town.
West Warwick Town	West Warwick Town.
Woonsocket City	Woonsocket City.
South Carolina	
Abbeville County	Abbeville County.
Aiken County	Aiken County.
Allendale County	Allendale County.
Anderson County	Anderson County.
Bamberg County	Bamberg County.
Barnwell County	Barnwell County.
Cherokee County	Cherokee County.
Chester County	Chester County.
Chesterfield County	Chesterfield County.
Clarendon County	Clarendon County.
Colleton County	Colleton County.
Darlington County	Darlington County.
Dillon County	Dillon County.
Florence County	Florence County.
Georgetown County	Georgetown County.
Greenville City	Greenville City in Greenville County.
Greenwood County	Greenwood County.
Hampton County	Hampton County.
Horry County	Horry County.
Jasper County	Jasper County.
Kershaw County	Kershaw County.
Lancaster County	Lancaster County.
Laurens County	Laurens County.
Lee County	Lee County.
Marion County	Marion County.
Marlboro County	Marlboro County.
McCormick County	McCormick County.
North Charleston City	North Charleston City in Charleston County.
Oconee County	Oconee County.
Orangeburg County	Orangeburg County.
Pickens County	Pickens County.
Saluda County	Saluda County.
Sumter County	Sumter County.
Union County	Union County.
Williamsburg County	Williamsburg County.
York County	York County.
South Dakota	
Buffalo County	Buffalo County.
Corson County	Corson County.
Dewey County	Dewey County.
Shannon County	Shannon County.
Todd County	Todd County.
Tennessee	
Anderson County	Anderson County.
Bedford County	Bedford County.
Benton County	Benton County.
Bledsoe County	Bledsoe County.
Blount County	Blount County.
Bradley County	Bradley County.
Campbell County	Campbell County.
Cannon County	Cannon County.
Carroll County	Carroll County.
Carter County	Carter County.
Chattanooga City	Chattanooga City in Hamilton County.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE FROM OCT. 1, 1984 THROUGH SEPT. 30, 1985—Continued

Eligible labor surplus areas	Civil jurisdictions included
Chester County	Chester County.
Claiborne County	Claiborne County.
Clarksville City	Clarksville City in Montgomery County.
Cocke County	Cocke County.
Coffee County	Coffee County.
Crockett County	Crockett County.
Cumberland County	Cumberland County.
DeKalb County	DeKalb County.
Decatur County	Decatur County.
Dickson County	Dickson County.
Dyer County	Dyer County.
Fayette County	Fayette County.
Fentress County	Fentress County.
Franklin County	Franklin County.
Gibson County	Gibson County.
Giles County	Giles County.
Grainger County	Grainger County.
Greene County	Greene County.
Grundy County	Grundy County.
Hamblen County	Hamblen County.
Hancock County	Hancock County.
Hardeman County	Hardeman County.
Hardin County	Hardin County.
Hawkins County	Hawkins County.
Haywood County	Haywood County.
Henderson County	Henderson County.
Henry County	Henry County.
Hickman County	Hickman County.
Houston County	Houston County.
Humphreys County	Humphreys County.
Jackson County	Jackson County.
Jefferson County	Jefferson County.
Johnson County	Johnson County.
Knoxville City	Knoxville City in Knox County.
Lake County	Lake County.
Lauderdale County	Lauderdale County.
Lawrence County	Lawrence County.
Lewis County	Lewis County.
Lincoln County	Lincoln County.
Loudon County	Loudon County.
Macon County	Macon County.
Madison County	Madison County.
Marion County	Marion County.
Marshall County	Marshall County.
Maury County	Maury County.
McMinn County	Mc Minn County.
Mc Nairy County	Mc Nairy County.
Meigs County	Meigs County.
Memphis City	Memphis City in Shelby County.
Monroe County	Monroe County.
Balance of Montgomery County.	Montgomery County less Clarksville City.
Morgan County	Morgan County.
Overton County	Overton County.
Perry County	Perry County.
Pickett County	Pickett County.
Polk County	Polk County.
Putnam County	Putnam County.
Rhea County	Rhea County.
Roane County	Roane County.
Robertson County	Robertson County.
Rutherford County	Rutherford County.
Scott County	Scott County.
Sequatchie County	Sequatchie County.
Sevier County	Sevier County.
Smith County	Smith County.
Stewart County	Stewart County.
Sullivan County	Sullivan County.
Sumner County	Sumner County.
Tipton County	Tipton County.
Trousdale County	Trousdale County.
Unicoi County	Unicoi County.
Union County	Union County.
Van Buren County	Van Buren County.
Warren County	Warren County.
Washington County	Washington County.
Wayne County	Wayne County.
White County	White County.
Wilson County	Wilson County.
Texas	
Angelina County	Angelina County.
Baytown City	Baytown City in Harris County.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE FROM OCT. 1, 1984 THROUGH SEPT. 30, 1985—Continued

Eligible labor surplus areas	Civil jurisdictions included
Beaumont City	Beaumont City in Jefferson County.
Brownsvill City	Brownsville City in Cameron County.
Calhoun County	Calhoun County.
Balance of Cameron County	Cameron County less Brownsville City.
Camp County	Camp County.
Cass County	Cass County.
Dimmit County	Dimmit County.
El Paso City	El Paso City in El Paso County.
Balanc of El Paso County	El Paso County less El Paso City.
Galveston City	Galveston City in Galveston County.
Balance of Galveston County	Galveston County less Galveston City.
Garza County	Garza County.
Henderson County	Henderson County.
Balance of Hidalgo County	Hidalgo County less McAllen City.
Jasper County	Jasper County.
Jim Hogg County	Jim Hogg County.
Killeen City	Killeen City in Bell County.
La Salle County	La Salle County.
Laredo City	Laredo City in Webb County.
Longview City	Longview City in Gregg County.
Marion County	Marion County.
Matagorda County	Matagorda County.
Maverick County	Maverick County.
Mc Allen City	McAllen City in Hidalgo County.
Morris County	Morris County.
Newton County	Newton County.
Balance of Nueces County	Neuces County less Corpus Christi City.
Orange County	Orange County.
Polk County	Polk County.
Port Arthur City	Port Arthur City in Jefferson County.
Presidio County	Presidio County.
Reeves County	Reeves County.
Sabine County	Sabine County.
San Augustine County	San Augustine County.
San Jacinto County	San Jacinto County.
Starr County	Starr County.
Texarkana County	Texarkana City in Bowie County.
Tyler County	Tyler County.
Upshur County	Upshur County.
Val Verde County	Val Verde County.
Willacy County	Willacy County.
Zapata County	Zapata County.
Zavala County	Zavala County.
Utah	
Carbon County	Carbon County.
Duchesne County	Duchesne County.
Garfield County	Garfield County.
Grand County	Grand County.
Juab County	Juab County.
Kane County	Kane County.
Ogden City	Ogden City in Weber County.
Piute County	Piute County.
San Juan County	San Juan County.
Sanpete County	Sanpete County.
Summit County	Summit County.
Uintah County	Uintah County.
Wasatch County	Wasatch County.
Wayne County	Wayne County.
Vermont	
Essex County	Essex County.
Orleans County	Orleans County.
Virginia	
Alleghany County	Alleghany County.
Bland County	Bland County.
Brunswick County	Brunswick County.
Buchanan County	Buchanan County.
Buena Vista City	Buena Vista City.
Caroline County	Caroline County.
Carroll County	Carroll County.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE FROM OCT. 1, 1984 THROUGH SEPT. 30, 1985—Continued

Eligible labor surplus areas	Civil jurisdictions included
Charlotte County	Charlotte County.
Covington City	Covington City.
Craig County	Craig County.
Danville County	Danville County.
Dickenson County	Dickenson County.
Dinwiddie County	Dinwiddie County.
Essex County	Essex County.
Franklin City	Franklin City.
Giles County	Giles County.
Grayson County	Grayson County.
Greensville County	Greensville County.
Halifax County	Halifax County.
Highland County	Highland County.
Hopewell City	Hopewell City.
King and Queen County	King and Queen County.
Lancaster County	Lancaster County.
Lee County	Lee County.
Lunenburg County	Lunenburg County.
Northumberland County	Northumberland County.
Nottoway County	Nottoway County.
Page County	Page County.
Patrick County	Patrick County.
Pittsylvania County	Pittsylvania County.
Pulaski County	Pulaski County.
Richmond County	Richmond County.
Rockbridge County	Rockbridge County.
Russell County	Russell County.
Smyth County	Smyth County.
South Boston City	South Boston City.
Surry County	Surry County.
Sussex County	Sussex County.
Tazewell County	Tazewell County.
Warren County	Warren County.
Waynesboro City	Waynesboro City.
	Westmoreland County.
Wise County	Wise County.
Wythe County	Wythe County.
Washington	
Adams County	Adams County.
Asotin County	Asotin County.
Benton County	Benton County.
Chelan County	Chelan County.
Clallam County	Clallam County.
Clark County	Clark County.
Columbia County	Columbia County.
Cowlitz County	Cowlitz County.
Douglas County	Douglas County.
Everett City	Everett City in Snohomish County.
Ferry County	Ferry County.
Franklin County	Franklin County.
Grant County	Grant County.
Grays Harbor County	Grays Harbor County.
Jefferson County	Jefferson County.
Kittitas County	Kittitas County.
Klickitat County	Klickitat County.
Lewis County	Lewis County.
Mason County	Mason County.
Okanogan County	Okanogan County.
Pacific County	Pacific County.
Pend Oreille County	Pend Oreille County.
Balance of Pierce County	Pierce County less Tacoma City.
Seattle City	Seattle City in King County.
Skagit County	Skagit County.
Skamania County	Skamania County.
Balance of Snohomish County	Snohomish County less Everett City.
Spokane City	Spokane City in Spokane County.
Balance of Spokane County	Spokane County less Spokane City.
Stevens County	Stevens County.
Tacoma City	Tacoma City in Pierce County.
Thurston County	Thurston County.
Whatcom County	Whatcom County.
Yakima City	Yakima City in Yakima County.
Balance of Yakima County	Yakima County less Yakima City.
West Virginia	
Barbour County	Barbour County.
Berkeley County	Berkeley County.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE FROM OCT. 1, 1984 THROUGH SEPT. 30, 1985—Continued

Eligible labor surplus areas	Civil jurisdictions included
Boone County	Boone County.
Braxton County	Braxton County.
Brooke County	Brooke County.
Balance of Cabell County	Cabell County less Huntington City.
Calhoun County	Calhoun County.
Clay County	Clay County.
Doddridge County	Doddridge County.
Fayette County	Fayette County.
Gilmer County	Gilmer County.
Grant County	Grant County.
Greenbrier County	Greenbrier County.
Hampshire County	Hampshire County.
Hancock County	Hancock County.
Hardy County	Hardy County.
Harrison County	Harrison County.
Huntington City	Huntington City in Cabell County.
	Wayne County.
Jackson County	Jackson County.
Balance of Kanawha County	Kanawha County less Charleston City.
Lewis County	Lewis County.
Lincoln County	Lincoln County.
Logan County	Logan County.
Marion County	Marion County.
Marshall County	Marshall County.
Mason County	Mason County.
McDowell County	McDowell County.
Mercer County	Mercer County.
Mineral County	Mineral County.
Mingo County	Mingo County.
Monroe County	Monroe County.
Morgan County	Morgan County.
Nicholas County	Nicholas County.
Ohio County	Ohio County.
Pendleton County	Pendleton County.
Pleasants County	Pleasants County.
Pocahontas County	Pocahontas County.
Preston County	Preston County.
Putnam County	Putnam County.
Raleigh County	Raleigh County.
Randolph County	Randolph County.
Ritchie County	Ritchie County.
Roane County	Roane County.
Summers County	Summers County.
Taylor County	Taylor County.
Tucker County	Tucker County.
Tyler County	Tyler County.
Upshur County	Upshur County.
Balance of Wayne County	Wayne County less Huntington City.
Webster County	Webster County.
Wetzel County	Wetzel County.
Wirt County	Wirt County.
Wood County	Wood County.
Wyoming County	Wyoming County.
Wisconsin	
Ashland County	Ashland County.
Bayfield County	Bayfield County.
Buffalo County	Buffalo County.
Burnett County	Burnett County.
Balance of Calumet County	Calumet County less Appleton City.
Balance of Chippewa County	Chippewa County less Eau Claire City.
Clark County	Clark County.
Columbia County	Columbia County.
Crawford County	Crawford County.
Dodge County	Dodge County.
Door County	Door County.
Douglas County	Douglas County.
Florence County	Florence County.
Fond du Lac County	Fond du Lac County.
Forest County	Forest County.
Grant County	Grant County.
Green Bay City	Green Bay City in Brown County.
Green Lake County	Green Lake County.
Iowa County	Iowa County.
Iron County	Iron County.
Jackson County	Jackson County.
Janesville City	Janesville City in Rock County.
Jefferson County	Jefferson County.
Juneau County	Juneau County.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE FROM OCT. 1, 1984 THROUGH SEPT. 30, 1985—Continued

Eligible labor surplus areas	Civil jurisdictions included
Kenosha City	Kenosha City in Kenosha County.
Kewaunee County	Kewaunee County.
Lincoln County	Lincoln County.
Manitowoc County	Manitowoc County.
Marathon County	Marathon County.
Marinette County	Marinette County.
Marquette County	Marquette County.
Menominee County	Menominee County.
Milwaukee City	Milwaukee City in Milwaukee County.
Monroe County	Monroe County.
Oconto County	Oconto County.
Oneida County	Oneida County.
Balance of Outagamie County	Outagamie County less Appleton City.
Pepin County	Pepin County.
Polk County	Polk County.
Price County	Price County.
Racine City	Racine City in Racine County.
Balance of Racine County	Racine County less Racine City.
Richland County	Richland County.
Balance of Rock County	Rock County less Janesville City.
Rusk County	Rusk County.
Sauk County	Sauk County.
Sawyer County	Sawyer County.
Taylor County	Taylor County.
Trempealeau County	Trempealeau County.
Vernon County	Vernon County.
Vilas County	Vilas County.
Washburn County	Washburn County.
Washington County	Washington County.
Waukesha City	Waukesha City in Waukesha County.
Waupaca County	Waupaca County.
Waushara County	Waushara County.
Wyoming	
Lincoln County	Lincoln County.

[FR Doc. 84-25495 Filed 9-25-84; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel; Meeting

AGENCY: National Endowment for the Humanities, NFAH.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that the following meeting will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506.

DATE: October 9, 1984.

Time: 9:00 a.m. to 5:00 p.m.

Room: 415.

Program: This meeting will review Bicentennial Conferences applications, submitted to the Office of the Bicentennial, for projects beginning after January 2, 1985.

The proposed meeting is for the purpose of panel review, discussion, evaluation and recommendation on

applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meeting will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and priviledged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and (3) information the disclosure of which would significantly frustrate implementation of proposed agency action; pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that this meeting will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information about this meeting can be obtained from Mr. Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, D.C. 20506, or call (202) 786–0322.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 84–25557 Filed 9–25–84; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation Act of 1978, Pub. L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice of permits issued.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers, Permit Office, Division of Polar Programs, National Science Foundation, Washington, D.C. 20550. Telephone (202) 357–7934.

SUPPLEMENTARY INFORMATION: On August 13, 1984 (49 FR 32288), the National Science Foundation published a notice in the **Federal Register** of a permit application received. On September 17, 1954 a permit was issued to: Alfred F. Giddings.

Charles E. Myers,

Permit Office, Division of Polar Programs.

[FR Doc. 84–25467 Filed 9–25–84; 8:45 am]

BILLING CODE 7555–01–M

Directorate for Science and Engineering Education (SEE); Revised List of States Electing Review of SEE Programs Eligible for Review Under E.O. 12372

SUMMARY: This notice identifies those states that have notified the NSF, as of August 31, 1984, that they have elected to review the programs of the Foundation's Directorate for Science and Engineering Education that are eligible for review under E.O. 12372 ("Intergovernmental Review of Federal Programs"). These programs are described at Federal Catalog of Domestic Assistance No. 47.063. All activities under that number are eligible for state review except the following: Research in Teaching and Learning; Presidential Awards for Excellence in Science and Mathematics Teaching; and Studies and Analysis. The following list supersedes the one published in the **Federal Register** on December 7, 1983 (48 FR 54915).

Nine states have been added to the list of reviewing states effective October 1, 1984. They are: California, Hawaii, Maine, Massachusetts, Missouri, North Dakota, Ohio, Pennsylvania, and U.S. Virgin Islands. Proposals from these states received by the NSF on or after October 1, 1984, must have been submitted to the state's single point of contact (SPOC) before submission to the NSF. (Proposals from all other listed states are already required to have been submitted to the state's SPOC.)

Several changes have been made to the names and telephone numbers of states' SPOCs. The following list is believed correct as of August 31, 1984.

EFFECTIVE DATE: This list of states and identifications of states' single points of contact in this notice supersedes the list contained in the notice published December 7, 1983 ("Notice of Clarification on SEE Programs Eligible for Review under E.O. 12372; and States Electing Review"). This notice does not affect the eligibility of the programs set forth in that notice for review under E.O. 12372.

This notice is effective for all proposals submitted to eligible SEE programs that are received by the NSF on or after October 1, 1984.

FOR FUTHER INFORMATION CONTACT: Questions relating to NSF's implementation of E.O. 12372 should be directed to the NSF Intergovernmental Review Officer at (202) 357–7880. This is not a toll-free number.

Charles H. Herz,

General Counsel.

September 14, 1984.

States Electing To Review Eligible NSF Science and Engineering Education Activities (as of Aug. 31, 1984)

CALIFORNIA: Office of Planning and Research, 1400 Tenth Street, Sacramento, CA 95814, (916) 445–0282

CONNECTICUT: Intergovernmental Review, Coordinator, Comprehensive Planning Divisions, Office of Policy and Management, 80 Washington Street, Hartford, CT 06106–4459, (203) 566–4298

DELAWARE: Francine Booth, Executive Department, Thomas Collins Building, Dover, DE 19903, (302) 736–4204

HAWAII: Mr. Kent M. Keith, Director, Department of Planning and, Economic Development, P.O. Box 2359, Honolulu, HI 96804, (808) 548–3085, [For information contact: Hawaii State Clearinghouse, (808) 548–3085]

INDIANA: Ms. Susan J. Kennell, State Budget Agency, 212 State House, Indianapolis, IN 46204, (317) 232–5604

KENTUCKY: Kentucky State Clearinghouse, 2nd Floor, Capital Plaza Tower, Frankfort, KY 40601, (502) 564–2382

LOUISIANA: Michael J. Jefferson, Assistant Secretary, Department of Urban and, Community Affairs, Office of State Clearinghouse, P.O. Box 44455, Capitol Station, Baton Rouge, LA 70804, (504) 925–3722

MAINE: State Planning Office, Intergovernmental Review Process, State House Station 38, Augusta, ME 04333, (207) 289–3261

MASSACHUSETTS: Executive Office of Communities, and Development, 100 Cambridge Street, Room 1401, Boston, MA 02202, (617) 727–3264

MICHIGAN: Carol Hoffman, Director, Office of Business and Community, Development, Michigan Department of Commerce, P.O. Box 30004, Lansing, MI 48909, (517) 378–8363

MISSOURI: Missouri Federal Assistance, Clearinghouse, Office of Administration, Division of Budget and Planning, Room 129 Capitol Building, Jefferson City, MO 65102, (314) 751–4834 or 751–2345

NEBRASKA: Policy Research Office, P.O. Box 94601, Room 1321, State Capitol, Lincoln, NE 68509, (402) 471–2414

NEVADA: Ms. Linda A. Ryan, Director, Office of Community Services, Capitol Complex, Carson City, NV 89710, (702) 885–4420

NEW HAMPSHIRE: Mr. David G. Scott, Director, New Hampshire Office of State Planning, 2½ Beacon Street, Concord, NH 03301, (603) 271–2155

NEW JERSEY: Mr. Barry Skokowski, Director, Division of Local Government Services, Department of Community Affairs, CN 803, 363 West Street, Trenton, NJ 08625, (609) 292–8613, [Correspondence

and questions: Nelson S. Silver, State Review, address as above; (609) 292–6613]

NEW MEXICO: Mr. Peter P. Pence, Director, Department of Finance and, Administration, State of New Mexico, 515 Gaspar, Santa Fe, NM 87503, (505) 827–3885

NEW YORK: New York State Clearinghouse, Division of the Budget, State Capitol, Albany, NY 12224, (518) 474–1605, [NOTE: NY will start review of eligible DSEE programs 9/30/84.

NORTH DAKOTA: Office of Intergovernmental, Assistance, Office of Management and Budget 14th Floor—State Capital, Bismarck, ND 58505, (701) 224–2094

OHIO: State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 39th Floor, Columbus, OH 43215, (614) 466–0699, [For information contrat: Leonard E. Roberts, Deputy Dir.]

OKLAHOMA: Office of Federal Assistance, Management, 4545 North Lincoln Boulevard, Oklahoma City, OK 73105, (404) 528–8200

PENNSYLVANIA: Pennsylvania International Council, P.O. Box 1288, Harrisburg, PA 17108, Attention: Charles Griffiths Executive Director (717) 783–3760

SOUTH CAROLINA Danny L. Cromer, Grant Service, Office of the Governor, 1205 Pendleton Street, Room 477, Columbia, SC 29201, (803) 758–2417

SOUTH DAKOTA: Jeff Stroup Commissioner of the Bureau of International Relations Second Floor, Capitol Building Pierre, SD 57501, (605) 773–3661

TENNESSEE: Sarah Lee W. Terry, Director, Grant Review Program, Tennessee State Planning Office, 1800 James K. Polk Building, 505 Deaderick Street, Nashville, TN 37219, (615) 741–1676.

VERMONT: State Planning Office, Pavilion Office Building, 109 State Street, Montpelier, VT 05602, (802) 828–3326

VIRGINIA: Robert H. Kirby, Intergovernment Review Officer, Department of Planning and Budget, Post Office Box 1422, Richmond, VA 23211, (804) 786–1921

WASHINGTON: Washington Planning and Community Affairs North and Columbia Building, Olympia, WA 98504 (206) 753–2200

WISCONSIN: Secretary Doris J. Hanson Wisconsin Department of Administration, 101 South Webster Street—GEF 2 Madison, WI 53702, (608)266–1212

WYOMING: Wyoming State Clearinghouse, State Planning Coordinator's Office, Capitol Building, Cheyenne, WY 82002 (307) 777–7574

DISTRICT OF COLUMBIA: Pauline Schneider, Director Office of Intergovernmental Relations, Room 416, District Building, Washington, D.C. 20004 (202) 727–6265

U.S. VIRGIN ISLANDS: Federal Programs Office, Office of the Governor, The Virgin Islands of the United States, Charlotte Amalie, St. Thomas, VI 00801, (809) 724–0001

NORTHERN MARINA Islands: Planning and Budget Office, Office of the Governor, Saipan, CM 96950

[FR Doc. 84-25488 Filed 9-25-84; 8:45 am]
BILLING CODE 7555-01-M

Directorate for Scientific, Technological, and International Affairs (STIA); Revised List of States Electing Review of STIA Programs Eligible for Review Under E.O. 12372

SUMMARY: This notice identifies those states that have notified the NSF, as of August 31, 1984, that they elect to review the Intergovernmental Science and Technology Program (Federal Catalog of Domestic Assistance No. 47.036) of the Foundation's Division of Research Initiation and Improvement in the Directorate for Scientific, Technological, and International Affairs under E.O. 12372 ("Intergovernmental Review of Federal Programs"). The Foundation designated that program as eligible for review in a notice ("Programs Eligible for Inclusion under E.O. 12372") published in the **Federal Register** on June 24, 1983 (48 FR 29366).

Seven states have been added to the list of reviewing states effective October 1, 1984. They are: Alabama, California, Hawaii, Maine, Massachusetts, Ohio, Pennsylvania, and U.S. Virgin Islands. Proposals from these states received by the NSF on or after October 1, 1984, must have been submitted to the state's single point of contact (SPOC) before submission to the NSF. (Proposals from all other listed states are already required to have been submitted the state's SPOC.)

Several changes have been made to the names and telephone numbers of states' SPOCs. The following list is believed correct as of August 31, 1984.

EFFECTIVE DATE: This notice is effective for all proposals submitted to eligible STIA programs that are received by the NSF on or after October 1, 1984.

FOR FURTHER INFORMATION CONTACT: Questions relating to NSF's implementation of E.O. 12372 should be directed to the NSF Intergovernmental Review Officer at (202) 357–7880. This is not a toll-free number.

Charles H. Herz,

General Counsel.

September 14, 1984.

States Electing To Review NSF Intergovernmental Science and Technology Program (as of Aug. 31, 1984)

ALABAMA: Mrs. Donna J. Snowden, SPOC, Alabama State Clearinghouse, Alabama Department of Economic and Community Affairs 3465 Norman Bridge Road, Post Office Box 2939, Montgomery, AL 36105–0939

ARIZONA: Office of Economic Planning and Development, State of Arizona, Jo Stephens, Director, Local Government Assistance ATTN: Arizona State Clearinghouse 1700 W. Washington Street, Room 205, Phoenix, AZ 85007, (602) 255–5004

ARKANSAS: State Clearinghouse, Office of Intergovernmental Services, Department of finance and Administration, P.O. Box 3278, Little Rock, AR 72203, (501) 371–2311

CALIFORNIA: Office of Planning and Research, 1400 Tenth Street, Sacramento, CA 95814, (916) 445–0282

CONNECTICUT: Gary E. King, Under Secretary, Comprehensive Planning Division, Office of Policy and Management, 80 Washington Street, Hartford, CT 06106–4459, (203) 566–4298

DELAWARE: Executive Department, Thomas Collins Building, Dover, DE 19903, ATTN: Franchine booth, (302) 736–4104

FLORIDA: Ron Fahs, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, FL 32301 (904) 488–8114

GEORGIA: Charles H. Badger, Administrator, Georgia State Clearinghouse, 270 Washington Street, S.W., Atlanta, GA 30334, (404) 656–3855

HAWAII: Mr. Kent M. Keith, Director, Department of Planning and Economic Development, P.O. Box 2359, Honolulu, HI 96804 (808) 548–3085

ILLINOIS: Tom Berkshire, Office of the Governor, State of Illinois, Springfield, IL 62706, (217) 782–8639

INDIANA: Ms. Susan J. Kennell, State Budget Agency, 212 State House, Indianapolis, IN 46204, (317) 232–5604

KENTUCKY: Kentucky State Clearinghouse, 2nd Floor, Capital Plaza Tower, Frankfort, KY 40601, (502) 564–2382

LOUISIANA: Michael J. Jefferson, Assistant Secretary, Department of Urban and Community Affairs, Office of State Clearinghouse, P.O. Box 44455, Capitol Station, Baton Rouge, LA 70804, (504) 925–3722

MAINE: State Planning Office, Intergovernmental Review Process, State House Station #38, Augusta, ME 04333, (207) 289–3261

MARYLAND: Guy W. Hager, Director, Maryland State Clearinghouse, for Intergovernmental Assistance, Department of State Planning, 301 West Preston Street, Baltimore, MD 21201–2365, (301) 383–7875

MASSACHUSETTS: Executive Office of Communities, and Development, 100 Cambridge Street, Room 1401, Boston, MA 02202, (617) 727–3264

MICHIGAN: Carol Hoffman, Director, Office of Business and Community, Development, Michigan Department of Commerce, P.O. Box 30004, Lansing, MI 48909, (517) 373–8363

MISSOURI: Missouri Federal Assistance, Clearinghouse, Office of Administration, Division of Budget and Planning, Room 129, Capitol Building, Jefferson City, MO 65102

MONTANA: Agens Fipperman, Intergovernmental Review, Clearinghouse, c/o Office of the Lieutenant Governor, Capitol Station, Helena, MT 59620, (406) 444–5522

NEBRASKA: Policy Research Office, P.O. Box 94601, Room 1321, State Capitol, Lincoln, NE 68509, (402) 471–2414

NEVADA: Ms. Linda A. Ryan, Director, Office of Community Services, Capitol

Complex, Carson City, NV 89710, (702) 885–4420

Note.—Correspondence and questions concerning this state's E.O. 12372 process should be directed to: John Walker, Clearinghouse Coordinator, (702) 885–4420.

NEW HAMPSHIRE: Mr. David G. Scott, Director, New Hampshire Office of State Planning, 2½ Beacon Street, Concord, NH 03301, (603) 271–2155

NEW JERSEY: Mr. Barry Skokowski, Director, Division of Local Government Services, Department of Community Affairs, CN 803, 363 West Street, Trenton, NJ 08625, (609) 292–6613

[Correspondence and questions should be directed to: Nelson S. Silver, State Review Process, address as above; (609) 292–0803]

NEW MEXICO: Mr. Peter P. Pence, Director, Department of Finance and Administration, State of New Mexico, 515 Don Gaspar, Santa Fe, NM 87503, (505) 827–3885

NEW YORK: Director of the Budget, New York State

[Note: Correspondence and questions to: New York State Clearinghouse, Division of the Budget, State Capitol, Albany, NY 12224, (518) 474–1605]

NORTH CAROLINA: Mrs. Chrys Baggett, Director, State Clearinghouse, Department of Administration, 116 West Jones Street, Raleigh, NC 27611, (919) 733–4131

OHIO: Leonard E. Roberts, Deputy Director, State Clearinghouse, Office of Budget Management, 30 East Broad Street, 39th Floor, Columbus, OH 43215, (614) 466–0699

OKLAHOMA: Office of Federal Assistance, Management, 4545 North Lincoln Boulevard, Oklahoma City, OK 73105, (405) 528–8200

OREGON: Intergovernmental Relations Divisions, State Clearinghouse, Executive Building, 155 Cottage Street, NE., Salem, OR 97310, (503) 373–1998

PENNSYLVANIA: Pennsylvania Intergovernmental Council, P.O. Box 1288, Harrisburg, PA 17108, Attention: Charles Griffiths, Executive Director, (717) 783–3700

SOUTH CAROLINA: Danny L. Gromer, Grant Services, Office of the Governor, 1205 Pendleton Street, Room 477, Columbia, SC 29201, (803) 758–2417

SOUTH DAKOTA: Jeff Stroup, Commissioner of the Bureau of Intergovernmental Relations Second Floor, Capitol Building, Pierre, SD 57501, (605) 773–3661

TENNESSEE: Tennessee State Planning Office, 1800 James K. Polk Building, 505 Deaderick Street, Nashville, TN 37219, (615) 741–1676

TEXAS: Bob McPherson, State Planning Director, Office of the Governor, Austin, TX 78711, (512) 475–6156

VERMONT: State Planning Office, Pavilion Office Building, 109 State Street, Montpelier, VT 05602, (802) 828–3326

VIRGINIA: Robert H. Kirby, Intergovernmental Review Officer, Department of Planning and Budget, Post Office Box 1422, Richmond, VA 23211, (804) 786–1921

WASHINGTON: Washington Planning and Community Affairs Agency, North and Columbia Building, Olympia, WA 98504, (206) 753–2200

WEST VIRGINIA: Mr. Fred Cutlip, Director, Community Development Division, Governor's Office of Economic and Community Development, Building #6, Room 553, Charleston, WV 25305, (304) 348–4010

WISCONSIN: Secretary Doris J. Hanson, Wisconsin Department of Administration, 101 South Webster Street—GEF 2 Madison, WI 53702 (608) 266–1212

WYOMING: Wyoming State Clearinghouse, State Planning Coordinator's Office, Capitol Building, Cheyenne, WY 82002, (307) 777–7574

DISTRICT OF COLUMBIA: Pauline Schneider, Director, Office of Intergovernmental Relations, Room 416, District Building, Washington, D.C. 20004, (202) 727–6265

U.S. VIRGIN ISLANDS: Federal Programs Office, Office of the Governor, The Virgin Islands of the United States, Charlotte Amalie, St. Thomas, VI, 00801 (809) 724–7900

NORTHERN MARIANA ISLANDS: Planning and Budget Office, Office of the Governor, Saipan, CM 96950

[FR Doc. 84-25428 Filed 9-25-84; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Combined Subcommittees on Reliability and Probabilistic Assessment/Limerick Units 1 and 2; Meeting

The ACRS Subcommittees on Reliability and Probabilistic Assessment/Limerick Units 1 and 2 will hold a combined meeting on October 9 and 10, 1984, 1717 H Street, NW, Washington, DC.

The meeting will be for the most part open to public attendance. However, a portion of the meeting will be closed to discuss proprietary information relating to the Limerick risk assessment and matters relating to the details of the Security Plan for the Limerick Generating Station.

The agenda for subject meeting shall be as follows:

Tuesday, October 9, 1984, Room 1046—1:00 p.m. until the conclusion of business

Wednesday, October 10, 1984, Room 1046—8:30 a.m. until the conclusion of business

The Subcommittees will continue their review of the probabilistic risk assessment for the Limerick plant and review the Philadelphia Electric Company's application for a license to operate the Limerick Generating Station.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. 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 Subcommittees, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as practicable so that appropriate arrangements can be made.

During the intitial portion of the meeting, the Subcommittees, along with any of its consultants who may be present, will exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittees will then hear presentations by and hold discussions with representatives of the Philadelphia Electric Company, the NRC Staff, their consultants, and other invited persons regarding this review.

Further information about topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Dr. Richard Savio (telephone 202/634–3267) between 8:15 a.m. and 5:00 p.m., Edt. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: September 21, 1984.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 84-25530 Filed 9-25-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–294]

Michigan State University; Renewal of Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 5 to Facility Operating License No. R–114 for Michigan State University (the licensee) which renews the license for operation of the training and research reactor located in East Lansing, Michigan. The facility is a non-power reactor that has been operating in the non-pulsing mode at power levels not in excess of 250 kilowatts (thermal). The renewed Operating License No. R–114 will expire on February 15, 1998.

The amended license 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. Those findings are set forth in the license amendment. Opportunity for hearing was afforded in the notice of the proposed issuance of this renewal in the **Federal Register** on December 20, 1977 at 42 FR 63829. No request for a hearing or petition for leave to intervene was filed following notice of the proposed action.

The Commission has prepared a Safety Evaluation Report (NUREG–1084) for the renewal of Facility Operating License No. R–114 and has, based on that report, concluded that the facility can continue to be operated by the licensee without endangering the health and safety of the public.

The Commission also has prepared an Environmental Assessment for the renewal of Facility Operating License No. R–114 and has concluded that this action will not have a significant effect on the quality of the human environment. The Notice of Finding of No Significant Environmental Impact was published in the **Federal Register** on September 14, 1984 at 49 FR 36180.

For further details with respect to this action, see (1) the application for amendment dated September 19, 1977, as supplemented, (2) the Finding of No Significant Environmental Impact, (3) Amendment No. 5 to License R–114, (4) the Commission's related Safety Evaluation Report (NUREG–1084), and (5) Environmental Assessment. These items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. 20555.

Copies of NUREG–1084 may be purchased by calling (301) 492–9530 or by writing to the Publication Services Section, Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, or purchased from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

Dated at Bethesda, Maryland, this 19th day of September 1984.

For the Nuclear Regulatory Commission.

Cecil O. Thomas,

Chief, Standardization and Special Projects Branch, Division of Licensing.

[FR Doc. 84–25531 Filed 9–25–84; 8:45 am]

BILLING CODE 7590–01–M

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued a new guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 3.54, "Spent Fuel Heat Generation in an Independent Spent Fuel Storage Installation," presents a method acceptable to the NRC staff for calculating conservative values of heat generation rates for use as design input for an independent spent fuel storage installation.

Comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. Comments should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. Copies of active guides may be purchased at the current Government Printing Office price. A subscription service for future guides in specific divisions is available through the Government Printing Office. Information on the subscription service and current prices may be obtained by writing to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Publications Sales Manager.

(5 U.S.C. 552(a))

Dated at Silver Spring, Maryland this 19th day of September 1984.

For the Nuclear Regulatory Commission.

Robert B. Minogue,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 84–25528 Filed 9–25–84; 8:45]

BILLING CODE 7590–01–M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Agency Report Forms Under OMB Review

AGENCY: Overseas Private Investment Corporation.

ACTION: Request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit 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 form under review is summarized below.

DATE: Comments must be received within 14 calendar days of this notice. If you anticipate commenting on the form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Submitting Officer of your intent as early as possible.

ADDRESS: Copies of the subject form and the request for review submitted to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the Agency Submitting Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

OPIC Agency Submitting Officer

L. Jacqueline Brent, Office of Personnel and Administration, Overseas Private Investment Corporation, Suite 405, 1129 Twentieth Street, NW., Washington, D.C. 20527; Telephone (202) 653–2818.

OMB Reviewer

Francine Picoult, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503; Telephone (202) 395–7231.

Summary of Form Under Review

Type of Request: Revision
Title: Application for Political Risk Investment Insurance
Form No.: OPIC–52
Frequency of Use: 275 per annum
Type of Respondent: U.S. investor
Standard Industrial Classification Codes: All
Description of Affected Public: U.S. companies investing overseas
Number of Responses: 275
Reporting Hours: 500
Federal Cost: $10,000
Authority for Information Collection: Section 234(a) of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses)

Pursuant to OPIC's statute, OPIC must screen each applicant for investment insurance in order to determine the eligibility of the investor, assess the political risks of the project, and

calculate the economic and development effects of the project in the host country and in the U.S. The OPIC Form 52 enables OPIC to collect this information in order to carry out Congress' mandate to manage the program prudently and to assure that no project is supported which has a significant adverse effect on U.S. employment.

Dated: September 17, 1984.

Leo H. Phillips, Jr.,

Office of the General Counsel.

[FR Doc. 84-25465 Filed 9-25-84; 8:45 am]

BILLING CODE 3210-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 21335; File No. 600-5]

Full Registration as a Clearing Agency; Boston Stock Exchange Clearing Corp.; Order

September 20, 1984.

I. Introduction and Summary

This Order concerns Boston Stock Exchange Clearing Corporation's ("BSECC") application for registration as a clearing agency under the Securities Exchange Act of 1934 (the "Act").[1] On December 1, 1975, the Commission granted BSECC registration as a clearing agency for a period of eighteen months and instituted proceedings to determine whether to grant or deny BSECC full registration as a clearing agency under the Act.[2] Subsequently, the Commission extended BSECC's temporary registration on a number of occasions, with the most recent extension to expire on September 30, 1984.[3] During the past several years, BSECC significantly altered its operations. Because of these operational changes, BSECC requested an extension of its temporary registration in order to revise its rules, by-laws and procedures. That revision is now substantially complete and the Commission has reviewed BSECC's updated by-laws, rules and procedures.

The Commission monitored BSECC carefully and extensively over the past few years as it altered its operations and procedures. The Commission also conducted a comprehensive review of BSECC's revised rules, by-laws, procedures and amended Form CA-1 to ensure that BSECC's rules and procedures substantially satisfy the Act and the Division of Market Regulation's (the "Division") Standards for Registration as a Clearing Agency (the "Standards").[4] During the Commission's review of BSECC's registration application, BSECC requested exemption from three of the Standards: (1) The internal accounting control report; (2) the fair representation standard; and (3) one aspect of the clearing fund contribution requirement.

As discussed below, the Commission is granting BSECC's exemption requests subject to certain undertakings. On the basis of its review of BSECC's application, rules, by-laws and procedures, the Commission believes that BSECC substantially satisfies the requirements of the Act and the Standards. Accordingly, the Commission is approving BSECC's application for full registration as a clearing agency, subject to certain undertakings noted below.

II. Discussion

1. BSECC's Services

BSECC offers its members a variety of trade comparison, clearance, settlement and limited depository services, most of which rely on the services of the National Securities Clearing Corporation ("NSCC") and the Depository Trust Company ("DTC"). For BSECC members that are NSCC members, BSECC collects trade data regarding trades executed on the BSE floor and transmits that data to NSCC for processing. For BSECC members that are not NSCC or DTC members, BSECC provides access to NSCC and DTC through BSECC sponsored accounts. As part of this sponsorship, BSECC guarantees member trades and collects and pays members' daily settlement obligations at NSCC and DTC. BSECC also provides a variety of services for member BSE specialists. In addition to transmitting trade data to NSCC, BSECC offers related clearance and settlement services to BSE specialists, guarantees their settling trades and provides those members with daily clearance and settlement reports. BSECC also offers member BSE specialists financing services to meet their daily settlement obligations. BSECC offers institutional members access to DTC's Institutional Delivery System and collects and pays members' daily DTC settlement obligations. Finally, BSECC provides institutional members safeguarding and settlement services for non-DTC eligible securities.

2. The Internal Accounting Control Report

The Standards require a clearing agency to "furnish annually to participants an opinion report prepared by its independent public accountant based on a study and evaluation of the clearing agency's system of internal accounting control for the period since the last such report."[5] The scope of the study and evaluation covers all clearing agency activities performed for participants, particularly trade recording, transaction processing and depository services.[6] The scope of the study, moreover, must be sufficient to provide reasonable assurance that any material weakness existing during the period since the last report would be discovered. The accountant's report must describe any material weakness discovered and any corrective action taken or proposed to be taken.[7]

BSECC requested a one year phase-in period to implement the annual for-the-period requirement. BSECC proposed that, for fiscal 1985, it will obtain an opinion from its independent accountant respecting BSECC's internal controls for a period of three months. Thereafter, BSECC proposed to comply with the Standards regarding an annual for-the-period internal accounting control report.

The Commission is granting BSECC's request for a one year exemption to implement the annual for-the-period requirement. BSECC has undergone significant changes over the last several years. As a result of those changes, DTC now performs virtually all the depository functions previously performed by the New England Depository Trust Company ("NESDTC") and NSCC performs much of the securities transaction processing for BSECC. Therefore, as a practical matter, much of BSECC's activity is subject to review by NSCC's and DTC's auditors, incidentally, as part of their work. BSECC has also taken a number of steps to strengthen its internal accounting control system including establishing an internal audit department and an audit committee. Accordingly, the Commission believes BSECC and its independent accountant could benefit from additional time to implement a full annual-period review of, and report on, BSECC's system of internal accounting

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[1] *See* Sections 17A(a)(2) and 19(a) of the Act (15 U.S.C. 78q-1(a)(2) and 78s(a)) and Rule 17Ab2-1(c)(1) (17 CFR 240.17Ab2-1(c)(1)) thereunder.

[2] *See* Securities Exchange Act Release No. 11875 (Nov. 26, 1975), 40 FR 55910 (Dec. 2, 1975).

[3] *See* Securities Exchange Act Release No. 20222 (Sept. 23, 1983), 48 FR 45167 (Oct. 3, 1983).

[4] *See* Section 17A(b)(3)(A)-(I) of the Act, 15 U.S.C. 78q-1(b)(3)(A)-(I); Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41920 (June 23, 1980) ("Standards Release").

[5] *See* Standards Release, 45 FR at 41925.

[6] Securities Exchange Act Release No. 19744 (May 9, 1983), 48 FR 21089 (May 13, 1983). Excluded from the scope of the study and evaluation, however, would be clearing agency corporate functions, such as payroll accounting.

[7] *See* Standards Release, 45 FR at 41928, for a discussion of the definition of "material weakness."

control. In the interim, BSECC will obtain a three month period report similar in scope to DTC's three month period report previously approved by the Commission.

3. Fair Representation

Section 17A(b)(3)(C) of the Act requires that the clearing agency provide shareholders and participants a meaningful opportunity to be represented in the selection of the board of directors and the administration of the clearing agency's affairs. Although the Standards describe several methods by which a clearing agency may comply with the fair representation standard, the Standards emphasize that each clearing agency's procedures must be evaluated on a case-by-case basis.[8] The Commission, however, believes that, at a minimum, fair representation requires that the entity responsible for nominating individuals to the clearing agency's board of directors should be obligated to nominate directors with a view toward assuring fair representation of the interest of shareholders and a cross-section of the member community.[9]

BSECC's Board of Directors is composed of the five members of BSE's Executive Committee, three of which are BSECC members. To ensure fair representation of the clearing member community, BSECC has agreed to amend its by-laws to ensure that a majority of BSECC's directors will be BSECC members. Moreover, BSECC's nominating committee will have an obligation to solicit names for possible nomination from all segments of the BSECC member community and to select BSECC directors with a view toward assuring fair representation of a cross-section of BSECC members.

The Commission believes that BSECC's proposal is sufficient to assure the fair representation of BSECC members. Moreover, nearly all BSECC members are BSE members, and, therefore, by virtue of their BSE membership, they can participate in the selection process.[10]

[8] Securities Exchange Act No. 20022I (September 23, 1983, 48 FR 45167 (October 3, 1983) ("Full Registration Order").

[9] *See* Standards Release, 45 FR 41923.

[10] The Commission approved a somewhat similar nomination and selection process involving the Philadelphia Stock Exchange ("Phlx") and the Stock Clearing Corporation of Philadelphia ("SCCP"), whereby Phlx's nominating committee, in effect, selected SCCP's Board of Directors. Likewise, Phlx's nominating committee was obligated "to make nominations with a view toward assuring fair representation of the interest of shareholders and of a cross-section of the community of participants." *See* Full Registration Order, 48 FR at 45174.

4. Collecting Additional Clearing Fund Contributions

The Standards require a clearing agency's clearing fund to be composed of contributions based on a formula, applicable to all users, that assesses the risk to the clearing agency arising from each member's use of clearing agency services.[11] The Standards contemplate that member clearing fund contributions would include two components: a minimum contribution and additional contributions, if necessary, that reflect the particular risks associated with each member's use of the clearing agency's services. The Standards emphasized the second component because each member's contribution to the clearing fund represents one of the clearing agency's primary protections against financial loss in the event of that member's insolvency.

BSECC requested an exemption from the mandatory collection of additional clearing fund contributions. Although BSECC requires each member to contribute $6,000 to BSECC's clearing fund and calculates additional clearing fund contributions using such a formula, BSECC does not collect those additional clearing fund contributions from members that may have some additional obligation. BSECC believes that the $6,000 contribution requirement is adequate to cover current member risks because member activity levels are such that collecting additional clearing fund contributions would contribute few additional monies to the clearing fund.[12] Nonetheless, because member activity levels can change, BSECC has agreed to monitor, on a monthly basis, both member activity levels and related clearing agency risks and to collect additional contributions if warranted.

Particularly in light of the reduced scope of BSECC's clearing agency activities, the Commission believes this alternative is adequate under the Act and is granting BSECC an exemption from this Standard. First, BSECC's rules authorize BSECC to collect from members additional clearing fund contribution and, if necessary, to obtain further assurances to protect it from the risk of a member's insolvency. Even more crucial to the Commission's consideration is the assurance that BSECC will review, regularly and continuously, member clearing fund contributions and, if warranted, collect additional contributions.

[11] *See* Standards Release, 45 FR 41929.

[12] The $6,000 minimum clearing fund contribution is comparable to the minimum set at other clearing agencies.

III. Conclusion

Based on the foregoing, the Commission believes that BSECC has substantially satisfied the requirements of the Act and the Standards for registration as a clearing agency and should be granted full registration subject to the limitations, undertakings, exemptions and other qualifications outlined above.

It is therefore ordered, pursuant to Sections 17A(a)(2) and 19(a) of the Act and Rule 17Ab2–1(c)(2) thereunder, that BSECC is granted full registration as a clearing agency.

By the Commission.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84–25404 Filed 9–25–84; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 23428; 70–7013]

The Connecticut Light & Power Co; Proposal To Enter Into Reimbursement Agreement Providing For Letters of Credit; Exception From Competitive Bidding

September 20, 1984.

The Connecticut Light and Power Company ("CL&P"), Selden Street, Berlin, Connecticut, 06037, a wholly owned subsidiary of Northeast Utilities, a registered holding company, has filed a proposal pursuant to Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(5) thereunder.

CL&P has a 4.05985% joint ownership in the Seabrook nuclear generating project, ("Seabrook Project"). On May 14, 1984, CL&P and the other joint owners of the Seabrook Project ("Seabrook Participants") adopted a resolution ("Resolution") which, among other things, required each of the Seabrook Participants to provide to each other a plan for financing its ownership share of the cost of completing Seabrook Unit I and for seeking any necessary approvals and consents. The Resolution also required that each Participant's plan provide assurance acceptable to other Seabrook Participants that financing of the portion of the assumed completion cost of the Seabrook Participant submitting the plan will be available. On June 23, 1984, the Seabrook Participants determined that the financing plan of each of the Seabrook Participants, including CL&P, was acceptable.

CL&P proposes to enter into two separate reimbursement agreements ("Reimbursement Agreements"), one with Chemical Bank and the other with

Manufacturers Hanover Trust Company ("Banks"). Each Reimbursement Agreement will provide for the Bank to issue its irrevocable standby letter of credit ("Letters of Credit") for the account of CL&P, naming as beneficiary the disbursing agent or another entity acting for the Seabrook Participants. The Letters of Credit to be provided by the Banks will cover the entire presently estimated maximum amount of CL&P's obligation with respect to Seabrook Unit 1. Based on the estimated maximum cash cost of $1.3 billion to complete the construction of Seabrook Unit 1, CL&P's 4.05985% share would be a maximum of $52.778 million. The amount of the Letter of Credit to be issued by Chemical Bank would be $25 million, and the amount of the Letter of Credit to be issued by Manufacturers Hanover Trust Company would be $27.778 million. Seabrook Unit I expenditures by CL&P before the date of issuance of the Letters of Credit will reduce the initial aggregate amount of the Letters of Credit on a dollar-for-dollar basis. After the issuance, the amounts of the Letters of Credit will decrease each month by the amount of CL&P's payment that month of its share of Unit 1 construction costs. The Letters of Credit would be effective from the date of issuance (expected to be approximately December 31, 1984) until October 1, 1987, or until the aggregate amount covered by the Letters of Credit has been paid by CL&P and verified by the disbursing agent for the Seabrook Participants, or until Seabrook Unit 1 is completed or cancelled as verified by the disbursing agent, whichever occurs first. The Letters of Credit could be cancelled if the first mortgage bonds of CL&P should be assigned a rating of A– or above from both Moody's and Standard & Poor's. The Letters of Credit will not be cancellable due to material adverse changes, including any changes to the expected date or forecasted cost of completing Seabrook Unit 1.

Each Letter of Credit will provide that if the disbursing agent gives the issuing Bank a statement to the effect that CL&P has failed to pay all or a portion of the construction payments billed to CL&P for Seabrook Unit 1, and if the other conditions contained in the Letters of Credit are satisfied, then on the demand of the disbursing agent the Banks will make the appropriate current payments into the disbursing agent's account or will immediately escrow to the account of the disbursing agent the entire remaining face value of the Letters of Credit at that time and charge CL&P for a corresponding loan ("Loan").

The Reimbursement Agreements will provide that CL&P will repay the amounts of any Loans within 90 days after the date on which such Loans are made, together with interest at the Banks' respective prime rates. If any Loans are not repaid when due, the interest rate on all amounts remaining unpaid will be increased to a rate two percentage points above the Banks' respective prime rates. For undertaking to issue the Letters of Credit, the Banks will be entitled to be paid commissions at the rates of .50% per annum (in the case of Chemical Bank) and .65% per annum (in the case of Manufacturers Hanover Trust Company) of the initial amounts of the respective Letters of Credit from September 15, 1984 until the date of issuance of the Letters of Credit. From and after the issuance of the Letters of Credit, the Banks will be entitled to be paid commissions at the rates specified above, calculated on the basis of the average daily amount available to be paid under the respective Letters of Credit. CL&P will also agree to pay the Banks for their reasonable costs and expenses with respect to the Letters of Credit.

CL&P requests an exception from the competitive bidding requirements of Rule 50 (b) and (c) pursuant to Rule 50(a)(5) stating that the nature of the obligations makes competitive bidding inappropriate.

The proposal and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by October 15, 1984, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact and/or law that are disputed. A person who so requests will be notifed of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the proposal, as filed or as it may be amended, may be authorized.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-25493 Filed 9-25-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21336; File No. 600-19]

New England Securities Depository Trust Co.; Order Granting Request for Withdrawal and Termination as a Clearing Agency

September 20, 1984.

I. Introduction

This Order concerns the withdrawal and termination of the New England Securities Depository Trust Company's ("NESDTC") temporary registration as a clearing agency under the Securities Exchange Act of 1934 (the "Act").[1] On September 24, 1976, the Commission granted NESDTC registration as a clearing agency for a period of eighteen months and instituted proceedings to determine whether to grant or deny NESDTC full registration as clearing agency.[2] Subsequently, the Commission, by Order, extended NESDTC's temporary registration on a number of occasions, with the most recent extension to expire on September 30, 1984.[3] On December 1, 1982, NESDTC ceased to do business as a clearing agency. Subsequently, NESDTC requested the cancellation of its temporary registration and withdrawal of its application for full registration pursuant to Section 19(a)(3) of the Act. The Commission has reviewed the nature and extent of NESDTC's residual activities and liabilities and has obtained from BSE what it believes are the necessary assurances to protect any rights and obligations NESDTC may have relative to its participants.

II. Discussion

NESDTC no longer performs any services and has no participants, officers, employees, accounts with banks or other clearing agencies, or securities or dividend activities. The depository functions previously performed by NESDTC are performed by the Depository Trust Company ("DTC") and the Boston Stock Exchange Clearing Corporation ("BSECC"), NESDTC's sister clearing corporation. Virtually all certificates held at NESDTC have been transferred to DTC. A few

[1] *See* Sections 17A(a)(2) and 19(a) of the Act (15 U.S.C. 78q-1(a)(2) and 78s(a)) and Rule 17Ad2-1(c)(1) (17 CFR 240.17Ab2-1(C)(1)) thereunder.

[2] Proceedings regarding NESDTC's registration as a clearing agency were instituted on June 23, 1977.

[3] Securities Exchange Act Release No. 20222 (Sept. 23, 1983), 48 FR 45167 (Oct. 3, 1983). NESDTC consented to an extension of its temporary registration to afford the Commission time to review the nature and extent of residual activities and liabilities, if any, and to determine whether additional steps or undertakings must be made by NESDTC or the Boston Stock Exchange, Inc. ("BSE") before granting deregistration.

remaining non-depository eligible securities have been transferred to BSECC, which will perform depository functions for those securities.

NESDTC's assets were transferred to Boston Stock Exchange Research, Inc. ("BSER") and NESDTC's clearing fund was transferred to BSECC.[4] BSER is a wholly-owned subsidiary of BSE that researches, resolves and pays claims against NESDTC. Since 1982 BSER has researched and resolved over 150 stock dividend claims, 100 bond interest claims and 900 cash dividend claims totalling over $727,000. As of July 31, 1984, BSER had available $500,843 to pay outstanding claims against NESDTC.

BSE has agreed to guarantee any remaining NESDTC liabilities (after BSER exhausts NESDTC's assets), up to $312,992.35. The Commission believes that BSE's limited guarantee is sufficient because all significant claims against NESDTC have been resolved and remaining claims are relatively insubstantial. There are currently outstanding 6 stock dividend claims totalling $40,000 and 46 cash dividend claims totalling $7,200. BSE has undertaken that for at least five years after December 1, 1982 (the date NESDTC ceases to perform depository functions), BSER will continue to research and pay valid claims against NESDTC up to the extent of NESDTC's remaining assets at BSER and BSE's guarantee.

Section 19(a)(3) of the Act provides in part that a self-regulatory organization may "withdraw from registration by filing a written notice of withdrawal with the Commission." Section 19(a)(3) also provides that if the Commission finds that any self-regulatory organization is no longer in existence or has ceased to do business in the capacity specified in its application for registration, "the Commission, by order, shall cancel its registration." Based upon the undertakings discussed in this Order and the representations made by BSE, the Commission has determined that granting NESDTC's request for withdrawal from registration as a clearing agency would be consistent with the requirements of the Act. The Commission further finds that NESDTC has ceased to do business in the capacity specified in its registration application and accordingly has determined to cancel its temporary registration, effective September 30, 1984.

[4] The monies transferred to BSECC's clearing fund were credited to each BSECC member as part of that member's clearing fund contribution.

The Commission believes, however, that it would be appropriate to require NESDTC, BSE and BSER to retain and, at the Commission's request, produce certain records that registered clearing agencies must maintain under Rule 17a-1 (a) and (b).[5] Specifically, the Commission believes that BSE and BSER should maintain records necessary to research claims concerning participants' past securities transactions and positions at NESDTC. In this regard, BSE and BSER, through BSE's counsel, have undertaken to maintain and make available for Commission inspection NESDTC's records for at least five years after NESDTC ceased doing business as a clearing agency. As noted above, BSE and BSER have also undertaken to continue researching, resolving and paying claims against NESDTC to the extent of NESDTC's remaining assets and BSE's limited guarantee.

III. Conclusion

On the basis of the foregoing facts and representations it is ordered that:

(1) Effective September 30, 1984 NESDTC's request for withdrawal from registration be granted and its registration as a clearing agency be cancelled; and

NESDTC, through BSE and BSER, shall maintain records necessary to research future claims regarding participants' past securities transactions and positions for at least five years after NESDTC ceased to do business and are to provide those records, upon request, to the Commission during that period of time.

By the Commission.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-25491 Filed 9-25-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21334; File No. SR-CSE-84-2]

Self-Regulatory Organizations; Cincinnati Stock Exchange; Order Approving Proposed Rule Change

September 20, 1984.

The Cincinnati Stock Exchange, 209 Dixie Terminal Building, Cincinnati, Ohio, 45202, submitted on July 10, 1984 copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b-4 thereunder, to amend Article II, Section 5.2 of the CSE constitution to increase the maximum number of Proprietary Memberships from 75 to 200. The Exchange also proposes to amend Article II, Section 10.1 to set the annual membership meeting on the fourth Thursday in April. In addition, the Exchange, pursuant to Amendment No. 1 submitted on July 20, 1984, would change Section 3.2 of Article VI to require that the Chairman appoint the Nominating Committee for the Board of Trustees not less than 30 nor more than 90 days prior to the annual membership meeting and that such members' terms would be one year. In addition, the CSE rule proposal would amend Article II, Section 10.4 to permit Access Participants to vote, but only in the election of any proposed trustee who is an Access Participant or a partner, officer or director thereof, and Article V, Section I to limit to two the number of trustees who are Access Participants.

[5] 17 CFR 240.17a-1 (a) and (b).

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 21223, August 9, 1984) and by publication in the **Federal Register** (49 FR 32821, August 16, 1984). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-25492 Filed 9-25-84; 8:45 am]

BILLING CODE 8010-01-M

[File No. 22-12932]

Chrysler Financial Corp.; Application and Opportunity for Hearing

September 20, 1984.

Notice is hereby given that Chrysler Financial Corporation (the "Applicant") has filed an application under clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding by the Commission that the trusteeships of Manufacturers Hanover Trust Company ("MHTC") under a 1983 indenture which was qualified under the Act, and two new indentures, which have not been qualified under the Act, are not so likely to involve a material

conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify MHTC from acting as trustee under the three indentures.

Section 310(b) of the Act provides, in part, that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest (as defined in the section), it shall within ninety days after ascertaining that it has such conflicting interest either eliminate such conflicting interest or resign. Subsection (1) of this section provides, with certain exceptions that a trustee is deemed to have a conflicting interest if it is acting as trustee under another indenture under which any other securities of the same obligor are outstanding. However, pursuant to clause (ii) of subsection (1), there may be excluded from the operation of this provision another indenture or indentures under which other securities of such obligor are outstanding, if the issuer shall have sustained the burden of proving on application to the Commission, and after opportunity for hearing thereon, that trusteeship under the qualified indenture and such other indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under any of such indentures.

The Applicant alleges that:

1. On November 22, 1983, the Applicant filed a Registration Statement (Registration No. 2–88008), covering $300,000,000 principal amount of 13–1/4% Notes Due 1988 (the "13-1/4% Notes").

2. The 13-1/4% Notes were issued pursuant to an Indenture, dated as of December 15, 1983, between MHTC, as Trustee, and the Applicant (the "1983 Indenture").

3. On January 18, 1984, the Applicant filed a Registration Statement (Registration No. 2–88931), covering $300,000,000 principal amount of Medium-Term Notes of varying interest rates and dates of maturity (the "Medium-Term Notes").

4. The Medium-Term Notes were issued pursuant to an Indenture, dated as of January 15, 1983, between MHTC, as Indenture Trustee, and the Applicant (the "January 1984 Indenture").

5. The 13-1/4% Notes and the Medium-Term Notes are secured under the Security Agreement dated as of May 15, 1980 among the Applicant, Chrysler Credit Corporation, Chrysler Leasing Corporation and Chrysler Overseas Capital N.V., and Wilmington Trust Agreement among the same parties and dated as of the same date (in each case as amended by Agreement dated as of August 15, 1983).

6. The Applicant is not in default in any respect under the 1983 Indenture or the January 1984 Indenture or under any other existing Indenture.

7. On June 21, 1984, the Applicant filed a Registration Statement (Registration No. 2–91782) covering the proposed issue of $1,500,000,000, principal amount of Senior Debt Securities, of varying interest rates and dates of maturity (the "Senior Debt Securities").

8. The Senior Debt Securities will be issued pursuant to a trust indenture to be qualified under the Act between the Applicant and an indenture trustee. The Applicant desires to appoint MHTC as indenture trustee under such indenture (the "June 1984 Indenture").

9. The Senior Debt Securities will be secured under the Security Agreement dated as of May 15, 1980 among the Applicant, Chrysler Credit Corporation, Chrysler Leasing Corporation and Chrysler Overseas Capital N.V., and Wilmington Trust Company, as trustee, and the Trust Agreement among the same parties and dated as of the same date (in each case as amended by Agreement dated as of August 15, 1983).

10. The 13–1/4% Notes, the Medium-Term Notes and the Senior Debt Securities (assuming the January and June 1984 Indenture are qualified) will be identically secured and of equal rank.

11. Each Indenture contains a cross-default provision allowing the Trustee, MHTC, to accelerate 10 days after notice to Applicant of a default and acceleration under another indenture or agreement.

12. Pursuant to the Security Agreement dated as of May 15, 1980, Wilmington Trust Company as the holder of the collateral under each Security Agreement has a trustee's obligation to treat all holders of debt secured thereunder equally and ratably and would dispense a pro rata portion of the trust estate to MHTC as Trustee under 1983 Indenture, the January 1984 Indenture and the June 1984 Indenture.

13. The Applicant is filing this application pursuant to secton 310(b)(1)(ii) of the Act for a determination that the trusteeships under the 1983 Indenture (which has been qualified under the Act), the June 1984 Indenture (which application is currently pending, File No. 22–13164), and the January 1984 Indenture are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify MHTC from acting as Indenture Trustee under one of such Indentures.

Accordingly, in the opinion of the Applicant, the trusteeships of MHTC under the 1983 Indenture, the June 1984 Indenture and the January 1984 Indenture are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors that MHTC be disqualified from acting as trustee under one of such Indentures.

The Applicant waives notices of hearing and waives hearing and waives any and all rights to specific procedures under the Rules of Practice of the Commission with respect to the application.

For a more detailed account of the matters of fact and law asserted, all persons are referred to said application, which is a public document on file in the offices of the Commission at the Public References Room, 450 Fifth Street, NW., Washington, D.C.

Notice is further given that any interested persons may, not later than October 15, 1984, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of law of fact raised by such application which he desires to controvert, or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Shirley E. Hollis, Acting Secretary, Securities and Exchange Commission, Washington, D.C. 20549. At any time after said date, the Commission may issue an order granting the application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest or for the protection of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84–25576 Filed 9–25–84; 8:45 am]

BILLING CODE 8010–01–M

[File No. 22–13164]

Chrysler Financial Corp.; Application and Opportunity for Hearing

September 20, 1984.

Notice is hereby given that Chrysler Financial Corporation (the "Applicant") has filed an application under clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding by the Commission that the trusteeships of Manufacturers Hanover Trust Company ("MHTC") under a 1983 indenture which was qualified under the

Act, and two new indentures which have not been qualified under the Act, are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify MHTC from acting as trustee under the three indentures.

Section 310(b) of the Act provides, in part, that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest (as defined in the section), it shall within ninety days after ascertaining that it has such conflicting interest either eliminate such conflicting interest or resign. Subsection (1) of this section provides, with certain exceptions, that a trustee is deemed to have a conflicting interest if it is acting as trustee under another indenture under which any other securities of the same obligor are outstanding. However, pursuant to clause (ii) of subsection (1), there may be excluded from the operation of this provision another indenture or indentures under which other securities of such obligor are outstanding, if the issuer shall have sustained the burden of proving on application to the Commission, and after opportunity for hearing thereon, that trusteeship under the qualified indenture and such other indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under any of such indentures.

The Applicant alleges that:

1. On November 22, 1983, the Applicant filed a Registration Statement (Registration No. 2–88008), covering $300,000,000 principal amount of 13¼% Notes Due 1988 (the "13¼% Notes").

2. The 13¼% Notes were issued pursuant to an Indenture, dated as of December 15, 1983, between MHTC, as Trustee, and the Applicant (the "1983 Indenture").

3. On January 18, 1984, the Applicant filed a Registration Statement (Registration No. 2–88931), covering $300,000,000 principal amount of Medium-Term Notes of varying interest rates and dates of maturity (the "Medium-Term Notes").

4. The Medium-Term Notes were issued pursuant to an Indenture, dated as of January 15, 1983, between MHTC, as Indenture Trustee, and the Applicant (the "January 1984 Indenture").

5. The 13¼% Notes and the Medium-Term Notes are secured under the Security Agreement dated as of May 15, 1980 among the Applicant, Chrysler Credit Corporation, Chrysler Leasing Corporation and Chrysler Overseas Capital N.V., and Wilmington Trust Agreement among the same parties and dated as of the same date) in each case as amended by Agreement dated as of August 15, 1983).

6. The Applicant is not in default in any respect under the 1983 Indenture or the January 1984 Indenture or under any other existing Indenture.

7. On June 21, 1984, the Applicant filed a Registration Statement (Registration No. 2–91792) covering the proposed issue of $1,500,000,000 principal amount of Senior Debt Securities, of varying interest rates and dates of maturity (the "Senior Debt Securities").

8. The Senior Debt Securities will be issued pursuant to a trust indenture to be qualified under the Act between the Applicant and an indenture trustee. The Applicant desires to appoint MHTC as indenture trustee under such indenture (the "June 1984 Indenture").

9. The Senior Debt Securities will be secured under the Security Agreement dated as of May 15, 1980 among the Applicant, Chrysler Credit Corporation, Chrysler Leasing Corporation and Chrysler Overseas Capital N.V., and Wilmington Trust Company, as trustee, and the Trust Agreement among the same parties and dated as of the same date (in each case as amended by Agreement dated as of August 15, 1983).

10. The 13¼% Notes, the Medium-Term Notes and the Senior Debt Securities (assuming the January and June 1984 Indentures are qualified) will be identically secured and of equal rank.

11. Each Indenture contains a cross-default provision allowing the Trustee, MHTC, to accelerate 10 days after notice to Applicant of a default and acceleration under another indenture or agreement.

12. Pursuant to the Security Agreement dated as of May 15, 1980, Wilmington Trust Company as the holder of the collateral under such Security Agreement has a trustee's obligation to treat all holders of debt secured thereunder equally and ratably and would dispense a pro rata portion of the trust estate to MHTC as Trustee under 1983 Indenture, the January 1984 Indenture and the June 1984 Indenture.

13. The Applicant is filing this application pursuant to section 310(b)(1)(ii) of the Act for a determination that the trusteeships under the 1983 Indenture (which has been qualified under the Act), the January 1984 Indenture (which application is currently pending. File No. 22–12932), and the June 1984 Indenture are not so likely to invoke a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify MHTC from acting as Indenture Trustee under one of such Indentures.

Accordingly, in the opinion of the Applicant, the trusteeships of MHTC under the 1983 Indenture, the January 1984 Indenture and the June 1984 Indenture are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors that MHTC be disqualified from acting as trustee under one of such Indentures.

The Applicant waives notice of hearing and waives hearing and waives any and all rights to specific procedures under the Rules of Practice of the Commission with respect to the application.

For a more detailed account of the matters of fact and law asserted, all persons are referred to said application, which is a public document on file in the offices of the Commission at the Public Reference Room, 450 Fifth Street, NW., Washington, D.C.

Notice is further given that any interested persons may, not later than October 15, 1984, request in writing that a hearing be held on such matters, stating the nature of his interest, the reasons for such request, and the issues of law or fact raised by such application which he desires to controvert, or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Shirley E. Hollis, Acting Secretary, Securities and Exchange Commission, Washington, D.C. 20549. At any time after said date, the Commission may issue an order granting the application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest or for the protection of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-25571 Filed 9-25-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 23426 (70-7019)]

Eastern Utilities Associates and Montaup Electric Co.; Proposals To Enter Into Reimbursement Agreement Providing for a Letter of Credit Secured by an Unconditional Parent Guarantee; To Issue and Sell Short-Term Note; Exception From Competitive Bidding

September 20, 1984.

Montaup Electric Company ("Montaup"), an electric generating subsidiary of Eastern Edison Company, a wholly owned retail electric subsidiary of Eastern Utilities Associates ("EUA") a registered holding company, P.O. Box 2333, Boston, MA 02107, and EUA propose a transaction subject to sections 6(a), 7, 9(c) and 12(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 45 and 50(a)(5) thereunder.

EUA and Montaup propose to enter into a Reimbursement Agreement ("Agreement") with The Chase Manhattan Bank, N.A. ("Chase") and other banks, with Chase as agent, providing for the issuance by Chase to Montaup of an irrevocable standby letter of credit ("letter") in an amount up to $37.1 million, naming as beneficiary the Seabrook Project Disbursing Agent or other appropriate entity as may develop. The purpose of this letter is to finance Montaup's 2.9% ownership share of the Seabrook Project as set forth in the Agreement for Joint Ownership, Construction and Operation of New Hampshire Nuclear Units dated May 1, 1973 ("Seabrook Agreement"). The initial amount of the letter will decrease each month by the amount of Montaup's payment of its share of Unit 1 construction costs. The letter will authorize the beneficiary to draw under it if Montaup fails to make in full a payment due under the Seabrook Agreement. If requested by the banks following an event of default, the beneficiary will draw the full amount remaining under the letter. This amount will be deposited with Chase, as escrow agent, in an escrow account. A drawing under the letter will obligate Montaup to reimburse Chase, plus interest of 2% over the prime rate, forthwith, for the amount drawn. Montaup will pay a letter of credit fee of .50% per annum, increasing to .75% per annum on the earlier of December 31, 1984 and the date the letter is delivered by Montaup to the beneficiary, calculated monthly on the amount available to be drawn under the letter. Various conditions, covenants and events of default for the letter and the Agreement are described in the Commitment Letter dated August 16, 1984. The letter will terminate on October 1, 1987, unless cancelled earlier with the consent of the beneficiary.

The Agreement will require EUA to unconditionally guarantee Montaup's obligations under such Agreement. Upon the occurrence of certain events, as set forth in a Commitment Letter dated August 16, 1984, EUA will be required to deposit with Chase in a cash collateral account an amount equal to the remaining amount available to be drawn under the letter of credit.

In the event EUA is required to deposit funds with Chase in a cash collateral account, EUA will be required to secure the Notes by depositing an amount of cash equal to the then outstanding principal amount of the Notes. EUA requests authorization for the temporary investment of such cash in certain debt and equity instruments as will be approved by this Commission.

To enable EUA to deposit cash with Chase in the cash collateral account and to deposit cash as security for the Notes, if such deposits are required, EUA proposes to issue short-term notes to banks, and to pay such notes by the issuance of renewal notes at any time during the period from January 1, 1985 through October 1, 1987. The aggregate principal amount of such short-term notes outstanding at any one time will not exceed the sum of the amount required at such time to be deposited or remain on deposit with Chase and the amount required at such time to be deposited or remain on deposit as security for the Notes. These short-term notes either (i) will bear interest at the floating prime rate (13% as of September 11, 1984), will have maximum maturities of nine months, and will be subject to prepayment at any time without premium or (ii) will bear interest at available money market rates (which will always be less than the prime rate), will have maximum maturities of sixty days, and will not be prepayable.

Sections 10.5, 10.6, and 10.7 of EUA's note agreement ("Note Agreement") for $22.5 million, 10¼% Senior Notes due March 1, 1999 (as authorized in HCAR No. 20916 dated February 7, 1979 and HCAR No. 21056 dated May 22, 1979) ("Notes"), contain limitations on funded debt, guarantees, and liens. The transactions proposed by EUA in this proposal are outside the limitations of the Note Agreement. However, the Note Agreement allows for a waiver of those limitations if EUA obtains letters of waiver and amendment from at least 75% of the Note holders as required by section 15 of the Note Agreement. EUA states that it expects to obtain those letters.

Montaup requests an exception from the competitive bidding requirements of Rule 50 pursuant to Rule 50(a)(5) in connection with the proposed obligations of Montaup and EUA arising from the Agreement and letter. Montaup states that compliance with the requirements in paragraphs (b) and (c) of Rule 50 is not necessary or appropriate in the Public interest or for the protection of investors or consumers to assure the maintenance of competitive conditions, the receipt of adequate consideration or the reasonableness of any fees or commissions to be paid.

The proposal and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by October 15, 1984, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy of the applicants at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the proposal, as filed or as it may be amended, may be authorized.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-25678 Filed 9-25-84; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-6922]

Guilford Mills, Inc.; Application To Withdraw From Listing and Registration

September 20, 1984.

The above named issuer has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

A Commission notice dated September 12, 1984 specifying the reasons alleged for withdrawal of the security from listing and registration and requesting public comment thereon inadvertently indicated that such action was requested with respect to the

Midwest Stock Exchange, rather than the Amex.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-25577 Filed 9-25-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21337 (SR-Phlx-84-17)]

Philadelphia Stock Exchange, Inc.; Filing of Proposed Rule and Order Granting Accelerated Approval of Proposed Rule Change

September 20, 1984.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 11, 1984, the Philadelphia Stock Exchange, Inc. ("Phlx"), 1900 Market Street, Philadelphia, PA., 19103, filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

Phlx is proposing to extend its pilot program [1] relating to implementation of a system for the execution, processing and reporting of standard odd-lot market orders to purchase or sell shares in American Telephone & Telegraph Co. ("AT&T") and the equity shares created as a result of the AT&T divestiture [2] from its scheduled expiration date of August 21, 1984 to February 21, 1985. In its original filing implementing the pilot (File No. SR-Phlx-83-19). Phlx noted that in light of the increase in odd-lot order volume anticipated as a result of the divestiture, Phlx was implementing procedures to ensure maximum capacity for odd-lot order processing as well as to provide for efficient clearance and settlement of these transactions. The Exchange has stated in its filing that the procedures detailed in its original filing will remain in effect, for the duration of the extended pilot program.

Under the pilot program, no odd-lot differentials are charged on an odd-lot market order. Standard odd-lot market orders in AT&T and the divestiture issues received prior to the opening of trading or after a regulatory trading halt are executed at the New York Stock Exchange ("NYSE") opening or re-opening prices while standard odd-lot orders received after the NYSE opening are executed at the PACE quote. After a non-regulatory halt, if the Exchange decides to continue trading, standard odd-lot market orders continue to be executed at the PACE quote, but if the Exchange decides to halt trading and to resume trading upon resumption of trading on the NYSE, standard odd-lot market orders received after the halt and prior to the resumption of trading are executed at the reopening price on the NYSE.

In its filing Phlx states that the pilot program establishes a more efficient means of pricing and that the program's extension will provide Phlx with an opportunity to further assess the results of the pilot pricing system under market conditions before making a determination as to what formal modifications are appropriate in this area. According to Phlx, in providing for efficient execution, reporting, clearance and settlement of odd-lot orders, the proposed rule change is consistent with sections 11(a)(1) and 17(A)(1) of the Act which encourage the use of new data processing and communications techniques, creating the opportunity for more efficient and effective market operations.

Interested persons are invited to submit written data, views and arguments concerning the proposed rule change within 21 days after the date of publication in the **Federal Register**. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 5th Street NW., Washington, D.C. 20549. Reference should be made to File No. SR-PHLX-84-17.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 5th Street NW., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof, in that the pilot program was scheduled to expire on August 21, 1984. An extension of the pilot program will provide Phlx with the additional time necessary to study and evaluate the efficiencies achieved by the pilot program as well as to determine whether to submit a formal codification of procedures under the pilot. Therefore, the Commission believes it is appropriate to extend the pilot program until February 21, 1985.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change referenced above be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-25579 Filed 9-25-84; 8:45 am]

BILLING CODE 8010-01-M

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[1] The pilot program approved on November 18, 1983 is described in File No. SR-Phlx-83-19 (Securities Exchange Act Release No. 20325, November 18, 1983; 48 FR 53777, November 29, 1983).

[2] The following issues are affected by the pilot procedures under the pilot program: American Telephone & Telegraph Co., Bell Atlantic Corporation, BellSouth Corporation, NYNEX Corporation, Pacific Telesis Group, Southwestern Bell Corporation and U.S. West, Inc.

SELECTIVE SERVICE SYSTEM

Matching Program To Identify Registration Violators

AGENCY: Selective Service System.

ACTION: Notice.

SUMMARY: Pursuant to OMB Memorandum dated May 11, 1982, "Revised Supplemental Guidance for Conducting Matching Programs", the Selective Service System publishes the following information concerning revision of the Selective Service System Registration Compliance Program for computerized matching of individual records maintained by the Selective Service System against records of other federal and non-federal sources. This revision of the report published in 49 FR 7687 (March 1, 1984) incorporates additional sources of records of registration age men.

FOR FURTHER INFORMATION CONTACT: Lawrence Roffee, Management Services, Selective Service System, Washington, D.C. 20435, Phone 202-724-0872.

Dated: September 20, 1984.

Thomas K. Turnage,

Director of Selective Service.

Report Concerning SSS Matching Program to Identify Registration Violators

Pursuant to OMB Memorandum dated May 11, 1982, concerning "Revised Supplemental Guidance for Conducting Matching Programs", the Selective Service System submits the following information concerning its revision to the Selective Service System Registration Compliance Program for computerized matching of individual records maintained by the Selective Service System against the records of the Social Security Administration, the Internal Revenue Service, the Defense Logistics Agency, the United States Coast Guard, the Veterans Administration, the Immigration and Naturalization Service, Federal Aviation Administration, State and local government agencies, commercial enterprises, and private individuals.

Authority

The authority under which this program is conducted are Sections 10(b)(5) and 12(e) of the Military Selective Service Act (50 U.S.C. App. 451 et seq.); and Presidential Proclamation 4771, 45 FR 45247 (July 3, 1980).

Purpose

This matching program is a continuing program to identify those persons who are in violation of the registration requirements of section 3 of the Military Selective Service Act (50 U.S.C. App. 453).

Procedure

The matching procedure for the program includes the following steps:

(1) The Social Security Administration, State and local government agencies, Veterans Administration, Department of Defense, Federal Aviation Administration, and commercial mailing list firms provide the Selective Service System the following information as available: the name, social security account number, date of birth, and address of each male born in the year of birth of the age groups which are required to register.

(2) The data received from the various record sources is compared to the Selective Service Registrant Registration Record System (SSS–10) to eliminate those men who have registered. Pending further matching and confirmation, the names on the lists that are not matched with the Selective Service record of registrants constitute the Selective Service Suspected Violator Inventory System (SSS–8) containing the names of suspected violators.

(3) The Selective Service Suspected Violator Inventory System (SSS–8) is then compared to the record systems of the Defense Logistics Agency and the U.S. Coast Guard containing the names of personnel on active duty with the armed forces. The names of persons who are on active duty with the armed forces are removed from the Suspected Violator Inventory System.

(4) Letters and registration forms are mailed to individuals in the Selective Service Suspected Violator Inventory System. Records not containing addresses may then be matched by Internal Revenue Service to their Individual Master File (IRS–24.030) to determine the most current addresses. (Authority: 26 U.S.C. 6103(i)(2)). The Internal Revenue Service then mails letters and registration forms to the individuals.

(5) Those who respond by registering are entered into the Selective Service Registrant Record System (SSS–10). Those who fail to respond or refuse to register are reported to the Department of Justice for further investigation and possible prosecution. Those who respond but are determined to be exempt from registration pursuant to sections 3(a) and 6(a) (1) and (2) of the Military Selective Service Act (50 U.S.C. App. 453, 456) are so identified.

Record Systems

The record systems that are matched against the SSS–8 are:

(1) Selective Service System Record System No. SSS–10 "Registrant Registration Records (post-1979) SSS" published in 45 FR 30587 (May 8, 1980);

(2) Social Security Administration Record System No. 09–60–0058 "Master Files of Social Security Number Holders HHS SSA OEER" published in 46 FR 53784 (October 30, 1981);

(3) Internal Revenue Service Record System No. IRS 24.030 "Individual Master File (IMF)" published in 46 FR 16463 (March 12, 1981);

(4) U.S. Coast Guard, Record System No. DOT/CG 624 "Personnel Management Information System (PMIS)" published in 46 FR 59741 (December 7, 1981);

(5) U.S. Coast Guard, Record System No. DOT/CG 678 "Reserve Personnel Management Information System (Automated)" published in 46 FR 59741 (December 7, 1981);

(6) Defense Logistics Agency Record System No. S 322.10 DLA–LZ "Defense Manpower Data Center Data Base" published in 46 FR 40556 (August 10, 1981);

(7) Veterans Administration Record System No. 45VA23 "Veterans Assistance Discharge System (VADS)—VA" published in 47 FR 370 (January 5, 1982);

(8) Federal Aviation Administration, Record System No. DOT/FAA 802 "Airmen Certification System", published in 46 FR 59782 (December 7, 1981);

(9) State and local government records; and

(10) Lists acquired from private concerns and individuals.

Start and End Dates

The matching program began June 1, 1982. The program will continue indefinitely unless registration under the Military Selective Service Act is terminated by the President or by statute.

Safeguards

Safeguards afforded the records involved are:

(1) Records are available to authorized Selective Service personnel only. Authorized personnel include the Director, Deputy Director, Associate Director for Operations, Associate Director for Management Services, the General Counsel, computer operators involved in processing the information, and other personnel specifically authorized to have access to the information by the Director, the Deputy Director, the Associate Directors or the General Counsel to have access to the information.

(2) Computer files are maintained at the Joint Computer Center at Great Lakes, Illinois.

(3) Building is secured and patrolled after normal business hours.

(4) Security guards for the building allow access to authorized personnel only.

(5) Computer room is secured with cypher locks.

(6) Terminal access to the computer system is restricted to those with valid user ID and password.

(7) A Customer Information Control System requires an additional password for interactive access to data base information.

(8) A software security package protects access to data in the system.

Disposition of Records

At the completion of the program for each year group, source records are returned to source agencies by registration year group, if requested; or destroyed pursuant to any prior agreement between the Selective Service System and any respective

source agency; or disposed of pursuant to Chapters 21 and 33 of the Federal Records Act of 1950 (44 U.S.C. 2101 et seq.).

Congressional Notice

Copies of this report are sent concurrently with publication to the Congress, addressed to the President of the Senate and the Speaker of the House of Representatives.

[FR Doc. 84-25452 Filed 9-25-84; 8:45 am]
BILLING CODE 8015-01-M

SMALL BUSINESS ADMINISTRATION

Arizona; Region IX Advisory Council; Public Meeting

The Small Business Administration Region IX Advisory Council, located in the geographical area of Phoenix, Arizona, will hold a public meeting at 11:00 a.m., on Thursday, October 25, 1984, at the China Doll Restaurant, Seventh Avenue and Osborn, Phoenix, Arizona, to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

For further information, write or call Walter Fronstin, District Director, U.S. Small Business Administration, 3030 North Central Avenue, Suite 1201, Phoenix, Arizona 85012, telephone (602) 241–2206.

Dated: September 19, 1984.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 84-25505 Filed 9-25-84; 8:45 am]
BILLING CODE 8025-01-M

[Application No. 05/05-0199]

Northern Capital Corp.; Application for License To Operate as a Small Business Investment Company (SBIC)

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to § 107.102 of the SBA Regulations (13 CFR 107.102 (1984)) by Northern Capital Corporation, 50 South LaSalle Street, Chicago, Illinois 60675 for a license to operate as a small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958 (the Act) as amended (15 U.S.C. 661 et seq.) and the Rules and Regulations promulgated thereunder.

The proposed officers, directors and shareholder are:

Name and address	Title or relationship	Percent of ownership
George M. Richmond, 5202 North Magnolia, Chicago, IL 60640.	President, Director	
Donald H. Choate, 72 Cumberland Dr., Deerfield, IL 60015.	Secretary	
Thomas P. Mamie, 1100 North Lake Shore Dr., Chicago, IL 60611.	Treasury, Director	
Miklas Bubnovich, 1660 North LaSalle, Chicago, IL 60614.	Assistant Secretary	
Charles H. Barrow, 2735 Collins St., Evanston, IL 60201.	Director	
John W. Hogge, 621 Turner Ave., Glen Ellen, IL 60525.	do	
Peter H. Kingman, 128 South Madison Ave., La Grange, IL 60525.	do	
Edward Byron Smith, Jr., 90 Ahwahee Rd., Lake Forest, IL 60045.	do	
John B. Snyder, 592 Cherry St., Winnetka, IL 60093.	do	
The Northern Trust Company, 50 South LaSalle St., Chicago, IL 60675.	Shareholder	100

Northern Trust Corporation, a bank holding company, owns all the outstanding capital stock of the Northern Trust Company, other than directors' qualifying shares. Harold Byron Smith has a sole or shared voting power and/or sole or shared investment power as to an aggregate of 665,926 shares or 13.58 percent of the outstanding common stock of Northern Trust Corporation.

The Applicant will begin operations with a capitalization of $1,000,000 and will be a source of equity capital and long term loan funds for qualified small business concerns.

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 new company under their management, including adequate profitability and financial soundness in accordance with the Act and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Deputy Associate 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 Chicago, Illinois.

(Catalog of Federal Domestic Assistance Program No. 59.011 Small Business Investment Companies)

Dated: September 17, 1984.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84-25520 Filed 9-25-84; 8:45 am]
BILLING CODE 8025-01-M

Utah; Region VIII Advisory Council; Public Meeting

The Small Business Administration Region VIII Advisory Council, located in the geographical area of Salt Lake City, Utah, will hold a public meeting at 9:00 a.m., on Tuesday, October 16, 1984, at the Utah State Capital Legislative Chambers, Salt Lake City, Utah, to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

For further information, write or call R. Kent Moon, District Director, U.S. Small Business Administration, 125 South State Street, Salt Lake City, Utah (801) 524–5800.

Dated: September 19, 1984.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 84-25506 Filed 9-25-84; 8:45 am]
BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. IP84-2; Notice 2]

General Motors Corp; Grant of Petition for Exemption From Notice and Remedy for Inconsequentiality Noncompliance

This notice grants the petition by General Motors, Corp., of Warren, Michigan (GM) to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.108, Motor Vehicle Safety Standard No. 108, *Lamps, Reflective Devices and Associated Equipment.* The basis of the grant is that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published on March 14, 1984, and an opportunity afforded for comment (49 FR 1670).

The noncompliance is found on 1287 1984 model Buick LeSabre, Regal, and Electra passenger cars. The Type 2A1 headlamps installed on these vehicles may contain a halogen bulb in which the upper beam filament of 45 watts

exceeds the maximum design wattage of 43 watts specified in paragraph S4.1.1.33 of Standard No. 108. The noncompliance results from a manufacturing error in which the upper (40 watts) and lower beam filaments (45 watts) were reversed. The noncompliance affects all the left hand headlamps of the 1287 vehicles, but only 657 of the right hand ones.

GM argued that the noncompliance is inconsequential because the headlamps otherwise meet all requirements of Standard No. 108. Operation of headlamps on uppper beam "will result in a nominal increase in load of 10 watts, which is well within the load carrying capacity of the headlamp circuits of the vehicles."

No comments were received on the petition.

The agency has analyzed GM's representations that, notwithstanding the reversal of the filaments, the design life and photometric requirements of Standard No. 108 are met, and has found no reason not to accept them. Further, the increase in load of 10 watts may be deemed nominal and should not compromise the load carrying capacity of the headlamp circuits of the vehicles. Accordingly petitioner has met its burden of persuasion that the noncompliance with Standard No. 108 herein described is inconsequential as it relates to motor vehicle safety, and its petition is hereby granted.

The engineer and attorney principally responsible for this notice are Jere Medlin and Taylor Vinson, respectively.

(Sec. 102, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 48 CFR 1.50 and 49 CFR 501.8)

Issued on September 20, 1984.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 84-25511 Filed 9-25-84; 8:45]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

List of Countries Requiring Cooperation With an International Boycott

In order to comply with the mandate of section 999(a)(3) of the Internal Revenue Code of 1954, the Department of the Treasury is publishing a current list of countries which may require participation in, or cooperation with, an international boycott [within the meaning of section 999(b)(3) of the Internal Revenue Code of 1954]. The list is the sames the prior quarterly list published in the **Federal Register.**

On the basis of the best information currently available to the Department of the Treasury, the following countries may require participation in, or cooperation with, an international boycott [within the meaning of section 999(b)(3) of the Internal Revenue Code of 1954[.

Bahrain
Iraq
Jordan
Kuwait
Libya
Oman
Qatar
Saudi Arabia
Syria
United Arab Emirates
Yemen, Arab Republic
Yemen, Peoples Democratic Republic of

Ronald T. Pearlman,

Acting Assistant Secretary for Tax Policy.

[FR Doc. 84-25502 Filed 9-25-84; 8:45 am]

BILLING CODE 4810-25-M

Bureau of Alcohol, Tobacco and Firearms

[Notice No. 546; Ref: ATF O 1100.101A]

Delegation to the Associate Director (Compliance Operations) of Authorities of the Director in 27 CFR Part 1, Basic Permit Requirements Under the FAA Act

Delegation Order

1. *Purpose.* This order delegates certain authorities of the Director to the Associate Director (Compliance Operations) and permits redelegation to other Compliance Operations personnel.

2. *Cancellation.* ATF O 1100.101, Delegation Order—Delegation to the Assistant Director (Regulatory Enforcement) of Authorities of the Director in 27 CFR Part 1, dated December 13, 1978, is canceled.

3. *Background.* Under current regulations, the Director has authority to take final action on matters relating to basic permit requirements under the Federal Alcohol Administration Act. We have determined that certain of these authorities should, in the interest of efficiency, be delegated to a lower organizational level.

4. *Delegations.* Under the authority vested in the Director, Bureau of Alcohol, Tobacco and Firearms, by Treasury Department Order No. 221, dated June 6, 1972, and by 26 CFR 301.7701-9, authority to take final action on the following matters is delegated to the Associate Director (Compliance Operations):

a. To prescribe all forms, including permits, required by Part 1, under 27 CFR 1.3 and 27 CFR 1.5.

b. To prescribe the form for persons to use to make application for basic permits to engage in any of the operations specified in 27 CFR 1.20 through 27 CFR 1.22; and to require applications to be accompanied by affidavits, documents, and other supporting data, under 27 CFR 1.25.

c. To issue instructions for verification of any document, under 27 CFR 1.56.

5. *Redelegation.* The authorities in paragraph 4 above may be redelegated to personnel in Bureau Headquarters not lower than the position of branch chief.

6. *For Information Contact.* David M. Purcell, Procedures Branch, 1200 Pennsylvania Avenue, NW, Washington, DC 20226 (202) 566-7602.

7. *Effective Date.* This delegation order becomes effective on September 26, 1984.

Approved: September 17, 1984.

Stephen E. Higgins,

Director.

[FR Doc. 84-25460 Filed 9-25-84; 8:45 am]

BILLING CODE 4810-31-M

Office of Revenue Sharing

Final Date for Adjustment Demands and Close of Data Definitions

AGENCY: Office of Revenue Sharing, Treasury Department.

ACTION: Data and allocation notice.

SUMMARY: This notice announces that on September 30, 1984 the Revenue Sharing allocations to eligible governments for Entitlement Period Fourteen will become final, unless a demand for adjustment has been received by September 30, 1984, and that the data definitions will become final on that date for Entitlement Period Sixteen. This notice also serves as a demand by the Office of Revenue Sharing for allocation adjustments under the Revenue Sharing Act.

DATE: September 30, 1984 effective date.

FOR FURTHER INFORMATION CONTACT: Matthew Butler, Manager, Data and Demography Division, Office of Revenue Sharing, 2401 E Street, NW., Washington, D.C. 20226; telephone (202) 634-5166.

SUPPLEMENTARY INFORMATION: The Revenue Sharing Act, specifically 31 U.S.C. 6702(c) (Pub. L. 97-258; 96 Stat. 1012) provides that for entitlement periods beginning after December 31, 1976, no adjustment shall be made in a government's payments for an

entitlement period, unless a demand for adjustment has been made by the recipient government or the Secretary of the Treasury within one year after the end of that entitlement period. Under authority delegated to the Director of the Office of Revenue Sharing by the Secretary (31 CFR 51.1), I hereby make a demand to change the amount of entitlement funds of all Revenue Sharing recipient governments for Entitlement Period Fourteen (October 1, 1982–September 30, 1983) to reflect corrections in governments' payments on the basis of the final Period Fourteen allocations, as provided for by the Revenue Sharing Act (31 U.S.C. 6702(c)).

A recipient local government may make a demand for allocation adjustment for Entitlement Period Fourteen until September 30, 1984. A demand accompanied by adequate supporting documentation pending on the September 30, 1984 deadline will be researched and a written decision on the data challenge will be rendered. Any government which receives a data change as a result of an adjustment demand will be eligible for an adjustment to its allocation, and will be notified of any adjustment amount at the completion of the adjustment process.

The Office of Revenue Sharing will send "Recipient Account Statement" forms to all Revenue Sharing recipient governments during December 1984. These forms will include information about the data used to calculate each goverments' allocations, adjustments from prior periods, and the entitlement amount for Entitlement Period 16 (October 1, 1984–September 30, 1985).

In accordance with § 51.23(a) of the Revenue Sharing regulations, the Office of Revenue Sharing also announces that the data definitions upon which the allocations are based for Entitlement Period 16 (October 1, 1984–September 30, 1985) will become final on September 30, 1984. These data definitions were published in the **Federal Register** on June 13, 1984 (49 FR 24481).

According to § 51.23(b) of the Revenue Sharing regulations, the data definitions include the provisions of the Revenue Sharing Act (31 U.S.C. 6709(a)(3) formerly, 31 U.S.C. 1228(e)(2)(B)), the "Memphis Rule." This provision allows the governor of a State to certify for the computation of local tax effort, that certain county sales taxes are eligible to be credited to local governments in the county. That certification must be received by the Office of Revenue Sharing on or before September 30, 1984 to be effective for Entitlement Period 16.

Authority

This notice is issued under the authority of the Revenue Sharing Act (31 U.S.C. 6701–6724) formerly the State and Local Fiscal Assistance Act of 1972, as amended (31 U.S.C. 1221 *et seq.*) and Treasury Department Order No. 224, January 26, 1973 (33 FR 3342) as amended by Treasury Department Order No. 103–1 dated March 18, 1982.

Dated: September 20, 1984.

Michael F. Hill,

Director, Office of Revenue Sharing.

[FR Doc. 84–25401 Filed 9–25–84; 8:45 am]

BILLING CODE 4810–28–M

VETERANS ADMINISTRATION

Agency Forms Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains a reinstatement and lists the following information: (1) The Department or Staff Office issuing the form; (2) The title of the form; (3) The Agency form nunber if applicable: (4) How often the form must be filled out; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to fill out the form; and (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from Patricia Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 389–2146. Comments and questions about the items on this list should be directed to the VA's OMB Desk Officer, Dick Eisinger, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395–7316.

DATES: Comments on the information collections should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: September 20, 1984.

By direction of the Administrator:

Dominick Onorato,

Associate Deputy Administrator for Information Resources Management.

Reinstatement

1. Department of Medicine and Surgery.
2. Request for Consent to Release of Drug Abuse, Alcoholism or Alcohol Abuse or Sickle Cell Anemia Information from Medical Records.
3. 10–5345.
4. On occasion.
5. Individuals or households.
6. 421,908.
7. 21,095.
8. Not Applicable.

[FR Doc. 84–25402 Filed 9–25–84; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 186
Wednesday, September 26, 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

1

CIVIL AERONAUTICS BOARD

[M–411 amdt 1, 9/18/84]

Notice of Deletion of Item and Addition of Item at the September 18, 1984 Meeting.

TIME AND DATE: 10:00 a.m., September 18, 1984.

PLACE: Room 1027 (Open), Room 1012 (Closed), 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

SUBJECT:

13. Commuter carrier fitness determination of Air Caribe International, Inc.; Docket 42394, Emergency Exemption of Air Caribe to operate as a commuter pending completion of its fitness review and Docket 42401, Application for fitness review. (BDA)

25. Discussion of Greek Negotiations. (BIA)

STATUS:

13 Open.
25 Closed.

PERSON TO CONTACT: Phyllis T. Kaylor, The Secretary, (202) 673–5068.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84–25686 Filed 9–24–84; 4:06 am]
BILLING CODE 6320–01–M

2

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, September 26, 1984.

LOCATION: Third Floor Hearing Room 1111—18th Street, NW., Washington, DC.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

1. First Aid Labeling of Hazardous Household Products

The staff will brief the Commission on issues related to appropriate first aid labeling of certain hazardous household products. Particular attention will be devoted to first aid treatments which are recommended following alkali poisoning.

2. Regional Directors Meeting/Briefing on Field Investigations

The Regional Directors will meet with the Commission to discuss various issues including field investigations.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20227, 301–492–6800.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 84–25585 Filed 9–24–84; 8:58 am]
BILLING CODE 6355–01–M

3

FEDERAL COMMUNICATIONS COMMISSION

September 20, 1984.

Deletion of Agenda Item From September 26 Open Meeting

The following item has been deleted from the list of agenda items scheduled for consideration at the September 26, 1984, Open Meeting and previously listed in the Commission's Notice of September 19, 1984.

Agenda, Item No., and Subject

Common Carrier—5—Title: Integration of Rates and Services for the Provision of Communications by Authorized Common Carriers between the Contiguous States and Alaska, Hawaii, Puerto Rico and the Virgin Islands (CC Docket No. 83–1376). Summary: The Commission will consider the Petition filed by General Communication Incorporated seeking interim relief pending the development of a long term resolution of the issues raised in the *Notice of Inquiry* in this Docket.

Issued: September 20, 1984.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84–25672 Filed 9–24–84; 4:06 pm]
BILLING CODE 6712–01–M

4

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is herby given that at 3:42 p.m. on Thursday, September 20, 1984, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to: (1) Receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Century National Bank, Jacksonville, Florida, which was closed by the Senior Deputy Comptroller for Bank Supervision, Office of the Comptroller of the Currency, on Thursday, September 20, 1984; (2) accept the bid for the transaction submitted by Barnett Bank of Jacksonville, National Association, Jacksonville, Florida; and (3) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to effect the purchase and assumption transaction.

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director C.T. Conover (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting ws practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: September 21, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 84–25641 Filed 9–24–84; 1:12 pm]
BILLING CODE 6714–01–M

5

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Monday, October 1, 1984, the Federal Deposit Insurance Corporation's Board of Directors will

meet in closed session by vote of the Board of Directors, pursuant to sections 552b (c)(2), (c)(6), (c)(8), and (c)(9)(A)(ii) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendation, pursuant to section 10(b) of the Federal Deposit Insurance Act, that the Corporation examine a certain state member bank:

Name and location of bank authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8) and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(8) and (c)(9)(A)(ii)).

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389–4425.

Dated: September 24, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 84–25684 Filed 9–24–84; 8:45]

BILLING CODE 6714–01–M

6

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the Provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Monday, October 1, 1984, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Application for Federal deposit insurance:

Fireside Thrift Company, an operating noninsured industrial bank located at 401 Warren Street, Redwood City, California.

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 46,108–L: Algoma Bank, Algoma, Wisconsin

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications, requests, or actions involving administrative enforcement proceedings approved by the Director or an associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Reports of the Director, Office of Corporate Audits and Internal Investigations:

Summary Audit Report re: Penn Square Bank, National Association, Oklahoma City, Oklahoma, NR–391 (Memo dated August 22, 1984)

Summary Audit Report re: United Southern Bank of Clarksville, Clarksville, Tennessee, AP–359 (Memo dated September 6, 1984)

Summary Audit Report re: National Bank of Odessa, Odessa, Texas, AP–363 (Memo dated September 7, 1984)

Summary of Two Liquidation Site Audits: The First National Bank of Danvers, Danvers, Illinois, AP–357; First Commerce Bank of Hawkins County, Rogersville, Tennessee, AP–358 (Memo dated September 10, 1984)

Discussion Agenda: No matters scheduled.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389–4425.

Dated: September 24, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 84–25685 Filed 9–24–84; 4:06 pm]

BILLING CODE 6714–01–M

7

FEDERAL RESERVE SYSTEM

Board of Governors of the Federal Reserve System

TIME AND DATE: 9:15 a.m., Friday, September 21, 1984.

The business of the Board required that this meeting be held with less than one week's advance notice to the public, and no earlier announcement of the meeting was practicable.

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.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: September 21, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84–25559 Filed 9–21–84; 4:49 pm]

BILLING CODE 6210–01–M

8

INTERNATIONAL TRADE COMMISSION

[USITC SE–84–45]

TIME AND DATE: 10:00 a.m., Thursday, October 4, 1984.

PLACE: Room 117, 701 E Street, NW., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.

4. Petitions and complaints: a. Certain surgical implants for internal fixation (Docket No. 1095).

5. Consideration of the FY 86 budget proposal.

6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 523–0161.

Kenneth R. Mason,

Secretary.

[FR Doc. 84–25558 Filed 9–21–84; 4:49 pm]

BILLING CODE 7020–02–M

9

NUCLEAR REGULATORY COMMISSION

DATES: Weeks of September 24, 1984, and October 1, 8, 15, 1984.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, D.C.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of September 24

Thursday, September 27

3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of October 1

Tentative

Tuesday, October 2

10:00 a.m.
Briefing/Possible Vote on UCS 2.206 Petition on TMI–1 Emergency Feedwater (Public Meeting)

2:00 p.m.
Continuation of 9/5 Discussion of Indian Point Probabilistic Risk Assesment (Public Meeting)

Wednesday, October 3

2:00 p.m.
Discussion of Reexamination of Exemption Process (Public Meeting)

Thursday, October 4

10:00 a.m.
Discussion/Possible Vote on Full Power Operating License for Callaway–1 (Public Meeting)

3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of October 8

Tentative

Tuesday, October 9

10:00 a.m.
Discussion of Severe Accident Program for Nuclear Power Reactors—Revised Policy Statement (Public Meeting)

2:00 p.m.
Discussion of Proposed Rule on Decommissioning Nuclear Facilities (Public Meeting)

Wednesday, October 10

10:00 a.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

Thursday, October 11

2:00 p.m.
Periodic Meeting with Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting)

3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Friday, October 12

10:00 a.m.
NUMARC Briefing on Fitness for Duty, Training and Requirements for Senior Managers (Public Meeting)

Week of October 15

Tentative

Tuesday, October 16

10:00 a.m.
Discussion of Material False Statements—Policy Options (Public Meeting) (Tentative)

2:00 p.m.
Discussion of QA Report to Congress (Public Meeting)

Thursday, October 18

3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

ADDITIONAL INFORMATION:

Presentations by Parties on Board Order in Shoreham scheduled for September 21, *cancelled.*

Discussion of Remaining Questions on Backfitting scheduled for September 21, *cancelled.*

TO VERIFY THE STATUS OF MEETINGS CALL: (Recording)—(202) 634–1498.

CONTACT PERSON FOR MORE INFORMATION: Julia Corrado, (202) 634–1410.

September 21, 1984.

John C. Hoyle,

Office of the Secretary.

[FR Doc. 84–25557 Filed 9–24–84; 4:06 pm]

BILLING CODE 7590–01–M

10

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of September 24, 1984, at 450 Fifth Street, NW., Washington, D.C.

A closed meeting will be held on Tuesday, September 25, 1984, at 10:00 a.m.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meeting may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10).

Chairman Shad and Commissioners Treadway, Cox, Marinaccio and Peters voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, September 25, 1984, at 10:00 a.m., will be:

Institution of injunctive actions.

Institution of administrative proceedings of an enforcement nature.

Settlement of administrative proceedings of an enforcement nature.

Chapter 11 proceeding.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: David Powers at (202) 272–2091.

Shirley E. Hollis,

Acting Secretary.

September 20, 1984.

[FR Doc. 84–25642 Filed 9–24–84; 1:11 pm]

BILLING CODE 8010–01–M

federal register

Wednesday
September 26, 1984

Part II

Environmental Protection Agency

40 CFR Parts 152, 157, 158, and 162
Pesticide Registration and Classification Procedures; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 152, 157, 158 and 162

[OPP-30071; FRL 2604-1(b)]

Pesticide Registration and Classification Procedures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This proposal would extensively revise and reorganize EPA's procedural regulations on pesticide registration. Current regulations describe registration and compensation procedures, classification of pesticides for restricted use, special review procedures, child-resistant packaging requirements and labeling requirements. The Agency believes that these proposed revisions will update and simplify registration procedures, clarify requirements for pesticide producers, and effect regulatory efficiencies for the Agency. A related proposal on labeling appears elsewhere in today's **Federal Register**.

DATE: Written comments on this proposed rule should be submitted on or before December 26, 1984. Comments should be identified with the notation "OPP 30071".

ADDRESS: Submit written comments to:

By mail: Information Services Section, Program Management and Support Division (TS-757C0, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, deliver comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this proposed rule may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: 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: (OMB Control Number 2000-0012.)

I. Introduction

A. Authority

This proposed regulation is published under the authority of sections 3, 6, 12, 19 and 25 of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA" or "the Act"), as amended, 7 U.S.C. 136 through 136y.

B. Background

FIFRA sec. 3 requires that pesticide products be registered with EPA prior to entering commerce. Regulations to implement the registration provision were promulgated in 1975, with amendments and additions in 1978 and 1979. Those regulations [40 CFR Part 162] address all aspects of pesticide registration, including procedures for registration, the different types of registration, data required to support registration, compensation for use of data, labeling requirements, child-resistant packaging requirements, and pesticide classification.

Amendments to FIFRA enacted in 1978 directed EPA to reregister all pesticides and, within nine months after enactment, to prescribe simplified procedures for the registration process. EPA issued an Advance Notice of Proposed Rulemaking in the **Federal Register** of December 26, 1979 (44 FR 76311) announcing the Agency's intention to propose revisions to its existing regulations in order to carry out Congress' mandate and to improve the regulations in other ways. Comments received in response to the Advance Notice, together with EPA's experience and policy decisions over the past several years, form the basis for these proposed revisions.

C. Purpose of Proposed Revisions

This proposal would extensively revise current regulations for the following purposes:

1. To update procedures and requirements to coincide with FIFRA amendments enacted since 1975.

2. To consolidate the various regulations issued since 1975 into a coherent organizational sequence. Regulations being incorporated include those on:

a. Registration procedures, issued as supplemental guidelines on September 9, 1975 (40 FR 41788).

b. Classification of pesticides by regulation, issued on February 9, 1978 (43 FR 5786), and subsequent additions to those rules.

c. Child-resistant packaging, issued on March 9, 1979 (44 FR 13022), revisions issued on January 4, 1984 (49 FR 380) and further revisions proposed on January 4, 1984 (49 FR 423).

d. Conditional registration, issued as interim final rules on May 11, 1979 (44 FR 27932), and reissued as final rules on July 26, 1983 (48 FR 34000).

e. Procedures to ensure protection of data submitters' rights, issued on August 1, 1984 (49 FR 30884).

3. To divide the current regulations in 40 CFR Part 162 into logical units, by separating data, labeling, and packaging requirements from administrative procedures. Data requirements have been proposed separately as Part 158 of Title 40. See the **Federal Register** of November 24, 1982 (47 FR 53192). Revisions to current labeling regulations are being proposed today as new Part 156. Packaging requirements are proposed today as new Part 157. The Agency plans to revise the Rebuttable Presumption Against Registration procedures currently located in § 162.11 (a) and (b), and to issue them as a proposed rule.

4. To effect regulatory efficiencies, by eliminating or changing sections to reflect EPA's practical experience in registering pesticides over the last 8 years.

5. To rewrite the rule in clearer and more readable language.

A discussion of the major elements of this proposal follows. Since the regulation has been reorganized and renumbered, and since certain current sections have been combined, divided, or eliminated, derivation and distribution tables have been prepared to enable readers to compare the current regulations with the proposed revisions. These tables appear in Unit XVIII of this preamble.

EPA proposes to move the majority of the material contained in Subpart A of Part 162 to Part 152 and to create a new Part 157 to contain packaging requirements. References in this preamble use the new designations.

II. Scope

Subpart A of Part 152 would set out the scope of the regulation and its applicability to pesticide products of various types. Subpart B would enumerate certain exemptions to the requirements of FIFRA.

A. Definitions

Current § 162.3 would be revised to add new definitions, to delete unnecessary or obsolete ones, and to clarify existing definitions. In general, definitions pertaining to labeling requirements would be transferred to proposed Part 156. Definitions that are used throughout Part 152 would be included in the principal definitions section of Subpart A. Definitions that apply to only one subpart would be located at the beginning of that subpart. Changes of note include the following:

1. The term "distribute or sell" and its grammatical variations would be defined. These terms are used in the Act to define the activities concerning pesticides to which FIFRA applies and at which point the Agency is authorized to regulate. This proposal defines the term to encompass the term "released for shipment," which is used in defining EPA's inspection authority under FIFRA sec. 9. The term "released for shipment" has not been used in FIFRA regulations before, but has been defined in policy statements in the same manner as proposed here.

2. Under FIFRA section 3(b)(1) products may be shipped between establishments "operated by the same producer" without registration. The current definition encompasses both establishments owned by a single producer, and also establishments operated under contract to a producer, but which may be owned by another person. In this proposal, the Agency would define the phrase "operated by the same producer" to limit it to establishments owned or leased by a single company. Limiting the definition in this manner EPA believes would reflect the intent of Congress in FIFRA section 3(b)(1) and the clear sense of the phrase.

The provision for shipment between one producer and another under contract for processing, packaging and labeling (permitted without registration under the current definiton of "operated by the same producer") would be continued by specific exemption in § 152.30. The contractual exemption is discussed later in this preamble.

3. The term "domestic application" would be replaced with the terms "residential use" and "institutional use," to allow better delineation of the applicability of certain requirements, (such as child-resistant packaging, which is required for products labeled for residential use but not for products labeled for institutional use). The definition of residential use would include those areas contained in the "domestic" use definition that clearly relate to household use sites, and would include also pre-school and day care facilities where small children spend time. Institutional use would include larger facilities such as hospitals, office buildings, commercial establishments, and schools at the elementary or above level, which the Agency believes have different pesticide use and exposure patterns. The Agency requests comments on whether these definitions are adequate for the purpose of this regulation, or whether they should be modified, and in what ways, to be more useful. In particular, EPA would like comment on whether day care and preschool facilities should be encompassed by the residential use definition.

B. When Registration Is Required

Under FIFRA sec. 3, a pesticide must be registered before it can be distributed or sold. FIFRA section 2(u) defines a pesticide in terms of its intended use against a pest, or its use for pesticidal purposes. Whether a substance is a pesticide that must be registered depends on the interpretation of pest, pesticidal purpose, and the intent of use of a product as a pesticide.

The term "pesticide" has different meanings in different portions of the Act. In some places it is used as a general term to describe substances which are subject to the Act. In other places, it is used to mean a particular pesticide product that is distributed or sold, and which, according to FIFRA section 3, must be registered. This proposal will use the term "pesticide" in its general sense; the term "pesticide product" will be used to describe a particular pesticide in the form in which it is (or will be) registered and marketed, including the product's composition, packaging and labeling.

The proposal further elaborates on the meaning of concepts ("pest," "pesticidal purpose," and "intent" that the Agency uses in deciding whether a substance is a pesticide product which must be registered. Sections 152.8, 152.10, and 152.15 of the proposal would set out exclusions from registration based on these factors.

First, a pesticide product may be subject to registration only if it is intended for use against a pest (or for use as a plant regulator, desiccant or defoliant). The Administrator must define those organisms deemed to be pests for the purposes of the Act. Section 152.5 would define as pests vertebrates, invertebrates, insects, fungi, weeds, and microorganisms which are deleterious to man or the environment.

Second, a pesticide product will be subject to registration only if it is intended to produce a "pesticidal effect." A substance may function against a pest without having a pesticidal effect. An example would be a product used for survey and detection purposes rather than pesticidal purposes. Section 152.10 lists products which do not have a pesticidal effect, and therefore are not required to be registered.

Finally, it is not enough that a substance have a "pesticidal effect" on a "pest;" the substance must also be "intended" to have that effect. Thus, a substance is a pesticidal product that may be subject to registration if, regardless of whether it actually has a pesticidal effect, it is intended to be used for a pesticidal purpose. The determination of intent is a separate test for the requirement for registration, and is central to the decision of whether a product is required to be registered.

Section 152.15 would describe the circumstances under which the Agency will presume that a substance is being distributed and sold with the intent that it be used as a pesticide. Clearly, either express or implied claims or representations by the seller, such as labeling or advertising, would be evidence of intent. However, the Agency believes that, in the absence of claims, a product may be considered to be a pesticide if the seller or distributor is aware of the intended uses of the product as a pesticide. This may be the case either because there are no other significant uses of the product, or because other circumstances of the sale and distribution are such that he should reasonably know the ultimate use of the product as a pesticide.

C. Exemptions Under FIFRA

FIFRA section 25 authorizes the Administrator to exempt from any or all provisions of FIFRA a pesticide for which he can make a determination that the pesticide either is adequately regulated by another Federal agency or is of such a character that regulation under FIFRA is not necessary.

The Agency is given the latitude to determine the scope of an exemption under FIFRA section 25. Although a producer may be relieved of the provisions of all or any sections of FIFRA by an exemption, as a practical matter only two levels of exemption are viewed as cost-efficient for both Agency and producer: exemption from all provisions of FIFRA or exemption from the registration requirements of FIFRA section 3. This proposal contains two sections devoted to exemptions. These sections would be used to list pesticides exempted partly or wholly from FIFRA

based on determinations of "adequate regulation by other Federal agencies" or "character unnecessary to be regulated under FIFRA."

The Agency is proposing to exempt (or to continue exemptions of) several categories of products which it believes do not need to be regulated under FIFRA. First, EPA has previously exempted pheromones and pheromone traps and some biological pest control agents; those exemptions are included. A second category is that of preservatives for biological specimens, which are used in specialized situations where knowledge and experience of the users minimize the possibility of harmful exposure to the pesticide.

Third, the Agency proposes specifically to incorporate into § 152.25 the exemption in FIFRA section 2(v), for vitamin-hormone horticultural products that are both: (1) Not intended for pesticidal purposes, and (2) non-toxic in the undiluted packaged concentration, i.e., as distributed and sold. EPA believes that such products are generally not used for pesticidal purposes. Further, the Agency believes that the "non-toxic" criterion can be practically expressed by limiting the exemption to products that would be in Toxicity Categories III or IV as defined by proposed Part 156, and that are not used where there would be a likelihood of residues on food from application. EPA realizes that products in Toxicity Categories III and IV are not necessarily "non-toxic;" however, the Congress clearly intended to exempt products of relatively low acute toxicity from the requirements of FIFRA. Further, the Agency believes that limiting the exemption to preclude the dietary route of exposure will adequately protect the public from possible chronic effects of these products. Thus, the exemption would be conditioned on low acute toxicity of the actual product as sold, coupled with a restriction to use on non-food crop sites.

Finally, the proposal would exempt, in a manner analogous to pheromones, food products that are not combined with toxicants, but are used as attractants.

D. Distribution or Transfer Exempt From Registration

Section 152.30 proposes the exemption of certain classes of pesticides from the FIFRA section 3 registration requirement. These exemptions are administrative in nature, for situations when registration is considered impractical or unnecessary to carry out the purposes of the Act.

Paragraph (a) of this section contains the provisions of FIFRA section 3(b)(1) authorizing an exemption from registration for pesticides transferred between registered establishments operated by the same producer. The definition of "operated by the same producer" in this proposal is narrower than that in the current regulations, such that the statutory exemption would no longer be defined to permit transfers on a contractual basis.

Paragraph (b), however, proposes to exempt pesticides transferred for further processing, packaging or labeling of the pesticide. A producer would be permitted under this exemption to contract out any or all of his production operations, as long as he is the registrant of the product that ultimately is distributed. In addition, the registrant must be the owner of the pesticide at all stages of its processing, packaging, and labeling, and no sale, distribution or other change in ownership would be legal.

Unregistered pesticides could be transferred under contract only between the owner/registrant and a processor. An unregistered pesticide could not be transferred from a producer to an owner/registrant (even under contract). The practical effect would be that a product would have to be registered prior to any transfer representing a sale or change in ownership.

III. Application Procedures

Subpart C describes the contents and form of an application for registration or amended registration under FIFRA section 3. (Subpart C does not cover applications for reregistration, which are addressed in Subpart D.) The procedures proposed in this subpart are generally those currently contained in § 162.6, but would be reorganized and clarified by this proposal. Some current provisions would be eliminated to make the process more efficient and less burdensome.

A. Amendments Not Requiring Agency Approval

Proposed § 152.42(b) (1) and (2) describe certain registration changes that may be made without the approval of the Agency. Some of these would require that the registrant notify the Agency, but the registrant would not have to await Agency approval before shipping or distributing the product. EPA has considered the types of amendments to registrations that commonly occur, and would eliminate Agency review of certain amendments that are not essential to Agency determinations on health, safety or the adverse effects of pesticide use.

The proposal would include among those requiring notification but not review and prior approval (paragraph (b)(1)) the requirements pertaining to distributor products currently found in § 162.6(b)(4). The requirements are not changed; however, the proposal reflects the status of distributor products as variations of the registered product, and the distributor as the agent of the registrant. The proposal does not state the specific requirements for distributor products unless they would be different from those applicable to other registered products. Thus, the provisions in current § 162.6(b)(4) stating that the distributor product must have the same composition, same producer, same labeling, and same registration number as the registered product would be omitted as superfluous. The requirement that the distributor's company number appear on the label in conjunction with the registration number would be retained.

Notifications to the Agency under this paragraph would not be considered applications under FIFRA, and therefore would not be subject to the procedures of FIFRA section 3(c)(1)(D). However, the notifications would be considered reports under FIFRA sec. 12(a)(2)(M), and thus falsification would be a violation of the Act.

B. Separate Applications

Proposed § 152.45 enumerates certain conditions of the product proposed for registration that require the applicant to submit separate applications, as opposed to a single application, for registration. The current requirement in § 162.6(b)1) is that a separate application must be submitted for each pesticide product. Exceptions to this rule, e.g., products with variations in composition for which a single application may be made, are currently contained in § 162.21(a). In the proposed regulation both the rule and its exceptions are included in the same section, § 152.45. The exceptions have been expanded to include combinations of pesticide and non-pesticide components and alternate formulations which meet certain conditions.

The principal difference between the current regulation and the proposal is that the variations in product formulation that do not need separate registration are related to the stated certified limits of the product, required to be submitted by proposed Part 158, published in the Federal Register of November 24, 1982 (47 FR 53192). Variations in product formulation would be permitted under the same application, (and subsequently under the same registration) provided they were within the originally stated certified

limits of the active and inert ingredients, and the variations would not affect the safety of the product, or necessitate labeling variations.

C. Contents of Applications

Section § 152.50 would describe what information must be submitted with an application for new or amended registration. This proposal would combine most of the provisions of current §§ 162.6 and 162.165 and incorporate pertinent parts of §§ 162.41 through 162.47.

1. Requirement Retained From Current Regulations

The basic requirements for application content have been retained from the current regulations. Each application would have to include information on identity of the applicant and product and on product composition. The applicant would be required to submit labeling and material demonstrating compliance with FIFRA section 3(c)(1)(D) requirements. Further, the applicant would have to submit data so that the Agency could make determinations concerning unreasonable adverse effects under FIFRA section 3(c)(5) or (7). In addition, if applicable, statements concerning classification, child-resistant packaging, requirement for tolerances, and adverse effects data would be required. These requirements are scattered throughout current regulations, and are consolidated here for the first time.

2. Requirements for Satisfaction of Data Requirements

Proposed § 152.50 states that applicants must satisfy two related sets of requirements concerning the submission and citation of data, which the Agency uses for two distinct purposes. The first set of requirements would direct applicants to submit materials showing that they have complied with FIFRA section 3(c)(1)(D). Under FIFRA section 3(c)(5)(B), the Agency must determine that an applicant has submitted all required materials and that they comply with the requirements of the Act. The procedures for complying with FIFRA section 3(c)(1)(D) are located in Subpart E.

The second set of data requirements concerns the submission or citation of data needed by the Agency to make various types of registration determinations. FIFRA section 3(c)(5)(C) and (D) authorize EPA to register products unconditionally if EPA can determine that the product and its uses do not cause unreasonable adverse effects. In its discretion, the Agency may instead register products conditionally under FIFRA section 3(c)(7) if EPA can determine that the product and its uses do not increase the risk of unreasonable adverse effects. Data needed to make determinations with respect to unreasonable adverse effects are specified in proposed Part 158, and § 158.30 specifies when applicants and registrants must submit such data. Accordingly, § 152.50 refers an applicant to Part 158 to determine which, if any, data must be submitted with his application to enable the Agency to make its determination under FIFRA section 3(c)(5) (C) or (D), or 3(c)(7).

The applicant would be required to provide with his application a non-confidential summary of the data submitted, the results shown, and how the results support the application.

The Agency believes that applicants for registration should be subject to the same requirement to submit reports concerning known adverse effects as is imposed upon registrants by FIFRA section 6(a)(2). Accordingly, § 152.50(j) would include this requirement.

IV. Reregistration

The Registration Standards process was extensively discussed in the Advance Notice of Proposed Rulemaking (ANPR) issued in the **Federal Register** of December 26, 1979 (44 FR 76311). Since the ANPR was issued, the registration Standards process has been modified to introduce greater efficiency. The Agency issued several additional notices in the **Federal Register** describing the implementation of the Registration Standards process, including the list of the first 55 chemicals for which standards would be developed, published in the **Federal Register** of April 18, 1980 (45 FR 26370), a description of the cluster scheme, published in the **Federal Register** of November 14, 1980 (45 FR 75488), an explanation of the Data Call-In Program, published in the **Federal Register** of October 7, 1980 (45 FR 66736, and a notice of availability of the ranking of clusters, published in the **Federal Register** of January 27, 1982 (47 FR 3770). The Agency has considered the comments submitted in response to the ANPR; EPA's response to these comments is provided in this unit of the preamble. Also included here is a summary of the Registration Standards process as it now functions, and a discussion of the reregistration procedures contained in this proposal.

A. Response to Comments on ANPR

1. The Transition to a Registration Standards System

A number of commenters were concerned that the reregistration system described in the Advance Notice would be so cumbersome and time-consuming that its benefits would not justify the delays that implementation might cause in the reregistration process. EPA's experience in having issued over 60 Standards indicates that the transition to a Registration Standard system has been accomplished in an orderly manner. The new system makes two important changes: data are organized and evaluated more systematically, and information and regulatory decisions are carefully documented independent of the process of registering or reregistering individual products.

Other commenters believed that EPA would allow the registration process to be temporarily halted during the implementation phase. This has not happened: EPA's resources are allocated separately to registration and reregistration activities, and the Agency operates the Registration Standards process in parallel with other registration activities. In addition, the Agency expects that the Registration Standards system will ultimately enable EPA to process many registration actions more efficiently once Registration Standards are developed for those chemicals.

2. Consistency With FIFRA Requirements

Some commenters questioned whether the reregistration system described in the Advance Notice complies with FIFRA section 3, which they said requires EPA to make registration and reregistration determinations on a product-by-product basis. The Agency believes that the Registration Standards program does not conflict with the Act and that Registration Standards will actually enhance Agency decision making. The Registration Standards process differs from previous practice only in the manner in which the information supporting these determinations are developed and organized. Once a Standard has been developed, the Agency will continue to review and approve registration and reregistration applications on an individual basis. The resources required to evaluate an application for registration of a product covered by a Standard, however, should be considerably less than those required for a product not covered by a Standard.

3. Legal Status of Registration Standards

The Advance Notice discussed two alternatives for defining the legal status of a Registration Standard and explained the consequences in terms of the type of review available to an applicant or registrant who wishes to challenge the Agency's determination on a pesticide registration. The first alternative considered Standards to be non-regulatory statements of the Agency's position; the second, as regulations to be promulgated under notice-and-comment procedures. Under the former, an applicant or registrant whose registration was threatened with cancellation, for example, would be entitled to a full adjudicatory hearing on the merits of an Agency decision to deny or cancel reregistration. Under the latter, there would be a right to a hearing, but the prior notice-and-comment procedures of rulemaking would limit the issues that could be litigated. In this case, the hearing would be for the purpose of determining only whether the Standard applied to the products in question and whether the product registrations complied with the standard.

Commenters generally favored a system under which Registration Standards would not be developed as rules governing reregistration but would instead be statements of the position EPA would take in acting on applications for registration, reregistration, or amendment. The Agency concurs with these comments and believes that the alternative would raise legal questions concerning the scope of the hearing right under sections 3(c) (6) and 6(b). Accordingly, Registration Standards are Agency position documents, which do not constitute a final Agency determination pertaining to any particular pesticide application or registration. The issuance of a Standard, therefore, does not create the right to request an Agency hearing; such requests are proper only after a registration action is taken under the Standard.

In these circumstances, it serves no real purpose to distinguish between "interim" and "final" Registration Standards, as was discussed in the Advance Notice. A Standard may be used in making registration decisions, even though the Agency intends to update or revise the Standard after issuance. No Standard is "final" in the sense that a regulation is final after promulgation. The regulatory position expressed in a Standard will be reevaluated when additional uses of chemical are proposed, the Agency receives new data, or for any other reason deemed necessary by the Agency, but this reevaluation will not be conducted as notice-and-comment rulemaking.

4. Rejection Criteria for the Data Call-In Program

In the Advance Notice and in the notice announcing the Data Call-In Program, EPA discusses its intention to define criteria for evaluating studies submitted to satisfy applicable data requirements. Such criteria, termed Rejection Criteria, would serve to identify those long-term chronic studies that could not form the basis for reregistration decisions because of obvious deficiencies in data reporting or methodology. Many commenters objected to this approach, stating that the application of criteria could not adequately substitute for a case-by-case scientific evaluation of each study. EPA still believes that the concept of rejection criteria has merit, and is considering the possibility of establishing such criteria.

5. Minor Uses

Several commenters asked whether EPA will give special consideration to registration actions pertaining to minor uses. In the application of the Data Call-In program and in the establishment of data requirements under Registration Standards, the Agency considers the potential extent of use and exposure to man as well as the cost impact of developing the required data to support these products, as required by FIFRA section 3(c)(2)(A).

6. Consideration of Benefits

Some commenters took exception to EPA's statement in the Advance Notice that the Registration Standards process would not normally include an expensive quantification or discussion of benefits for chemicals which do not meet any of the special review criteria. These commenters argued that FIFRA requires EPA to evaluate the risks and benefits of each pesticide or pesticide use in making registration and reregistration determinations.

EPA agrees that a consideration of benefits is a necessary component in making the determination whether a pesticide or use will perform its intended function without causing unreasonable adverse effects on the environment. Determining the reasonableness of any risk of an adverse effect requires EPA to consider benefits of pesticide uses, but the analysis of benefits must be considerably more detailed when EPA has definite information that a pesticide use may pose a significant risk, i.e., information indicating that a special review criterion has been exceeded.

If EPA has no indication of adverse effects, the analysis of benefits will be more limited. In the Registration Standards process, EPA's evaluation of benefits is commensurate with the type and severity of the hazard indicated by the available pertinent data.

A few commenters asserted that EPA lacks the authority to impose restrictions to reduce the risks posed by the uses of a pesticide if the benefits of such uses are clearly established and no special review criteria are exceeded. EPA disagrees with these comments. If reduction of risk can be achieved with little or no reduction in benefits, or if the cost of the risk reduction measure is low compared to the potential benefits of that action, then the risk of an adverse effect is clearly unreasonable. Because FIFRA sec. 6 authorizes the Agency to cancel the registration of products which cause unreasonable adverse effects, the agency is well within its authority to impose a requirement that would reduce risks to a reasonable level.

7. Maintenance of a Registration Standard

The Advance Notice listed four possible occurrences that could necessitate amending a Registration Standard: (1) When EPA wishes to incorporate new information developed since the Standard was issued; (2) when it becomes apparent, at some time after a Standard is issued, that additional data are required to maintain registrations under the Standard; (3) when new information comes to the attention of the Agency that indicates a potential for significant risk to health or the environment; and (4) when a registrant seeks to register a product or use beyond the scope of the existing Standard.

Commenters generally agreed that EPA should amend Registration Standards when there are indications such as those listed above. A few commenters assumed that EPA, exercising its authority under FIFRA section 6(a) to review registrations every 5 years, would conduct a review of each Registration Standard every 5 years as well. The Agency believes this to be unnecessary and time-consuming if done on a routine basis. Review of the Standard as the result of registration amendments will assure that Standards receive adequate review. Furthermore, EPA will reconsider its regulatory position if new information suggests the need to do so; for example, if information on potential adverse effects on health or the environment are

submitted by a registrant in accordance with FIFRA section 6(a)(2).

8. Inert Ingredients

The Advance Notice sought comment on the manner in which EPA should evaluate the safety of inert ingredients used in pesticide formulations. Some commenters questioned EPA's authority to regulate such substances; others referred to the regulation of such substances under other statutes. In general, the comments were in favor of a system whereby the Agency presumes that inert ingredients do not cause or increase the risk of adverse effects. EPA is concerned that some inert ingredients could pose significant risk, and does not agree that existing regulation assures the safety of all such substances. The Agency is currently developing a tiered, interdisciplinary scheme of tests for evaluating inert ingredients, focusing initially on mammalian toxicology and residue analysis in food and feed. As part of this scheme, the Agency would identify inert ingredients deemed to be innocuous and exempt from testing requirements.

B. Summary of the Registration Standards Process

The Registration Standards Program is EPA's approach to the reassessment and reregistration of pesticide products as mandated by FIFRA section 3(g). The intent of that section is to require EPA to ensure that existing products meet current EPA requirements for registration.

1. The Agency's approach to reassessment of previously registered chemicals has been a long-term strategy, involving three steps:

i. Identification and review of problem chemicals through the high-priority special review process;

ii. Completion of the data base for such chemicals through the Data Call-in Program; and

iii. Systematic reassessment of the chemicals not singled out for special review through the Registration Standards program, using, when available, new data generated as a result of the Data Call-in program.

The Special Review process is a review process to identify pesticides which meet or exceed certain risk criteria, and therefore may pose unreasonable adverse effects. Through this informal review, the Agency examines the risks and benefits of these pesticides, and determines what regulatory actions to take to reduce risks. Special reviews, begun in 1975, have been completed for the majority of the originally indentified problem chemicals, and now is being integrated into the Registration Standards program. Of 84 chemicals identified for special review, 75 have completed the special review process.

The Data Call-in program fills a second critical need in our reassessment strategy. During the early years of the special review program, and in planning for the Registration Standards program, it became clear to the Agency that its data base needed for reassessment of risks and benefits was inadequate by modern standards. Studies addressing chronic health effects were lacking, often not because of failure by the industry to submit such data when the product was first registered, but simply because data requirements had increased over the years. The majority of chemicals that were to be reviewed had been registered prior to 1975, when fewer data requirements were in place.

The Data Call-in program is intended to fill that gap. By notifying registrants before the Agency's reassessment is to be done, essential chronic health data can be developed and made available for that review. By 1985, the Agency believes that its early Data Call-in efforts will begin to show results in the Registration Standards program.

Having dealt with obvious problem chemicals through the special review process, and having initiated a program to acquire needed data upon which to base its review of the remaining chemicals, the Agency has begun the final stage of its reassessment—the Registration Standards program. In the Registration Standards program, the Agency undertakes a thorough review of the scientific data base underlying pesticide registrations, and makes broad regulatory decisions for a group of pesticide products containing the same active ingredient rather than on a product-by-product basis. An estimated 600 standards will be developed covering most of the currently registered pesticide products. This approach is intended to simplify and streamline the regulatory process for both the Agency and pesticide registrants and to assure the public that all registrations are supported by a complete and valid scientific data base.

To process approximately 600 active ingredients through Registration Standard review, active ingredients with similar uses have been divided into 48 groups, or clusters. The Agency adopted this use cluster approach based on considerations of market competition, availability of in-depth data on use alternatives should the need for an intensive review arise, and efficient use of EPA resources. The clusters were ranked by applying production, human exposure, and ecological exposure factors.

2. A Registration Standard is optimally developed in four phases: (i) Data Call-In, (ii) Data gathering, (iii) Data evaluation, and (iv) Development of the Standards and Guidance Package.

i. *Data Call-In.* The Data Call-In Program operates under the authority of FIFRA section 3(c)(2)(B), which provides that the Agency may require the submission of data in support of continued registration. Under the Data Call-In Program the Agency requires registrants to provide needed long-term chronic toxicity studies before the initiation of the Registration Standard review. Because of the time needed for development and submission of long-term studies (3 to 4 years), the chemicals reviewed in the early years of the Registration Standards program have been evaluated without the benefit of the prior call-in of long term data.

The four types of long-term toxicological data which are addressed by the Data Call-In Program are chronic feeding, oncogenicity, reproduction, and teratogenicity studies. Under the Data Call-In Program, the Agency first determines which of the four types of chronic test data are required for the pesticide, based on its use patterns and other factors. The Agency's files are checked to ascertain that none of those data have been submitted, and the registrants notified that they must initiate testing to fill those data gaps. Because of limited Agency resources and the need to use them most efficiently, data currently in Agency files are not reviewed to determine their acceptability; therefore, when the full Registration Standard review is completed, some of these studies may need to be replaced. Waivers may be requested by applicants for such reasons as limited exposure and low production, irrelevance of the data requirements, or cancellation of specific uses.

If a registrant does not comply with the Data Call-In notice and is not granted a waiver, the Agency may issue a Notice of Intent to Suspend under FIFRA section 3(c)(2)(B). Once a pesticide registration is suspended, the registrant is not permitted to distribute his product(s) until he complies with the terms of the notice. A suspension notice is rescinded when the Agency is informed that the registrant has complied with the notice requirements.

Data Call-In notices are being issued at the rate of 70 or more active ingredients per year. Registration Standard reviews are being conducted at the rate of 20 or 30 active ingredients

per year. Therefore, the Data Call-In Program will be completed well ahead of the Registration Standards reviews.

ii. *Data gathering.* Chemicals are scheduled for review approximately 6 months to a year before the Agency begins its review. Once the schedule is established, all manufacturing use producers, and formulators who do not buy the active ingredient as a registered technical source, are asked to provide an updated description of the manufacturing process.

As the initial step in the actual review process, the Agency prepares a bibliography of all data in Agency files pertaining to the chemical, except that in most cases efficacy data are not included because the Agency is no longer required to make a finding of efficacy for many product. The bibliography also includes any Government-conducted studies (such as National Cancer Institute studies) and other primary source material identified by Agency scientists. The Agency attempts to ensure that the bibliography is complete and accurate, and that listings are not duplicated.

When the final bibliography of pertinent studies has been compiled, Agency scientists identify those studies they believe are necessary for their review; these studies are retrieved from Agency files and reviewed. The data gathering phase lasts about 5 months.

Concurrent with the bibliography development, use information is developed, including all current use patterns, and, to the extent possible, potential uses for which registration is likely to be sought in the near future. Registrants are asked to assist in identifying potential new use patterns.

iii. *Data evaluation.* Each chemical is reviewed by a Project Support Team, which is managed by a Registration Product Manager, and includes use experts, data retrieval experts, and scientists in various disciplines. At the outset of the Data Evaluation phase, the Project Support Team meets to exchange information on the chemical from a regulatory and scientific perspective. These meetings are designed to provide background from which the scientists can conduct their review. Knowledge of the regulatory history, the growth patterns of the chemical's use, the completeness of the data base, and any past regulatory or health problems will help focus the review and increase its effectiveness.

In the Data Evaluation phase, scientists review data in each of five disciplines: Product chemistry, environmental fate, residue chemistry, toxicology, and ecological effects. Efficacy data are reviewed if necessary. The scientists document their reviews of each relevant study and prepare a summary of what is known about the chemical in their respective disciplines. Scientists also identify gaps in the data base which should be filled to enable a complete scientific assessment to be made. The Agency's proposed Part 158 data requirements are used as the basis for determination of data gaps, although, based on knowledge of the particular use patterns of the chemicals and the results of the initial reviews, additional data gaps may be identified.

If the analysis of the data shows a special review criterion has been met or exceeded, the standard may be issued noting that a special review is being or will be initiated.

Depending on the number of studies to be reviewed, the Data Evaluation phase lasts from 6 to 10 months.

iv. *Development of the Standard and issuance of Guidance Package.* At the completion of the Data Evaluation phase, the Agency establishes a regulatory position for the chemical, that is, what compositions, levels of active ingredient, formulation types, and uses are registrable under the Standard and whether restrictions on use (such as use only by certified applicators or farmworker safety restrictions) are needed. The Agency also states the rationale for each regulatory decision and determines the data which must be submitted to complete the review. Included in this phase is a reassessment of all tolerances or other clearances under the Federal Food, Drug and Cosmetic Act (FFDCA). If warranted, the Agency will propose to increase or decrease the tolerance levels or note the need for other actions under the FFDCA.

Finally, the scientific summaries, the regulatory position and supporting rationale, the tolerance assessment, data requirements, and conditions of continued use of the chemical are compiled into a Registration Standard.

For the purposes of reregistration, a Guidance Package is prepared for registrants, containing the regulatory position and rationale, data requirements and bibliography. Reregistration may be granted when the registrant agrees to submit missing data, submits an updated statement of his formulation, complies with any regulatory restrictions placed on the pesticide, satisfies Agency data submission requirements under FIFRA section 3(c)(1)(D), and provides labeling reflecting the results of product chemistry and acute toxicity studies.

Study reviews and scientific summaries are placed in Agency records for retrieval during subsequent reviews of the chemical. Copies of the Registration Standard, the study reviews, and the science summaries are available to the public under the Freedom of Information Act, subject to the provisions of FIFRA section 10.

. C. Reregistration Procedures

Proposed Subpart D (§§ 152.60 through 152.79) describes the procedures the Agency will use for the reregistration of currently registered pesticide products, as mandated by FIFRA section 3(g). The procedures are generally analogous to those for new registration. Reregistration of a manufacturing use product will normally follow the issuance of a Registration Standard for the pesticide, but end use products may be reregistered under a variety of circumstances, including special call-in or under the procedures of the Label Improvement Program. The Agency would notify current registrants of the need to submit an application for reregistration. The contents of the application are referenced to § 152.50. The Agency's review would encompass the same considerations as for new unconditional or conditional registration, and the approval would be granted based on the criteria in §§ 152.112 or 152.113, depending on whether additional data were determined to be necessary. The reregistration would be issued under the authority of FIFRA section 3(g).

Unlike its denial of an application for new registration, however, the Agency would issue a notice of intent to cancel the registration if the registrant failed to submit his application for reregistration. The registrant receiving a notice of intent to cancel would have 30 days to comply with the Agency's requirements or to request a hearing on those requirements to which he objected. The proposal specifies that, during the pendency of any hearing, the registrant would have to comply with requirements not at issue.

V. Procedures for Satisfying Data Requirements

Subpart E describes the materials that an applicant must submit to fulfill the Agency's data requirements under FIFRA section 3(c)(1)(D). Subpart E was issued as a final rule and published in the **Federal Register** of August 1, 1984 (49 FR 30884).

VI. Agency Review of Applications

Subpart F would describe the Agency's review of applications for registration or amended registration, including notification via **Federal Register** publication of certain types of application, disposition of applications

that are incomplete, the bases for approval of unconditional and conditional registrations, and the grounds for denial of an application. The provisions of this subpart are generally those currently in effect, with certain clarifications of existing policy.

A. Incomplete Applications

The proposal would make clear that an application that is incomplete for any reason would not be reviewed by the Agency. The applicant would be notified, and allowed 75 days in which to complete the application or correct initial deficiencies. The 75-day time frame was established by FR Notice 75–4, dated August 27, 1975, and is now proposed to be included in the regulation. PR Notice 75–4 would be revoked upon promulgation of this rule.

B. Standard for Review of Applications

Proposed § 152.111 makes it clear that EPA has the discretion to review applications either under FIFRA section 3(c)(5) for unconditional registration, or under FIFRA section 3(c)(7) for conditional registration. The proposal states that the Agency will consider applications under the standards of FIFRA section 3(c)(5) only if a new chemical is proposed, or if the Agency decides that such review is warranted. EPA will review all other applications under section 3(c)(7) of the Act. In the past, conditional registration applications have comprised the bulk of Agency registration actions, and EPA expects that this will continue to be the case in the future.

Proposed §§ 152.112 through 152.114 describe the criteria by which the Agency would approve applications unconditionally under FIFRA section 3(c)(5) and conditionally under FIFRA section 3(c)(7). Section 152.114 contains in regulations for the first time the criteria for approval of conditional registration of products containing new active ingredients under FIFRA section 3(c)(7)(C). Section 152.115 describes the conditions normally imposed on registrations issued under FIFRA section 3(c)(7).

VII. Obligations and Rights of Registrants

Proposed Subpart G describes in one location both the obligations of the registrant with respect to his product and the Agency, and the rights that accrue to him as a result of the registration of his product. The proposal describes two specific obligations that would be imposed on registrants. First, the registrant would have a continuing obligation to ensure that the Agency could contact him if necessary. This would involve updating his name and address, and, if necessary, those of his authorized agent. The Agency believes that a correct name or address is a form of information that may be required to continue or maintain the registration in effect under FIFRA section 3(c)(2)(B), and proposes to use the suspension penalty provided by that section if the information is not submitted in a timely manner. If the Agency is unable to contact the registrant after two attempts by certified mail, the Agency will, after 90 additional days, suspend all registrations of the registrant involved. Reinstatement could be accomplished at any time that the registrant complied by submitting his correct name and address.

This proposal is intended to permit EPA to purge its files periodically of registrants who have gone out of business or moved without notifying the Agency. EPA makes a diligent effort to locate registrants in addition to sending correspondence by certified mail, but currently lacks a suitable regulatory mechanism to remove such producers from its listings. EPA does not believe that suspension of registration if the registrant cannot be located is an unduly harsh penalty, since reinstatement is automatic upon submitting the information.

Second, the proposal would incorporate as § 152.125 the statutory requirement of FIFRA section 6(a)(2) that a registrant inform the Agency of any adverse effects of his product(s) on man or the environment.

The remaining sections of proposed Subpart G pertain to the rights accorded a registrant. The basic right provided by registration is that a pesticide product may legally be sold and distributed in commerce.

Proposed § 152.128 describes the Agency's policy with respect to distribution of the product as labeled. A registrant would continue to be permitted to distribute and sell under his currently approved labeling. However, when that labeling was changed at his request, this section would limit the time that products bearing old labeling could continue to be distributed. Current regulations in § 162.6(b)(3)(iv) permit distribution of a product under any labeling accepted over a 5-year period. EPA believes that 5 years is an inordinately long time for labels to continue to be used after an amendment. Five-year old labels, which may be obsolete because of repeated amendment by the registrant, or because of changing technology or new health or safety information, may be misleading to the user. Moreover, the Agency's experience is that obsolete labels create

confusion in enforcement when several previously accepted labels are found in channels of trade. Accordingly, the Agency proposes that, if a registrant amends his accepted label, he should be permitted a year to distribute or sell previously labeled product. EPA believes that this period of time is sufficient to exhaust stocks of old labeling. In submitting an application to amend his label, the registrant has indicated his intention and desire to change his label, and could be expected upon approval to do so as soon as possible. Moreover, a year would be consistent with current Agency policy that permits the distribution and sale of products after voluntary cancellation for a period of one year. EPA would like comment on whether this period of time is sufficient, or whether a shorter or longer period of time should be allowed. Based on comments received, EPA may adopt a different time frame for permissible use of previously approved labeling.

If the Agency requires that labels be revised, as a result of its reviews for reregistration, special review, or other label review processes, the Agency would specify the period of time that old labels may continue to be used.

A further right accorded to a registrant is that of transferring his registration to another person without having to obtain a new registration. The Agency has no legal obligation to permit or recognize the transfer of a registration merely because the registrant desires to sell the product to another producer. Obtaining registration for a "me-too" product is a relatively simple matter for a pesticide producer. However, if the Agency did not permit transfer of products between pesticide producers, it is likely that its files would soon be burgeoning with duplicate "me-too" products. Registrants who wish to stop producing or marketing a product often fail to request cancellation of the registration. Transfer of the unwanted registration therefore alleviates to a certain extent the recordkeeping problems of the Agency.

The Agency proposes to establish conditions for the transfer of registrations that are consistent with practices in transferring other assets of a business. The Agency would thereby avoid common problems that have arisen in the past in making such transfers. Requests for transfer may be made for a variety of reasons, including the sale of the company, its pesticide product line, or the rights to one or more pesticide products; the reorganization of the company; or the bankruptcy of a company and subsequent legal proceedings. The Agency does not wish to be embroiled in the resolution of complex questions of ownership of a pesticide registration. Nor, however, can it permit such questions to result in a situation where the Agency cannot ascertain the identity of the true registrant who is responsible for the product under the Act.

The Agency therefore proposes that transfer or registration be accomplished by submitting a transfer agreement describing relevant information about the transfer (financial details need not be supplied). A transfer would be irrevocable, once accomplished, i.e., the transferor could not retain any rights, title, or interest in the registration. Nor could the transferred registration serve as collateral or security for any loan arrangement, such that it could revert to the ownership of the transferor automatically, or without the knowledge and approval of the Agency. In addition to the transfer agreement, the transferor would have to submit a notarized statement that the transfer was legally proper, and that it met all applicable State, local and, if necessary, court-ordered requirements.

After receipt of the appropriate documents, and if the transfer meets the requirements, the Agency would record the transfer. Subsequently, the Agency would regard the transferee as the legal registrant for all purposes under section 3 of the Act.

Transfer of rights to exclusive use of data or compensation under FIFRA section 3(c)(1)(D) is considered to be a separate transaction from transfer of the registration itself, entailing fewer requirements. Subpart E (49 FR 30884) provides procedures for the transfer of data rights; those proposed for the transfer of registration parallel those in § 152.98.

Finally, the proposal would incorporate the current policy under which the registrant has the right to request the cancellation of his product's registration. If he does not wish to continue to distribute and sell the product, and does not wish to transfer the registration to another producer, he should request cancellation.

VIII. Other Agency Regulatory Activities Affecting Registrations

Proposed Subpart H summarizes for registrants, applicants, and prospective applicants other regulatory activities associated with the registration process. In considering an application for registration, and after registration has been issued, the Agency may take other actions affecting the registration that are authorized under other sections of FIFRA. These activities either do not apply to all applications or all registrations, as do those in Subparts C, D, and E, or are conditioned upon the occurrence of certain circumstances. A registrant would be able to scan Subpart H, and, if he finds that any of the activities mentioned would apply to his product, may refer to the more detailed requirements in the referenced subparts. Some of the Agency's actions (cancellation and suspension of registrations) do not warrant an entire subpart and would be contained complete in Subpart H.

Activities summarized in this unit, together with their referenced subpart in Part 152 (if any) include the following:

1. Classification—Subpart I.
2. Submission of information to maintain registration.
3. Reregistration—Subpart D.
4. The Special Review Process—to be proposed serparately.
5. Cancellation of registration.
6. Suspension of registration.
7. Child-resistant packaging—new Part 157.
8. The Label Improvement Program—Subpart J.
9. Coloration and discoloration requirements—Subpart K.

IX. Classification of Pesticides

Proposed Subpart I combines the requirements currently found in §§ 162.11(c) 162.30, and 162.31 for the classification of pesticides for restricted use. The Agency also is proposing several changes in the requirements.

A. Criteria for Restriction

The Agency has restructured the criteria for restricted use to reflect that its concerns are directed to the identification and classification of products that need restriction rather than products that should be unrestricted. Current regulations in § 162.11(c) set criteria which, if met place a product in general use classification. Section 152.175 would state the criteria which, if met, would warrant classifying a product for restricted use.

The Agency also proposes a single set of criteria that would apply both to the new products and to previously registered products. Current regulations in § 162.11(c) establish artificial distintions between these two types of products.

The Agency is proposing in § 152.175 a number of changes in the toxicity criteria under which a product becomes a candidate for restricted use classification. To assist readers, a table comparing the current criteria and the proposed criteria has been included in this unit of the preamble.

1. The proposal would add oral toxicity as a restricted use criterion for uses other than residential and institutional use. The Agency believes that the potential for inadvertent ingestion exists even with those use patterns not in a residential or institutional setting and would therefore consider formulations with an acute oral LD_{50} of 50 mg/kg or less (Toxicity Category I) for restricted use.

2. The criteria for non-target organism exposure for outdoor uses would be independent of the criteria for human exposure. Under current § 162.11(c)(1)(iii), criteria for non-target organism toxicity apply only if the criteria for human toxicity are first exceeded. Under the proposal, a product could be a candidate for restricted use based solely on its toxicity to non-target organisms.

3. The criteria for non-target species would be expanded to establish additional criteria for granular products, which would reflect the peculiar nature of the hazard to be expected from their use. Such products often exhibit toxicity to birds and/or mammals from direct ingestion of the product remaining on the soil surface, rather than as residues on foliage or other food sources. Accordingly, the Agency is proposing specific toxicity criteria based on the acute toxicity of the product to birds and/or mammals. These criteria would be independent of the current residue criteria which would be retained.

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TABLE--COMPARISON OF CURRENT AND PROPOSED CRITERIA FOR RESTRICTION

Criteria	Current	Proposed
	DOMESTIC	RESIDENTIAL/INSTITUTIONAL
	Product is candidate for unrestricted if:	Product is candidate for restricted if:
Oral toxicity	>1.5 g/kg on product as diluted for use	≤1.5 g/kg on product as diluted for use
Dermal toxicity	>2000 mg/kg on formulated product	≤2000 mg/kg on formulated product
Inhalation toxicity	>2 mg/l on product as formulated	≤0.5 mg/l on product as formulated[1/]
Eye irritation	Current Toxicity Categories III and IV	Current Toxicity Categories I and II
Skin irritation	Current Toxicity Categories III and IV	Current Toxicity Categories I and II
	NON-DOMESTIC	ALL OTHER USES
	Product is candidate for unrestricted if:	Product is candidate for restricted if:
Oral toxicity	None	≤50 mg/kg on product as formulated
Dermal toxicity	(1) >200 mg/kg on formulated product	(1) ≤200 mg/kg on formulated product
	(2) >16 g/kg on product as diluted into mist or spray	(2) ≤16 g/kg on product as diluted for use
Inhalation toxicity	>0.2 mg/l on product as formulated	≤0.05 mg/l on product as formulated[1]
Eye irritation	Current Toxicity Categories II, III and IV	Current Toxicity Category I
Skin irritation	Current Toxicity Categories II, III and IV	Current Toxicity Category I

Criteria	Current	Proposed
	OUTDOOR USE	OUTDOOR USE
	Product is candidate for unrestricted if:	Product is candidate for restricted if:
Mammalian toxicity	Occurs as residue at <1/5 acute oral LD_{50}	Same, except ≥1/5 acute LD_{50}
Bird subacute toxicity	Occurs as residue at <1/5 subacute dietary LC_{50}	Same, except ≥1/5 subacute dietary LC_{50}
Aquatic organism toxicity	Occurs in water at <1/10 acute LC_{50}	Same, except ≥1/10 acute LC_{50}
Bird acute toxicity	None	For granular products, acute mammalian or avian LD_{50} of formulated product ≤ 50 mg/kg

[1/] Equivalent to current requirement. Refer to proposed Part 156 for discussion of changes in criteria for inhalation Toxicity Categories.

EPA notes that these criteria are used for the purpose of screening products as candidates for classification for restricted use, and that the Agency, in deciding ultimately to restrict a product, may take into account exposure factors not expressly delineated in regulations. As an example, the Agency might take into account in deciding whether or not to restrict a product the fact that it was packaged in such a small quantity as to preclude exposure to a toxic amount.

B. Restriction to Certified Applicators Vs. Other Regulatory Restrictions

This proposal has been organized to clarify the Agency's authority under FIFRA section 3(d)(1)(C)(i) to restrict products to use by certified applicators only, and its authority under FIFRA section 3(d)(1)(C)(ii) to impose other restrictions by regulation. The criteria contained in § 162.11(c) are clearly identified as applicable only under the former authority.

The Agency's authority under FIFRA Section 3(d)(1)(C)(ii) to restrict pesticide products is not limited by considerations of toxicity, as is restriction to certified applicators under FIFRA section 3(d)(1)(C)(i). The Agency may, if warranted, propose other criteria for restriction that might not be toxicity-based.

C. Advertising of Restricted Use Products

Under FIFRA section 12(a)(2)(E), it is a violation of the Act to advertise a restricted use pesticide without giving the classification of the product. The Agency is proposing in § 152.170 additional requirements pertaining to the advertising of restricted use products to help clarify the responsibility of registrants in this area. These would expand the requirement of current § 162.30(i)(5) that written advertising state the restricted use classification of the product either 120 or 270 days after the effective date of restriction, depending on whether the advertising was in final printed form.

First, the proposal would specify that the advertising limitations apply equally to printed, broadcast, and telephone advertising, and would further specify how the requirement could be satisfied for each of these media. Second, the requirements for advertising would become effective 270 days after imposition for currently registered products and immediately upon registration for new products. The effect of this provision is that the current 120-day effective date for printed advertising would be extended to 270 days. Thus distribution and sale at the retail level of a properly labeled product and the advertising of that product would be subject to the same 270-day time frame.

X. Label Improvement Program

Subpart J (§§ 152.180 through 152.199) is a new proposal based on EPA's current Label Improvement Program policy instituted by **Federal Register** notice of June 5, 1980 (45 FR 37884).

The Agency proposes in Subpart J some minor revisions in the process to reflect its evolution since 1980. First, a Label Improvement Program notice sent to registrants would not necessarily require the submission of an application for amended registration. The Agency has found that it can accomplish many label revisions of a specific nature without reviewing the labels for compliance. Certification to the Agency is proposed as an option. Certification will strengthen the enforcement capability of the Agency to monitor compliance. The proposal specifies the contents of a certification statement and the time frame likely to be imposed for its submission. The Label Improvement Program is intended to be a flexible program to meet changing needs in labeling of pesticides, without exceeding the bounds of existing regulations. The proposed procedures are thus general in nature, but include all the procedural elements necessary for registrant compliance.

XI. Coloration and Discoloration

Subpart K (§§ 152.200 through 152.219) retains unchanged the provisions of current § 162.13 requiring that certain highly toxic pesticides be colored or discolored to minimize the possibility that they might be mistaken for foodstuffs.

EPA would like comment on whether the current provisions are adequate for the protection of the public. Should the list of pesticides required to be colored/discolored be expanded, reduced, or deleted altogether in favor of general criteria for coloration/discoloration? If general criteria would be preferred, what factors should be used? Should requirements for other types of sensory warning, such as addition of odorous compounds to fumigants, be added?

The Agency is proposing to add to this section a requirement that any product for treating seed contain a dye, or that the labeling specify addition of a dye during the seed treatment process. EPA believes that dyeing seed would minimize the possibility that treated seed could inadvertently be fed to animals used for food without appropriate tolerances having been obtained for such use.

Seed is normally treated to control storage pests before planting or soil pests after planting, including bacteria, fungi, insects, nematodes, and vertebrates. Recent experimental work has demonstrated that weed control is feasible by coating seeds with herbicides.

The seed treatment policy contained in § 152.215 was first issued as PR Notice 70–24, dated October 28, 1970, and has been applied on a case-by-case basis since that time. Inclusion at this time will complement the Food and Drug Administration policy that treated grain seed be dyed, and the U.S. Department of Agriculture's regulations, which require that treated seed packaged for interstate shipment be labeled to indicate that the seed has been treated. Accordingly, the Agency proposes to incorporate this policy into its regulations. PR Notice 70–24 would be revoked upon final promulgation of this regulation.

Finally, the Agency proposes to require that granular products applied to the soil be brightly colored to contrast with the soil. Coloration of these products would assist farmers in soil incorporation, and, it is believed, would deter wildlife and birds from ingesting the granules, which are often indistinguishable from other soil components and seeds.

XII. Intrastate Products

This proposal generally would continue in effect the requirements in the existing regulations concerning intrastate pesticides, including requirements for child-resistant packaging which became effective in 1981. Intrastate pesticides are those sold or distributed solely in a single State. The 1972 amendments to FIFRA for the first time required these products to be federally registered. EPA, as a matter of enforcement discretion in its 1975 regulations (§ 162.17) allowed the continued sale and distribution of intrastate pesticides not registered under FIFRA, provided that they were registered under State law, and that the producers of such pesticides had timely submitted a Notice of Intent to Apply for Federal Registration. In addition to continuing these provisions, the proposal also would prohibit sale and distribution of unregistered intrastate pesticides containing active ingredients for end uses which have been cancelled or suspended.

The proposal would establish a date (December 31, 1988) by which all intrastate pesticide products would be required to be registered. In addition, the proposal would identify a number of

occasions when EPA will require the producer of an intrastate pesticide to submit a full application for Federal registration in advance of that date. Moreover, the regulation would make it clear that EPA's enforcement discretion allowing the distribution of an unregistered intrastate pesticide does not extend to situations where the producer has failed to submit a required application or where EPA has denied the application.

XIII. Devices

Subpart M states the requirements applicable to pesticide devices, by reference to the Act and to specific Parts of Title 40 of the Code of Federal Regulations.

XIV. Requirements for Information on Pesticide Composition

A. Proposed Requirements

The Agency proposes to create a new Subpart R in Part 152, and to locate in it requirements for the submission of certain pesticide composition data as part of the application for registration. These requirements have previously appeared in substantially the same form in the Agency's Pesticide Assessment Guidelines for product chemistry. Portions of this proposal have also been issued as proposed rules in 40 CFR Part 158.

Under this section, applicants would be required to submit: (1) A complete identification of the composition of the product—a Confidential Statement of Formula listing ingredients by chemical and common name, nominal concentration and certified limits; (2) a description of the beginning materials used to make the pesticide; (3) a detailed explanation of how the product is manufactured; and (4) a discussion of the possible formation of impurities in the product, based on the applicant's knowledge of the beginning materials and manufacturing process. By issuing these requirements as rules rather than non-binding guidelines, the Agency expects to reduce confusion about the types and amount of information required to evaluate the composition of a pesticide.

In order to evaluate fully a product for registration, the Agency must know the composition of the pesticide. Section 152.344 would require an applicant to identify each active ingredient, each intentionally added inert ingredient, and in certain cases, impurities that may be present in the product while it is being distributed in commerce. Identification of an ingredient would include a variety of information: for all ingredients, the chemical name, common name, and Chemical Abstract Service (CAS) Number; for active ingredients and intentionally added inert ingredients, the purpose or function of the ingredient; and for active ingredients, the molecular weight (or range), as well as other means of identification.

In addition to identifying the ingredients in his product, the applicant would also be required to provide certified limits for the ingredients listed in the statement of formula as specified in § 152.352. Upper and lower limits would be required for each active and intentionally added inert ingredient. In addition, for some types of products, an upper certified limit would be required for certain impurities. The upper certified limit would be the maximum (and the lower certified limit would be the minimum) amount of the ingredient that may legally be present in the product at any time while it is in commerce. It is the applicant's responsibility to establish his own certified limits, taking into account his quality control capabilities and limitations, source materials, and other factors that might affect the certified limits.

The Agency proposes to continue the requirements for certified limits as currently proposed in 40 CFR 158.110. In particular, the Agency will ask for certified limits for impurities only if they either: (1) Are associated with an active ingredient in the product and would be expected to constitute more than 0.1 percent of the technical chemical, or (2) are considered toxicologically significant. The first group of impurities are those the Agency expects would be most likely to pose possible risks. Therefore certified limits would be required routinely for those substances. The second group would be identified on a case-by-case basis, taking into account information on the amount of the ingredient and on the toxicity of the impurity or compounds having a similar chemical structure.

The rules would also continue the distinction between end use products not produced by an integrated formulation system—generally these are products which qualify for the "formulator's exemption" for all of the active ingredients in the product—and all other pesticide products. Because products not produced by an "integrated formulation system," as defined in proposed § 152.342(e), are less likely to contain toxic impurities, other than those known to be present in their beginning materials, these products are subject to less stringent requirements for information on pesticide composition. EPA can adequately evaluate the composition of these products because the Agency has access to reliable information on the composition of the pesticides used in the manufacture of such end use products.

The comprehensive listing of ingredients required by § 152.344 would be used in a variety of ways to assure that the pesticide product is acceptable for registration. First, EPA would review the Confidential Statement of Formula to determine whether the applicant's product contained any ingredient in an amount that could cause unreasonable adverse effects on the environment. EPA would also use pesticide composition data when reviewing applications for conditional registration to determine whether applicants' products are "identical or substantially similar to any currently registered pesticide * * * or differ only in ways that would not significantly increase the risk of unreasonable adverse effects on the environment * * *." In nearly every case, this determination would involve a comparison of the composition of an applicant's pesticide to that of other registered products. Finally EPA would compare data on pesticide composition with information on the composition of materials used in toxicity and other kinds of studies. This comparison could indicate whether the test material adequately represents an applicant's product.

In addition to a list of ingredients and certified limits, EPA proposes to require certain information which would allow Agency staff to perform an independent evaluation of the composition of the product. Two of the most basic pieces of information needed to determine the composition of a pesticide product are the identity and, so far as feasible, the composition of the materials used to produce the product. Section 152.346 would require an applicant to identify each "beginning material" (each separate raw or processed material) used to produce his product, and to supply certain information on the beginning material. Specifically, the applicant would be required to submit a copy of available technical specifications by which the supplier of a beginning material describes its composition, properties, an/or toxicity, as well as any other information available to the applicant concerning the composition of the beginning material. If a beginning material is a registered pesticide product, it would be sufficient simply to identify the product by its registration number.

The proposed requirements concerning the description of beginning materials are a change from the 1978 proposed Product Chemistry Guidelines.

In that proposal, an applicant would have been required to provide "the identity and the percent composition by weight of each substance present in the material [and] the expected variation in composition (to the extent that this information is reasonably ascertainable) . . . ." The requirement did not take into account the fact that a producer who purchased his beginning materials would not have firsthand knowledge of the composition of those materials, and that therefore, he might be required to conduct difficult and expensive chemical analysis of beginning materials. The Agency now proposes that an applicant be required to submit only the information (of the types specified) which is available to him. The rule would not require an applicant to perform periodic chemical analysis of his beginning materials.

The second kind of information necessary to evaluate the composition of a pesticide is a description of the manufacturing process for the product. Section 152.348 specifies the kinds of information that would be contained in this description. Among other things, the description would include: a statement of the order in which beginning materials are added and their relative amounts; a description of the physical conditions controlled during the manufacturing process; a description of any purification procedures; and a description of any quality control measures. In addition, a flow chart showing the intended chemical reactions during each step of the process would be required.

Together the description of beginning materials and of the manufacturing process identify the major variables affecting the composition of a pesticide product. The Agency's chemists can review this information together with other information to determine whether the applicant's product will contain the ingredients and conform to the certified limits listed in the Confidential Statement of Formula.

Finally, § 152.350 would require the applicant to submit a theoretical discussion of the impurities that might be present in his pesticide and to explain how such impurities could be formed. Applicants would be required to address impurities which either have been detected by analysis of samples of the product or are expected to be present in quantities equal to or greater than 0.1 percent of the pesticide formulation.

EPA expects the theoretical discussion would serve several functions. The Agency would learn what kinds of impurities the applicant expects will be present in his product as it is distributed in commerce. EPA could independently evaluate this information to determine whether other impurities might be present in the pesticide. In addition, the thoroughness of the theoretical discussion might indicate how reliable other pieces of information supplied by the applicant might be. Finally, the list of impurities generated by the theoretical discussion could be used as the basis for required sample analyses.

The theoretical discussion would be based on the information concerning beginning materials and manufacturing process required by §§ 152.346 and 152.348. Different requirements would be established for end use pesticides not produced by an integrated formulation system and all other pesticides (end use pesticides produced by an integrated formulation system and manufacturing use pesticides). Applicants seeking to register end-use products not produced by an integrated formulation system would be subject to less stringent requirements since the impurities associated with an active ingredient in such a product will almost always be the impurities present in the pesticide products used as manufacturing sources for their products.

B. Need for Rulemaking

As noted, the contents of Subpart R have appeared in earlier Agency rulemaking notices. In 1978 EPA proposed rules which were quite similar to those being proposed here. See the **Federal Register** of July 10, 1978 (43 FR 29696). The primary differences between the 1978 proposal and Subpart R are in the scope of the requirements for certified limits on impurities and for identification of the composition of beginning materials. Portions of the 1978 proposal were subsequently reissued as a proposed rule on November 24, 1982 (47 FR 53192). The proposed regulations include sections corresponding to proposed § 152.342 (refer to proposed § 158.108(c)), proposed § 152.344 (refer to proposed § 158.108(b)), proposed § 152.352 (refer to proposed § 158.110), and proposed § 152.354 (refer to proposed § 158.112). The remaining material from the 1978 proposal has been published in the Agency's Pesticide Assessment Guidelines. As explained below, the Agency now believes that additional portions of this Guidelines material should be issued as rules.

The decision to issue these data requirements by rulemaking, rather than as part of the Pesticide Assessment Guidelines, represents a change in Agency policy. After publication of the 1978 proposal, the Agency decided to limit the rule to establishing specific registration data requirements, and to place the proposed revisions concerning acceptable methods for conducting required studies in non-binding guidance documents, collectively referred to as the Pesticide Assesment Guidelines. The purpose of this scheme was to promote efficient testing and to reduce costs by allowing applicants and registrants more flexibility in designing and executing satisfactory studies.

Applying this general policy to the proposed product chemistry requirements, the Agency assigned most of the material to the Pesticide Assessment Guidelines. The Agency recognized, however, that the portions of the product chemistry requirements concerning pesticide composition differed from other types of data requirements. Unlike toxicity and other types of scientific studies, there is no established, generally accepted set of test protocols comprising the "composition" of a pesticide. Thus, in the preamble to the 1982 proposal, the Agency requested comment on the possibility of again issuing rules containing requirements for detailed information about pesticide composition.

Public comments on the 1982 proposal have convinced the Agency that it is appropriate to promulgate rules requiring information on pesticide composition. Only representatives of the pesticide industry commented on this issue, and all opposed using rulemaking to establish the requirements for information on pesticide composition. Nonetheless, most of the same commenters also submitted extensive suggestions for revisions of the provisions of the Pesticide Assessment Guidelines that specified the information needed on the composition of a pesticide. Not only did comments show some confusion about the extent to which the Guidelines were advisory or mandatory, but they also reflected a keen interest in the nature of the requirements for pesticide composition information. Because there is no single, generally accepted understanding about the kinds of information needed on the composition of a pesticide, the Agency determined that it would be appropriate to clarify through rulemaking exactly what types of information EPA would require to evaluate a product and to give all interested parties a further opportunity to express their views on these requirements.

XV. Special Review Process

Regulations pertaining to the special review of pesticides (previously referred to as the Rebuttable Presumption

Against Registration or RPAR process) are currently contained in § 162.11(a) and (b). The Agency is considering changes to the criteria and procedures for the special review process at this time, and intends to issue a proposal to revise these regulations.

XVI. Child Resistant Packaging Requirements

New Part 157 would contain the child-resistant packaging requirements currently found in § 162.16. The Agency has recently issued, published in the **Federal Register** of January 4, 1984 (49 FR 380) final rules revising the criteria and procedures for child-resistant packaging and has proposed a size-based exemption for child-resistant packaging requirements, published in the **Federal Register** of January 4, 1984 (49 FR 423). Those provisions would be renumbered and designated as Subpart B of Part 157.

That rule required various types of recordkeeping to demonstrate that a package would meet the effectiveness standards, but failed to include a similar requirement with respect to records demonstrating that the compatibility and durability standards are met. This proposal would correct that oversight in § 157.39(d). EPA is proposing no other changes in child-resistant packaging requirements.

XVII. Format of Data Submitted to the Agency

The Agency is proposing to revise 40 CFR Part 158, which defines the data requirements applicable to pesticide registration, by adding new sections establishing format requirements for the data submitted to the Agency. The Agency currently receives a considerable quantity of data in conjunction with its review of registration actions, and will be receiving even more as the Agency's Data Call-In, and reregistration activities accelerate. The Agency can most efficiently review these massive amounts of data if they are submitted in a format that facilitates retrieval and review.

Section 158.32 would require that studies be distinctly identified. Each individual study would have a title page containing identifying information about the study, the pesticide, and the person or organization that conducted the study. Each study would have to be accompanied by a certification in accordance with the Good Laboratory Practice standards of 40 CFR Part 160. All studies submitted at the same time for the same Agency action would be required to be accompanied by a transmittal document identifying all submitters of the material, the Agency action for which the data are submitted, and a bibliography of all studies contained in the transmittal.

In addition, the Agency is proposing format requirements to facilitate EPA compliance with the requirements of FIFRA sec. 10. That section requires that EPA not release certain types of confidential business information. To enable the Agency to recognize such submissions quickly and easily, applicants would be directed to submit material which is clearly and appropriately identified as protected from disclosure.

FIFRA section 10(d) defines as data that may not be disclosed by the Agency the identify and test methods for inert ingredients in pesticides, and manufacturing and quality control processes. Other data submitted to the Agency may generally be disclosed if the Agency determines under FIFRA section 10(b) that it is not trade secret, and provides 30-day notification to the submitter of EPA's intent to release it.

If the Agency is efficiently to administer its responsibilities under the Freedom of Information Act and make pesticide health and safety data available to the public, it must ensure that data not disclosable under section 10(d) are separated from other data that may be released. Under interim procedures published in the **Federal Register** of December 19, 1978 (43 FR 59060), the applicant is responsible for marking and separating claimed confidential information at the time of submission.

This procedure has not worked satisfactorily in practice, however, because most data submitters assert a claim of confidentiality for all data submitted, without regard to whether it is defined in section 10(d) as disclosable or not. The data submitter is not required to segregate further the data according to its status under section 10. The result is that a data submission generally consists of a mixture of data that may and may not be released. The Agency's policy is to deny claims of confidentiality which pertain to data which are disclosable under section 10(d)(1). When a request for release is received, the Agency has borne the burden of reviewing the data and separating or obliterating that information which is non-disclosable under section 10(d)(1) (A), (B), and (C) from that which the Agency has determined may be released. This is costly and time-consuming and the source of considerable delay in responding to requests under the Freedom of Information Act.

The Agency believes that Congress did not intend that all-inclusive claims of confidentiality should be allowed to impede the release of information which it specifically defined as releasable. Consequently, the Agency is proposing to revise its proposed Part 158 rules to require that a data submitter be required to mark any information which he claims is non-disclosable under section 10(d)(1) (A), (B) or (C) and to separate it from the remainder of the submission. He also may assert a claim of confidentiality for any of the data under section 10(b). If the Agency rejects the 10(b) claim (as is routinely done in the majority of cases), the information covered by the 10(b) claim could be released to a requester promptly. If the submitter fails to identify and separate the 10(d) information, the Agency would not assume any obligation to do so itself, and would release all the information once any 10(b) claim had been resolved. The data submitter would be assumed to have waived his claim of confidentiality for such information.

Section 158.33 would require that information claimed as trade secret under section 10(d)(1) (A), (B), or (C) of the Act be submitted separately and identified by numerical reference within the study. FIFRA section 10(d) defines the types of information that may not be released by the Agency, including manufacturing process, quality control, and identity of and test methods for inert ingredients in a pesticide product. Information not separately submitted and identified as trade secret would be releasable to the public in accordance with Freedom of Information procedures. Information claimed as trade secret under other sections of FIFRA sec. 10 (such as 10(b)) would not have to be submitted separately, but would have to be clearly marked within the body of the study. Separate data confidentiality claims statements (required for each study) would have to be submitted for information claimed to be confidential under section 10(d)(1) (A), (B), and (C) and that claimed confidential under other sections.

In order to distinguish studies that are not marked because they do not contain confidential information from those not marked because they were submitted to the Agency prior to these requirements being established, the Agency is proposing to establish an effective date for §§ 158.32 and 158.33. These sections would become effective for all data received by the Agency approximately 60 days after the effective date of the final rule. A **Federal Register** document will specify the exact effective date.

EPA is also considering requiring registrants to screen previously submitted data and either make or waive confidentiality claims for that data. Identification of the trade secret information in all of EPA's data would greatly facilitate processing of requests under the Freedom of Information Act. Studies could be returned to submitters (in microfiche form) in conjunction with the issuance of a Registration Standard or special review. Data submitters would be required to identify those portions of each study that they claim meet the criteria of FIFRA section 10(d)(1)(i) (A), (B), and (C). EPA would like to receive comment on whether such a plan would be feasible (particularly on a phased basis) the costs likely to be incurred, and the problems that might be foreseen if such a program were instituted.

XVIII. Relationship of Proposal to Current Regulations

The following tables compare the current regulations found in 40 CFR Part 162 with those being proposed today. The first table shows where material originally in Part 162 would be located under this proposal, or indicates why it is no longer needed. References to proposed Part 156 appear in a companion document elsewhere in today's **Federal Register**.

DISTRIBUTION TABLE

Old section	New section
162.1	152.1.
162.2	Deleted; redundant.
162.3	152.3, except as noted.
(a)	Deleted; unnecessary.
(e)	Deleted; unnecessary.
(j)	Deleted; unnecessary.
(k)	See definition of "new use"—152.3(q).
(l)	See definition of "residue"—152.161(c).
(m)	See definition of "residential use"—152.3(w).
(n)	Deleted; unnecessary
(o)	Deleted; unnecessary.
(q)	Moved to Labeling definitions—152.2(b).
(r)	Deleted; unnecessary.
(s)	Moved to Labeling definitions—152.2(c).
(v)	Deleted; unnecessary.
(w)	See definition of "residue"—152.161(c).
(x)	Deleted; unnecessary.
(y)	Deleted; unnecessary.
(z)	Deleted; unnecessary.
(aa)	Deleted; unnecessary.
(bb)	Deleted; unnecessary.
(cc)	See definition of "outdoor use"—152.161(b).
(ee)	152.5.
(gg)	Deleted; unnecessary.
(ii)	Deleted; unnecessary.
(jj)	Deleted; unnecessary.
(kk)	See definition of "residue"—152.161(c).
(ll)	See definition of "dietary LC-50"—152.161(a).
(mm)	Deleted; unnecessary.
(nn)	152.3(c), (d), and (e), and 152.161(a).
(oo)	Moved to Labeling definitions—152.2(l).
(pp)	Deleted; unnecessary.
(qq)	Deleted; unnecessary.
(rr)	Deleted; unnecessary.
162.4(a)	152.15.
(b)	152.15.
(c)(1)–(5), (6)	152.8 and 152.10 deleted.
162.5(a)	152.15.
(b)(1)–(5)	152.30.
(b)(6)	152.20(b).
(c)	152.20(a).
162.6(a)(1)	152.40.
(a)(2)–(4)	152.50(b).
(a)(5)	152.104 and 152.105.
(b)(1)	152.45, 152.50.
(b)(2)	152.50, except (b)(2)(i)(C)(2)—moved to 158.27.
(b)(3)	152.42(a), 152.50.
(b)(4)	152.42(b)(1)(i).
(b)(5)	Subpart D, §§ 152.60 through 152.79.
(b)(6)	152.102, except (b)(6)(ii)—deleted; unnecessary.
(c)	Deleted; obsolete and unnecessary.
162.7(a)	152.100.
(b)	Deleted; unnecessary.
(c)	152.110.
(d)(1)	152.107.
(d)(2)	152.112.
(d)(3)	152.112.
(d)(4)	Deleted.
(e)	152.111.
(f)	152.116.
(g)	152.119 (published in the FEDERAL REGISTER of August 1, 1984 (49 FR 30884).
162.8(a)	152.50(g)(2).
(b)	152.50(j).
(c)	152.107(c).
162.10	Proposed 40 CFR Part 156.
162.11(a)	Deleted; new regulations will be promulgated.
(b)	Deleted; new regulations will be promulgated.
(c)	Subpart I, §§ 152.160 through 152.179.
162.12	Deleted; not relevant to registration procedures.
162.13	Subpart K, §§ 152.200 through 152.219.
162.14	152.5.
162.15	Subpart M, § 152.240.
162.16	Proposed Part 157, Subpart B.
162.17	Subpart L, §§ 152.220 through 152.239.
162.21(a)	152.45.
(b)	Proposed part 156, Subpart P.
162.22	Deleted; obsolete.
162.23	Deleted obsolete.
162.30	Subpart I, §§ 152.160 through 152.179.
162.31	Subpart I, § 152.171.
162.41 through 162.47.	Deleted redundant and obsolete.
162.60	158.27.
162.160 through 162.177 (Subpart E).	Subsumed in Subparts C, E, F, and H pertaining to submission, review, and disposition of applications.

The following table shows how material in this proposal is derived from Part 162:

DERIVATION TABLE

New section	Old section
152.1	162.1.
152.3	162.3, except as noted.
(i)	162.5(c)(2).
(j)	New.
(k)	162.15.
(l)	162.9–7(c).
(o)	New.
(p)	New.
(s)	162.16(b)(1).
(v)	New.
(w)	New.
152.5	162.14.
152.8(a)	162.3(ff)(2)(ii).
(b)	162.3(ff)(ii)(iii) and (13)(iii).
(c)(1)	162.4(c)(5).
(c)(2)–(4)	New.
152.10(a)	162.4(c)(1).
(b)	162.3(ff)(3)(ii).
(c)	162.4(c)(2), (3), and (4).
(d)	New.
(e)	New.
152.15(a)	162.4(b).
(b)	New.
(c)	New.
152.20(a)	162.(c)

DERIVATION TABLE—Continued

New section	Old section
(b)	162.5(b)(6).
152.25(a)	162.5(d).
(b)	New.
(c)	New.
(d)	162.3(ff)(3)(i)(B).
152.30(a)—(f)	162.5.
(g)	New.
152.40	162.6(a).
152.42(a)	162.6(b)(2).
(b)(i)	New.
(ii)(2)	New.
152.45, except (d)	162.6(b)(i), 162.21(a).
(d)	New.
152.50	162.6(b)(2).
(b)	162.6(a).
(c)	New.
(d)	New.
(e)	162.6(b)(2)(i)(C).
(f)	162.8(b)(2) and (3), 162.165(b)(2).
(g)(i)	162.6(b)(i).
(g)(2)	162.8(a)(i), 162.163.
(h)	162.16(e).
(i)	162.6(b)(2)(i)(D), 162.165(b)(5).
(j)	162.8(b).
(k)	New
152.55	New.
Subpart D §§ 152.60—152.79.	New.
152.100	New.
152.102	162.6(b)(6).
152.104	162.6(a)(5).
152.105	162.6(a)(5).
152.107	162.7(d).
152.108	New.
152.110	162.7(c).
152.111	162.7(d)(1), 162.7(e).
152.112	162.7(d)(2) and (3).
152.113	162.167(a) and (b).
152.114	New.
152.115	162.167(c).
152.117	New.
152.118	162.7(f), 162.167(e).
Subpart G	New.
Subpart H, except § 152.148.	New.
152.148	162.11(a) and (b), 162.177.
Subpart I, except §§ 152.170, 152.171 and 152.175.	162.30.
152.170	162.11(c).
152.171	162.31.
152.175	New.
Subpart J	New.
Subpart K, except §§ 152.215 and 152.216.	162.13
152.215	New.
152.216	New.
Subpart L	162.17.
Subpart M	162.15.
Subparts N through Q	162.15.
[Reserved].	
Subpart R	New.
Part 157	162.16.
158.27	162.60.
158.32	New.
158.33	New.
158.1001	162.60

XIX. Statutory Review

In accordance with FIFRA section 25, this proposal was submitted to the Secretary of Agriculture (USDA), the Scientific Advisory Panel (SAP), and the House Committee on Agriculture and Senate Committee on Agriculture, Nutrition and Forestry for comment. No comment was received from either Congressional Committee.

A. USDA Comments and Agency Response

1. USDA asserted that the language of § 152.15 would redefine the statutory definition of pesticide. As stated in the preamble, the definition of pesticide in FIFRA section. 2(u) depends in part on the "intent" of the seller or distributor, but the Act does not indicate how EPA is to determine such intent. Section 152.15 sets forth the factors that the Agency would consider in determining intent of a seller or distributor, and if intent is found to be present, would subject the product to the requirements of the Act. EPA does not view that section as expanding the statutory definition, but merely clarifying and interpreting it.

2. USDA suggested, with reference to § 152.25(d), that the rule exempt food products as ingredients in pesticide products, without a limitation that they be the sole ingredient in an attractant product. In this way, the exempt food product could either be used as a sole active ingredient product unregulated under FIFRA, or could be combined with any toxicant in a product that would be required to be registered solely because of the presence of the toxicant. USDA cites as their reason for this suggestion that fact that, under FIFRA section 24(c), an active ingredient may not be registered by a State unless contained in, or derived from, a product that is federally registered. Unless the food by itself is exempted, a combination product containing that food mixed with a federally registered toxicant would not be permitted under section 24(c).

The exemption for food products in § 152.25(d) is an exemption under FIFRA section 25(b) from all FIFRA requirements, and thus extends to registrations under section 24(c) as will as section 3. Thus, any food product not containing a toxicant need not be registered under FIFRA section 3 or section 24(c). Moreover, by extension, the food product is also exempted from the requirement under FIFRA section 24(c) regulations that it be contained in or derived from a federally registered product in order for it to be used in a State-registered product that does contain a toxicant. Thus, the exemption contained in § 152.25(d) accomplishes what USDA has suggested by done.

USDA also suggested that the wording of the exemption be modified to include "chemically synthesized" as well as naturally occurring" foods. Since the Agency believes that all foods are described by these terms, the proposal has been revised to delete the "naturally occurring" language. The section now exempts "foods."

3. USDA expressed some concerns about the Agency's proposal that products intended for treating seeds be dyed, and that granular products be dyed (Subpart K).

a. USDA speculated that there might be substantial costs associated with the requirement to dye seeds and granular products. EPA believes that any costs associated with these requirements would be minimal. The cost of including a dye in a pesticide product would be no more than the cost of including any other adjuvant, such as an emulsifier. The cost of dyeing the seed at the time of treatment would be minimal, since the dye would be added at the same time as the pesticide treatment. EPA has required dyeing of treated seed since 1970 on a case-by-case basis, and the Agency has had no indications in that time from pesticide producers or users of seed treatment products that the requirement has been economically burdensome.

b. USDA also expressed concern that dyeing of seeds and granulars might make such products more attractive to children, thereby increasing rather than decreasing hazards. On the other hand, USDA acknowledged that colored seeds and granules might enhance application efficiency by avoiding overlaps.

EPA acknowledges that there is a possibility that children might find treated and dyed seeds and granules attractive if accessible. Storage and use are the primary points where children might have access to the treated and dyed materials. We believe, however, that the hazzards to children from storage will be minimal. Proper storage of treated and dyed seeds and granular products under lock and key will largely preclude access by children. Granular products intended for residential use that are toxic enough to be of concern would be packaged in child-resistant containers.

Children are also unlikely to have routine or frequent access to treated and dyed seeds in use situations. Treated seed is normally not exposed on the soil surface, but planted under the soil, and thus is unavailable to a curious child.

Granular products, on the other hand, may be applied to the soil surface, and thus might be available to a child. In an agricultural situation, EPA considers remote the probability that children would have access to treated fields at a time when the granules are applied, and that coloration would therefore not present a significant increased hazard. On the other hand, EPA agrees that, if coloration of granules does make them more attractive to children, residential use of a granular product (such as for lawn use) might pose an increased hazard. However, EPA believes that such hazards may be addressed on a case-by-case basis through the Agency's review of individual products.

c. USDA suggested that the requirement to dye seeds be limited to those for use on seed that may be fed to animals, and, additionally, to those where the seed are capable of being dyed. EPA has not adopted this suggestion. Most seed treatment products are registered for use on a large variety of seed types, including those likely to be used for animal feed (such as grain), and others not so likely to be used for animal feed (such as vegetable seeds). The USDA suggestion would be practical only if products intended for treatment of seeds that could potentially be diverted for animal feed or that could feasibly be dyed were required to be separately registered from other types of seed treatment products. EPA believes that this would neither be efficient from an administrative standpoint, nor desirable from the perspective of the registrant and seed treater. The proposal does, however, provide that registrants may seek an exemption from the requirement if they believe it justified.

d. Finally, in response to a request for comments on the possible addition of odorous compounds as a warning signal in some products, USDA suggested that such requirements might necessitate residue tolerances being set for the compounds. USDA also suggested that the Agency determine which odorous compounds are available and evaluate them to determine whether use might increase overall hazard. These comments will be reviewed together with other comments on the subject, and the final rule will discuss the outcome of the review.

4. USDA commented that the language of the definition of "new use" that applies the term to any use pattern resulting in an increase in the level of exposure would encompass almost any additional use pattern. EPA agrees and has inserted the word "significant" to describe the increased levels of exposure of concern to the Agency.

5. USDA suggested that § 152.10(b) include a statement that products used for survey and detection purposes only, and not combined with a pesticidal toxicant, be permitted to be registered under FIFRA section 24(c) (by itself or in combination with other pesticidal ingredients) without necessarily being included in a federally registered product (refer to the discussion under Item 2 for a discussion of the FIFRA

section 24(c) requirement). The Agency has not adopted this suggestion.

The use of a product only for survey and detection purposes is not one of pesticidal effect or intent, according to § 152.10. This is true only if the product being used is not combined with a toxicant. Once the product has been combined with a pesticidal component, the product is no longer solely for survey and detection purposes, but has pesticidal effects as well. Thus the survey and detection criterion cannot be met when a product is combined with a toxicant.

Nor is the Agency willing to treat the "products" in a manner analogous to that for foods in § 152.25(d). Foods are pesticides that have been specifically exempted under FIFRA section 25(d) because they are innocuous enough not to warrant FIFRA regulation. The same cannot be said of the "products" in § 152.10. These is no limitation on such products, which may not be innocuous compounds. EPA is not willing to exempt such products entirely from FIFRA oversight, but acknowledges that when used alone for survey or detection purposes, they do not have a pesticidal effect, and it that specific situation, are not required to be registered as pesticides.

6. USDA suggested that the language of § 152.50(j) requiring an applicant to submit adverse effects data be limited to "valid" factual data. This requirement is intended to parallel that of FIFRA section 6(a)(2), under which registrants are required to submit such data. In that case, the statute does not limit the requirement to "valid" data. EPA believes that to do as USDA suggests would be an improper limitation of the statutory requirement, and would leave to applicants and registrants the decision of whether adverse effects data are valid. The Agency has the responsibility of deciding the validity of the adverse effects data. The Agency's policy statements referred to in § 152.50(j) fully explain the Agency's policies on adverse effects data.

7. USDA commented that, before the Agency takes action to suspend a product's registration for failure to keep the Agency notified of a current address, the Agency should seek to verify the company's status. The Agency currently engages in several activities of this type. When an item is returned to the Agency as undeliverable, the Agency's contractor automatically attempts to verify whether the company is still in business by checking phone directories for the last known address. Failing verification by this means, the Regional Office is requested to physically inspect the address and make enquiries of neighboring businesses to determine the whereabouts or fate of the company. Only after these have failed would the Agency suspend the registrations.

8. USDA asserted that the non-target hazard criterion for restriction of a pesticide (§ 152.170(c)(1)(iv)) was vague and open to interpretation. USDA also suggested replacing this criterion with one that is based on the statutory term "unreasonable adverse effects." EPA recognizes that the criterion is general and open to interpretation. However, phrasing the criterion in terms of the statutory unreasonable adverse effects would not be a practical alternative, and EPA believes, would actually be more general rather than more explicit. The statutory term is used to trigger a number of actions by the Agency, including both restriction and cancellation. The criterion in § 152.170(c)(1)(iv) for non-target hazard is intended to interpret and clarify the meaning of "unreasonable adverse effects" in the context of restriction. (In a similar manner, criteria for special review also clarify the term "unreasonable adverse effects" as a trigger for possible cancellation.)

The non-specific language was originally intended to allow the Agency discretion in deciding whether a product should be a candidate for restricted use. The qualitative nature of the criterion was (and still is) necessary because large scale non-target effects are often difficult to quantify and definitive criteria cannot be devised that cover all the possible effects of concern to the Agency. The Agency has retained a general screening criterion for non-target effects, but has modified the language somewhat for clarification.

9. USDA suggested that the Label Improvement Program should allow an opportunity to comment on label changes before the requirements are imposed. The Label Improvement Program is intended to implement existing labeling requirements, as for example, those in the related labeling proposal in today's **Federal Register**. Registrants would already have had sufficient opportunity for comment on any labeling revisions. Moreover, EPA intended to design the Program to be able to respond rapidly to labeling concerns, and a required comment period might delay corrective actions. The Agency may, of course, provide additional opportunity for comment before issuing a Label Improvement Notice, and does accept comments after issuance.

10. USDA inquired as to what is meant by a "normal adult" in the "child-resistant packaging" definition in § 157.21(b). Child-resistant packaging is defined in that section as being packaging that a normal adult can open but that a child cannot. For the purposes of child-resistant packaging, the Agency relies on the CPSC testing scheme in 16 CFR 1700.20, which defines the adult testing group as comprising adults ages 18 to 45 with no overt physical or mental handicaps, 70 percent of whom are female. These are the "normal adults" referred to in the definition.

B. SAP Comments and Agency Response

1. The SAP questioned the use of the terms "significant" and "serious" in various criteria for the restriction of pesticides (§ 152.170). Such terms, they commented, were ambiguous and could lead to legal challenges. EPA agrees that the terms are not quantitative. These terms are used to allow the Agency discretion in examining whether to restrict use of a product to certified applicators. The criteria in § 152.170 are screening criteria that lead to a further evaluation of the uses of the pesticide to determine whether restriction would be beneficial in mitigating unreasonable adverse effects. Some pesticides may not meet any of the quantitative criteria set out in § 152.170, but still may have undesirable effects that should trigger consideration for restricted use.

EPA does not believe that the use of the terms in this way will subject the Agency to legal challenges. The terms have been used in the same manner since 1979 without legal challenge. Moreover, EPA believes it unlikely that legal challenges will ensure, since the terms are used only in preliminary criteria that have no direct regulatory consequences, but merely trigger further evaluation by the Agency. Under the licensing scheme of FIFRA, legal challenges would occur only when the Agency took regulatory action affecting the pesticide products.

2. The SAP also questioned, in connection with the restricted use criteria, the practicality of using acute dietary exposure as a factor to indicate hazard to wildlife. Their concern apparently was the accuracy of estimated pesticide levels in the diet of wildlife. EPA recognize the uncertainty in attempting to accurately estimate the levels of pesticide actually occurring in wildlife diets. The Agency's Office of Research and Development is working to improve these methods. The Agency believes that its dietary exposure models, upon which the estimates are based, are the best scientific mechanisms currently available for assessing potential short term acute toxicitv.

3. The Panel viewed the proposed product chemistry information requirements (Subpart R) as expanding data requirements in this area. The Panel stated that the Agency had not advanced a convincing argument that these data were needed for regulatory purposes.

The Agency would not characterize these as new requirements. They are contained in the Agency's product chemistry data requirements proposed in 40 CFR 158.120, as published in the Federal Register of November 24, 1982 (47 FR 53192). Moreover, the Agency has been requesting data of this sort for several years in conjunction with special reviews, Registration Standards, and new chemicals. EPA also recognizes that these requirements are highly controversial, and believes that specific comment will be useful in delineating the scope of the requirements (refer to the discussion of these requirements in Unit XIV of this preamble).

EPA believes that these are the types of product chemistry data needed to establish the identity of inert ingredients, and particularly the impurities, in pesticide products, so that the Agency is equipped to make future regulatory decisions if necessary. Without this information, the Agency would be unable to respond rapidly and decisively to indications of hazards posed by these substances in pesticide products, or action would be delayed pending receipt of such data. The presence of dioxins in phenoxy pesticides, or of DDT-related compounds in dicofol might be undetected and unregulated were this information not readily available to the Agency. EPA believes it prudent to anticipate the need for such information, and obtain it from the applicant at the time of registration, rather than seeking it under FIFRA sec. 3(c)(2)(B) after registration.

Moreover, EPA believes that product chemistry data of the types that would be required by Subpart R are routinely developed by pesticide producers, and thus the data requirements impose little, if any, additional cost on registrants. The Agency's "Regulatory Impact Analysis of Data Requirements for Registering Pesticides under the Federal Insecticide, Fungicide and Rodenticide Act," developed in support of Part 158, addresses these costs in detail.

4. The SAP commented that the document does not contain requirements for storage stability of pesticides and pesticide products between production and use. While the requirements of Subpart R pertain only to the identification of the pesticide, its beginning materials, inerts and impurities, Part 158 contains data requirements on storage stability of the pesticide. If such data demonstrate that a product's composition changes significantly over time, or that degradation into potentially more toxic compounds may occur, the Agency may require additional toxicity testing on the product or its degradates.

5. The SAP stated that the term "integrated formulation system" (defined in § 152.342(d)) is unclear and confusing. EPA has used this term and discussed its meaning in various regulatory documents over the past several years. The best description and discussion of the term appears in the preamble to the proposed Product Chemistry Guidelines, issued in the Federal Register of July 10, 1978 (43 FR 29701). In its simplest form, the term refers to a formulation system using a pesticide which is not registered with the Agency before its incorporation into an end use product. For such products, the process impurities and contaminants may be unknown (and unregulated) because the Agency cannot legally regulate such products until they become part of a pesticide product that is sold or distributed in commerce. In order to obtain needed information about impurities and contaminants of pesticides so used, the Agency must establish special requirements that apply to the regulated products into which an unregistered pesticide is incorporated. Such regulated products are described as being produced by an "integrated formulation system." A new term was necessary since these products are not adequately characterized by existing terms.

6. The SAP stated that the term "toxicological significance," used in conjunction with the certification of limits for impurities in § 152.352, was open to interpretation, and suggested that it be delimited in some way. The term is used to allow Agency discretion to require the more stringent certified limits set out in that section if warranted. In EPA's view, toxicological significance is a function both of toxicity characteristics and potential exposure. Neither of these is easily quantified; hence the Agency finds it difficult to establish a better criterion for when EPA might impose the additional requirements of § 152.352. Comments and suggestions are invited on this topic.

XX. Executive Order 12291

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

The proposed revisions are primarily a reorganization and clarification of existing procedural regulations. The Agency is also proposing certain additions reflecting Agency policies that have been applied in the past on a case-by-case basis, but which have previously been stated only in non-regulatory policy documents. These proposed revisions are not so extensive as to trigger the criteria of E.O. 12291 that would classify the regulation as major.

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

XXI. Regulatory Flexibility Act

This proposed regulation has been reviewed under the provisions of section 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 the revisions would clarify the procedural requirements for registration, and generally would reduce the number of submissions needed to be submitted to the Agency to obtain and maintain registration, the regulations would be less burdensome to small businesses than are the regulations they would supersede. Other small entities, such as organizations and local governmental units, are not affected by these revisions since they seldom seek registration of pesticide products. For these reasons, I hereby certify that the proposed revisions to 40 CFR Part 162 do not have a significant impact on a substantial number of small entities.

XXII. Paperwork Reduction Act

Under the Paperwork Reduction Act, EPA must identify any regulation, and must obtain clearance from the Office of Management and Budget (OMB) for any such collection activities. All information collection activities under this proposal have been approved by the OMB under OMB Control Number 2000–0012.

List of Subjects in 40 CFR Parts 152, 157, 158, and 162

Administrative practices and procedures, Data requirements, Packaging, Pesticides and Pests, Recordkeeping and reporting requirements.

Dated: September 18, 1984.

William D. Ruckelshaus,

Administrator.

Therefore, it is proposed that Chapter I of Title 40 be amended as follows:

1. By adding Subparts A through D, F through M, and R to existing Part 152, to read as follows:

PART 152—PESTICIDE REGISTRATION AND CLASSIFICATION PROCEDURES

Subpart A—General Provisions

Subpart B—Exemptions From FIFRA Requirements

Subpart C—Registration Procedures

Subpart D—Reregistration Procedures

Subpart F—Agency Review of Applications

Subpart G—Obligations and Rights of Registrants

Subpart H—Agency Actions Affecting Registrations

Subpart I—Classification of Pesticides

Subpart J—Label Improvement Program

Subpart K—Coloration and Discoloration of Pesticides

Subpart L—Intrastate Pesticide Products

Subpart M—Devices

Subparts N–Q [Reserved]

Subpart R—Product Chemistry Data Requirements

Authority: Secs. 3, 25(a)(1) and 25(c)(3), as amended (Pub. L. 92–516, 92 Stat. 819; 7 U.S.C. 136 through 136y.

Subpart A—General Provisions

§ 152.1 Scope.

Part 152 establishes regulations for the registration and reregistration of pesticide products under FIFRA section 3, and for associated regulatory activities affecting registration. These latter regulatory activities include procedures governing satisfaction of data requirements (Subpart E), the classification of pesticide uses (Subpart I), and the revision of labeling under the Agency's Label Improvement Program (Subpart J). This part also sets forth requirements for the coloration or discoloration of certain pesticides (Subpart K) and references the general requirements applicable to nonfederally registered intrastate products (Subpart L) and devices (Subpart M).

§ 152.3 Definitions.

As used in this part, the following terms shall have the meanings set forth in this section. Terms defined by the Act are provided for reference.

(a) "Act" or "FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136–136y).

(b) "Active ingredient" means:

(1) In the case of a pesticide other than a plant regulator, defoliant, or desiccant, any ingredient that will prevent, destroy, repel, or mitigate any pest.

(2) In the case of a plant regulator, any ingredient which, through physiological action, will alter the growth processes of plants or the product thereof.

(3) In the case of a defoliant, an ingredient that will cause the leaves or foliage to drop from a plant.

(4) In the case of a desiccant, an ingredient that will artificially accelerate the drying of plant tissue.

(c) "Acute dermal LD_{50}" means a statistically derived estimate of the single dermal dose of a substance that would cause 50 percent mortality to the test population under specified conditions.

(d) "Acute inhalation LC_{50}" means a statistically derived estimate of the concentration of a substance that would cause 50 percent mortality to the test population under specified conditions.

(e) "Acute oral LD_{50}" means a statistically derived estimate of the single oral dose of a substance that would cause 50 percent mortality to the test population under specified conditions.

(f) "Administrator" means the Administrator of the United States Environmental Protection Agency or his delegate.

(g) "Agency" means the United States Environmental Protection Agency (EPA), unless otherwise specified.

(h) "Applicant" means a person who applies for a registration, amended registration, or reregistration, under FIFRA Section 3, or a designated agent for the applicant.

(i) "Biological control agent" means any living organism applied to or introduced into the environment to prevent, destroy, repel, or mitigate the population or biological activities of another organism declared to be a pest by the Administrator.

(j) "Distribute or sell," and other grammatical variations of the term, such as "distributed or sold" and "distribution or sale" refer to the acts of distributing, selling, offering for sale, holding for sale, shipping, delivering for shipment, or receiving and (having so received) delivering or offering to deliver, or releasing for shipment to any person in any State. Distribution is deemed to have occurred if a product has been packaged and labeled in the manner in which it will be shipped, or if it has been stored in an area where finished products are ordinarily held for shipment.

(k) "Device" means any instrument or contrivance (other than a firearm) intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life (other than man and other than a bacterium, virus, or other microorganism on or in living man or living animals) but not including equipment used for the application of pesticides (such as tamper-resistant bait boxes for rodenticides) when sold separately therefrom.

(l) "End use product" means a pesticide product whose labeling (1) includes directions for use of the product (as distributed or sold, or after combination by the user with other substances) for controlling pests or defoliating, desiccating or regulating plants, and (2) does not state that the product may be used to manufacture or formulate other pesticide products.

(m) "Final printed labeling" means the label or labeling of the product when distributed or sold. Final printed labeling does not include the package of the product.

(n) "Inert ingredient" means an ingredient that is not an active ingredient. The term includes both impurities and intentionally added inert ingredients.

(o) "Institutional use" means any application of a pesticide in or around property or a facility that functions to provide a service to the general public, including but not limited to: (1) Hospitals and nursing homes, (2) schools other than pre-schools and day care facilities, (3) museums and libraries, (4) sports facilities, and (5) office buildings.

(p) "Manufacturing use product" means any pesticide product that is not an end-use product.

(q) "New use," when used with respect to a product containing a particular active ingredient, means:

(1) Any proposed use pattern that would require the establishment of, or the increase in, a tolerance under the Federal Food, Drug and Cosmetic Act;

(2) Any aquatic, terrestrial, outdoor, or forestry use pattern, if no substantially similar product containing that active ingredient is currently registered for a use in that use pattern; or

(3) Any additional use pattern that would result in a significant increase in the level of exposure, or a change in the route of exposure, to that active ingredient of man or other organisms.

(r) "Operated by the same producer," when used with respect to two establishments, means that both establishments are owned by, or leased for operation by and under the control of, a single person or company. The term does not include establishments operated by different persons or companies, regardless of contractual agreements between such persons.

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

(t) "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest, or intended for use as a plant regulator, defoliant or desiccant; but not including any article (1) that is a new animal drug under FFDCA section 201(w), or (2) that has been determined by regulation of the Secretary of Health and Human Services not to be a new animal drug, or (3) that is an animal feed under FFDCA section 201(x) that bears or contains any substance described by paragraph (t)(1) or (2) of this section.

(u) "Pesticide product" means a pesticide in the particular form (including composition, packaging and labeling) in which the pesticide is, or is intended to be, distributed or sold. The term includes any physical apparatus used to deliver or apply the pesticide when distributed or sold with the pesticide.

(v) "Registration Standard" means a document, documents or other information source specifying the Agency's position on registration of a category of pesticide products containing a specific ingredient, or combination of ingredients.

(w) "Residential use" means use of a pesticide directly:

(1) On humans or pets,

(2) 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 and recreational vehicles, or

(3) In any preschool or day care facility.

§ 152.5 Pests.

Each of the following types of organisms is declared to be a pest when it exists under circumstances that make it deleterious to man or the environment:

(a) Vertebrate animals other than man;

(b) Invertebrate animals (other than internal parasites of living man or other living animals), including but not limited to insects and other arthropods, nematodes, and mollusks such as slugs and snails;

(c) Plants growing where not wanted, including mosses, algae, liverworts, and all plants of higher orders, and plant parts such as roots;

(d) Fungi, bacteria, viruses, and other microorganisms, other than those on or in living man or other living animals and those on or in processed food or processed animal feed, beverages, and drugs (as defined in section 201(g)(1) of the Federal Food, Drug and Cosmetic Act (FFDCA) (21 U.S.C. 321(g)(1)).

§ 152.6 Products that are not pesticides because they are not for use against pests.

The substances or articles described in this section are not pesticides because they are not intended for use against pests, as defined in § 152.5.

(a) A product intended for use only for the control of fungi, bacteria, viruses or other microorganisms in or on living man or animals, and labeled accordingly.

(b) A product intended for use only for control of internal invertebrate parasites

or nematodes in living man or animals, and labeled accordingly.

(c) Products of the following types intended only to aid the growth of desirable plants:

(1) Fertilizer products not containing pesticides.

(2) Plant nutrient products, consisting of one or more macronutrients or micronutrient trace elements necessary to normal growth of plants and in forms readily usable by plants.

(3) Plant inoculant products consisting of microorganisms applied to the plant or soil for the purpose of enhancing the availability or uptake of plant nutrients through the root system.

(4) Soil amendment products containing a substance or substances added to the soil for the purpose of improving soil characteristics favorable for plant growth.

§ 152.10 Products that are not pesticides because they do not have a pesticidal effect.

A product that does not prevent, destroy, repel, or mitigate a pest, or does not defoliate, desiccate or regulate the growth of plants, is not considered to have a pesticidal effect. Unless a pesticidal claim is made, the following products or articles are not considered to be pesticides:

(a) Deodorizers, bleaches, and cleaning agents.

(b) Products not containing toxicants, intended only to attract pests for survey or detection purposes, and labeled accordingly.

(c) Articles or substances treated with pesticides to protect the articles or substances themselves, for example, paint treated with a pesticide to protect the paint coating, or wood products treated to protect the wood against insect or fungus infestation.

(d) Products that are intended to exclude pests only by providing a physical barrier against pest access, and which contain no toxicants, such as certain pruning paints for trees.

(e) Products intended to force bees from hives for the collection of honey crops.

§ 152.15 Pesticide products required to be registered.

No person may distribute or sell any pesticide product that is not registered under the Act, except as provided in §§ 152.20, 152.25 and 152.30. A pesticide is any substance (including any mixture of substances) intended for a pesticidal purpose, i.e., use for the purpose of preventing, destroying, repelling, or mitigating any pest (see § 152.5) or use as a plant regulator, defoliant, or desiccant. A substance is intended for a pesticidal purpose, and thus is a pesticide, if:

(a) The person who distributes or sells the substance claims, states, or implies (by labeling or otherwise):

(1) That the substance (either by itself or in combination with any other substance) can or should be used as a pesticide; or

(2) That the substance consists of or contains an active ingredient and that it can be used to manufacture a pesticide; or

(b) The substance consists of or contains one or more active ingredients and has no significant commercially valuable use as distributed or sold other than (1) use for a pesticidal purpose (by itself or in combination with any other substance), or (2) use for manufacture of a pesticide; or

(c) The person who distributes or sells the substance knows or should reasonably know that the person(s) to whom the substance is distributed or sold will use the substance for a pesticidal purpose.

Subpart B—Exemptions from FIFRA Requirements

§ 152.20 Exemptions for pesticides regulated by another Federal Agency.

The pesticides or classes of pesticide listed in this section are exempt from all requirements of FIFRA. The Agency has determined, in accordance with FIFRA sec. 25(b)(1), that they are adequately regulated by another Federal agency.

(a) *Certain biological pest control agents.* (1) Except as provided by paragraph (a)(3) of this section, all biological control agents are exempt from FIFRA requirements.

(2) If the Agency determines that an individual biological control agent or class of biological control agents is no longer adequately regulated by another Federal agency, and that it should not otherwise be exempted from the requirements of FIFRA, the Agency will revoke this exemption. If it does so, paragraph (a)(3) of this section will be amended accordingly.

(3) The following biological control agents are not exempt from FIFRA requirements:

(i) Living organisms taxonomically defined as viruses;

(ii) Living organisms taxonomically defined as bacteria, actinomycetes, rickettsia, mycoplasmas, or 1—forms of bacteria.

(iii) Living organisms classified as members of the animal subkingdom *Protozoa.*

(iv) Living organisms taxonomically defined as fungi.

(v) Living organisms classified as members of Class I, *Schizophyceae,* of Division I of the Plant Kingdom, *Protophyta,* including blue-green algae, as described in the 8th edition of "Bergey's Manual of Determinative Bacteriology."

(b) *Certain human drugs.* A pesticide product that is offered solely for human use and is also (1) a new drug within the meaning of FFDCA section 201(p), or (2) an article that has been determined by the Secretary of Health and Human Services not to be a new drug by a regulation establishing conditions of use for the article, is exempt from the requirements of FIFRA. Such products are subject to regulation in accordance with the Federal Food, Drug, and Cosmetic Act and implementing regulations.

§ 152.25 Exemptions for pesticides of a character not requiring FIFRA regulation.

The pesticides or classes of pesticides listed in this section have been determined to be of a character not requiring regulation under FIFRA, and are therefore exempt from all provisions of FIFRA when intended for use, and used, only in the manner specified.

(a) *Pheromones and pheromone traps.* Pheromones and identical or substantially similar compounds labeled for use only in pheromone traps and pheromone traps in which those compounds are the sole active ingredient(s).

(1) For the purposes of this paragraph, a pheromone is a compound produced by an arthropod which, alone or in combination with other such compounds, modifies the behavior of other individuals of the same species.

(2) For the purposes of this paragraph, a synthetically produced compound is identical to a pheromone only when their molecular structures are identical, or when the only differences between the molecular structures are between the stereochemical isomer ratios of the two compounds, except that a synthetic compound found to have toxicological properties significantly different from a pheromone is not identical.

(3) When a compound possesses many characteristics of a pheromone but does not meet the criteria in paragraph (a)(2) of this section, it may, after review by the Agency, be deemed a substantially similar compound.

(4) For the purposes of this paragraph, a pheromone trap is a device containing a pheromone or identical or substantially similar compound used for the sole purpose of attracting, and trapping or killing, target arthropods. Pheromone traps are intended to

achieve pest control by removal of target organisms from their natural environment and do not result in increased levels of pheromones or identical or sustantially similar compounds over a significant fraction of the treated area.

(b) *Preservatives for biological specimens.* (1) Embalming fluids.

(2) Products used to preserve animal or animal organ specimens, in mortuaries, laboratories, hospitals, museums and institutions of learning.

(3) Products used to preserve the integrity of milk, urine, or blood samples for laboratory analysis.

(c) *Vitamin hormone products.* Vitamin hormone horticultural products consisting of mixtures of plant hormones, plant nutrients, inoculants, or soil amendments, which meet the following criteria:

(1) The product, in the undiluted package concentration at which it is distributed or sold, meets the criteria for Toxicity Category III or IV (refer to 40 CFR 156.42 for Toxicity Categories); and

(2) The product is not intended for use on food crop sites, and is labeled accordingly.

(d) *Foods.* Products consisting of foods and containing no toxicants, which are used to attract pests.

§ 152.30 Pesticides that may be transferred, sold or distributed without registration.

Unregistered pesticides may be distributed or sold, or otherwise transferred, as described by this section.

(a) *A pesticide transferred between registered estalishments operated by the same producer.* An unregistered pesticide may be transferred between registered establishments operated by the same producer. See § 152.3(r). The pesticide as transferred must be labeled in accordnce with 40 CFR 156.105.

(b) *A pesticide transferred for processing, packaging, or labeling.* An unregistered pesticide may be transferred if:

(1) The transfer is solely for the purpose of further processing, formulating, packaging or labeling the pesticide to become a pesticide product that is registered;

(2) The pesticide is owned by the transferor;

(3) The finished product is registered by the transferor and will be sold or distributed only by him or a distributor as his agent;

(4) The transfer is between registered establishments; and

(5) The pesticide as transferred is labeled in accordance with 40 CFR 156.105.

(c) *A pesticide distributed or sold under an experimental use permit.* An unregistered pesticide may be distributed or sold in accordance with the terms of an experimental use permit issued under FIFRA section 5, if the product is labeled in accordance with 40 CFR 172.6.

(d) *A pesticide transferred solely for export.* An unregistered pesticide may be transferred within the United States solely for export if:

(1) It is prepared and packaged according to the specifications of the foreign purchaser; and

(2) It is labeled in accordance with 40 CFR 156.110.

(e) *A pesticide distributed or sold under an emergency exemption.* An unregistered pesticide may be distributed or sold in accordance with the terms of an emergency exemption under FIFRA section 18, if the product is labeled in accordance with 40 CFR 156.112.

(f) *A pesticide transferred for purposes of disposal.* An unregistered pesticide may be transferred solely for disposal in accordance with FIFRA section 19 or an applicable Administrator's order. The product must be labeled in accordance with 40 CFR 156.115.

(g) *Existing stocks of a formerly registered product.* A cancelled or suspended pesticide may be distributed or sold to the extent and in the manner specified in an order issued by the Administrator concerning existing stocks of a formerly registered pesticide.

Subpart C—Registration Procedures

§ 152.40 Who may apply.

Any person may apply for new registration of a pesticide product. Any registrant may apply for amendment of the registration of his product.

§ 152.42 When application are required.

(a) *New product registration.* Any person who wishes to obtain an initial registration for a pesticide product must submit an application for new registration, containing the information specified in § 152.50. An application for new registration must be approved by the Agency before the product may legally be distributed or sold.

(b) *Amended registration.* Except as provided in paragraph (b) (1) and (2) of this section, a registrant who wishes to make changes in a product's composition (except changes that comply with § 152.45), labeling, or packaging must submit an application for amended registration, containing the information specified in §152.50, as applicable. An application for amended registration must be approved by the Agency before the product, as modified, may legally be distributed or sold.

(1) *Changes needing Agency notification, but not approval.* A registrant may make the following changes to his registered product's composition, labeling or packaging if he notifies the Agency before the product is distributed or sold. The registrant need not obtain Agency approval of any such amendment, but may distribute or sell the product, as changed, as soon as he has notified the Agency of the change. Notification under this paragraph is considered a report filed under the Act for the purposes of FIFRA section 12 (a) (2) (M).

(i) A change in the brand name and the name and address appearing on the label to those of a distributor; provided, that the company number assigned to the distributor appears on the label in conjunction with the EPA registration number.

(ii) A revision of the label format consistent with 40 CFR Part 156 and involving no change in the precautionary statements or in the directions for use.

(iii) Change in the package size and label net contents, provided no change in use directions or requirement for child-resistant packaging would ensue.

(iv) Addition or substitution of brand names.

(v) A change in the source of the beginning materials or the manufacturing process of the product, provided that the certified limits for the active and inert ingredients would not vary as a result of the change.

(2) *Changes not needing Agency approval or notification.* The following changes may be made in a product's composition, labeling or packaging without notification to or approval by the Agency:

(i) Change in the source, but not the identity, of any intentionally added inert ingredient.

(ii) Correction of typographical or printing errors on the labeling.

(iii) Revision of non-mandatory label statements, consistent with 40 CFR Part 156 of this chapter, including additions or changes required by other Federal statutes or agencies.

(iv) Change on the label of the name or address of the registrant, except for a change resulting from transfer of ownership which requires Agency approval in accordance with § 152.130.

(Approved by the Office of Managment and Budget under Control Number 2000–0012.)

§ 152.45 Products for which separate applications must be submitted.

An application for registration or amended registration may not have as its subject more than one pesticide product. Except as provided in paragraphs (a) through (d) of this section, a pesticide product shall have a single, specified composition, i.e., the active and inert ingredients specified in the Confidential Statement of Formula, each ingredient being within the certified limits stated therein. If a product has multiple formulations as permitted by paragraphs (a) through (d) of this section, the composition of each formulation shall be stated on a separate Confidential Statement of Formula as required by § 152.50(e).

(a) A pesticide-fertilizer combination product may be registered as a single product with variations in the identity and amount of its fertilizer components, if the application rate of the pesticide active ingredient remains constant and the same precautionary labeling is appropriate for each allowable variation in composition.

(b) A pesticide-feed combination product may be registered as a single product with variations in the identity or amount of its feed components, if the dosage rate of the pesticide active ingredient per unit weight or per animal is constant and the same precautionary labeling is appropriate for each allowable variation in composition.

(c) A pesticide-pigment combination product may be registered as a single product with variations in the identity or amount of its pigment component, if the same precautionary labeling is appropriate for each allowable variation in compostion.

(d) Any other type of pesticide product may be registered as a single product with allowable variations in the identity or amount of inert ingredients, if the following conditions are met:

(1) The certified limits of the active ingredient do not change;

(2) The required labeling for each of the proposed variations is the same;

(3) None of the proposed variations affects the safety of the product, including the persistence of residues of the active ingredients(s);

(4) If the product is to be used on food or feed, each inert ingredient has been cleared under the Federal Food, Drug and Cosmetic Act; and

(5) Each proposed variation is consistent with any applicable Registration Standard.

§ 152.50 Contents of application.

Each application for registration or amended registration shall include the following information, as applicable:

(a) *Application form.* An application form must be completed and submitted to the Agency. Application forms are provided by the Agency, with instructions as to the number of copies required and proper completion.

(b) *Identity of the applicant*—(1) *Name.* The applicant must identify himself. An applicant not residing in the United States must also designate an agent in accordance with paragraph (b)(2) of this section to act on behalf of the applicant on all registration matters.

(2) *Authorized agent.* An applicant may designate a person residing in the United States to act as his agent if an applicant wishes to designate an agent, he must send the Agency a letter stating the name and United States address of his agent. The applicant must notify the Agency if he changes his designated agent. This agency relationship may be terminated at any time by the applicant by notifying the Agency in writing.

(3) *Address of record.* The applicant must provide an address in the United States for correspondence purposes. The U.S. address provided will be considered the applicant's address of record, and EPA will send all correspondence concerning the application and any subsequent registration to that address. It is the responsibility of the applicant to ensure that the Agency has a current and accurate address. Refer to § 152.122.

(4) *Company number.* If an applicant has been assigned a company number by the Agency, the application must reference that number.

(c) *Summary of the application.* Each application must include a list of the data submitted with the application, together with a brief description of the results of the studies and a statement of reasonable grounds why the application should be approved. The summary must state that it is releasable to the public after registration in accordance with § 152.119.

(d) *Identity of the product.* The product for which application is being submitted must be identified. The following information is required:

(1) The product name;

(2) The EPA Registration Number, if currently registered;

(3) The trade name(s) (if different);

(4) Any company code numbers (optional).

(e) *Composition of the product.* The composition of the product for which the application is being submitted must be stated. The information required by Subpart R must be submitted. Refer to § 152.45 for information on which formulations must be registered separately, and which may be combined a separate Confidential Statement of Formula must be submitted for each separate formulation.

(f) *Draft labeling.* Each application for new registration must be accompanied by five (5) legible copies of draft labeling (typescript or mock-up). Each application for amended registration that proposes to make any changes in the product labeling must be accompanied by five (5) legible copies of draft labeling incorporating the proposed labeling changes. If the proposed labeling change affects only a portion of the labeling, such as the use directions, the applicant may submit five copies of the portion of the label which is the subject of the amendment.

(g) *Registration data requirements.* (1) An applicant must submit materials to demonstrate that he has complied with the FIFRA section 3(c)(1)(D) and Subpart E of this part with respect to satisfaction of data requirements, to enable the Agency to make the determination required by FIFRA section 3(c)(5)(B).

(2) An applicant must also furnish any data specified in 40 CFR Part 158, in accordance with the requirements of § 158.30, which are required by the Agency to determine that the product meets the standards for registration stated in FIFRA sections 3(c)(5)(C) and (D) or 3(c)(7). All studies must be conducted in accordance with the requirements of 40 CFR Part 160, Good Laboratory Practice Standards, and the statement required by 40 CFR 160.12 must be submitted with the data.

(h) *Certification relating to child-resistant packaging.* If the product meets the criteria for child/resistant packaging, the applicant must submit a certification that the product will be distributed in child/resistant packaging. Refer to 40 CFR Part 157 for the criteria and certification requirements.

(i) *Request for classification as general or restricted use.* If the applicant wishes to request a classification different from the established by the Agency, he must submit a request for such Classification and information supporting the request.

(j) *Adverse effects data.* Each application shall state whether the applicant is aware of any factual information regarding unreasonable adverse effects of the pesticide on man or the environment, which would be required to be reported under FIFRA section 6(a)(2) if the product were registered. If the applicant states that he is aware of such information, he must submit it as part of his application. Such information may consist of, for example, published or unpublished laboratory studies (whether or not such studies have been completed) and human,

animal or non-target plant accident experience, as described in Agency statements of policy issued in the **Federal Register** of August 23, 1978 (43 FR 37611), and July 12, 1979 (44 FR 40716).

(k) *Statement concerning tolerances.* If the proposed labeling bears instructions for use of the pesticide results or may be expected to result, directly or indirectly, in pesticide residues in or on food or feed (including residues of any active ingredient, metabolite, or degradation product), the applicant must submit a statement indicating whether such residues are authorized by tolerances, exemptions from the requirement of a tolerance, or food additives regulations issued under FFDCA sec. 408 or 409. If such residues have not been authorized, the application must be accompanied by a petition for establishment of appropriate tolerances, exemptions from the requirement of a tolerance, or food additive regulations in accordance with 40 CFR Part 180.

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§ 152.55 Where to send application and correspondence.

Applications and correspondence relating to registrations should be mailed to the Registration Division (TS–767C), U.S. Environmental Protection Agency, Washington, D.C. 20460. Persons who wish to hand-deliver applications should contact the Registration Division to determine the location for delivery.

Subpart D—Reregistration Procedures

§ 152.60 General.

FIFRA section 3(g) requires that all currently registered pesticide products be reregistered. To facilitate the reregistration of products, EPA has instituted a program for the review of each pesticide active ingredient, the data supporting registration of products containing that active ingredient, and its uses. This review normally culminates in the issuance of a Registration Standard. The Standard will explain the Agency's position on the registrability of products containing the active ingredient(s), assess the acceptability of existing tolerances, and list additional data or information that must be submitted to complete the reregistration review.

§ 152.65 Application for reregistration.

(a) When the Agency is prepared to reregister products containing a specified active ingredient or combination of ingredients, it will notify the registrant by certified mail and will inform him of the specific requirements and the timeframes for submission of an application for reregistration.

(b) After receiving notice, the registrant is required to submit an application for reregistration within the timeframes specified in the notice. The application must comply with § 152.45 with respect to the need for separate applications.

(c) The application must contain the information required by § 152.50(a) through (h), and (k), unless such information is already on file with the Agency and is current and accurate. A new Confidential Statement of Formula must be submitted with each application.

(d) At the time that the Agency requires submission of an application for reregistration, it may also issue to registrants of affected products a notice under FIFRA section (3)(c)(2)(B) requiring the submission of data. The applicant must state in his application for reregistration that he has complied with the terms of that notice.

(Approved by the Office of Management and Budget under Control Number 2000–0012)

§ 152.70 Agency response to application.

(a) *Approval of application.* The Agency will approve an application for reregistration when it determines that the registrant has complied with the instructions in the Agency's notice, and that the production meets the criteria for registration stated in § 152.112 or § 152.113, as applicable. Any application which pertains to a product with uses, labeling, packaging, and composition that conform to the applicable Registration Standards(s) will be considered to meet the criteria for registration.

(b) *Time for compliance after approval.* If the Agency approves the application, it will notify the registrant of such approval. The notice of approval will specify the time permitted for modification of product composition, labeling and packaging of products shipped or distributed in commerce.

(c) *Notice of intent to cancel.* If a registrant fails to submit an application within the time allowed, or submits an application that does not conform to Agency requirements, the Agency will issue a notice of intent to cancel the registration, unless within 30 days, the registrant:

(1) Submits a complete and correct application;

(2) Corrects the deficiencies in his previously submitted application; or

(3) Requests a hearing, as provided by § 152.75.

§ 152.75 Hearing.

The rights of a registrant following the issuance of a notice of intent to cancel are described in § 152.148.

Subpart F—Agency Review of Applications

§ 152.100 Scope.

The Agency will follow the procedures in this subpart for all applications for registration, except an application for registration of a pesticide that has been the subject of a previous Agency cancellation notice. The Agency will follow the procedures of Subpart D of 40 CFR Part 164, in evaluating any application that meets the criteria of 40 CFR 164.13. Generally, that section applies to any application for registration of a pesticide for a use that has been prohibited by the Agency following the issuance of a cancellation notice.

§ 152.102 Publication.

The Agency will issue in the **Federal Register** a notice of receipt of each application for registration of a product that contains a new active ingredient or that proposes a new use.

§ 152.104 Completeness of applications.

The applicant is responsible for the accuracy and completeness of all information submitted in connection with the application. The Agency will review each application to determine whether it is complete. An application is incomplete if any pertinent item specified in § 152.50 has not been submitted, or has been incorrectly submitted (e.g., application forms have not been signed).

§ 152.105 Incomplete applications.

The Agency will not begin or continue the review of an application that is incomplete. If the Agency determines that an application is incomplete or that further information is needed in order to complete the Agency's review, the Agency will notify the applicant of the deficiencies and allow the applicant 75 days to make corrections or additions to complete the application. If the applicant believes that the deficiencies cannot be corrected within 75 days, he must notify the Agency within those 75 days of the date on which he expects to complete the application. If, after 75 days, the applicant has not responded, the Agency will terminate any action on such application, and will treat the application as if it had been withdrawn by the applicant. Any subsequent submission relating to the same product must be submitted as a new application.

§ 152.107 Review of data.

(a) The Agency normally will review data submitted with an application if they have not previously been submitted to the Agency.

(b) The Agency normally will review other data submitted or cited by an applicant only:

(1) As part of the process of reregistering currently registered products;

(2) When acting on an application for registration of a product containing a new active ingredient; or

(3) When the Agency determines that it would otherwise serve the public interest.

(c) If the Agency finds that it needs additional data in order to determine whether the product may be registered, it will notify the applicant as early as possible in the review process.

§ 152.108 Review of labeling.

The Agency will review all draft labeling submitted with the application for compliance with the requirements of 40 CFR Part 156. If the applicant submits only that portion of the labeling proposed for amendment, the Agency may review the entire label, as revised by the proposed changes, in deciding whether to approve the amendment. The Agency will not approve final printed labeling, but will selectively review it for compliance with 40 CFR Part 156.

§ 152.110 Time for Agency review.

The Agency will complete its review of applications as expeditiously as possible. Applications involving new active ingredients, new uses, petitions for tolerance or exemptions, or consultation with other Federal agencies normally will take longer than applications for substantially similar products and uses.

§ 152.111 Choice of standards for review of applications.

The Agency has discretion to review applications under either the unconditional registration criteria of FIFRA section 3(c)(5) or the conditional registration criteria of FIFRA section 3(c)(7). The type of review chosen depends primarily on the extent to which the relevant data base has been reviewed for completeness and scientific validity. EPA conducts data reviews needed to support unconditional registrations on a chemical-by-chemical basis, according to an established priority list. Except for applications for registration of a new active ingredient or in special cases where it finds immediate review to be warranted, the Agency will not commence a complete review of the existing data base on a given chemical in response to receipt of an application for registration. Instead the Agency will review the application using the criteria for conditional registration in FIFRA section 3(c)(7) (A) and (B).

§ 152.112 Approval of registration under FIFRA section 3(c)(5).

EPA will approve an application under the criteria of FIFRA section 3(c)(5) only if:

(a) The Agency has determined that the application is complete and is accompanied by all materials required by the Act and this part, including, but not limited to, evidence of compliance with Subpart E of this part;

(b) The Agency has reviewed all relevant data in the possession of the Agency (see §§ 152.107 and 152.111);

(c) The Agency has determined that no additional data are necessary to make the determinations required by FIFRA section 3(c)(5) with respect to the pesticide product which is the subject of the application;

(d) The Agency has determined that the composition of the product is such as to warrant the proposed claims for it, if efficacy data are required by Part 158 for the product;

(e) The Agency has determined that the product will perform its intended function without unreasonable adverse effects on the environment, and, when used in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects on the environment;

(f) The Agency has determined that the product is not misbranded as that term is defined in FIFRA section 2(q) and Part 156, and its labeling and packaging comply with the applicable requirements of the Act, this part, and Parts 156 and 157;

(g) If the proposed labeling bears directions for use on food, animal feed, or food or feed crops, or if the intended use of the pesticide results or may reasonably be expected to result, directly or indirectly, in pesticide residues (including residues of any active or inert ingredient or the product, or of any metabolite or degradation product thereof) in or on food or animal feed, all necessary tolerances, exemptions from the requirement of a tolerance, and food additive regulations have been issued under FFDCA sec. 408, sec. 409 or both; and

(h) If the product, in addition to being a pesticide, is a drug within the meaning of FFDCA section 201(q), the Agency has been notified by the Food and Drug Administration (FDA) that the product complies with any requirements imposed by FDA.

§ 152.113 Approval of registration under FIFRA section 3(c)(7)—products that do not contain a new active ingredient.

(a) Except as provided in paragraph (b) of this section, the Agency will approve an application for registration or amended registration of a pesticide product, each of whose active ingredients is contained in one or more other registered pesticide products, only if the Agency has determined that:

(1) It possesses all data necessary to make the determinations required by FIFRA section 3(c)(7) (A) or (B) with respect to the pesticide product which is the subject of the application (including, at a minimum, any data needed to characterize any incremental risk that would result from approval of the application);

(2) Approval of the application would not significantly increase the risk caused by already registered products containing the same active ingredient(s) and

(3) The criteria of § 152.112(a), (d), and (f) through (h) have been satisfied.

(b) *Prohibition on conditional registration of new uses.* Notwithstanding the provisions of paragraph (a) of this section, the Agency will not approve the conditional registration of any pesticide product for a new use if:

(1) The pesticide is the subject of a special review, based on a use of the product that results in human dietary exposure; and

(2) The proposed new use involves use on a major food or feed crop, or involves use on a minor food or feed crop for which there is available an effective alternative registered pesticide which does not meet the risk criteria associated with human dietary exposure. The determination of available and effective alternatives shall be made with the concurrence of the Secretary of Agriculture.

§ 152.114 Approval of registration under FIFRA section 3(c)(7)—products that contain a new active ingredient.

An application for registration of a pesticide containing an active ingredient not in any currently registered product may be conditionally approved for a period of time sufficient for the generation and submission of certain of the data necessary for a finding of registrability under FIFRA section 3(c)(5) if the Agency determines that:

(a) Insufficient time has elasped since the imposition of the data requirement for that data to have been developed;

(b) All othe required test data and materials have been submitted to the Agency;

(c) The criteria in § 152.112 (a), (b), (d), and (f) through (h) have been satisfied;

(d) The use of the pesticide product during the period of the conditional registration will not cause any unreasonable adverse effect on man or the environment; and

(e) The registration of the pesticide product and its subsequent use are in the public interest.

§ 152.111 Conditions of registration.

(a) *Substantially similar products and new uses.* Each registration issued under § 152.113 shall be conditioned upon the submission or citation by the registrant of all data which are required for unconditional registration of his product under FIFRA section 3(c)(5), but which have not yet been submitted, no later than the time such data are required to be submitted for similar pesticide products already registered. If a notice requiring submission of such data has been issued under FIFRA section 3(c)(2)(B) prior to the date of approval of the application, the application must submit or cite the data described by that notice at the time specified by that notice. The applicant must agree to these conditions before the application may be approved.

(b) *New active ingredients.* Each registration issued under § 152.114 shall be conditioned upon:

(1) The applicant's submission of remaining required data in accordance with a schedule approved by the Agency;

(2) The failure of the data when submitted to demonstrate (alone, or in conjunction with other data) that the product or one or more of its uses meets or exceeds any of the risk criteria established by the Agency to initiate a special review.

(3) *Other conditions.* The Agency may establish, on a case-by-case basis, other conditions applicable to registration to be issued under FIFRA section 3(c)(7).

(4) *Cancellation if condition is not satisfied.* If any condition of the registration of a product is not satisfied, the registration will be cancelled under FIFRA section 6(e) and § 152.148.

§ 152.117 Notification to applicant.

The Agency will notify the applicant of the approval of his application by a Notice of Registration for new registration, or a letter in the case of an amended registration.

§ 152.118 Denial of application.

(a) *Basis for denial.* The Agency will deny an application for registration if the pesticide product does not meet the criteria for registration under either FIFRA section 3(c)(5) or 3(c)(7), as specified in §§ 152.112 through 152.114.

(b) *Notification of applicant.* If the Agency determines that an application should be denied, it will notify the applicant by certified letter. The letter will set forth the reasons and factual basis for the determination with conditions, if any, which must be fulfilled in order for the registration to be approved.

(c) *Opportunity for remedy by the applicant.* The applicant will have 30 days from the date of receipt of the certified letter to take the specified corrective action. During this time the applicant may request that this application be withdrawn.

(d) *Notice of denial.* If the applicant fails to correct the deficiencies within the 30-day period, the Agency may issue in the **Federal Register** a notice of denial which sets forth the reasons and the factual basis for the denial.

(e) *Hearing rights.* Within 30 days following the publication of the notice of denial, an applicant, or any interested person with written authorization of the applicant, may request a hearing in accordance with FIFRA section 6(b). Hearings will be conducted in accordance with 40 CFR Part 164.

Subpart G—Obligations and Rights of Registrants

§ 152.122 Currency of address of record and authorized agent.

(a) The registrant must keep the Agency informed of his current name and address of record. The Agency will first attempt to contact the registrant by certified mail. If the letter is returned as undeliverable, the Agency will issue legal notice in the **Federal Register**, under FIFRA section 3(c)(2)(B), requiring that the registrant submit his current name and address within 90 days. After 90 days, the Agency will issue in the **Federal Register** a notice of intent to suspend any or all registrations of the registrant after 30 days. Upon expiration of the 30 days, the Agency will suspend such products. A product suspended because of failure of the registrant to submit this information will be reinstanted if the registrant subsequently notifies the Agency of his current name and address of record.

(b) The registrant must also notify the Agency if he changes his authorized agent.

§ 152.125 Submission of information pertaining to adverse effects.

If at any time the registrant receives or becomes aware of any factual information regarding unreasonable adverse effects of the pesticide on man or the environment that has not previously been submitted to the Agency, he shall, in accordance with FIFRA section 6(a)(2), immediately provide such information to the Agency, clearly identified as FIFRA section 6(a)(2) data. Such information concludes, but is no limited to, published or unpublished laboratory studies (whether or not such studies have been completed) and human, animal or non-target plant accident experience. Refer to Agency interpretations and statements of policy isued in the **Federal Registers** of August 23, 1978 (43 FR 37611) and July 12, 1979 (44 FR 40716).

§ 152.128 Distribution under approved labeling.

(a) A registrant may distribute or sell a registered product with the labeling currently approved by the Agency.

(b) A registrant may distribute or sell the product under labeling bearing any subset of the approved uses, provided that in limiting the uses listed on the label, no changes would be necessary in precautionary statements, use classification, or packaging of the product.

(c) If the product labeling is amended on the initiative of the registrant, by submission of an application for amended registration, the registrant may distribute or sell under the previously approved labeling for a period of one year after approval of the revision, unless an order issued under FIFRA sec. 6 provides otherwise. The Agency will not normally require that products not in the physical possession of the registrant be relabeled. Refer to § 152.42(b).

(d) If a product's labeling is revised, as a result of the issuance of a Registration Standard, a Label Improvement Program notice, or a notice concluding a special review process, the Agency will specify in the notice to the registrant the period of time that previously approved labeling may be used. The Agency will normally make such label changes effective as of a date certain or a future date the product is distributed or sold by the registrant. Unless stated otherwise in the notice, the Agency will not apply the requirement retroactively such that product not in the physical possession of the registrant must be relabeled.

§ 152.130 Transfer of registration.

(a) A registrant may transfer the registration of a product to another person without the requirement of a new application for registration by that other person if the parties submit to the Agency the documents listed in

paragraphs (b) and (c) of this section, and receive Agency approval as described in paragraph (d) of this section.

(b) Persons seeking approval of a transfer of registration must provide a document signed by authorized representatives of the registrant (the transferor) and the person to whom the registration is transferred (the transferee) that contains the following information:

(1) The name, address and State of incorporation of the transferor;

(2) The name, address and State of incorporation of the transferee;

(3) The name(s) and EPA registration number(s) of the product(s) being transferred;

(4) A statement that the transferor transfers irrevocably to the transferee all right, title, and interest in the EPA registration(s) listed in the document;

(5) A statement that the transferred registration(s) shall not serve as collateral or otherwise secure any loan or other payment arranged or executory promise, and that the registration(s) shall not revert to the transferor unless a new transfer agreement is submitted to and approved by the Agency;

(6) A description of the general nature of the underlying transaction e.g., sale, bankruptcy (no financial information need be disclosed);

(7) A statement that the transferor and transferee understand that any false statement may be punishable under 18 U.S.C. 1001; and

(8) An acknowledgement by the transferee that his rights and duties concerning the registration will be deemed by EPA to be the same as those of the transferor at the time the transfer is approved.

(c) In addition, the transferor must submit to the Agency a notarized statement affirming that:

(1) The person signing the transfer agreement is authorized by the registrant to bind the transferor;

(2) No court order prohibits the transfer, and that any required court approvals have been obtained; and

(3) The transfer is authorized under Federal, State and local law and relevant corporate charters, bylaws or partnership agreements.

(d) If the required documents are submitted, and no information available to the Agency indicates that the information is incorrect, the Agency will approve the transfer without requiring that the transferee obtain a new registration. The Agency will notify the transferor and transferee of its approval.

(e) The transfer will be effective on the date of Agency approval. Thereafter the transferee will be regarded as the registrant for all purposes under FIFRA.

(f) Rights to exclusive use of data or compensation under FIFRA section 3(c)(1)(D) are separate from the registration itself and may be retained by the transferor, or may be transferred independently in accordance with the provisions of § 152.98. If the registrant as the original data submitter wishes to transfer data rights at the same time as he transfers the registration, he may submit a single transfer document containing the information required by this section for both the registration and the data.

(Approved by the Office of Management and Budget under Control Number 2000-0012.)

§ 152.135 Voluntary cancellation.

(a) A registrant may request at any time that his registration be cancelled. A request for voluntary cancellation must include the registrant's name and address, the product name(s), the EPA registration number(s) involved, and the signature of the registrant or his authorized representative. EPA will send a notice of cancellation by certified mail to the registrant. After the effective date of the cancellation, the Agency will normally permit the distribution and sale of existing stocks of the cancelled product for one year.

(b) Voluntary cancellation of a product applies to all products distributed under that registration number. The registrant is responsible for ensuring that distributors under his cancelled registration are notified and comply with the terms of the cancellation.

Subpart H—Agency Actions Affecting Registrations

§ 152.140 Classification of pesticide products.

The Agency may, as part of the registration or reregistration of a pesticide, or by issuing a regulation, or by an order under FIFRA section 6 classify a product, its uses, or a class of products or uses for restricted use, in accordance with the criteria and procedures in Subpart I of this part.

§ 152.142 Submission of information to maintain registration in effect.

FIFRA section 3(c)(2)(B) authorizes the Agency to require that a registrant submit information necessary to maintain his registration in effect. Such information may consist of data on the chemistry, efficacy, toxicity, environmental fate, environmental effects or other characteristics of the product or its ingredients, or on the exposure of organisms to the product or its ingredients, or other information necessary to support the continued registration of the product. If the Agency determines that additional data are necessary in order to maintain a registration in effect, the procedures set out in FIFRA section 3(c)(2)(B) will be used.

§ 152.144 Reregistration.

Under FIFRA section 3(g), the Agency must evaluate all currently registered pesticides against the standards of FIFRA section 3(c)(5) or 3(c)(7) and reregister those that meet systematic review of pesticides that culminates in the issuance of a Registration Standard for products containing a specified active ingredient. The registrant of a product may be required to change the product's composition, labeling, packaging, or uses in order to be reregistered and to maintain his registration in effect. The procedures for reregistration are found in Subpart D of this part.

§ 152.146 Special review of pesticides.

The Agency has established a special review process to identify and evaluate pesticides that may cause unreasonable adverse effects on man or the environment when used in accordance with label directions or widespread and commonly recognized practice. If the Agency determines that the product or its uses may cause unreasonable adverse effects, or that the risks posed by the pesticide outweigh its benefits, the Agency may initiate cancellation proceedings under § 152.148.

§ 152.148 Cancellation of registration.

(a) *Grounds for cancellation.* The Agency may issue a notice of intent to cancel the registration of a product, or to cancel the registration unless it is amended as specified in the notice, if:

(1) The composition, labeling, or packaging of the product, or other materials required to be submitted, do not comply with the Act;

(2) The pesticide, when used in accordance with label directions, or widespread and commonly recognized practice, generally causes unreasonable adverse effects on the environment;

(3) A registrant fails to initiate or pursue appropriate action toward meeting any conditions imposed on the registration;

(4) A registrant fails to meet any conditions imposed on the registration;

(5) A registrant fails to comply with the provisions of Subpart I of this Part for a product that has been classified for restricted use; or

(6) A registrant submits to the Agency a false statement concerning compliance of any study with the Good Laboratory Practices requirements of 40 CFR Part 160.

(b) *Notice of intent to cancel.* The Agency will, by certified mail, notify the registrant at the address of record of the Agency's intent to cancel, and will state the reasons for the proposed cancellation. The Agency will also issue in the **Federal Register** a notice of its intent to cancel a registration.

(c) *Opportunity for corrections.* The registrant may, within 30 days of his receipt of the notice or publication in the **Federal Register**, whichever is later, submit an application to amend his registration to make any corrections identified in the notice.

(d) *Hearing request.* (1) The registrant may, within 30 days of the registrant's receipt of the notice or publication in the **Federal Register**, whichever is later, request that a hearing be held. The registrant may request a hearing on any or all of the Agency's requirements, as stated in the Agency's notice of intent to cancel. If he does so, the registrant must state in his request the specific requirements he objects to, and the reasons for his objection. He need not comply with the requirements in dispute until a final hearing decision has been issued. The registrant must, however, within the time frames allowed for other registrants, comply with all other Agency requirements that are not at issue.

(2) Any other person adversely affected by the proposed cancellation may, within 30 days of publication in the **Federal Register**, request that a hearing be held.

(3) If a request for a hearing is received, the hearing will be conducted according to FIFRA section 6(d) or 6(e) and 40 CFR Part 164.

(e) *Effective date of cancellation.* (1) If no hearing request is timely received and the registrant fails to make required corrections in a timely manner, the cancellation shall be effective at the end of 30 days from the date of publication in the **Federal Register** or receipt by the registrant, whichever is later.

(2) If a hearing is requested to challenge the cancellation, and thereafter the cancellation is sustained, it shall be effective immediately upon issuance of the final Agency order in the proceeding.

(f) *Effect of cancellation.* After the effective date of cancellation, sale or distribution of a cancelled product by the registrant will be considered a violation of FIFRA section 12(a)(1)(A) or 12(a)(2)(K). The Agency will specify in the notice of final cancellation whether existing stocks of the product may be sold and distributed, what conditions of sale, distribution and use (if any) have been established, and the date after which such sale and distribution will no longer be permitted.

(g) *Reinstatement of registration.* The Agency will reinstate a cancelled registration if the registrant can show that the cancellation was the result of Agency clerical or administrative error, or that the Agency failed to follow the procedures of this section in canceling the registration.

§ 152.150 Suspension of registration.

(a) *Grounds for suspension.* The Agency may issue a notice of intent to suspend the registration of a product if:

(1) Under FIFRA section 6(c), the Agency determines that suspension is necessary in order to prevent an imminent hazard during the time necessary for cancellation or change in classification proceedings.

(2) Under FIFRA section 3(c)(2)(B), a registrant has failed, within the time required:

(i) To take steps to provide data necessary for continued registration;

(ii) To participate in a procedure for reaching agreement concerning joint development of data or in an arbitration proceeding; or

(iii) To comply with the terms of any agreement or arbitration decision.

(b) *Procedures for suspension.* The Agency will suspend products in accordance with the provisions of 40 CFR Part 164, Subpart C, or FIFRA section 3(c) (2) (B), as applicable.

(c) *Effect of suspension.* After the effective date of suspension, the distribution or sale of a suspended product, except in accordance with the terms of the suspension notice, will be considered a violation of FIFRA section 12(a) (2) (J).

§ 152.152 Child-resistant packaging.

The Agency has established criteria, standards and recordkeeping requirements for the packaging of certain products in child-resistant packaging. Refer to 40 CFR Part 157.

§ 152.154 Label Improvement Program.

The Agency may review the labeling of a product or class of products for the purpose of determining the continued adequacy and consistency of such labeling with the requirements of 40 CFR Part 156. If the Agency determines, as a result of such review, that labeling revisions are necessary, the Agency will notify each registrant of an affected product, by certified mail, and require that the changes be made. The procedures the Agency will follow in the Label Improvement Program are contained in Subpart J of this part.

§ 152.156 Coloration and discoloration of products.

The Agency has established requirements for the coloration or discoloration of certain pesticide formulations. The pesticides affected and the requirements may be found in Subpart K of this part.

Subpart I—Classification of Pesticides

§ 152.160 Scope.

(a) *Types of classification.* A pesticide product may be unclassified, or it may be classified for restricted use or for general use.

(b) *Kinds of restrictions.* The Agency may restrict a product or its uses to use by certified applicators, as described in FIFRA section 3(d) (1) (C). The Agency may also prescribe by regulation other forms of restriction relating to the product's composition, labeling, packaging, or approved uses.

(c) *Procedures.* The Agency may classify products or uses by regulation. Refer to § 152.164. Alternatively, the Agency will conduct reviews, and may classify products or uses individually or as a class in one or more of the following circumstances:

(1) As part of the review of an application for new registration of a product containing an active ingredient not contained in any currently registered product;

(2) As part of the review of an application for a new use of a product, if any existing use of that product have previously been classified for restricted use.

(3) As part of the process of developing or amending a registration stand for a pesticide.

(4) As part of any special review of a pesticide.

(5) If the Agency determines at any time that a restriction on the use of a pesticide product is necessary to avoid unreasonable adverse effects on the environment.

(d) *Manufacturing use product.* A manufacturing use product is not subject to the provisions of this subpart.

§ 152.161 Definitions.

In addition to the definitions in § 152.3, the following terms are defined for the purposes of this subpart:

(a) "Dietary LC_{50}" means a statistically derived estimate of the concentration of a test substance in the diet that would cause 50 percent mortality to the test population under specified conditions.

(b) "Outdoor use" means any pesticide application that occurs outside enclosed manmade structures or the consequences of which extend beyond enclosed manmade structures, including, but not limited to, pulp and paper mill water treatments and industrial cooling water treatments.

(c) "Residue" means the active ingredient(s), metabolite(s), or degradation product(s) that remain in the crops, soil, water or any other component of the environment, including man, after the application of a pesticide.

§ 152.164 Classification by regulation.

(a) *Restricted use classification groups.* The Agency may identify a group of products having common characteristics or uses and may, by regulation, classify for restricted use some or all of the products or uses included in that group. Such a group may be comprised of, but is not limited to, products that:

(1) Contain the same active ingredients.

(2) Contain the same active ingredients in a particular concentration range, formulation type, or combination of concentration range and formulation type.

(3) Have uses in common.

(4) Have other characteristics, such as toxicity, flammability, or physical properties, in common.

(b) *Time frames for compliance*—(1) *Submission to the Agency.* Within 60 days after the effective date of the final rule classifying a product or use of a registered product as restricted, the registrant must submit to the Agency one of the following:

(i) A copy of the amended label and any supplemental labeling to be used as an interim compliance measure.

(ii) A certification statement that the registrant will comply with the labeling requirements prescribed by the Agency within the time frames prescribed by the regulation.

(iii) An application for amended registration to delete the uses which have been restricted, or to "split" the registration into two registrations, one including only restricted or all uses, and the other including only uses that have not been classified.

(2) *Distribution and sale.* (i) No product with a use classified for restricted use by a regulation may be distributed or sold by the registrant or producer after the 120th day after the effective date of such regulation unless the product:

(A) Bears an approved amended label which complies with 40 CFR 156.62;

(B) Bears a sticker containing the product name, EPA registration number, and any terms of restricted use imposed by the Agency, or

(C) Is accompanied by supplemental labeling bearing the information listed in paragraph (b)(2)(i)(B) of this section.

(ii) If the registrant chooses to delete the restricted uses from his product label, in accordance with paragraph (b)(1)(iii) of this section, that product may not be distributed or sold after the 180th day after the effective date of such regulation unless the product bears amended labeling with the restricted uses deleted.

(iii) Notwithstanding paragraphs (b)(2)(i) and (ii) of this section, after the 270th day after the effective date of the regulation, no registrant or producer may distribute or sell a product that does not bear the approved amended label. After that date, stickers and supplemental labeling described in paragraph (b)(2)(i) are no longer acceptable.

(3) *Sale by retailer.* No product with a use classified for restricted use by a regulation may be distributed or sold by a retailer or other person after the 270th day after the effective date of the final rule unless the product bears a label or labeling which complies with paragraph (b)(2)(i) of this section.

§ 152.166 Labeling of restricted use products.

A product that has been classified for restricted use must be labeled in accordance with the requirements of 40 CFR 156.52 or other Agency instructions. The Agency will permit the use of stickers or supplemental labeling as an alternative to the use of an approved amended label. These alternatives may be used on products distributed or sold for 270 days after the effective date of the classification for restricted use, after which date the approved amended label must be used.

§ 152.168 Advertising of restricted use products.

(a) Any product classified for restricted use shall not be advertised without including in the advertisement a statement of its restricted use classification.

(b) The requirement in paragraph (a) of this section shall apply to:

(1) Printed brochures, pamphlets, circulars and similar material;

(2) Advertisements in newspapers, magazines, newsletters and other printed material in circulation to the public;

(3) Advertisements on radio, television, other broadcast media, or by telephone.

(c) The requirement may be satisfied for printed material by inclusion of the statement "Restricted Use Pesticide," or the terms of restriction, enclosed within a solid block outline, in a prominent position in the advertisement. The requirement may be satisfied with respect to broadcast or telephone advertising by inclusion in the spoken broadcast of the words "Restricted use pesticide," or a statement of the terms of restriction.

(d) The requirements of this section shall be effective:

(1) After 270 days after the effective date of restriction of a product that is currently registered, unless the Agency specifies a shorter time period;

(2) Upon the effective date of registration of a product not currently registered.

§ 152.170 Criteria for restriction to use by certified applicators.

(a) *General criteria.* An end-use product will be restricted to use by certified applicators (or persons under their direct supervision) if the Agency determines that:

(1) Its toxicity exceeds one or more of the specific hazard criteria in paragraph (b) or (c) of this section, or evidence described in paragraph (d) of this section substantiates that the product or use poses a serious hazard that may be mitigated by restricting its use to certified applicators;

(2) Its labeling, when considered according to the factors in paragraph (e)(2) of this section, is not adequate to mitigate these hazard(s);

(3) Restriction of the the product to use only by certified applicators would decrease the risk of adverse effects; and

(4) The decrease in risks of the pesticide as a result or restriction would exceed the decrease in benefits.

(b) *Criteria for human hazard*—(1) *Residential and institutional uses.* A pesticide product intended for residential or institutional use will be considered for restricted use classification if:

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

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

(iii) The pesticide, as formulated, has an acute inhalation LC_{50} of 0.5 mg/liter or less;

(iv) The pesticide, as formulated, is corrosive to the eyes (causes irreversible destruction of ocular tissue) or results in corneal involvement or irritation persisting for more than 7 days;

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

(vi) When used in accordance with label directions, or widespread and commonly recognized practice, the pesticide may cause significant subchronic, chronic or delayed toxic effects on man as a result of single or multiple exposures to the product ingredients or residues.

(2) *All other uses.* A pesticide product intended for uses other than residential or institutional use will be considered for restricted use classification if:

(i) The pesticide, as formulated, has an acute oral LD_{50} of 50 mg/kg or less;

(ii) The pesticide, as formulated, has an acute dermal LD_{50} of 200 mg/kg or less;

(iii) The pesticide, as diluted for use, has an acute dermal LD_{50} of 16 g/kg or less;

(iv) The pesticide, as formulated, has an acute inhalation LC_{50} of 0.05 mg/liter or less;

(v) The pesticide, as formulated, is corrosive to the eyes or causes corneal involvement or irritation persisting for more than 21 days;

(vi) The pesticide, as formulated, is corrosive to the skin or causes severe skin irritation persisting for more than 72 hours; or

(vii) When used in accordance with label directions, or widespread and commonly recognized practice, the pesticide may cause significant subchronic toxicity, chronic toxicity, or delayed toxic effects on man, as a result of single or multiple exposures to the product ingredients or residues.

(c) *Criteria for hazard to non-target species*—(1) *All products.* A pesticide product intended for outdoor use will be considered for restricted use classification if:

(i) When used according to label directions, application results in residues in the diet of exposed mammalian wildlife, immediately after application, such that:

(A) The level of residues equals or exceeds one-fifth of the acute dietary LC_{50}; or

(B) The amount of pesticide consumed in one feeding day (mg/kg/day) equals or exceeds one-fifth of the mammalian acute oral LD_{50};

(ii) When used according to label directions, application results, immediately after application, in residues in the diet of exposed birds at levels that equal or exceed one-fifth of the avian subacute dietary LC_{50};

(iii) When used according to label directions, application results in residues in water that equal or exceed one-tenth of the acute LC_{50} for non-target aquatic organisms likely to be exposed; or

(iv) Under conditions of label use or widespread and commonly recognized practice, the pesticide may cause discernible adverse effects on non-target organisms, such as significant mortality or effects on the physiology, growth, population levels or reproduction rates of such organisms, resulting from direct or indirect exposure to the product ingredients or residues.

(2) *Granular products.* In addition to the criteria of paragraph (c)(1) of this section, a pesticide intended for outdoor use and formulated as a granular product will be considered for restricted use classification if:

(i) The formulated product has an acute avian or mammalian oral LD_{50} of 50 mg/kg or less as determined by extrapolation from tests conducted with technical material or directly with the formulated product; and

(ii) It is intended to be applied in such a manner that significant exposure to birds or mammals may occur.

(d) *Other evidence.* The Agency may also consider evidence such as field studies, use history, accident data, monitoring data, or other pertinent evidence in deciding whether the product or use may pose a serious hazard to man or the environment that can reasonably be mitigated by restriction to use by certified applicators.

(e) *Alternative labeling language.* (1) If the Agency determines that a product meets one or more of the criteria of paragraphs (b) or (c) of this section, or if other evidence identified in paragraph (d) of this section leads the Agency to conclude that the product should be considered for restricted use classification, the Agency will then determine if additional labeling language would be adequate to mitigate the identified hazard(s) without restricted use classification. If the labeling language meets all the criteria specified in paragraph (e)(2) of this section, the product will not be classified for restricted use.

(2) The labeling will be judged adequate if it meets all the following criteria:

(i) The user, in order to follow label directions, would not be required to perform complex operations or procedures requiring specialized training and/or experience.

(ii) The label directions do not call for specialized apparatus, protective equipment, or materials that reasonably would not be available to the general public.

(iii) Failure to follow label directions in a minor way would result in few or no significant adverse effects.

(iv) Following directions for use would result in few or no significant adverse effects of a delayed or indirect nature through bioaccumulation, persistence, or pesticide movement from the original application site.

(v) Widespread and commonly recognized practices of use would not nullify or detract from label directions such that unreasonable adverse effects on man or the environment might occur.

§ 152.171 Pesticides restricted to use by certified applicators.

The following uses of pesticide products containing the active ingredients specified have been classified for restricted use and are limited to use by or under the direct supervision of a certified applicator:

Active ingredient	Formulation	Use pattern	Classification [1]	Criteria influencing restriction
Acrolein	As sole active ingredient. No mixtures registered.	All uses	Restricted	Inhalation hazard to humans. Residue effects on avian species and aquatic organisms.
Acrylonitrile	In combination with carbon tetrachloride. No registration as the sole active ingredient.	do	do	Other hazards—accident history of both acrylonitrile and carbon tetrachloride products.
Aldicarb	As sole active ingredient	Ornamental uses (indoor an outdoor).	do	Other hazards—accident history.
	No mixtures registered	Agricultural crop uses	Under further evaluation	
Allyl alcohol	All formulations	All uses	Restricted	Acute dermal toxicity.
Aluminum phosphide	As sole active ingredient. No mixtures registered.	do	do	Inhalation hazard to humans.
Azinphos methyl	All liquids with a concentration greater than 13.5 pct.	do	do	Do.
	All other formulations	do	Under further evaluation	

Active ingredient	Formulation	Use pattern	Classification [1]	Criteria influencing restriction
Calcium cyanide	As sole active ingredient. No mixture registered.	...do	Restricted	Do.
Carbofuran	All concentrate suspensions and wettable powders 40% and greater.	...do	...do	Acute inhalation toxicity.
	All granular formulations	Rice	Under evaluation	
	All granular and fertilizer formulations	All uses except rice	...do	
Chlorterninphos	All concentrate solutions or emulsifiable concentrates 21% and greater.	All uses (dmestic and nondomestic).	Restricted	Acute dermal toxicity.
Chloropicrin	All formulations greater than 2%	All uses	...do	Acute inhalation toxicity.
	All formulations	Rodent control	...do	Hazard to non-target organisms.
	All formulations 2% and less	Outdoor uses (other than rodent control).	Unclassified	
Clonitralid	All wettable powders 70% and greater	All uses	Restricted	Acute inhalation toxicity.
	All granulars and wettable powders	Molluscide uses	Restricted	Effects on aquatic organisms.
	Pressurized sprays 0.55% and less	Hospital antiseptics	Unclassified	
Cycloheximide	All formulations greater than 4%	All uses	Restricted	Acute dermal toxicity.
	All formulations 0.027% to 4%	...do	Under evaluation	
	All formulations 0.027% and less	Domestic uses	Unclassified	
Demeton	1 pct fertilizer formulation, 1.995 pct granular formulation.	All uses, including domestic uses	Restricted	Domestic uses: Acute oral toxicity. Acute dermal toxicity. Nondomestic outdoor uses. Residue effects on avian and mammalian species.
	All granular formulations, emulsifiable concentrates and concentrated solutions.	All uses	...do	Acute dermal toxicity. Residue effects on mammalian and avian species.
Dicrotophos	All liquid formulations 8% and greater	All uses	Restricted	Acute dermal toxicity; residue effects on avian species (except for tree injections).
Dioxathion	All concentrate solutions or emulsifiable concentrates [2] greater than 30%.	...do	...do	Acute dermal toxicity.
	Concentrate solutions or emulsifiable concentrates [2] 30% and less and wettable powders 25% and less.	Livestock and agricultural uses (non-domestic uses only).	Unclassified	
	All slutions [2] 3% and greater	Domestic uses	Restricted	Do.
	2.5% solution [2] with toxaphene and melathion.	All uses	Under evaluation	Acute dermal toxicity.
Disulfoton	All emulsifiable concentrates 65% and greater, all emulsifiable concentrates and concentrate solutions 21% and greater with fensulfothion 43% and greater, all emulsifiable concentrates 32% and greater in combination with 32% fensulfothion and greater.	...do	Restricted	Acute inhalation toxicity.
	Non-aqueous solution 95% and greater	Commercial seed treatment	Restricted	Acute dermal toxicity.
	Granular formulations 10% and greater	Indoor uses (greenhouse)	...do	Acute inhalation toxicity.
Endrin	All emulsions, dusts wettable powders, pastes, and granular formulations 2 pct and above.	All uses	Restricted	Acute dermal toxicity. Hazard to nontarget organisms.
	All concentrations less than 2 pct	...do	...do	Hazard to nontrget organisms.
EPN	All liquid and dry formulations greater than 4%.	...do	...do	Acute dermal toxicity; acute inhalation toxicity; residue effects on avian species.
		Aquatic uses	...do	Effects on aquatic organisms.
Ethoprop	Emulsifiable concentrates 40% and greater.	All uses	...do	Acute dermal toxicity.
	All granular and fertilizer formulations	All uses	Under evaluation	
Ethyl parathion	All granular and dust formulations greater than 2 pct, fertilizer formulations, wettable powders, emulsifiable concentrates, concentrated suspensions, concentrated solutions.	...do	Restricted	Inhalation hazard to humans. Acute dermal toxicity. Residue effects on mammalian, aquatic, avian species.
	Smoke fumigants	...do	...do	Inhalation hazard to humans
	Dust and grular formulations 2 pct and below.	...do	...do	Other hazards—accident history.
Fenamiphos	Emulsifiable concentrates 35% and greater.	...do	...do	Acute dermal toxicity.
Fensulfothion	Concentrate solutions 63% and greater, all emulsifiable concentrates and concentrate solutions 43% and greater with disulfoton 21% and greater, all emulsifiable concentrates 32% and greater in combination with disulfoton 32% and greater.	...do	Restricted	Do. Acute inhalation toxicity.
	Granular formulations 10% and greater	Indoor uses (greenhouse)	...do	Do.
Fluoroacetamide/1081	As sole active ingredient in baits. No mixtures registered.	All uses	Restricted	Acute oral toxicity.
Fonofos	Emulsifiable concentrates 44% and greater.	...do	...do	Acute dermal toxicity.
	Emulsifiable concentrates 12.6% and less with pebulate 50.3% and less.	Tobacco	Unclassified	
Hydrocyanic acid	As sole active ingredient. No mixtures registered.	...do	Restricted	Inhalation hazard to humans.
Methamidophos	Liquid formulations 40% and greater	...do	Restricted	Acute dermal toxicity; residue effects on avian species.
	Dust formulations 2–5% and greater	...do	...do	Residue effects on avian species.
Methidathion	All formulations	All uses except nursery stock, safflower and sunflower.	...do	Do.
	All formulations	Nursery stock, safflower and sunflower.	Unclassified	
Methomyl	As sole active ingredient in 1 pct to 2.5 baits (except 1 pct fly bait).	Nondomestic outdoor-agricultural crops, ornamental and turf. All other registered uses.	Restricted	Residue effects on mammalian species.
	All concentrated solution formulations	...do	...do	Other hazards-accident history.

Active ingredient	Formulation	Use pattern	Classification [1]	Criteria influencing restriction
	90 pct wettable powder formulation (not in water soluble bags).	....do	....do	Do.
	90 pct wettable power formulation in water soluble bags.	....do	Unclassified	
	All granular formulations	....do	....do	
	25 pct wettable powder formulations	....do	....do	
	In 1.24 pct to 2.5 pct dusts as sole active ingredient and in mixtures with fungicides and chlorinated hydrocarbon, inorganic phosphate and biological insecticides.	....do	....do	
Methyl bromide	All formulations in containers greater than 1.5 lb.	All uses	Restricted	Do.
	Containers with not more than 1.5 lb of methyl bromide with 0.25 pct to 2.0 pct chloropicrin as an indicator.	Single applications (nondomestic use) for soil treatment in closed systems.	Unclassified	
	Containers with not more than 1.5 lb having no indicator.	All uses	Restricted	Do.
Methyl parathion	All dust and grandular formulations less than 5 pct.	....do	....do	Other hazards-accident history. All foliar applications restricted based on residue effects on mammalian and avian species.
	Microencapsulated	....do	....do	Residue effects on avian species. Hazard to bees.
	All dust and granular formulations 5 pct and greater and all wettable powders and liquids.	....do	....do	Acute dermal toxicity. Residue effects on mammalian and avian species.
Mevinphos	All emulsifiable concentrates and liquid concentrates.	....do	....do	Do.
	Psycodid filter fly liquid formulations	....do	....do	Acute dermal toxicity.
	2 pct dust	....do	....do	Residue effects on mammalian and avian species.
Monocrotophos	Liquid formulations 19% and greater	....do	....do	Residue effects on avian species. Residue effects on mammalian species.
	Liquid formulations 55% and greater	....do	....do	Acute dermal toxicity. Residue effects on avian species. Residue effects on mammalian species.
Nicotine (alkaloid)	Liquid and dry formulations 14% and above.	Indoor (greenhouse)	....do	Acute inhalation toxicity.
	All formulations	Applications to cranberries	....do	Effects on aquatic organisms.
	Liquid and dry formulations 1.5% and less.	All uses (domestic and nondomestic).	Unclassified	
Paraquat (dichloride) and paraquat bis(methyl sulfate).	All formulations and concentrations except those listed below.	All uses	Restricted	Other hazards. Use and accident history, human toxicological data.
	Pressurized spray formulations containing 0.44 pct Paraquat bis(methyl sulfate) and 15 pct petroleum distillates as active ingredients.	Spot weed and grass control	Unclassified	
	Liquid fertilizers containing concentrations of 0.025 pct paraquat dichloride and 0.03 percent atrazine; 0.03 pct paraquat dichloride and 0.37 pct atrazine, 0.04 pct paraquat dichloride and 0.49 pct atrazine.	All uses	....do	
Phorate	Liquid formulations 65% and greater	....do	Restricted	Acute dermal toxicity Residue effects on avian species (applies to foliar applications only). Residue effects on mammalian species (applies to foliar application only).
	All granular formulations	Rice	....do	Effects on aquatic organisms.
Phosacetim	Baits 0.1% and greater	All uses	Restricted	Hazard to non-target species. Residue effects on mammalian species. Residue effects on avian species.
Phosphamidon	Liquid formulations 75% and greater	....do	....do	Acute dermal toxicity. Residue effects on mammalian species. Residue effects on avian species.
	Dust formulations 1.5% and greater	....do	....do	Do. Residue effects on mammalian species.
Picloram	All formulations and concentrations except tordon 101 R.	....do	....do	Hazard to nontarget organisms (specifically nontarget plants both crop and noncrop).
	Tordon 101 R forestry herbicide containing 5.4 pct picloram and 20.9 pct 2,4-D.	Control of unwanted trees by cut surface treatment.	Unclassified	
Sodium cyanide [3]	All capsules and ball formulations	All uses	Restricted	Inhalation hazard to humans.
Sodium fluroacetate	All solutions and dry baits	....do	....do	Acute oral toxicity. Hazard to nontarget organisms. Use and accident history.
Strychnine	All dry baits, pellets and powder formulations greater than 0.5 pct.	....do	....do	Acute oral toxicity. Hazard to nontarget avian species. Use and accident history.
	All dry baits, pellets and powder formulations.	All uses calling fur burrow builders.	....do	Hazard to nontarget organisms.
	All dry baits, pellets and powder formulations 0.5 pct and below.	All uses except subsoil	....do	Do.
	....do	All subsoil uses	Unclassified	
Sulfotepp	Sprays and smoke generators	All uses	Restricted	Inhalation hazard to humans.
Tepp	Emulsifiable concentrate formulations	....do	....do	Inhalation hazard to humans. Dermal hazard to humans. Residue effects on mammalian and avian species.
Zinc Phosphide	All formulations 2% and less	All domestic uses and nondomestic uses in and around buildings.	Unclassified	
	All dry formulations 60% and greater	All uses	Restricted	Acute inhalation toxicity.

Active ingredient	Formulation	Use pattern	Classification [1]	Criteria influencing restriction
	All bait formulations	Non-domestic outdor uses (other than around buildings).	....do	Hazard to non-target organisms.
	All dry formulations 10% and greater	Domestic uses	....do	Acute oral toxicity.

[1] "Under evaluation" means no classification decision has been made and the use/formulation in question is still under active review within EPA.
[2] Percentages given are the total of dioxathion plus related compunds.
[3] (NOTE—M-44 sodium cyanide capsules may only be used by certified applicators who have also taken the required additional training.)

§ 152.175 Restrictions other than those relating to use by certified applicators.

The Agency may by regulation impose restrictions on a product or class of products if it determines that:

(a) Without such restrictions, the product when used in accordance with warnings, cautions and directions for use or in accordance with widespread and commonly recognized practices of use may cause unreasonable adverse effects on man or the environment; and

(b) The decrease in risks as a result of restricted use would exceed the decrease in benefits as a result of restricted use.

Subpart J—Label Improvement Program

§ 152.180 General.

(a) The Agency's Label Improvement Program (LIP) is a continuing program for the purpose of upgrading pesticide labeling for three purposes:

(1) To reduce risks associated with the use of the pesticide;

(2) To improve the enforceability of the instructions by eliminating ambiguities and clarifying language; and

(3) To promote consistency in labeling of similar products.

(b) The LIP program is intended to function within existing regulations, policies, and procedures, and not to implement new requirements. The purpose is to achieve rapid response to labeling problems identified by the Agency, the States, user groups or the public.

(c) The procedures the Agency will use in administering the LIP program and the procedures that registrants must follow to comply with the program are described in this subpart. When an application for amended registration is required of registrants, the Agency will follow the same procedures as for submission and review of applications for other amendments.

§152.185 Notification and submission to Agency.

When the Agency initiates an LIP activity, it will notify each affected registrant by certified mail of the specific revisions to be made to his product label. The notice will require that the registrant take one of the following actions:

(a) Submit an application for amended registration for Agency approval before distributing or selling products bearing the amended labeling. If an application for amended registration is required, the registrant must submit to the Agency within a specified time the following information:

(1) An application form;

(2) Five copies of draft labeling incorporating the required changes;

(3) In some cases, a Confidential Statement of Formula (on a form provided by the Agency);

(b) Make the required changes within a given time frame, which may be a date certain or a non-specific date, and certify to the Agency that he had done so. If a certification statement is required, the registrant must submit a statement containing the following information:

(1) A certification that he has made, or will make within the allotted time frame, the changes specified in the LIP notice;

(2) A recitation of the changes to be made;

(3) The date on which the changes were or are expected to be accomplished, if a date certain was not stated in the notice;

(4) The name, title and signature of the registrant or his authorized representative;

(5) An agreement that all product labels, including all distributor product labels, will be revised.

(c) Make the required changes without submission of application or certification.

§ 152.187 Time for submission.

(a) The notice to the registrant will specify a time frame for submission of materials to the Agency. Normally, not less than 60 days will be allowed for an application and not less than 30 days for a certification statement.

(b) If the required materials are not submitted within the stated time, the Agency may initiate a cancellation proceeding under FIFRA section 6(b) and § 152.148 of this part.

§ 152.190 Combined applications.

A single application may respond to two or more LIP notices when the time periods for response overlap. Time frames for submission and compliance will be calculated from the later of the LIP notices.

§ 152.195 Compliance after approval of application.

An LIP notice to registrants will clearly specify when product labeling must be revised. The date will normally be not less than 6 months from the date of the notice or date of approval of an application, but the Agency may establish shorter time frames and permit the use of stickers or supplemental labeling as an interim compliance measure. After the date specified, a product may not be distributed or sold by the registrant (or any supplemental distributors included under his registration) without bearing the approved amended label, sticker, or supplemental labeling if permitted.

Subpart K—Coloration and Discoloration of Pesticides

§ 152.200 General.

Section 25(c)(5) of the Act authorizes the Administrator to prescribed regulations requiring coloration or discoloration of any pesticide if he determines that such requirement is feasible and necessary for the protection of health and the environment. The Agency uses the Munsell Book of Color as a color standard.

§ 152.205 Coloring agent.

The coloring agent must produce a uniformly colored product not subject to change beyond the minimum requirements specified in this subpart during ordinary conditions of distribution and storage and must not cause the product to be ineffective or result in adverse effect to non-target organisms when used as directed.

§ 152.207 Arsenicals and barium fluosilicate.

Standard lead arsenate, basic lead arsenate, calcium arsenate, magnesium arsenate, zinc arsenate, and barium fluosilicate shall be colored any hue, except the yellow-reds and yellows, having a value of not more than 8 and a chroma of not less than 4, or shall be discolored to a neutral lightness value not over 7.

§ 152.210 Sodium fluoride and sodium fluosilicate.

(a) Products containing sodium fluoride and sodium fluosilicate shall be colored blue or green having a value of

not more than 2 and a chroma of not less than 4, or shall be discolored to a neutral lightness value not over 7.

(b) A product containing sodium fluoride shall be exempt from the requirements of this section if:

(1) It is intended and labeled for use as a fungicide solely in the manufacture or processing of rubber, glue, or leather goods.

(2) Coloration of the pesticide in accordance with said requirements will be likely to impart objectionable color characteristics to the finished goods;

(3) The pesticide will not be present in such finished goods in sufficient quantities to cause injury to an person; and

(4) The pesticide will not come into the hands of the public except after incorporation into such finished goods.

§ 152.215 Seed treatment products.

(a) Pesticide products intended for seed treatment use for the control of bacteria, weeds, fungi, insects, nematodes and vertebrate animals, and for which no tolerances or other clearances under the Federal Food, Drug, and Cosmetic Act have been obtained in animals used for food purposes, must contain an EPA-approved dye to impart an unnatural color to the seeds.

(b) The following products are exempt for the requirement of paragraph (a) of this section:

(1) Products intended and labeled for use solely by commercial seed treaters, provided that the label bears a statement requiring the user to add an EPA-approved dye with the pesticide during the seed treatment process;

(2) Products intended and labeled for use solely as at-planting or hopper box treatments;

(3) Products which are gaseous in form or contain volatile liquids which are used for fumigation of seed.

(c) EPA-approved dyes are those listed in 40 CFR 180.1001 (c) and (d). Upon written request additional dyes will be considered for inclusion in this listing.

§ 152.216 Granular products for outdoor use.

Granular products intended for terrestrial outdoor use must be colored with with an EPA-approved dye so as to contrast clearly with the color of the soil to which they will be applied. Such products may not be colored or discolored to white, black, brown, or neutral earth tones. Bright primary colors (such as reds, oranges, yellows, blues, greens) must be used for maximum contrast.

§ 152.218 Exceptions

(a) Notwithstanding other provisions of this subpart, the Agency may exempt a product from the requirements of this subpart, or may permit other hues to be used for any particular purpose, if it determines that use of the prescibed hues is not feasible for such purpose and is not necessary for the protection of health and the environment.

(b) Any pesticide product specified in this subpart which is intended solely for use by a textile manufacturer or commercial laundry, cleaner or dryer as a mothproofing agent, and which would not be suitable for such use if colored, and which will not come into the hands of the public except when incorporated into a fabric, is exempt from the requirements of this subpart.

Subpart L—Intrastate Pesticide Products

§ 152.220 Scope.

This subpart applies to any pesticide which is distributed or sold solely within a single State (hereafter designated an "intrastate product") and:

(a) For which a Notice of Application for Federal Registration (EPA Form 8570–8) containing the following information was filed with EPA by October 4, 1975 (or as extended by the Agency):

(1) The name and mailing address of the registrant;

(2) The name of the State in which the product is registered;

(3) The State registration number (if any) of the product;

(4) The product name;

(5) A list of the product's active ingredients in descending order by weight;

(6) The type and broad use pattern of the product; and

(7) Two complete copies of the labeling as approved by the State;

(b) Which does not contain an active ingredient intended for any end-use that has previously been cancelled or suspended by the Agency for substantive reasons; and

(c) Which is registered under a State pesticide registration law.

§ 152.225 Application for Federal registration.

(a) Each current intrastate producer who has submitted a "Notice of Application for Federal Registration" must, no later than July 31, 1988, submit a full application for Federal registration complying with the requirements of this Part 152.

(b) The Agency may, at time before that date, require the producer of an intrastate product to submit an application for Federal registration of his product.

(c) The Agency will require the producer of an intrastate product to submit an application for Federal registration if the intrastate product contains the same active ingredient and is intended for the same or a substantially similar end use as federally registered products which are subject to:

(1) A notice of Rebuttable Presumption against Registration (RPAR) of special review;

(2) A notice under FIFRA section 3(c)(2)(B) requiring the submission of data in support of Federal registration;

(3) A regulation or notice classifying the product for restricted use under FIFRA section 3(d)(1)(C); or

(4) A notice requiring the Federal registrant to submit an application for reregistration of his product.

(d) If the Agency requires the submission of an application for registration of an intrastate product prior to July 31, 1988, the Agency will notify the producer of the intrastate product in writing, and will specify a date by which the application must be submitted.

§ 152.230 Sale and distribution of unregistered intrastate pesticide product.

(a) An intrastate product which is not federally registered may continue to be sold or distributed solely within a single State until December 31, 1988, provided that

(1) Such product complies with FIFRA section 12(a)(1) (D) and (E), in accordance with the definitions contained in:

(i) FIFRA section 2(q)(1) (A) through (G); and

(ii) FIFRA section 2(q)(2)(A), (C) (i) through (iii), and (D).

(2) The producer of such product has submitted a timely application for Federal registration of the pesticide, if he has been notified by the Agency to do so;

(3) The Agency has not issued in the **Federal Register** a notice of denial of an application for registration of such product under FIFRA section 3(c)(6); and

(4) The Agency has not issued a notice of intent to cancel or suspend federally registered pesticide products containing the same active ingredient and intended for the same (or substantially similar) end uses as such intrastate product.

(b) After December 31, 1988, no intrastate product may be sold or distributed unless it is federally registered.

Subpart M—Devices

§ 152.240 Requirements for devices.

A device is not required to be registered under FIFRA section 3. The Agency has issued a policy statement concerning its authority and activities with respect to devices, which was published, in the **Federal Register** of November 19, 1976 (41 FR 51065). A device is subject to the requirements set forth in:

(a) FIFRA section 2(q)(1) and 40 CFR 156.118, with respect to labeling;

(b) FIFRA section 7 and 40 CFR Part 167, with respect to establishment registration and reporting;

(c) FIFRA section 8 and 40 CFR Part 169, with respect to books and records;

(d) FIFRA section 9, with respect to inspection of establishments;

(e) FIFRA sections 12, 13, and 14, with respect to violations, enforcement activities, and penalties;

(f) FIFRA section 17, with respect to import and export of devices;

(g) FIFRA section 25(c)(3), with respect to child-resistant packaging; and

(h) FIFRA section 25(c)(4), with respect to the Agency's authority to declare devices subject to certain provisions of the Act.

Subparts N–Q [Reserved]

Subpart R—Product Chemistry Data Requirements

§ 152.340 General.

This subpart describes the product chemistry data requirements that apply to all products proposed for registration, amended registration, or reregistration. The information specified in this subpart must be submitted with each application for new registration or amended registration or for reregistration if it has not been submitted previously or if the previously submitted information is not complete and accurate. If a registrant proposes to change the composition of his product in any way that would necessitate revision of the information required by this subpart, he must apply for amended registration.

§ 152.342 Definitions.

The following terms are defined for the purposes of this subpart:

(a) "Beginning material" means any substance used in making the product which constitutes or contains any of the product's active or intentionally added inert ingredients or which constitutes or contains a chemical precursor of any such ingredient.

(b) "Impurity" means any substance in a pesticide product other than an active ingredient or an intentionally added inert ingredient, including beginning materials, side reaction products, contaminants, and degradation products.

(c) "Impurity associated with an active ingredient" means:

(1) Any impurity present in the technical grade of the active ingredient; and

(2) Any impurity which forms in the pesticide formulation through reactions between the active ingredient and other substances in the formulation or packaging of the product.

(d) "Integrated formulation system" means a process for producing an end use product through the use of any substance which contains an active ingredient and which:

(1) Is not a registered pesticide product; or

(2) Was produced or acquired in a manner that does not permit its inspection by the Agency under FIFRA section 9(a) prior to its use in the process.

(e) "Intentionally added inert ingredient" means any ingredient of a pesticide formulation (other than an active ingredient) which is intentionally made a part of the formulation to serve some useful function.

(f) "Nominal concentration" means the amount of an ingredient which is expected to be present in a typical sample of a pesticide.

(g) "Technical grade of an active ingredient" means a material:

(1) Which contains an active ingredient;

(2) Which contains no other intentionally added ingredient, other than one use for synthesis or purification of the active ingredient; and

(3) Which is produced on a commercial or pilot-plant scale.

§ 152.344 Pesticide composition information.

Information on product composition is normally supplied by completing a Confidential Statement of Formula form provided by the Agency. The following information is required:

(a) For each active ingredient, intentionally added inert ingredient and impurity, the name and nominal concentration, and certified limits in accordance with § 152.352.

(b) For each active ingredient and intentionally added inert ingredient, the chemical name from the Chemical Abstracts Index of Nomenclature, the Chemical Abstracts Service (CAS) Registry Number, and the common name (if any).

(c) For each active ingredient, the molecular, structural and empirical formulae, the molecular weight or weight range, and any experimental or internal code number assigned to the ingredient.

(d) The purpose of each active ingredient and intentionally added inert ingredient.

§ 152.346 Description of beginning materials.

Each application must include a description of the beginning materials used to produce the pesticide, including the following information:

(a) If the beginning material is a registered product, the registration number of the product;

(b) For each other beginning material:

(1) The name and address of the manufacturer or producer of the beginning material or, if that information is not known by the applicant, the name and address of the supplier of the beginning material;

(2) Each brand name, trade name, or similar commercial designation of the beginning material used by the manufacturer, producer, or supplier of the beginning material;

(3) A copy of all available technical specifications, data sheets, and other documents by which the manufacturer, producer, or supplier of the beginning material describes its composition, properties, or toxicity; and

(4) All other information which the applicant has available to him concerning the qualitative and quantitative composition of the beginning materials.

§ 152.348 Description of manufacturing process.

Each application must include an accurate and current description of the process used to manufacture or formulate the pesticide. The description must contain the following information:

(a) A statement of whether the process is a batch or continuous process;

(b) The relative amounts of beginning materials and the order in which they are added;

(c) A description of the equipment used to produce the pesticide which may influence its composition;

(d) A description of the physical conditions (e.g., temperature, pressure, humidity) which are controlled during each step of the process in order to influence the pesticide's composition, and the parameters that are maintained;

(e) A statement of whether the process for producing the pesticide involves intended chemical reactions (that is, combination of beginning materials which are expected to react with each other to produce an active

ingredient or intentionally added inert ingredient);

(f) A flow chart with chemical equations of each intended chemical reaction occurring at each step of the process and the duration of each step;

(g) A description of any purification procedures, including procedures to recover or recycle starting materials, intermediates, or the final product; and

(h) A description of measures taken to assure the quality of the final pesticide, including procedures involving the equipment used for blending components and for filling and packaging.

§ 152.350 Discussion of formation of impurities.

Each application must include a discussion of the impurities that may be present in the product, and why they may be present. The discussion should be based on established chemical theory and the information submitted in accordance with §§152.346 and 152.348. The types of impurities which must be discussed are the following, as applicable:

(a) *Manufacturing-use products and end-use products produced by an integrated formulation system.*

(1) Each impurity which the applicant believes may be present in his pesticide product at a level equal to or greater than 0.1 percent (1000 ppm) of the technical grade of the active ingredient, based on his knowledge of:

(i) The composition (or composition range) of each beginning material which he uses to produce any active ingredient of his pesticide;

(ii) The composition (or composition range) of each beginning material containing an active ingredient which he purchases (or otherwise obtains from another) and uses to produce his pesticide;

(iii) The composition (or composition range) of each intentionally added inert ingredient of his pesticide;

(iv) The impurities which he knows are present, or believes are likely to be present, in the materials listed in paragraph (a)(1)(i) through (iii) of this section, and the known or presumed level (or range of levels) of those impurities;

(v) The substances which result from the intended (main) reactions and side reactions which occur in the manufacturing and formulation of his pesticide, and the relative amount of each such substances produced;

(vi) Degradation of any of the product's active ingredients after production of the pesticide but prior to its use, and post-production reactions between any of the pesticide's active ingredients or intentionally added inert ingredients and any other components of the pesticide or its packaging;

(vii) Migration of components of packaging materials into the pesticide;

(viii) Contaminants resulting from earlier use of production equipment to produce other products or substances; and

(ix) The process control, purification and quality control measures he uses; and

(2) Each other impurity which was found to be present in any analysis of the pesticide he has conducted.

(b) *End-use products not produced by an integrated formulation system.* (1) Each impurity which may be present in his pesticide product at a level equal to or greater than 0.1 percent (1000 ppm) of the technical grade of the active ingredient, based on his knowledge of:

(i) The carryover of impurities present in any registered product which serves as the source of any of his pesticide's active ingredients (the level of such impurities in the registered source need not be discussed or quantified);

(ii) The carryover of impurities present in the intentionally added inert ingredients of his pesticide;

(iii) Reactions occurring during the production of his pesticide between any of its active ingredients, between the active ingredients and intentionally added inert ingredients, or between the active ingredients and the production equipment;

(iv) Post-production reactions between any of the pesticide's active ingredients and any other component of the pesticide or its packaging;

(v) Migration of packaging materials into the pesticide; and

(vi) Contaminants resulting from earlier use of equipment to produce other products or substances.

(2) On a case-by-case basis, the Agency may require further discussion of possible chemical reactions involving other ingredients.

§ 152.352 Certification of ingredient limits.

Each registration must be supported by a certification that each upper and lower limit established in accordance with paragraph (a), (b), or (c) of this section will be maintained for all product distributed or sold. The range between the upper and lower certified limits for each active ingredient and each intentionally added inert ingredient should be based on a consideration of the variability of each of these ingredients when normal quality assurance procedures are used in the production process. The limits stated for each ingredient must not greatly exceed its actual variability in the product. The following certified limits must be stated:

(a) For each manufacturing use product that contains no intentionally added inert ingredients (i.e., that consist only of the technical grade of the active ingredient):

(1) For each active ingredient, an upper and lower limit;

(2) For each impurity (or group of structurally similar impurities) associated with an active ingredient that either was indicated in the discussion required by § 152.350 as being potentially present, or that was found to be present in any sample, at a level equal to or greater than 0.1 percent by weight, an upper limit; and

(3) For each impurity (or group of structurally similar impurities) associated with an active ingredient that either was indicated in the discussion required by § 152.350 as being potentially present, or was found to be present in any sample, at a level less than 0.1 percent by weight, an upper limit if the impurity is determined to be of toxicological significance.

(b) For each manufacturing use product containing any intentionally added inert ingredient and each end use product produced by an integrated formulation system:

(1) For each active ingredient, an upper and lower limit;

(2) For each intentionally added inert ingredient, an upper limit;

(3) For each impurity (or group of structurally similar impurities) associated with an active ingredient that was either indicated in the discussion required by § 152.350 as being potentially present, or was found to be present in any sample, at a level equal to or greater than 0.1 percent by weight, an upper limit;

(4) For each impurity (or group of structurally similar impurities) associated with an active ingredient that was either indicated in the discussion required by § 152.350 to be potentially present, or was found to be present in any sample, at a level less than 0.1 percent by weight, an upper limit if the impurity is determined to be of toxicological significance; and

(5) For each impurity (or group of structurally similar impurities) not associated with an active ingredient, an upper limit if the impurity is determined to be of toxicological significance.

(c) For each end use products not produced by an integrated formulation system:

(1) For each active ingredient, an upper and lower limit;

(2) For each intentionally added inert ingredient, an upper limit; and

(3) For each impurity (or group of structurally similar impurities) not associated with an active ingredient, an upper limit if the impurity is determined to be of toxicological significance.

§ 152.353 Certified limits for additional ingredients and impurities.

The Agency may require, on a case-by-case basis, any or all of the following:

(a) More precise limits;

(b) Certified limits for additional ingredients;

(c) More thorough explanation of how the certified limits were determined;

(d) Certified upper limits for impurities which will be present at levels less than 0.1 percent (1000 ppm) of the product; or

(e) A narrower range between the upper and lower certified limits than that proposed by the applicant.

§ 152.354 Enforcement analytical method.

An analytical method suitable for enforcement purposes must be submitted for each active ingredient in the product, and each other ingredient or impurity that is determined to be toxicologically significant.

2. By adding Part 157, to read as follows:

PART 157—PACKAGING REQUIREMENTS FOR PESTICIDES AND DEVICES

Subpart A—[Reserved]

Subpart B—Child-Resistant Packaging

Sec.

Authority: Sec. 25(a)(1) and (c)(3), as amended Pub. L. 92–516, 92 Stat. 819 (7 U.S.C. 136 through 136y).

Subpart A—[Reserved]

Subpart B—Child-Resistant Packaging

§ 157.20 General.

This subpart prescribes requirements for child-resistant packaging of pesticide products. The requirements are established under the authority of FIFRA Section 25(c)(3), which authorizes the Administrator to establish standards with respect to the package, container or wrapping in which a pesticide or device is enclosed in order to protect children and adults from serious injury or illness resulting from accidental ingestion or contact with pesticides or devices regulated under the Act.

§ 157.21 Definitions.

Terms used in this subpart shall have the following meanings:

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

(b) "Child-resistant packaging" means packaging that is designed and constructed to be significantly difficult for children under 5 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.

(c) "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.

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

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

§ 157.22 When required.

A pesticide product must be distributed and sold in child-resistant packaging complying with § 157.32 if the product meets all of the following criteria:

(a) Based upon testing with an appropriate test species, it meets any of the following toxicity criteria:

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

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

(3) The pesticide has an acute inhalation LC_{50} of 0.5 mg/liter or less, based upon a 4-hour exposure;

(4) 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;

(5) 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

(6) The pesticide or device 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 serious hazard of accidental injury or illness which child-resistant packaging could reduce;

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

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

(d) It has not been exempted in accordance with § 157.36.

§ 157.25 Products classified for restricted use.

Notwithstanding the provisions of § 157.22, 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 or device 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.

§ 157.27 Unit packaging.

Pesticide products distributed or sold as an aggregate of one or more unit packages and meeting the criteria of § 157.22 must be distributed or 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.

§ 157.30 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 § 157.32. The registrant must certify to this effect in accordance with § 157.34, and must retain the records required by § 157.39.

§ 157.32 Standards.

(a) *Effectiveness standard.* The child-resistant packaging, when tested by the protocol specified in 16 CFR 1700.20, shall meet the effectiveness specifications in 16 CFR 1700.15(b).

(b) *Compatibility standard.* The child-resistant packaging must continue to meet the effectiveness specifications of paragraph (a) of this section when in actual use as a pesticide container. This requirement may be satisfied 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.

(c) *Durability standard.* The child-resistant packaging must continue to meet the effectiveness and compatibility standards of paragraphs (a) and (b) 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. This requirement may be satisfied by appropriate technical evaluation based on physical wear and stress factors of the packaging, the force required for activation, and other relevant factors.

§ 157.34 Certification.

(a) *General.* (1) The registrant of a pesticide product required to be in child-resistant packaging shall certify to the Agency that the package meets the standards of § 157.32.

(2) 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.

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

(1) 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.

(2) A statement that the packaging that is being used for the product will meet the standards of § 157.32. The statement, "I certify that the packaging that will be used for this product meets the standards of 40 CFR 157.32," will suffice for this purpose.

§ 157.36 Exemptions.

(a) *General.* The Agency may, on a case-by-case or class basis, grant an exemption from the requirements of this subpart, 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.

(b) *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:

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

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

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

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

(c) *Exemption based upon lack of toxicity.* The Agency may grant an exemption from the requirements of this subpart if the registrant or applicant demonstrates to the Agency's satisfaction that the hazards indicated by the toxicity criteria in § 157.22(a) 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.

(d) *Exemption based upon technical factors.* The Agency may grant an exemption from the requirements of this subpart 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 the **Federal Register**. In considering whether to grant an exemption, the Agency will consider, among other things, the following:

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

(2) Whether child-resistant packaging is technically feasible, practicable, or appropriate. An exemption may be granted if the Agency determines that any one of these criteria has been met.

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

(4) 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 or packaging equipment.

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

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

(e) *Exemption based upon package size.* (1) Except as provided in paragraph (e)(2) of this section, the Agency hereby grants an exemption from the requirements of this subpart for each product that is distributed or sold in packages having the net contents specified in the following table:

TABLE--SIZE LIMITS FOR WHICH PACKAGES 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)	Weight (for non-liquids)
Insecticide	> 1 gallon	> 40 pounds
Rodenticide	> 1 gallon	> 40 pounds
Herbicide	> 5 gallons	> 75 pounds
Fungicide	> 5 gallons	> 75 pounds
Antimicrobial (except swimming pool chemicals)	> 5 gallons	> 10 pounds
Swimming pool chemicals	> 15 gallons	> 100 pounds

(2) Notwithstanding the general exemption granted by paragraph (e)(1) 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 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.

(3) A product that, except for the size limitations set out in the table, would be required to be in child-resistant packaging, 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."

§ 157.39 Recordkeeping requirements.

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 this section. The registrant must, upon request by the Agency, make them available to Agency representatives for inspection and copying, or must submit them to the Agency.

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

(1) The container and its dimensions and composition.

(2) 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.

(b) A copy of the certification statement required by § 157.34.

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

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

(2) 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.

(3) Test data, whether or not conforming 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.

(4) Written evidence that verifies that testing on the package has been conducted according to the protocol in 16 CFR 1700.20. Written evidence may be:

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

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

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

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

(i) Information of the kinds described in paragraph (c) (1) through (4) of this section showing that the closure is child-resistant; and

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

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

(6) A combination of the above.

(d) Records verifying that the container meets the compatibility and durability standards of § 157.32.

(Approved by the Office of Management and Budget under Control Number 2000-0407.)

PART 158—DATA REQUIREMENTS FOR REGISTRATION

3. By adding §§ 158.27, 158.32, 158.33 and 158.1001 to proposed Part 158 published on Nov. 24, 1982 (47 FR 53192) and corrected on Jan. 18, 1983 (48 FR 2142), to read as follows:

§ 158.27 Determination of active and inert ingredients.

(a) It is the responsibility of the applicant to determine whether any ingredient is active or inert with respect to pesticidal activity. An ingredient will be considered active if:

(1) The ingredient has the capacity by itself, and when used as directed at the proposed use dilution, to function as a pesticide; or

(2) The ingredient has the ability to elicit or enhance a pesticidal effect in another compound whose pesticidal activity is substantially increased due to the interaction of the compounds. Compounds which function simply to enhance or prolong the activity of an active ingredient by physical action, such as stickers and other adjuvants, are not generally considered to be active ingredients.

(b) The Agency may require any ingredient to be designated as an active ingredient if the Agency finds that it meets the criteria in paragraph (a) of this section for determining active ingredients.

(c) The Agency has concluded that the ingredients listed in § 158.1001 normally have no independent pesticidal activity when included in antimicrobial products, and thus normally are properly classified as inert ingredients of such products. The Agency may determine, on an individual product basis, or the applicant may demonstrate to the Agency's satisfaction, however, that any ingredient listed in § 158.1001 is pesticidally active. In such case, the ingredient shall be listed as an active ingredient on the product label and on the Confidential Statement of Formula.

§ 158.32 Requirements for data submission.

(a) *Transmittal document.* All data submitted at the same time and for review in support of a single administrative action (e.g., an application for registration, reregistration, experimental use permit, or in response to a requirement for data under the authority of FIFRA section. 3(c)(2)(B)) must be accompanied by a single transmittal document including the follwing information:

(1) The identify of the submitter, of all joint submitters, or of the agency for joint submitters, as applicable;

(2) The date of the submission;

(3) The identifying number (if known) of the Agency action in support of which the data are being submitted, such as the registration number or file symbol, petition number, experimental use permit number, or registration standard review; and

(4) A bibliography of all specific documents included in the submission and covered by the transmittal.

(b) *Individual studies.* (1) All data must be submitted in the form of individual studies. Each study should normally address a single data requirement, and be listed separately in the bibliography.

(2) Each study must include the following elements in addition to the study itself:

(i) A title page, as described in paragraph (c) of this section;

(ii) A Statement of Data Confidentiality Claims and, if desired, a Supplemental Statement of Data Confidentiality Claims, in accordance with § 158.33; and

(iii) A certification with respect to Good Laboratory Practice standards, in accordance with 40 CFR 160.12.

(iv) If the original study is not in the English language, a complete and accurate English translation under the same cover.

(3) Two identical copies of each study must be submitted. The copies must be on uniform pages of white paper 8½ x 11 inch size, and have a print quality suitable for microfilming.

(c) *Contents of title page.* Each individual study must have a title page bearing the following identifying information:

(1) The title of the study, including identification of the substance(s) tested and the test name or data requirement addressed;

(2) The author(s) of the study;

(3) The date the study was completed;

(4) If the study was performed in a laboratory, the name and address of the laboratory and any laboratory project numbers or other identifying codes;

(5) If the study is a commentary on or supplement to another previously submitted study, full identification of the other study which it should be associated in review; and

(6) If the study is a reprint of a published document, all relevant facts of publication, such as the journal title, volume, issue, inclusive page numbers, and date of publication.

(d) *EPA document identification number.* Each study will be assigned an EPA Master Record Identification (MRID) number, of which the submitter will be promptly notified. This number should be used in all further communications with the Agency about the study.

(e) *Reference to previously submitted data.* Data which have previously been submitted need not be resubmitted unless specifically requested by the Agency. If an applicant or registrant wishes the Agency to consider such data in the review of an Agency action, he should cite the data by providing:

(1) The title or adequate description of the study;

(2) The transmittal information required by paragraph (a) (1), (1), and (3) of this section; and

(3) The MRID number assigned in accordance with paragraph (d) of this section.

§ 158.33 Procedures for claims of confidentiality of data.

(a) *General.* A data submitter must clearly identify any information for which he wishes to assert a claim of confidentiality under FIFRA sec. 10. The procedures in this section must be followed to assert a claim of confidentiality.

(b) *Claims of confidentiality for information described by FIFRA sec. 10(d)(1) (A), (B), and (C).* Any information claimed to be confidential under FIFRA section 10(d)(1) (A) through (C) must be submitted in accordance with the following procedures:

(1) The information must be contained in a separate attachment to the study. If any information is included in the body of the study rather than in the confidential attachment, the submitter waives a claim of confidentiality for such information under FIFRA section 10(d)(1) (A), (B), or (C).

(2) The attachment must have a cover page which is clearly marked to indicate that the material contained in the attachment falls within the scope of FIFRA section. 10(d)(1)(A), (B), or (C).

(3) Each item in the attachment must be numbered. For each item, the submitter must cite the applicable portion of FIFRA section 10(d)(1) (A), (B), or (C) on which the claim of confidentiality is based. In addition, for each item, the submitter must provide a list of page numbers in the study where the item is cited (i.e., identified by number).

(4) Each item in the attachment must be referenced in the body of the study by its number in the attachment.

(5) The following statement must appear on the Statement of Data Confidentiality Claims: "Information claimed confidential on the basis of its falling within the scope of FIFRA section 10(d)(1) (A), (B), or (C) has been removed to a confidential appendix, and is cited by cross-reference number in the body of the study." The statement must bear the name, title, and signature of the submitter or his properly designated agent, and the date of signature.

(c) *No claim of confidentiality under FIFRA 10(d)(1) (A), (B), or (C).* If no claim of confidentiality is being made for information described by FIFRA section 10(d)(1) (A), (B), or (C), or if such information is not contained in the body of the study, the Statement of Data Confidentiality Claims must include the following statement: "No claim of confidentiality is made for any information contained in this study on the basis of its falling within the scope of FIFRA section 10(d)(1) (A), (B), or (C)." This statement must bear the name, title and signature of the submitter or his properly designated agent, and the date of signature.

(d) *Claim of confidentiality for information not described by FIFRA section 10(d)(1) (A), (B), or (C).* Any information not described by FIFRA section 10(d)(1) (A), (B), or (C) for which a claim of confidentiality is made must be submitted in accordance with the following procedures.

(1) The information must be clearly marked in the body of the study as being claimed confidential;

(2) A separate Supplemental Statement of Data Confidentiality

Claims must be submitted identifying by page and line number the location within the study of each item claimed confidential, and stating the basis for the claim.

(3) The Supplemental Statement of Data Confidentiality Claims must bear the name, title, and signature of the submitter or his properly designated agent, and the date of signature.

§ 158.1001 Ingredients considered inert when used in antimicrobial products.

The following substances are designated inert ingredients within the meaning of FIFRA section 2(m) when used in antimicrobial pesticide products:

Substance	Uses
Acetone	Solvent.
Alkyl * amino betaine (46 percent C_{12}, 24 percent 3_{14}, 10 percent C^{16}, 8 percent C^{18}, 7 percent C_8, 5 percent C_{10}.	Corrosion Inhibitor/Surfactant.
Alkyl monoethanolamide	Emulsifier.
Aluminum chloride	Detergent.
Aluminum hydroxybenzenesulfate sulfonate.	Emulsifier.
Aluminum powder	Filler.
Ammonium carbonate	Detergent.
Ammonium citrate	Sequesterant.
Ammonium lauryl sulfonate	Emulsifier.
Ammonium oleate	Detergent/Emulsifier.
Ammonium oxalate	Detergent.
Amyl acetate	Diluent.
Borax	Detergent.
Butyl alcohol, tertiary	Solvent/Odorant
Carbon	Carrier/Absorbent.
Castor oil	Emulsifier.
Citric acid	Sequesterant.
Diethanolamine dodecylbenzene sulfonate.	Detergent.
Dimethyl phthalate	Perfume.
Disodium monoethanolamine phosphate.	Emulsifier.
Dodecyl benzene sulfonic acid.	Detergent.
Essential oils	Perfume.
Ethanol (ethyl alcohol)	Solvent, except in tinctures or where sole or major active ingredient.
Ethanolamine	Emulsifier.
Ethanolamine dodecylbenzene sulfonate.	Detergent.
Ethoxylated lanolin	Ointment base.
Ethylenediamine	Emulsifier.
Ethylenediaminetetraacetic acid (including all salts and derivatives.	Sequesterant.
Fumaric acid	Sequesterant.
Gluconic acid	Buffer.
Isooctyl phenoxy polyethoxy ethanol.	Surfactant.
Isopropanol (isopropyl alcohol	Solvent, except in tinctures or where sole or major active ingredient.
Isopropyl myristate	Solvent.
Juniper tar	Odorant.
Lauryl alcohol	Detergent/Odorant.
Lauryl methacrylate	Emulsifier.
Limonene	Odorant/Perfume.
Magnesium chloride	Builder.
Magnesium lauryl sulfate	Detergent.
Magnesium silicate	Odor absorbent.
Menthol	Perfume.
Methanol (methyl alcohol)	Solvent, except in tinctures or where sole or major active ingredient.
Methyl ethyl ketone	Solvent.
Methyl salicylate	Perfume/Odorant.
Mineral oil, mineral seal oil or white mineral oil.	Lubricant.
Monoethanolamides of the fatty acids of coconut oil.	Emulsifier.
Monosodium phosphate	Emulsifier/Buffer.
Morpholine	Corrosion inhibitor.
Nonylphenoxypolyethoxyethanol.	Suractant.
Octylphenol	Nonionic surfactant.
Oil of citronella	Perfume/Odorant.
Oil of eucalyptus	Perfume.
Oil of lemongrass	Perfume.
Oleic acid	Solvent.
Petroleum distillate, oils, hydrocarbons, also paraffinic hydrocarbons, aliphatic hydrocarbons, paraffinic oil.	Lubricant/Solvent.
Polyoxyethylene sorbitol, mixed ether ester of.	Emulsifier.
Polyvinylpyrolidone	Emulsifier.
Potassium bisulfate	Builder.
Polyvinylpyrrolidone	Emulsifier.
Potassium bisulfate	Builder.
Potassium carbonate	Detergent.
Potassium dodecylbenzenesulfonate.	Anionic detergent.
Potassium laurate	Emulsifier.
Potassium myrisate	Emulsifier.
Potassium *N*-(*s*-(nitroethyl) benzyl) ethylenediamine.	Emulsifier.
Potassium phospates, tribeic	Sequesterant.
Potassium ricinoleate	Emulsifier.
Potassium toluene sulfonate	Detergent.
Potassium xylene sulfonate	Detergent.
Propanol (propyl alcohol)	Solvent, except in tinctures or where sole or major active ingredient.
Soap	Detergent.
Sodium acetate	Buffer.
Sodium alkyl (100 percent C^8): benzenesulfonate.	Detergent.
Sodium bicarbonate	Detergent.
Sodium carbonate	Detergent.
Sodium chloride	Builder.
Sodium decylbenzene sulfonate.	Detergent.
Sodium diacetate	Sequesterant.
Sodium dihydroxyethylglycine	Chelate/Buffer.
Sodium diisopropylnaphthalene sulfonate.	Detergent.
Sodium di. (monoethanolamine) phospate.	Emulsifier.
Sodium dodecylbenzene sulfonate (May be active as a sanitizer in dishwashing formulations).	Detergent.
Sodium dodecyl diphenyl oxide sulfonate.	Perfume.
Sodium glycolate	Sequesterant.
Sodium laurate	Detergent.
Sodium N-lauroylsarcosinate	Detergent.
Sodium lauryl sulfate	Detergent.
Sodium metasilicate	Detergent.
Sodium *N*-methyl-*N* oleoyl taurate.	Emulsifier.
Sodium mono and dimethyl naphthalene sulfonate.	Detergent.
Sodium oleate	Emulsifier.
Sodium phosphate	Emulsifier/Buffers.
Sodium salt of Turkey Red Oil	Emulsifier.
Sodium sesquicarbonate	Detergent.
Sodium silicate	Detergent.
Sodium sulfate	Detergent.
Sodium sulfonated oleic acid	Emulsifier.
Sodium thiosulfate	Builder.
Sodium toluene sulfonate	Détergent.
Sodium tripolyphosphate	Sequesterant.
Sodium xylene sulfonate	Detergent.
Tetrapotassium pyrophosphate.	Sequesterant.
Tetrasodium pyrophosphate	Emulsifier.
1,1,1,-Trichloroethane	Diluent.
Triethanolamine	Emulsifier.
Triethanolamine dodecylbenzene sulfonate.	Detergent.
Triethanolamine laurate	Emulsifier.
Triethanolamine lauryl sulfate	Emulsifier.
Triethanolamine myristate	Emulsifier.
Triscopropanolemine	Emulsifier.
Triethanolamine	Emulsifier.
Trisodium phosphate	Detergent.
Turkey red oil	Emulsifier.
Undecylenic acid	Perfume.
Xylene	Solvent.
Zirconium oxide	Dye.

PART 162—REGULATIONS FOR THE ENFORCEMENT OF THE FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT

Subpart A and E—[Removed]

4. By removing Subparts A and E of Part 162.

[FR Doc. 84-25228 Filed 9-25-84; 8:45 am]

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Wednesday
September 26, 1984

Part III

Environmental Protection Agency

40 CFR Parts 156 and 167

Labeling Requirements for Pesticides and Devices; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 156 and 167

[OPP-30052; FRL 2604-1(a)]

Labeling Requirements for Pesticides and Devices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to revise and expand its regulations for the labeling of pesticide products and devices under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (FIFRA). The proposed regulation states the labeling requirements for pesticides required to be registered and provides recommendations for labeling when no requirement is imposed. Requirements are also proposed for pesticide products whose labeling is subject to Agency regulation under the misbranding provisions of the FIFRA, but which are not required to be registered. This subpart would describe the requirements for the format and placement of the label, and the relationship of its various elements. It would also establish requirements for the content of pesticide labels, the scientific criteria, if any, on which specific requirements are based, and, when necessary, the specific wording to be used. The Agency believes that this revision will provide for pesticide producers a comprehensive description of pesticide labeling requirements, and will result in better quality pesticide labeling for users.

DATE: Written comments on this proposed rule should be submitted on or before December 26, 1984. Mark comments with the notation OPP-30052.

ADDRESS: Submit written comments to: By mail: Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental protection Agency, 401 M St., SW, Washington, D.C. 20460

In person, bring comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway Arlington, VA.

Information submitted in any comment concerning this proposed rule may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submited for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: 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. Introduction

A. Authority

This part would establish comprehensive regulations for the form and content of pesticide product labeling, and is issued under the authority of sections 2, 3(c), 5, 6, 7, 9, 10, 12, 17, 18, 19, and 25 of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended ("FIFRA" or "the Act"), 7 U.S.C. 136 through 136y. It would apply both to pesticides required to be registered and to pesticides not subject to registration requirements but for which the Agency has authority to regulate labeling.

The statutory standard that is the basis for Agency regulation of pesticide labeling is contained in section 2(q) of FIFRA, which defines a "misbranded" pesticide and enumerates specific labeling deficiencies that constitute misbranding. The regulations interpret and elaborate upon the statutory standard.

The Agency is empowered to enforce its labeling requirements pursuants to its authority to regulate pesticide distribution and sale. FIFRA sec. 3 requires that a pesticide be registered prior to distribution and sale. As a prerequisite to registration, the labeling of the pesticide must comply with the requirements of the Act. Failure to comply with the labeling requirements may result in a denial of an application for registration or may provide grounds for cancellation of the registration of the pesticide under FIFRA sec. 6.

In addition, section 12(a)(1) (E) and (F) of FIFRA provide that it is unlawful to distribute or sell a pesticide or device that is misbranded. (The Act does not define a "misbranded" device, but EPA interprets the pesticide misbranding provisions to apply to devices.)

The Agency has issued regulations under section 5 of FIFRA establishing labeling requirements for pesticides distributed and sold under experimental use permits. These labeling requirements are currently set out in 40 CFR 172.6. This part includes room for the section 5 labeling regulations should the Agency decide to transfer them to this part at a future time.

The regulations in 40 CFR Part 166 for emergency exemptions do not currently include labeling requirements. Section 156.112 of this part establishes requirements for products shipped in accordance with an emergency exemption.

B. Background

In the **Federal Register** of July 3, 1975 (40 FR 28242), EPA issued final regulations ("the 1975 regulations") for the registration and classification of pesticides. These regulations, codified as 40 CFR Part 162, Subpart A, included requirements for the labeling of registered products in § 162.10.

Since the 1975 regulations on registration were published, FIFRA has been amended three times, in 1975, 1978, and 1980. The 1978 amendments included provisions directly affecting labeling, and others having broad implications for labeling:

1. Unregistered pesticides produced for export only are now required to bear a statement that they are not registered in the United States (FIFRA sec. 2(q)(1)(H)).

2. FIFRA sec. 2(ee) was added to define the term "to use any registered pesticide in a manner inconsistent with its labeling." It is a violation of the law to use any registered pesticide in a manner inconsistent with its labeling. That section expressly excludes certain types of use from the definition.

3. FIFRA sec. 3(c)(5) was amended to permit the Administrator to register a pesticide without determining whether its composition is such as to warrant the proposed claims for it. The Agency issued conditional registration regulations, which were published in the **Federal Register** of May 11, 1979 (44 FR 27932), that waived the requirement to submit efficacy data for all but public health pest claims and new uses of chemicals whose registrations have been cancelled, suspended, or placed under special review. The Agency issued a rule, published in the **Federal Register** of July 26, 1983 (48 FR 34000), that extended the efficacy data waiver to additional pesticide products. Under the waiver, the Agency no longer reviews efficacy data upon which use directions are based for new products or new uses of existing products. Without this initial product performance data, the Agency is compelled to monitor more closely the content of use

directions on labels. Label use directions directly relate to the potential for exposure from the use of pesticides. If a pattern of inaccurate, outdated, or ambiguous use directions is determined to be a major problem, the Agency will require the submission of efficacy data on an individual basis or for a group of common products.

In the Federal Register of June 25, 1975 (40 FR 26802), EPA issued proposed guidelines describing data and labeling requirements for pesticides. These were intended to supplement the labeling regulations mentioned earlier in the use directions area. The Agency proposed to add a new section pertaining to labeling, focusing primarily on requirements for use direction labeling for various types of products. In response to the 1975 proposal, over 80 sets of comments were received relating directly to the labeling portion. These comments have been considered in drafting this new subpart. However, due to the broad expansion in scope of this new proposal and the extensive restructuring that has occurred in its development, some of the comments no longer appear pertinent. EPA believes that the comments have been adequately considered, but if not, commenters are invited to reiterate their comments at this time. In preparing the final regulations EPA will address issues raised by commenters.

A Label Improvement Program has been initiated to bring older registered products into compliance with the requirements of current § 162.10. In addition, labeling changes, including many in this proposal, may be required on a case-by-case basis at any time an application for registration, amended registration or reregistration is submitted, or if the Agency issues a notice of intent to cancel the registration of a product.

C. Scope and Organization of Part 156

As noted previously in Unit I.A, Authority, Part 156 would prescribe, for all pesticides for which the Agency has authority to regulate labeling, the form and contents of the label, and the relationship of label components. In the context of registration, where data requirements are the basis for labeling statements, this part would relate label requirements and criteria to the data supporting registration.

Part 156 would not specify the circumstances when labeling must be submitted or revised, the responsibility of registrants and producers to maintain label accuracy and integrity, or the administrative and procedural requirements of submission, Agency review, and approval of labeling. Finally, it would not address the legal or enforcement consequences of failure to adhere to these requirements. These aspects of labeling are addressed in procedural regulations currently found in 40 CFR Part 162, Part 166, and Part 172. Elsewhere in today's Federal Register, a related proposal to revise and renumber Part 162 is being issued.

This proposal primarily addresses labeling of products required to be registered, since the most extensive labeling requirements are imposed on such products. Section 3(c) (5) of FIFRA sets forth the statutory requirement for registration with respect to labeling, as follows:

> The Administrator shall register a pesticide if he determines that, when considered with any restriction imposed under subsection (d)—* * * (B) its labeling and other material required to be submitted comply with the requirements of this Act; * * *.

1. The requirements for labeling that "complies with the requirements of the Act" are encompassed within the statutory definition of misbranding, found in FIFRA sec. 2(q). This definition establishes as misbranded a pesticide that, among other things, does not bear a label containing:

a. The name of the product;

b. The name and address of the producer, registrant, or person for whom produced;

c. A net weight statement;

d. An ingredients statement;

e. A use classification;

f. Registration and establishment numbers assigned to the product and producing establishment, respectively; or

g. Use directions.

Furthermore, required labeling statements must be prominent and conspicuous and may not be false or misleading. It is important to note that, although many of the misbranding requirements relate only to registered products, the term "misbranded" applies to any pesticide, whether subject to registration or not (and, by extension, to devices).

2. In addition to labeling requirements for registered products, Part 156 proposes labeling requirements for pesticides not required to be registered and for devices. Because these requirements often parallel those for registered products, they are cross-referenced except where differences exist. The following classes of products would be included:

a. Products shipped between establishments operated by the same producer.

b. Products intended solely for export.

c. Products shipped under an emergency exemption.

d. Products shipped for disposal under FIFRA sec. 19.

e. Devices.

Subpart A of these proposed regulations contains general requirements that apply to all or most products. Subpart B describes product identification requirements, Subpart C precautionary statements, and Subpart D use directions and restrictions. Subpart E proposes requirements for specialized labeling situations. Subpart F proposes requirements for products not subject to registration. Subpart P prescribes performance standards and resulting labeling requirements for antimicrobial products. If labeling requirements are in the future prescribed for other specific types of products they would be located in subparts beyond Subpart P.

D. Relation to Current Labeling Regulations

Labeling requirements for registered products are currently prescribed in § 162.10 of the registration regulations (40 CFR Part 162). Requirements for the labeling of products to be used under an experimental use permit are contained in 40 CFR Part 172. Labeling requirements for other pesticides and devices are not currently prescribed by regulation.

This part is intended to serve as the principal source of labeling requirements for pesticide products. The Agency is revising its procedural regulations in Part 162 (see the related document being proposed today), and will retain and amplify in that part provisions concerning the submission, review, and approval of labeling.

II. Major Provisions of This Proposal

A. Format of Label

The Agency believes that standardizing the placement of certain elements of the label makes label information readily identifiable, thereby encouraging users routinely to read and observe label directions and precautions. For the most part, this proposal would retain the format requirements of the 1975 regulations with respect to required placement of label elements and grouping of common or related elements.

With respect to contrast, the Agency would require that the label text contrast with the background with respect to color, and would recommend the use of dark-colored text on a lighter background. The Agency would reserve the right to reject color combinations that are not clearly contrasting. Two

additional clarifying requirements have been added in this section:

1. If the container is transparent, the color of the label text must clearly contrast with the contents of the container, rather then the container itself; and

2. When the product label is required to bear the word POISON in red, surrounding text may not be in red.

The Agency proposes in this revision to convert its type size requirements from U.S. units to metric units. Section 156.10(c) expresses label dimensions in metric units and letter height in absolute millimeters rather than "points." Specification in absolute units is in keeping with the requirements of other agencies having labeling statutes, such as the Federal Hazardous Substances Act and the Fair Packing and Labeling Act. The metric equivalents are based on the established conversion factors of 72 points to one inch and one inch to 25.4 millimeters, rounded to the nearest one-half millimeter. The following table shows the differences in the proposed type size requirements compared to those in the current regulations.

TABLE A—TYPE SIZE REQUIREMENTS FOR PESTICIDE LABEL TEXT IN PROPOSED PART 156 IN METRIC UNITS

Square inch (current requirement)	Approximate square centimeters (proposed requirement)	Type size requirement for—			
		Signal word and restricted use statement		Child hazard warning	
		Currerit	Proposed	Current	Proposed
Column [1](1)	(2)	(3)	(4)	(5)	(6)
<5	<30	6	2.0	6	2.0
>5-<10	>30-<60	10	3.5	6	2.0
>10-<15	>60-<100	12	4.0	8	3.0
>15-<30	>100-<200	14	5.0	10	3.5
>30-<60	>200-<400	18	6.5	12	4.0
>60	>400	24	8.5	18	6.5

[1] Only colums 2, 4, and 6 appear in Table 1 of § 156.10

Further, the Agency proposes to discontinue the requirement that the heading for the Storage and Disposal statement appear in the same type size as the required for the child hazard warning. Since the storage and disposal heading is but one of many headings required or used on the label, there appears to be no logical reason to single it out for particular type size requirements. Instead, EPA proposes to require that all required headings, including that for the storage and disposal instructions, be distinguished from text by use of a contrasting color, larger type size, different type face, or other means of ensuring prominence.

Finally, the Agency would like comment on the possibility of permitting registrants to provide (and segregate on the label) information that was not required by regulations or by the Agency. The registrant could in this way provide additional information to users, provided that it is not misleading or inconsistent with other label statements. A registrant also could choose to voluntarily restrict the product's use in ways not required by the Agency. Although such statements could not be enforced under the misuse provisions of FIFRA sec. 12, users and State pesticide enforcement officials could distinguish those restrictions which the Agency explicity requires from those that it suggests or recommends, or that are registrant-imposed.

B. Use of Symbols

Section 156.10 of these regulations would permit, but would not require, the use of graphic symbols on pesticide labels as an accompaniment to the labeling text.

The Agency recognizes that symbols can be a valuable tool in communicating information on chemical characteristics and hazards to illiterate people, or those who may not speak or read English as their primary language. Moreover, EPA is aware that numerous symbol systems have been devised both by organizations and individual countries to facilitate communication of hazard information in international commerce. Nevertheless, EPA believes it would be inappropriate to endorse (or require the use of) any single symbol system at this time. If, in the future, standardization of international labeling criteria and requirements (a goal that the Agency supports) is achieved through international cooperation, and a unified set of symbols developed, the Agency may adopt and prescribe the use of such symbols on pesticide labels.

The Agency is also considering, and would like specific comment on, a system that would use colored bands at the bottom of the label to identify the acute toxicity level of the product. Such a system has been recommended for use by South American, Central American, and Caribbean nations by the Plant Protection Directors of those nations, at a regional consultation on the Harmonization of Registration and Labeling sponsored by the Inter-American Institute for Cooperation on Agriculture. The color band scheme would use the colors red, yellow, blue and green (in that order from highest to lowest toxicity) as a band along the base of the label, equal to 15 percent of the width of the label. The colored band would be supplemented by wording within the band indicating the toxicity category designation of the product, signal words, and, if applicable, the skull and crossbones symbols.

C. Product Identification

Section 156.20 would require that the name of a pesticide product appear on the front panel of the label, would state requirements relating to unique and duplicative names, and would specify naming practices considered false or misleading.

Section 156.22 would require that a product label indicate the broad pesticidal functions of the product, so that a purchaser unfamiliar with pesticides will not knowingly purchase a product that will not serve his needs. Most product labels already provide this information in one or another acceptable form.

Section 156.24 would establish requirements with respect to the name and address appearing on the label. The Agency is proposing two modifications in the requirements from those currently in effect. Section 162.10 of the 1975 regulations permits the name and address on the label to be that of the "producer, registrant, or person for whom produced." Since the purpose of having a name and address on a pesticide label is to enable the user to direct questions or problems to the person responsible for the product, the Agency believes that the name of the producer on the label is not sufficient for this purpose. Accordingly, this section would require that the name appearing on the label be that of the registrant (or distributor). Nothing would preclude the registrant or distributor from also including the name of the producer of the product if he so desires. A clarification has also been proposed that a foreign registrant who is required to have a U.S. agent for administrative and correspondence purposes, must include the name and address of the registrant and not the agent on the label.

Section 156.36 would prescribe requirements pertaining to the net

contents statement on the label. These regulations propose changes in the requirements for the declaration of net contents, so that pesticide labels conform more closely to those of non-pesticide products. The following revisions are proposed:

1. Elimination of current requirements with respect to the form of the net contents statement. The net contents may be expressed in any reasonable manner, provided that the units chosen are appropriate to the size of the package. Products in compliance with the requirements of the Fair Packaging and Labeling Act, as found in 16 CFR Part 500, would be considered to be in compliance with the requirements of FIFRA.

2. Addition of requirements (consistent with those in 16 CFR Part 500) for the declaration of net contents on the outer container of a multi-unit package, whose unit packages are not intended for separate retail sale. Currently, there are no specific requirements for declaring the number or net weight of the individual unit packages, although many products bear such statements.

3. A provision permitting, but not requiring, metric units in lieu of, or in precedence to, U.S. units. Although the use of metric units in both labeling and packaging is voluntary, their use is strongly encouraged by the Agency when practicable.

D. The Ingredients Statement

Under the provisions of 40 CFR 158.120, proposed in the **Federal Register** of November 24, 1982 (47 FR 53192), an applicant would be required to determine and submit to the Agency the upper and lower limits on the amount of each active ingredient present in his product. Since the lower certified limit would actually be present in the product only a small percentage of the time, the Agency proposes in this subpart that the label declaration of active ingredient percentage be the amount of active ingredient found in a typical sample of the product (the "normal concentration"). The nominal concentration will always be within the stated certified limits for the active ingredient.

Use of the nominal concentration as the label declaration of active ingredients would not represent a change in Agency policy. Current regulations require that the lowest percentage which may be present be stated, within the limits of good manufacturing practice. The certified limits required for each active ingredient are intended to encompass the "good manufacturing practice" variations referred to in current regulations, so that the lower certified limit represents the lowest amount that may be present. The lower certified limit would be used as the enforceable lower limit on product composition for purposes of FIFRA section 12(a)(1)(C), while the nominal concentration appearing on the label would be the routinely achieved concentration used for calculation of dosages and dilutions.

It is important for registrants to note that certified limits for active ingredients are not considered to be trade secret information under FIFRA section 10(b). In this respect they will be routinely provided to States for enforcement purposes, since the nominal concentration appearing on the label will not represent the enforceable composition for purposes of section 12(a)(1)(C).

The Agency also proposes to establish an order or precedence of common names used in the ingredients statement. Previously, the only common name acceptable on the label was that approved by the American National Standards Institute (ANSI). If there was no ANSI name the chemical name alone was to be used. Many older pesticides do not have ANSI common names. The Agency believes that the length and complexity of most chemical names prevents users from recognizing and becoming familiar with those pesticides. Therefore, the proposal would permit the use of common names established by the International Standards Organization (ISO), the British Standards Institute (BSI), or an established technical association in the absence of an established ANSI common name. New pesticides never before registered would be required to have a common name for use on the label.

E. Elimination of Mandatory Expiration Dating

The 1975 regulations required that, if a product's composition was known to change significantly after manufacture, the label must bear an expiration date after which the product could not be sold or used. Under this proposal, a registrant would no longer be required to use an expiration date. However, the product would have to meet all composition claims while in channels of trade, and registrants might wish to use an expiration date on the label to limit potential enforcement action for product deterioration.

Anticipated product deterioration would also affect the label directions for use. In developing use directions for a product that degrades rapidly, the registrant should make allowances for any changes in efficacy resulting from the constantly decreasing percentage of active ingredient. Many products known to deteriorate are used against pests of public health significance, where product ineffectiveness due to inadequate label dosages could have serious health consequences. Proposed § 156.72(i)(6) would require that the use directions instruct the user how to compensate for the lower level of active ingredient present at the time of use, such that the user could ascertain the correct dosage and proper use conditions at any time during which the product may be legally used.

F. Toxicity Category Revisions

EPA is proposing in this part to revise the Toxicity Category criteria for dermal toxicity and for eye irritation potential, to clarify the wording of the Toxicity Category criteria for dermal irritation, and to make the inhalation criteria consistent with the test methods advocated by the Registration Guidelines.

The Agency is proposing to revise the criteria for Category IV toxicity for dermal exposure. The 1975 regulations established a lower limit for Category IV dermal toxicity as 20,000 mg/kg. Since that time, the Agency has become aware that in many cases such a high level of test material cannot reasonably be achieved on the skin of the test species. Consequently, a registrant who believes that his product is in Toxicity Category IV cannot easily demonstrate that fact through testing, and his product is assigned to Toxicity Category III. In its Registration Guidelines, the Agency has recommended that dermal toxicity testing be conducted with 5000 mg/kg of test substance, the maximum that can realistically be achieved. Accordingly, the Agency is proposing to assign products to dermal Toxicity Category IV based on the 5000 mg/kg test level.

EPA is also proposing to add to the dermal irritation criteria clarifying language intended to provide better guidance on the application of the criteria. The addition of clarifying language would not in any way increase or decrease the stringency of the criteria.

The Agency further proposes to change the eye irritation criteria. Until 1975, the Agency had no published eye irritation criteria nor any Toxicity Categories assigning signal words for eye irritation potential. Unpublished criteria were applied to products for the purpose of labeling. These criteria were subsequently adopted in the Agency's 1975 regulations (40 CFR 162.10(h)(1)),

and were established on the basis of the best information available at the time.

In 1976, the Consumer Product Safety Commission, which administers the Federal Hazardous Substances Act, requested that the National Academy of Sciences (NAS) revise its 1964 document entitled "Principles and Procedures for Evaluation the Toxicity of Household Substances," commonly known as the NAS 1138 publication. In conjunction with that revision, the Soap and Detergent Association submitted a study on toxicity test procedures that included a comprehensive study [1] on eye irritation effects of substances known to be injurious to the eye. One of the more significant conclusions of the study was the following:

> For adequate evaluation of the effects produced by introducing chemicals into the eyes of animals, the observation period must extend up to three weeks. Some injuries may not be evident until after 3 days have passed, and many lesions undergo significant healing within 21 days.

The study proposed a classification scheme for eye irritation severity based on a three-week observation period, and recommended that the reversibility of the effects within the period be considered a factor in classifying substances. The proposed scheme defines four categories of eye irritation encompassing: (1) Corrosive or severe irritation; (2) substantial harm, but reversible within 21 days; (3) moderate irritation reversible in less than 7 days; and (4) essentially inconsequential effects. The results of this study were endorsed and adopted in the revised NAS 1138 publication issued in 1977.[2]

In 1979, EPA adopted the eye criteria of the NAS as one of the determinants of whether a pesticide product should be packaged in child-resistant packaging as required by 40 CFR 162.16, and stated its intention to incorporate these eye criteria into the registration regulations defining Toxicity Categories. See the **Federal Register** of March 9, 1979 (44 FR 13022). Accordingly, the Agency is proposing in Table 1 of § 156.42 new Toxicity Categories for eye irritation.

This revision might affect products that are assigned to Toxicity Categories I and II. Proiducts currently in Categories III and IV would not be affected, since the criterial for those categories are essentially unchanged.

Note also that the term "corneal opacity" which is used in the current regulations would be replaced with the term "corneal involvement." This revision recognizes that corneal opacity is only one facet of corneal injury and healing of the injured tissue.

In conjunction with the change in criteria, EPA would incorporate into the hazard warnings for the new categories a description of the actual degree of severity of the effects to be expected, and so proposes to included in Table 4 of § 156.52(b) language that reflects the category terminology adopted in the NAS 1138 publication.

As a third revision, EPA is proposing to revise inhalation criteria to reflect the test methods recommended in the Registration Guidelines. Current labeling categories provide for the following Toxicity Categories:

Category I—LC_{50} up to 0.2 mg/l
Category II—LC_{50} from 0.2 mg/l through 2 mg/l
Category III—LC_{50} from 2 mg/l through 20 mg/l
Category IV—LC_{50} greater 2 than 20 mg/l

Exposure durations are not specified; however, in practice these concentrations have been based on one-hour exposures and the exposure levels have been based on a calculated concentration. The Registration Guidelines in Subdivision F recommend 4-hour exposures and actual concentration levels, for the following reasons:

1. One-hour exposures do not allow time for equilibration of the atmospheres within the chambers, and the concentrations within the chambers are much lower than indicated by the nominal concentration estimates.

2. The nominal concentration, especially for aerosols, is not an accurate measure of the actual inhalable concentration, and is often off by a factor of 10 to 100 (or higher).

3. The short 1-hour exposure does not readily lend itself to adequate sampling of the atmospheres for concentrations and particle sizes. Moreover, the four-hour exposures are more conservative in evaluating possible acute exposures in humans.

Most inhalation exposures obey Haber's Law, which states that the product of the exposure time and the cocentration is a constant. Therefore the proposal, in defining a 4-hour exposure period instead of the 1-hour period commonly used in the past, also reduces the Toxicity Category criteria by a factor of four. Applicants who choose test methods using an exposure time other than 4 hours should be aware that the inverse relationship of exposure concentration and exposure time will be maintained in applying the criteria, i.e., if testing is conducted for two hours, the criteria for the categories will be doubled.

The Agency is considering ways in which it might establish a chronic effects labeling scheme. EPA acknowledges the difficulties inherent in addressing chronic effects, for which quantitative criteria are often not feasible or self-evident. Additional difficulties may arise in attempting to translate those effects into a practical labeling scheme. EPA efforts are still in a formative stage, and the Agency would like comment on the feasibility of chronic effects labeling, possible ways of implementing a scheme within the framework of FIFRA, and possible language that could be used to convery accurately the nature and risks of chronic effects.

G. Statement of Practical Treatment

Section 156.48 would require that a statement of practical treatment appear on the labels of most pesticide products. Products in Toxicity Categories I, II, and III by any route of exposure would be required to bear information on measures that can or should be taken when excessive exposure occurs. Separate information would be required for those treatments that the average person can undertake, and those that can be provided only by medical personnel or physicians. A "Note to Physician" would be mandatory for products in Toxicity Category I, or products possessing characteristics for which specific medical treatment is essential or singularly beneficial.

Practical treatment statements for Toxicity Category I routes of exposure are currently required to appear on the front panel of the label, preferably contained in a blocked paragraph. The agency woud prefer that all practical treatment statements appear on the front panel, but since label space may not always permit this ideal placement, practical treatment statements for Categories II and III could be placed with the general precautionary statements on a side or back panel of the label. In this case, a referral statement on the front panel would be required. The heading "Practical Treatment" or "First Aid," would be permitted, but the paragraph could not be titled "Antidote" unless a specific antidote is available. Typical and currently recommended practical

[1] Green, W.R., J.B. Sullivan, R.M. Hehir, and L.G. Scharpf. 1976. A systematic comparison of chemically induced eye injury in the albino rabbit and rhesus monkey. In Appendix C of: Submission to the National Academy of Sciences by the Soap and Detergent Association on Toxicity Test Procedures, with Appendices A–F. Soap and Detergent Association, Washington, DC.

[2] Committee for the Revision of NAS Publication 1138, Committee on Tox., Nat. Res. Council. 1977. Principles and Procedures for Evaluating the Toxicity of Household Substances. Pp. 1–9, 23–55. Prepared for the Consumer Product Safety Commission. National Academy of Sciences, Washington, D.C.

treatment statements are provided in Tables 1 through 5 of § 156.52.

H. Labeling Requirements for Inert Ingredients

FIFRA authorizes EPA to regulate all ingredients used in pesticide products, including inert ingredients that are not in themselves pesticidally active. These include solvents, emulsifiers, defoaming agents, perfumes and fragrances, propellants, diluents of all sorts, and similar ingredients whose presence in the formulation is ancillary to its pesticidal function. The definition in FIFRA section 2(m) of such ingredients as "inert" is intended only to distinguish them from those that are pesticidally active, and in no way signifies that they are toxicologically or chemically inert. Inert ingredients may or may not be hazardous by themselves, or in combination with other ingredients.

Because the identity of an inert ingredient is protected from disclosure by FIFRA sec. 10(d)(1)(C), a prerequisite for labeling identification of such ingredients is that the Agency make a finding that "disclosure is necessary to protect against an unreasonable risk of injury to health or the environment." EPA believes that this criterion is clearly met when the presence of an inert ingredient contributes significantly to the overall acute hazard of the product.

Required label statements would take the form of identification of the ingredient, precautionary statements to address the particular hazard of the inert ingredient, or more commonly, both. Table 1 of § 156.50 lists specific inert ingredients and proposed label requirements for products containing them. The table would be expanded to include other inert ingredients as the need arises.

The Toxic Substance Control Act (TSCA) regulates chemicals that are also used as inert ingredients in pesticide products. If data development is required under TSCA for a chemical that is an inert ingredient in pesticide products, such data may serve as the basis for label statements under FIFRA. If labeling regulations are issued under sec. 6 of TSCA, the Agency would consider applying those requirements to chemicals used as pesticide inert ingredients to the extent possible within the framework and authority of FIFRA.

I. Human Hazard Precautionary Statements

Section 156.52 proposes requirements for human hazard precautionary statements, and their location and format, if applicable. The section consists primarily of a series of tables specifying precautionary statements pertaining to:

(1) Signal word; (2) precautionary measures to avoid or reduce the possibility of injury; and (3) instructions on practical treatment or other remedial steps to take if exposure occurs.

The statements and format requirements proposed in this section are largely unchanged from those in the 1975 regulations in 40 CFR 162.10(h)(2)(i), but have been expanded and are better organized. Practical treatment measures recommended by the Agency have been added.

The statements are provided as a guide, but are those that would be commonly required for pesticide products in the prescribed Toxicity Categories. Because it is impossible to prescribe in these Tables exact statements for all combinations of ingredients, formulation types, and uses, the statements would be considered the minimum acceptable ones, and not inclusive of all statements that might be required. The need for additional precautionary statements or modified ones would be determined on a case-by-case basis.

A new § 156.52(c) has been added that would require a statement concerning respirator use for a pesticide that is highly toxic or toxic (Category I or II) by the inhalation route of exposure. The respirator requirement has been applied on a case-by-case basis for several years, but without being linked to specific toxicity criteria. EPA now believes that a required statement is necessary in this regard. To ensure that respirators provide adequate protection, only respirators approved by the Mine Safety and Health Administration and the National Institute for Occupational Safety and Health for pesticide use could be recommended on the label.

J. Environmental Hazard Precautionary Statements

Section 156.55 proposes requirements for environmental hazard statements (non-target species such as fish, aquatic invertebrates, wild mammals, birds, and beneficial insects) most of which were originally established in the 1975 regulations. Retaining the basic criteria and toxicity statements prescribed in present 40 CFR 162.10(h)(2)(ii), this section would prescribe acute toxicity criteria for labeling pertaining to honeybees, based on data that would be submitted in accordance with proposed 40 CFR 158.155 (Non-target insect data requirements). In addition, in the intervening period since the 1975 regulations were published, the Agency's responsibilities under the Endangered Species Act of 1975 have been carefully spelled out in regulations issued by the Department of the Interior (50 CFR Part 402). EPA has instituted a process for evaluating hazards to endangered species in consultation with the Departments of the Interior and Commerce—a process that may result in labeling statements of a restrictive nature. Finally, recent Agency labeling requirements have been shifted away from non-specific label statements that rely on interpretation by the user. It is increasingly clear, both from a legal and an enforcement standpoint, that label statements must contain a precise description of parameters that define the permitted use of the product.

Environmental hazard statements are of three types: those where explicit wording can be prescribed for all or most outdoor use products; those which derive primarily from the known toxicity of the active ingredient in outdoor use products based on testing that would be required by proposed 40 CFR 158.145 and 158.155; and those which are dependent on an evaluation of the product's hazards, use patterns, potential exposure, and other factors. These last generally take the form of use restrictions, and are generally prescribed on a case-by-case basis. Refer to § 156.76, Restrictions on Use.

The testing requirements of 40 CFR Part 158 allow the Agency to determine whether criteria for labeling statements of toxicity to fish, birds and mammals, aquatic invertebrates and honeybees are met. The 1975 regulations contained the same criteria concerning toxicity to fish, birds and mammals as are proposed here. The aquatic invertebrate criterion is new. Subdivision L of the Registration Guidelines describes recommended data protocols for beneficial insects (pollinators, aquatic insects, and predators), the honeybee being of primary concern. Of the beneficial insects, acute toxicity data are generally available only for the honeybee. Data requirements for other non-target insects are at a formative stage; therefore, toxicity categories and label statements prescribed by this part are limited to honeybees. As data requirements for other non-target insects are developed, additions and modifications to this part will be made to accommodate required labeling.

The Agency also proposes to modify the effluent discharge statement for products having uses that result in effluent discharges either directly into surface waters of the U.S. or indirectly into a sewer system. Examples of such products are those for formulating use, industrial treatment, cooling towers,

pulp and paper mills, and leather tanning operations. Point source discharges (such as from a single site) are generally governed by the issuance of a National Pollutant Discharge Elimination System (NPDES) permit that may regulate the level or type of pollutants allowed to be discharged. Sewage treatment facilities that discharge are also required to have NPDES permits.

Since 1977 the Agency has required a statement prohibiting discharge into U.S. surface waters except in accordance with an NPDES permit. This language was used in the belief that pesticides contained in such discharges would be considered in setting the standards for each individual permit, or that in the absence of specific language in the permit, no discharge was permitted. This is apparently not so. A common misunderstanding of the NPDES system is that substances not mentioned in permits are not permitted to be discharged. In fact, the opposite is true: If a substance is not specifically mentioned in the NPDES permit, it may be discharged without limitation. Therefore the 1977 language would in most cases result in no control over the discharge of any particular pesticide.

The proposed language would not require that an NPDES permit set quantitative limits on the amount or concentration of pesticide that could be discharged in an effluent. Other general controls, such as good management practices, may be sufficient. Therefore, the label statement merely requires that the pesticide be "identified and addressed" in the NPDES permit.

Facilities that discharge pesticide-containing effluent to a sewer system are not required to obtain NPDES permits (the sewer system authority must obtain the permit). Therefore the label statement that applies to direct discharge operations is not appropriate for these indirect dischargers. Nonetheless, pesticides from industrial sources can seriously disrupt the operation of biological wastewater treatment plants by inhibiting biological activity or creating sludge contamination problems. If passed through the sewer system into a receiving stream or river, the pesticide may have effects on aquatic organisms. The Agency has increasingly become aware of problems from indirect discharge facilities, and proposes a label statement that would require pesticide users to notify their receiving sewer system authority prior to discharging. The form and consequence of this notification would not be prescribed by a label statement, but notification would allow the municipal system to be knowledgeable about the pesticides that are received by their facilities.

K. Flammability Statements

Existing regulations in 40 CFR 162.10(h)(2)(iii) require the term "flammable" for any product whose flash point, as determined by testing conducted in accordance with 40 CFR Part 158, falls between 20°F and 80°F. In order to be consistent with regulations issued under the Hazardous Materials Transportation Act, and with proposed regulations under the Federal Hazardous Substances Act, the upper limit would be extended from 80°F to 100°F. Products whose flash points fall at or below 20°F (extremely flammable) and those above 100°F would not be affected by this change. A product with flash point between 80°F and 100°F would, under this proposal, bear labeling of greater stringency than before. Tables 1 and 2 of § 156.58 reflect this change.

At the same time, EPA is proposing to permit a declaration of non-flammability on labels under specified circumstances. Claims for non-flammability have in the past been considered implied safety claims and therefore misleading statements. In some use situations, the knowledge that a product is nonflammable is not only beneficial but essential in the use and handling of the product. Examples of such use situations are in and around electrical machinery, around power lines and in hospital operating rooms. Provided that the factual statement is not applied to products that have no reasonable expectation of flammability under any circumstances, such as water-based products, and provided that the statement is not emphasized in a manner that implies safety, a product meeting the standards set out in this section could be labeled as "non-flammable." The Agency would reserve the right to determine whether the claim is reasonable, after review of the composition and uses of the product, and the data submitted to support the claim.

L. Classification Statements

Section 3(d) of FIFRA requires that each pesticide product be classified for restricted use or general use. The 1975 regulations require that a statement of classification appear on the label. The Agency now believes that the phrase "general use" is potentially misleading if a user infers from the statement that the product may be used for "general" purposes not listed on the label. The Agency believes that the intent of the statute to distinguish between products whose uses are restricted and those products whose uses are not restricted can be effected by labeling of those that are restricted. Section 156.62 proposes that products classified for restricted use bear a statement to that effect; products classified for general use would not be permitted to bear a statement of classification. The few products that may have been classified by the Agency for general use would be granted ample time to make the change, and use up old stocks of labels bearing the general use classification statement.

Further, the Agency proposes to modify the restricted use statement, by changing the text to read, "For retail sale to and use only by a Certified Application for uses authorized by his certification, or by persons under his direct supervision."

In the context of restriction of pesticide use, the Agency is considering establishing, probably under the authority of section 3(d)(1)(C)(ii), a series of defined user categories, such as pest control operator, arborist, and the like, that could be used by either the Agency or the registrant to restrict the use of a product when desired or deemed necessary. Unlike the certified applicator program currently in use under FIFRA sec. 3(d)(1)(C)(i), the use of these categories on labels would not necessarily result from any toxicity considerations, but might encompass considerations such as product performance, specialized equipment needs, or particular expertise.

Designations of this nature have been used on labels, both with and without Agency sanction, for a number of years. Before the inception of the certified applicator program, the Agency itself imposed such restrictions on products having toxicity characteristics that made their availability to the general public unacceptable. Since 1975, the Agency has generally used the certified applicator program when it wished to restrict a product's use, because of its clear authority to regulate and enforce certified applicator restrictions. However, the Agency has continued to accept voluntary registrant restrictions, adhering to the logic that the registrant must have good reason for desiring to limit the sale and distribution of his product, and recognizing that such restrictions also reduce exposure potential and environmental effects. The problem that arises with such voluntary restrictions is that the States, who have primary authority for enforcement of misuse under FIFRA sec. 12(a)(2)(G), cannot always discern from the label statements who the intended users of the product are. The States have also

relied heavily on the certified applicator program, and have defined categories of certified applicator, but have not generally defined categories of users who are not certified applicators. Designation of additional categories of users could be used to bridge the gap between products which are available for use by anyone, and those that must be restricted because of toxicity considerations to certified applicators.

The Agency will be working with the States through the State FIFRA Issues Research and Evaluation Group (SFIREG) to develop candidate user categories that could be adopted by the Agency and the States. Meanwhile, the Agency would like comment on this subject, particularly as to potential user categories, and criteria for defining such user categories.

M. Reentry Restrictions

The 1975 regulations in § 162.10(i)(2)(viii) specify that each pesticide product must bear a reentry interval statement that meets the requirements of 40 CFR Part 170, Worker Protection Standards for Agricultural Pesticides, which provides standards for farm worker protection and notification. Briefly, Part 170: (1) Prohibits application of pesticides when unprotected persons are in the treatment area; (2) prohibits an owner or lessee from permitting reentry into treated fields by unprotected workers until exposure to the pesticides has been generally reduced by drying of sprays or settling of dusts; (3) establishes minimal time intervals for 12 specific chemicals, during which no reeentry is permitted without protective clothing; (4) provides that more stringent reentry restrictions may be established by States; (5) provides that more stringent reentry requirements contained on an individual pesticide label shall take precedence; and (6) requires oral or written warning to workers. EPA has developed data requirements upon which to base accurate and realistic reentry interval statements. Subdivision K of the Registration Guidelines addresses the factors involved in assessing exposure to workers after application of a pesticide, the types of data needed to make the assessment, and approaches for estimating appropriate reentry intervals based on data.

EPA is proposing in this part to continue in effect the 1975 labeling requirements based on Part 170. Because, however, the 1975 regulations did not specify the form or wording of label statements that met the requirements of Part 170, it has been difficult for registrants to comply with the 1975 regulations. Section 156.67 proposes statements for all products intended for outdoor agricultural use using hand labor.

The statements being proposed are consistent with those required by PR Notice 83–2, issued March 29, 1983. Products would have to be labeled with statements concerning exposure of persons in treated areas, reentry intervals if established by Part 170 or the Agency, warnings to workers, and, if products are in Toxicity Category I or II, certain statements in Spanish for the benefit of field workers who are not literate in English. The Agency would like comment on whether Spanish language requirements should be expanded to include products in Toxicity Categories III and IV.

EPA believes that oral warnings or posting of agricultural fields and outdoor areas, and placarding of structures and vehicles, are a necessary adjunct to labeling to ensure that persons who do not have access to the label information are at least made aware of the application of and potential exposure to the pesticide. Section 156.67(a)(7) would provide that the label require oral or written warnings or posting and would prescribe the content of any posting statement.

Part 170 is targeted specifically to "farm workers performing hand labor operations in fields after ground * * *, aerial, or other types of application of pesticides." However, EPA does not believe that reentry hazards should be perceived only as an agriculturally oriented problem. Adequate protection should be offered to all workers regardless of use situation. Fumigation in enclosed spaces, in particular, has the potential for serious harm if entry is gained into the treatment area without proper precautions. Accordingly, 40 CFR Part 158 requires exposure data for certain indoor fumigant uses, and § 156.67 correspondingly would require label statements pertaining to entry into fumigated areas such as structures and vehicles.

EPA is currently reevaluating its Part 170 rules, and intends to propose new standards for farmworker protection in the future. To the extent that the new standards would require modifications to the labeling requirements of § 156.67, EPA would revise this rule.

Reentry restrictions provided by Part 170 are not appropriate to indoor fumigant applications. Therefore, the label statements contemplated by Part 170 would not be required by this section. Other more appropriate statements are included in § 156.67(b).

N. Disposal Statements

In 40 CFR Part 165, Subpart C, Recommended Procedures for the Disposal and Storage of Pesticides and Pesticide Containers, issued in 1975, EPA described recommended storage and disposal practices for pesticides and their containers. Since 1975, EPA has required on labels a series of disposal statements consistent with the prohibitions and recommended practices of that subpart. Data requirements to enable the Agency to define acceptable disposal methods for individual pesticides will in the future be proposed for inclusion in Part 158.

Since the issuance of Part 165 recommended procedures, the Resource Conservation and Recovery Act (RCRA) has been enacted, and a series of implementing regulations promulgated under its authority. Pesticide and container disposal may be regulated under both FIFRA and RCRA. The 1975 regulations require that acceptable disposal practices be stipulated on the pesticide label. A user who fails to follow label disposal instructions has misused the pesticide in violation of FIFRA sec. 12(a)(2)(G).

The labeling requirements proposed in this section are designed to be as consistent with RCRA as is possible under the FIFRA regulatory scheme. Because FIFRA requires that the Agency make determinations of health and safety on an individual product basis, EPA proposes to apply certain of the hazardous waste criteria based on pesticide formulation characteristics rather than generic or sole active ingredient characteristics used under RCRA rules. (The reference to "active ingredient" in RCRA regulations does not conform to that under FIFRA. "Active ingredient" under FIFRA refers to a pesticidally active ingredient, whereas under RCRA, "sole active ingredient" refers simply to the principal component of the product—as if the product were generically composed only of that ingredient.)

Briefly, the Agency would apply the toxicity criteria of 40 CFR 261.11(a)(2) for listing acutely hazardous ingredients on the RCRA "E" list to pesticide formulations as proposed for registration. Similarly, the Agency would apply the criteria in 40 CFR 261.21 through 261.23 for flammability, corrosivity, and reactivity to pesticide formulations as proposed for registration. On the other hand, EPA would use the "F" list (40 CFR 261.33(f)) generically as the basis for labeling a pesticide formulation as a toxic waste. A product would be labeled as a toxic

waste if it contained any of the ingredients on the F list in any concentration. Similarly, the Agency would consider the 14 chemicals listed in 40 CFR 261.24 because of extraction procedure (EP) toxicity (a test for potential leachability under landfill conditions) on a generic basis.

The Agency believes that a product-specific approach is not only feasible but preferable under FIFRA. The Act requires that the Agency evaluate and register pesticide formulations, most of which are mixtures of ingredients that currently are regulated under RCRA only as generic or sole active ingredients. In order to evaluate the product for registration, the Agency requires the submission of considerable data on the toxicological and physical characteristics of the pesticide formulation, and on each separate active ingredient in the formulation (or the technical product from which it is derived), but not generally for ingredients that are pesticidally inert. With specific formulation data in hand, the Agency is in a position to judge a pesticide formulation as a whole against hazardous waste criteria. Thus in many cases an accurate determination can be made that the product as distributed and sold commercially (a "commercial chemical product" in RCRA parlance) would or would not be a hazardous waste if disposed of.

First, the Agency proposes that products that meet the listing criteria of § 261.11(a)(2) be labeled as "acutely hazardous wastes." Under RCRA, the criteria of that section are used as the basis for the "E" list of commercial products that are acutely hazardous if they contain the listed ingredient as a sole active ingredient. A pesticide formulation that contains a relatively small amount of a single E-listed ingredient (a "sole active ingredient"), and yet as a formulation does not meet the acute toxicity criteria, could nonetheless, under RCRA regulations, be considered an "acute hazardous waste," subject to all the disposal requirements applied to acute hazardous wastes. The Agency believes that a strict interpretation of the RCRA E list, without consideration of the concertation limits of the listed hazardous ingredient in a diluted formulation mixture, results in inaccurate characterization of many commercial pesticide products as acute hazardous wastes. The consequence is that unwarranted disposal burdens are imposed on pesticide users.

On the other hand, EPA believes that there may be pesticide formulations that would meet the acute toxicity listing criteria, but which, because the active ingredients are either not E-listed or are present in mixtures that do not meet the definition of "sole active ingredient," are not regulated under RCRA. This could create potential risks by disposal in a non-approved manner. This proposal would remedy this situation, since all pesticide products would be evaluated against the acute toxicity criteria, regardless of whether they contained an E-listed ingredient or were a component of a mixture. In summary, EPA believes that designation of pesticides as acute hazardous wastes will be more accurately, consistently, and comprehensively administered if toxicity criteria are directed at all pesticides formulations as proposed for registration and not just at the formulations containing E-listed ingredients as sole active ingredients.

The Office of Solid Waste and Emergency Response is developing a proposal that would address mixtures as acute hazardous wastes under RCRA. (Mixtures are not currently regulated as hazardous wastes under RCRA.) Because acute toxicity data on mixtures are rarely available (pesticide mixtures are the exception), the proposal would base the E-list determination upon LD_{50} values extrapolated from those of the components of the mixture.

Second, under RCRA, hazards other than acute toxicity are addressed by applying a number of factors specified in 40 CFR 261.11(a)(3) to a group of chemicals known or believed to pose hazards. (Appendix VIII of 40 CFR Part 161). Those chemicals which are distributed and sold as commercial products are placed on the RCRA "F" list (40 CFR 261.33(f)). The Agency believes that when addressing chronic effects where quantitative hazard limits are either not feasible or not scientifically tenable, the Agency should evaluate products on a generic basis. In some cases, such as carcinogenicity, the Agency's position is that there is no lower concentration limit below which an ingredient does not pose the hazard. Thus any amount of a carcinogen in a product would be sufficient to warrant designation as a toxic waste. This proposal would designate any product that contains an F-listed chemical in any amount as a "toxic waste" on the basis of that ingredient.

Finally, any product (not limited to generic or single active ingredients) may be a hazardous waste under RCRA if it meets certain physical/chemical hazard characteristics defined in Subpart C of 40 CFR Part 261 (flammability, corrosivity, reactivity and Extraction Procedures (EP) toxicity). Pesticide regulations in 40 CFR Part 158 require the submission of data on product flammability, corrosivity, and, if applicable, reactivity. These criteria would be applied to the pesticide formulation as the basis for a "hazardous waste" labeling statement.

Data are not required by Part 158 for the EP toxicity test in 40 CFR 261.24 (although a test for leaching potential is required), so the Agency cannot evaluate individual pesticide formulations at the time of registration to determine whether they meet the EP toxicity test. Nor would the EP toxicity test be applicable to a pesticide formulation, since it was intended to identify toxic constituents (i.e., single active ingredients) of concern. EPA would, therefore, adopt the same generic approach as it would for F-listed chemicals, except that products containing the § 261.24 ingredient would be identified on the label as "hazardous wastes."

Products would be identified on the label as "acutely hazardous," "toxic," or "hazardous" wastes, in that order of precedence. Thus, a product that meets the criteria for more than one labeling designation would be labeled with the designation of highest concern. A product that, as a formulation, met the criteria for "acute hazardous" identification, would be labeled as such, regardless of the presence of any F-listed or § 261.24 ingredient. A product containing a pesticide that was both F-listed and in § 261.24. (as is the case with three pesticides) would be labeled as a "toxic waste" rather than a "hazardous waste." Products containing pesticides which met neither the criteria for "acutely hazardous" designation nor that for "toxic" designation, would be designated as "hazardous" wastes if they met the flammability, corrosivity, or reactivity criteria (as a formulation) or contained any amount of a § 261.24 ingredient. Although this last would categorize some products as hazardous wastes that might not meet the EP toxicity test criteria, applicants would be free to conduct the EP toxicity test to demonstrate that fact, which could serve as the basis for modification of the disposal statement.

In summary, § 156.70(c) lists criteria which, if met, would cause a pesticide product to bear statements alerting the user to the hazardous nature of any wastes, and requiring disposal in accordance with State or Federal requirements for such products. The criteria are:

1. The product is in certain Toxicity Categories defined in § 156.42. This criterion incorporates the listing criteria

for the E list of acutely hazardous wastes of § 261.11(a)(2), including acute oral and dermal toxicity corresponding to Toxicity Category I, and acute inhalation toxicity criteria corresponding to Toxicity Categories I and II. In addition, § 261.11(a)(2) states that if a product is "* * * capable of causing or significantly contributing to an increase in serious irreversible, or incapacitating reversible, illness," it may be listed on the E list. The Agency believes that pesticides that are corrosive to eye or skin or cause severe eye irritation for more than 21 days (Toxicity Category I) clearly meet this latter criterion, and has proposed to include such products in this section.

2. The product contains any substance listed in 40 CFR 261.33(f) (the F list). The F list contains substances that are considered hazardous, but do not meet the acute toxicity criteria of the E-list. Hazards addressed on the F-list include lesser acute hazards, chronic hazards such as carcinogenicity, mutagenicity and teratogenicity, and physical/chemical hazards such as ignitability, reactivity or corrosivity.

3. The product exhibits the characteristic of flammability, corrosivity, reactivity, or contains a pesticide listed in 40 CFR 261.24. These characteristics are indicators of physically or chemically hazardous properties that would render a product a hazardous waste.

The disposal statements prescribed by Table 1 of § 156.70 would not instruct the user exactly how to dispose of his waste pesticide product, other than by legal use in accordance with the label instructions. Legal disposal of a hazardous waste under RCRA depends not only on product composition and characteristics, but also on user identity and quantity of pesticide waste generated. Label statements that address these factors for a single product cannot be easily devised. The label statements, therefore, refer the user to his EPA Regional Office or State Environmental Control Agency for information on proper and legal disposal.

Distinguishing between hazardous waste and non-hazardous waste is necessary only for pesticide disposal. For pesticide containers, which may also be classified as hazardous wastes under RCRA, the label statements in Table 2 of § 156.70 would obviate the need for RCRA hazardous waste disposal procedures. If label statements for container disposal are followed, the container could be disposed of by normal procedures under Subtitle D of RCRA (at the use site or in regular solid waste facilities such as landfills, for example).

The Agency recognizes that a single set of statements, regardless of flexibility, cannot address the multiplicity of containers and pesticide types currently registered. Moreover, disposal practices are often further regulated at the State or local level. Section 156.70(e) therefore would permit registrants to propose alternative statements, consistent with RCRA, that express the available disposal options with greater definition. Moreover, as the Agency receives and evaluates data leading to specific disposal methods for pesticides, the labels of such products would be required to be modified to provide more exact information on acceptable methods of disposal.

O. Specific Use Directions and Restrictions

Section 156.72 would establish the types of information required in the use directions of any product. Section 156.76 would set out use restrictions that might be imposed. Neither is intended to describe detailed requirements applicable to specific types of products. Guidance on use directions specific to product type may be found in Subdivisions 101 through 106 of the Registration Guidelines. The only exception is that antimicrobial products of public health significance would be required to be labeled according to efficacy performance standards in Subpart P of this Part.

For the most part, §§ 156.72 and 156.76 proposed labeling requirements that incorporate requirements imposed in the past only on a case-by-case basis. However, several points in this section are noteworthy:

1. Labels would be required to express clearly the sites of use intended by the registrant. Specific data requirements for exposure to various segments of the user and non-target populations are still in development. In the absence of exposure data, EPA may need to use the label descriptions of the intended sites of use to identify and assess the possible exposure paterns to be expected.

2. Products intended for aerial, mist blower, or ground hydraulic application would, when data demonstrate significant determental effects, be required to bear instructions on methods of reducing pesticide spray drifts. This requirement necessarily would be imposed on a case-by-case basis, dependent upon the toxicity of the product to man and non-target species, its phytotoxicity, its proposed use patterns, and application technique.

The Agency would like comment on the possibility of requiring "downstream" labeling of consumer products treated with pesticides. The Agency believes that treated substances or articles have repeated or regular human contact should bear statements of the potential hazard of the product. The Agency could accomplish this under FIFRA by requiring that a pesticide product designed to be incorporated in a substance or article must be labeled with a statement requiring the subsequent user (the manufacturer of the treated material) to label the consumer product with a statement that the material had been treated with the pesticide. The downstream manufacturer would be in violation of the misuse provisions of FIFRA if he failed to label the materials as specified on the labeling. EPA contemplates that this requirement might be imposed for products intended for incorporation into materials such as fabrics and textile goods intended for human clothing (diapers and socks for example), wood articles having substantial human contact (toilet seats), indoor paints, mattresses and rugs. EPA notes that OSHA regulations require downstream labeling of chemicals used in the workplace, and views the labeling of pesticide-treated consumer materials as an analogous regulatory situation. Comments are welcomed, together with suggestions as to how best to delineate, both in regulation and on the label, the universe of consumer products for which labeling statements would be appropriate.

P. Labeling of Products Not Required to be Registered

FIFRA authorizes the Agency to regulate the labeling of all pesticides and pesticidal devices. The misbranding provisions of FIFRA sec. 2(q) do not distinguish a registered product from an unregistered product in applying the misbranding criteria.

The Agency has not chosen previously to promulgate specific regulations interpreting the misbranding provisions of FIFRA as they apply to unregistered pesticides. Subpart F would describe affirmative requirements that will ensure that products not required to be registered nonetheless maintain labeling standards comparable to those for registered products. The Agency believes that setting out affirmative requirements would be beneficial for producers of such products, who would then be able to ascertain whether they were in compliance with the misbranding provisions of the Act.

The affirmative requirements of these sections are derived from §§ 162.5 and 162.15 of the 1975 regulations, which delineated the misbranding provisions of FIFRA applicable to non-registered products of various types, and from previous Agency interpretations and policy statements.

Q. Efficacy Performance Standards

Subpart P (§§ 156.300 through 156.380), Labeling of Antimicrobial Products, proposes labeling requirements for certain antimicrobial products. The efficacy performance standards upon which the proposed statements are based are derived from the testing requirements of proposed 40 CFR Part 158. Antimicrobial products are identified on the label as sterilizers, disinfectants, sanitizers, or bacteriostats, depending on their level of antimicrobial activity. A product that does not meet the performance standard of Subpart P for a particular level of activity (sterilizer, disinfectant, or sanitizer) could not be identified as such on the label. This would not preclude its being labeled for any lesser degree of activity if it met the performance standard for that lesser activity level.

Section 156.305(b), Limited efficacy claims, has been changed to reflect new policy. In the past the products which were considered within this section were usually effective against a group of organisms such as gram negative organisms. The Agency has concluded that a claim based on killing gram negative organisms only is meaningless to the user since he is not able to determine what spectrum of organisms are in fact present on objects to be disinfected. The Agency therefore proposes to allow such limited claims only if the user clearly can discern from the label the organism he wants to control and the label can provide directions on where and how to control that particular pathogenic organism without being misleading.

III. Implementation

After promulgation, this revised rule would be implemented for existing products primarily through the reregistration program mandated by FIFRA sec. 3(g). EPA would apply the rules to products as they are required to be reregistered over a period of several years. This gradual implementation will allow ample time for registrants (including those whose products are registered by States under FIFRA sec. 24(c)) to make required label revisions without unduly burdening individual registrants, or disrupting the supply of pesticides.

Additionally, the Agency may selectively implement certain provisions of this rule through its Label Improvement Program. This program, instituted on June 5, 1980 (45 FR 37884), is a mechanism by which the Agency can focus its labeling efforts on potentially hazardous or unenforceable label deficiencies affecting a group of common products.

Finally, the rule would be applicable to new products registered after the effective date.

IV. 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 has conducted a Regulatory Impact Analysis and has determined that this proposal is not a major regulation. This proposal does not require additional persons to label pesticide products. Pesticide products are required to be labeled by the Act itself. Part 156 describes the content and format of the label necessary to comply with the Act and to allow persons to use pesticides and pesticide devices safely. Based on current costs for printing of new labels of $500 to $1,000 per product, the cost for relabeling the approximately 40,000 registered products would be $20 million to $40 million. Since only about one-eighth of the products are amended or reregistered each year, the annual cost would be between $2.5 million and $5 million.

The underlying data supporting labeling statements are submitted to satisfy the requirements of proposed Part 158, for which a comprehensive Regulatory Impact Analysis has been prepared. Compliance with this proposed regulation:

1. Would not result in an annual effect on the economy of $100 million or more.
2. Would not result in significant increases in costs to individual companies or users.
3. Would not have a significant impact on a substantial number of small entities.
4. Would result in benefits to pesticide users through consistency and completeness of pesticide labeling information.

This proposal was submitted to the Office of Management and Budget for review, as required by Executive Order 12291.

V. Regulatory Flexibility Act

Pursuant to section 3 of the Regulatory Flexibility Act, each proposed regulation is to be accompanied by a Regulatory Flexibility Analysis or by a certification that no such analysis is necessary because the regulation, if promulgated, will not have significant economic impact on a substantial number of small entities. The Agency has conducted a preliminary analysis, and has determined that a Regulatory Flexibility Analysis is not required. That analysis concluded that for small businesses (fewer than 500 employees), the cost of compliance with this proposal would be 0.5% of estimated sales per product. This percentage is not considered significant. For this reason, I hereby certify that the proposed Part 156 regulations on Labeling Requirements for Pesticides and Devices do not have a significant impact of a substantial number of small entities.

VI. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in the proposed rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and has assigned OMB Control Number 2000–0483. 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.

VII. Statutory Review

In accordance with FIFRA section 25, this proposal was submitted to the U.S. Department of Agriculture for comment. USDA comments and EPA responses to those comments are addressed below.

1. USDA stated its opinion that the proposal underestimates the costs of complying with the labeling provisions, asserting that that the primary costs of relabeling lie not in the printing of labels but in the design and execution of the label. The Regulatory Impact Analysis conducted for this proposal addressed these costs, and, based on discussions with industry personnel, the Agency estimates the cost of developing new printing plates ranges from $1,000 to $2,000 per product. For all 40,000 registered products this amounts to a one-time cost of $40 to $80 million to the industry. Since, however, the revisions will be accomplished over a period estimated at 8 years, the annualized cost will be between $5 and $10 million. This is viewed as an upper bound, since there will be a certain number of registrants who seek amended registration regardless of the new requirements, and thus would revise their labels for rasons unrelated to this proposal.

2. USDA also commented that, although it agrees with the Agency's goal of prescribing labeling that will encourge users to read the label, and will promote understanding, the length and detail of the label information may have the opposite effect. EPA acknowledges that the amount of information on labels is extensive and that its length and complexity have increased over the years. The phenomenon, however, can only partly be attributed to the Agency's labeling regulations.

The labeling reqirements in this proposal are derived from the misbranding provisions of the Act that require that labeling be "adequate to protect health and the environment." This broad general mandate means that labeling requirements must be compehensive. Moreover, the label, under FIFRA, serves both as an information vehicle and as the standard for enforcement of many of the Act's provisions. The enforcement aspect of labeling tends to increase the amount and complexity of detail needed on labels.

On the other hand, the industry often has reason to include additional label informtion, quite apart from the requirements of the statute and Agency regulations. Marketing considerations and potential liability are factors contributing to increased label complexity that are not of direct concern to EPA. The desire to expand the uses for which a product is registered means that an individual product, particularly one for agricultural use, may be registered for dozens of uses, each with directions and restrictions on use. Expanding usage of a single product is often more desirable from a marketing perspective (and usually easier to accomplish) than registering a number of similar products, each with fewer uses. For liability reasons, companies often voluntarily provide additional information on the label, particularly in the area of precautionary statements.

Taken together, these various factors do result in labeling of greater length, detail and complexity than is desirable from a user point of view. EPA shares USDA's concerns in this area. EPA is exploring ways in which label information may be provided more efficiently and effectively from a user standpoint, and welcomes suggestions and comments on possible ways of accomplishing this goal.

Copies of this proposal were supplied 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. Neither Committee commented on the proposal.

Copies of this proposal were submitted to the FIFRA Scientific Advisory Panel (SAP) for review. The SAP, in reviewing the proposed revisions to the Toxicity Categories (§ 156.42), waned to know where and how chronic toxicity is considered in categorizing pesticides into groups.

The toxicity categorizations in § 156.42 are based on acute toxicity criteria only; they ae not intended to encompass subchronic and chronic toxicity. The toxicity categories are a convenient reference point for regulating pesticides when acute hazards are of concern. EPA may also impose special labeling pertaining to subchronic or chronic hazards on an individual chemical basis. This has been done primarily when the Agency has identified a potential risk for a chemical based on subchronic or chronic hazard, conducted a risk/benefit analysis, and concluded that the risks of one or more uses are outweighted by the benefits of those uses. In this case, the product registrations for that use have been continued, but often with the requirement that the label bear statements of the nature of the hazard.

List of Subjects in 40 CFR Part 156 and Part 167

Environmental protection, Labeling, Pesticides, Recordkeeping and reporting requirements.

Dated: September 18, 1984.

William D. Ruckelshaus,

Administrator.

Therefore, it is proposed that 40 CFR be amended as follows:

1. By adding Part 156, to read as follows:

PART 156—LABELING REQUIREMENTS FOR PESTICIDES AND DEVICES

Subpart A—General Provisions

Subpart B—Product Identification

Subpart C—Warnings and Precautionary Statements

Subpart D—Use Directions and Restrictions

Subpart E—Specialized Labeling

Subpart F—Labeling of Products Not Required to be Registered

Subparts G Through O—[Reserved]

Subpart P—Labeling Requirements for Certain Antimicrobial Products

Authority: Secs. 2, 3, 5, 6, 7, 9, 10, 12, 17, 19, and 25 of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. 136–136v

Subpart A—General Provisions

§ 156.1 Purpose, scope, and applicability.

(a) *Purpose.* The purpose of Part 156 is to describe the content of the label and labeling for pesticide products that is necessary to comply with statutory requirements and that, if adhered to by

users, will protect public health and the environment from unreasonable adverse effects.

(b) *Scope.* This part specifies acceptable physical characteristics of the label and labeling, including requirements pertaining to placement, size, color, and typography. Further, this part describes the content of labeling, including product identification, hazard warning statements, use directions, and restrictions on use.

(c) *Applicability.* (1) The requirements of this part apply to all pesticide products and devices.

(2) At the time of an application for registration or amended registration, an applicant or registrant may present evidence to demonstrate that a particular requirement or labeling statement prescribed by this part is inappropriate for his product because of special circumstances of composition, use or packaging. Based on such evidence, the Agency may waive or modify a requirement, or may permit alternative labeling statements to be used.

(d) *Use of terms.* Mandatory specifications are indicated by the use of the terms "must", "shall", "may not", and "... is not acceptable". Where requirements are not imposed, Agency-preferred, recommended or optional labeling is indicated by the terms "may" and "should".

(e) *Enforcement*—(1) *Misbranding.* Except as specified by FIFRA sec. 12(b), it is unlawful under FIFRA sec. 12(a)(1)(E) and (F) to distribute, ship, or sell a misbranded pesticide product or device. Misbranding is also a basis for denial or cancellation of registration of a pesticide product. A misbranded pesticide or device is one bearing labeling that does not conform to the requirements of FIFRA sec. 2(q). Any pesticide product or device that does not comply with the requirements of this part is considered by EPA to be misbranded within the meaning of FIFRA sec. 2(q). Information not required by this part on a product label does not necessarily constitute misbranding; however, if such information is misleading or violates other specific requirements, the product may be deemed misbranded.

(2) *Misuse.* FIFRA sec. 12(a)(2)(G) provides that it is unlawful to use a registered pesticide in a manner inconsistent with its labeling. This applies not only to labeling statements and information required by this Part, but also to precautions, directions, and restrictions that are voluntarily included on labeling by the registrant. The user who fails to follow any label instructions may be held to be in violation of the misuse provisions of the Act.

§ 156.3 Definitions.

Words and terms used in this part have the meanings set forth in the Act and in 40 CFR 152.2. In addition, the following terms are defined for the purposes of this part:

(a) "Bulk container" means any mobile or stationary container used for transporting or storing pesticides in quantities greater than 55 gallons liquid or 100 pounds solid or semi-solid. The term includes, but is not limited to, tank trucks, cargo vessels, railroad tank cars, rail freight cars, storage tanks, and "nurse tanks." The term excludes containers used in the application of pesticides after dilution by the user.

(b) "Front panel" means the larger of the following:

(1) That portion of the area of a pesticide container that is ordinarily visible to the purchaser under the usual conditions of display for sale; or

(2) An area not less than 25 percent of the surface excluding the shoulder, neck and handle if these are part of the container.

(c) "Immediate container" means that container which is directly in contact with the pesticide or device.

(d) "Label" means the written, printed or graphic matter on or securely attached to the outer or immediate container of the pesticide or to the device.

(e) "Labeling" means the label and any technical bulletin, material safety data sheet, brochure, circular, leaflet, pamphlet, insert, printed advertising or any other printed or graphic matter to which reference is made on the label, or which accompanies the product at any time in distribution or sale. Advertising material not accompanying the product is not considered labeling.

(f) "Outer container" means a container or wrapper that is not in direct contact with the pesticide product, in which single or multiple immediate containers or unit packages are distributed.

(g) "Securely attached," when used with respect to a label, mean that:

(1) The label is not detachable from the immediate or outer container without destruction or defacement of the printed or graphic matter contained thereon; or

(2) The label can reasonably be expected to remain affixed to the immediate or outer container during the time that the product is held for distribution, sale, and use, under the conditions likely to be encountered during that time.

(h) "Trademark" means any word, letter, or symbol used in connection with a pesticide product or device which distinctly identifies the origin or ownership of the article or substance to which it applies.

(i) "Use" means any activity covered by the pesticide label including, but not limited to, application of a pesticide, mixing and loading, storage of pesticides and pesticide containers, disposal of pesticides and pesticide containers, and reentry into treated areas.

§ 156.5 Requirements for labeling.

(a) *Registered pesticide products.* Each pesticide product registered under FIFRA sec. 3 or 24(c) shall bear a label or labeling, the contents and form of which shall conform to the requirements of this part.

(1) An end use product shall be labeled in accordance with this part, as applicable. The instructions provided in the latest edition of Subdivision H of the Registration Guidelines are acceptable to comply with §§ 156.72 and 156.76.

(2) A manufacturing use product shall be labeled in accordance with § 156.80.

(3) A unit package shall be labeled in accordance with § 156.87.

(b) *Devices and non-registered pesticide products.* Each unregistered pesticide product or device that may be legally distributed or sold, or transferred without prior registration (see § 152.30) shall bear labeling, the contents and form of which shall conform to the requirements of this part as specified below:

(1) If the product is to be transferred between two registered establishments operated by the same producer, or for further processing, packaging or labeling, in accordance with § 152.30(a) or (b), the labeling shall meet the requirements of § 156.105.

(2) If the product is to be distributed or sold in accordance with the terms of an experimental use permit under 40 CFR Part 172, the labeling shall meet the requirements of that part.

(3) If the product is to be transferred solely for export to another country, the labeling shall meet the requirements of § 156.110.

(4) If the product is to be transferred in accordance with an emergency exemption, the labeling shall meet the requirements of § 156.112.

(5) If the product is to be transferred solely for purposes of disposal, the labeling shall meet the requirements of § 156.115.

(6) If the product is a device, as defined by FIFRA sec. 2(h), the labeling shall meet the requirements of § 156.118.

(7) If the product has been exempted from registration under FIFRA sec. 3 by a regulation issued under FIFRA sec. 25(b) that requires that the product be labeled, the labeling shall meet the requirements established by that regulation.

(c) *Failure to label correctly.* (1) If the pesticide product or device does not bear a label, the product is misbranded under FIFRA secs. 2(q)(2)(C), and 12(a)(1) (E) and (F).

(2) If the pesticide product or device bears labeling that fails to conform to the requirements of this part, the product is misbranded under FIFRA sec. 2(q)(1)(E), and may be misbranded under other provisions of FIFRA sec. 2(q).

§ 156.7 Placement of labie.

(a) *Immediate container.* Except as provided by paragraphs (c) and (d) of this section, the label must be displayed on or be securely attached to the immediate container of the pesticide product.

(b) *Outer container.* If the immediate container is enclosed in a wrapper or outer container through which the label cannot be clearly read at the time of retail sale, the label must also be displayed on or be securely attached to such wrapper or outside container.

(c) *Bulk container*—(1) *In transit.* A pesticide in transit in a bulk container must meet the requirements of 49 CFR Part 170 through 189, with respect to placement and content of labeling. In addition, a copy of the pesticide labeling must either be attached to the papers that accompany the shipment and left with the consignee at the time of delivery, or be attached to the immediate bulk container.

(2) *In storage.* A pesticide product stored in a bulk container that remains in the custody of the user, must have a copy of the labeling securely attached in the immediate vicinity of the discharge control value.

(3) *Distribution from bulk container.* If a pesticide product is distributed directly from a bulk container to a container provided by an individual user, the distributor must securely attach a copy of the labeling to that container.

(d) *Unit package.* A product distributed in unit packages shall bear a label on both the unit package and the outer container.

§ 156.10 Format of labeling.

(a) *Placement and prominence of labeling elements.* (1) Any word, statement, design or graphic representation required to appear on the labeling, either by this part or on a case-by-case basis for individual products, shall be located as prescribed in this part, unless the Agency states otherwise. Designation of location may be specific, such as "on the front panel," or may be in relation to other labeling statements and designs, such as "in the use directions".

(2) If no specific location is designated, or if the inclusion of the information is optional on the part of the registrant, the information may be placed in any reasonable location on the labeling. An optional statement or design shall not be placed so as to crowd, obscure, or obliterate required information, nor may it detract from required information by size, color, configuration, or prominence.

(3) All words, statements, graphic representations, and designs required by the Act and this part must be clearly legible to a person with normal vision. They shall be displayed with such conspicuousness that they would likely to encourage the ordinary individual to read the labeling under customary conditions of purchase and use. Unless approved by the Agency, statements shall run parallel to the bottom of the container as normally displayed for purchase. Statements shall not be placed along seams of cans or folds of bags.

(b) *Contrast.* (1) All required text must appear on a solid background of a contrasting color. The Agency encourages the use of dark colored text (black, or dark primary colors) against a light background (white, yellow, grey, beige) for maximum contrast; however, light text on a darker background is acceptable. Labeling shall not be imprinted on highly reflective surfaces, such as Mylar or aluminum foil.

(2) All required text of labeling that is lithographed onto a glass bottle or embossed onto a plastic container must be in a color which clearly contrasts with the color of the container. If the container is transparent, the text must contrast with the contents of the container. For example, a clear glass bottle containing a brown liquid shall be labeled in a color that contrasts with brown.

(3) The labeling of a product required to bear the word POISON in red shall not have the majority of its text in red. This paragraph is not intended to preclude incedential use of red in illustrations or graphic designs, nor the skull and crossbones in red. The Agency may prescribe the use of the color red on other labeling on a case-by-case basis.

(c) *Type size and form.* (1) All required text must be at least 2 mm in size (based on the height of the upper case letters). A larger type size materially enhances the legibility of the label and is desirable. A sans-serif type face is preferred. All required headings must be distinguished from the label text by use of a color contrasting with the text, larger type size, different type face, or similar means of differentiation.

(2) Minimum type size requirements in relation to front panel size are given in Table 1 for the following labeling elements: the signal words, child hazard warning ("Keep Out of Reach of Children"), and the statement RESTRICTED USE PESTICIDE (when required).

TABLE 1—TYPE SIZE REQUIREMENTS FOR PESTICIDE LABELING

Front panel size (Sq. cm)	Minimum type size for "Restricted Use Pesticide" (if required) and signal work in capital letters. (mm)	Minimum type size for "Keep Out of Reach of Children" (child hazard warning) (mm)
Up to 30	2.0	2.0
Over 30 to 60	3.5	2.0
Over 60 to 100	4.0	3.0
Over 100 to 200	5.0	3.5
Over 200 to 400	6.5	4.0
Over 400	8.5	6.5

(3) Paragraphs should be indented, with at least two spaces between paragraphs for increased legibility. The body of the text should be printed in lower case. Capital letters, bold face type, underlining, italics, or other forms of emphasis should not be used indiscriminately throughout the labeling but should be reserved for headings or areas where particular attention by users is sought, such as use limitations or special hazards.

(d) *Language to be used.* (1) All required text must be in the English language, except as provided in paragraph (d)(3) ot this section. The Agency may require that labeling be provided in a second language.

(2) At the registrant's option, and in addition to labeling in English, the labeling may contain information in a second language. If bilingual text is used, the following statement must appear in the second language on the front panel of the label: "If you cannot read English, do not use this product until instructed on its proper use." In addition to this statement, any or all of the text may be provided in the second language. The Agency encourages registrants to provide bilingual labeling for products distributed or sold in areas where large numbers of users are not literate in English.

(3) The label of a product distributed and sold solely for use in Puerto Rico,

whose English translation has been approved by the Agency, may be solely in Spanish, provided that a statement in English similar to, "If you cannot read Spanish, do not use this product until properly instructed", appears on the front panel.

(4) Labeling in a second language must be a complete and accurate translation of the English text, and must comply with format and presentation requirements of this section.

(5) Bilingual labeling requirements for products intended solely for export are contained in § 156.110.

(e) *Use of symbols.* (1) The labeling may bear pictorial or graphic symbols in addition to text. The Agency encourages the use of symbols that enhance user comprehension, particularly in the area of hazard warnings. Because of the multiplicity of symbols currently in use, the Agency prefers the use of existing systems rather than the development of new ones.

(2) An optional symbol may be located in any position on the labeling, provided that it does not crowd, obscure, or detract from required text. A symbol may not be used in lieu of text. A symbol may be used only with accompanying explanatory text, and must be placed in close proximity to such text.

(3) Symbols required by other Federal agencies, e.g., U.S. Department of Transportation, may be used on labeling, provided they are clearly distinguished from information required by this part.

§ 156.15 False and misleading statements.

(a) *Warranty and warranty disclaimer statements.* A statement on pesticide labeling warranting any aspect of the product or its use, or disclaiming or limiting the operation of a warranty, shall not contain any false or misleading statements. A statement will be considered false or misleading if it contradicts, negates, or detracts from any labeling statement required by the Act or regulations, including but not limited to:

(1) In the case of a warranty statement,

(i) Stating or implying that the product may be used in any manner that would be inconsistent with the labeling within the meaning of FIFRA sec. 2(ee).

(ii) Stating that information on the labeling is provided voluntarily by the manufacturer, when in fact such information is required by the Act and regulations to appear in the labeling.

(iii) Warranting the product composition for a period of time shorter than that during which the product may be legally sold, taking into account any expiration date on the labeling.

(iv) Using the term "guaranteed" without stating what is guaranteed.

(2) In the case of a warranty disclaimer or limitation statement, disclaiming or limiting liability for damages when the product is used in accordance with the labeling direction; provided, however, that a warranty disclaimer may state limitations of liability for damages caused by circumstances, such as unforeseen post-usage weather conditions, over which neither the manufacturer nor the user has any control.

(b) *Statements relating to the composition of the product.* Statements relating to the composition of the product must be consistent with the ingredients statement appearing on the front panel. Refer to § 156.34 for further information on the ingredients statement.

(1) References in the product name to the composition of the product, such as "granular", "WP", or "EC", must be accurate. A wettable powder must contain wetting agents, and an emulsifiable concentrate must contain an emulsifier. Any numbers immediately preceding letters such as "G", "EC", "L", "WP", or "D" have customarily been associated with the percentage or weight of active ingredient of the product; therefore, any number associated with these letters must accurately reflect the composition of the product.

(2) Words or phrases implying that a product possesses unique characteristics because of its composition are not acceptable. Examples of such terminology are, "unique formula," or "strongest on the market." The claim "new" may be used on the labeling of a product of new composition for a period of 6 months following approval of the labeling; however, the word "new" may not be a part of the product name of record.

(3) Vague or non-specific terms implying unstated benefits related to higher concentrations or greater percentage of active ingredient are not acceptable. Examples of such terms include, but are not limited to, "professional strength," "extra strength," "extermination strength," "hospital grade," and "hospital strength."

(4) The term "professional" applied to users is not acceptable unless qualified to describe specifically the professional user group intended. The non-specific phrase "For professional use only" or any variation of that phrase is not acceptable in any circumstances.

(c) *Statements concerning the effectiveness of the product as a pesticide or device.* Claims relating to product effectiveness may not be false or misleading in any particular. Examples of types of statements which are considered to be misleading with respect to any product are given below:

(1) Claims which imply total eradication or elimination of pests, including terms such as "100% effective," "rid," "free," "eliminates," "eradicates," "guaranteed to kill all," "sure kill," "dead sure," "kills virtually all," "weed-free," and "conquers." These and similar terms may be used in conjuntion with sterilizers and disinfectants, or in other circumstances when the claimant is required to provide evidence of complete kill in order to obtain registration.

(2) Claims which imply or state a percentage of pest control which is not valid, such as "kills 90% of [pest]." The claimed levels of efficacy must be determined by product testing.

(3) Terms implying that protection will extend for an indefinite period, such as "bug-proof", "germ-proof", "roach-proof", "mouse-proof", and "long-lasting control". The duration of effectiveness should be established by testing, and included on the labeling.

(4) Non-specific terminology or comparative words without valid comparison, such as "great new weapon," "the most notable advance in pesticides since . . ." "hard-to-kill" (weeds, rats, etc.), and "better and more effective."

(5) Superlatives, such as "perfect," "paramount," "ultimate," "ideal," and "superior," except that such words may be used in the product name when accompanied by the qualifier "Brand," (e.g., "Superior Brand Disinfectant").

(6) Claims for indirect or secondary benefits in the following situations:

(i) Claims implying that benefits will derive solely from use of the pesticide, when other factors contribute in equal or greater measure. An unacceptable claim in this respect is that a product will "improve production" or "produce larger animals."

(ii) Claims of indirect benefits, where the relationship between the direct benefit and the indirect benefit is not clearly established. For example, claims for control of disease vector pests are not acceptable if the conditions of transmission of the disease via the pest have not been clearly established.

(iii) Claims that indirect benefits are direct benefits. For example, labeling may not state that an insecticide will prevent the spread of plant disease viruses (indirect benefit), when in

actuality the pesticide controls the insect host of the virus (direct benefit). Labeling may, however, provide properly worded information on the circumstances under which indirect benefits may be expected. For example, an insecticide labeling may state that the product controls ticks that may transmit Rocky Mountain spotted fever.

(7) Dosages or dilution rates not consistent with package size. Directions for diluting 5 lbs. of product in water are not acceptable on a package that contains only 2 lbs. of product. Similarly, unless otherwise provided in this part, the directions shall not provide for a single application of more product than the package contains.

(8) Illustrations or graphics that imply a greater range of effectiveness than can be demonstrated, e.g., pictures of sites or pests for which the product is not registered.

(9) Illustrations showing exaggerated or undocumented toxic or behavioral effects of the pesticide on the pest, such as depiction of a pest exhibiting physical symptoms not representative of the effects of the product, or an animal repellent showing a dog or cat fleeing in terror from a treated object.

(10) Claims of benefits that are negated or contradicted by other labeling information.

(d) *Statements relating to the non-pesticidal purpose of product.* Labeling may not contain false or misleading statements unrelated to the pesticidal nature of the product. For example, the labeling of a multi-purpose disinfectant-cleaner may not bear false, exaggerated, or misleading claims concerning the cleaning power of the product. Examples of such false or misleading statements are: "Cleans twice as fast as other brands;" and "The most powerful cleansing agent known to man." Similarly, products which are pesticide-drug combinations, pesticide-fertilizer mixtures, or pesticide-nutrient mixtures may not make misleading claims concerning the drug, fertilizer, or nutrient action or value of the product.

(e) *Language stating or implying that the product is recommended or endorsed by any agency of the Federal Government.*

(1) Unqualified phrases such as "approved by * * *" or "recommended by * * *" are not acceptable.

(2) The EPA registration number and EPA establishment number may not be highlighted by type size, placement, color, or prominence so as to imply endorsement by EPA.

(3) References to Federal agencies that do not imply approval or endorsement are acceptable. An example would be "Tuberculocidal—Permitted for use by the Animal Health Programs, Veterinary Service, APHIS, USDA, in official disinfection programs involving domestic animal housing and transportation facilities." An example of an unacceptable statement is: "Product X has been found to be very effective for the control of imported fire ants and Japanese beetle in Federal-State quarantine programs."

(4) The labeling of a product intended for use in USDA-inspected meat and poultry plants, and for which evidence of approval by the Food Safety and Inspection Service (FSIS) has been submitted to the Agency, may include the following statement: "Authorized for use in edible product areas of official establishments operating under the Meat, Poultry, Shell Egg Grading and Egg Products Inspection Programs".

(5) Reference to cooperative extension services or agricultural experiment stations is acceptable under certain conditions. Refer to § 156.72 (i)(4) and (j)(3) for information on these conditions.

(6) The labeling of any product restricted to use by Federal or State authorities must so state.

(f) *A true statement sued in such a way as to give a false or misleading impression.* Labeling statements which are literally true but have the potential for misleading the user constitute misbranding. Examples are given below:

(1) Statements relative to composition indirectly implying safety of the product:

(i) "Contains all natural ingredients."

(ii) Reference to clearances under the Federal Food, Drug and Cosmetic Act.

(2) Superfluous information not relevant to the uses appearing on the labeling, such as:

(i) The statement "oil soluble" on labeling which bears no directions for dilution with oil.

(ii) Claims for pests not found at the use sites on the labeling, such as the inclusion of weeds found only at aquatic sites on a herbicide product bearing no directions for use on aquatic sites. Similarly, claims for pests not found in the United States on a product sold and distributed in the U.S. are considered misleading.

(g) *Claims as to the safety of the pesticide or its ingredients in any form.*

(1) Use of terms and phrases such as "safe," "non-toxic," harmless to pets and humans," "low in toxicity," "will not harm beneficial insects," "no health hazard," and variations or homonyms thereof are not acceptable.

(2) A statement that a product "contains no (name of chemical)" is not acceptable with respect to an active ingredient. The presence or absence of an active ingredient may be ascertained from the ingredients statement.

(3) A statement that a product "contains no (name of chemical)" with respect to an inert ingredient (not separately identified in the ingredients statement) may be permitted (upon written request, and for a limited period of time) if:

(i) The ingredient is the subject of a proposed or final regulation or other written determination based on hazard considerations, which notice prohibits all use, or use in pesticide products specifically; and

(ii) The product may legally be distributed in commerce for a finite period of time, as, for example, the time between issuance of a regulation and its effective date, or the time allowed for distribution of remaining stocks.

(4) Terms such as "non-flammable" and "non-combustible" are generally not acceptable; for exceptions, refer to § 156.58(b).

(5) Terms implying safety to the environment, such as "ecologically compatible", are not acceptable. The term "biodegradable" may be used only in conjunction with a detergent as, for example, "The detergent in this product is biodegradable".

(6) Graphics which negate or contradict required safety statements are not acceptable. Pictures of children or illustrations such as toys or candy which might be appealing to children are not acceptable.

Subpart B—Product Identification

§ 156.20 Product name.

(a) The label of each individually registered pesticide product shall bear a product name that distinguishes it from all other registered pesticide products of the same producer or registrant. The product name shall appear on the front panel of the label and on any labeling.

(b) The product name shall be descriptive of the product's ingredients, formulation type, quantity of ingredients, or function, or a combination of these. For example, the name Parathion 2–E is suitable for a product containing 2 lbs/gallon of parathion in an emulsifiable concentrate formulation.

(c) A trademark may be used as part of the product name, but if the trademark refers to a particular ingredient in the product, it shall not be used in the name of any product not containing that ingredient.

(d) The letters listed below shall be used in a product name only with the designated meanings:

A (or AS)	Aqueous (suspension).
D	Dust.
E (or EC)	Emulsifiable (concentrate).
F	Flowable
G	Granular.
L	Liquid.
W (or WP)	Wettable (powder).

(e) A number may be used in a product name to distinguish among products or to describe the quantity of an ingredient in the product. If a number is intended to refer to the quantity of an ingredient, it must be consistent with the ingredients statement.

(f) Any product name or additional brand name that has been recorded by the Agency for that product may appear on the label and labeling of the product when sold or distributed.

(g) No name, brand, or trademark under which a pesticide product is marketed or distributed may be false or misleading in any particular. Registration of a trademark with the U.S. Patent Office is not evidence that such trademark is not misleading under FIFRA; a registered trademark name may be in violation of FIFRA. Examples of names that are considered false or misleading include:

(1) A name that implies efficacy against a pest not named on the labeling (e.g., "Roach Killer," if the product is not registered for cockroach control).

(2) A name that implies broader effectiveness or a higher level of efficacy than has been demonstrated (e.g., "Kill All").

(3) A name that is misleading with respect to the composition of the product (e.g., "Malathion 10% WP" must be a wettable power containing 10 percent malathion).

(4) A name that includes words or any variations of words implying safety or non-toxicity of the product, such as "Saf-T."

§ 156.22 Pesticide type.

(a) The type of pesticide must be identified on the front panel of the label. Standard and commonly recognized terms shall be used, such as "insecticide", "herbicide", "defoliant", "algicide", "sterilizer", or "bacteriostat." If the product is a combination product, the label must identify all intended use types. If the product is intended for incorporation or impregnation into non-pesticide substances or articles, the label must indicate not only the pesticide type, but also the substances or articles into which it is to be incorporated.

(b) The pesticide type may be stated in one of the following ways:

(1) As part of the product name on the front panel (e.g, "ABC 10% Malathion Dust Insecticide").

(2) As a separate phrase or statement below the product name (e.g., "A bacteriostat for use in the preservation of water-based paints," or simply "An insecticide").

(c) A product for incorporation into non-pesticide substances or articles must use the separate phrase given in paragraph (b)(2) of this section.

§ 156.24 Identification of registrant.

(a) *Name*—(1) *Registrant name.* The name of the registrant or distributor (as agent of the registrant) must appear on the labeling of the pesticide product. Both names may appear on the labeling, provided that the name of the registrant for the product is clearly indicated.

(2) *Contact name.* The name required by paragraph (a)(1) of this section should convey sufficient information to allow a user to contact the appropriate department of the firm. It is desirable that a company with several divisions producing pesticides designate the specific division or other entity responsible for the particular pesticide. For example, "Jones Chemical Company, Animal Products Division."

(b) *Address.* (1) The address must provide sufficent information to direct a user to the company. The address must include the city, State and zip code of the company, and a street address. If the street address is contained in the telephone directory of the listed city, a post office box number may be used on labeling.

(2) The registrant may list several addresses, provided the principal address to contact for information regarding the product is clearly indicated.

(3) A foreign registrant must provide the foreign address of the company. Labeling may, in addition, bear the name and address of the U.S. agent for information purposes.

§ 156.27 Optional identification elements.

A registrant may include on labeling additional company identification elements, such as company logos, lot or code numbers identifying particular batches of products, dates of label preparation, or the Universal Product Code. Such identification elements shall not detract from or obscure required information.

§ 156.30 Product registration number.

(a) *Requirement.* The label must bear the registration number assigned to the product, preceded by the phrase "EPA Registration No." or "EPA Reg. No." The registration number consists of the company number of the registrant followed by a hyphen and a sequential number designating the individual product, e.g., "EPA Reg. No. 9151–156" (company number-sequential product number). The label of a distributor product must bear the registration number of the product, followed by the distributor's company number (company number-sequential product number-distributor company number).

(b) *Location of the registration number.* The registration number must appear on the label and on any labeling for the product. The preferred location on the label is the bottom of the front panel. The number must run parallel to other print, and must be in a type size and style similar to other print on that part of the labeling on which it appears. The registration number may not appear in such a manner as to imply endorsement or recommendation of the product by the Agency.

§ 156.31 Producing establishment number.

(a) *Requirement.* Every pesticide product or device shall bear the producing establishment registration number of the final establishment at which the product was produced. (Establishment numbers are assigned upon request to the Agency.) The number shall be preceded by the phrase "EPA Est." or "EPA Establishment." Labeling shall not bear the establishment number of any intermediate establishment.

(b) *Location of establishment number.* The EPA establishment number may be displayed on the label, labeling, or immediate container of the pesticide product. The type size and form for the number must be comparable to that used for the EPA registration number. If the establishment number is placed on the immediate container, it must be on the container itself, and not only on the lid, cap, or any other appendage which is not permanently a part of the container. The establishment number must also appear on the wrapper or outer container if the number on the immediate container cannot be clearly read through such wrapper or outer container.

(c) *Form of the establishment number.* The EPA establishment number shall be expressed as (company number)—(two-letter State designation)—(sequential number within State). An example would be 123–MA–2, indicating the second establishment within the State of Massachusetts for the company whose number is 123. Multiple establishment numbers may be listed, provided that it is clear at which establishment the product was produced. The format of

multiple establishment numbers may be varied with the approval of the Pesticides Branch in the EPA Region where the producing establishment is located. The EPA establishment number may not be combined with the EPA registration number.

§ 156.34 Ingredients statement.

(a) *Requirement.* The label must bear a statement of the ingredients in the product. The statement must include the name and percentage by weight of each active ingredient and the total percentage of all inert ingredients (including impurities of the active ingredient), and shall meet the requirements of paragraphs (b) through (h) of this section, as applicable.

(b) *Location of the ingredients statement.* The ingredients statement normally must appear on the front panel of the label. The Agency may, upon written request, grant permission to place the ingredients statement on the back or side panel of the label when the pesticide is packaged in extremely small or irregularly shaped containers, or when the ingredients statement is unusually long.

(c) *Form of the ingredients statement.* (1) The ingredients statement must contain the following items:

(i) The headings "ACTIVE INGREDIENT(S)" and "INERT INGREDIENTS," both aligned to the same left margin, and in the same type size and form.

(ii) The name of each active ingredient, in accordance with paragraph (d) of this section.

(iii) The nominal concentration of each active ingredient and the total percentage of inert ingredients, in accordance with paragraph (e) of this section.

(2) A "blind label," which lists all ingredients in order of descending amount without giving the percentage of each, is not acceptable.

(3) The active ingredients and percentages may be listed in column or, if the label space is limited, in paragraph form. If a column form is used, the percentages shall be aligned according to decimal place. An example of each type follows:

	Percent
Active ingredients	81.7
Common name (chemical name)	56.4
Common name (chemical name)	22.1
Common name (chemical name)	3.2
Inert ingredients	18.3

Active Ingredients: Common name (chemical name) 56.4%; common name (chemical name) 22.1%; common name (chemical name) 3.2% Total active ingredients 81.7%

Inert Ingredients: 18.3%

(d) *Names to be used in the ingredients statement*—(1) *Common name.* Each active ingredient must be identified by an accepted common name, if there is one, in the order of precedence of use specified in paragraph (d)(2) of this section, followed by the chemical name in accordance with paragraph (d)(3) of this section. An active ingredient never before registered must have a common name for use in the ingredients statement.

(2) *Order of precedence of common names.* The following order of precedence shall be used for common names:

(i) A common name established by the American National Standards Institute (ANSI). Persons wishing to establish a common name should write to the Secretary, K–62 Committee, American National Standards Institute, Inc., 1430 Broadway, New York, NY 10018.

(ii) A common name established by the International Standards Organization (ISO).

(iii) A common name established by the British Standards Institution (BSI). Information on the International Standards Organization and British Standards Institution accepted common names may be obtained for the British Standards Institution, 2 Park Street, London, England.

(iv) A common name established by an appropriate technical association in the United States, such as the Weed Science Society of America.

(v) A common name established by the Administrator, under FIFRA sec. 25(c)(6).

(3) *Chemical name.* Immediately following the common name, the chemical name must appear. If there is no common name, the chemical name alone must be used. Chemical names must be given according to the nomenclature of the Chemical Abstracts Service of the American Chemical Society. Persons wishing to verify the correct chemical name for an ingredient should write to the Nomenclature Director, Chemical Abstracts Service, The Ohio State University, Columbus, Ohio 43210.

(4) *Descriptive name.* If there is no accepted common name and no specific chemical name for an ingredient, the ingredients statement must contain a descriptive name approved by the Agency. Examples are "derris resins," "tobacco other than nicotine," and "petroleum distillates."

(5) *Trademark name.* A trademark name may not be used in the ingredients statement unless the name has been approved as a common name by the Administrator under the authority of FIFRA sec. 25(c)(6). Trademark names and other information concerning a particular ingredient may appear by reference to a footnote to the ingredients statement.

(e) *Expression of percentages.* (1) The percentage of each active ingredient shall be the nominal concentration. The nominal concentration is the amount of active ingredient in a representative sample of the product produce in accordance with good manufacturing practice by the process described in the application for registration. The nominal concentration will always be within the certified limits for the ingredient. Sliding scales, ranges, or the certified limits, e.g., 23–25 percent, may not be used on the label.

(2) The stated percentage of the total inert ingredients shall be such that the percentages of active and inert ingredients total 100 percent. The term "100%" need not be expressed as part of the ingredients statement.

(f) *Additional statements in the ingredients statement.* (1) If a pesticide contains arsenic in any form, the ingredients statement must contain a substatement of the percentages of total and water soluble arsenic, both expressed as elemental equivalent. Examples of typical wording follow:

(i) "Total arsenic, all in water soluble form, expressed as elemental: ——%."

(ii) "Total arsenic, as elemental arsenic: ——%; Water soluble arsenic, as elemental arsenic: ——%."

(2) The ingredients statement of a product whose active ingredient is a salt, ester, or amine of an acid must include a statement giving the percentage of acid equivalent, an example of which follows:

	Percent
Active ingredient: Dimethylamine salt of 2,4–D *	———
Inert ingredients	———

* Contains 22.1% acid equivalent of 2,4–D or 2 lbs. 2,4–D acid per gallon

or

* Equivalent to 22.1% 2,4–D or 2 lbs. 2,4–D acid per gallon.

(3) Equivalency statements are useful, but not required for metallic and halogen compounds.

(4) the label shall include a statement of the weight of active ingredient per unit volume of product if the product is intended for agricultural use and the dosages are expressed in volumetric terms. A statement similar to "contains —— pounds of active ingredients per gallon" (or other suitable weight and volume units) is acceptable. The expressed conversions shall be as accurate as is practical. Decimals should

not be rounded to the next highest whole number.

(g) *Identification of inert ingredients.* (1) If the Administration determines by regulations or on a case-by-case basis that any inert ingredient poses a hazard to man or the environment, that ingredient must be identified on the label. A statement in or in close proximity to the ingredients statement similar to, Contains (name of ingredient)" is sufficient. In addition, special precautionary statements may be prescribed with respect to such ingredients. Refer to § 156.50 for a listing of those inert ingredients which must be so identified, and for the specific precautionary labeling required for each.

(2) Except as provided by paragraph (g)(l) of this section, if any inert ingredient is identified on the label, all inert ingredients must be identified in descending order by weight. The percentage of the inert ingredients need not be listed.

(h) *Ingredients statements for products of biological origin.* (1) The ingredients statement for a product whose active ingredient is a biological organism rather than a chemical substance must identify the organism by the most explicit accepted scientific name (genus, species, and strain). The statement must declare the number of viable organisms or colony-forming units (e.g., spores) per unit measures of ingredients. An example follows:

	Percent
Active ingredients: a mixed culture of not less than 100 million viable spores of either *Bacillus popilliae* or *Bacillus lentimorbus* or both per gram of powder	
Inert ingredients	

(2) If the product's action derives from a combination of a biological organism and a toxin of biological origin (e.g., *Bacillus thuringiensis*), or if it is not readily demonstrable whether the active component is a viable organism (e.g., nuclear polyhedrosis virus), the active ingredient must be stated in an acceptable and generally recognized bioassay unit. An example follows:

	Percent
Active ingredient: *Bacillus thuringiensis* Berliner —— International Units of potency per mg. (equivalent to —— billion International Units of potency per pound (quart) of this product	
Inert ingredients	

(3) the ingredients statement for a product whose active ingredient is a naturally occurring plant regulator, for which quantitative chemical methods and units are not available, such as cytokinen, auxin, or gibberellin, must be stated in an acceptable and generally recognized bioassay unit. For example, the active ingredient may be stated as "Cytokinen (equivalent to 200 ppm kinetin activity)" or "Auxin (equivalent to 150 ppm indoleacetic acid activity)."

(4) The Agency may approve alternate forms of ingredients statement for products containing ingredients of biological origin, if such statements are consistent with the purposes of the Act.

(i) *Optional expiration date.* The labeling may bear a date beyond which the product may not legally be sold or used. A statement such as, "Not for sale or use after (date)" may be used for this purpose. The labeling may also bear the date of manufacture of the product as a reference for such a statement, e.g., "Not for sale or use after six months from date of manufacture."

(j) *Optional statement of feed and fertilizer analysis.* A registrant may include in labeling a statement of feed or fertilizer composition, which may vary according to the requirements of individual State laws. The statement must be separate from the pesticide ingredients statement, and must not detract from or obscure the required pesticide labeling statements.

§ 156.36 Net weight or measure of contents.

(a) *Requirement.* The net weight or measure of contents of the product must appear on the label or container. The stated net weight or contents must be measured exclusive of container or wrappers and shall be the average content, unless specifically stated to be the minimum content.

(b) *Units of measure.* (1) The net contents may be stated in standard U.S. units, metric units, or both. Either may predominate or be emphasized by means of placement, type size, or form, but the predominant unit must be consistent with the package size unit, e.g., metric units may not predominate on a package containing a quart of product.

(2) Units must be appropriate to the size of the package. For example, a package containing less than one pound, gallon, kilogram or liter must be expressed in smaller appropriate units, e.g., ounces, quarts, grams or milliliters.

(c) *Form of statement.* Unless otherwise specified in this section or by the Agency, any method of expressing the net weight or contents is acceptable.

(d) *Net contents statement for multi-unit packages.* The net contents statement of a multi-unit package containing unit packages (not intended to be sold separately) must include, on the labeling of the outer container:

(1) The number of individual unit packages contained in the package;

(2) The net weight or contents or each unit package; and

(3) The net weight or contents of the total package. For example, a package containing four individual bait boxes may state "4 bait boxes 100 grams each. Total 400 grams." A container of individually wrapped tablets may state "50–15 gm tablets. Total 750 gms." Individual unit packages are not required to bear a net contents statement.

(e) *Location of the net contents statement.* (1) The net contents statement may be located either on the label, labeling, or container. If on the label, the preferred location is the lower third of the front panel. If on the container, it must be in close proximity to the label text, and may not appear only on the top, bottom, or lid of the immediate container or outer container, if there is one.

(2) The net contents of a product being transported or stored in a bulk container must appear on the shipping papers accompanying the product, or on the labeling attached to the bulk container.

(f) *Fair Packaging and Labeling Act.* Any net contents statement that meets the requirements of the Fair Packaging and Labeling Act, as set out in regulations in 16 CFR Part 500, satisfies the requirements of paragraphs (b), (c), and (d) of this section.

(g) *Variations in net content.* Variation above minimum content or around an average is permissible only to the extent that it represents deviation unavoidable in good manufacturing practice. Variation below a stated minimum is not permitted. In no case shall the average content of the packages in a shipment fall below that stated average content.

Subpart C—Warnings and Precautionary Statements

§ 156.40 Content and format.

(a) *General.* The label of each pesticide product shall bear warnings and precautionary statements with respect to human, environmental, and physical or chemical hazard posed by the product, in accordance with this subpart. Statements required by this subpart include the signal word, child hazard warning, statements of practical treatment, and general precautionary statements. Required environmental hazard statements include toxicity to nontarget fish, mammals, birds, aquatic invertebrates, beneficial insects, and

plants. Required physical and chemical hazard statements primarily include flammability, but may also include characteristics such as explosiveness, reactivity, or oxidizing capability. The Agency may require on a case-by-case basis, that additional hazard statements appear on the label, such as statements pertaining to chronic hazards.

(b) *Front panel statements.* All required front panel warning statements must be grouped together, must run parallel to other print on the label, and must appear with sufficient prominence to make them unlikely to be overlooked. The signal word and the child hazard warning are subject to the type size requirements specified in Table I of § 156.10. Surrounding the front panel warning statements with a solid line (blocking) is suggested as a means of lending prominence to these statements.

(c) *Side or back panel statements.* Precautionary statements must be grouped together on the label and appear under the general heading "Precautionary Statements." They must be further delineated into "Hazards to Humans and Domestic Animals," dealing with humans, pets, and livestock; "Environmental Hazards," addressing fish, birds, wildlife, aquatic invertebrates, plants, and beneficial insects; and "Physical/Chemical Hazards," including flammability hazards.

(d) *Referral statement.* If precautionary statements, including the Environmental Hazard and Physical and Chemical Hazard statements, appear on panels other than the front panel, the front panel must contain a referral statement in language similar to "See additional precautionary statements on side/back panel." This referral statement may be combined with that required for the Statement of Practical Treatment, if applicable. Any or all precautionary statements may be located in the front panel statements.

§ 152.42 Toxicity category.

The label of each pesticide product msut include the warning statement required for the toxicity category to which the product has been assigned, based on its acute toxicity (oral LD_{50}, dermal LD_{50}, inhalation LC_{50}, skin and eye effects). A product is assigned to one of four toxicity categories for each hazard indicator. Table 1 lists the toxicity categories for each acute indicator, and the criteria for each, Category I being of greatest toxicity and Category IV least. The overall toxicity category of the product is determined by the greatest hazard shown for any of the acute indicators listed in the following table:

Table 1—Toxicity Category Criteria

Hazard indicators	Category I	Category II	Category III	Category IV
Oral LD_{50}	Up to and including 50 mg/kg.	>50 thru 500 mg/kg	>500 thru 5000 mg/kg	>5000 mg/kg.
Dermal LD_{50}	Up to and including 200 mg/kg.	>200 thru 2000 mg/kg	>2000 thru 5000 mg/kg.	>5000 mg/kg.
Inhalation LC_{50} (actual chamber concentration measured for a 4-hour exposure.	Up to and including 0.05 mg/liter.	>0.05 thru 0.5 mg/liter	>0.5 thru 5 mg/liter	>5 mg/liter.
Eye effects	Corrosive (irreversible destruction of ocular tissue) or corneal involvement or irritation persisting for more than 21 days.	Corneal involvement or irritation clearing in 8–21 days.	Corneal involvement, or irritation clearing in 7 days or less.	Minimal effects clearing in less than 24 hours.
Skin effects	Corrosive (tissue destruction into the dermis and/or scarring).	Severe irritation at 72 hours (severe erythema or edema).	Moderate irritation at 72 hours (moderate erythema).	Mild or slight irritation (no irritation or slight erythema).

§ 156.44 Signal word.

(a) The signal word ("DANGER," "WARNING," or "CAUTION") of the Toxicity Category to which the product is assigned must appear on the front panel of the label beneath the heading "Precautionary Statements" on the side panel as required by § 156.52, and on any labeling. The words "Danger", "Warning", and "Caution" may not appear in labeling in any other location, unless required by the Agency.

(b) The label of a product assigned to Toxicity Category I based on acute oral, dermal, or inhalation toxicity is required to bear the signal word "DANGER". In addition, the word "POISON" (in red) together with the skull and crossbones must appear in close proximity to the signal word.

(c) The label of a product assigned to Toxicity Category I solely on the basis of eye or skin irritation effects is required to bear the signal word "DANGER". The skull and crossbones and word "POISON" are not required for such products.

(d) The label of a product assigned to Toxicity Category II is required to bear the signal word "WARNING".

(e) The label of a product assigned to Toxicity Category III or IV is required to bear the signal word "CAUTION".

(f) The label of a product in any Toxicity Category may not bear the signal word assigned to a category of lesser toxicity, unless the Agency determines that the testing upon which that categorization was based is not truly indicative of the toxicity of the product to humans.

(g) The label of a product in any Toxicity Category may not bear the signal word assigned to a category of greater toxicity, unless the Agency determines that:

(1) The testing upon which that categorization was based is not truly indicative of the toxicity of the product to humans; or

(2) Based on accident reports or other information, the product requires the higher signal word to prevent unreasonable adverse effects.

§ 156.46 Child hazard warning.

(a) A child hazard warning statement must appear on the front panel of the label, on a separate line above the signal word, unless a waiver has been obtained in accordance with paragraph (c) of this section. The child hazard warning must also appear in any product labeling. The child hazard warning may not be juxtaposed with the signal word (i.e., WARNING: Keep Out of Reach of Children) so as to give the impression that the signal word applies only to child hazards.

(b) The child hazard warning normally required on products is "Keep Out of Reach of Children." If this warning would not be appropriate because of the circumstances of the intended use pattern, the Agency may permit a child hazard warning that more accurately reflects the form and use of the product. For example, a dog or cat collar, where the normal use of the product permits access by children, may bear the child hazard warning, "Do not allow children to play with collar."

(c) Upon written request of the registrant, the Agency will consider waiving the requirement for a child hazard warning. To support a waiver request, the product must be approved for use by or on small children and infants, or the applicant must demonstrate that the likelihood of contact with children in distribution, marketing, storage, or use is extremely remote.

§ 156.48 Statement of practical treatment.

(a) *Requirement.* A statement of practical treatment is required on the label of each pesticide product assigned to Toxicity Category I, II, or III. Instructions must address each route of exposure (oral, dermal, inhalation, eye and skin effects) that assigns the product to Toxicity Category I, II, or III. A statement is not required for any route of exposure in Toxicity Category IV. Instructions for various routes of exposure may be combined when appropriate.

(b) *Placement of statement.* (1) The statement of practical treatment for each route of exposure falling into Category I shall appear on the front panel of the label, grouped with the signal word and child hazard warning. Blocking is suggested as a means of emphasizing the statements.

(2) The statement of practical treatment for routes of exposure not falling into Category I may appear on the front, side, or back panel. In this case, the statements must be set apart from other precautionary statements on the panel. A referral statement on the front panel must be used when practical treatment statements appear elsewhere on the label.

(c) *Format of statement.* (1) The heading "Practical Treatment" or "First Aid" must precede the statement in all cases. The heading "Antidote" shall not be used, unless a specific antidote is recommended.

(2) The statements should be brief and in clear, simple, straightforward language so that the average person can easily and quickly understand the instructions.

(3) The statements should be segregated according to the various routes of exposure. Routes of greater hazard, requiring the most urgent treatment, should be listed first. For example, a product whose primary hazard is eye irritation, with lesser effects from oral, dermal, and inhalation toxicity, should appear as follows:

IF IN EYES, ...
IF SWALLOWED, ...
IF ON SKIN, ...
IF INHALED, ...

(d) *Nature of statements.* (1) A recommended practical treatment measure should generally be appropriate for all levels of exposure to the pesticide that result in acute toxic effects.

(2) The statement should be appropriate for persons of all ages who might be expected to be exposed, or should distinguish between treatments for differing ages, e.g., children vs. adults.

(3) The recommended practical treatment should be one that any reasonably competent individual is capable of performing. Procedures for which medical personnel or specialized equipment are required should be reserved for a "Note to Physician."

(4) The treatment should have few or no harmful effects.

(5) If there is a specific antidote for the pesticide, information on its use should be included.

(6) If inducing vomiting is recommended as a practical treatment measure, salt or salt solutions shall not be recommended as the emetic agent.

§ 156.49 Note to physician.

A "Note to Physician" must be included on the label for:

(a) All products in Toxicity Category I, and

(b) Any product containing an ingredient that produces physiological effects requiring specific antidotal or medical treatment. Examples of this latter category are cholinesterase inhibitors (such as carbamates and phosphorothioates), metabolic stimulants (such as dichlorophenols), and anticoagulants (such as warfarin). The Note to Physician must appear near the Statement of Practical Treatment, but clearly distinguished from it. Appropriate items for the Note to Physician are technical information on symptomatology, use of supportive treatments to maintain life functions, an medications that may counteract the specific physiological effects of the pesticide. A company telephone number may be provided to give medical personnel access to specialized medical advice.

§ 156.50 Inert ingredient labeling.

(a) When an inert ingredient has been determined by the Agency, by regulation or on a case-by-case basis, to pose an acute or other hazard, or to contribute significantly to the overall hazard of the product, the label must:

(1) Identify the inert ingredient by common name, if there is one, or by chemical name, in close proximity to the ingredients statement (a statement such as "Contains———" is acceptable for this purpose);

(2) Include specific precautionary statements required by ths subpart or by the Agency; and

(3) If required by the Agency, include specific practical treatment statements pertaining to the inert ingredient.

(b) Any product containing an inert ingredient listed in Table 1 must include the specified information on the label:

TABLE 1—REQUIRED LABELING FOR INERT INGREDIENTS

Substance	Limitations	Required labeling
Carbon tetrachloride		1. Identification. 2. Skull and crossbones and word POISON in red. 3. Statement: "DANGER". May be fatal if swallowed or inhaled. 4. Appropriate practical treatment statement.
Methanol	4 percent or more	1. Identification. 2. Skull and crossbones and word POISON in red. 3. Statement: "DANGER. Methanol may cause blindness. Fatal if swallowed. Avoid breathing spray mist or vapors. Avoid contact with skin." 4. Appropriate practical treatment statement.
Petroleum distillates (when inert)	10 percent or more	1. Identification. 2. Appropriate practical treatment statement.
Sodium nitrite		1. Identification.

§156.52 Human hazard precautionary statement.

(a) *Heading.* Human hazard precautionary statements must be immediately preceded by the signal word, if the statements appear on other than the front panel, and by the heading, "Hazards to Humans and Domestic Animals." If the use pattern precludes reasonable expectation of exposure to domestic animals, the phrase "* * * and Domestic Animals" may be omitted from the heading.

(b) *Acute hazard precautionary statements.* (1) Tables 1 through 5 illustrate typical human precautionary statements that must normally appear on labels. These tables are organized by route of exposure and Toxicity Category, and include the appropriate signal word and typical statements of practical treatment.

(2) Because these tables do not express all the hazards of specific products, and because toxic effects other than acute effects are not addressed, modification or expansion of precautionary statements may be necessary to reflect specific hazards of a given pesticide product. Tables 1 through 5 follow:

TABLE 1—PRECAUTIONARY STATEMENTS FOR ACUTE ORAL INGESTION HAZARD

Toxicity category	Signal word	Skull and crossbones and "Poison" required	Precautionary statements	Statements of practical treatment [1]
I				
LD_{50} up to and including 50 mg/kg	Danger	Yes	Fatal if swallowed. Wash thoroughly with soap and water after handling and before eating, drinking, or using tobacco.	*If Swallowed:* Call a physician or Poison Control Center. Drink 1 or 2 glasses of water and induce vomiting by touching back of throat with finger. Do not induce vomiting or give anything by mouth to an unconscious person.[2]
II				
LD_{50} >50 thru 500 mg/kg	Warning	No	May be fatal if swallowed. Wash thoroughly with soap and water after handling and before eating, drinking or using tobacco.	Same as above.
III				
LD_{50} >500 thru 5000 mg/kg	Caution	No	Harmful if swallowed. Wash thoroughly with soap and water after handling.	Do.
IV				
LD_{50} greater than 5000 mg/kg	....do	No	None required	None required.

[1] Statements of practical treatment will be significantly different for products containing petroleum distillates or which are corrosive since the induction of vomiting may be contraindicated, depending on the overall oral toxicity of the product.

[2] An alternate statment may be used, for example: *"If swallowed:* Call a physician or Poison Control Center. Drink 1 or 2 glasses of water and induce vomiting by touching back of throat with finger, or, if available, by administering syrup of ipecac. Do not induce vomiting or give anything by mouth to an unconscious person."

TABLE 2—PRECAUTIONARY STATEMENTS FOR ACUTE DERMAL ABSORPTION HAZARD

Toxicity category	Signal word	Skull and crossbones and posion required	Precautionary statements	Statements of practical treatment
I				
LD_{50} up to and including 200 mg/kg.	Danger	Yes	Fatal if absorbed through skin. Do not get in eyes, on skin, or on clothing. Wear protective clothing and rubber gloves. Wash thoroughly with soap and water after handling and before eating, drinking, or using tobacco. Remove contaminated clothing and wash before reuse.	*If on skin:* Wash with plenty of soap and water. Get medical attention.
II				
LD_{50} >200 thru 2000 mg/kg	Warning	No	May be fatal if absorbed through skin. Do not get in eyes, on skin, or on clothing. Wear protective clothing and rubber gloves. Wash thoroughly with soap and water after handling and before eating, drinking, or using tobacco. Remove contaminated clothing and wash before reuse.	Same as above.
III				
LD_{50} >2000 thru 5000 mg/kg	Caution	No	Harmful if absorbed through skin. Avoid contact with skin, eyes or clothing. Wash thoroughly with soap and water after handling.	Do.
IV				
LD_{50} >5000 mg/kg	....do	No	None required	None required.

TABLE 3—PRECAUTIONARY STATEMENTS FOR ACUTE INHALATION HAZARD

Toxicity category	Signal word	Skull and crossbones and "Poison" required	Precautionary statements and requirements	Statements of practical treatment
I				
LC_{50} up to and including 0.05 mg/l (actual chamber concentration measured for a four-hour exposure).	Danger	Yes	Fatal if inhaled. Do not breathe dust (vapor or spray mist). [Identify specific respiratory protective device approved by the Mine Safety and Health Administration and the National Institute for Occupational Safety and Health.] Remove contaminated clothing and wash before reuse.	*If inhaled:* Remove victim to fresh air. If not breathing, give artificial respiration, preferably mouth-to-mouth. Get medical attention.
II				
LC_{50} >0.05 thru 0.5 mg/l (actual chamber concentration measured for a four-hour exposure).	Warning	No	May be fatal if inhaled. Do not breathe dust (vapor or spray mist). Wear a mask or pesticide respirator jointly approved by the Mine Safety and Health Administration and the National Institute for Occupational Safety and Health. Remove contaminated clothing and wash before reuse.	Same as above.
III				
LC_{50} >0.5 thru 5 mg/l (actual chamber concentration measured for a four-hour exposure).	Caution	No	Harmful if inhaled. Avoid breathing dust (vapor or spray mist). Remove contaminated clothing and wash contaminated clothing and wash before reuse.	Must be determined on an individual basis, depending on site of use.
IV				
LC_{50} greater than 5 mg/l (actual chamber concentration measured for a four-hour exposure.	do	No	None required	None required.

TABLE 4.—PRECAUTIONARY STATEMENTS FOR EYE IRRITATION HAZARD

Toxicity category	Signal word	Skull and crossbones and "Poison" required	Precautionary statements	Statements of practical treatment
I				
Corrosive (irreversible destruction of ocular tissue); or corneal involvement or irritation persisting for more than 21 days.	Danger	No	Corrosive.[1] Causes irreversible eye damage. Do not get in eyes or on clothing. Wear goggles, face shield, or safety glasses).[2] Wash thoroughly with soap and water after handling. Remove contaminated clothing and wash before reuse.	*If in eyes:* Hold eyelids open and flush with a steady, gentle stream of water for 15 minutes *If swallowed:* Drink promptly a large quantity of milk, egg white, gelatin solution, or, if these are not available, large quantities of water. Avoid alcolhol. *Note to Physician:* Probable mucosal damage may contraindicate the use of gastric lavage.
II				
Corneal involvement or irritation clearing in 8–21 days.	Warning	No	Causes substantial but temporary eye injury. Do not get in eyes or on clothing. Wear (goggles, face shield, or safety glasses).[2] Wash thoroughly with soap and water after handling. Remove contaminated clothing and wash before reuse.	Same as above, except omit Note to Physician.
III				
Corneal involvement or irritation clearing in 7 days or less.	Caution	No	Causes (moderate) eye injury (irritation). Avoid contact with eyes or clothing. Wash thoroughly with soap and water after handling.	*If in eyes:* Flush eyes with plenty of water. Call a physician if irritation persists.
IV				
Minimal effects clearing in less than 24 hours.	do	No	None required	None required.

[1] The term "corrosive" may be omitted if the product is not actually corrosive, as demonstrated by testing.
[2] Choose appropriate form of eye protection. Recommendation for goggles or face shield is appropriate for industrial, commercial, or institutional uses. Safety glasses may be recommended for residential uses.

TABLE 5—PRECAUTIONARY STATEMENTS FOR DERMAL IRRITATION HAZARD

Toxicity category	signal word	Skull and crossbones and "Poison" required	Precautionary statements	Statements of practical treatment
I				
Corrosive (tissue destruction dermis and/or scarring).	Danger	No.	Corrosive. Causes burns. Do not get in eyes, on skin, or on clothing. Wear protective clothing and rubber golves.[1] Wash thoroughly with soap and water after handling. Remove contaminated clothing and wash before reuse.	*If on skin:* Wash with plenty of soap and water. Get medical attention. *If swallowed:* Drink promptly a large quantity of milk, egg white gelatin solution, or if thiese are not available, large quantities of water. Avoid alcohol. *Note to Physician:* Probable mucosal damage may contraindicate use of gastric lavage.
II				
Severe irritatation at 72 hours. (severe erythema or edema).	Warning	No.	Causes skin irritation. Do not get on skin or on clothing. Wash thoroughly with soap and water after handling. Remove contaminated clothing and wash before reuse.	Same as above, except omit Note to Physician
III				
Moderate irritation at 72 hours (moderate erythema).	Caution	No	Avoid contact with skin or clothing. Wash thoroughly with soap and water after handling.	*If on skin:* Wash with plenty of soap and water. Get medical attention if irritation persists.

TABLE 5—PRECAUTIONARY STATEMENTS FOR DERMAL IRRITATION HAZARD—Continued

Toxicity category	signal word	Skull and crossbones and "Poison" required	Precautionary statements	Statements of practical treatment
IV Mild or slight irritation at 72 hours (no irritation or slight erythema).	....do....	No.	None required.	None required.

[1] Need for gloves must be determined on an individual basis. Some products cause blistering if confined under clothing.

(3) If a product exhibits differing degrees of acute effects by several routes of exposure, a composite precautionary statement and statements of practical treatment must be developed by combining the statements from the table.

(c) *Respirator statement.* (1) A respirator statement is required on the label of each end-use product assigned to Toxicity Category I or II on the basis of inhalation toxicity.

(2) The label of a product in Toxicity Category I on the basis of inhalation toxicity must identify and require the use of a specific type of respiratory protective device that will provide protection to those exposed to the pesticide. Specific model designations may also be included. Only respirators jointly approved by the Mine Safety and Health Administration (MSHA) and the National Institute for Occupational Safety and Health (NIOSH) under ther provisions of 30 CFR Part 11 for either Supplied Air Respirators (Subpart J) or Pesticide Respirators (Subpart M) may be specified on the label. A list of approved respirators entitled, "NIOSH Certified Equipment List as of (date)," is published periodically by NIOSH. A copy of the latest edition of this publication may be obtained at a charge from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

(3) The label of a product in Toxicity Category II on the basis of inhalation toxicity must bear the statement, "Wear a respirator jointly approved by the Mine Safety and Health Administration and the National Institute for Occupational Safety and Health for pesticide application." The label may also identify a specific model of respirator.

(d) *Optional emergency information.* Emergency information, in addition to that required by this subpart, may be included on the label. Such information may instruct the user how to contact the company or the National Response Center in care of accident, spill, or other emergency. A registrant may include (or the Agency may require) a telephone number for access to emergency information.

§ 156.55 Environmental hazard statements.

(a) *Requirement.* Statements pertaining to hazard to fish, mammals, birds, aquatic invertebrates, beneficial insects, and endangered species are required on the label of a product intended for outdoor use. The required statements are based on the results of tests required by 40 CFR 158.145 and 158.155.

(b) *Placement.* (1) A statement that applies to the majority of use patterns on the label should generally appear in the side or back panel Precautionary Statements, under the heading "Environmental Hazards."

(2) A statement associated with a specific use pattern, site of application, application technique, time of application, or geographic location should be placed in the general Directions for Use section, or in close association to the applicable use directions.

(c) *Environmental contamination statement.* (1) Except as provided by paragraph (c)(3) of this section, each product intended for outdoor use must bear the statement "Do not contaminate water by cleaning of equipment or disposal of wastes." This statement must appear in the Precautionary Statements section.

(2) Each product intended for outdoor use (unless application to water or wetlands is specified on the label) must bear the statement, "Do not apply directly to water or wetlands."

(3) Each product for use in cooling towers, pulp and paper mills, or similar sites where the pesticide may be contained in effluent discharges from the site (which may be governed directly or indirectly by the issuance of a National Pollutant Discharge Elimination System (NPDES) permit), is required to bear the following statement:

Do not discharge effluent containing this product into lakes, streams, ponds, estuaries, oceans, or public waters unless this product is specifically identified and addressed in an NPDES permit. Do not discharge effluent containing this product to sewer systems without previously notifiying the sewage treatment plant authority. For guidance, contact your State Water Board or Regional Office of the EPA.

This statement must appear in the general Directions for Use.

(d) *General toxicity statements.* Products intended for outdoor use that exhibit toxicity to various nontarget animals as demonstrated by the toxicity tests required by § 158.145, must bear toxicity statements (which shall be located in the Precautionary Statements section of the label) as follows:

(1) If the mammalian acute oral LD_{50} is 100 mg/kg or less, or the avian acute oral LD_{50} is 100 mg/kg or less, or the avian subacute LD_{50} is 500 ppm or less, the label must bear the statement, "This pesticide [or product] is toxic to wildlife."

(2) If the fish acute LD_{50} is 1 ppm or less, the label must bear the statement "This pesticide [or product] is toxic to fish."

(3) If the aquatic invertebrate acute LD_{50} is 1 ppm or less, the label must bear the statement, "This pesticide [or product] is toxic to aquatic invertebrates."

(4) The term "toxic" in the statements must be replaced with "extremely toxic * * * [Fish and/or wildlife] in treated areas may be killed," if field studies or accident history demonstrates that the use of the pesticide may result in fatality to birds, fish, aquatic invertebrates or mammals. The Agency will apply this requirement on a case-by-case basis.

(5) If the product exhibits toxicity in more than one wildlife or aquatic category, the required statements may be combined i.e., "This pesticide is toxic to fish and wildlife." If a product exhibits toxicity to both fish and aquatic invertebrates, only the statement for fish in paragraph (d)(2) of this section need be used.

(e) *Use restrictions.* The toxicity statements in paragraph (d) of this section are the minimum acceptable for any product requiring environmental hazard statements. If a product is toxic or extremely toxic and an environmental hazard is associated with a specific use pattern, site, application technique, geographic location, or other use-related parameter, use restrictions may be required. Examples of some frequently required statements, together with the conditions that trigger their required use, are given below:

(1) For pesticides with aquatic uses: "Consult your State Fish and Game Agency before applying this product to public waters to determine if a permit is needed for such application."

(2) For granular pesticides that are extremely toxic: "Cover or incorporate granules that are spilled during loading or are visible on soil surface in turn areas."

(3) For products for use on non-aquatic sites that require a toxicity statement under paragraph (d) (2) or (3) of this section: "Drift and runoff from treated areas may be hazardous to aquatic organisms in neighboring areas."

(4) For swimming pool algicides and slimicides containing chlorine: "Chlorine must be allowed to dissipate from treated pool water before discharge. Do not make any chlorine application within 24 hours of discharge."

(5) For products containing instructions for use as seed treatments: "Dispose of excess treated seed by burial away from bodies of water."

(f) *Endangered species.* (1) Based on data submitted in accordance with §§ 158.135, 158.145, and 158.155 and upon recommendations of the Office of Endangered Species, Department of the Interior, or the National Marine Fisheries Service, Department of Commerce, the Agency may require, on a case-by-case basis, specific restrictions for the protection of endangered species.

(2) Statements may take the form of geographical limitations, timing, frequency, or application restrictions, or buffer zones to protect sensitive areas. If required, such statements will be located in the use directions.

(3) In no case may a pesticide label bear directions for use against an endangered species as a pest.

(g) *Beneficial insect cautions*—(1) *Requirement.* Beneficial insect cautions are required on the label of a product if:

(i) The pesticide is toxic to beneficial insects, as shown by data developed in accordance with § 158.155; and

(ii) The product is intended for foliar application to agricultural crops, forests, shade trees or ornamentals, or for mosquito abatement.

(2) *Toxicity criteria.* Pesticide products are classified according to the acute toxicity of their active ingredient(s) to beneficial insects based on data required by § 158.155. The following Table 1 sets out the toxicity groupings and required label statements for honeybees:

TABLE 1.—HONEYBEE TOXICITY GROUPS AND CAUTIONS

Toxicity group	Precautionary statement if extended residual toxicity is displayed	Precautionary statement if extended residual toxicity is not displayed
I		
Product contains any active ingredient with acute LD_{50} of 2 micrograms/bee or less.	This product is highly toxic to bees exposed to direct treatment or residues on blooming crops or weeds. Do not apply this product or allow it to drift to blooming crops or weeds if bees are visiting the treatment area.	This product is highly toxic to bees exposed to direct treatment on blooming crops or weeds. Do not apply this product or allow it to drift to blooming crops or weeds while bees are actively visiting the treatment area.
II		
Product contains any active ingredient(s) with acute LD_{50} of greater than 2 micrograms but less than 11 micrograms/bee.	This product is toxic to bees exposed to direct treatment or residues on blooming crops or weeds. Do not apply this product if bees are visiting the treatment area.	This product is highly toxic to bees exposed to direct treatment. Do not apply this product while bees are actively visiting the treatment area.
III		
All others	No bee caution required.	No bee caution required.

(3) *Precautionary statements.* The appropriate precautionary statement given in Table 1 of this section must be placed in the Environmental Hazards section of the label precautionary statements. The statements in Table 1 are categorized according to toxicity groupings, and further subdivided to delineate products that exhibit extended residual toxicity.

(4) *Use-related restrictions.* Pesticide products that are highly toxic to bees (Group I products) and that bear directions for use on certain specific sites are required to bear additional precautionary statements. These auxiliary statements should appear in the use directions for the particular crop or site rather than in the precautionary statements. Statements are required for the following crops:

(i) Foliar application to alfalfa, peas, or beans: "Do not apply if the crop or weeds in the treatment area are in bloom."

(ii) Foliar application to corn: "Do not apply to corn during the pollen shed period."

(iii) Foliar application to listed fruit trees (apple, cherry, peach, plum, citrus): "Do not apply when trees or substantial numbers of weeds in the orchard (grove) are in bloom."

§ 156.58 Physical/chemical hazard statements.

(a) *Flammability statement.* Precautionary statements relating to flammability of a product are required on the label if the product meets the criteria given in Tables 1 or 2 of this section. Tables 1 and 2 also list the statements to be used. These statements are to be located in the side or back panel precautionary statements section, preceded by the heading "Physical/Chemical Hazards". No signal word is used in conjunction with the flammability statements. Tables 1 and 2 follow:

TABLE 1—FLAMMABILITY STATEMENTS FOR NON-PRESSURIZED PRODUCTS

Flash point at or less than 20°F.	Extremely flammable. Do not use or store near fire, sparks, or heated surfaces. Do not use in the vicinity of pilot lights.
Flash point greater than 20°F and less than 100°F.	Flammable. Do not use or store near heat sources or open flame. Do not use in the vicinity of pilot lights.
Flash point at or greater than 100°F and less than 150°F.	Do not use or store near heat or open flame.
Flash point at 150°F or greater.	No statement required.

TABLE 2—FLAMMABILITY STATEMENTS FOR PRESSURIZED PRODUCTS

Flash point at or less than 20°F or if there is a flashback at any degree of valve opening.	Extremely flammable. Do not use or store near fire, sparks, or heated surfaces. Do not use in the vicinity of pilot lights. Contents under pressure. Do not puncture or incinerate container. Exposure to temperatures above 130°F may cause bursting.
Flash point greater than 20°F and less than 100°F; or if the flame extension is more than 18 inches at a distance of 6 inches from the flame.	Flammable. Do not use or store near heat sources, sparks, or open flame. Do not use in the vicinity of pilot lights. Contents under pressure. Do not puncture or incinerate container. Exposure to temperatures above 130°F may cause bursting.
All other pressurized containers.	Contents under pressure. Do not use or store near heat or open flame. Do not puncture or incinerate container. Exposure to temperatures above 130°F may cause bursting.

(b) *Criteria for declaration of non-flammability.* The label of a product that meets the following criteria for non-flammability may bar the term "non-flammable" or "non-flammable (gas, liquid, etc.)":

(1) If a gas or mixture of gases, it does not ignite when a lighted match is paced against the open cylinder valve.

(2) If a liquid, it has a flash point greater than 350°F (177°C).

(3) If an aerosol, it meets all of the following criteria:

(i) The flame extension is zero inches, and there is no flashback, with the valve opening at a distance of 6 inches from the flame.

(ii) The flash point of the non-volatile liquid component is greater than 350°F (177°C).

(c) *Location of declaration of non-flammability.* The phrase may appear as a substatement to the ingredients statement, or on a back or side panel, but shall not be highlighted or emphasized (as with an inordinately large type size) so as to constitute a safety claim.

(d) *Other phsical/chemical hazard statements.* When data submitted in accordance with § 158.120 demonstrate hazards of a physical or chemical nature other than flammability, appropriate statements of hazard must be included on the label. Such statements may address hazards of explosiveness, oxidizing or reducing capability, reactivity or corrosivity.

Subpart D—Use Directions and Restrictions

§ 156.60 General.

(a) *Placement*—(1) *Label.* Unless otherwise specified in this section, all information required by this Subpart D may be placed in any location on the label of the product.

(2) *Labeling.* All information required by this Subpart D may appear in labeling (e.g., brochures, pamphlets), instead of on the label, provided that:

(i) Such labeling is securely attached to the pesticide container, or placed within the outer container or wrapper; and

(ii) The label bears a statement similar to, "Use only in accordance with directions in the enclosed circular."

(b) *Heading.* The heading "Directions for Use" or similar wording denoting instruction to the user must be used.

§ 156.62 Classification statement.

(a) *Products classified for restricted use.* (1) If the uses of a product have been classified for restricted use only by certified applicators under FIFRA section 3(d)(1)(C), the label must bear the phrase "RESTRICTED USE PESTICIDE" at the top of the front panel. The phrase must be in capital letters, and must appear in a type size at least as large as that required for the signal word. Type size requirements are found in Table 1 ot § 156.10(c)(2). The phrase (and accompanying terms of restriction, if required) must appear prominently above the product name, company logo, or other text or graphic matter so that it is unlikely to be overlooked during the customary conditions of purchase or use. If labeling is also used for Directions for Use, the restricted use phrase and terms of restriction must also appear at the top of such labeling.

(2) If the phrase "RESTRICTED USE PESTICIDE" is required, directly below it must appear a statement of the terms of the restricted use. If use is limited to certified applicators, the statement shall read, "For use only by a certified applicator for uses authorized by his certification, or by persons under his direct supervision."

(3) Blocking the restricted use statements within a solid line is suggested as a means of emphasis.

(b) *Products classified for restricted used and bearing other unrestricted uses.* The label of a product bearing restricted uses may bear unrestricted uses. The product, however, must be labeled in accordance with the requirements of paragraph (a) of this section, as if all uses were restricted. The labeling may not distinguish between uses classified for restricted use and those not so classified.

(c) *Products bearing only uses not classified or classified for general use.* The labeling of a product bearing only uses that are not classified or which are classified for general use may not bear a statement of classification.

§ 156.64 Misuse statement.

(a) The labeling of each product shall bear one of the following misuse statements:

(1) "It is a violation of Federal law to use this product in a manner inconsistent with its labeling."

(2) "Federal law prohibits use of this product in a manner inconsistent with its labeling."

(b) The misuse statement shall appear as a separate paragraph directly beneath the heading of the Directions for Use portion of the labeling, and shall be distinct from other text in the Directions for Use.

§ 156.67 Worker protection statements.

(a) *Outdoor agricultural products involving hand labor.* The labeling of each product for outdoor agricultural use on crops involving hand labor shall meet the following requirements:

(1) The labeling shall bear the following statement: "Do not apply this product in a manner as to expose workers or other persons either directly or through drift. The area being treated must be vacated by unprotected persons."

(2) If the product is assigned to Toxicity Category I or II, the front panel signal word must appear in Spanish as well as English.

(3) If the product is assigned to Toxicity Category I or II, the statement, "Si usted no lee ingles, no use este producto hasta que el etiqueta haya sido explicado ampliamente," must appear in close proximity to the Spanish signal word. [Translation: "If you cannot read English, do not use this product until the label has been fully explained to you."]

(4) If a specific reentry interval has been established by 40 CFR Part 170, or has been established by the Agency based on data submitted in accordance with Subdivision K of the Registration Guidelines, the labeling must include that reentry interval. A reentry interval established based on data in accordance with Subdivision K takes precedence if there is a conflict with 40 CFR Part 170. The following statement must be used: "Do not enter or allow entry into treated areas within —— (hours/days) after treatment unless protective clothing is worn." [The reentry interval in 40 CFR 170.3(b)(2) or that established by application of Subdivision K is to be placed in the blank space.]

(5) If no specific reentry interval has been established in 40 CFR Part 170 or in accordance with Subdivision K, the following reentry statement must appear in labeling: "Do not enter or allow entry into treated areas without protective clothing until (sprays have dried/dusts have settled)."

(6) Labeling must also include a statement advising that State reentry restrictions may be more stringent than federally established ones. The following is an acceptable statement for this purpose: "State or local reentry regulations may be more restrictive than those stated on this label."

(7) Labeling must bear a statement prohibiting use unless written or oral warnings have been given to workers in an appropriate language or unless areas to be treated have been posted at usual points of entry. The statement shall require that such posting or warning include, at a minimum, the following information, in an appropriate language:

(i) The signal word and, if required for the product, the skull and crossbones symbol (for posting);

(ii) A statement that the area has been treated with a named pesticide;

(iii) The date of treatment;

(iv) The date or time when safe reentry may be accomplished;

(v) A warning not to enter the treated area without protective clothing until the date specified; and

(vi) A telephone number for further information.

(8) An example of an acceptable posting statement would be, "WARNING. Area treated with (name of pesticide) on (date). Do no enter without protective clothing until (date/time of reentry). For further information call (telephone number)."

(9) Reentry restrictions must appear in the Directions for Use portion of labeling. Specific reentry intervals should be associated with the use(s) to which they are applicable.

(b) *Products for treating structures and vehicles.* The labeling of each product intended for fumigation of structures or vehicles must bear:

(1) A statement requiring the placarding of the treated structure or vehicle at doors and other access points with the following:

(i) The signal word, and, if required for the product, the skull and crossbones symbol;

(ii) The statement "Area under fumigation. Do not enter."

(iii) The date of fumigation;

(iv) The name of the fumigant used;

(v) An emergency telephone number; and

(vi) The name and address of the fumigator.

(2) Complete instructions for aeration of the treated area, including the required use of a suitable detector to determine when the area is safe for reentry.

(3) A statement that the warning placards are not to be removed until aeration has been completed in accordance with the instructions provided.

(c) *Required statement for truck and van fumigants.* The labeling of each product intended for fumigation of trucks, vans and trailers must bear the following statement: "Do not move trucks, vans, or trailers during fumigation. Aerate in accordance with label instructions before moving."

§ 156.70 Storage and disposal statements.

(a) *Location and format.* Storage and disposal statements shall be grouped together in the Directions for Use portion of labeling. Products labeled for home and garden use by homeowners only do not require a heading for the statements. All other products shall bear the heading "Storage and Disposal." Storage and disposal statements must be set apart from other directions for use. Blocking is suggested for this purpose.

(b) *Storage instructions.* Labeling must bear storage and handling instructions, based on a consideration of the conditions that might alter the form or composition of the pesticide or that might affect the container and its ability to continue to function properly. Such instruction should describe, when applicable:

(1) Acceptable ranges of temperature and humidity, and the effect of excesses of heat, sunlight, friction or contaminating substances or media on the product;

(2) Acceptable physical conditions of storage of the product, such as positioning of the container, measures to avoid breakage, crushing, shock, friction or moisture penetration, stacking height, and separation of pesticides during storage to prevent cross-contamination of other pesticides, fertilizer, food, and feed.

(3) Proper handling of the pesticide and container, including how to move the container within the storage area, how to open and close the container properly (particularly for partially used containers), and measures to prevent contamination upon opening or closing.

(4) What actions to take if the container is damaged in any way, or if the pesticide is leaking or has been spilled, and what precautions to take to minimize exposure if any of these has occurred.

(5) If the product is for residential or institutional use, instructions for locked storage and warnings against transfer of the pesticide from its original container.

(c) *Pesticide disposal statement.* (1) The labeling of each product intended for residential or institutional use (and in a size appropriate to that use) must bear a disposal statement similar to that for RESIDENTIAL AND INSTITUTIONAL PRODUCTS in Table 1 of this section.

(2) The labeling of each other product that meets any or the criteria in paragraph (c)(2) (i) through (iii) of this section must bear the statement given in that paragraph, together with the pesticide disposal statements given for HAZARDOUS WASTE in Table 1 of this section. If the product meets more than one criteria, it must bear the statement denoting highest hazard (acutely hazardous > toxic > hazardous).

(i) The product is assigned to Toxicity Category I on the basis of acute oral or dermal toxicity, or skin or eye irritation potential, or Toxicity Category I or II on the basis of acute inhalation toxicity. Any such product shall bear the statement, "Pesticide wastes are acutely hazardous."

(ii) The product contains any ingredient listed in 40 CFR 261.33(f). Any such product shall bear the statement, "Pesticide wastes are toxic."

(iii) The product meets any of the criteria for a hazardous waste in 40 CFR 261.21 through 261.23, or contains any ingredient listed in 40 CFR 261.24 for EP toxicity. Any such product shall bear the statement, "Pesticide wastes are hazardous."

(3) The labeling of each other product not meeting the criteria of paragraph (c)(2) of this section must bear the pesticide disposal statements given for NON-HAZARDOUS WASTE in the following Table 1:

TABLE 1—PESTICIDE DISPOSAL STATEMENTS

Residential and institutional use products.	Securely wrap original container in several layers of newspaper and discard in trash.
Hazardous waste	Pesticide wastes are (acutely hazardous/toxic/hazardous). Dot not contaminate water, food, or feed by storage or disposal. Improper disposal of excess pesticide, spray mixture, or rinsate is a violation of Federal law. Dispose of excess or waste pesticide by use according to label directions, or contact your State Pesticide or Environmental Control Agency or the Hazardous Waste representative at the nearest EPA Regional Office for guidance.
Non-Hazardous waste	Do not contaminate water, food, or feed by storage or disposal. Wastes resulting from the use of this product may be disposed of on site or at an approved waste disposal facility.

(d) *Container disposal.* (1) If a product is intended and labeled for residential use, its labeling must bear the statement, "Do not reuse empty container (or bottle, can, jar, bag). (If bottle, can, or jar) Rinse thoroughtly before discarding in trash. (If bag) Discard bag in trash. (If aerosol) Replace cap and discard in trash. Do not incinerate or puncture." The container disposal statement may be combined with that required for pesticide disposal to eliminate redundancy.

(2) The labeling of each other product must bear a container disposal statement appropriate to the type of container. Unless modifications to statements are approved by the Agency, the statements in the following Table 2 shall be used:

TABLE 2.—CONTAINER DISPOSAL STATEMENTS

Container type	Disposal statement
Metal containers	Triple rinse (or equivalent). Then offer for recycling or reconditioning, or puncture and dispose of in a sanitary landfill, or by other approved State and local procedures.
Plastic containers	Triple rinse (or equivalent). Then offer for recycling or reconditioning, or puncture and dispose of in a sanitary landfill, by incineration or, if allowed by State and local authorities, by burning. If burned, stay out of smoke.
Glass containers	Triple rinse (or equivalent). Then dispose of in a sanitary landfill, or by other approved State and local procedures.

TABLE 2.—CONTAINER DISPOSAL STATEMENTS—Continued

Container type	Disposal statement
Fiber drums with liners.....	Completely empty liner by shaking and tapping sides and bottom to loosen clinging particles. Empty residue into application equipment. Then dispose of liner in a sanitary landfill or by incineration if allowed by State and local authorities. If drum cannot by reused[1], dispose of in the same manner.
Paper and plastic bags.....	Completely empty bag into application equipment. Then dispose of bag in a sanitary landfill, by incineration or, if allowed by State and local authorities, by burning. If burned, stay out of smoke.
Large compressed gas cylinders.	Return empty cylinder for refilling (or similar wording).

[1] Manufacturer may replace this phrase with one indicating whether and how fiber drum may be reused.

(e) With the approval of the Agency, alternative statements based on data, or on special packaging types or product characteristics may appear on labeling. Each alternative disposal statement must include a pesticide disposal statement consistent with the requirements of the Resource Conservation and Recovery Act (RCRA), and a container disposal statement also consistent with RCRA requirements.

§ 156.72 Directions for use.

(a) *Requirement.* (1) Unless exempted by paragraph (a) (2) or (3) of this section, all end use products are required to bear specific directions or instructions for use, conforming to the requirements of paragraphs (b) through (i) of this section, and of Subpart P of this part in the case of antimicrobial products.

(2) A product limited to use by highly trained professionals such as veterinarians and physicians is not required to bear specific directions for use, provided that:

(i) The label clearly states on the front panel that the product is for use only by veterinarians or physicians;

(ii) The product is also a drug or animal drug that is regulated as such under the provisions of the Federal Food, Drug, and Cosmetic Act.

(3) A manufacturing-use product is exempt from the requirement for detailed directions for use. Refer to § 156.80 for labeling requirements for manufacturing-use products.

(b) *Inclusion of directions for use under a special local needs registration.* (1) A product registered under FIFRA sec. 3 may bear directions for "special local need" uses approved by individual States under FIFRA sec. 24(c), provided that:

(i) Such instructions are clearly distinguished on the labeling from other use directions, such as by enclosing them within a solid outline (blocking);

(ii) The statement, "For use only in (insert name(s) of State)" is included; and

(iii) The special local need (SLN) number assigned by each State in included.

(2) Use directions for special local needs uses must conform to the requirements of §§ 156.72 and 156.76.

(c) *Physical and chemical properties of the product.* In all cases where the pesticide is intended to be incorporated or impregnated into a non-pesticide substance or article, the use directions must include information pertinent to the treatment and use of the finished product into which the pesticide is incorporated. Such information should include:

(1) The physical and chemical properties of the product, such as volatility, stability under conditions of use, photodegradation, or leachability; and

(2) The beneficial results and any detrimental effects that may be expected from the application of the pesticide to the material or article to be treated, such as discoloration, or increased strength, flexibility, or shelf life duration.

(d) *Compatibility with other pesticides.* The use directions should indicate any physical compatibility problems that might be encountered when use with other pesticides in tank mixes is a common practice. If the directions recommend use with fluid fertilizers, a procedure for a "jar" type compatibility test should be included in labeling.

(e) *Adjuvants.* If the product is to be used only with a specific adjuvant, the directions must name that adjuvant, and must provide specific directions for use with that adjuvant.

(f) *Mixing or dilution.* The directions for use must include instructions for mixing or diluting the product unless the product is in a ready-to-use form. Directions for use of any equipment necessary to perform the mixing or dilution must be included. Instructions must include:

(1) Order of mixing, if necessary to proper use;

(2) Identification of the diluent(s) and solvents that may be used, if other than water.

(3) Quantity of each diluent to be used (dilution ratio);

(4) Concentration of final spray;

(5) Need for agitation to maintain suspension;

(6) Special precautions to use when mixing; and

(7) If the container is to be triple rinsed, a statement to add the rinse water to the spray mixture before adding the total volume of water required by the use instructions. The information in paragraph (f) (1) through (7) of this section may appear as general instructions where applicable to all uses, or may be listed separately with each applicable use.

(g) *Sites of applications.* (1) The directions for use must state the site(s) of application, e.g., the crops, animals, areas, or articles to be treated. The site designation must clearly characterize the use pattern so that the Agency can ascertain and evaluate the exposure likely to result from application to that site, and the user can determine the legal use(s) of the product. For example, labeling must distinguish between:

(i) Residential and non-residential sites (e.g., home garden or commercial agricultural application; residential application or institutional application).

(ii) Field and greenhouse sites, if either might reasonably be inferred by the user.

(iii) Indoor and outdoor areas, if either might reasonably be inferred by the user.

(iv) Food crop and non-food crop areas, if either might reasonably be inferred by the user.

(v) Terrestrial and aquatic areas, if either might reasonably be inferred by the user.

(2) If intended for incorporation into non-pesticide items, the ultimate usage of the treated articles or substances, such as "canvas for tents and awnings," or "plastic for non-food, non-human contact articles." All-inclusive or broad terminology without qualification as to the type or ultimate use of the finished product is not acceptable.

(3) The Agency encourages applicants and registrants to consult "EPA Site Categories for Preparing and Coding Pesticide Labeling," a comprehensive listing of acceptable site terminology developed for consistency in characterizing pesticide use sites. Microfiche copies are available at a charge from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. When requesting copies, ask for "Set B of Pesticide Information on Microfiche," NTIS accession number PB80-921900.

(h) *Target pest or objective.* (1) The target pest(s) or intended physiological action must be identified in the directions for use, and generally must be clearly associated with each site to which it applies. In some cases, such as with residential use products, it may be acceptable to group common pests with

a group of sites where those pests may be encountered, if the product is intended for application to each site/pest combination. For example, it may be appropriate to group cabbage looper, imported cabbageworm, and diamondback moth with cabbage, broccoli, brussels sprouts, and cauliflower.

(2) Pests or situations for which the pesticide may be ineffective should be identified. The user should be advised of action to take if ineffectiveness is encountered.

(i) *Dosage rate.* (1) Use directions must specify the effective dosage rate or range for each site and pest combination. If a dosage range is stated, the directions must describe the circumstances in which the higher and lower rates are to be used, as, for example, "Use the higher rate and shortest time interval when heavy pest populations are present," or "Use the lower rate on sandy soils and the higher rate on muck soils."

(2) Dosage rates must be expressed in units of measurement appropriate to the formulation, container size, if necessary, and use site. Examples of appropriate terms would be: amount of product per unit surface area ("1 pound per acre"); amount per unit volume of solvent or diluent, together with total volume to be applied ("One ounce per gallon. Apply to runoff."); duration of exposure at a given concentration ("10 second dip in 0.5% solution"); amount per unit volume of space ("one ounce per 1000 cubic feet"); amount per linear distance ("one pound per 100 feet of row" or "1 oz per 150 feet of row); amount per unit weight of animal ("one ounce per hundredweight"); or for certain pressurized products, the length of time of spraying at a specified distance from a surface ("10 seconds at a distance of 10–12 inches").

(3) Agricultural pesticides with directions for row treatments must specify the dosage rate in terms of the amount per unit of linear row distance (e.g., "2 oz/1000 linear feet of row") and, when applicable, the band width and row spacing. Row spacings must be stated when the possibility of overlapping treated areas exists. The equivalent amount per unit area for specific row spacing (e.g., "1 pound/acre for 36-inch rows") may be included.

(4) The directions must clearly instruct the user how to achieve acceptable results when the pesticide is applied according to the label dosage rates. However, when a dosage range is provided, the labeling may refer the user to the State Extension Service or State Fish and Game Agency for supplementary guidance in selecting the proper dosage rate within the range for local conditions.

(5) The dosage rate may not exceed the net contents of the product, as packaged.

(6) If the amount of any active ingredient is likely to decrease as a result of deterioration of the product, and the product is intended for use against pests of public health significance, the dosage rate must be adjustable to take this into account. Either of the following is acceptable:

(i) The directions for use may relate dosages to a stated date of manufacture. The use directions may contain a statement such as "If used over —— months after date of manufacture, use an additional —— ounces of product per gallon of water," or the directions may include a table of dosage or dilution variation at periodic intervals after the date of manufacture.

(ii) The directions for use may prescribe the use of test kits or other readily available methods that allow the user to determine the appropriate dosage.

(j) *Timing and frequency of application.* (1) The timing of application, number of applications necessary, and frequency of application must be stated in the directions for use. Dates, number of days before or after planting, last application, emergence or harvest, stage of growth of crop, stage of growth of pest, abundance of the pest(s), indicators of pest appearance, or economic threshold levels may be used to describe timing and frequency of application.

(2) If repeat applications are recommended, directions must include the recommended intervals between treatments (or other indicators of repeat treatment) and the total quantity of product that can legally be applied per growing season.

(3) The directions must clearly instruct the user how to achieve acceptable results when the pesticide is applied according to timing and frequency instructions on the label. However, reference may be made to consult the "State Agricultural Experiment Station, or State Extension Service Specialists" for supplementary information on local pest abundance, integrated pest management procedures, or appropriate local timing of application.

(k) *Method of application.* (1) Clear, specific instructions on how to apply the pesticide are required in the directions for use. Such instructions shall include:

(i) Mixing, dilution, and loading instructions;

(ii) Designation of the type of equipment or apparatus to be used, if necessary for the proper application of the pesticide, or, alternatively, a description of the necessary application parameters, to enable the user to select appropriate equipment for use;

(iii) Calibration instructions for equipment, if necessary;

(iv) Application procedures pertaining to delivery of the proper dosage or dilution coverage and to minimize drift and other undesirable application effects; and

(v) Ancillary procedures to be followed before, during, or after pesticide application so that the user will achieve the intended results, and to minimize exposure to the pesticide. They may include pre-cleaning or preparation of the application site, or watering material into the ground, or sealing the application site (such as with fumigants).

(2) If the pesticide is packaged in or with the apparatus to be used, directions for use of the apparatus must be included. For example, a product used in a pesttrapping device must bear instructions for use of the specified trap, as well as directions for placement of the trap. If the pesticide can be used only with a specific apparatus or type of equipment, the labeling must so state, and provide directions for use of the product with that apparatus.

(3) For agricultural pesticides and those intended for large areas, such as forests, right-of-way, or mosquito abatement, the directions must provide separate directions for ground and aircraft application. Ground instructions must specify the type of ground application equipment (hydraulic, air blast). Aircraft instructions must state whether fixed-wing or helicopter (rotary-wing) aircraft are to be used. Special methods, such as irrigation system applications, must also be separately described.

(4) If aerial application is not intended, and specific directions provided, the labeling must bear a statement prohibiting such application.

§ 156.76 Restrictions on use.

The directions for use must include any prohibitions, warnings, or restrictions on use necessary to prevent unreasonable adverse effects or ineffectiveness, or to ensure that residue tolerances will not be exceeded. Such statements may be located in the general directions for use if of general applicability to the use of the pesticide, or in close proximity to the specific directions for the use.

(a) *Preharvest or preslaughter interval.* The interval (time period) between application of a pesiticide on a crop, animal, or site, and its safe harvest

or use for feed or food is required to appear on labeling when data indicate that, without such restrictions, illegal residues may result from use of the pesticide. The interval is generally expressed in a statement such as "Do not apply within 8 days of harvest" or "Withdraw animals from treatment one week prior to slaughter."

(b) *Rotational crop restrictions.* (1) The labeling must include a restriction limiting rotation (or replanting after crop loss) for a specified period of time after pesticide application (not to exceed 18 months) if data submitted in accordance with § 158.26 indicate that:

(i) Residues remaining in soil will result in adverse effects to following crops; or

(ii) Residues remaining in soil will result in residues in the following crop where there is not tolerance, or in excess of an established tolerance for the following crop.

(2) An example of a typical statement would be "Do not plant crops other than corn or sorghum within 12 months after application."

(c) *Geographic restrictions.* (1) Geographic restrictions may be necessary in any of the following situations:

(i) Efficacy testing indicates that the product is not effective in all areas of the country. Statements may limit use to regions or States where effectiveness has been demonstrated, e.g., "For use only in Louisiana, Texas, Arkansas, and Mississippi," or "Southeastern U.S. only."

(ii) An endangered species, or the critical habitat of an endangered species, would be jeopardized by use of the pesticide as proposed on the label. Endangered species restrictions prohibit use in specific counties or other narrowly drawn geographical areas where the endangered species would be jeopardized.

(iii) Residue data submitted in support of a tolerance are not representative of all areas where the crop is grown, or indicate that residues may exceed the established tolerance level in particular areas.

(iv) Data indicate that, without geographical restrictions, unreasonable adverse effects on the environment, such as groundwater contamination may result.

(2) Upon written request, and with the approval of the Agency, the label may bear geographic restrictions desired by the registrant.

(d) *Phytotoxicity (crop safety) warnings.* (1) A statement similar to "Since phytotoxicity has not been evaluated on all possible crop varieties, it is recommended that varietal responses be tested on a few plants prior to full scale applications" should be included in use directions for products intended for use on crops or crop planting sites, if applicable.

(2) When temporary crop injury such as stunting, discoloration, or malformation would be expected to occur, the use directions must advise the user of this expected injury. When some degree of crop stand loss results from pesticide application, even if such loss is considered economically acceptable, this effect must be clearly indicated in the use directions.

(e) *Performance restrictions.* If specific environmental conditions, such as cultural, crop management or chemical use practices, would detrimentally affect product performance, the labeling must identify the conditions and the expected effects. Conditions may include soil conditions, (moisture, pH, texture, organic matter), meteorological conditions, (precipitation, drought, temperature, wind) and cultural practices (tillage, cultivation, irrigation).

(f) *Nontarget area plant cautions.* If a pesticide is readily transported during or after application to nontarget areas through air (via spray drift, volatilization) or water (via leaching, lateral movement in soil, runoff, drainage or irrigation), and has been shown to possess phytotoxic properties, label precautions on possible adverse effects to nontarget plants are required. The nature and duration of any effects (temporary, permanent, or seasonal) should be described.

(g) *Spray drift restrictions*—(1) *General.* When drift may cause adverse effects which the Agency deems significant on organisms outside the intended site of application, either directly or indirectly through contamination of the soil or water, the labeling must advise the user of these effects and must provide recommendations to minimize drift and drift hazard. Drift-related use directions, recommendations, precautions, and limitations should be included for all pesticides applied by, but not limited to, aerial, mist blower, sprinkler irrigation and hydraulic ground applications.

(2) *Content.* Use directions should describe general meteorological conditions, recommended equipment operation and adjustments, and adjuvants and carriers necessary to minimize pesticide drift.

(3) *Specific statements.* General use directions must include the following statements:

(i) For all outdoor applications of sprays and dusts: "Do not apply when weather conditions favor drift from the target area. Coarse sprays are less likely to drift. Increase spray volumes by increasing nozzle orifice diameter rather than by adding more nozzles or increasing nozzle pressure."

(ii) For aerial applications: "Do not use nozzle cores which disperse spray into fine or mist droplets. For crosswind swath applications, begin the first swath on the downwind side of the treatment area, with successive swaths progressing upwind."

(iii) For aerial applications and mist blowers (air carriers): "Do not apply when temperature inversion ceilings are likely to exist."

Subpart E—Specialized Labeling

§ 156.80 Manufacturing use products.

(a) *General.* This section prescribes requirements for labeling of manufacturing use pesticides. Unless otherwise stated in paragraphs (b) through (n) of this section, the requirements of Subparts A through D apply to all manufacturing use products. The general requirements are enumerated here for reference.

(b) *Name, brand, or trademark.* The requirements of § 156.20 apply.

(c) *Identifying phrase.* An identifying phrase must appear beneath the product name. The phrase must indicate that the product is only for formulation of other pesticides and the type of pesticide (insecticide, for example).

(d) *Name and address of the registrant.* The requirements of § 156.24 apply.

(e) *EPA registration number.* The requirements of § 156.30 apply.

(f) *EPA establishment number.* The requirements of § 156.31 apply.

(g) *Ingredients statement.* The requirements of § 156.34 apply.

(h) *Net contents.* The requirements of § 156.36 apply.

(i) *Precautionary statements.* (1) Except as specified in paragraph (i) (2), (3), and (4) of this section, the requirements of Subpart C apply.

(2) The child hazard warning "Keep Out of Reach of Children" is not required on the label of manufacturing use product.

(3) If all precautionary statements are grouped together on the front panel, the heading "Precautionary Statements" and the signal word required by § 156.52 below that heading may be omitted. The referral statement may be omitted if all precautions appear on the front panel.

(4) The environmental hazard statements required under the heading "Environmental Hazards" are limited to the following:

(i) A statement of relative toxicity to appropriate organisms for hwich testing required by 40 CFR 158.145 indicates a potential hazard, e.g., "This product is toxic to fish and wildlife."

(ii) The statement, "Do not discharge effluent containing this product directly into lakes, streams, ponds, estuaries, oceans or public waters unless this product is specifically identified and addressed in an NPDES permit. Do not discharge effluent containing this product to sewer systems without previously notifying the sewage treatment plant authority. For guidance, contact your State Water Board or Regional Office of the Environmental Protection Agency."

(j) *Classification statement.* No statement of use classification with respect to use by certified applicators is required or permitted on the labeling.

(k) *Misuse statement.* The misuse statement must appear on the label of a manufacturing use product. The misuse statement must also appear in any labeling in which instructions for formulation appear, located immediately following the heading for such instructions. The wording of the misuse statement is the same as that given in § 156.64.

(l) *Reentry interval statement.* No reentry interval statement is required on the labeling of a manufacturing use product.

(m) *Directions for use.* Detailed instructions for formulating may be omitted from the labeling of a product intended for formulating other registered pesticides, provided that:

(1) The labeling includes the following:

(i) Information pertinent to the needs of the formulators, including, but not limited to, physical and chemical properties, of the product. If such information is stated in labeling rather than directly on the product label, a reference statement such as "Refer to Technical Bulletin X for formulating and other information" must appear on the label.

(ii) A statement that each formulator is responsible for obtaining EPA registration for his end use product(s). Labeling for the manufacturing use product may include sample labels of registered end use products as guidance for formulators. Labeling may not include specimen labels for end use products not registered by the Agency.

(2) Information on the composition, toxicity, methods, of formulation, limitations and restrictions, and effectiveness of the product for pesticide purposes is readily available to the formulator from sources other than the labeling.

(n) *Storage and disposal statements.* The labeling of a manufacturing use product is required to bear appropriate statements of pesticide storage and disposal. Refer to § 156.70 and Tables 1 and 2 of that section for requirements.

§ 156.87 Unit packaging.

(a) *Requirement.* Each unit package shall bear a label conforming to the requirements of paragraph (b) of this section. The outer container in which the unit packages are distributed and sold shall bear labeling conforming to the requirement of paragraph (c) of this section. An individual water-soluble unit package which is further enclosed in a foil or plastic wrapper on a one-to-one basis may be labeled on the foil or plastic wrap.

(b) *Contents of label of unit package.* The label of each individual unit package shall include the following information:

(1) A statement of the active ingredient(s). Each active ingredient must be identified by name, unless the Agency has approved a statement including only the names of the principal or most hazardous ingredient(s). The statement of active ingredients need not meet the requirements for an ingredients statement of § 156.34, but may simply declare "Contains (name of ingredient)." No percentages or statements of inert ingredients are required.

(2) The appropriate signal word.

(3) The skull and crossbones (if required).

(4) The child hazard warning, "Keep Out of Reach of Children."

(5)The EPA Registration Number.

(6) The phrase "RESTRICTED USE PESTICIDE" if the product has been so classified.

(7) A reference statement to the label of the outer package for directions and precautions.

(c) *Contents of label of outer container.* The outer container label or labeling must fully comply with the requirements of Subparts A through D. In addition, the front panel of the container must bear the following statement in a prominent position: "Do not remove packages from container except for immediate use."

(d) *Prominence and optional information.* The information required by paragraph (b) of this section must appear in type of 2 mm or greater. The manufacturer may, at this option, add additional information on the unit package when size permits, providing it does not detract from the prominence or legibility of the required information.

Subpart F—Labeling of Products not Required to be Registered

§ 156.105 Products shipped between registered establishments.

(a) *General.* 40 CFR 152.30 exempts from the registration requirement certain pesticides being transferred between registered establishments. Such unregistered pesticides are subject to certain misbranding provisions of FIFRA sec. 2(q). This section sets out the labeling requirements for such products.

(b) *Contents of label.* The label shall bear each of the following items.

(1) The name and address of the producer of the pesticide being shipped, meeting the requirements of § 156.24.

(2) The establishment number of the producing establishment from which shipped. This number is not necessarily the same establishment number as that which will appear on the final product being produced at the second establishment. A product produced at Establishment A and shipped to Establishment B for further formulation and then to Establishment C for packaging into the retail product must bear, successively:

(i) The number of Establishment A during transport to Establishment B.

(ii) The number of Establishment B during transport to Establishment C; and

(iii) The number of Establishment C, the final establishment, on the retail package.

(3) An ingredients statement complying with the requirements of paragraph (b)(3) (i) or (ii) of this section.

(i) If the product is being shipped in final form, i.e., no further formulation or composition changes are to be made prior to distribution or sale of retail packages, the ingredients statement shall comply in all respects with § 156.34.

(ii) If the pesticide is being shipped for further formulation or processing, the ingredients statement shall include the name of each active ingredient, and the percentage of each to the nearest whole percentage.

(4) The net weight or measure of the contents of the product, consistent with the requirements of § 156.36.

(5) Hazard warning statements, conforming to the requirements of Subpart C with respect to signal word, use of the word "POISON" and skull and crossbones symbol and human, environmental, and physical/chemical hazard statements.

(c) *Exemption from requirement for directions for use.* Specific directions or restrictions on use, formulation, or packaging of the product being shipped

between registered establishments are not required to appear on labeling.

(d) *Additional labeling requirements.* The following sections of this part apply to products being shipped between registered establishments.

(1) Section 156.7, Placement of label.

(2) Section 156.10 (a)(3), (b)(1), (c)(1), and (d), concerning prominence, legibility, contrast, type size, and language to be used.

(3) Section 156.15, False and misleading statements, except for paragraph (a), Warranty disclaimer statements.

§ 156.110 Products for export only.

(a) A pesticide product, device, or active ingredient used in producing a pesticide that is intended solely for export must be labeled with the following information:

(1) In English or the language of the importing country:

(i) The name and address of the registrant, or if unregistered, or the producer, in accordance with § 156.24;

(ii) The producing establishment number, in accordance with § 156.31;

(iii) A statement of net weight or contents, in accordance with § 156.36; and

(iv) A statement of use classification, if classified for RESTRICTED USE on the basis of toxicity to man or the environment. The terms of the U.S. restriction need not be included.

(2) In English and the language of the importing country:

(i) An ingredients statement, in accordance with § 156.34;

(ii) Warning or precautionary statements, in accordance with Subpart C of this part;

(iii) If in Toxicity Category I on the basis of acute oral, dermal, or inhalation toxicity, the following:

(A) The skull and crossbones (in red or black);

(B) The word POISON (in red) on a background of distinctly contrasting color; and

(C) A statement of practical treatment, in accordance with § 156.48.

(iv) If the product is unregistered, the statement, "Not registered for use in the United States of America."

(b) Labeling of a registered product will be considered to satisfy the requirements of paragraph (a)(1) of this section and the English language requirements of paragraph (a)(2) of this section if the label or labeling otherwise complies with the requirements of this part.

(c) If the information required by this section would conflict with the requirements of the importing country, any or all of the information may instead be included in labeling that is attached to or accompanies the product container or shipping container, provided that the product is labeled according to the requirements of the importing country.

§ 156.112 Products shipped under an emergency exemption.

(a) *Registered product.* A registered product must bear the labeling approved in conjunction with its registration.

(b) *Unregistered product.* An unregistered product must bear labeling that complies with the specifications in the authorizing exemption notice. Such labeling will normally be one of the following:

(1) Labeling meeting the requirements of Subparts A through D of this part, but not including §§ 156.72, Directions for use, and 156.76, Restrictions on use;

(2) Labeling approved in conjunction with the issuance of an experimental use permit under FIFRA sec. 5; or

(3) Labeling reviewed and approved by the Agency in conjunction with the request for exemption.

(c) *Directions for use.* (1) In all cases, directions for use of the product must be in accordance with the terms and conditions of the authorizing exemption notice, and must be available to the user at the time of use. Use directions may be contained in labeling (which may include the authorizing exemption notice itself) distributed with the product.

(2) The use directions should include the year or growing season for which use is authorized, and the name of the State to which the exemption has been granted.

§ 156.115 Pesticides shipped for disposal only.

(a) *General.* FIFRA section 19 provides that the Administrator shall, if requested by the owner of a pesticide, arrange for disposal of a pesticide that has been cancelled following suspension under FIFRA section 6(c). Regulations contained in 40 CFR Part 165, Subpart B, provide that the owner of the pesticide must transport the pesticide to an acceptance location for transfer to the Agency.

(b) *Labeling requirements for a product being shipped for disposal.* A product being shipped to an acceptance location by its owner, and thereafter being shipped by the Agency to a disposal site, shall bear a label containing the following information:

(1) The name and address of the registrant, or if unregistered, the producer of the product, in accordance with § 156.24;

(2) The establishment number, if any, of the establishment at which the product was produced, if the product remains in the original unbroken container, or at which the product was repackaged for disposal, if the contents have been transferred to another container for disposal purposes.

(3) An ingredients statement, in accordance with § 156.34.

(4) Warning and precautionary statements, in accordance with Subpart C of this part, including the following:

(i) The signal word;

(ii) If highly toxic (Toxicity Category I) by virtue of acute oral, dermal or inhalation toxicity, the skull and crossbones and the word "POISON" (in red), together with an appropriate statement of practical treatment or first aid; and

(iii) Precautionary statements addressing the human, environmental, and physical or chemical hazards of the product.

(5) A statement, that shall at least partially obliterate any directions for use on the label, that the product is for disposal only and not for pesticide use.

(6) If the product is a hazardous waste, as defined by 40 CFR 261.11, or as listed in § 261.33 (e) or (f), it shall also bear the statement in 40 CFR 262.32, i.e., "HAZARDOUS WASTE—Federal Law Prohibits Improper Disposal. If found, contact the nearest police or public safety authority or the U.S. Environmental Protection Agency." A sticker or additional labeling may be used for this purpose.

(7) The required information must not be false or misleading in any particular, and must meet the prominence requirements of § 156.10.

(c) The label of a product for disposal only is acceptable if the labeling meets the requirements of Subparts A through D of this part and it bears the disposal statements given in paragraph (b) (5) and (6) of this section.

§ 156.118 Pest control devices.

(a) *Defintion.* A pest control device is any instrument or contrivance (other than a firearm) intended for trapping, destroying, repelling, or mitigating any pest. Equipment used for the application of a pesticide, when sold separately from such pesticide, is not considered to be a device. Examples of devices subject to the labeling requirements of this section are electromagnetic and ultrasonic pest control devices, and "glue boards."

(b) *Exemption.* The following devices are exempt from the requirements of this section:

(1) Those that depend for their effectiveness more upon the performance of the person using the

device than on the performance of the device itself, such as rat and mouse traps, fly swatters, and tillage equipment for weed control.

(2) Those that operate only to entrap vertebrate animals, such as fish traps.

(c) *Required labeling information.* The following information must be included on each device, its wrapper, or its package:

(1) *Name, brand or trademark.* The label of a device whose function is not obvious must include a name, brand or trademark, and an indication of the function of the device.

(2) *Name and address of the producer or distibutor.* The name and address of the producer of the device must be provided on the label. Refer to § 156.24 for further information on name and address requirements.

(3) *EPA establishment number.* The label of each pest control device must bear the establishment registration number assigned under FIFRA section 7. This number may appear in any location on the label or on the device itself. If the device is contained in a wrapper or outer container through which the establishment number cannot be clearly read; the establishment number must also appear on such outer container or wrapper. Refer to § 156.31 for further information on the display of the EPA establishment number. The establishment number may not be highlighted or emphasized by size, color or typography to imply Agency approval or endorsement.

(4) *Precautionary statements.* The label must identify any hazards posed in using the product, and must provide adequate warnings and use limitations that, if adhered to, will protect against or minimize such hazards. Hazards may include, but are not limited to, structural (such as sharp edges), mechanical (such as rapidly moving parts), electrical, high temperature, radiation, chemical, or noise.

(5) *Directions for use.* Directions for use of the product must include, at a minimim, the following information:

(i) *Site of use.* Where the device is intended to be used, positioned, or located.

(ii) *Activation.* Instructions on how to install or activate, and, if necessary, deactivate the device if it would not be self-explanatory or obvious to the user.

(iii) *Target pest.* The pest(s) the device is intended to destroy, capture, repel, or affect, and the results that may be expected (death, entrapment, repellency, inactivation).

(iv) *Restrictions or limitations on use.* Any specific circumstances under which the device should not be used, or that would limit the effectiveness of the device. If the duration of the effectiveness is limited, the length of time the device can be expected to be effective must be indicated. If the product would not be effective in certain situations that might reasonably be encountered in use, a statement to this effect must be included.

(d) *False and misleading statements.* The labeling of a pest control device shall not contain any statement that is false or misleading in any respect. Examples of false and misleading statements may be found in § 156.15.

Subparts G Through O—[Reserved]

Subpart P—Labeling Requirements for Certain Antimicrobial Products

§156.300 Sterilizers for use on hard surfaces.

Product labeling may bear "sterilizer" or "sporicidal" claims if:

(a) The product meets the standard in paragraph (b) of this section, when tested by at least two laboratories,one of which is independent of the registrant; and

(b) The product, when tested by the method in § 91–2(a) of Subdivision G of the Registration Guidelines or its equivalent, kills the test spores on all 720 carriers used in the tests.

§ 156.305 Disinfectants for use on hard surfaces.

(a) *Performance requirement.* Product labeling may bear claims as a "disinfectant" if, when tested by the appropriate method in section 91–2 (b), (c), or (d) of Subdivision G of the Registration Guidelines or its equivalent, kills the test microorganisms on 59 out of 60 carriers of each set to provide significance at the 95 percent confidence level.

(b) *Limited efficacy claims.* The labeling of a disinfectant which is effective against specific microorganisms only (e.g. Herpes virus, influenza virus, cold (rhino) viruses) must clearly denote these limitations. Furthermore, such limitations must be readily understandable and shall not be misleading to the user.

(c) *General or broad-spectrum efficacy claims.* Labeling claims of effectiveness as a "General Disinfectant" and representations that the product is effective against a broad spectrum of microorganisms are acceptable if the product is effective against both Gram-positive and Gram-negative test microorganisms.

(d) *Hospital or medical environment efficacy claims.* Labeling claims for use on surfaces in hospital or medical environments will be accepted only for those products that have been demonstrated to be effective for general or broad-spectrum disinfection (see paragraph (c) of this section) and additionally against *Pseudomonas aeruginosa.* Claims such as "hospital disinfectant" or "for hospital use" are acceptable. Claims such as "hospital grade" or "hospital strength" are not acceptable.

§ 156.310 Fungicides for use against human pathogenic Fungi.

(a) *Performance requirement.* Product labeling may bear claims of effectiveness against pathogenic fungi if the product kills all fungal spores by one of the following test methods:

(1) The AOAC Fungicidal Test (see section 91–2(e)(1) of Subdivision G of the Registration Guidelines) or its equivalent; or

(2) The AOAC Use Dilution Method or AOAC Germiciadal Spray Products Test, modified to conform to appropriate elements of the AOAC Fungicidal Test (see § 91–2(e)(3) of Subdivision G of the Registration Guidelines) or its equivalent.

(b) *Claims against pathogenic fungi.* The statement that a product is effective against "athlete's foot" is not acceptable. If the product is effective against the causative organism (*Trichophyton mentagrophytes*) in appropriate areas such as shower room floors, locker room benches, or bath mats, the label may bear a statement such as "kills athlete's foot fungi on inanimate surfaces."

§ 156.315 Virucides.

(a) *Performance requirement.* Product labeling may bear claims as a "virucide" against designated human pathogenic viruses if, when tested according to the method in section 91–2(f) of Subdivision G of the Registration Guidelines or its equivalent, the product:

(1) Inactivates the virus at all dilutions when no cytotoxicity is observed in the assay system; or

(2) Reduces the viral titer by at least a 3–log magnitude when cytotoxicity is observed in the assay system.

(b) *Virucidal claims.* The unqualified claim "virucidal" is not acceptable. The claim "virucidal" must be qualified by designating each specific virus against which the product has been tested and shown to be effective, and to indicate that the activity occurs only on inanimate surfaces.

§ 156.320 Tuberculocides.

(a) *Performance requirement.* Product labeling may bear claims as a "tuberculecide" against *Mycobacterium*

tuberculosis if, when tested by the appropriate method in section 91–2(g) of Subdivision G of the Registration Guidelines or its equivalent:

(1) The product kills the test microorganisms on all carriers; and

(2) No growth occurs in any of the inoculated tubes of the two additional required media.

(b) *Tuberculocidal claims.* The labeling of a product claiming disinfection of inhalation therapy equipment and pulmonary diagnostic equipment but which has not been tested for effectiveness against *Mycobacterium tuberculosis* must bear the following statement: "This product has not been tested for effectiveness against *Mycobacterium tuberculosis*, and must not be relied upon when a tuberculocidal product is desired."

§ 156.325 Phenol coefficient.

The phenol coefficient, as determined by the AOAC Phenol Coefficient Test in section 91–2(h) of Subdivision G of the Registration Guidelines or its equivalent, is permitted to appear on labeling only if:

(a) The product is a disinfectant, with use directions adequate to support a disinfection level of antimicrobial activity; and

(b) The phenol coefficient, when multiplied by 20, provides the effective use dilution of the product [as confirmed by the AOAC Use-Dilution Method (see section 91–2 (a), (b), or (c) of Subdivision G) or its equivalent]; and

(c) The phenol coefficient is determined on the pesticide as formulated, rather than the active ingredient(s).

§ 156.330 Products for use against other microorganisms.

(a) *Performance requirement.* Product labeling may bear disinfectant claims against specific microorganisms other than designated test species if, when tested by the appropriate method of section 91–2(i) of Subdivision G of the Registration Guidelines or its equivalent:

(1) The product kills the test microorganism on all carriers; and

(2) Plate count data on appropriate culture media demonstrate that a concentration of at least 10^4 microorganisms survived the carrier drying step in untreated controls.

(b) *Claims against other microorganisms.* Substantiated claims of effectiveness of a product against specific microorganisms other than the designated test microorganism(s) are permitted, but not required, provided that the target pest is likely to be present in or on the recommended use areas and surfaces and thus may present a potential problem.

§ 156.335 Sanitizers for hard non-food contact surfaces.

(a) *Performance requirement.* Product labeling may bear "sanitizing" claims for use on non-food contact surfaces if, when tested by the method in section 91–2(j) of Subdivision G of the Registration Guidelines or its equivalent, the product achieves a reduction of at least 99.9 percent over the parallel control count.

(b) *Claims.* The labeling of a product intended for use on non-food contact surfaces which does not eliminate, but significantly reduces, the numbers of target microorganisms must be clearly represented and qualified as being effective at the sanitizing level only. Examples of acceptable labeling claims are: "Sanitizes", "Significantly reduces", or "Reduces the number of bacteria by 99.9%." Products recommended for use in critical hospital or medical environments that are not effective at the sterilizing or disinfecting level must bear a labeling disclaimer statement such as: "This product is not a disinfectant or sterilizer".

(c) *Fogging applications.* Representations such as "germicidal fogging" and "disinfectant fogging" are not acceptable. Claims for fogging applications of disinfectants to sanitize room surfaces are acceptable.

(d) *Circulate-in-place (CIP) applications.* Claims for CIP applications as "germicidal" or "disinfecting" are not acceptable. Claims for CIP applications to sanitize the surfaces of the systems are acceptable.

§ 156.340 Sanitizers for hard food contact surfaces.

(a) *Performance requirement*—(1) *Halide chemical products.* The labeling of a product formulated with iodophors, mixed halides, or chlorine-containing chemicals may bear claims for "sanitizing" food contact surfaces if, when tested by the method in section 91–2(k)(1) of Subdivision G of the Registration Guidelines or its equivalent, the product concentrations show equivalence of activity to 50, 100, and 200 ppm of available chlorine. (The test standard is sodium hypochlorite.)

(2) *Other chemical products.* The labeling of a product formulated with other chemicals, such as quaternary ammonium compounds, anionic detergent-acid compounds, and chlorinated trisodium phosphate, may bear claims for "sanitizing" food contact surfaces if, when tested by the method in section 91–2(k)(2) of Subdivision G of the Registration Guidelines or its equivalent, the product achieves a 99.999 percent reduction in the number of each test microorganism within 30 seconds.

(b) *Claims.* Claims for a use pattern of "one-step" cleaning and sanitizing are not acceptable for food-contact surfaces.

§ 156.345 Products providing residual activity for use on hard surfaces.

(a) *Performance requirement.* Product labeling may bear residual "self-sanitizing" claims (that can be identified as related to human health) if, when tested by the criteria in section 91–2(m) of Subdivison G of the Registration Guidelines or its equivalent, the product achieves at least a 99.9 percent reduction in numbers of test microorganisms on the treated surface(s) over those on the parallel control surface(s).

(b) *Claims.* Label claims pertaining to residual "self-sanitizing" or "bacteriostatic" surfaces (i.e., reduction in numbers, or inhibition of the growth, respectively, of specific microorganisms that may be present or that may be subsequently deposited on hard surfaces) must be related to the presence of moisture on surfaces that are likely to become wet under normal conditions of use. Labeling must also indicate the duration of effectiveness of the treatment. Only self-sanitizing claims can be identified as related to human health considerations.

§ 156.350 Laundry additives.

(a) *Disinfecting pre-soak*—(1) *Performance requirement.* Product labeling may bear claims as a "disinfectant" for pre-soaking fabrics prior to laundering if, when tested by the AOAC Use Dilution Method as described in section 91–2 (b), (c), or (d) of Subdivision G of the Registration Guidelines (modified to include organic soil as in section 91–30(e)(4) of subdivision 5) or its equivalent, the product kills the test microorganisms on 59 out of 60 carriers of each set.

(2) *Claims.* Labeling must distinguish between products recommended as soaking treatments prior to laundering and products recommended as additives in actual laundry operations. Pre-soaking claims are applicable only to products which have been shown to be effective as "one-step" cleaner-disinfectants for hard surfaces in the presence of moderate amounts of organic soil (e.g., "pre-soak diapers for 10 minutes to disinfect").

(b) *Non-residual laundry additives*—(1) *Performance requirement.* (i) The labeling of a product intended as a

laundry additive may bear claims for "disinfection" if, when tested by the method in section 91–4(a)(2) Subdivision G of the Registration Guidelines or its equivalent, the product prevents growth of each test microorganism in fabric subcultures or laundry water subcultures.

(ii) The labeling of a product intended as a laundry additive may bear claims for "sanitizing" if, when tested by the method in section 91–4(a)(3) of Subdivision G of the Registration Guidelines or its equivalent, the product causes at least 99.9 percent reduction in numbers of each test microorganism over the control count for both fabric and laundry water.

(2) *Claims.* The labeling of a product recommended as a laundry additive must differentiate between claims to provide non-residual disinfection and to sanitize during the laundry operation (e.g., "disinfects laundry in wash water," "sanitizes laundry in the final rinse water").

(c) *Residual laundry additives*—(1) *Performance requirement.* The labeling of a product intended as a laundry additive may bear residual "self-sanitizing" claims (that can be identified as related to human health) if, when tested by the method in section 91–4(a)(4) of Subdivision G of the Registration Guidelines or its equivalent, the product demonstrates a reduction of at least 99.9 percent in numbers of each test microorganism over the zero-time control and the parallel untreated control.

(2) *Claims.* Claims for residual antimicrobial activity on laundered materials or articles are acceptable only when such materials are likely to become and remain wet (for example, diapers and bed linens of incontinent persons) during normal conditions of use and storage (e.g., "provides self-sanitizing residual activity against pathogenic microorganisms on bed linens in the presence of wet contamination").

§ 156.355 Fabric and textile products.

(a) *Carpet sanitizers—performance requirement.* The labeling of a product intended as a carpet treatment may bear claims as a "sanitizer" if, when tested by the method in section 91–4(b) of Subdivision G of the Registration Guidelines or its equivalent, the product demonstrates a 99.9 percent reduction in numbers of test microorganisms over the scrubbed control.

(b) *Mattress and upholstered furniture treatments—performance requirement.* The labeling of a gas or fumigant product intended for treatment of mattresses, upholstered furniture, pillows, and similar objects may bear claims as a "sterilizer," and "disinfectant," or "sanitizer" if, when tested against the criteria in section 91–4(c) of Subdivision G of the Registration Guidelines or its equivalent, the product meets the performance requirement specified:

(1) In § 156.300(a) for sterilizers; or

(2) In § 156.305(a) for disinfectants; or

(3) In § 156.335(a) for sanitizers.

(c) *Fabric impregnating treatments*—(1) *Performance requirement.* The labeling of a product intended for impregnating fabrics may bear residual "self-sanitizing" claims if, when tested by the method in section 91–2(m) of Subdivision G of the Registration Guidelines or its equivalent, the product achieves at least a 99.9 percent reduction in numbers of test microorganisms on the treated fabric(s) over those on the zero-time control and the parallel untreated control.

(2) *Claims.* Claims must be limited to residual self-sanitizing levels of activity in the presence of moisture. Labeling must indicate the duration of effectiveness of the residual activity.

§ 156.360 Air sanitizers.

(a) *Performance requirement.* The labeling of a product intended for the treatment of air in enclosed spaces may bear claims as a "sanitizer" if, when tested by the appropriate method in section 91–5 of Subdivision G of the Registration Guidelines or its equivalent, the product meets one of the following standards:

(1) If the product contains glycols, a vapor concentration of 50 percent saturation or more in the air of the test enclosure; or

(2) If the product does not contain glycols, a reduction of at least 99.9 percent of test microorganisms over the parallel untreated control in the air of the test enclosure.

(b) *Claims.* Claims that a product prevents diseases, or provides any other health protection, whether expressed or implied, are not acceptable. Claims must clearly indicate the mitigating nature of the activity, such as "Temporarily reduces the number of airborne bacteria."

§ 156.365 Toilet bowl and urinal treatments.

(a) *Surface treatments*—(1) *Performance requirement.* The labeling of a product intended for toilet bowl and urinal surface treatment may bear "disinfecting" or "sanitizing" claims if, when tested by the appropriate method in section 91–2 (b), (c), (d), or (j) of Subdivision G of the Registration Guidelines or its equivalent, the product meets the performance requirement specified in:

(i) Section 156.305(a) for disinfectants; or

(ii) Section 156.335(a) for sanitizers.

(2) *Claims.* Claims for disinfecting or sanitizing toilet bowl and urinal surfaces are acceptable. Claims for disinfecting the hidden trap and claims for solutions in the tank to disinfect or sanitize the bowl surface each time the toilet is flushed are not acceptable.

(b) *Water treatments*—(1) *Performance requirement.* The labeling of a product intended for treating toilet bowl and urinal water may bear "sanitizing" claims (that can be identified as related to human health) if, when tested by the method in section 91–7(b) of Subdivision G of the Registration Guidelines or its equivalent, the product demonstrates at least a 99.9 percent reduction in numbers of test microorganisms over the zero-time control and the parallel untreated control.

(2) *Claims.* Claims for products of this type must either pertain to sanitizing activity or aesthetic benefits commonly associated with control of odor, slime, or other aesthetic problems in toilet and urinal bowl water. Examples of acceptable claims are: "Inhibits the production of ammoniacal odors produced by bacteria in toilet and urinal bowl water," "Controls unsightly slime formation produced by bacteria in toilet and urinal bowl water," and "Sanitizes toilet bowl water." Only sanitizing claims can be identified as related to human health considerations.

§ 156.370 Human drinking water treatments.

(a) *Emergency water supplies—performance requirement.* The labeling of a product intended for emergency treatment of drinking water may bear a claim as a "disinfectant" if, when tested by the method in section 91–8(a)(2) of Subdivision G of the Registration Guidelines or its equivalent, the product kills all test microorganisms in the water.

(b) *Water purifier units—performance requirement.* The labeling may bear claims for "purification" of raw water if, when tested by the method in section 91–8(a)(3) of Subdivision G of the Registration Guidelines or its equivalent, the product eliminates the microbial pollution from the water.

§ 156.375 Swimming pool water treatments.

The labeling of a product intended for treatment of swimming pool water may bear claims for "disinfection" if, when

tested according to the laboratory and field methods in section 91–8(c)(1) of Subdivision G of the Registration Guidelines or its equivalent, the product meets both of the following criteria:

(a) *Laboratory test.* The product meets or exceeds the performance of the sodium hypochlorite control against each test microorganism.

(b) *Field test.* Not more than 15 percent of the samples collected fail to meet all of the following bacterial indices:

(1) The standard plate count at 35 °C does not exceed 200 colonies per 1.0 ml.

(2) The most probable number of coliform bacteria is less than 2.2 organisms per 100 ml. If the membrane filter test is used, there shall be no more than 1.0 coliform organism per 50 ml.

(3) The most probable number of enterococcal organisms is less than 2.2 organisms per 100 ml. If the membrane filter test is used there shall be no more than 1.0 enterococcal organism per 50 ml.

§ 156.380 Health-related and non-health-related claims for antimicrobial products.

The Agency will use the following criteria to determine whether or not the labeling of an antimicrobial agent bears claims of human health significance:

(a) Products bearing labeling claims to control specific microorganisms infectious for man, such as *Staphylococcus aureous, Mycobacterium tuberculosis,* sand *Pseudomonas aeruginosa,* are considered to be directly related to human health.

(b) All sterilizers, hospital disinfectants, swimming pool water disinfectants, human drinking water disinfectants and purifiers, and food-contact surface sanitizers are human health-related, whether or not control if infectious microorganisms is specifically claimed.

(c) Veterinary and animal premise disinfectants are considered human health-related if microorganisms that are infectious for both man and animals are involved, such as *Staphylococcus aureus* and *Pseudomonas aeruginosa.* Microorganisms that are solely pathogenic for animals (such as canine distemper virus and hog cholera virus) are not considered human health-related.

(d) Claims for products as disinfectants or sanitizers are considered to include or imply effectiveness against microorganisms infectious for man. Such claims must be expressly qualified (e.g., "odor-causing bacteria" or "slime-forming bacteria") in order to remove implications of human health significance. In addition, if the intent of the claim is not clearly defined, a labeling disclosure of ineffectiveness of the product against health-related micro-organisms may be required (e.g., "This product has not been demonstrated to be effective against microorganisms infectious for man").

(e) Since elimination or significant reduction in numbers of microorganisms (sterilization, disinfection, sanitization) must be demonstrated before a product is considered acceptable for claims against microorganisms infectious for humans, or for use in medical or sickroom environments, products bearing claims for effectiveness at the bacteriostatic (inhibition of growth) level are not acceptable for such uses. Bacteriostatic claims are acceptable only for products expressly recommended for control of microorganisms of only economic or aesthetic significance, e.g., spoilage bacteria and ordor-causing bacteria.

(f) Slime and ordor control agents, preservatives, algicides, and other products expressly claiming control of microorganisms of economic or aesthetic significance are not considered to be human health-related, but are nevertheless subject to the requirements for accurate label claims and adequate directions for a practical pattern of use.

PART 167—REGISTRATION OF PESTICIDE PRODUCING ESTABLISHMENTS AND SUBMISSION OF PESTICIDES REPORTS

2.a. By revising the heading of Part 167 to read as set forth above.

§ 167.4 [Removed]

b. By removing § 167.4

(Sec. 2, 3, 5, 6, 7, 9, 10, 12, 17, 19, and 25 of the Federal Insecticide, Fungecide, and Rodenticide Act, as amended, 7 U.S.C. 136–136y)

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Part IV

Environmental Protection Agency

40 CFR Parts 122, 124, and 125
National Pollutant Discharge Elimination System Permit Regulations; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 122, 124, and 125

[OW-FRL-2532-8]

National Pollutant Discharge Elimination System Permit Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On May 19, 1980, the Environmental Protection Agency published final rules which consolidated the regulations and procedures for five EPA permit programs including the National Pollutant Discharge Elimination System (NPDES) permit program under section 402 of the Clean Water Act (CWA). Following promulgation of these Consolidated Permit Regulations, petitions for review of various aspects of these regulations were filed in several federal courts and were subsequently consolidated into a single action in the United States Court of Appeals for the District of Columbia Circuit (*NRDC* v. *EPA*, and consolidated cases, No. 80–1607 (D.C. Cir., filed June 2, 1980)). On June 7, 1982, EPA entered into a settlement agreement on Clean Water Act issues with numerous industry petitioners. Under the terms of that settlement, EPA agreed to propose changes to the May 19, 1980 regulations to reflect the resolution of issues in the settlement. EPA also agreed to take such action as may be necessary to suspend several sections of the regulations pending completion of final rulemaking. Accordingly, EPA proposed amendments to the NPDES sections of the Consolidated Permit Regulations on November 18, 1982. At the same time, EPA proposed to suspend portions of these regulations and related provisions of the NPDES application forms to correspond with proposed changes to the regulation agreed to in that settlement.

After considering numerous comments submitted on the proposed changes, EPA has developed the amended NPDES regulations which are promulgated in final form today. Today's action also represents the final rulemaking on the proposed suspensions. No final action had been taken previously since the most expeditious manner of resolving all outstanding issues was to complete rulemaking on the suspension issues as well as the others at the same time.

Today's rulemaking also contains final regulations for determining whether a facility is a new source. EPA suspended the existing new source criteria and proposed revisions to these regulations on September 9, 1980 (40 FR 59317).

DATES: The effective date of this regulation is October 26, 1984.

In accordance with 40 CFR 100.01 (45 FR 26098, April 17, 1980), these regulations shall be considered final agency action for purposes of judicial review at 1:00 p.m. eastern time on October 10, 1984. In order to assist EPA to correct any typographical errors, incorrect cross references, and similar technical errors, comments of a technical and nonsubstantive nature on the final regulations may be submitted on or before November 26, 1984. The effective date of these regulations will not be delayed by consideration of such comments.

The modified information requirements contained in §§ 122.29(c)(5), 122.41(l)(1), 122.42(a), 122.45(b), 122.62(a), and 124.5 have not been approved by the Office of Management and Budget (OMB) and they are not effective until OMB has approved them.

ADDRESS: Comments of a technical and nonsubstantive nature should be addressed to: William Diamond, Permit Division (EN–336), Office of Water Enforcement and Permits, U.S. Environmental Protection Agency, Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: William Diamond, Permits Division (EN–336), Office of Water Enforcement and Permits, U.S. Environmental Protection Agency, Washington, D.C. 20460. Telephone: (202) 426–4793.

SUPPLEMENTARY INFORMATION: .

I. BACKGROUND

On June 7, 1979, EPA published final regulations establishing program requirements and procedures for the NPDES program. A week later, on June 14, 1979, a number of petitioners representing major industrial trade associations, several of their member companies, the Natural Resources Defense Council (NRDC), and Citizens for a Better Environment filed petitions for judicial review of the regulations. Also on June 14, 1979, EPA published proposed regulations consolidating the requirements and procedures for five EPA permit programs. These included the NPDES program under the Clean Water Act (CWA), the Underground Injection Control (UIC) program under the Safe Drinking Water Act (SDWA), State "dredge or fill" programs under Section 404 of the CWA, the Hazardous Waste Management (HWM) program under the Resource Conservation and Recovery Act (RCRA), and the Prevention of Significant Deterioration (PSD) program under the Clean Air Act.

Final Consolidated Permit Regulations (CPR) were published on May 19, 1980. These consolidated regulations were challenged in court. Petitions for review were filed in several U.S. Courts of Appeal and subsequently consolidated in the District of Columbia Circuit (*NRDC* v. *EPA*, and consolidated cases [No. 80–1607, filed June 2, 1980]). The petitions for review of the final NPDES regulations published June 7, 1979, were joined with this action. In response to these challenges, on September 9, 1980 EPA suspended the criteria for

determining whether a discharge is a new source (40 FR 59317). On the same day, EPA proposed regulations to replace the new source criteria (45 FR 59343).

EPA held extensive discussions with all litigants on the remaining issues raised in the petitions and subsequently signed four separate settlement agreements with the industry parties. One agreement covered only the UIC program, one covered the HWM program under RCRA, one covered the NPDES program, and the fourth covered issues which were common to at least two of the three permit programs involved in the litigation along with the definition of "new discharger" and its relationship to mobile drilling rigs under the NPDES program. Today's final rulemaking completes action initiated as a result of the settlement of NPDES issues.

The NPDES Settlement Agreement was reached after two years of intensive negotiations between EPA and the industry groups challenging the regulations. Industry litigants had raised approximately 47 issues affecting both substantive and procedural requirements in the NPDES regulations.

EPA signed the NPDES Settlement Agreement with industry petitioners on June 7, 1982. The settlement covered 27 of the 47 issues raised by industry litigants challenging the NPDES permitting portions of the Agency's regulations. Nine other issues were covered under the Common Issues Settlement Agreement. Of the nine, three related specifically to the NPDES permit program while the remaining six covered generic requirements common to all EPA permit programs. The remaining issues were determined either to be inappropriate for review except in the context of individual permit issuance or not capable of resolution among the parties. Additionally, no resolution was reached on other issues raised by the environmental group petitioners.

Under the terms of the NPDES Settlement Agreement, EPA agreed to propose revisions to the NPDES regulations. EPA also agreed to include certain language in the preamble to the proposed revisions that reflected the intent of the agreement. Finally, EPA agreed to take action necessary to suspend certain provisions, primarily relating to permit application requirements. The parties to the settlement agreed to withdraw their challenges to the regulations to the extent EPA promulgates final regulations and preamble language substantially the same as and not altering the meaning of the language agreed to in the settlement agreement.

EPA received comments from many interested persons, including some of the parties to the settlement agreement, requesting that the rules be changed in ways different from those set forth in the agreement. EPA has considered carefully all such comments and has made changes in response to these.

On those issues in which final action differs from that proposed, industry litigants may decide to continue their challenges in court. Petitioners, the Natural Resources Defense council and Citizens for a Better Environment, are not parties to the settlement agreement. Their challenges to provisions of the reagulations may not be withdrawn as a result of today's final promulgation of changes to parts of the regulations. Certain industrial petitioners have also indicated an intention to litigate certain NPDES issues raised in their petitions that were not resolved by the settlement agreement and not covered by the proposed rules. In addition, two of the industry parties (Mobil Oil Company and the American Iron and Steel Institute (AISI)) did not join in the settlement of the net/gross issue (40 CFR 122.45(h) [CPR 122.63(h)]) and AISI did not join in the settlement of the total metals issue (40 CFR 122.45(c) [CPR 122.63(c)]). (See discussion below of citing format.)

EPA published proposed rules implementing the settlement agreement on November 18, 1982 (47 FR 52072). At the same time, proposed suspensions were also published (47 FR 52093). The comment period for the proposed rule closed on January 17, 1983. EPA received approximately 85 comments from numerous industries and trade associations, eight States and four environmental groups. Most of these comments were concentrated on a few issues such as the toxics control strategy, storm water discharges, anti-backsliding, and the construction prohibition for new sources.

The proposed changes in the regulations resulted from the settlement of challenges under the CWA to provisions of the regulations affecting the NPDES program. However, some of the changes to Part 124 affect RCRA, PSD, and UIC programs as well. EPA solicited comments on the extent to which the November 18, 1982 proposed changes to these sections should affect RCRA, PSD, and UIC permitting. No comments were received on this issue. Today's rulemaking implements several procedural changes to Part 124, Procedures for Decision-making, which minimally affect the RCRA, PSD, and UIC permit programs.

On April 1, 1983, EPA published final rules "deconsolidating" the Consolidated Permit Regulations (48 FR 14146 [April 1, 1983]). The rule was published as a technical amendment to the regulations, and resulted in no substantive revisions. Under the deconsolidation, the permit regulations for each of the five programs appear in different portions to Chapter 40 of the Code of Federal Regulations. The NPDES regulations remain in Parts 122 and 123 (Part 124 was not affected by the revision and still applies to all of the programs). The deconsolidation of the NPDES regulations resulted in a renumbering of the provisions in Parts 122 and 123. Since the November 18, 1982 proposed regulations were published as revisions to the Consolidated Permit Regulations and the April 1 revisions completely renumbered the NPDES portions of the Consolidated Permit Regulations in Part 122, the format used in this preamble generally includes the Consolidated Permit Regulations (CPR) citation in brackets following the new (April 1) NPDES citation. For example: § 122.21 [CPR § 122.53]. This approach should help to eliminate confusion.

Today's final regulations reflect a final Agency determination on the proposed changes after full consideration of the comments received. To facilitate understanding, the rulemaking package includes in Part II of this preamble ("Final Regulations") for each part of the regulation EPA proposed to change a detailed discussion of the original regulation, the November 18, 1982 proposed change, the reasons for the proposal, the Agency's response to comments, and the final Agency determination.

Today's action also revises the portion of the NPDES regulations establishing criteria for new sources. As stated above, as a result of the challenge to the Consolidated Permit Regulations, EPA suspended the new source criteria (45 FR 59317) in the regulations and proposed substitute criteria. Because the revision to the new source criteria was initiated as a result of the challenge to the regulations, we have included the final action in this rulemaking.

For certain issues, today's final action is identical to the November 18, 1982, proposal, and thus consistent with the NPDES Settlement Agreement. However, some of the proposed rules have been modified, in some cases to retain existing regulatory requirements, as a result of EPA's review of the issues

and the public comments received on the proposal.

The implementation of the changes made to the NPDES permit program as a result of today's rulemaking affects one of the permit application forms (Form 2c). To assist the public in understanding these changes, EPA is publishing the revised Form 2c along with this rulemaking. However, because many States and EPA regional offices have large supplies of existing Form 2c, it is both administratively and economically impractical to immediately convert to the new permit application form. Therefore, the old permit application Form 2c will continue to be used until all have been used up and/or until copies of the revised Form 2c permit application can be furnished to the States and EPA regional offices. Since permit applicants must comply with the changes in the NPDES permit program resulting from today's rulemaking, applicants should cross out the sections of the existing Form 2c which no longer apply and insert the new information required. States and EPA regional offices may wish to prepare an addendum to the permit application Form 2c which explains the changes in reporting requirements.

II. FINAL REGULATIONS

A. Toxics Control Strategy (40 CFR 122.21 [CPR § 122.53], 122.42 [CPR § 122.61], 122.44 [CPR § 122.62], 122.62 [CPR § 122.15])

The Agency proposed a number of changes to regulatory provisions that are part of the Agency's overall strategy for controlling toxic pollutant discharges under the NPDES program. EPA previously discussed its Toxic Control Strategy in issuing the final Consolidated Application Forms (45 FR 33516, May 19, 1980). The NPDES effort to regulate the discharge of toxic pollutants is extensive. To assist readers in understanding how the proposed revisions and today's final rule fit into this strategy, it is appropriate to provide the public with a statement of the NPDES Toxic Control Strategy. Before discussing the changes to the regulations, today's preamble will outline some of the major objectives of the strategy.

(1) Background

Congress established the basis for controlling toxic discharges in the Federal Water Pollution Control Act Amendments of 1972 (FWPCA). Section 307(a) of the FWPCA required EPA to develop a list of toxic pollutants for which the Agency would establish effluent standards. These standards (or discharge prohibitions) were to be established on a pollutant-by-pollutant basis within 180 days of listing as a toxic pollutant. EPA has established section 307(a) standards for only six toxic pollutants since 1972.

Concerned about the Agency's perceived lack of emphasis on controlling toxic pollutants and lack of progress in establishing section 307(a) standards, the Natural Resources Defense Council (NRDC) file suit. The parties entered into a Consent Decree which subsequently formed the basis for the Agency's regulation of toxics. *NRDC v. EPA*, 8 E.R.C. 2110 (D.D.C. 1976). Under the Consent Decree, EPA would supplement the 307(a) standard approach with regulation of pollutant discharges, including toxics, through effluent limitation guidelines promulgated for industrial categories or subcategories. EPA was to establish effluent limitation guidelines reflecting the Best Available Technology Economically Achievable (BAT) to control a list of 65 classes of toxic pollutants in each of 21 primary industrial categories defined in the Consent Decree (the 65 classes were subsequently expanded to 129 toxic pollutants and the 21 industry categories were further subdivided into 34 categories). Congress, in the 1977 Clean Water Act Amendments, adopted the Consent Decree approach towards controlling toxic pollutant discharges.

In August 1978, EPA proposed NPDES regulations to implement the requirements of the Consent Decree and the 1977 CWA amendments. These regulations, published as final NPDES regulations on June 7, 1979, for the first time focused on obtaining adequate information on toxic pollutants through the permit application process. The final Consolidated Permit Regulations promulgated May 19, 1980, retained the NPDES provisions relating to the control of toxic pollutants.

The Agency's NPDES Toxic Control Strategy, which was discussed in detail in the preamble to the Consolidated Permit Application Forms, consists of three central elements.

First, the agency established a comprehensive process for identifying, reporting the presence of and gathering data on toxic pollutants in discharges. In addition to EPA's effluent limitation guideline effort, this activity is implemented through the NPDES permit application requirements. Permit applicants are required to identify the presence of toxic pollutants, and in certain circumstances, must submit data indicating the quantities and concentrations of pollutants present. To ensure that the data accurately describe the discharge, sampling methods and minimum sampling requirements are also specified.

The second element of the Toxic Control Strategy is to establish specific effluent limitations in NPDES permits. Permit limitations are generally based either upon promulgated effluent limitation guidelines (technology-based limits) or State water quality standards (water quality-based limits). In the absence of or in combination with a promulgated guideline, EPA establishes technology-based limitations on a case-by-case basis under section 402(a)(1) of the CWA based on the permit writer's best professional judgment. EPA establishes permit effluent limitations on individual toxic pollutants or "indicator" pollutants that will assure adequate treatment of toxics (e.g. COD, TSS, TOC, etc.). Where these are inadequate, permit limitations may be established in terms of effluent toxicity.

The third element of the strategy is to ensure that the permitting authority receives adequate information concerning the discharge during the term of the permit and has the ability to adjust the permit if necessary. All permits require dischargers to monitor their effluent for pollutants (including toxic pollutants) limited in the permit and to report the results. These reports enable the permitting authority to determine compliance by the permittee. In addition, permittees generally must provide notice of new or potential discharges of toxic pollutants. The Director can then decide whether a change in the permit is necessary to control the modified discharge. The regulations specify the circumstances under which permits can be modified.

EPA has authority to request additional information to supplement permit applications or later compliance monitoring reports where necessary to carry out the objectives of the Act.

The regulations implementing the Toxic Control Strategy reflect a balance between the need for adequate information to control the discharge of toxic pollutants and the burden these requirements impose on the regulated public. The existing rules represent the Agency's initial decision on the appropriate balance. Litigants sued EPA because they disagreed with that decision. The November 18, 1982 proposal allowed the Agency to solicit public comment on possible changes to the existing rule. Today's final rule represents EPA's decision on what is necessary to provide adequate environmental protection yet not unduly burdensome or unproductive. EPA has

adopted some of the litigation settlement proposals as final rules. The changes adopted today will not inhibit the Agency's ability to carry out any of the elements in its Toxic Control Strategy.

(2) Quantitative Data Requirements (40 CFR 122.21(g)(7) [CPR § 122.53(d)(7)])

EPA's strategy for gathering specific information on toxic pollutants in existing industrial discharges relies primarily upon application Form 2c. Most important, the application requires disclosure of the presence and, for some pollutants, the quantities of specified pollutants in the discharge.

EPA proposed several changes to the quantitative data requirements of the application form. A brief overview of all the application data requirements will put these changes in perspective.

All applicants must test for and report quantitative data for seven listed conventional and nonconventional pollutants (§ 122.21(g)(7)(i) and Item V–A in Form 2c). The Director may waive testing for any or all of these pollutants for individual dischargers in certain circumstances.

In addition, all applicants must provide information on the presence of toxic pollutants in accordance with a scheme set forth in the regulation. In established testing requirements for toxic pollutants (metals and organic chemicals, with the addition of cyanide and total phenols), EPA balances the likelihood of the presence of the pollutants against the costs and burdens for applicants to analyze the effluent. It is unnecessary to require all applicants to test for all pollutants. In some industries there is no reasonable expectation that certain pollutants are present. Therefore, mandatory testing for any toxic pollutants applies only where EPA data (gathered primarily through the effluent guidelines development process) have indicated a likelihood that the pollutant will be present in the discharge. Testing requirements for toxic pollutants fall into two groups.

First, all process discharges in primary industrial categories must be tested for the presence of metals, cyanide and total phenols (§ 122.21(g)(7)(ii) and Item V–C of Form 2c.) However, testing is not required for all organic toxic pollutants in all primary industry categories. The specific organic pollutants for which an industy must test are listed in the regulations according to the fractions tested by the analytical procedure which uses gas chromatography/mass spectrometry (GC/MS). For example, organic chemical facilities are required to analyze for all fractions, while coal mining operations are not required to test for any organic chemicals by this provision of the regulations.

Second, in addition to the mandatory testing explained above, *all* industrial dischargers must report quantitative data for any toxic pollutant that they know or have reason to believe is present in the discharge. A similar requirement applies to certain listed conventional pollutants, twenty-one nonconventional pollutants, and radioactivity. (§ 122.21(g)(7)(iii)(B) and Item V–B of Form 2c).

In addition to the toxic pollutant testing explained above, each applicant must indicate whether it knows or has reason to believe that certain hazardous substances or asbestos are discharged, and briefly explain why. Each applicant must also identify the presence of 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) if it uses or manufactures certain listed substances or expects TCDD to be in its discharge.

(a) Mandatory Testing

1. Existing rules. As mentioned above, the NPDES regulations require all applicants to submit quantitative data for three conventional pollutants (BOD, Total Suspended Solids, and pH) and four nonconventional pollutants (Chemical Oxygen Demand, Total Organic Carbon, Ammonia, and Temperature). (§ 122.21(g)(7)(i) and Item V–A of Form 2c). Testing is required since these pollutants are commonly found in many different types of discharges and tend to be indicative of the nature of a discharge. Applicants may request the Director to waive this requirement for one or more of the pollutants. As discussed, there is also mandatory testing for toxic metals and organic pollutants required for process discharges from primary industrial categories (§ 122.21(g)(7)(ii)), but changes were not proposed to these provisions.

2. Proposed changes. EPA proposed to clarify the provision allowing the Director to waive the testing requirement for the seven listed conventional and nonconventional pollutants. The proposal stated that in order to obtain the waiver, the applicant must demonstrate that the reduced reporting will still provide the Director with sufficient information to write adequate permit limitations. Additionally, the proposal would make it clear that requests for waivers could be submitted not only for individual facilities, but also for an entire industry category or subcategory. Waiver requests for an entire category or subcategory of discharges should be submitted to the Director, Office of Water Enforcement and Permits.

3. Comments and responses. EPA received no comments on this proposal.

4. EPA action. The final rule clarifying the waiver provision is adopted as proposed.

(b) Testing Potentially Required—Toxic Pollutants

1. Existing regulations. All permit applicants must report quantitative data on any listed toxic pollutant and certain conventional and nonconventional pollutants the discharger knows or has reason to believe are present in the discharge (§ 122.21(g)(7)(iii)(A) and (B) [CPR § 122.53(d)(7)(iii)]; Items V–B and V–C of Form 2c). This testing is in addition to the mandatory testing for toxic pollutants of process discharges in primary industry categories. Testing requirements for toxic pollutants are established to ensure that permitting authorities receive adequate information on the presence of toxic pollutants in a discharge. This information enables permit writers to establish appropriate limitations to control pollutants that may be of concern. Permitting authorities are not required to establish effluent limitations for all toxic pollutants on which a discharger reports quantitative data under the "know or have reason to believe" standard. In general, EPA does not intend that information supplied in the application process automatically trigger the establishment of effluent limitations. Rather, it allows the permit writer to make appropriate judgments about the need for such limitations. The regulations require the establishment of permit limitations if the pollutants are or may be discharged above the technology-based levels applicable to the discharge (as specified in effluent limitations guidelines or developed through the permit writer's best professional judgment) or, before today's revision, if they are used or manufactured at the permitted facility (see Part A. (5), below).

2. Proposed changes. Industry litigants were concerned that the toxic pollutant testing requirements were too extensive. They felt the regulation was unclear on how applicants should determine whether pollutants are "believed to be present" and that it failed to address *de minimis* quantities of pollutants. Industry contended the "believed to be present" provision required them to test, unnecessarily, for *all* pollutants that could be present in any amounts, simply to assure that the applicant would not be liable for incomplete and false reporting. In response to these concerns,

EPA proposed to establish a threshold level below which testing would not be required. Applicants would be required to submit quantitative data only for those toxic pollutants that they know or have reason to believe are present in the discharge at levels exceeding 100 μg/1 (parts per billion (ppb)). For four pollutants (acrolein, acrylonitrile, 2,4-dinitrophenol, and 2-methyl-,4,6-dinitrophenol), EPA proposed a higher threshold of 500 ppb. If an applicant knew or believed a toxic pollutant was present at less than the threshold level, the applicant could either submit quantitative data or simply explain why the applicant thought it was in the discharge. As noted in the preamble, and reflected in the proposed regulation, this cut-off would not apply to testing for process discharges in the primary industry categories.

The threshold levels in the proposal were seen as a compromise between industry's desire for a level that would eliminate testing for pollutant discharges in extremely small amounts and concentrations and EPA's need to have sufficient data to identify the presence of pollutants which should be controlled through permit limitations. This is particularly important because in accordance with section 402(k) of the CWA, a permittee is deemed to be in compliance with the CWA if he meets the requirements and limitations of his permit. Thus, pollutants not prohibited or limited by the permit can be discharged unless and until the permit is modified. EPA acknowledged in the preamble that EPA water quality criteria indicate that many of the pollutants required to be analyzed are known to cause significant adverse impact to aquatic organisms and human health at levels of 100 ppb or less (47 FR 52075, November 18, 1982).

EPA also based the 100 ppb upon an assessment of GC/MS methods 624 and 625 (as proposed December 3, 1979, 44 FR 69464). In general, those methods indicated a detection limit of 10 ppb or less for most toxic pollutants. For purposes of the application proposal, EPA then multiplied those limits by a factor of 10 as a rough measure to respond to concerns about analytical variability. EPA described this variability factor as "conservative," based upon Agency analytical experience. The higher threshold for four specific toxic pollutants was based upon the same proposed test methods, although a smaller variability factor was added since there is far less analytical variability at higher concentrations.

The proposal was intended primarily to minimize analytical burdens on applicants, while still providing permit writers with adequate information to evaluate a discharge and write appropriate effluent limitations. EPA's concern about the suitability of this proposed revision led the Agency to specifically request in the preamble that the public comment on the appropriateness of establishing threshold levels and whether 100 ppb was a reasonable level.

3. Comments and responses. This provision generated a great deal of comment. Several commenters opposed the 100 ppb threshold level. Several States that have been administering the NPDES program commented that threshold levels were inappropriate and applicants should submit quantitative data for any toxic pollutant they know or have reason to believe is present in the discharge in any amount. They felt that extensive application data on toxic pollutants are essential to any effective toxic pollutant control program and that the cost of testing is not excessive relative to the information gained. Several pointed to statements in EPA's own preamble that many pollutants are toxic below 100 ppb. One State commenter suggested that applicants should be required to submit quantitative data unless the Director specifically waives the requirement for an individual facility. Industry commenters supported the threshold concept. They suggested that it should be extended to other requirements and that the testing threshold should be raised to 250 ppb, or even higher. They argued that the analytical variability of samples taken at low concentrations resulted in imprecise date which should not be used in establishing permit effluent limitations.

After careful review of the comments and of the possible impacts of a 100 ppb threshold, we have concluded that the proposed threshold was too high. Requiring applicants to submit quantitative data on any pollutant that they know or have reason to believe is present in the discharge will supply permit writers with information that is often necessary in developing appropriate permit conditions, including monitoring and reporting requirements. This is consistent with the purpose of the application to provide permitting authorities with sufficient information to fully evaluate the discharge. Permitting authorities can use the data to identify pollutants that may be of concern and in appropriate cases, to control them through effluent limitations in the permit.

The Agency recognizes that quantitative data at extremely low levels may have some uncertainties, although those uncertainties are more likely to concern accuracy of specific *quantitative* readings than to involve any false positive readings of pollutants that actually are not present. Nonetheless, even at levels where the accuracy of the data may be somewhat uncertain, analytical information is useful to the permitting authority as a screening technique to identify the presence of a pollutant and supply an estimate of its concentration. Permit writers will be aware of any uncertainty as to the accuracy of the data submitted on the application. If more precise information is necessary to set permit limitations, the permit writer can request additional quantitative data through a gas chromatography (GC) test tailored to a specific pollutant. These GC test methods provide more accurate data at much lower levels than the GC/MS test methods which dischargers will generally use and at much less cost.

Industry's concern that there is a level below which quantitative data are of little value does have some legitimacy; but it is most significant only at levels low enough to trigger some likelihood of "false positives." Therefore, EPA has decided to retain the threshold concept, but to set it at a level where the data are sufficiently accurate to be useful and the value of the data is not outweighed by the burden of testing imposed on the applicant. After the review of the available information, the Agency has decided that a threshold of 10 ppb best achieves this balance.

There are several reasons why the Agency is establishing this new threshold level. As several commenters observed, a number of toxic pollutants are acutely toxic at levels below 100 ppb. EPA water quality criteria indicate that many of the organic toxic pollutants (e.g. chlordane, aldrin) are either carcinogenic or acutely toxic at levels well below 100 ppb (in a number of cases, toxic effects occur below both GC and GC/MS detection limits). The criteria also indicate that many of the toxic metals have effects at levels near or below 10 ppb (e.g., cadmium, hexavalent chromium). Under the proposal, permit writer would only be able to obtain data on these toxic pollutants if the permittee expected discharge at or above 100 ppb, well in excess of the levels where health or aquatic effects occur. Several States approved to administer the NPDES program commented that given these toxicity levels, it is important to require a submission of data at lower levels. On reconsideration, EPA agrees that data on these toxic pollutants at low levels

may be necessary for comprehensive evaluation of a discharge and establishment of permit limits.

The proposed threshold level was designed to take into account the possibility of imprecision and analytical variability associated with testing for toxic pollutants at levels near detection limits. EPA based the proposed threshold on method detection limits for the proposed GC/MS methods 624 and 625 (see 44 FR 69464, December 3, 1979), since multi-pollutant GC/MS testing will generally be used to report quantitative data on toxic pollutants. To take into account analytical variability, EPA added a variability factor of ten to the general detection limit of 10 ppb, which resulted in a proposed threshold of 100 ppb (for 4 pollutants with higher detection limits, a lower variability factor was set, resulting in a 500 ppb threshold).

The final rule contains an application testing threshold at 10 ppb, based in large part upon the detection limits in the proposed GC/MS test methods (see above), without the addition of the variability factor of ten. The proposed methods indicate that most organic toxic pollutants can be detected in waste water at that level (see 44 FR 69532, December 3, 1979). (For the four toxic pollutants discussed above that cannot be detected at 10 ppb the Agency is establishing a higher threshold at 100 ppb.) EPA recognizes that the 10 ppb threshold is based upon proposed methods rather than final rules. However, since the testing threshold is intended as a general number for testing purposes, the proposal is sufficiently accurate as a basis for the threshold. Moreover, more recent Agency data on these test methods confirm these detection limits and, in fact, indicate that GC/MS detection limits are actually lower.

The final rule is based upon a determination that it is unnecessary to include a variability factor above the detection limit in the testing threshold. While such a factor may be appropriate in some cases, such as in the establishment of effluent limitations since compliance is based upon these limits, a similar degree of precision is not necessary in establishing a testing threshold for permit applications, particularly since the data often serve a screening function. In fact, variability factors incorporated into the application threshold deprive permit writers of valuable information. The application is intended to obtain complete information on the discharge, thus enabling permit writers to determine the parameters for which permit limits must be set. This can be accomplished even if the initial data are somewhat imprecise due to alleged analytical variability since the permit writer will still have enough information to evaluate the discharge and can take such factors into account at the time of establishing permit limitations. If more precise data are needed to establish permit limitations at levels where variability may be a concern, the permittee is free to submit such data and the permit writer retains the authority to request additional data on the toxics, such as through more accurate GC testing.

Furthermore, in developing method detection limits, EPA has already considered analytical variability to some degree. Thus, adding a variability factor of ten to the detection limits compounds the consideration of analytical variability. In light of concerns expressed by commenters that the 100 ppb threshold would deprive permit writers of application data necessary to fully evaluate a discharge, it is not appropriate to add this second variability factor.

The Agency has also determined in rulemaking published subsequent to the November 18, 1982 proposal, that not only detection, but quantification of toxic pollutants below 100 ppb is possible, thus further confirming EPA's reliance on the 10 ppb figure. The proposed effluent limitations guideline for the Organic Chemicals Manufacturing Point Source Category contains limitations for a number of organic chemicals at the 50 ppb level (48 FR 11828, March 21, 1983). Moreover, as stated in the preamble to that proposal, EPA recognizes that with careful analytical techniques, toxic pollutants can be quantified below the levels at which limits were proposed (48 FR 11839). The limitations on the discharge of Total Toxic Organic (TTO) pollutants in the final Effluent Guidelines for the Electroplating and Metal Finishing Point Source Categories are based upon adding all quantifiable values of the 113 toxic organic pollutants over 10 ppb to determine whether the discharge complies with the TTO limitations. (48 FR 32462, July 15, 1983.) For most of the organic toxic pollutants, the Final Development Document for the Metal Finishing effluent guideline indicates that 10 ppb is an appropriate quantification level. EPA also proposed limitations for one toxic pollutant, N-nitrosodi-n-propylamine, at one ppb and numerous other toxic pollutants at levels between 20 and 50 ppb in the Pesticide Chemicals Guideline (47 FR 53994, November 30, 1982). The Agency recently made available for comment data on the Pesticides Category that would set limitations on a number of pollutants in the 10 ppb to 20 ppb range (49 FR 24492, June 13, 1984).

For four toxic pollutants (acrolein, acrylonitrite, 2,4-dinitrophenol, and 2-methyl-4,6-dinitrophenol), EPA is establishing a higher application testing threshold of 100 ppb (EPA had proposed 500 ppb). The proposed GC/MS test methods indicate that two of these pollutants are detectable at 100 ppb and the others (the phenolic compounds) at 250 ppb. However, the same proposal indicated that both of the phenolic compounds were detectable using GC methods at levels well below 100 ppb (44 FR 69487, December 3, 1979). Thus if applicants expect concentration below the GC/MS detection limit, they can perform GC analysis to obtain the precise data.

Finally, while analytical variability may be higher for samples taken at extremely low concentrations, it is not necessary or appropriate to eliminate all uncertainties by setting a relatively high concentration as the threshold. Since the establishment of too high a threshold could trigger a large number of supplemental requests for information to be submitted to the permit writer, this could substantially delay permit issuance and create significant additional burden on both applicants and permit writers. EPA concluded that it would be appropriate and desirable to set a threshold that will enable permitting authorities in most cases to rely on data submitted from applicants without extensive supplemental information requests.

The threshold level does not mean that permit limitations should necessarily be set for all pollutants present at 10 ppb, nor that it may never be appropriate to set limitations below this level. The submission of data, whether under § 122.21 (g)(7)(iii), (g)(7)(ii) [CPR § 122.53(d)(7) (iii), (ii) (for specified GC/MS fractions), or otherwise, does not automatically trigger the establishment of effluent limitations for the pollutants reported. Before setting technology-based limitations on pollutants present in the discharger's effluent at any level, the permit writer must consider whether the appropriate technology can reduce the pollutants in question to that level, and whether the analytical uncertainty and variability that may exist are so significant that the imposition and enforcement of specific limitations at that level may be unreasonable.

Clearly, for the reasons set forth above, the 250 ppb threshold proposed by some commenters is too high.

One commenter submitted data concerning the fact that analytical variability may be a problem even at 100 ppb. The Agency recognizes that analytical variability is more likely at lower levels. However, as discussed above, EPA does not consider it appropriate to add a variability to the threshold for *application* purposes.

Commenters also questioned EPA's proposal to require toxics testing under the "know or have reason to believe" standard only for routine or frequent discharges. On reconsideration, EPA is persuaded that all toxic pollutant discharges should be tested under the "know or have reason to believe" standard, not just those discharged on a routine or frequent basis. As stated above, the application is intended to provide a complete picture of the permitted facility once every five years. For permit writers fully to evaluate the discharge and impose appropriate permit controls, complete information on the discharge is essential. Even if permit effluent limitations are inappropriate due to the non-routine nature of the discharge, permit writers could determine that control through Best Management Practices (BMP) requirements are necessary or that additional monitoring is warranted. Therefore, the final regulation will apply to all toxic pollutant discharges and eliminate the proposed limitation for only routine or frequent discharges.

One State commenter expressed concern that the 100 ppb application testing threshold would require permit writers to impose additional monitoring requirements to verify the quantities of pollutants reported as being discharged below the threshold. EPA believes that the lower threshold adopted in today's final rules lessens any need to require permit monitoring to verify application information. EPA recognizes, of course, that some State permitting authorities may require pre-application testing for all pollutants the discharger may know or have reason to believe are present. States have the authority to adopt this approach or to request additional data on any pollutant identified in the application and to impose additional monitoring requirements during the permit term.

Another commenter stated that the proposed application testing threshold would interfere with the imposition and enforceability of effluent limitations below the threshold. This concern is also applicable to the lower threshold adopted today. EPA emphasizes that the application testing threshold is established only for triggering a requirement to test for particular toxic pollutants in the application process and it in no way restricts the levels at which effluent limitations can be set for specific pollutants in the permit. Most pollutants can be detected and quantified accurately at the 10 ppb using GC/MS for multi-pollutant analyses. Pure GC methods for a single pollutant frequently are quantifiable well below this level. Determining appropriate effluent limitations involves considering treatment technology as well as possible analytical variabilities when testing a pollutant. Effluent guidelines are developed based on analysis of the treatment capabilities for an industry category. Permit limitations often will be set at levels different from the application testing threshold.

One commenter questioned the basis on which applicants would determine whether a pollutant was likely to be present above the threshold level without testing. Under the regulation, each discharger must assess the likelihood that a particular toxic pollutant will be discharged above the threshold levels. Applicants may base their assessments on available information on the discharge, including their own experience and knowledge. In some cases, applicants can rely upon previous monitoring data for the pollutant, while in others, new testing may be necessary. EPA expects the applicants to consider, among other things, the age and amount of available data, the levels measured in the past, and any changed circumstances that would suggest the need for additional testing. Of course, the permit writer can always request testing for pollutants if he determines it is necessary to evaluate the discharge.

Several commenters stated that the proposed 100 ppb threshold should be applicable to the mandatory testing requirements for process discharges in primary industries as well as testing under the "know or have reason to believe" standard. As discussed above, § 122.21(g)(7)(ii) [CPR § 122.53(d)(7)(ii)] imposes a mandatory duty on applicants in primary industrial categories to test for the presence of certain toxic pollutants as specified in the regulation. The commenters stated that EPA's rationale, that 100 ppb was a technically achievable measurement level using "conservative" variability factors, was also applicable to these discharges.

The mandatory testing requirements for each primary industry category are based upon a review of data on the likelihood that a particular pollutant will be discharged, rather than the more speculative "know or have reason to believe" standard. Because of this difference, an application testing threshold is inappropriate. EPA, in developing effluent limitations guidelines, conducted extensive sampling of primary industries and this information was used in developing the mandatory testing requirements. In fact, EPA set these mandatory testing requirements based upon whether the toxic pollutants appeared in concentrations above 10 ppb. (See discussion in preamble to the Consolidated Application Forms, 45 FR 33516, May 19, 1980.) EPA periodically revises the testing requirements in the NPDES regulations, based upon consideration of this or any new data. For example, EPA suspended testing in certain categories where further data indicated that toxic pollutants were not likely to be present in all facilities within the category (see discussion of suspensions below). In recognition that it may be more burdensome for applicants to predict what pollutants may be discharged, EPA has established a threshold to relieve applicants of some of the testing burdens. Because of the greater degree of certainty of the presence of pollutants in primary industry process discharges, relief in the form of a threshold is not justified.

Another commenter requested that EPA clarify the status of suspensions of the mandatory testing requirements for organic toxic pollutants. EPA suspended mandatory testing requirements for all organic toxics in the Coal Mining Point Source category on January 8, 1981 (46 FR 2054) and for some or all organic toxic pollutants in the Textile Mills, Ore Mining and Dressing and Porcelain Enameling Point Source Categories on April 20, 1981 (46 FR 22584). On July 1, 1981, EPA also suspended mandatory testing for some or all organic toxic pollutants in the Gum and Wood Chemicals; Leather Tanning and Finishing; Paint and Ink Formulation; Photographic Supplies; Petroleum Refining; Pulp, Paper and Paperboard; and Steam Electric Power Generating Point Source Categories (46 FR 35090). These requirements are still suspended. EPA intends to propose regulations in the future that will make the changes to the mandatory testing a permanent regulation change.

4. EPA Action. In response to public concerns over the 100 ppb threshold provision, today's rule modifies the proposal. The final rule requires applicants to submit quantitative data for any toxic pollutant they know or have reason to believe is present in the discharge above 10 ppb. For four pollutants (acrolein, acrylonitrile, 2,4-dinitrophenol, and 2-methyl-4,6

dinitrophenol), we are establishing a higher threshold of 100 ppb. Applicants must continue to identify any toxic pollutant they know or have reason to believe is present but below these threshold levels applicants have the option to either supply quantitative data or explain why the pollutant is known or believed to be discharged.

Several persons requested that we clarify whether the inclusion of the requirement to sample and test the parameter "total phenols" in Item V–C of NPDES Form 2c is intended to classify total phenols as a toxic pollutant. While all other pollutants covered by Item V–C are toxic pollutants, EPA recognizes that this parameter (total phenols) using the 4-aminoantipyrine (4AAP) standard method, measures both toxic and non-toxic pollutants. Total phenols are covered in Item V–C merely for the purpose of specifying the type of testing and reporting that is required. EPA is modifying the Title to Appendix D to Part 122 to clarify that total phenols are included in Item V–C only for testing purposes and not to classify the parameter as a toxic pollutant.

Therefore, an applicant would be eligible for a variance under sections 301(c) or 301(g) from a BAT permit limit on total phenols upon a demonstration (*e.g.*, by GC or GC/MS) that either those toxic phenolics listed under section 307(a) of the CWA are not present or that each section 307(a) toxic phenolic present is at a level below that required by BAT or is directly controlled by a BAT effluent limitation. Where limitations on total phenols (as measured by 4AAP) are being used to control section 307(a) toxic pollutants not otherwise limited in the permit, a variance cannot be granted unless the total phenols limitation as an indicator for control of the toxic pollutants is replaced by another indicator pollutant not the subject of the variance request or individual limits are placed on the toxic or conventional pollutants in question.

(c) Certain Conventional and Nonconventional Pollutants

1. Existing rules. Section 122.21(g)(7)(iii)(B) [CPR 122.53(d)(7)(iii)(B)] and Item V–B of Form 2c require applicants to submit quantitative data for certain conventional and nonconventional pollutants identified in the regulations (Part 122, Appendix D, Table IV) if they know or have reason to believe the pollutant is present in the discharge. Like the other testing requirements, this provision is intended to supply adequate information on the contents of the discharge to establish permit conditions.

2. Proposed change. As with the testing requirements for toxic pollutants, industry litigants were concerned that this requirement was overly broad in that it required testing for every pollutant believed present, regardless of the amount. In response, the Agency again proposed to establish a screening criterion for testing purposes. Since a concentration-based threshold was inappropriate for a number of the pollutants in this group, EPA proposed that applicants be required to submit quantitative data only if the pollutants were either directly or indirectly (through an indicator) limited in an applicable, promulgated effluent limitation guideline. Under the proposal, permitting authorities would rely upon guidelines to indicate when pollutants were of concern and would supplement data through subsequent requests to the applicant. If quantitative data were not required because the pollutant was not limited in a guideline, applicants would still be required to identify any pollutants that they know or have reason to believe are present and explain why the pollutants are expected in the discharge.

3. Comments and responses. Most commenters expressed general support. However, one stated that all dischargers should be required to submit data on pollutants that they have used, handled, or generated within the previous five years, or which they know or have reason to believe are present in the discharge. Because the potential for extensive, potentially unneeded testing is great and the pollutants subject to this application requirement are not among the 126 toxic pollutants of primary concern, we consider this suggestion overly broad. While information on such pollutants may be useful, after general consideration of testing burdens and the value of the information in setting permit conditions, we have concluded that for these pollutants it is not always necessary to require extensive up front submission of testing results through the application form unless they are limited by a guideline. The Director may still obtain quantitative data if he determines that additional information is necessary. Otherwise, data on pollutants regulated by a guideline and a narrative description of the reason other pollutants in this category are expected to be discharged should provide sufficient information to develop adequate permit limitations.

Another commenter observed that in the case of discharge categories for which no effluent limitations guideline has been promulgated, no testing is required by the proposal. It is true that the proposal would not require testing for such discharges as part of the application. However, the applicants must still identify these pollutants expected to be present in the discharge and explain why they are present. If additional information is needed to decide whether to establish effluent limitations, the Director can use his authority under § 122.21(g)(13) [CPR § 122.53(d)(13)] to obtain the additional information. EPA expects that in these cases, the Director will closely examine the circumstances surrounding the discharge, including the applicant's explanation of why the pollutant is expected to be present, and request information whenever pollutants may be of concern.

4. EPA action. EPA is adopting the modification to § 122.21(g)(7)(iii)(A) as proposed. The change will reduce testing requirements for many dischargers, while not affecting EPA's ability to obtain necessary information concerning the pollutants. Since applicants must still submit quantitative data whenever the applicable effluent limitation guideline regulates the pollutant, EPA can write adequate permit conditions for many of the more significant discharges without additional requests for information. For discharges not covered by effluent limitation guidelines, the permitting authority may rely upon its authority to request additional information to ensure that adequate data are available to establish permit limitations. The final rule is a reasonable compromise between the need to avoid extensive, unnecessary testing and the need to assure that enough information is readily available to allow the Director to develop an appropriate permit.

(3) Sampling (40 CFR 122.21(g)(7) [CPR § 122.53(d)(7)])

1. Existing rules. Section 122.21(g)(7) specifies the type of sampling that applicants are required to perform to obtain quantitative data required by the application. Under the regulation, applicants must use 24-hour composite samples for all testing, except that grab samples must be taken for seven named pollutants (pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, and fecal coliform).

2. Proposed changes. EPA's sampling requirements were considered too restrictive by a number of litigants. EPA proposed to revise the sampling requirements to allow the expanded use of grab samples in three cases. Grab samples in lieu of composite samples

would be allowed for holding ponds and other impoundments with a retention time of over 24 hours. Applicants could also use grab samples for storm water discharges, but would be required to take one grab sample for each hour of discharge up to a minimum of four grab samples for discharges of four or more hours duration. The proposal would also allow the Director to waive composite sampling if the applicant demonstrates that use of an automatic sampler is infeasible and that the minimum of four grab samples would be representative of the discharge. The proposed changes were intended to allow greater sampling flexibility where use of grab samples would still provide representative data and to recognize the impracticalities of obtaining composite samples of storm water discharge.

3. *Comments and responses.* All comments received supported the proposal. Several persons stated that there was no need to specify a particular sampling method where other methods can produce reliable data. EPA is convinced it *is* appropriate to specify these methods because sampling methods affect the reliability and accuracy of analytical data submitted on the application. For most discharges, EPA requires composite samples since these samples usually produce the most reliable and representative data for assessing the environmental impact of the discharge over time. The existing regulations require grab samples for seven pollutants because storage of the sample for the time to take a 24-hour composite sample makes evaluation of the parameter difficult or impossible (e.g., temperature). EPA recognizes that in certain cases where applicants can generate reliable data through other methods, it is appropriate to increase flexibility. Therefore, EPA will now allow grab samples for storm water discharges because the unpredictable and infrequent nature of such discharges makes composite sampling very difficult. EPA is also allowing grab samples for holding ponds or other impoundments with 24-hour retention time and, at the Director's discretion, other discharges if use of an automatic sampler is infeasible. The one grab sample minimum for holding ponds or other impoundments applies both to holding ponds at the end of the treatment system and to those that are themselves treatment systems. This change should reduce sampling costs for applicants while not appreciably reducing the reliability of the application data.

One commenter supported EPA's proposed change as it affects storm water discharges. Composite sampling may not be possible for some storm water discharges and hourly sampling (for the first 4 hours) up to a minimum of four grab samples should be sufficient to accurately reflect the discharge. The regulations do not specify any particular time during each hour that applicants must test although applicants must take samples that are representative of the discharge. Since, in many instances, the first discharge of pollutants after a rainfall is the most significant, applicants should wherever feasible, take their first grab sample during the first quarter hour of storm water discharge.

4. *EPA action.* For the reason stated above, today's final rule is adopted as proposed.

(4) Potential Discharges (40 CFR 122.21(g)(10) [CPR § 122.53(d)(10)])

1. *Existing rules.* The NPDES regulations require permit applicants to list any toxic pollutant that is expected to be discharged during the following five years at more than twice the level reported in the application. The requirement is intended to provide notice of anticipated discharges to allow permit writers to establish limitations at the time of permit issuance and ensure installation of adequate control technology prior to changes in the discharge.

2. *Proposed changes.* Litigants argued that acurate prediction of future discharges was exteremely difficult. They also stated that changes in discharge levels were inherent given the analytical variability in pollutant testing. They feared the requirement could mean that failure to properly predict or report on such changes would expose them to liability for filing an incorrect application. EPA proposed to delete § 122.21(g)(10) since the information on potential discharges, although useful, was not essential to writing adequate permits. Additionally, EPA relied upon § 122.42(a) [CPR § 122.61(a)], under which permittees would be required to notify the Director during the term of the permit of toxic pollutant discharges exceeding five times the application value, thus allowing permit modification if necessary.

3. *Comments and responses.* One commenter objected to the deletion of this application requirement, stating that the information allows establishment of permit limits and installation of control equipment prior to discharge. Several other commenters supported the proposal stating that accurate prediction was impossible given analytical variability.

EPA agrees that the establishment of permit limitations and installation of any appropriate treatment equipment prior to the discharge or increased discharge of toxic pollutants is an important goal. However, exact prediction of future discharges is not always possible, and only in some cases will information on future discharges be sufficiant to allow the permit writer to establish such limitations at the time the permit is issued. Therefore, the burden on applicants of predicting future discharges does not appear justified in light of the generally speculative nature of making future discharge level predictions. Under § 122.42(a), permittees must notify the Director whenever the routine or frequent discharge of a toxic pollutant exceeds the higher of 100 ppb or five times the value reported in the application. This should generally be sufficient to allow the Director to modify the permit to impose permit limitations or other conditions if appropriate. In addition, most significant increases will also be associated with process changes that dischargers must still report under §§ 122.42(a) or 122.41(l)(1) [CPR § 122.7(l)(1)]. Of course, applicants are encouraged to provide the permit writer with any relevant information on planned new or increased discharges expected during the term of the permit being sought (usually five years).

4. *EPA action.* For the reasons stated above the final rule adopts the provision as proposed and deletes § 122.21(g)(10). (A new paragraph § 122.21(g)(10) is added by revisions to the storm water regulation. See B., below.)

(5) Used or Manufactured pollutants (40 CFR 122.21(g)(9) [CPR § 122.53(d)(9)], 122.42(a)(2) [CPR § 122.61(a)(2)], 122.44(e)(1)(ii) [CPR § 122.62(e)(1)(ii)], 122.62(a)(13) [CPR § 122.15(a)(ix)])

1. *Existing rules.* Four provisions of the NPDES regulations relate to application, notification, and control requirements for pollutants that the discharger uses or manufactures as intermediate or final products or byproducts. These requirements affect all aspects of the Toxic Control Strategy.

Applicants must identify all toxic pollutants that the applicant does or expects to use or manufacture within the next five years (§ 122.21(g)(9) [CPR § 122.53(d)(9)] and Item VI of Form 2c). Examination of such pollutants can assist in the establishment of permit limitations by supplementing quantitative data that the discharger has submitted. The NPDES regulations also require the Director to establish permit limitations on all toxic pollutants that

the discharger does or may use or manufacture § 122.44(e)(1)(ii)) [CPR § 122.62(e)(1)(ii)]. Permitees must notify the Director whenever they begin or expect to begin to use or manufacture a toxic pollutant that was not reported in the permit application (§ 122.42(a)(2) [CPR § 122.61(a)(2)]. Based on such information, the Director has authority to modify the permit to then include limits for these toxic pollutants (§ 122.62(a)(13)) [CPR § 122.15(a)(5)(ix)]].

2. *Proposed changes.* A number of litigants objected to EPA's regulations dealing with used or manufactured toxic pollutants, suggesting that EPA had authority only to regulate the discharge of pollutants. Since not all pollutants that are used or manufactured by a permittee are necessarily discharged, EPA determined that the requirements might be unnecessarily broad. Although EPA did not agree that it lacked authority to regulate such pollutants, EPA proposed to delete all four provisions relating to the use or manufacture of toxic pollutants and thereby avoid unnecessary application requirements, and the imposition of permit limitations on pollutants that are not discharged. EPA concluded that requirements in the permit application for obtaining data on the actual discharge of pollutants and authority to impose permit limitations on any of these pollutants would provide adequate control of toxic pollutants.

3. *Comments and responses.—a. Comments on application and notification requirements.* Several commenters opposed the deletion of the application and notice requirements. One State indicated that EPA should retain the existing regulations to allow imposition of permit limitations and installation of control technology prior to discharge. Several others commented that, at a minimum, information on toxic pollutants currently used or manufactured was necessary. Another State added that the information from the application was very useful during inspections of a permittee. Other commenters supported the elimination of the application requirement to predict future use or manufacture due to the difficulty of making such predictions. These commenters also supported the proposal as it related to permit conditions and notification requirements stating that it is more appropriate to concentrate on pollutant discharges than on their use or manufacture.

EPA has carefully considered the comments and concluded that the proposal to delete all four provisions went too far in eliminating regulation of used or manufactured toxic pollutants. Since pollutants that are used or manufactured at a facility frequently have some potential to be discharged, even if unintentionally, it may be appropriate to regulate them. Information on the use or manufacture of pollutants allows permit writers to establish appropriate conditions to control the discharge of pollutants. These controls may take the form of permit effluent limitations on the pollutant. In some cases, permit writers may determine that the imposition of Best Management Practices (BMP) conditions in permits will be a more effective means to control the pollutant by reducing the possibility of actual discharge. (For example, BMPs may be appropriate where a potential for discharge exists due to leaks or spills from storage facilities.) Quantitative data requirements will generally not provide information on all used or manufactured toxic pollutants since the applicant may not have reason to believe the pollutants will be discharged. Thus, permit writers would not have adequate data to impose limitations on these pollutants. Additionally, as the commenter noted, this information can assist authorities in performing compliance inspections.

However, instead of requiring speculative prediction of future use or manufacture and notification when the discharger begins to use or manufacture a toxic pollutant, the regulations will only require applicants to submit information on toxic pollutants currently (at the time of application) used or manufactured. This will be sufficient for permit writers to impose adequate permit limitations since the permit must be renewed at least once very five years. The notification of pollutant use or manufacture during the entire permit term is more burdensome than the one time application requirement and has been eliminated to reduce permittee burdens.

EPA recognizes that for some dischargers the obligation to report all used or manufactured toxic pollutants may be difficult or even impossible to meet, particularly when there are numerous toxic components in a substance. For example, applicants that use chemical solvents purchased under a brand name may be unaware of or unable to ascertain the specific toxic pollutant components that are in the solvent. To reduce these burdens, the regulation will allow the Director to modify or waive the requirement to list all used or manufactured toxics pollutants if the applicant can demonstrate that it would be overly burdensome. For example, the Director could modify the application provision for a discharger to require only a listing of solvents by brand name and then use the information, along with other information available to him (such as toxicity testing results or water quality data), in conjunction with his best professional judgment, to decide whether more exact information is needed. Even where the waiver is granted, the Director can use his authority under (§ 122.21(g)(13) [CPR 122.53(d)(13)]] to request additional information where necessary. This change will reduce burdens for many applicants, without reducing the Director's ability to obtain needed information.

While data on future use and manufacture might also be useful to allow the imposition of permit limitations prior to any potential for discharge, this value is outweighed by the burdens it creates for applicants. Some applicants will be unable to predict future use or manufacture of toxic pollutants, making the information of little value because of its speculative nature. The permitting authority should still receive notice when the permittee has reason to believe these pollutants will be discharged at or above 100 ppb (see § 122.42(a)(1)), and the Director may then impose such permit conditions as are necessary.

One commenter supporting the proposed change to the application stated that the existing requirement to report used or manufactured toxic pollutants in the permit application could lead to the divulgence of confidential business information. Data on currently used or manufactured pollutants are needed to ensure that the permit contains adequate conditions to control potential or actual discharges. Since the CWA specifically provides that application forms must be available to the public (section 402(j)), EPA has no discretion to keep portions of the application confidential (see § 122.5(c) [CPR § 122.19(c)]]. EPA recognizes the possibility that some confidential information may be included in the listing of used or manufactured pollutants. However, EPA believes that the need for this information to assure adequate environmental protection in general outweighs the burden to applicants. EPA, therefore, will continue to require submission of data on current use or manufacture. The Agency expects, however, that some of the commenter's concerns may be alleviated by the deletion of the requirement that permittees predict future use or manufacture. In addition, the Director can exercise his discretion in truly

burdensome situations to modify or waive the requirement to list all pollutants currently used or manufactured where this information is not necessary to establishing permit limitations.

b. Comments on permit limitations. Several commenters supported the proposed deletion of the requirement that permits contain limitations on all toxic pollutants the permittee does or may use or manufacture. Because it requires effluent limitations even when the Director determines that they are unnecessary or where other means to control pollutant discharge, such as BMPs, are more appropriate, the Agency agrees that this regulation is unnecessary and overly restrictive and that it is better to allow the Director discretion in determining what limitations are appropriate. The Director still must impose limitations on any pollutant regulated by an applicable guideline and has authority under § 122.44 to impose permit limitations on any pollutant that may be of concern.

Another commenter supported the proposed deletion of the requirement to impose permit limitations, but suggested that we modify § 122.44(e)(1)(i) [CPR § 122.62(e)(1)(i)] which requires the Director to impose permit limitations on any pollutant that may be discharged at levels above BAT. The suggested modification was to require the establishment of such limitations for pollutants discharged at levels below BAT, but above water quality standards. Since permitting authorities have adequate authority to impose any limitations that are necessary to ensure compliance with State water quality standards [§ 122.44(d), [CPR 122.62(d)]] it is unnecessary to modify the regulation as suggested.

4. EPA action. For most of the provisions, the final regulation is identical to the proposal. Sections 122.42(a)(2), 122.44(e) (i) and (ii), and 122.62(a)(13) are deleted by today's rule. However, in response to commenters' concerns, EPA will retain the requirement that applicants list all toxic pollutants that are currently used or manufactured as an intermediate or final product or byproduct [§ 122.21(g)(9)—Item IV of Form 2c). Applicants will no longer be required to predict future use or manufacture. The regulation will also allow the Director to modify or waive the currently used or manufactured application requirements if the applicant can demonstrate that it would be overly burdensome.

(6) Toxics Notification [40 CR 122.42(a) [CPR § 122.61(a)]]

1. *Existing rules.* The third element of the Toxic Control Strategy is the provisions for obtaining follow-up information concerning discharges during the permit term. One mechanism for providing such information is § 122.42(a) [CPR § 122.61(a)] which requires all industrial permittees to notify the Director when an activity has occurred or will occur that will result in the discharge or a toxic pollutant that is not limited in the permit. The permittee must provide such notice if the discharge exceeds the higher of 100 ppb (or 250 ppb for four pollutants identified in the regulation) or five times the concentration level reported for the pollutant in the application. This report is intended to ensure notification of new or increased toxic pollutant discharges during the permit term and allow for any appropriate permit modification.

2. *Proposed changes.* Industry litigants alleged that the regulation required continual notification because of the analytical variability when testing for the presence of pollutants at 100 ppb. This provision was not intended to require notification of daily fluctuations in pollutant readings, but rather to require notice of actual changes in the amount of the pollutants being discharged. EPA therefore proposed to modify the regulation to more accurately reflect the intent. Permittees would be required to notify the Director of the discharge of toxic pollutants exceeding threshold levels (the higher of 100 ppb or five times the concentration reported in the application) but only for toxic pollutants discharged on a routine or frequent basis, since these discharges are most appropriately controlled through permit limitations.

The proposal also required permittees to report nonroutine or infrequent discharges of a toxic pollutant not limited in the permit, if a single occurrence exceeds 10 times the value reported in the application, or 500 ppb, whichever is greater. EPA stated that infrequent and nonroutine discharges are still of concern, but are not as likely to be controlled through permit limitations.

3. *Comments and responses.* Several commenters supported the proposal because it would eliminate unnecessary burdens and concentrate on discharges that have a regulatory significance. EPA agrees that the proposal will eliminate burdens for dischargers, although the Agency would not characterize non-routine and infrequent discharges as lacking regulatory significance. The notification requirement is intended to provide information on new or increased toxic pollutant discharges thereby allowing the imposition of permit limitations (see 45 FR 33521, May 19, 1980). Non-routine and infrequent discharges may still be significant, not due to a continuing discharge problem, but rather because many of these discharges are pollutant spills or other irregular events. However, since permitting authorities are less likely to modify the permit to impose limitations to control such discharges, EPA has established a higher threshold for reporting those toxic discharges. This higher threshold will reduce reporting burdens for permittees, while still alerting the Director to possible problems with the discharging facility that would require permit modification. In addition, permittees may have an independent obligation to report the spill situations not addressed by the NPDES permit under section 311 of the CWA.

Several commenters supported the proposal preamble statement that the notification requirement was not intended to require continuous monitoring. The Agency reiterates that the notification requirements of this provision are not intended to impose on a permittee a burden of continuous monitoring throughout the term of the permit. Rather, if the permittee discovers through any means available (*e.g.*, routine monitoring required by the permit, independent monitoring done by the permittee, or a professional judgment that a reasonable potential for discharge exists based on a knowledge of changes in the facility or process operations) that it now expects toxic pollutants not limited in the permit to be discharged, the permittee must notify the Director. In determining whether a discharge is routine or frequent within the level specified, the permittee should examine the circumstances of the discharge and the operations of its facility or activity to determine whether additional self-monitoring is necessary to make an accurate determination of whether it is routine or frequent.

One commenter stated that threshold levels were inappropriate for notifications of the new discharge of toxic pollutants. While EPA recognizes that requiring dischargers to report any discharge of new toxic pollutants would provide the maximum possible information, this could impose an extremely large burden on permittees to report toxic pollutants at extremely low levels. Unlike the permit application which requires the submission of information only once every five years, permittees must report throughout the

permit term under the notification requirement whenever a toxic pollutant is discharged. Therefore, the Agency has established a notification level to relieve dischargers from having to report all new discharges. The threshold level is set to require reporting a toxic discharge not limited in the permit in excess of 100 ppb or when the discharge of a pollutant exceeds five times the value reported on the application.

One commenter suggested that EPA impose permit limitations based upon the discharge values reported in the application. The Agency proposed such an application-based permit limit approach twice, and rejected it on the basis of extensive public comment. (See 45 FR 33516, May 19, 1980; 44 FR 34346, June 14, 1979; 43 FR 37078, August 21, 1978). EPA's decision was based on the inadequacy of data on wastestream variability and the problem of batch processes. EPA also concluded that the application-based approach could have imposed severe monitoring costs on applicants and permittees and that a more focused approach was preferred. The Agency continues to support the reasoning for the decision.

Several commenters claimed that the higher notification level could result in significant pollutant discharges without notification. In addition, these commenters suggested that the lack of a definition of routine or frequent discharge could also allow discharges without notification. EPA recognizes that some discharges below 500 ppb may be significant. However, the primary purpose of § 122.42(a) is to provide information on new or increased dischargers that may warrant permit modification. Since discharges subject to the higher threshold are infrequent and non-routine, the Director is generally less likely to modify the permit to impose limitations. Therefore, EPA has established a threshold at which the significance of the discharge increases the likelihood of permit modification.

EPA would also like to clarify the meaning of routine or frequent discharges. The lower threshold levels apply to any discharge that is either routine or frequent, not necessarily both. Routine discharges are those that occur on some regular basis (whether once a week or four times a year). This does not mean that routine discharges are only those that occur with clockwork regularity. Any discharge that the permittee expects will occur as a result of normal plant operation is likely to be routine. Thus, a facility that has a large holding pond from which it discharges several times a year would be subject to the routine discharge standard.

Discharges that occur mor than twice a year are frequent, whether or not they are routine. One-time spills are an example of infrequent discharges. These infrequent discharges are less likely to be controllable through permit limitations.

4. *EPA action.* After review of the comments, EPA has decided to promulgate the rule as proposed. Section 122.42(a) requires an existing industrial permittee to notify the Director when some activity has occurred or will occur causing it to discharge toxic pollutants which were not previously limited in the permit. In general, when such a discharge of a toxic pollutant occurs on a routine or frequent basis, the permittee must notify the Director if that discharge exceeds 5 times the level reported in the permit application form, or 100 ppb, whichever is higher. The permittee must also notify the Director when any one occurrence of a discharge exceeds 10 times the reported value or 500 ppb, whichever is greater.

(7) Toxicity Limits (§ 125.3(c)(4))

1. *Existing rules.* Most NPDES permit effluent limits are expressed as numeric limitations for specific pollutants. In addition to limiting specific chemicals, several generic pollutant parameters which simultaneously measure the effect of a number of distinct chemical substances are commonly limited (e.g., biochemical oxygen demand (BOD), chemical oxygen demand (COD), color, etc.). The NPDES regulations also authorize effluent limitations expressed in terms of effluent toxicity. Under the regulations, toxicity limits must reflect appropriate requirements of the Act (e.g., technology-based requirements or water quality standards). Toxicity limitations are useful where chemical limitations are either inadequate or infeasible (see 45 FR 33523, May 19, 1980). Permitting authorities determine compliance with toxicity limitations through biomonitoring of the effluent.

2. *Proposed changes.* Industry litigants had questioned the appropriateness of setting effluent toxicity permit limitations, particularly in the absence of an Agency policy. There was also some concern over the accuracy with which these limitations could be established and compliance measured. At the time of proposal, EPA was studying toxicity testing and its role in the NPDES program. EPA, therefore, proposed to delete § 125.3(c)(4) until we could complete our review and develop a policy for using toxicity-based permit limitations. Recognizing the usefulness of toxicity data as an assessment device in evaluating wastewater discharges, EPA continued to encourage its use for this purpose. Nevertheless, until EPA could develop a policy towards using biomonitoring and toxicity-based permit limitations, the use of actual toxicity-based limitations was discouraged.

3. *Comments and responses.* Several commenters stated that there is adequate information to justify the use of toxicity limitations in conjunction with other limits. These commenters argued that in many cases toxicity testing is a more valid approach than attempting to address all of the chemical pollutants and provides the only means to assess the actual impact to receiving water biota. One commenter also observed that toxicity-based limits created flexibility to use all available information to set limits. Other commenters expressed concern that the state of the art was not adequately developed for effective use of toxicity-based limitations.

Since the proposal, EPA has extensively considered the use of toxicity as a parameter for evaluating the effects of discharges and establishing permit limitations. EPA has concluded that toxicity testing is sufficiently refined to be used in setting effluent limitations, and has developed a policy for using toxicity testing in conjunction with chemical limitations to achieve water quality standards. This policy was issued on February 3, 1984 and published in the **Federal Register** (49 FR 9016, March 9, 1984). The policy explains that, in addition to enforcing specific numerical criteria, EPA and the States will use biological techniques and available data on chemical effects to assess toxicity impacts. In many cases, imposing effluent toxicity limits will be a better (and more feasible) means to prevent adverse water quality impacts and control toxic pollutants than attempting to address all of the individual chemicals in the effluent. Toxicity limitations can be particularly effective in controlling the cumulative impact of toxic pollutants in complex effluents. Additionally, as one commenter observed, site-specific characteristics of the receiving waters can also affect pollutants' toxicity. Analytical methods and information are available to determine controls to reduce toxicity through toxicity reduction evaluations. Therefore, EPA has decided to make no change in the regulation.

States commenting on the proposal were opposed to the change, arguing that they had effectively used toxicity limits for years. These States feared that EPA's revision would undermine their ability to use this permit and enforcement mechanism. EPA

recognizes that many States have successfully used permit limitations based on overall effluent toxicity and that the proposed deletion of the regulation authorizing toxicity limits and our preamble statements discouraging their use could undercut these State efforts. EPA's intention was only to announce EPA's plan to limit use of toxicity limitations prior to development of a formal policy, not to affect State use of toxicity limitations. EPA has now issued a policy to strongly encourage States to use both chemical and biological techniques, including consideration and elimination of total toxicity, to assess and control toxic pollutants.

Several commenters argued that EPA has no authority to prescribe toxicity permit limitations. The Agency has consistently taken the opposite position. EPA has authority to impose toxicity permit limitations either on a case-by-case basis under section 402(a)(1) or as necessary to implement State water quality standards. The definition of effluent limitations in section 502(11) does not indicate that the limitations must be either numerical or identify a particular pollutant. Additionally, toxicity limitations are similar to other generic pollutant parameters controlled in effluent limitations guidelines and used in permits, such as BOD, some of which are expressly authorized by the CWA (see section 304(a)). Similarly, toxicity limitations are also authorized when necessary under section 301(b)(1)(c) to meet State water quality standards. Section 308 of the CWA clearly authorizes EPA to require the generation of any information reasonably necessary to carry out its responsibilities; it specifically authorizes requirements for biological testing and other information as needed to establish permit limits.

Two commenters objected to the use of toxicity permit limitations in the absence of approved section 304(h) test methods. The absence of approved section 304(h) test methods is not sufficient reason to refrain from using available methodologies, since it does not mean that there are not well-established analytical procedures. Permitting authorities should use their judgment in determining which methods to use. In requiring toxicity monitoring or specifying a permit toxicity limitation, the regulatory authority must specify in the permit the analytical methodology to be used until methods are established under 304(h). EPA has successfully used this approach for a number of years for the priority pollutants for which there are not yet approved test methods.

One commenter stated that toxicity limits could subject discharges to changing treatment requirements which may include technologies different from those contemplated by an applicable effluent limitations guideline. The CWA requires compliance with two principal requirements: technology-based standards and water quality standards. EPA and the States will use biological techniques and available data on chemical effects to evaluate and control toxicity impacts primarily to achieve water quality standards. Therefore, the use of toxicity to define water quality requirements does not impose any burdens not already required by the CWA. To the extent toxicity limitations are technology-based, the permitting authority must consider the statutory factors in the development of the limitations, as required for any other technology-based limitation.

4. EPA action. As noted, the primary reason for proposing to delete the regulation was the absence of a formal EPA policy for the use of toxicity limits. EPA issued a policy which develops an integrated strategy for use of biological and chemical discharge control methods. Issuance of the policy will also replace our statement in the proposed rule discouraging use of toxicity limits. To enable EPA to implement the policy now issued, today's final rule retains the existing regulation authorizing the use of toxicity effluent limitations.

B. Storm Water Runoff Discharges (40 CFR 122.21 [CPR § 122.53], 122.22 [CPR § 122.6], 122.26 [CPR § 122.57])

1. Background. The appropriate means of regulating the discharge of storm water into the waters of the U.S. has long been a matter of concern to EPA. In its first attempt to resolve the issue, EPA, in 1973, distinguished among various types of storm water. At that time, the Agency promulgated regulations which exempted certain sources, among them storm water runoff discharges uncontaminated by industrial or commercial activity, from the requirement to obtain an NPDES permit. EPA maintained that, although these discharges fell within the definition of point source, they were ill-suited for inclusion in the NPDES permit program and better dealt with through non-point source controls. It was reasoned that pollutants are best eliminated from storm sewers by "process changes" which prevent pollutants from entering rainwater runoff rather than by treating the discharge by the traditional "end-of-pipe" NPDES permit method. In addition, EPA determined that to issue permits to the tremendous number of storm water sources would be adminstratively unworkable within the framework of the NPDES permit program.

Shortly thereafter, the Natural Resources Defense Council (NRDC) challenged EPA's authority to exempt categories of point sources from permit requirements under the CWA (*NRDC, Inc.* v. *Train,* 396 F. Supp. 1393 (D.D.C. 1975)). The U.S. District Court for the District of Columbia held that EPA could not lawfully exempt discharges which it identifies as point sources from regulation under the NPDES permit program. Although denying EPA the authority to exempt point sources from permit requirements, the Court did recognize the Agency's substantial discretion to define what activities constitute point and non-point sources. Furthermore, in response to EPA's administrative burden argument, the Court recognized EPA's discretion to use administrative devices, such as area permits, to manage its workload. (Id. at 1401–2).

On appeal, the U.S. Court of Appeals for the D.C. Circuit affirmed the lower court decision. (*NRDC* v. *Costle,* 568 F.2d 1369 (D.C. Cir. 1977)). On March 18, 1976, in response to the Court decision in *NRDC* v. *Train,* EPA published final storm water regulations which required NPDES permits for all storm water discharges, other than rural runoff, which the Agency contended was better considered non-point sources. Changes to these regulations were reflected in the separate storm sewer regulations published on June 7, 1979, 44 FR (40 CFR 122.79); re-published on May 19, 1980 at 40 CFR 122.57, 45 FR 332290.

2. Existing rules. Section 122.26 [CPR § 122.57] describes those storm water runoff discharges which are considered "point source" discharges under the CWA and thus are subject to NPDES permitting requirements. Two types of storm water discharges are identified. First, a "separate storm sewer" is defined as a conveyance or system of conveyances primarily used for collecting and conveying storm water runoff which is located in an urbanized area as designated by the Bureau of the Census or which is designated by the Director on a case-by-case basis as a "separate storm sewer" for any of the reasons discussed in § 122.26(c). A second type of storm water discharge is a conveyance which discharges storm water runoff contaminated by contact with wastes, raw materials, or pollutant-contaminated soil from areas used for industrial or commercial activities. Such conveyances are not considered "separate storm sewers," but are nonetheless considered point sources

which must obtain NPDES permits. A conveyance or system of conveyances operated primarily for the purpose of collecting and conveying storm water runoff which does not fit within either of the above described categories is not considered a point source and need not obtain an NPDES permit.

Dischargers of storm water that are defined as point sources are required to apply for a permit and to submit the same information required of all existing industrial and commercial sources, such as discharge location and flow quantities. Analytical requirements are also set forth in the application. Applicants must submit information about the presence of pollutants in the discharge and, in some cases, quantitative data are required. (See discussion of application and testing requirements in Toxics Control Strategy section of the preamble.)

3. Proposed changes. Despite EPA's efforts to formulate an environmentally sound and administratively workable approach for the permitting of point source storm water runoff discharges, a number of litigants challenged the storm water provisions of the May 19, 1980 regulations. Industry representatives argued that EPA had not gone far enough in excluding storm water dischargers from the NPDES program. They asserted that most storm water discharges pose no significant environmental danger and therefore should not be considered point sources subject to permitting requirements. The Agency's use of the term "contaminated" to decide which storm water discharges are not "separate storm sewers" was also challenged as being overbroad and ambiguous. Finally, industry claimed that the permit application testing requirements for those storm water discharges classified as point sources were inappropriate and unduly burdensome.

Citing EPA's limited resources and the magnitude of its permit issuance tasks, industry questioned the value of EPA's accumulation of storm water runoff data via the application form. It is widely recognized that permitting of storm water runoff discharges not associated with industrial/commercial facilities is a low priority in EPA permit issuance and enforcement actions. The extremely large number of storm water runoff discharges potentially encompassed by the existing regulations represents an enormous permit writing burden. Even with the use of resource saving devices such as general permits, just developing the basis for permit terms and conditions for such a disparate group of sources is an enormous task. Industry claimed that EPA and the States would never get to this task in most cases, thereby making pointless industry's costly gathering and submission of application data. In light of the vast disparity among different types of storm water runoff discharges with respect to size, flow amounts, the seriousness of the pollutant loadings, and the economic feasibility of control measures, industry urged the Agency to adopt a new approach to the control of storm water.

Based upon the settlement agreement resulting from almost two years of negotiations, EPA proposed a new approach to the permitting of storm water discharges. (See 47 FR 52073.) In the November 18, 1982 proposal, EPA attempted to balance the environmental concerns associated with storm water discharges, the practical limitations of the NPDES permit as a tool for regulating storm runoff, and the realities of limited government resources. Elsewhere in the November 18 **Federal Register** notice, EPA proposed the suspension of certain existing application and testing requirements for storm water discharges pending completion of final rulemaking. The Agency took this step in recognition that its final action might make this potentially large and costly data base unnecessary.

a. Definitions. A central element of the proposal was the definition of those storm water runoff discharges which were point sources and thereby required to obtain NPDES permits. EPA attempted to distinguish between storm-related discharges that were best suited to control by permits as point sources and those that were not. In making this determination, EPA relied upon its authority under the CWA to define what are point sources and what are nonpoint sources (*NRDC, Inc.* v. *Costle,* 568 F.2d. 1369 (D.C. Cir. 1977), on appeal from *NRDC, Inc.* v. *Train,* 396 F.Supp. 1393 (D.D.C. 1975)).

In the proposal, the term "separate storm sewer" was eliminated and replaced with the term "storm water discharge." A storm water discharge was defined as a conveyance or system of conveyances primarily used for collecting and conveying storm water runoff that is either:

(1) Contaminated by contact with process wastes, raw materials, toxic pollutants, hazardous pollutants listed in Table V of Appendix D to Part 122, or oil and grease; or

(2) Designated as a storm water discharge by the Director.

A conveyance or system of conveyances operated primarily for the purposes of collecting and conveying storm water runoff that did not constitute a "storm water discharge" under this definition would not be considered a point source. This new definition was based on the determination that the excluded discharges were generally *de minimis* sources of pollution that Congress did not intend the Agency to regulate as point sources through the NPDES permit program.

Combined sewer discharges were not affected by the November 18 proposal.

b. Application requirements. The November 18 proposal also reduced the NPDES permit application requirements as they applied to point source storm water runoff discharges. Although under the proposal NPDES permits were required for "contaminated" storm water discharges, most such discharges were expected to pose far less environmental concern than typical industrial discharges for which the application requirements were designed. The belief was expressed in the proposal preamble that extensive testing and reporting would not be needed in order to issue adequate storm water permits.

The amount of information an individual applicant would be required to submit depended upon the particular category of storm water discharge involved. EPA divided those storm water discharges defined as point sources into two broad groups based upon their assumed potential for significant pollution problems. The first group were those which were likely to pose the relatively more significant pollution problems. Therefore, the proposed regulation subjected them to more extensive application and testing requirements. This first group consisted of three categories of storm water discharges:

(1) Those subject to specific effluent limitations guidelines or toxic pollutant effluent standards;

(2) Those designated as significant contributors of pollution by the Director under § 122.26(c); or

(3) Those located at industrial facilities in areas immediately adjacent to the industrial plant or in plant associated areas, if there was a potential for a significant discharge of runoff contaminated by contact with process wastes, raw materials, toxic pollutants or hazardous substances.

The third category covered conveyances which discharged rain runoff that had the potential for becoming contaminated by contact with raw materials, intermediate or finished products, wastes, or substances used in production or treatment operations. The

term "plant associated areas" included areas such as industrial plant yards, immediate access roads, drainage ponds, refuse piles, storage piles or areas, and material or product loading and unloading areas. The term excluded commercial areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots, since contamination from process operations was not expected to occur there.

These Group I discharges would be required to submit NPDES applications that complied with all the requirements of § 122.21 [CPR § 122.53], and EPA permit application Forms 1 and 2c, with one exception. Group I applicants would generally not be required to submit *quantitative* sampling and analysis data. They were only required to indicate (in Items V–B and V–C of EPA application Form 2c) whether they believed any of the listed pollutants were present or absent and briefly describe why. Group I applicants would not be required under the proposal to test for pollutants they believed to be present. However, they were still required to test for seven listed conventional and nonconventional pollutants (§ 122.21(g)(7)(i)(A)—Item V–A of Form 2c). It was felt that this less expensive conventional pollutant testing would serve to alert the permit writers to possible significant pollution problems where they could request further testing for toxic and non-conventional pollutants. This approach was considered more economically and environmentally practicable than requiring Group I dischargers to test for the full range of conventional and non-conventional/toxic pollutants.

Group II consisted of all point source storm water discharges required to be permitted under § 122.26 that were not included in Group I. While these sources might be "contaminated", EPA asserted that since they were removed from pollutant generating commercial or industrial facilities, they would, logically, present less significant pollution problems than those in Group I. The reduced likelihood of the presence of significant amounts of pollutants justified even fewer application requirements. The proposed rules required only basic information necessary to identify the type, number and location of Group II storm discharges. The proposal eliminated all testing for and identification of pollutants for Group II.

In recognition of the intermittent and seasonal nature of storm water discharges, EPA further proposed that both Group I and Group II be allowed to estimate the average flow of their discharge. This estimate was to be based upon actual prior experience and the applicant would have to indicate the rainfall event upon which the estimate was based.

An additional simplification was proposed concerning the signatory requirements for Group II. Sections 122.22 (a) and (b) [CPR § 122.6 (a) and (b)] specify who is required to sign permit applications. EPA proposed to amend §122.22(b) to allow permit applications for Group II storm water dischargers to be signed by a duly authorized representative of the person or position identified in § 122.22(a) as responsible for signing applications. EPA decided this was appropriate since Group II storm discharges are much less complex than most point source discharges.

To allow sufficient time for both EPA and permittees to implement procedures reflecting the final promulgation of regulations covering storm water discharges, EPA proposed that existing unpermitted point source storm water dischargers be given six months from the date new final storm water regulations were issued to submit applications. For a discharger designated by the Director as a "storm water discharge" under § 122.26(c), the application would not be due until six months from the date of notification of its designation.

Finally, EPA proposed to revise § 122.26(a) to clarify that one permit could be issued covering all storm water discharges that are part of a storm water discharge system. In this case, each owner or operator of a discharge would be identified in an application form submitted by the owner or operator of the portion of the system discharging directly into the waters of the U.S. Any permit written to cover more than one owner or operator would have been required to identify the limitations applicable to each discharge and could not, without the source's consent, have imposed limitations on a source for discharges from another source.

On June 23, 1982, in conjunction with the settlement agreement on the storm water issues, EPA issued a non-enforcement letter. The letter indicated that while the proposal was pending, it was EPA's policy not to take enforcement action against storm water discharges other than those covered by an existing NPDES permit, subject to effluent limitations guidelines or toxic pollutant standards, or designated as a significant contributor of pollution. The "non-enforcement" policy also did not apply to existing enforcement actions. To be covered by the policy, storm water dischargers must submit new or amended applications, within six months after promulgation of new, final amended storm water regulations or within six months of designation as a storm water discharger under § 122.26(c).

4. Comments and responses. Its protracted gestation and thoughtful preparation notwithstanding, the storm water proposal generated more comment and controversy than almost any other section of the November 18 notice. Generally, trade associations and industries agreed with the proposed changes or stated they did not go far enough, while States and environmental groups opposed the proposal. Despite the numerous comments, there are only two major issues—which storm water discharges are point sources; and, what are the appropriate application and testing requirements for those that are.

a. Definitions. The most hotly contested portion of the proposed rulemaking is the same fundamental issue that has been disputed for over a decade. That is, what, if any, storm water discharges should be defined as point sources and thereby be subject to NPDES permit requirements. The Agency's proposal to classify as point sources those storm water discharges that are contaminated by contact with certain wastes, materials or pollutants received some support. However, it was also criticized on legal, technical, practical, and administrative grounds. Finally, a number of commenters stated that the proposal was flawed because it lacked sufficient clarity and specificity.

Those commenters supporting the proposal saw it as a common sense approach which appropriately focussed NPDES storm water permitting activities on discharges of concern. Several claimed that Congress did not intend the CWA to require regulation through NPDES permits of *de minimis* sources of pollutants and that the "contamination" screening criteria was a step in the right direction.

Comments criticizing the Agency's proposal as not going far enough emphasized several points. A number of commenters felt the proposal was still too all-encompassing and would classify as point sources some discharges, such as parking lots, which should not, and could not effectively, be controlled through the permit process. These comments were linked to concerns about EPA and States' ability to process thousands of applications from what were characterized as very minor discharges. Questions were also raised as to whether EPA had any practical

treatment processes in mind for these discharges. On the other hand, one commenter stated the proposal was too narrow in limiting "contamination" to a select list of pollutants and materials.

The use of the term "contamination" was criticized as being vague and ambiguous. Several commenters requested clarification in the form of a definition. They asked that specific threshold levels of pollutants; which would constitute contamination, and thereby trigger the permit requirement; be added to the regulation. Others questioned whether any acceptable, generic criteria could be established, and suggested that only case-by-case determinations on whether a discharge was a point source were appropriate.

These administrative and technical comments were bolstered on both sides by legal arguments. Those supporting a narrow use of the permit program for controlling storm water discharges contended that "pollutants" associated with storm water discharges were often naturally occurring and pandemic and that the CWA permit program was not intended to deal with this type of pollution problem but rather with pollutants relating to manufacturing and industrial processing. They asserted that Congress had specifically created non-point source provisions in the CWA to address the low pollutant levels and widespread occurrences often associated with runoff from rainstorms. In opposition to this approach, other commenters claimed the CWA requires storm water runoff to be regulated through the permit process regardless of the level of pollutants present in such discharges. This assertion notwithstanding, these same commenters questioned whether the Agency had a legally sufficient and technically supported basis for the distinction contained in the proposal.

The Agency recognizes that commenters have raised a number of legitimate issues with its proposal. However, although some uncertainty may exist about which specific discharges are properly classified as point sources, certain fundamental precepts are clear. Among these is that the best approach to deal with storm water related pollution problems, and the approach most consistent with the CWA, clearly falls between the extreme positions of not regulating any storm water discharges through the permit process, or of using NPDES permits to control all storm water which may potentially contain any pollutants. The Agency approach, set forth in the proposal, was a well-reasoned attempt at striking a balance. Under the CWA, Congress recognized that there are separate problems related to point and non-point sources of water pollution and different means to address them. Different sections of the Act deal with these distinct sources. Runoff from rain storms is best controlled as a point source in certain cases and as a non-point source in others. The Agency has the authority and the discretion to determine how this division should be made. In the preamble to the proposal, EPA cited the decision in *NRDC, Inc.* v. *Train*, 568 F.2d 1369 (D.C. Cir. 1977) in support of this authority. In their comments on the storm water proposal, NRDC alleged that EPA had improperly cited that case. NRDC is correct that in *NRDC, Inc.* v. *Train* the Court held that where the Agency defines a discharge as a "point source" it has no authority to exclude that source from the NPDES permit requirement. However, the Court in *NRDC, Inc.* v. *Train* additionally recognized that EPA has discretion to identify which sources are appropriately classified as point sources and which as non-point sources. This interpretation is upheld in subsequent cases, a number of which cite a statement by Senator Muskie in the 1971 debate on the FWPCA, "[G]uidance with respect to the identification of 'point sources' and 'non-point sources' . . . will be provided in regulations and guidance by the Administrator." (117 Cong. Record 38, 816 [1971]) Without the flexibility provided by this discretion, EPA would be hindered in its efforts to establish the most effective controls for various types of rain runoff.

Although EPA maintains that it has statutory authority to delineate between point and non-point sources, it does agree that to some extent both the existing regulation and the proposal were unclear. Further, EPA agrees that the proposal may have classified as non-point sources certain discharges which are best controlled under the NPDES permit program as point sources. The final regulation clarifies the point source/non-point source delineation as it applies to storm water runoff. Since EPA is persuaded by commenters that the proposal went too far in narrowing coverage of storm water under the NPDES permit program, the final rule maintains approximately the same coverage as the existing regulation.

The final rule classifies as a point source any storm water discharge which is located in an urbanized area, discharges from land or facilities used for industrial or commercial activities, or is designated by the Director as a point source. The data analyzed by the Agency to date do not support the proposed broad exclusion of storm water discharges from coverage as point sources. The final rule, therefore, retains comprehensive coverage of storm water discharges through the NPDES permit program. While EPA recognizes that in many cases these discharges may be better controlled as non-point sources, as several commenters pointed out, EPA may not exclude discharges without some basis. In fact, information currently available to the Agency, such as data recently available from EPA's Nationwide Urban Runoff Program (NURP) study, support the broad coverage of storm water discharges.

That study indicated there are both existing and potential pollutant problems with urban storm water runoff. NURP found significant instances of high levels of heavy metals (especially copper, lead and zinc) in urban runoff. Freshwater water quality standards (chronic) were exceeded for lead (94% of all samples), copper (82%), zinc (77%) and cadmium (48%). Nationwide, BOD loadings from runoff were estimated as comparable to that from secondary POTWs, while TSS loadings were estimated to be a factor of 10 higher than loadings from POTWs. Fecal coliform levels also indicated significant impacts from urban storm runoff, especially from runoff into lakes and shellfish harvesting areas. NURP considered a number of simple technologies which may significantly reduce levels of pollutants, although no economic analyses have been done.

Today's final regulation retains the classification of rural runoff as non-point sources. The Agency is convinced that most rural runoff cannot be effectively regulated by NPDES permits. In those cases where it can be, the regulations specifically classify the discharges as point sources (such as animal feedlots) or the Director has the authority to individually designate a discharge as a storm water point source. This is also consistent with Congressional intent that agricultural runoff be uniformly regulated through non-point source controls. This is indicated by the 1977 Clean Water Act amendments which exempted irrigation return flows from the point source definition. Congress' intent was to treat return flows similar to natural agricultural runoff, which was then already exempted by the Agency from point source control:

> * * * return flows from irrigated agriculture are indistinguishable from any other agricultural runoff, which may or may not involve a similar discrete point of entry into a watercourse. All such sources regardless of the manner in which the flow

was applied to the agricultural lands, and regardless of the discrete nature of entry point, are more appropriately treated under the requirements of section 208 * * *.

Senate Report, 4 Legis. Hist. Vol. 4, 668 (1977). See also Senate Debate of Conference report, 4 Legis. Hist. 527–8.) Consistent with this intent, EPA has excluded rural runoff that is not discharged from industrial or commercial lands or facilities.

EPA will continue to review existing information, including NURP data and any other available studies to determine appropriate control measures for storm water discharges. If these data indicate that further exclusions may be appropriate, EPA will propose such exclusions in the future.

Some improvement of clarity has been achieved by the repalcement of the old terms, "separate storm sewer" (existing regulation) and "storm water discharges" (proposal) with the more descriptive "storm water point sources". The existing regulation defined three different types of storm water discharges, two of which were point sources. The final regulation has only two categories—storm water point sources, which are subject to permit requirements as point sources, and other storm water discharges, which are not classified as point sources unless designated. EPA also agrees with the commenters who challenged as vague the use of the terms "contact," "contaminate," and "significant" in the proposed definitions of storm water point sources and Group I storm water discharges (proposed § 122.57(b) (1) and (2)). Some of these commenters wanted EPA to set numerical limits to define the point at which storm water became "contaminated;" however, the Agency lacks sufficient data to do this. To alleviate confusion, the final rule does not use these terms, but rather defines storm water point sources based solely on objective measures (i.e., by geographic criteria, rather than by the internal nature of the storm water).

On a related matter, other commenters requested that storm water discharges caused by diversion around an industrial facility, those contaminated by oil and grease, discharges from parking lots, and storm water discharges at natural gas compressor stations be classified as non-point sources. Although diversions from undistrubed areas around an industrial or commercial activity would not be considered industrial or commercial facility runoff for purposes of the storm water point source definition, nonetheless, they will be considered point sources if they are located in urbanized areas or designated a significant runoff source. With regard to discharges contaminated only by oil and grease, EPA has generally dropped the concept of contamination, so this point is now moot. No data or information were submitted to support the claims that parking lot runoff is not a pollution problem and therefore should be excluded from permit coverage. In fact, data from NURP indicate that discharges from parking lots may indeed present a problem and, therefore, EPA is maintaining coverage of such discharges as point sources. Similarly, no sufficient data were submitted to eliminate specific industrial categories from the point source definition. Therefore, EPA cannot exclude natural gas facilities that would otherwise fall within the definition of point sources.

Another commenter wished to exclude discharges that may be covered under the provisions of 40 CFR Part 112 (Spill Prevention Control and Countermeasure plans—SPCC). EPA disagrees. The provisions of Part 112 are meant to generally minimize the amount of pollutants that may need to be disposed of, by providing management practices to minimize spills. They do not replace the specific NPDES requirements necessary to control pollutant discharge levels when the resulting drainage is discharged into navigable waters.

Several commenters suggested the use of general permits to cover classes of storm water discharges, such as those discussed above. EPA agrees that this is an idea worthy of consideration and suggests that dischargers raise the concept with their permitting authority.

One commenter wanted more specification of the process by which storm water would be designated as a point source by the Director under § 122.26(c). This is a case-by-case decision which is highly site-specific and will be made by the Director on the basis of all information available, including application data. Of course, where the Director finds existing data are inadequate to make such a designation, he may request additional data from the owner or operator, including analytical testing, or may initiate data gathering on his own.

EPA recognizes that maintaining the broad coverage of the existing regulations will result in some burden for dischargers and the Agency. Lack of Agency resources and higher permitting priorities will mean that in many cases discharges which are classified as storm water point sources will not receive permits in the near future and will contribute to the backlog of minor permits. Nonetheless, this classification scheme will best allow the Agency to identify and target those storm water discharges which are amenable to NPDES permit control.

b. Application requirements. Comments on the proposed changes in the application and testing requirements for storm water point sources ranged from strong support to strong opposition. The two-tiered application approach was commended by many commenters as a practical recognition of the lesser likelihood of serious amounts of pollutants being present in Group II discharges. Generally, industry claimed it made little sense to require the same information for thousands of minor, intermittent storm water point sources as is required for process wastestreams. Thus, supporters stated the proposed changes would be substantial improvements by eliminating unnecessary analytical data and paperwork requirements, particularly the toxic testing requirements. Industry commenters asserted there was a limited likelihood that toxic pollutants would be present at levels of concern. These commenters pointed to the high costs and difficulty of obtaining samples that proved to have little value. Additionally, many commenters claimed that even though some rain discharges might be point sources, they were environmentally insignificant and, accordingly, less application data were needed. Supporters of the proposal also indicated that it was preferable to supplement data through requests to sources for additional information than to require thousands of sources to submit extensive data that would not be used.

Opponents of the proposal claimed the reduction in application testing requirements for rain runoff discharges deprived the permit writer of the information necessary to make a rational determination on appropriate permit terms and conditions. Several commenters questioned the logic of eliminating the requirement to monitor for toxics, especially since the proposed Group I classification on its face indicated there was a potential for discharge of toxic materials. EPA's claim that Group I testing data for conventional pollutants, such as BOD and TSS, would alert the permit writer to possible significant pollution problems was characterized as an "ignorance is bliss" policy. Commenters challenged the Agency position on the basis that these pollutants fail to identify potential long term toxicity problems. A number of commenters also criticized the use of the phrase "potential for significant discharge" in the criteria identifying Group I as unduly

vague. The minimal requirements for Group II were opposed as inadequate even to carry out the Agency's professed purpose of being able to confirm that these discharges should not be classified as Group I. Commenters claimed that with no quantified discharge data required it would not be possible to assess environmental impacts.

Finally, a commenter challenged the adequacy of the record to support the Agency's classification scheme and proposed reductions in testing.

Based upon the extensive comments, EPA has reexamined the storm water point source application requirements. The Agency is persuaded that in some respects the proposal went too far in eliminating application requirements. The final rule retains a two-tiered application approach, although both the distinguishing factors and the application requirements are modified. Group I storm water point sources are any sources subject to effluent limitations guidelines or toxic pollutant effluent standards, designated by the Administrator under § 122.26(c), or located at an industrial plant or in plant associated areas. These areas include any lands immediately adjacent to an industrial plant and such areas as industrial plant yards, immediate access roads, drainage ponds, refuse piles, storage piles or areas, and material or product loading and unloading areas. Any storm water point source discharge from these areas is considered Group I, irrespective of pollutants in the discharge. The final rule does not adopt the distinction based upon pollutants that EPA proposed. Generally, because of the greater presence and prevalence of industrial material and wastes in these areas, these discharges are more likely to contain higher levels of pollutants than other storm water point sources. For example, storm water discharges covered by effluent guidelines are included in Group I since the promulgation of the guideline represents the Agency's determination that there may be pollutant problems. Areas separate from the plant's industrial activities are excluded from Group I. Thus, commercial areas, such as office buildings and their accompanying parking lots, are excluded from Group I because they are separate from the industrial plant. All Group I storm water point sources will be required to comply with the same application requirements as other industrial point sources (as outlined in § 122.21 (f) and (g)) [CPR §§ 122.4(d) and 122.53(d)] and must submit both Application Forms 1 and 2c.

All other storm water point sources will be considered Group II dischargers. Under new § 122.21(g)(10), these dischargers are exempted from the requirement to submit Form 2c and need not submit the topographic map required by Form 1 (§ 122.21(f)(7) [CPR § 122.7(d)(7)]). However, to provide permit writers with information on the discharge, Group II storm water dischargers must provide a brief narrative description of the discharge that identifies the nature of the discharge; the drainage area, including the size and nature of that area; the receiving waters; and any treatment applied to the discharge. This information is easy to obtain and should be adequate for permit writers to determine whether a source should be designated as a Group I storm water point source.

The Agency had decided to adopt the two-tiered application approach for several reasons. EPA's resources for permitting storm water point sources are limited; the Agency and States approved to administer the NPDES program are unable to issue permits to all of these dischargers at this time. However, as discussed above, these storm water discharges are point sources under the CWA, subject to permit requirements. To balance these competing concerns, the final rule will focus application requirements upon the discharges that EPA's experience and common sense indicate are relatively more significant and reduce application burdens for other sources. Group I storm water point sources are more likely to be issued permits in a timely manner and full information is therefore required. In many cases, these sources are specifically regulated by an effluent limitations guideline, such as in the Ore Mining and Dressing Point Source Category (47 FR 54598, December 3, 1982). Permit writers will generally include permit limits for storm water outfalls covered by a guideline along with the other limits in the facility's permit. Given the likely delay in permitting Group II sources, full permit application data submitted at this time would probably be stale and useless by the time resources are available to begin permit processing. When a permitting authority prepares to issue permits to these Group II sources, it can request additional, current information. To require full Form 2c information and quantitative data in advance of that time is pointless and unnecessarily burdensome.

EPA has rejected the requests to adopt or go beyond the proposal in reducing the application requirements for Group I [commenters suggested exemption from the longitude/latitude provisions in Form 2c, Item I (§ 122.21(g)(1) [CPR § 122.53(g)(1)]) or the conventionals testings in Item 5–A of that form (§ 122.21(g)(7)(i))]. These requests are inconsistent with EPA's decision that Group I storm water point sources are sufficiently significant to submit all application materials. These data will provide permit writers with adequate data to assess the storm water discharge and impose appropriate limitations.

EPA also agrees with the logic that data on toxic pollutants should be required where such pollutants are likely to be present. It is unlikely that data on these conventional pollutants will be adequate to identify the presence of such pollutants, much less to allow permit writers to establish permit limits. As in other situations, where testing for these seven pollutants is unnecessary, permittees may request a waiver under § 122.21(g)(7)(i)(B).

Several commenters requested that oil and gas production facilities be specifically designated Group II storm water sources because they are of little environmental concern. No information has been submitted which justifies this statement. In addition, EPA has concluded that the best approach to storm water discharge is to establish application requirements based upon the likelihood that pollutants of concern may be present. Therefore, proximity to industrial facilities is a major criteria for inclusion in Group I. This applies equally to oil and gas facilities as to other industrial facilities.

c. Other provisions. Several persons supported the proposal to allow storm water dischargers to estimate the flow of the discharges rather than reporting the average flow as now required by § 122.21(g)(3) [CPR § 122.53(d)(3)]. Since storm water generally flows intermittently, making it difficult to obtain average flow data, EPA agrees with the commenters that it is appropriate to modify the application requirements to allow flow estimation. Applicants will have to identify the rainfall event on which the estimate is based. In addition, EPA has modified the final rule in response to a comment to require storm water dischargers to indicate the method of estimation used. The modified flow reporting requirements will not reduce information necessary to issue permits or to evaluate storm water impacts.

Several commenters supported the proposal to allow permit applications for Group II storm water discharges to be signed by a duly authorized

representative of the person or position identified in § 122.22(b). Since these discharges are generally less complex than other storm water discharges, we agree that it is appropriate to modify the signatory requirements. To relieve Group II storm water dischargers of application burdens further, today's final rule is modified as proposed. No commenters opposed the proposal.

Commenters also suggested that EPA extend the revised signatory requirements to Group I dischargers as well as Group II's. EPA does not agree that such extension is appropriate. Group I dischargers are subject to different, more detailed application requirements. Given the more serious nature of the application, it is appropriate to obtain higher level corporate involvement in the application process so as to ensure corporate responsibility.

5. EPA action. EPA is committed to a workable and environmentally sound approach to the control of storm water discharges, recognizing both the strengths and the limitations of the NPDES permit and non-point source programs. Today the Agency is promulgating a clear definition of storm water point sources as those which are located in urbanized, industrial, commercial areas, or are designated by the Director. It is also promulgating a two-tier application system which will enable permitting agencies to gather sufficient data to set priorities for storm water permitting and minimize the burden on regulated facilities.

EPA has retained the scope of the existing regulation defining which dischargers are point sources and are thus required to obtain a permit. The final rule defines a storm water point source as a conveyance or system of conveyances primarily used for collecting and conveying storm water runoff which is located in an urbanized area as designated by the Bureau of the Census or which discharges runoff from industrial or commercial facilities or areas or which is designated as a storm water point source by the Director. EPA has deleted the term "contaminated" as vague and confusing. In essence, the regulations will consider as point sources all storm water discharges located in urbanized commercial, or industrial areas regardless of the amount or type of pollutants they contain. EPA has adopted this approach for two reasons. First, the Agency has no information to indicate that currently regulated storm water discharges are not contributors of pollutants subject to regulation as point sources. To the contrary, preliminary analysis of data from the National Urban Runoff Program indicates that such discharges generally contain pollutants of concern, such as toxic pollutants and others, and may be best controlled under the NPDES program. Second, there is no reason to extend the current definition, since the Agency's analysis of data has not indicated that sources excluded from classification as point sources under the existing regulations are contributors of pollutants of concern that should be covered by NPDES permits.

Storm water point sources will be required to submit application information to enable permit writers to set priorities for permit issuance and to establish adequate permit conditions. All storm water discharges coming in contact with plant associated areas (as defined in the regulation) will be required to submit application form 1 and form 2c, as will storm water discharges regulated by an effluent limitation guideline or effluent standard. In addition, any other storm water discharges may be required by the Director to submit complete applications. These discharges will be classified as Group I storm water point sources. All other storm water discharges (Group II) will be exempted from the requirements of § 122.21(g) (Form 2c) and will only be required to submit Form 1 and a brief discription of type and extent of area drained and any effluent treatment. As described above, the Director may require other information on a case-by-case basis.

As part of this rulemaking, the Agency is also revoking the non-enforcement letter issued as part of the Settlement Agreement. That letter stated that EPA would not take enforcement actions against certain storm water dischargers for failure to have a permit so long as a permit application is filed within six months of promulgation of final rules or of designation as a storm water discharge. Within six months of the effective date of this regulation all Group I storm water dischargers which have not already submitted applications are required to submit complete NPDES applications, including both Form 1 and Form 2c; all Group II storm water discharges must submit only Form 1.

The Agency is promulgating as final rules two of the proposed changes. The requirement that permit applicants submit flow data is modified for storm water dischargers by amending § 122.21(g)(10)(ii) to allow such dischargers to estimate the flow if they identify the storm water event and method of estimation upon which the estimate is based. The Agency has also modified the application signatory requirements for storm water dischargers to allow applications for Group II storm water dischargers to be signed by a duly authorized representative of the person or position identified in § 122.22(a) as responsible for signing applications.

C. Construction Prohibition (40 CFR 122.29(c)(4), (c)(5)[CPR § 122.66(c)(4), (c)(5)])

1. Existing rules. EPA's issuance of an NPDES permit to a new source is subject to the National Environmental Policy Act of 1969 (NEPA). Section 511(c)(1) of the Clean Water Act states that "Except for * * * the issuance of a permit under section 402 of this Act for the discharge of any pollutant by a new source as defined in section 306 of this Act, no action of the Administrator taken pursuant to this Act shall be deemed a major Federal action significantly affecting the quality of the human environment within the meaning of [NEPA]." Compliance with NEPA may involve the preparation of an Environmental Impact Statement (EIS) if the issuance is determined to be a major federal action significantly affecting the environment. As is discussed elsewhere in today's preamble, EPA has the authority to impose permit conditions, including non-water quality related conditions, or deny a permit based upon the EIS (see discussion in Part F., below).

EPA has implemented the requirements of section 511(c)(1) through several provisions of the NPDES regulations. Several sections of the regulations authorize the imposition of EIS-related conditions in NPDES permits, or the denial of permits based upon the EIS. (See §§ 122.7(g) [CPR 122.12(g)], 122.29(c)(3) [CPR 122.66(c)(3)], and 122.44(d)(9) [CPR 122.62(d)(9)] as discussed below.) In addition, in accordance with a long-standing Agency policy, § 122.29(c)(4) generally prohibits on-site construction of a new source for which an EIS is required until after final Agency action in issuing an NPDES permit that incorporates EIS-related requirements. Section 122.29(c)(5) requires an applicant to notify the Regional Administrator if the applicant commences construction in violation of this prohibition.

The "ban" on pre-permit construction of a new source is far from absolute. The regulations allow construction to commence prior to final permit issuance if the applicant executes a legally binding written agreement to comply with all EIS-related conditions. In addition, the Regional Administrator has discretion to allow pre-permit

construction to commence if he determines that it will not cause significant or irreversible adverse environmental impacts. In exercising his discretion, the Regional Administrator may, for example, allow pre-permit construction after reaching agreement with the applicant on any appropriate mitigative measures. Regional Administrators have used this authority to allow construction prior to permit issuance in a number of instances. Thus, the pre-permit construction ban does not actually bar construction where there are appropriate safeguards to protect against environmental harm. In addition, although construction in violation of the ban is a cause for denial of a new source permit application, denial is not required. A decision to deny a permit application based on violation of the construction ban will depend upon the Agency's evaluation of all factors, including the degree of environmental harm and mitigating measures taken by the applicant.

EPA established the pre-permit construction ban to ensure that it could fulfill its obligations under NEPA in issuing new source permits. EPA has relied upon the pre-permit construction ban to ensure that its statutorily required NEPA review had substantive meaning. Because important issues in many NEPA reviews are facility siting and construction-related impacts, if review takes place after construction has been commenced or completed, the review may be meaningless as to these issues. These impacts could be adequately considered during or after construction only if the significant expenditures of the applicant are ignored or if restoration of the environment was physically possible. Because this would be difficult, undesirable, and perhaps impracticable, EPA has used the pre-permit construction ban, along with the discretionary waiver, to ensure review is completed prior to construction, unless appropriate conditions can be imposed.

The Agency has taken the position, since 1976, the EPA has authority to prohibit construction of a new source prior to issuance of a permit containing EIS-related conditions. (See General Counsel Opinion No. 76–18, September 23, 1976; the General Counsel concluded that: "Congress could not have intended that [the NEPA review) be a hollow one or one of extremely limited value. The case law that has developed under NEPA is clear in requiring an agency to consider all of the reasonable alternatives to its proposed action * * *. The only way the Administrator can meaningfully consider [facility siting alternatives] in an NPDES proceeding is to perform his evaluation prior to the construction of the facility." (See also former 40 CFR § 6.906, 42 FR 2454, January 11, 1977). Pre-permit construction was expressly prohibited in both the June 7, 1979 NPDES regulations (§ 122.47(c), 44 FR 32854) and the May 19, 1980 Consolidated Permit Regulations (§ 122.66(c), 45 FR 33290).

2. Proposed rule. Industry litigants challenged EPA's authority to impose the pre-permit construction ban. They argued that the ban would delay construction of new sources, particularly since any administrative hearings on the permit must also be completed prior to construction. Industry also stated that the pre-permit construction ban would create inconsistencies between EPA and approved States that do not have State laws comparable to this Federal requirement. In response to these concerns, EPA proposed to eliminate the pre-permit construction ban and allow on-site construction to commence prior to permit issuance without approval by EPA or imposition of NEPA-related conditions. However, EPA noted that in performing the balance of costs and benefits required by NEPA, EPA would not consider any costs "which might be incurred by the applicant in restoring the site or in altering construction plans" no matter how substantial these costs might be. (See proposed § 122.66(c)(4), 45 FR 52091, Nov. 18, 1982.) Industry would commence construction before permit issuance entirely at its own risk, and EPA would issue, deny, or condition the permit based upon the NEPA review as if no construction had commenced. EPA's proposal was based in part on the fact that the CWA explicitly requires that EPA regulate discharges, not the construction of facilities that may discharge. Consistent with deleting the pre-permit construction ban, EPA also proposed to delete the requirement that applicants give notice of construction prior to permit issuance (§ 122.29(c)(5)).

3. Comments and responses. A number of commenters addressed the legality of the pre-permit construction ban. Several environmental groups stated that the proposed rule would unlawfully curtail EPA's opportunity to exercise its NEPA responsibilities and would violate NEPA, since an Agency may not take action that would foreclose reasonable alternatives to the proposed action, have significant adverse effects on the environment, or unfairly prejudice future decisions. One environmental group added that since site selection is frequently a major issue, serious and avoidable damage could result from the elimination of the pre-permit construction prohibition. Industry commenters supported the proposal, and alleged that EPA had no authority to impose the pre-permit construction ban since the CWA regulates discharges, not construction. Several argued that since a permit is still a prerequisite to discharge, EPA can carry out its obligations prior to pollutant discharge. Others argued that private facility construction is not a Federal action subject to NEPA. Industry commenters also addressed the discriminatory impact of the pre-permit construction ban and its potential to delay construction activities.

Upon consideration of all the comments and a reexamination of the statute and case law, the Administrator has determined that the pre-permit construction ban is authorized by both the CWA and NEPA and that it is the most effective mechanism to enable EPA to carry out its obligation under section 511(c)(1) of the CWA. While the CWA clearly requires EPA to regulate discharges of pollutants, section 511(c)(1) also requires EPA to comply with NEPA in the issuance of NPDES permits to new sources. Under section 501(a), the Administrator is given authority to promulgate such regulations as are necessary to carry out his functions under the Act. In addition, NEPA clearly supplements the factors which EPA must consider in its decisionmaking and authorizes the Agency to take action based on its evaluation. E.g., *United States* v. *King Fisher Marine Service*, 640 F. 2d 522, 523 (5th Cir. 1981, *Calvert Cliffs Coordinating Committee*, v. *AEC*, 449 F. 2d 1109, 1115, 1128 (D.C. Cir. 1973).

EPA believes it can more effectively carry out its NEPA review if construction has not yet commenced, unless the Regional Administrator exercises his authority to allow construction to proceed prior to completion of an EIS. (The discretionary waiver provides needed flexibility to assure that construction is not unduly delayed where the review is not likely to involve irreparable harm to the environment.) A construction ban is necessary to ensure that NEPA's requirement for a comprehensive evaluation of all environmental effects of a project is not frustrated.

In order to do a comprehensive review as envisioned by NEPA, EPA must consider all reasonable alternatives to the proposed action. Once extensive on-site construction work has begun, some alternatives to the proposed action may be foreclosed, thus reducing the value of that review. One alternative to be

evaluated is whether the environment at the specific site should be altered by the proposed construction. Even where construction is appropriate, the manner and timing of construction may be legitimate factors for consideration. Options affecting significant environmental matters such as land use, aesthetics, historic preservation, and air quality might also be precluded to the extent construction is allowed to proceed. To a low construction to proceed prior to completion of an EIS could limit the Administrator's alternatives for action. The cost of remedial measures and site restoration is incalculable once irreparable alterations have already taken place. Even in circumstances where remedial measures or relocation to another site may be physically possible, it would be extremely difficult, if not impossible, for EPA to require this where the applicant has made significant capital investments in the project. EPA would also have to consider delays in the commencement of operation that would result if EPA made a permit decision that was inconsistent with the construction under way. EPA would find it difficult to ignore these factors in making its permit decision, especially since they would put the equities on the applicant's side. These considerations do not enter into the permitting process if the NEPA review and permit issuance is completed prior to construction.

As one commenter pointed out, the pre-permit construction ban is also consistent with the Council on Environmental Quality NEPA regulations (40 CFR Part 1506). These regulations establish general criteria that Agencies should follow in conducting NEPA reviews. Section 1506.1(a) of the NEPA regulations states that until an Agency issues a record of decision (including an EIS), no action should be taken which would limit the choice of reasonable alternatives or have an adverse environmental impact. The pre-permit construction ban ensures that EPA follows these guidelines.

EPA recognizes that all uncertainties for permit applicants are not eliminated under the existing regulations, since even if the Regional Administrator allows pre-permit construction, there is no guarantee that the final permit will be consistent with that construction. However, under the scheme in the existing regulations it is more likely that EPA and the applicant can consider the possible impacts of the construction prior to its commencement and can better coordinate the construction with the probable EIS outcome. These agreements will help avoid delays in operation that may result if there is no agreement and EPA subsequently makes a decision that is inconsistent with construction.

Several commenters stated the pre-permit construction ban would cause delays. Discussions with EPA Regional Offices, however, identified only a few instances in which applicants claimed that the ban actually resulted in construction delay. In some of these cases no actual delay occurred since the Regional Administrator exercised his discretionary waiver of the ban to allow construction to proceed. Very few facilities should have actual construction delays due to the construction ban. Moreover, most new sources for which an EIS would be prepared are large; there is substantial "lead time" between the planning and the construction of the facility that would allow EIS completion and permit issuance. Alternatively, the applicant could begin construction after entering into a binding legal agreement with the Regional Administrator, committing to meet certain conditions as needed to assure environmental protection. It is EPA's experience that this process provides adequate flexibility to avoid inappropriate results in specific cases.

EPA agrees with commenters who stated that private facility construction is not a Federal action. However, the CWA recognizes EPA's issuance of an NPDES permit to the facility as the Federal action which subjects it to NEPA. Construction of a discharge source generally proceeds in reliance on future Federal action: the issuance of an NPDES permit which is clearly within the Agency's jurisdiction. Without the permit the source would be unable to operate as intended. Thus, EPA's pre-permit construction review is not an attempt to control private activity per se, nor to expand the Agency's organic jurisdiction, but rather to protect the Agency's jurisdiction by preserving an unaltered balance of cost and benefit factors, as envisioned by NEPA.

In response to comments about the discriminatory impact of the pre-permit construction ban, there are at least six approved NPDES States which have State legal authorities comparable to the EPA pre-permit construction ban. Thus, contrary to the comment that the pre-permit construction ban applies only in States not approved to administer the NPDES program, construction is prohibited prior to final consideration of the environmental review in some cases where EPA is not the permitting authority. Even though there is some inconsistency since all States do not have a pre-permit construction ban, this is a natural result of the variation among State laws and would not provide sufficient justification to modify a requirement of federal law necessary to carry out EPA's independent statutory responsibilities. There would be some difference between States regardless of what action EPA takes on this regulation.

4. EPA action. In light of the comments, and EPA's reevaluation of legal authorities related to the duty to comply with NEPA, the Administrator has determined that retention of the prepermit construction ban and the notice of construction prior to permit issuance is appropriate. In conducting a review under NEPA, EPA must ensure that all results of that review are considered.

Moreover, the proposal would have required EPA to ignore the costs of prior construction or site restoration. As we discuss above, such a position would be very difficult to carry out in practice and would be inconsistent with the normal Agency practice, which is to consider all relevant facts available to the decisionmaker prior to final action. The decisionmaker should not ignore substantial capital expenditures and possible severe adverse economic impacts when determining whether to issue a permit. Accordingly, after a full evaluation, EPA has determined, with one exception, not to modify the existing rules on this issue.

EPA is making one change from the proposal to clarify that violation of the ban is grounds for denial of the permit. Section 122.29(c)(5) already implies that permits may be denied due to on-site construction. However, we are modifying that provision to make it clear that EPA considers violation of the construction ban to be grounds for permit denial. Consistent with existing policy, EPA will consider all factors relating to the facility in making its permit decision.

D. Anti-backsliding (40 CFR 122.44, 122.62 [CPR §§ 122.15, 122.62])

1. Existing rules. The Clean Water Act controls the discharge of pollutants through the application of technology-based effluent limitations or more stringent water quality-based standards. All existing dischargers were required to comply with effluent limitations based upon the best practicable control technology currently available (BPT) by July 1, 1977, under section 301(b)(1) of the Clean Water Act (CWA). By July 1, 1984, dischargers must comply with limitations reflecting the best available technology economically achievable (BAT), or in the case of "conventional"

pollutants, the best conventional pollutant control technology (BCT), under section 301(b)(2). This scheme of imposing increasingly stringent pollution control requirements illustrates the Act's national goal of encouraging reasonable further progress towards eliminating the discharge of all pollutants. Section 101(a)(1).

EPA is directed to implement technology-based requirements primarily through the development of national effluent limitation guidelines (guidelines) for categories of point source discharges. In the absence of applicable guidelines, NPDES permits are issued on a case-by-case basis under section 402(a)(1) of the CWA, establishing effluent limitations based on the permit writer's best professional judgment (BPJ) of what constitutes the appropriate technology requirement (BPT, BAT, or BCT). In developing these BPJ limitations, permit writers must consider the same factors (set out in section 304(b) of the CWA) that would be used in the development of an effluent limitation guideline.

In order to implement the Act's goal of continued further progress towards eliminating pollutant discharges EPA established an "anti-backsliding" policy reflected in the NPDES regulations at 40 CFR 122.44(1) [CPR § 122.62(1)]. See *U.S. Steel* v. *Train* 556 F.2d 822, 842 (7th Cir. 1977). This provision prohibited the reissuance of an NPDES permit with limitations, standards, and conditions less stringent than those in the previous permit unless the circumstances on which the previous permit had been issued had materially and substantially changed and constituted cause for permit modification or revocation. With respect to BPJ permit limitations which were more stringent than subsequently promulgated effluent limitation guidelines, "backsliding" was prohibited, except in limited circumstances set forth in the regulations.

2. Proposed changes. Industry litigants questioned EPA's authority to impose BPJ technology-based permit limitations more stringent than effluent limitation guidelines. They asserted that once promulgated, the limitations established by a guideline should replace case-by-case permit limitations. They also considered the anti-backsliding policy inequitable, arguing that permittees who had accepted BPJ limitations developed prior to guideline limitations are required to meet more stringent control requirements.

EPA disagreed with the challenge to the legality of the policy. However, in response to the equity concerns, EPA proposed to eliminate its anti-backsliding policy for BPJ permits where it subsequently promulgates an applicable effluent limitation guideline with limitations less stringent than those imposed in the permit. Under the proposal, EPA would, upon the request of the permittee, be required to modify EPA-issued BPJ permits to reflect the less stringent guideline limitations. Although States were free to provide similar relief, no mandatory obligation to modify State-issued BPJ permits to reflect less stringent guideline requirements was proposed, since Section 510 of the CWA authorizes States to impose more stringent requirements. EPA also proposed to apply the new policy to existing permits during their terms by adding a new cause for permit modification consistent with the above approach.

In explaining its proposed abandonment of the "antibacksliding policy", EPA stated that the national effluent limitation guidelines should be applied equally to all dischargers, rather than penalizing, or placing at a competitive disadvantage, those companies within an industry that had received a BPJ permit before guidelines promulgation. The revised policy would also facilitate issuance of second round BPJ permits that might otherwise be challenged in evidentiary hearings.

3. Comments and response. Many commenters addressed the legality of the antibacksliding policy. Supporters of the proposal stated that EPA had no authority to impose limitations, standards, or conditions more stringent than those in applicable law and regulations. They reasoned that after an effluent limitation guideline is promulgated, EPA must include limitations based upon that guideline in permits, in lieu of previously established more stringent case-by-case permit limitations.

Opposing commenters stated that deletion of the antibacksliding policy was inconsistent with the statutorily prescribed goal of continued further progress toward attaining the Act's goal of fishable/swimmable waters. Commenters also argued that the deletion would violate the individual permit process required by section 402(a)(1) by allowing case-by-case limitations to be relaxed even where the discharger can meet the limits at acceptable cost, where the permittee has exhausted or waived its opportunity to challenge those limits, or where the discharger already has achieved those limits. Commenters, focusing on relaxation of BPJ permits based upon BPT, stated that the BPJ permits represented the Agency's determination of BPT and therefore, BAT cannot be less stringent. However, under the proposal this could be possible if BAT guidelines were less stringent than previously established BPJ limitations.

It is EPA's position that the CWA provides the Administrator with the authority to prohibit backsliding from a case-by-case permit when a guideline is subsequently promulgated. While the CWA does not explicitly establish an antibacksliding requirement, such a requirement is a logical outgrowth of the CWA's requirements and goals. Effluent limitation guidelines are calculated for industrial categories, and represent the minimum limitations that each facility within the industry should be capable of attaining if it installs the appropriate control technology. Guidelines are generally calculated with a 99% confidence level. Therefore, if a discharger exceeds the effluent limitations established by the guideline regulation, there is a 99% certainty that it was caused by discharger error rather than statistical variation. To achieve this certainty, the limitations in an effluent guideline must be established at a level that all dischargers within the industrial category can meet after the installation of pollution control equipment. Although many dischargers should be able to attain more stringent limitations, this approach to guideline development ensures that the standard can be achieved by all facilities. It is well established that EPA has authority to set technology-based limitations required by section 301 of the CWA through industry-wide regulations, provided that limited allowance is made for variation in industrial plants. *E. I. duPont de Nemours and Co.* v. *Train* 430 U.S. 112, 97 S.Ct. 965, 975 (1977).

In the absence of guidelines, EPA has the authority to establish permit limitations on a case-by-case or BPJ basis under section 402(a)(1). In issuing a BPJ permit, permit writers must consider all of the statutory factors that pertain to the promulgation of a guideline (whether BPT, BAT, or BCT). (See discussion of the Agency's BPJ authority in section F of the preamble.) When EPA issues a BPJ permit, it establishes the Agency's determination of the appropriate technology-based limitations for the facility. See *U.S. Steel Corp.* v. *Train, supra,* Moreover, since it is calculated on a case-by-case basis, a BPJ determination can be tailored to the relevant circumstances and capabilities of the permittee and thereby inherently incorporates any necessary allowance for variations in individual plants. It would be inconsistent with that process to replace such limitations with less precisely calculated limitations. EPA's

subsequent issuance of effluent limitations guidelines does not invalidate the detailed BPJ determination of BPT or BAT/BCT made at the time of permit issuance. To adopt the policy that a subsequently issued less stringent effluent limitation guideline should replace BPJ established permit limits would cast an undeserved pall of uncertainty on BPJ permits. Such a policy could have a chilling effect on the issuance of permits in advance of guideline promulgation since the possibility would exist of a burdensome permit modification process.

A prohibition on backsliding for BPJ permits is also consistent with reasonable further progress towards controlling pollutant discharges. If a BPJ permit has been issued, a modification (or reissuance) to reflect subsequently promulgated less stringent guidelines would be inconsistent with the section 301(b)(2)(A) requirement that BAT represent reasonable further progress towards achieving the goals of the Act. Only in limited circumstances where it is demonstrated that the original BPJ limitations cannot technically be achieved despite all good faith efforts, might some allowance be legitimate. EPA has provided corrective measures for dealing with such situations in its existing regulations.

In relation to this, however, EPA does not completely agree with the commenter who stated that it was impermissible to allow backsliding where permittees had met their limits, could meet the limits at acceptable cost, or had waived or exhausted their opportunity to challenge their permits. Although backsliding, in general, is inconsistent with the Act for permittees who can or are meeting permit limitations, the anti-backsliding provision should not limit the Director when the previous case-by-case limitations prove to be an incorrect assessment of the discharger's capabilities. The regulations, therefore, create two exceptions from the policy. Permittees may obtain less stringent limitations when, despite installation and proper operation and maintenance of the necessary treatment system, they are unable to meet a BPJ permit. (§ 122.44(1)(2)(i) [CPR § 122.62(1)(2)(i)].. Today's rulemaking will also allow permits to be modified during their term in these cases. Additionally, permittees that can only meet their BPJ limitations at unreasonable costs should be able to obtain less stringent limitations. Therefore, today's regulation provides relief to a permittee that can meet its current permit effluent limitations only with operation and maintenance costs wholly out of proportion to those of average facilities covered by a subsequent guideline for the category. For dischargers with permits based upon guidelines, EPA already allows relief if the removal costs are wholly disproportionate from those considered in developing the guideline. EPA will now allow qualifying facilities to request permit modification (or reissuance) with less stringent limitations under a similar standard although the permit may not be less stringent than the subsequent guideline. The final rules thus create a new cause for permit modification. In light of this, the status of the permit and whether challenges to it have been exhausted are not appropriate considerations. However, if the facility is able to meet its BPJ limits with reasonable costs, it is consistent with the case-by-case process to require the permittee to continue to achieve those limits.

Several commenters argued that the anti-backsliding policy was unfair to permittees that accept BPJ permits and that these permittees should not be penalized. These commenters pointed out that permittees that contest case-by-case permits may be rewarded. Another commenter countered that EPA had not demonstrated that the anti-backsliding policy would place BPJ permittees at a competitive disadvantage.

It is possible that some case-by-case permittees will attempt to delay the permitting process in the hope that they will obtain less stringent limitations. However, as we explained above, a BPJ permit represents the Agency's determination of the appropriate technology-based limitations applicable to an individual facility. It would be inconsistent with the goals of the Act for the Agency to reverse that decision solely because a permittee may try to delay a permit process in hopes of achieving a more favorable result. In addition, the Agency received no specific data from commenters in support of the allegation that the anti-backsliding policy created a competitive disadvantage.

Commenters agreed with EPA's statement in the proposal that the anti-backsliding policy could result in challenges to second round NPDES permits. EPA acknowledges that it cited this concern in the November 18, 1982 preamble as support for the proposed elimination of the anti-backsliding policy. At the time, EPA expected to issue many of the second round permits on a case-by-case basis and anticipated that many would be challenged. Since then, a great deal of progress has been made in promulgating effluent limitations guidelines. In addition, EPA's second round industrial permit issuance policy assigns highest priority to permits that will be based on water quality standards more stringent than technology standards. In other cases, if promulgation of a guideline is expected, EPA will generally defer permit issuance rather than issue a BPJ permit. Thus, it now appears that far fewer permit challenges will result from the anti-backsliding policy than had been anticipated.

Two commenters pointed out that the Agency's retention of § 122.44(l)(2) [CPR § 122.62(l)(2)] (which sets out specific instances under which BPJ permits may be reissued with less stringent limitations) was inconsistent with the proposed revision and ought to be deleted. EPA agrees with the commenters that the retention of this language was inconsistent with the proposal. However, since today's final rule does not eliminate the anti-backsliding policy as it applies to BPJ permits, it is unnecessary to delete § 122.44(l)(2).

One commenter stated that since the proposed rule appeared in § 122.62(a) [CPR § 122.15(a)] "Cause for Permit Modification", we should clarify that the change would also apply to permit renewal and revocation and reissuance. The commenter's question reflects a misunderstanding of § 122.62(a). Section 122.62(a) states that if the permittee agrees, each of the causes for permit modification also constitutes cause for permit revocation and reissuance. The proposal would also have applied to renewal through § 122.44(l)(1) which states that permits may be renewed with less stringent limitations if there is cause for permit modification under § 122.62.

A single commenter stated that dischargers covered by revised water quality standards should also be able to obtain less stringent limitations at reissuance. The existing NPDES regulations already contain provisions that allow this change. Section 122.62(a)(3) allows permit modification if the permit is based upon a water quality standard or promulgated effluent limitation guideline and that standard or guideline is made less stringent. This also applies to reissuance through § 122.44(l).

Another commenter stated that we should clarify that the term "effluent limitations guidelines" in the proposed rule and in § 122.62(a)(3) includes New Source Performance Standards (NSPS). Thus, if EPA wrote a permit based upon an NSPS that was subsequently modified or revised, the permittee could

request permit modification to obtain less stringent limitations. The commenter further argued that since the permittee would no longer be a new source, EPA could not apply NSPS to these permittees, but would be required to include BAT conditions.

The suggested interpretation of § 122.62(a)(3) and the proposed rule is inconsistent with the existing regulations. The NPDES regulations define the term "effluent limitations guidelines" as regulations published under section 304(b) of the CWA. (See § 122.2 [CPR § 122.3].) Effluent limitations guidelines thus include BAT, BPT, and BCT guidelines, but not NSPS which are promulgated under section 306 of the CWA. The reference to "standards" in § 122.62(a) is clearly intended to refer to water quality standards and not NSPS. Thus, by the terms of this regulation, sources covered by an NSPS are subject to the Agency's current anti-backsliding policy.

The regulation is supported by section 306 of the CWA which requires that NSPS reflect the greatest degree of effluent reduction determined to be achievable through the application of the best available demonstrated control technology. NSPS are only applicable to sources which are constructed after proposal or promulgation of an NSPS (see 40 CFR 122.2). This is because NSPS are intended to impose state-of-the-art technology upon new sources which are capable of constructing their facilities to meet such requirements. Limiting the circumstances by which these NSPS can be modified once imposed on a facility is consistent with Congressional intent that NSPS represent the "maximum feasible control of new sources," S. Rep No. 92–414, p. 58 (1971), Leg. Hist. 1476. See also *E. I. duPont de Nemours & Co.* v. *Train* 430 U.S. 112 (1977) (a variance procedure for NSPS is inappropriate).

Promulgation of a subsequent "new" NSPS by the Agency does not justify elimination of the anti-backsliding policy. It is clear under the statute that a later promulgated NSPS would not apply to "existing" new sources since the "existing" new source was constructed prior to the promulgation or proposal of the "new" NSPS. Furthermore, the promulgation of the "new" NSPS does not withdraw or revise the original standard for an "existing" new source since by its terms it only affects "new" new sources whose construction commenced after its promulgation. Thus, the commenter's statement that the promulgation of a subsequent NSPS converts the "existing" new source into an existing source subject to BAT effluent limitations is incorrect. Rather, the existing NSPS remains applicable to sources that were constructed after its promulgation but before a new NSPS is issued. Modification of permit limitations based upon the existing NSPS to reflect later promulgated NSPS would be inappropriate.

Only in a situation where the new NSPS was intended to withdraw or revise, in whole or in part, the previous NSPS because of some error or infeasibility might an exemption from the anti-backsliding be legitimate. See, for example, the recent proposed changes to the NSPS for coal mine point sources. 49 FR 19240 (May 4, 1984). However, a change to the NPDES regulations at 40 CFR 122.62(a) to modify the anti-backsliding policy to generally allow for backsliding with respect to NSPS would require reproposal to allow for public coment since the issue was not raised by the November 18, 1982 proposal. Since the Agency considers it appropriate to retain the anti-backsliding policy for NSPS, EPA is not proposing such a change.

One commenter stated that EPA cannot allow backsliding to BCT guidelines where the inital BPJ/BPT permit limitations are more stringent than the guideline limitations. This commenter misconstrues the existing regulations which now contains an exception from the anti-backsliding policy allowing BPJ permit limitations to be made less stringent to conform to a later promulgated BCT effluent limitation guideline (§ 122.44(l)(2)(iii) [CPR § 122.62(l)(2)(iii)]). EPA included this exception in the June 7, 1979 NPDES regulation, reasoning that it would only be available in a small number of cases and that it was in accord with Congressional intent that BCT, rather than BAT, represent the highest level of treatment applicable to conventional pollutants (44 FR 32864, June 7, 1979).

On reevaluation, the Agency recognizes that the BCT exception as explained in the 1979 preamble in inconsistent with the general intent of the anti-backsliding policy to prevent unwarranted "backsliding" in pollution control. EPA agrees with the commenter's statement that BCT must in all cases be at least as stringent as BPT, whether BPT is in a guideline or in a BPJ permit. Moreover, requiring permittees to maintain the level of control imposed by BPT requirements would not be contrary to Congressional intent with respect to control of conventional pollutants. Under section 301(b)(1), all dischargers are required to comply with BPT requirements by 1977. BPT is intended to be the floor for purposes of determining BCT requirements whether BPT was established by guideline promulgation or by a permit writer's best professional judgement.

Due to the inconsistency in our current regulations, EPA is considering revising the BCT exception to make it consistent with the rest of the anti-backsliding policy. The Agency is currently working on a BCT methodology and has not yet promulgated any BCT guidelines. Additionally, it is unclear whether there are any BPJ permits more stringent than BPT or BCT guidelines that will present a real backsliding issue. Therefore, the Agency will assess the need to correct the anti-backsliding policy in conjunction with issuance of a final BCT methodology. If BCT guidelines are likely to allow backsliding, EPA will propose a revision to correct the anti-backsliding regulation at that time.

Finally, one commenter supported the proposal on the grounds that it would allow EPA to correct previous errors. This provision is not intended to provide general authorization to correct previous errors. EPA already has authority to correct BPJ permit limitations when they are unachievable. As noted above, existing § 122.44(l)(2)(i) allows the reissuance of permits with less stringent limitations if permittees install and properly operate and maintain the necessary BPJ limits. Elsewhere in this rulemaking, we are extenting this policy to apply to *modification* of BPJ permits. Under today's revision, the permitting authority will also be able to modify (or reissue with less stringent limitations) BPJ permits upon promulgation of subsequent guidelines when they can only be achieved with costs wholly disproportionate to those considered in the guidelines, although the revised limits may not be less stringent than the guideline.

4. EPA action. Based upon EPA's review of the comments and the requirements of the CWA, the Agency has decided to retain the current anti-backsliding policy with one exception. The regulation will now allow BPJ permits to be made less stringent if the permittee can demonstrate that its removal costs are wholly disproportionate to those considered in a subsequently promulgated effluent guideline. This demonstration should be equivalent to the similar showing in variance requests from guidelines-based permit limitations (see § 125.31(b)(3)).

Generally, the BPJ permit limitations are based upon technology that is widely known and not different from that considered in guideline development. Permit writers usually

know the approximate removal costs at the time the limitations are established. However, in some cases, technology may be installed that requires unexpected and inordinate operation and maintenance costs to meet the guideline. In these cases, we will revaluate the previous determination and allow the permit to be modified to reflect removal costs that are not wholly disproportionate to those on which the guideline is based (although in no event may the limitations be made less stringent than the guideline without a variance).

EPA would like to clarify one final point on the new information exception to the anti-backsliding policy in the existing regulations. For purposes of implementing the anti-backsliding provision in § 122.44(l) for a reissued permit, where limitations in the expiring permit were based on water quality standards, "information" under § 122.62(a)(2) may include alternative grounds (including necessary methodology; mathematical parameters, and other assumptions) for translating water quality standards into water quality-based limitations.

E. Disposal to Wells, POTW's, or by Land Application (40 CFR 122.50 [CPR § 122.65])

1. Existing rules. The existing regulation sets forth a formula for adjusting mass-based permit effluent limitations for those dischargers that do not dispose of all their wastes to waters of the United States. The purpose of the formula is to assure that if part of a discharger's total process wastewater flow is diverted to wells, land application or POTWs, the remaining wastes discharged to surface waters are subject to technology-based requirements notwithstanding the diversion. Mass-based limitations are adjusted proportionally to the percentage of the wastewater disposed into a well, a POTW, or by land application. Thus technology-based effluent limitations cannot be met merely by diverting most of the wastestream by one of these three methods.

The existing regulation does not limit or prevent a discharger from disposing of part or all of its wastewater to a well, by land application or to a POTW. That decision is clearly within the discretion of the discharger. The provision simply recognizes that the NPDES permit program of the CWA focuses on control of that waste *actually* discharged to waters of the United States. Therefore, limitations calculated upon the assumption that a facility's entire wastewater flow would be discharged to waters of the United States must be adjusted to reflect the fact that only a portion of it is in fact being discharged. This technical adjustment is accomplished through use of the formula in the existing regulation. The regulation does not regulate, directly or indirectly, the wastewater that is diverted. No limits are placed on the amount of wastewater that may be diverted, nor upon how that waste is treated or disposed of. Generally, such activities are outside the scope of the NPDES program.

The existing regulations also provide that, if a discharge to a well, POTW, or by land application "changes the character or treatability" of the pollutants being discharged to receiving waters, the effluent limitation can be made more stringent than required by application of the adjustment formula established in the regulations. This provision was originally included in response to comenters' concerns that a strict application of the formula would otherwise allow a discharger to inject concentrated wastes into a well, to a POTW, or by land application and then discharge relatively dilute wastes to surface water with little or no treatment.

2. Proposed changes. Industry litigants complained that the adjustment formula in the regulation unlawfully and unfairly discriminated against some forms of treatment in favor of others. They claimed that their diversion of wastewater to land application, a POTW or a well was, in fact, treatment of that waste for purposes of the Clean Water Act and that therefore no adjustment of their permit limits was necessary or appropriate. Industry supported this assertion by contending that since mass-based permit limits are based on a discharger's level of production and not the volume of wastewater discharged, reduced flow was not grounds for different permit limits. The litigants further argued that the adjustment formula was flawed. They alleged that it assumes pollutant load to be uniform over all flow rates and treatment plant efficiency to be linear; litigants opined that treatment plant efficiency might decline when flow is reduced.

In the settlement with industry litigants, EPA agreed to propose their approach for public comment.

Consistent with that agreement, the proposal would amend the regulations to recognize land application and well disposal as forms of treatment, under the NPDES program, that prevent wastes from reaching waters of the U.S. Therefore, technology-based limitations would not be adjusted if part of the wastestream was disposed of in a well or by land application. The remaining wastes directly discharged would be allowed the full wasteload limitation.

The proposal, however, retained the adjustment formula for industries which discharge a portion of their wastes into POTWs, since pollutants from a POTW *will* (indirectly) be discharged into waters of the U.S. However, the adjusted effluent limitation could be further adjusted under the proposal if the effluent limitations yielded by the formula would require a greater degree of effluent reduction (taking into account both reduction of the POTW and reduction at the permittee's facility) than would have been required if the industry has treated and discharged all its wastes directly to the receiving waters.

Furthermore, the proposal removed the "change the character or treatability" provision which would have allowed the effluent limitation to be made more stringent if the wastewaters directly discharged were not representative of the total waste flow. This provision would have been superfluous under the proposal.

3. Comments and responses. Several commenters supported the proposed rule and reiterated litigant contentions that well injection and land application are forms of treatment and that the existing regulation unlawfully discriminated against such forms of treatment. One commenter believed EPA should not be concerned about the impacts of diverted wastewater because other programs such as the UIC, pretreatment, and RCRA programs should adequately protect the environment. Other commenters objected to well injection and land application being considered forms of treatment. They stated that the overall effect of such an interpretation would be an increase of pollutant discharges to the waters of the U.S. and to the environment. These commenters pointed out that both disposal into wells and land application may ultimately result in contamination of ground and surface waters. One commenter stated that the proposal could lead to the situation where a facility discharged all but the guideline amounts to land or wells and then discharged the remainder to surface waters, untreated. Similarly, another commenter claimed that the proposal would allow a municipality to discharge raw sewage from a portion of its population if wastes from the remainder of its population are disposed of on land or by discharge to another municipality.

Other commenters objected to land application being considered treatment

that prevents wastes from reaching wastewaters of the U.S., since surface runoff from the application area would convey applied pollutants to receiving waters. One commenter objected to EPA's "novel" approach, stating that underground injection cannot be considered a form of treatment, and, in fact, is more properly regarded as a substitute for treatment.

After reviewing comments received and reevaluating the issues, the Agency has decided to retain the existing regulation. If all the effluent limitations guidelines and permit limitations were expressed solely in terms of concentration, there would be no need for the adjustment formula contained in the existing regulation. If a discharger sent half of his wastewater to an injection well or land application, a concentration-based limit would assure the same level of treatment of wastewater directly discharged as would have been applied to the total wastestream. However, to preclude dilution as a substitute for treatment and to encourage flow reduction (such as recycling of process water) at the industrial facility, effluent limitation guidelines are often expressed solely in terms of mass. While mass-based limits address the problems related to dilution, such limits do not similarly assure a consistent level of treatment for dischargers who reduce flow by well injection, land application, or routing to a POTW. By retaining the existing regulation, EPA ensures that the regulatory approach to both mass-based and concentration-based limits is consistent.

The policy in the existing regulation is also consistent with the development of effluent guidelines. Production-based mass limits in effluent limitations guidelines are based upon the assumption that total process flows would be directly discharged. In the guideline development process, the treatment technology is evaluated and a concentration limit determined. The concentration limit is then multiplied by the process flow per unit of production. The result of this multiplication is the mass limit per unit production. If some of the process flow is diverted, it is necessary to adjust the above calculation since the mass guideline limit is based upon the total process flow. (While flow reduction techniques may also reduce process flow to the treatment facility, there is no diversion of wastewater containing pollutants; since pollutant loads are not changed, adjustment is unnecessary.) The existing regulation makes the necessary adjustment by revising the limitation to reflect the amount of wastewater directly discharged.

Furthermore, the adjustment of mass-based permit limitations accords with the intent of the CWA. Section 402(a)(1) authorizes the Administrator to issue a permit for the "discharge of any pollutant" upon the condition that the discharge meets the requirements of, *inter alia*, section 301. It is clear from the Act that the "discharge of a pollutant," as defined in section 502(12), must comply with the technology-based standards of section 301. If part of a discharger's process wastewater is released to the environment in a manner that is not a "discharge of a pollutant," e.g., into a POTW or by land application, then it would be inappropriate to allow the discharger to escape the technology-based requirements of section 301 in the section 402 permit for the remaining flows. The existing regulation requires the same degree of treatment to the wastewater directly discharged as would have been applied to the total wastewater. As noted, this is also the same degree of treatment that would be required if EPA had included concentration-based limits. Dischargers should not be given a credit merely because EPA chose to encourage flow reduction by solely limiting pollutant mass. To give a discharger "credit" because he disposed of the rest of his wastewater into an injection well or by land application would be inconsistent with the intent of the CWA to apply technology-based limits to all discharges to waters of the U.S. The statute requires technology-based limits for "discharges of pollutants" without regard to whether all or only some process wastewater is discharged.

Waste disposal through land application and discharge to wells also presents environmental risks of an unknown dimension. Surface impoundments and water treatment lagoons that handle other than hazardous wastes are not extensively regulated by the Agency. EPA's recently completed Surface Impoundment Assessment indicates that many such facilities have the potential to and do contaminate groundwater. About 40% of municipal and industrial impoundments are located in areas with thin or permeable soils or over aquifers currently used or that could be used for drinking water. The impact of land application systems upon groundwater is not yet known, although recent information indicates some environmental threat. Also, some land application systems are designed to lead to sheet runoff to surface waters, which would be classified as a non-point source not subject to NPDES permitting. Although well injection will ultimately be regulated by the Underground Injection Control (UIC) Program, the UIC program is not yet fully implemented in most States, and requirements for some varieties of wells have not yet been specified. In light of the risks, well injection and land application should not be considered treatment for the purpose of avoiding recalculation of mass-based permit limitations, since they could ultimately result in increased release of uncontrolled pollutants to the environment. The present uncertainty and potential for harm as well as the fact that NPDES permit writers are not equipped to evaluate the effectiveness or environmental impacts of these means of disposal is another reason EPA has decided not to allow credit.

Contrary to one commenter's view, EPA does not intend or expect its action today to discourage land application or well injection where these are appropriate. Dischargers can still dispose of any part of their wastewater by land application or well disposal. The NPDES regulations are neutral and are not intended to either encourage or discourage other disposal options. If a portion of a discharger's process wastewater is disposed into a well or by land application, the proposal would have allowed the remaining wastewater to be directly discharged with the same total mass of pollutants as if *all* the wastewater were directly discharged. In some, perhaps many cases, this would mean that the discharge itself would not be treated at all. Such a result would be inconsistent with the basic technology-based approach of the CWA.

One commenter asserted that the existing regulation would, in effect, penalize a discharger for her investment in wells or in land application by requiring more stringent treatment of the wastewater actually discharged to the waters of the U.S. EPA does not agree because, as indicated above, the regulation does not require *more* stringent treatment but simply a proportionate level of treatment for the portion which is directly discharged. If a facility chooses to dispose of some wastewater by land application or other means instead of discharging it directly, that decision is most likely based on a weighing of all relevant factors, one of which is the relative costs. The Agency is not concerned with this industrial cost balancing, but rather with ensuring that *whatever* amount of wastewater the facility ultimately decides to discharge is treated to a level consistent with the CWA requirements. Consistent with this

approach, the costs of disposal into a well, POTW, or by land application will not be considered appropriate costs in determining control measures which constitute BPT, BAT or BCT in BPJ determinations.

In a similar vein, it has been asserted by a commenter that the Agency has not considered the economic achievability of complying with an effluent guideline limitation if that limitation has been adjusted to reflect reduced flow. This assertion is incorrect. The determination of economic achievability for an effluent limitations guideline also applies to the adjusted limitation.

When technology-based effluent limitations guidelines are developed, the Agency estimates the costs for investment and operation of a treatment system. If plant-specific costs are estimated, the size of the treatment system reflects the amount of the facility's wastewater. This amount of wastewater flow may reflect the facility's current flow or a reduced flow that the Agency believes can be achieved through process changes such as recycling. In either case, the costs of the treatment system reflect those that will allow the facility to comply with the effluent guideline limitation. These costs are the basis of the economic impact analysis, which is used to determine economic achievability.

If a discharger chooses to reduce wastewater flow by disposal practices such as well injection, a smaller or less extensive treatment system should be required and the end result will still be economically achievable. In fact, the discharger would likely not make such a change unless it results in cost savings. It is reasonable to assume that in exercising its discretion to select wastewater disposal practices, a facility will not choose a more costly option than is necessary. EPA should not adjust the regulations to benefit dischargers that choose a more expensive method of disposal.

Other commenters point out that the proposed rule would be unfair to dischargers tht discharge directly because a comparable degree of treatment would not be required for those using land application or an injection well. EPA agrees that in some circumstances inequities could result if a competitor were able to avoid treatment costs by disposing of part of his wastewater to a well or by land application. In addition, the proposal would lead to inequities between dischargers with concentration-based limits and those with mass-based limits, since concentration-based limits remain applicable, unchanged, even if a portion of the wastewater is land applied or injected to wells.

Another concern raised by commenters was in reference to the existing provision which provides EPA with the authority to make the limitations more stringent under Part 125, Subpart D, if discharges to wells, POTWs or by land application change the "character or treatability" of the pollutants discharged to receiving waters. One commenter pointed out that the proposal never provided a reason for omitting that provision. The proposal to provide treatment "credits" for disposal into wells, by land application and for the amount of effluent reduction at a POTW, would have eliminated the need for the "character or treatability" provision. Since EPA has decided not to proceed with the proposed approach, it is appropriate to maintain that provision.

A few commenters stated that the existing regulation assumes that the efficiency of a treatment plan is linear, but in fact the efficiency declines when process flow is reduced. Generally, EPA's experience is that efficiencies of treatment systems are linear in relation to flow. Effluent guidelines regulate large and small plants based upon a linear model; the discharge limit is based upon the size of the plant reflected by its production level and process wastewater flow. In fact, contrary to the commenters' suggestions, EPA expects that, in most instances, if the flow is reduced, the efficiency of an existing treatment plant would increase because of the greater retention time of the wastewater by the treatment facility.

However, in certain circumstances the efficiency of a treatment plant may decline when process flow is reduced. This might occur, for example, if disposal of highly concentrated wastewater to a well, POTW or by land application leaves a discharger with highly diluted wastewater to be treated. It is also possible that the situation might arise where the efficiency of a plant declines merely because the process flow is reduced. If application of the adjustment formula would lead to removal costs which would be wholly out of proportion to the removal costs considered during development of the national limits, then the discharger may be eligible for a further adjustment under Part 125, Subpart D fundamentally different factor variance procedure. For this reason, today's rulemaking clarifies that the effluent limitations may be further adjusted under Part 125, Subpart D to make them either more or less stringent if disposal to a well, POTW or by land application changes the character or treatability of the pollutants being discharged to receiving waters. This clarification should alleviate the concerns of commenters who pointed out that a reduction in flow rate may decrease efficiency or that the existing regulation assumes that pollutant loads are uniform over all flow rates.

In the case of discharges to POTWs, the proposal would have allowed effluent limitations to be adjusted if the effluent limitations yielded by the formula would require a greater degree of effluent reduction (taking into account both reduction at the POTW and at the permittee's facility) than would have been required if the industry had treated and discharged all its wastes directly to the receiving waters.

Several commenters supported the proposed approach for POTWs. Another commenter pointed out that this provision is equivalent to "removal credits" which provide a discharger into a POTW with an allowance for the treatment achieved by the POTW. However, the commenter stated that it does not have any of the detailed showings and other safeguards required under the removal credit program in 40 CFR 403.7. Consistent with the approach taken with respect to well disposal or land application, the final regulation applies mass-based guidelines to the wastewater to be directly discharged into waters of the U.S. If part of the total wastewater is disposed of elsewhere (e.g., into a POTW), it shoud be dealt with in the context of other regulatory programs. For example, discharges to POTWs must meet categorical pretreatment standards and other local limits imposed on industrial dischargers by the municipal treatment authority. Wastewater disposed into a POTW may be eligible for a removal credit under a pretreatment program and will be dealt with in that context.

4. EPA action. After analyzing the comments received and reevaluating our proposal, we have decided to retain our long-standing policy expressed in the existing regulation. In response to comments, however, we have clarified the regulation to allow less stringent limitations if the character or treatability of discharged wastewater is changed.

It should also be clarified that when information comes to the attention of the permitting authority concerning a discharger reducing the flow upon which a permit is based by well injection, land application or discharge to a POTW, this constitutes grounds for permit modification as new information under 40 CFR 122.62(a)(2) [CPR § 122.15(a)(2)].

F. Best Professional Judgment (BPJ) and Draft Development Documents and Treatability Manual

1. Best Professional Judgment (BPJ) (40 CFR 124.56(b)(1), 125.3(c) (2), (3), 125.3(d)).—a. Existing rules. Effluent limitations may be established on a case-by-case basis under section 402(a)(1) of the Clean Water Act in the absence of applicable effluent limitations guidelines, or in addition to effluent limitations guidelines if these guidelines do not control pollutants of concern or particular wastestreams at a facility. Permits containing case-by-case effluent limitations are based on a permit writer's "best professional judgment" (BPJ) and represent the appropriate statutory requirement—"best practicable control technology currently available" (BPT), "best conventional pollutant control technology currently available" (BCT), or "best available technology economically available" (BAT)—for that particular facility.

Because "BPJ" permit effluent limitations and conditions operate in the absence of, or in addition to, effluent limitations guidelines authorized under section 304(b) of the Clean Water Act, permit writers are required to apply the appropriate statutory factors in that section when imposing technology-based effluent limitations in permits on a case-by-case basis. The current regulations clearly state this obligation by requiring permit writers when writing BPJ permits to "apply the appropriate factors listed in section 304."

b. Proposed changes. Industry litigants were concerned that permit writers would not address these statutory factors unless expressly listed in the regulation. They were also concerned that permit writers would not explain the basis for their case-by-case determinations unless the regulation expressly required that their bases be set forth in the fact sheet required by § 124.56. EPA responded to these concerns by proposing to list the section 304(b) factors in proposed § 125.3(d) and to specifically reference the fact sheet in proposed § 125.3 (c)(2) and (c)(3). EPA also proposed a conforming revision to § 124.56(b)(1).

c. Comments and responses. Industry groups supported the proposed changes contending that listing the statutory factors would help ensure that permit writers follow the proper methodology in setting BPJ effluent limitations. They also claimed that requiring the fact sheet to set forth the basis for BPJ limitations would make it easier for applicants to comment on draft BPJ permits and for courts to review challenges to these permits. Two States administering the NPDES program objected to the proposal on the grounds that it would impose a burdensome requirement on the administering agency and, if followed literally, could make the fact sheet a larger document than the permit.

Sections 124.8 and 124.56 of the current NPDES regulations require permit writers to prepare a fact sheet for every draft permit for a major NPDES facility or activity. In accordance with these provisions, a fact sheet must include calculations or other necessary explanations of the derivation of specific effluent limitations and conditions, including a citation to applicable effluent limitations guidelines or where not applicable, an explanation of how alternative limits were developed. (For minor dischargers the permit writer must prepare a statement of basis (40 CFR 124.7). Although less detailed than a fact sheet, a statement of basis still requires an explanation of the derivation of the permit conditions.) States opposing the proposal apparently believed that reference to the fact sheet in proposed § 125.3 (c)(2) and (c)(3) imposed some greater burden of justification for BPJ limitations. The intent was merely to point out the requirements of §§ 124.8 and 124.56 of BPJ situations. To avoid misunderstanding, EPA has deleted the reference to the fact sheet in proposed § 125.3 (c)(2) and (c)(3) as redundant with existing §§ 124.8 and 124.56. The final regulation retains the section 304(b) statutory factors a permit writer must consider when setting technology-based effluent limitations on a case-by-case basis. Although BPJ permit writers are required to consider these factors whether or not they are listed in the regulations, the Agency agrees it is more efficient and effective to restate them in the regulations.

One commenter requested that permit writers be specifically instructed in § 125.3 to use the proposed BCT methodology (47 FR 49176 et seq., October 29, 1982) in determining BPJ–BCT effluent limitations. Since the BCT methodology has not yet been finalized, it would be inappropriate to reference it in this rulemaking. However, permittees and permit writers should be aware that once EPA establishes a BCT methodology, permit writers must apply this methodology in establishing BPJ permit limitations.

d. EPA action. Based on an evaluation of the comments in light of our BPJ permit experience, EPA will retain the list of statutory factors but has not adopted the fact sheet portion of the proposal.

2. Draft Development Document and Treatability Manual (40 CFR 125.3(c)(2)).—a. Existing rules. The current regulation includes EPA draft or proposed development documents or guidance in a parenthetical clause as examples of available information a permit writer must consider when making case-by-case determinations of technology-based effluent limitations.

b. Proposed changes. Industry parties to the settlement agreement were concerned that permit writers would do more than just *consider* development documents and guidance when writing BPJ permits. They feared that permit writers would be bound by these documents which, in their opinion, often contained faulty data. Additionally, litigants claimed that if permit writers are required to consider draft development documents and guidance, there would be no incentive for EPA to finalize effluent limitation guidelines. In response to these concerns, EPA proposed to delete the parenthetical reference to the documents in § 125.3(c)(2)(i), and stated in the preamble to the proposal that although not bound by EPA draft or proposed development documents or guidance, permit writers must consider all pertinent information, including these documents, in developing case-by-case effluent limitations.

c. Comments and responses. We received two comments on this issue. Both supported the proposed deletion of the parenthetical clause and stated that this change would ensure that undue weight would not be given to these documents.

d. EPA action. The final regulation does not contain the parenthetical clause. EPA continues to support the position taken in the preamble to the proposal that in establishing case-by-case permit limitations under section 402(a)(1) of the CWA, permit writers are not bound by EPA draft or proposed development documents or guidance. Permit writers should consider all pertinent information, including these documents, when developing case-by-case effluent limitations, just as they must consider significant comments and criticisms of the data they contain.

G. Net/Gross Limits (40 CFR 122.45(g)) [CPR § 122.63 (g), (h)]

1. Existing rules. The issue of whether and to what extent net/gross credits should be granted arises because of what appears to be a fundamental dichotomy. Industry has argued that dischargers are not responsible for removing pollutants already present in their intake water. (See *Appalachian*

Power Co. v. *Train*, 545 F.2d 1351, 1377 (4th Cir. 1977)). This should lead, they contend, to simple subtraction of intake pollutant values from effluent values when setting permit limits and measuring compliance. However, effluent limitations guidelines (guidelines) and other technology-based permit limitations are written on a gross basis without any such subtraction, because within a broad range of influent pollutant concentrations, treatment systems typically reduce pollutants to a certain level. Pragmatically, therefore, technology-based limits should be achievable regardless of the amount of intake pollutants. To grant a net/gross credit may give an unfair advantage to facilities with measurable levels of pollutants in their intake waters. Such facilities, by relying on intake credits, could "comply" with effluent limitations by utilizing a lower level of treatment than their competitors on cleaner streams—frequently a far lower level of treatment than that designated by EPA as BAT. Furthermore, intake pollutants rarely simply pass through a facility and all its associated intake and/or effluent treatment without some removal and/or complicated exchange of pollutants. In particular, generic pollutant parameters, such as total suspended solids or biochemical oxygen demand, frequently measure very different things in the influent and effluent. Thus, a simple subtraction of intake pollutants often does not make sense and would result in relaxing control standards in inappropriate circumstances.

The existing rule was intended to provide an allowance for intake pollutants considering the circumstances described above. Credits are available for pollutants to the extent that they are not removed by intake and effluent treatment systems. Also, to qualify for a credit, the intake water must come from the "same body of water" as that which receives the discharge. Additionally, pollutant parameters in the effluent must be physically, chemically and biologically identical to those found in the influent. These and other conditions are intended to address the problems described above and to limit the use of net credits to appropriate circumstances.

2. Proposed changes. Industry litigants were concerned that the restrictions in the existing rule severely limited the availability of net credits. For example, most pollutants change form in some way as they pass through a facility, and thus it is nearly impossible to provide exact physical, chemical, and biological identity between intake and effluent pollutants. EPA, for its part, was concerned that permitting authorities were overlooking the need for careful application of net credits due to the excessive complexity of the existing rule. Therefore, the proposal dropped many of the existing restrictions in an attempt to respond to both these concerns. They were replaced by a statement that net credits would be given only where necessary to meet applicable technology-based limitations. In place of the demonstration of exact equivalency of pollutant parameters in influent and effluent, three alternative demonstrations of substantial similarity were provided. The "same body of water" restriction was dropped. (See 47 FR 52080–81, November 18, 1982.) Both th existing rule and the proposal reflected the efforts of many parties to deal with many individual situations of concern. In both cases, this led to detailed and lengthy regulations and preamble discussions. The settlement agreement resulted in such a complicated proposal that EPA became concerned, after reviewing public comments on the proposal, that the proposed changes failed to simplify the net/gross provision so that it might be properly understood and implemented.

3. Comments and responses. The most controversial aspect of the net/gross issue was the removal of the "same body of water" restriction. Industry comments were strongly in favor of removal of this restriction while environmental groups and government organizations were strongly opposed. One government organization stated that it was aware of several instances in which contaminated groundwater was being used for non-contact cooling water and discharged to cleaner surface water without treatment. During the development of the existing rule, EPA was particularly concerned with fresh water discharge to estuaries. Several of the environmentalist and government organizations gave hypothetical examples in support of retention of the restriction. Industry commenters claimed that water quality standards were sufficient to protect receiving water while those opposed to the proposal pointed out that standards are often inadequate, especially for toxic pollutants. While EPA agrees with this latter argument, we also note that in some limited cases the same body of water restriction may not be appropriate. One example might be a case where intake waters are taken from a relatively clean tributary of a relatively dirty body of water and discharged to the latter body, possibly adjacent to where the tributary itself flows into the large body. Therefore, EPA has decided to retain the same body of water restriction but with some discretion available to the permitting authority to waive the requirement on a case-by-case basis. EPA agrees with the commenters who said that water quality standards are often inadequate since many States have not yet developed specific limitations on toxic pollutants, and hence meeting water quality standards is not alone a sufficient condition for this waiver.

One commenter stated that the proposed regulations have too many restrictions and give too much discretion to the permit writer. The commenter said industry is not responsible for removing pollutants in the intake water and that EPA should provide for simple subtraction of all intake pollutants from effluent standards. For the reason stated above, EPA cannot accept this argument. Intake pollutants do not pass through intake treatment systems, facilities, and effluent treatment systems unchanged. Thus, simple subtraction would amount to a relaxation of standards that were based on a determination of what technology can achieve, without taking into account the true removals the technology accomplishes. Another industrial commenter stated that EPA should "continue to allow a full credit * * * and * * * not use a threshold test." The commenter misinterprets the current regulation which does not allow a full credit, but only a credit after consideration of removal in intake and effluent treatment systems. Today's regulation replaces that complicated calculation with a more simple approach of granting credit as needed to meet technology-based standards.

Several commenters stated that the proposal was too complex. As indicated above, EPA agrees and, in today's final rule, has attempted to simplify the regulations and preamble explanation. A State agency commented that discretion regarding net credits should be left to the permitting authority. EPA agrees that the permitting authority is best positioned to decide when net credits are appropriate and has significantly simplified the regulation and preamble to further this principle.

A commenter representing a water treatment plant supported the proposed changes to the net/gross rules and argued that raw water clarifier sludge and filter backwash should be allowed to be discharged back to the stream. A State maintained that this was an unwarranted exemption from NPDES requirements. The existing regulation has been interpreted by some as imposing an absolute ban on clarifier

sludge discharges, although on its face it only bans net credits for such discharges. The proposal was interpreted to allow these discharges without restriction, except for restrictions required to meet water quality standards.

After review of all of the comments on this issue, EPA has decided that both extreme positions are undesirable. Discharge requirements for discharges of raw water clarifier sludge and filter backwash are best determined at the local permitting level after consideration of the appropriate technology-based effluent limits and water quality standards. Since there are no national guidelines for these discharges, they must be limited on a case-by-case basis according to the permit writer's Best Professional Judgment (BPJ), with more stringent limits if necessary to meet water quality standards. The particular technology used to determine BPJ technology-based effluent limits depends on the application of the statutory criteria for different levels of control, for example, best practicable or best conventional technology. These regulations are intended neither to ban such discharges nor to prohibit permit authorities from imposing such a ban in specific cases where this is the appropriate standard for control.

An environmental group commented that the proposed tests for similarity of generic pollutants may not be adequate to fulfill the objectives of the Clean Water Act, especially with regard to water quality. Their concern was that generic pollutants in the influent which were composed of relatively non-toxic constituents would be credited against more harmful constituents in the effluent. On the other hand, an industrial commenter said that the proposed tests to show substantial similarity of generic pollutant parameters are much more reasonable than the existing rule. In general, EPA believes that the "substantial similarity" approach (as opposed to demonstration of identical chemical, physical and biological characteristics) appropriately provides greater flexibility to permit writers in considering requests for net credits, but nevertheless provides adequate protection against environmental harm. However, EPA agrees that strict application of only one of the three tests for demonstrating substantial similarity suggested in the proposal, in some cases, may not provide adequate protection. Therefore, the three tests of the proposal have been replaced in today's final regulation with a more flexible regulation which relies more heavily on the exercise of judgment by the permit writer. The tests specified in the proposal may still be considered by permit writers. However, other alternatives may be required where necessary for adequate protection.

An industrial commenter asked for more flexible specification of the definition of "control system" arguing that net credits should be available in cases where the control strategy intended to be employed to meet permits limits involves management practices, such as a chlorine minimization program, rather than physical treatment technology. As explained in the preamble to the proposal, control system means any control measures considered by permit writers in developing effluent limitations which are applied by the permittee to wastestreams in order to meet the technology-based limitations and standards established in the permit. This includes measures such as chlorine minimization programs. This regulation is not intended to require the installation of specific treatment technology in all cases (e.g., in many cases it may not be necessary, or even useful, to run noncontact cooling water or raw water clarifier sludge through the same treatment system designed for process waters). Nor would this regulation bar a permitting authority from requiring treatment technology, other controls, or zero discharge in a particular case. In considering net credit requests permit writers should examine the control measures that were intended to be employed to meet the applicable permit limits.

Another industrial commenter wanted net credits to be available for water quality-based standards. A State also raised water quality concerns. The proposed regulation included a section stating that the regulation did not preclude consideration of intake pollutants in setting water quality based limits. For the following reasons, EPA is deleting this section as unnecessary. This regulation deals only with technology-based standards. The Clean Water Act's requirement to protect and enhance water quality is not conditioned on factors such as intake water quality and it would be inappropriate for EPA to impose such a condition. Eligibility for a net credit under these regulations does not imply any right to violate water quality standards. However, EPA recognizes that implementation of water quality-based standards is a complex balancing and consideration of many facilities and many factors and that, in setting water quality based permit limitations, a permit writer may take into account the presence of intake water pollutants, as appropriate. Of course, in any case limits must be adequate to meet the water quality objectives of the Clean Water Act when considered along with control requirements for other dischargers to the stream.

An environmental group maintained that the provision that dischargers need not incur significant additional expense to remove intake pollutants amounts to an economic variance which is illegal under the Clean Water Act. EPA does not agree with this contention. EPA is not authorizing variances from the applicable effluent limitations based on the costs to a particular permittee to meet these. Rather, EPA is recognizing that in meeting these limitations the permittee should not be responsible for additional incidental removal of intake pollutants where this would result in significant additional costs. EPA believes this comports with the Fourth Circuit ruling in *Appalachian Power*. In addition, we note that net credits are only available to the extent needed to meet applicable limitations.

4. EPA action. The issue of net/gross credit presents difficult problems. While in certain circumstances credits may be appropriate, there are abundant possibilities for abuse. Attempts by EPA to deal with this situation in complicated and detailed regulations do not seem to have resolved these problems and may have unduly restricted the legitimate use of net credits. Therefore, EPA has decided to restructure the regulation, preserving the best of the existing rule and settlement proposal, but simplifying it and providing for more discretion by the local permitting authority. This should make the granting of net/gross credits on a reasoned basis more workable and less arbitrary.

Three particular situations merit specific comment. First, "proper" operation of the control system as required in § 122.45(g)(1)(ii) could arguably be interpreted to require the permittee to incur significant additional expense (such as additional chemical cost) to treat as much of the pollutant present in the effluent as the system is capable of removing. EPA intends that if the permittee would incur significant additional expense above those contemplated in the development of effluent limitations in achieving the incidental removal of intake pollutants the discharger should qualify for a credit to account for these. EPA cannot place a precise figure on what is a "significant" additional cost. This determination must be made on the basis of site-specific

information during the individual permit process. Similarly, when a company is adding a pollutant (e.g., chlorine) only during certain times, it need not continuously operate the system intended to remove that pollutant, but rather only needs to operate as necessary to remove the pollutant added, if it would require significant additional expense to add more chemicals to also control the pollutants present in the intake water.

Second, raw water clarifier sludges and filter backwash, if discharged, are subject to NPDES regulations as are any other discharges of pollutants. Consideration must be given to any additions to the intake water by the permittee, such as the use of flocculants. Since, as described above, EPA believes that these discharges are best dealt with outside the context of net/gross, the language in the proposal concerning raw water clarifier sludges has been deleted. Further, to avoid the improper use of the net/gross regulation to avoid appropriate technology-based limitations on these discharges, a provision has been added to remove them from coverage under net/gross.

Third, a large volume of non-process water, such as non-contract cooling water, is frequently combined with a relatively small volume of process water. An otherwise appropriate grant of net credits for the non-process water could conceivably lead to outfall limits so high as to mask inadequate process water treatment. If a net credit is deemed appropriate in such a situation, the permit writer should set additional limits, under § 122.45(g)(2), to assure proper removal of process water pollutants. These limits may cover the generic pollutants immediately after the process water treatment system or more specific process water pollutants at the outfall. Finally, ineligibility of a facility for net/gross credits under this regulation does not affect that facility's right to apply for a fundamentally different factor (FDF) variance.

H. Total Metals (40 CFR 122.45(c) [CPR § 122.63(c)])

1. *Background.* Metals in water occur in both dissolved and solid forms. There are three methods for measuring the level of metals in water. Each of these methods will give a different result depending upon the amounts of metals which are in each form. The total metals method uses a strong acid digestion to dissolve solids and measures both dissolved and solid metals. The dissolved metals method uses filtration to remove solids and measures only dissolved metals. The total recoverable metals method is an intermediate method which uses a weak acid treatment to dissolve readily soluble solids and filtration to remove residual solids. Details of these methods may be found in the publication "Methods for the Chemical Analysis of Water and Wastewater", EPA–600/4–79–020, March, 1979.

Decisions on how to measure metals in effluents must be made when establishing permit limitations and compliance monitoring requirements. These decisions are complicated by the chemical and biological processes that occur when effluents combine with receiving waters. Additionally, what ultimately happens to these pollutants in the receiving waters is very complex. Metals in solid form may dissolve and, although somewhat less likely, metals in dissolved form may change to solid. (See "Water Related Environmental Fate of 129 Priority Pollutants", EPA–440/4–79–029a.)

2. *Existing rules.* The current regulation takes the conservative approach of regulating metals as total metals, unless otherwise specified in a nationally promulgated effluent limitations guideline (guideline) or the permit writer in setting case-by-case permit limitations determines that a different method of measurement is appropriate. This approach is based on the assumption that all solid metals have the potential to dissolve and adversely affect the environment.

3. *Proposed changes.* Industry litigants claimed that only dissolved metals were environmentally significant and, therefore, that the appropriate method of measurement should be dissolved metals. EPA disagreed with this claim because of the complex chemical and biological processes that occur when effluents combine with receiving waters. For example, metals in the effluent of an electroplating facility that adds lime and uses clarifiers will be a combination of solids not removed by the clarifiers and residual dissolved metals. When the effluent from the clarifiers, usually with a high pH level, mixes with receiving water with a significantly lower pH level, these solids instantly dissolve. Measuring dissolved metals in the effluent, in this case, would underestimate the impact on the receiving water. Measuring with the total metals method required by the existing regulations, on the other hand, would assure no violation of water quality. Furthermore, proper sizing and operation of the clarifiers is a necessary part of the technology of reducing metals to acceptable levels. Measuring dissolved metals in the effluent would mask any inadequacies in the clarification step.

EPA, therefore, proposed a lesser relaxation of the existing rule, using total recoverable metals as the general standard, unless otherwise specified in a guideline or the permit writer determines other measures are appropriate. This standard for determining the level of metals in the effluent would measure dissolved metals plus that portion of solid metals which can easily dissolve. This is intended to measure metals which are or may easily become environmentally active, while not measuring those which may be expected to settle out and remain inert.

4. *Comments and responses.* An industrial commenter wanted the use of the total recoverable metals method extended to cases where guidelines are based on total metals. However, as stated in the preamble to the proposal, data using total metals and that using total recoverable metals are not interchangeable. Therefore, EPA could only change the guidelines measurement method based on compilation of a new data base. This would be a large and extensive undertaking and would adversely affect EPA's ability to address important priorities. Such a disruption to program implementation is unwarranted and would conflict with court ordered deadlines. Where guidelines specify total (or dissolved) metals, that is the method to be used.

Several commenters stated that data based on total recoverable metals are not readily available. This is generally true at this time. Where effluent data based on total metals are being used to set permit limits (such as treatability manual data used for a "best professional judgment" determination), the permit writer may need to gather additional comparison effluent data using both methods. Data involving water quality standards is quite a different case. Analytical methods used to set water quality standards are not uniform and often vary within, as well as among, States. Consequently, when using data based on water quality standards to set effluent limitations, permit writers may discover that these data were derived from any of the three methods of measuring metals in the receiving water. However, because of the complex processes that occur when effluents combine with receiving waters, it is not possible to relate directly the form of the metals in the effluent to those in the receiving water. Therefore, it is not necessary to use the same analytical method used in developing the water quality standards for

developing effluent limitations. EPA's intent in promulgating this regulation is to endorse the total recoverable method as the best predictor of effluent impact on water quality. Using the total recoverable method to set water quality-based effluent limitations is independent of the method used to develop water quality standards for the receiving water.

Several commenters asserted that this standard is not sufficiently environmentally protective since metals excluded from total recoverable metals (but included in total metals) could eventually dissolve and affect water quality. A particular concern was an accumulation of slowly dissolving solid metals on the bottom of a water body. There are little or no data available on such long term environmental effects. To some extent these slowly dissolving solids will either disperse or be covered over, lessening any potential impacts. EPA has concluded that the total recoverable metals method is the most reasonable approach because it gives results that best approximate the amount of metals that are likely to produce water quality impacts. While all the metal measured by the total metals method could eventually dissolve, the portion of total metals represented by total recoverable metals is a better measure of potential adverse environmental impact.

An industry commenter asked that the phrase "dissolved or valent or total" in § 122.45(c)(1) [CPR § 122.63(c)(1)] and 122.45(c)(2) be revised to "dissolved or ionic or valent or total" and that the word "dissolved" in § 122.45(c)(3) be expanded to "dissolved or ionic." The commenter wished to make these sections include specific simple or complex metal ions. (A complex metal ion is a combination of a metal with other chemical compounds.) EPA agrees in part with this comment. The term "valent" in § 122.45(c) (1) and (2) is intended to include simple or complex metal ions. Section 122.45(c)(3) is also applicable to simple or complex metal ions. However, the commenter wished to use the sections to encourage the regulation of specific simple or complex ions. EPA disagrees that the regulation of metals as specific simple or complex ions is useful or desirable. The general standard to be applied is *total* recoverable metal, since metals may change form in receiving waters or elsewhere in the environment. Also, the NRDC consent decree [8 ERC 2120 (D.D.C. 1976)] requires EPA to regulate all compounds containing the specified toxic metals. While some complex ions have strong bonds, many are weak and easily convert to other forms, especially when passing from an effluent to the receiving water. Therefore, it is important to control all ions containing the metal. Also, practical difficulties would arise since the analytical methods for distinguishing specific simple or complex metal ions are often complicated, sensitive, and prone to error. The single known example of a case where it may be useful to regulate a specific ionic form is hexavalent chromium. The strongly oxidized state of this highly toxic ion makes its formation from other chromium in the environment essentially impossible. Furthermore, hexavalent chromium limits are frequently used in addition to total chromium limits, rather than as a substitute for total chromium.

5. EPA action. EPA is today promulgating, unchanged, the proposed regulation. By choosing a total recoverable metals standard, the use of dissolved metals limits is being strongly discouraged, especially for toxic metals. Except where otherwise provided in guidelines, or where required in highly unusual cases to implement the Clean Water Act, metals limits in permits should be stated as total recoverable metals.

I. Actual Production § 122.45(b)(2) [CPR § 122.63(b)(2)]

1. Existing rule. The existing regulation requires production-based permit limits to be based upon a reasonable measure of actual production, not upon the design capacity of the facility. This requirement is intended to assure that facilities operating below full capacity are treating their wastewater to the extent required by the Clean Water Act's technology-based treatment requirements, rather than enjoying relaxed limits due to unused production capacity. Such an approach also assures equity among facilities in the same industry, regardless of their design capacity.

2. Proposed changes. Industry litigants expressed concern that, especially for cyclical industries which are currently in a slump, estimates of projected production should be allowed where the historical measures of actual production may not be reasonable predictors of future production. They also were concerned that should production increase beyond the level on which the permit was based, the permit modification process might not be fast enough to respond to the need for a higher production based limit in the permit. The proposal, recognizing the unique nature of the auto industry, in which demand is extremely volatile and the Director may not be able to modify permits to increase effluent limitations with sufficient speed to allow increased production, provides for alternate effluent limitations for that industry. The proposal requires EPA, and allows States, to write alternate permit limits for the automotive manufacturing industry if the applicant satisfactorily demonstrates that its actual production is substantially below maximum production capability and there is a reasonable potential for an increase above actual production during the permit term. Under the proposal, a permit could be written providing more than one permit limitation—one based on the discharger's current production level and one or more based on potential increased production rates. For example, a hypothetical automotive plant with historic production of 60% of capacity might have a permit limit on pollutant "X" of 2 pounds per day. The alternate limits might be 2.5 pounds per day for production from 61–80% of capacity, and 3 pounds per day for 81–100% of capacity. If the plant's production for a month was in the higher range, then it could discharge up to the corresponding higher effluent limitation. The proposal also required monthly notice of anticipated production increases.

In addition, the preamble to the proposal clarified that the operative requirement is that the permit be based on a reasonable measure of actual production and the examples cited in the regulation are not meant to be all-inclusive, but are merely illustrative.

3. *Comments and responses.* Many commenters supported the concept of alternate permit limitations as allowing companies to respond quickly to changes in the market. Several commenters suggested that the concept also be applied to other industries besides the auto industry. EPA agrees that alternate permit limits may be useful in developing permits for other industrial categories and therefore has revised the final regulation to explicitly provide that EPA and the States have the discretion to adopt such limitations. Use of alternate limits is mandatory only where EPA writes permits for discharges associated with the automotive manufacturing industry if the discharger makes the requisite demonstration. Only the automotive industry has clearly demonstrated the need for the alternative limits. In all other situations, alternate limits will be used at the discretion of the permit writer, although dischargers may request the use of such limits. For approved NPDES States, the use of

alternate permit limitations is discretionary even for the automotive manufacturing industry.

It should also be noted that alternate permit limitations may also be appropriate where a decrease in production is expected to occur during the term of the permit, such as in industries where the production reported on the application is significantly higher than the long term production. Today's rulemaking clarifies that, on a case-by-case basis, the permit writer may provide for alternate limits based upon possible declining production.

EPA anticipates that alternate permit limitations will be used in instances where historical production levels are not indicative of expected future production. The alternate limits approach, however, is not a substitute for the permit modification process or a cure-all for other problems, such as bypass situations, which are addressed separately in the regulations. Alternate permit limitations are appropriate only when production is expected to change so substantially during the permit term that a single set of permit limitations could not adequately cover all the production levels. Permit writers, however, are not required to consider all possible contingencies or to address all anticipated fluctuations in production rates with alternate limits.

As pointed out by one commenter, although providing increased flexibility, the regulatory change will require increased technical supervision to ensure that permit conditions are not violated. Therefore, when they are used, the alternate permit limitations generally should be based upon a tiered approach, providing, for example, 2 or 3 alternative limits based upon reliably anticipated ranges of production levels. Because of the administrative and enforcement difficulties, the permit should generally not entail the use of a continuum of effluent limitations based upon all possible production levels up to capacity. However, permit writers have the flexibility to include a continuum where appropriate, such as for industries likely to have daily production fluctuations that cannot adequately be accounted for otherwise.

Another commenter suggested that the permit contain limits on both pounds per day of pollutant per unit production (essentially a continuum), and pounds per day based on production capacity or recent historic or projected production, in order to avoid the requirement to report at the beginning of each month when production is expected to rise to higher alternate levels. We have not chosen this approach since, as discussed above, it is more difficult to effectively regulate and monitor compliance of dischargers using permit limits based upon a continuum. Should a permit writer, however, on a case-by-case basis find such an approach useful, the regulations provide sufficient latitude. In addition, as discussed below, the final regulation has addressed the reporting requirements concern and reduced the reporting burden to a minimum. Furthermore, notification of increased production levels is not required when the permit includes a continuum, rather than a tiered approach.

Several other commenters thought that the reporting requirements should be changed. One commenter thought that it may not always be possible to give advance notice two business days before each month of production increases. Although a discharger may not always be certain that production will change two business days before the ensuing month, he nevertheless will know whether there is a reasonable likelihood. It is a good business practice to conduct advance planning of production levels on at least a monthly basis so that production personnel, materials and other factors can be coordinated. Since the notification process is only two days in advance of monthly production change, information concerning the likelihood of a change should be readily available to the permittee. If the permittee thinks there is a reasonable likelihood that production will increase, he should submit a notice indicating the anticipated production level, otherwise he would not be eligible for the higher limit. The notification requirement may also benefit permittee pollution control programs since it will encourage permittees to effectively plan and coordinate their pollution control programs and production levels.

Of course, when the discharger submits notification, the higher limit applies only if the production actually increases. If production does not increase, the permittee must comply with the limitations applicable to the actual production for the period. Thus, permittees are not rewarded for overestimating future production. EPA and States will track compliance against limitations corresponding to actual production, irrespective of any notices submitted by permittees. To track compliance in any other way would be unfair to permittees or would benefit dischargers that inflate production values.

The notification requirement applies whenever a permittee wants to be eligible for a discharge limit other than the lowest limit in the permit. The notice, however, does not have to be limited to an ensuing 30 day period, as EPA proposed, if the discharger expects to qualify for a higher limitation over a longer period of time. For example, if a discharger expects to be producing at a higher level for six months, the Agency sees no reason for requiring notification before each month. When submitting the notice of future discharge levels, the permittee should specify the period of time for which the higher anticipated level will apply. If the period covered by the notice extends beyond the ensuing month, then the notice should specify the reasons why the higher production level is anticipated. A new notice is required (1) to cover a period or production level not covered by a prior notice or (2) if during two consecutive months otherwise covered by a notice, the production level at the permitted facility does not in fact meet the higher level designated in the notice. Permitting authorities will assume that the facility is operating at the higher level (except for possibly an interim month) until the end of the noticed period or until a new notice is received indicating production at an even higher level (although compliance will still be tracked against the actual production levels).

The notices will provide inspectors with the knowledge of the levels at which the facility expects to operate at the time inspections are performed. The discharge monitoring report (DMR) for each period must contain the level of production that actually occurred. Dischargers must also identify on the DMR the permit limits that correspond to the actual production level, since EPA will track compliance against such limits.

Furthermore, to obtain the actual production figures and determine applicable limits for compliance monitoring purposes as soon as possible, it will usually be appropriate for dischargers with alternate permit limits to submit DMRs on at least a monthly basis. EPA does not expect monthly submission to result in a change in total reporting burdens, since the dischargers most likely to have alternate limits are generally major facilities with monthly DMRs requirements in their current permits.

One commenter objected to the reporting and publicizing of anticipated production schedules and actual production figures. Anticipated production information is vital to the permit writer if the Agency is to provide alternate permit limits. Actual production figures also must be reported to EPA in order for EPA to determine compliance with the appropriate

discharge limit. Although this information would be available to the public upon request, EPA does not plan to publish the information. However, to restrict access to this information would prevent the public from evaluating compliance.

A few commenters pointed out that the preamble to the proposed regulations was helpful in clarifying the "reasonable measure of actual production" standard. As stated in the preamble to the proposed regulation, § 122.45(b)(2) [CPR § 122.63(b)(2)] requires that production based permit effluent limitations be based on some "reasonable measure of actual production of the facility, such as the production during the high month of the previous year, or the monthly average for the highest of the previous 5 years." As stated in the preamble to the proposal, the operative requirement of this provision is that the permit be based on a reasonable measure of actual production. The examples given are simply examples, and merely illustrate typical acceptable measures. Other measures of actual production are entirely acceptable if the Director finds them "reasonable". To clarify that the examples are not the operative requirement, EPA has deleted them from the final rule. The regulations will now only require use of a reasonable measure of actual production.

In addition, the alternate permit limitations approach should avoid the controversial nature of determining actual production. Instead of having permit limitations potentially based upon a "worst case scenario", i.e., the period of maximum production, alternate limitations allow the limitations to correspond to varying production levels. Thus, when alternate limits are used, average production measures can be used as one reasonable measure of actual production, unless an effluent limitations guideline specifies otherwise. For example, the alternate permit limitations approach would allow permit writers to take into account changes in production levels using long-term average values, instead of relying on a short-term maximum level of production to cover normal day-to-day variations.

One commenter provided specific descriptions of two facilities which he thought met the criteria of the examples of a "reasonable" measure provided in the preamble. It is not appropriate to respond to specific permit situations in the context of these general regulations since all the facts of the situation may not be available.

One commenter objected generally to the use of mass-based (as opposed to concentration-based) limits and particularly those based on production. Permit writers are encouraged to express limits in terms of both mass and concentration. Mass-based limits are necessary and encouraged to prevent the use of dilution as a means of treatment and also, where water quality is limiting, control total loadings in regard to the assimilative capacity of the receiving water body. Concentration-based limits ensure proper operation of treatment facilities regardless of raw wastewater load and protect against water quality impacts where pollutant concentration is important (e.g. toxic pollutants). The amended regulation provides the procedural means for implementing production-based limits. Comments about the appropriateness of a production-based limit should be submitted during the comment period for the relevant effluent guideline or where the limit is not based on a guideline, for the draft permit.

4. EPA action. EPA has expanded the proposal. The final regulation allows industries other than automotive manufacturing to be covered by alternate permit limitations and alternate limits to be written if there is an expected increase or decrease in production levels during the permit term.

J. Imposition of Water Quality Conditions Stayed by a Court or Agency (40 CFR 122.44(d)(3) [CPR § 122.62(d)(3)])

1. Existing rules. Section 401 of the CWA requires EPA, before issuing an NPDES permit, to obtain from the State in which the discharge originates a certification that the discharge, under the terms of the permit, will comply with State legal requirements, including water quality standards. If the State waives certification or fails to act within a "reasonable period of time (which shall not exceed one year)," then EPA may issue the permit without certification.

Section 124.53 of the NPDES regulations provides that the State will be deemed to have waived certification of the conditions in a draft permit if it has not responded within a specified time, not to exceed sixty days, unless the EPA Regional Administrator authorizes a longer period. This waiver period assures that the issuance of NPDES permits is not delayed until State certification issues are resolved in all cases. Generally, sixty days have proven to be a reasonable and achievable time frame for certification.

In addition, § 122.44(d)(3) [CPR § 122.62(d)(3)] provides that if a State certification is stayed by a court or State board or agency, EPA shall include conditions in the permit which may be necessary to comply with section 301(b)(1)(C) of the Clean Water Act. Section 301(b)(1)(C) requires NPDES permits to include any more stringent limitations established under State law or regulations or any other Federal law, including those necessary to meet water quality standards.

2. Proposed changes. EPA proposed that, if a State certification is stayed by a court or by a State board or agency, States would have sixty days in which to submit the certification before the certification is deemed waived. The proposal responded to the industry litigants' concern that if EPA issues the permit without giving the State an opportunity to resolve its proceedings, the State's proceedings would effectively be moot. The proposed regulation would allow a State an opportunity to complete its review proceedings prior to the issuance of the permit.

3. Comments and responses. Some commenters recognized the proposed rules as a reasonable compromise between EPA's interest in prompt permit issuance and the permittee's interest in ensuring that his permit incorporates finally effective State requirements which may have been revised as a result of their being challenged. Other commenters questioned EPA's authority to deem certification waived within sixty days as being inconsistent with section 401(a)(1) of the Act. They suggested a longer period of time (e.g., from six months to a year) is warranted, since it is unlikely that a State could complete judicial or administrative proceedings in sixty days.

According to the legislative history of this provision, the State certification procedure was included in the CWA to provided a State water pollution control agency an opportunity to determine whether or not effluent limitations established for dischargers in an EPA issued permit are at least as stringent as any applicable State requirements. (See Senate Consideration of the Report of the Conference Committee, October 4, 1972, 93rd Cong., 2d Sess. (1972), reprinted in Environmental Policy Decision of the Library of Congress, A Legislative History of the Water Pollution Control Act Amendments of 1972, 93rd Cong., 1st Sess., 176, Serial No. 93–1, hereinafter referred to as Legislative History.) Section 401(a)(1) requires the Agency to provide a reasonable period of time, not to exceed one year, before State certification is deemed waived. The waiver provision of section 401 was provided to assure that a State's inaction would not

frustrate the application for a federal permit. See H.R. Rep. No. 92-911, 920 Cong., 2d Sess., 22 (1972) reprinted in Legislative History, p. 809.

In choosing a "reasonable time period", the Agency had to balance the opportunity for a State agency to evaluate and assure compliance with State requirements, the permittee's interest in assuring that its permit reflects State regulations which may ultimately be revised as a result of their being challenged, and the goals of the Clean Water Act to assure prompt permit issuance and compliance with statutory deadlines. In § 124.53 EPA chose sixty days as the waiver period, agreeing with commenters that delays caused by the State certification process to the NPDES program would be unwarranted if a year were allowed for certification, See 44 FR 32880 (Revision of NPDES regulations, June 7, 1979). Consistent with that determination, today's rulemaking would provide another sixty day period prior to issuance of the permit if the certification is stayed by a court or State board or agency.

EPA recognizes that in some instances States will not be able to resolve their proceedings in sixty days or even in one year, the maximum time allowed under section 401(a)(1) of the CWA. In some cases, however, States can complete review proceedings quickly. EPA has concluded that it is reasonable to allow sixty days from the staying of a certification for a State to resolve issues. This time frame is consistent with the original certification period provided in § 124.53 and is based on the same balancing of interests reflected therein.

It is important that NPDES permits be issued in a timely fashion to assure compliance with the Act and, where necessary, to avoid unwarranted delays in the construction and operation of new facilities. No evidence has been submitted to EPA demonstrating that a six-month time period, or any other alternative period, would assure resolution of a significantly larger number of State proceedings so as to warrant delays in the NPDES permit issuance process.

Sixty days is a minimum time period and does not preclude EPA from delaying permit issuance if it is apparent the State decision is imminent. On a case-by-case basis, EPA has the discretion to wait and incorporate the State decision. In addition, even if EPA chooses to proceed, if a modified State certification is received prior to final Agency action on the permit, the permit will be modified to issuance, if necessary, to be consistent with the certification. See § 124.55.

Regardless of whether a State has certified or waived certification, EPA has an independent obligation to include in permits limitations necessary to comply with State law. See section 301(b)(1)(c) of the CWA and Decision of the General Counsel No. 58 (March 29, 1977). Any permit issued by EPA must protect the State's interest by assuring compliance with State standards. In addition, the permittee's interests are protected even after EPA has issued the permit. If the State proceedings determined that a State standard which has been incorporated into the permit is invalid, the permittee may seek a permit modification.

One commenter stated that the proposal provides a discharger opposed to conditions of State certification with the incentive to intentionally delay State proceedings. The commenter suggested that the certification should not be deemed waived if the State is unable to complete judicial or administrative proceedings due to the discharger's failure to cooperate.

EPA disagrees that its proposal provides an unfair incentive for intentional delays. EPA's ability to proceed with permit issuance after 60 days, regardless of whether State proceedings have been completed, in most cases will eliminate any advantage to delay. In situations where a discharger is delaying solely because it believes a determination by EPA will be more advantageous, EPA does have the ability to extend the 60 day period to allow more time to complete State proceedings. In addition, the new regulation in fact makes it more difficult for a discharger to avoid the State certification requirements because it provides the State with an additional sixty days in which to complete State proceeedings beyond that provided in the current regulations. However, we caution that EPA should not become involved in findings of fact as to whether lack of resolution of a State's proceedings is due to a discharger's failure to cooperate.

One commenter suggested that alternative means, such as the State/EPA agreement, be used to deal with permit certification "log jams" that may occur. EPA recognizes that the State/EPA agreement and other means may be needed to assure timely State certification and this is not precluded by the regulations. It is always preferable, from EPA's standpoint as well as the States, to have State certification prior to EPA's issuance of a permit and EPA will continue to work to assure that this is done. The regulations, however, are needed to assure a consistent method of dealing with the unusual case of procedural delay.

4. EPA action. Based on review of the proposal and the comments, the amendment is promulgated as proposed.

K. Incorporation of NEPA-based Conditions in Permits (40 CFR 122.7(g) [CPR 122.12(g)], 122.29(c)(3) [CPR 122.66(c)(3)], 122.44(d)(9) [CPR 122.62(c)(9)], 124.85(e), 124.121(f))

1. Existing rules. Under section 511(c) of the CWA, the issuance of an NPDES permit to a new source is subject to review under the National Environmental Policy Act of 1969 (NEPA). This may require the preparation of an Environmental Impact Statement (EIS). Several sections of the NPDES regulations deal with the incorporation of EIS-related conditions in new source NPDES permits. Section 122.44(d)(9) [CPR § 122.62(d)(9)] provides that when EPA is the permitting authority, new source permits shall incorporate requirements, conditions or limitations under NEPA and section 511 of the CWA. Similarly, § 122.29(c)(3) [CPR § 122.66(c)(3)] requires Regional Administrators to issue, condition, or deny new source permits after a NEPA review, including an EIS, if prepared. Section 122.47(g) [CPR § 122.12(g)] notes that NEPA may require the inclusion of EIS-related conditions, as described in § 122.29(c)(3).

2. Proposed changes. In response to litigants' concerns that NEPA could not legally be used as broadly in the permit process as EPA regulations provided, EPA proposed several changes. First, EPA proposed to modify §§ 122.7(g), 122.29(c)(3), and 122.44(d)(9) to clarify that NEPA cannot be used to review effluent limitations or other requirements established by the CWA or to set such effluent limitations. Section 511(c)(2) of the CWA expressly prohibits the use of NEPA for such purposes. EPA also proposed to revise these sections to explain that, in all other respects, the regulations take no position on the circumstances under which NEPA conditions (other than effluent limitations) may be imposed in NPDES permits. The proposal was intended to eliminate the implication that EIS-related conditions must be incorporated in permits and to allow the appropriateness of EIS-related conditions (including whether any such conditions should be incorporated) to be resolved in the context of specific permit issuance.

EPA also proposed a new section to its evidentiary hearing rules (§ 124.85(e)) to provide that evidence of

environmental impacts of a facility may be submitted at an evidentiary hearing concerning a new source subject to NEPA if the evidence would be relevant to the Agency's obligations under § 122.29(c)(3). This proposal would also apply to Non-Adversary Panel Procedure (NAPP) hearings through a revision to § 124.121(f). (The existing evidentiary and NAPP hearing regulations contain no specific provisions concerning the admission of evidence on environmental impacts.) In addition, for sources that hold final RCRA, PSD, UIC, or ocean dumping permits, the proposal would also bar the admission of evidence and cross-examination related to environmental issues that were or could have been considered in the permitting proceedings for these permits. Under the proposal, the Presiding Officer would have the discretion to admit portions of the record from those permit proceedings in order to fulfill evaluation obligations. The proposal was intended to avoid having an evidentiary or NAPP hearing on an NPDES permit subject to NEPA become a forum for reexamination of decisions under other statutes to which NEPA does not apply. The proposed rule would thus limit the scope of evidence that could be submitted at hearings to the scope of analysis required under NEPA.

3. Comments and responses. One commenter supporting the proposal states that EPA has no authority to include EIS-related conditions in permits. Several others added that EPA could only impose NEPA conditions related to the permitted discharge. An opposing commenter objected that the proposed change violates NEPA and reverses EPA's previous interpretations that EPA could condition or deny a permit based upon non-water quality impacts.

After careful consideration of these comments and the statutes, the Administrator has determined that NEPA, in conjunction with the CWA, authorizes the Agency to deny or impose conditions, including non-water quality related conditions, in NPDES permits on the basis of the NEPA review. Section 511(c)(1) makes clear Congress' intent that NEPA applies to the issuance of an NPDES permit to a new source. That review might be meaningless if EPA had no authority to consider and act upon its results. Thus, EPA has consistently taken the position that EPA can take appropriate actions by conditioning or denying the permit to mitigate or prevent unacceptable environmental impacts identified by the EIS. This position is supported by the legislative history of the CWA and NEPA case law. (See Opinions of the General Counsel Nos. 76–18 and 76–19 (September 23, 1976).)

The authority to include conditions related to the EIS would also apply to non-water quality impacts identified in the EIS. Section 511(c) does not limit the scope of the NEPA review, except to prohibit EPA from reviewing or establishing effluent limitations. EPA interprets this to imply that the Agency may consider all other results of the environmental review. The Administrator may impose appropriate non-water quality conditions using his authority to condition or deny permits under section 402(a)(1) of the CWA.

The proposed regulation would not change this position. NEPA does not mandate that EPA take any particular action as a result of a NEPA review, but rather grants the Agency discretion to determine what action is appropriate. EPA's change to the provisions related to NEPA conditions will still authorize EPA to impose such conditions. The only changes will be (1) to allow questions of whether particular permit conditions based upon the EIS are appropriate or authorized to be resolved in the permit issuance process and (2) to remove any implication that EPA must always include such conditions.

A commenter asserted that NEPA requires that EPA consider using more stringent effluent limitations to satisfy NEPA requirements. It was suggested that "there may be circumstances in which, for an individual site, more stringent effluent limitations ought to be considered since they may provide a better balance of costs and benefits than would non-water quality conditions that EPA could impose in the permit. Since this suggestion directly conflicts with the language of section 511(c)(2), EPA concludes that it would not be permissible under the statute. EPA may consider the entire EIS in deciding whether to issue or deny an NPDES permit or include mitigating measures other than effluent limitations, but EPA has no authority to establish or review effluent limitations based upon the NEPA review. More stringent limitations may not be imposed if not otherwise authorized by the CWA. EPA does have authority to impose limitations in addition to those in an applicable New Source Performance Standard (NSPS), under section 402(a)(1) using the permit writer's best professional judgement (BPJ), if an NSPS does not address a particular waste stream or pollutant present in the discharge and it is determined such controls are necessary. (See discussion above, Part F.) In such a case, NEPA would not be the basis for establishing such BPJ limitations, but rather EPA would develop such limitations as necessary to meet the requirements of the CWA, using information from the EIS in addition to other sources. EPA can also impose limits more stringent than an NSPS where necessary to comply with water quality standards or address other water quality concerns, even if the EIS was used to identify the impacts.

Another commenter stated that the proposal conflicted with the New Source Performance Standards for the Ore Mining and Dressing Point Source Category (40 CFR Part 440; 47 FR 54598, December 3, 1982). That standard specifically exempted the Quartz Hill Molybdenum Project from coverage under the standard (§ 440.100(b)) to allow full consideration of non-water quality environmental impacts through an EIS the NEPA review was triggered by the Alaska National Interest Lands Conservation Act, not the CWA). (See 47 FR 54601, December 3, 1982). The commenter stated that the proposed change would eliminate all possible bases for the development of an NPDES permit.

EPA does not agree that the revision will make permit issuance impossible. The Quartz Hill Project is not a new source within the definition of § 122.2 [CPR § 122.3], since it is specifically excluded from the Ore Mining NSPS and is not covered by another NSPS. Therefore, the NPDES permit for the facility will be based on the permit writer's BPJ under section 402(a)(1) of the CWA and the Director may include such conditions as are necessary to comply with the Act. In issuing the permit, the Director may use all available information to determine what effluent limitations are necessary to meet the requirements of the CWA. This information could include the EIS.

Several commenters opposed EPA's proposed limitations on the admission of evidence at evidentiary and NAPP hearings. One of these suggested that issues that were not raised in the prior permit decision should not be barred in the NPDES permit hearings. Another suggested that the Presiding Officer should be authorized to make an independent determination of whether to allow admission of evidence. EPA has concluded that these suggestions could allow undue complication of NPDES proceedings. The proposal eliminates unnecessary duplication of effort and relitigation of issues while still ensuring that EPA meets its NEPA review responsibilities. EPA does not interpret the limited applicability of NEPA to new

source NPDES permit proceedings under section 511(c) to authorize reexamination of determinations made by EPA under other statutes to which NEPA does not apply. For example, PSD determinations, like all EPA determinations under the Clean Air Act, are exempted by statute from NEPA's EIS requirements. (See section 7(c)(1) of the Energy Supply and Environmental Coordination Act, 15 U.S.C. 793(c)(1).) The limitation on the admission of evidence also carries out Congress' directive in Section 101(f) of the CWA that "the procedures utilized for implementing this Act shall encourage the drastic minimization of paperwork and interagency decision procedures, and the best use of available manpower and funds, so as to prevent needless duplication and unnecessary delays at all levels of government."

In response to the comments, EPA has modified the final rule to clarify that the limitations on the admission of evidence at EPA hearings applies only where the previous permit proceedings were held by EPA. EPA cannot delegate its NEPA responsibilities to States. *Stuebing* v. *Brinegar* 511 F.2d (2nd Cir. 1975); *Greene County Planning Board* v. *FPC* 455 F.2d 412 (2nd Cir. 1972), *cert. den.* 409 U.S.C. 849 (1972). Therefore, EPA can limit admission of evidence that could have been submitted at a previous hearing on a permit for the facility under a different program only if the permit was issued by EPA. States approved to administer other permit programs may make decisions on such other permits that address issues relevant to EPA's NEPA review. However, since these issues were previously considered only by the State, evidence on these issues is admissible at an EPA-held hearing for a new source. Otherwise, EPA would have impermissibly authorized the State to carry out EPA's NEPA responsibilities.

4. EPA action. The language of today's final rule is the same as the proposal, except for the revision to § 124.85(e) clarifying that the limits on admissibility at hearings of evidence on environmental impacts applies only if the issues could have been raised at prior EPA hearings. Sections 122.47(g), 122.29(c)(3), and 122.44(d)(9) have been revised as proposed to make clear that, under section 511(c)(2) of the CWA, NEPA cannot be used to review effluent limitations or other requirements established under the CWA or to set such limitations. These revised provisions now make clear that, in all other respects, the regulations take no position on particular circumstances under which NEPA conditions (other than effluent limitations) may be imposed in NPDES permits. These revisions do not substantively change EPA's authority to impose EIS-related conditions.

EPA will continue to impose EIS-related conditions in permits in appropriate circumstances. For example, conditions have been used to limit the times of the year during which discharges are authorized where such discharges may have an impact upon fish spawning. EPA has also used EIS-related conditions to require consultation with appropriate State officials by coal mine operators in archeologically important areas. Where a NEPA review indicates that such conditions are appropriate, EPA will use them.

New § 124.85(e) provides that evidence on environmental impacts of a facility may be submitted at a hearing for a new source subject to NEPA if the evidence would be relevant to the Agency's obligations under § 122.29(c)(3). That section, in turn, requires EPA, to the extent allowed by law, to conduct an evaluation of significant environmental impacts of the proposed action. Thus, the scope of the evidence on environmental impacts admissible at a NPDES hearing turns ultimately on the scope of analysis required by NEPA.

In order to minimize delay and duplication of effort, § 123.85(e) also provides that where a source holds a final EPA-issued RCRA, PSD, UIC, or ocean dumping permit, no evidence may be admitted nor will cross-examination be allowed with respect to issues that were considered or could have been considered in those permit proceedings, even as to matters that may have been within the proper scope of NEPA analysis. In such cases, the Presiding Officer may (to the extent required by NEPA) instead admit relevant portions of the record of the PSD, RCRA, UIC, or ocean dumping proceedings. This evidence may be necessary to perform the balancing of costs and benefits required by NEPA.

L. Compliance Schedule Prohibition (40 CFR 122.47, 122.29(d)(4) [CPR §§ 122.10, 122.66(d)(4)])

1. Existing rule. The current regulations treat new sources, new dischargers and recommencing dischargers differently from existing sources and do not allow them to be placed on compliance schedules to meet permit limitations. Permits issued to existing sources may contain compliance schedules, but new sources, new discharge and recommencing dischargers must install and start up all pollution control equipment prior to discharger and comply with their permit limitations within the shortest feasible time, not to exceed 90 days following commencement. The current regulations treat these dischargers differently because new sources and new dischargers have never operated under a previously issued permit and, like recommencing dischargers which begin to discharge after terminating operations, are considered to be in a better position than existing sources to install and "start up" their equipment and meet their permit limitations. Existing sources, on the other hand, may need additional time to upgrade their treatment technology to meet new permit limitations.

2. Proposed changes. Industry litigants challenged the compliance schedule prohibition on the grounds that it was too inflexible and did not address the situation when EPA issued or revised requirements after a facility began to construct but before it began to discharge. Industry argued that such a facility should be given a reasonable time to adjust its equipment to comply with newly issued or revised requirements. In response to these concerns, EPA proposed to allow permits issued to new sources, new dischargers and recommencing dischargers to include compliance schedules which allow those dischargers to meet their permit limitations within a reasonable time after discharge begins rather than in all cases at the time of discharge. Under the proposed regulations, reasonable compliance schedules could be issued to new sources and new dischargers if requirements were issued or revised after construction began but less than three years before they begin to discharge. Because construction is not an issue with recommencing dischargers, the proposal allowed them to be placed on compliance schedules if requirements were issued or revised less than three years before discharge recommences.

3. Comments and responses. We received five comments on the proposal. All comments were from industry and all supported the proposed change. One commenter suggested that we should conform the proposed change to the section on new sources and new dischargers.

4. New action. Based on the comments received, we are promulgating the final regulation as proposed and cross-referencing it in § 122.29(d)(4) [CPR § 122.66(d)(4)] (New sources and new dischargers).

M. Notice of Physical Alterations or Additions (40 CFR 122.41(1)(l) [CPR § 122.7(1)(l)]

1. Existing rule. The existing rule requires the permittee to give notice to the Director of any planned physical alteration or addition to the permitted facility. The rule was based on the rationale that notice of such changes would enable the Director to decide whether a permit modification was necessary.

2. Proposed changes. The proposed regulation would require permittees to give notice to the Director of physical alterations or additions which could significantly change the discharge. The proposal further provides that this notice applies to pollutants for which the Director would not otherwise receive notice through (1) compliance reporting for pollutants limited in the permit or (2) notification of toxics under § 122.42(a)(1) [CPR § 122.61(a)(1)]. The proposal recognized that many industrial facilities frequently undergo physical alteration or additions which are minor and have little or no impact on a permittee's discharge and thus, reporting all such changes would be unnecessarily burdensome. Notice of only those changes which could result in significant changes to the permitted facility's discharge should provide EPA or the State permitting agency sufficient information to determine the need for permit modification.

3. Comments and responses. EPA received ten comments, all supporting the proposal. Several commenters stated that most alterations and additions to industrial facilities are minor and have little impact on the permittee's disharge. Several other commenters felt that the existing rule created an unnecessary reporting burden on permittees. Some commenters noted that the proposal ensured that EPA would receive sufficient information to assess permit compliance and to decide whether permit modifications are necessary.

Commenters also contended that the existing rule exceeded EPA's authority under the CWA. EPA does not agree that the original rule exceeded EPA's authority under the CWA, since EPA has broad authority under section 308 of the Act to require recordkeeping and reporting. However, EPA has concluded that notice of every physical alteration or addition is unnecessary, since many changes have little impact on a permittee's discharge and would create an unnecessary reporting burden. Under the final regulation, EPA will still be kept informed of significant changes to the permitted facility which could result in a permit modification.

One commenter asked that the word "significantly" modify both "change" and "increase." EPA interprets "significantly" to modify both verbs, making such a change unnecessary.

4. EPA action. EPA is promulgating the final rule as proposed, with some minor clarifications. The rule will provide the Director with sufficient information for evaluating permit compliance or the need for permit modification, without imposing unnecessary reporting requirements. The second sentence of § 122.41(l)(1) has been split into two sentences to clarify Agency intent that the toxics notification under § 122.42(a) [CPR § 122.61(a)] and reporting on pollutants limited in the permit are separate requirements that do not depend on a significant change in the nature of or increase in the quantity of pollutants discharged. EPA has also added a sentence to clarify the Agency's intent that any change to the permitted facility which may result in a new source must be reported to the Director, allowing him to make a new source determination. Without such notice EPA may not become aware of changes to an existing facility which would be subject to new source performance standards.

EPA has also deleted "For NPDES permittees," since under the deconsolidated regulations this provision only applies to NPDES permittees. Finally, the reference to § 122.42(a)(1) [CPR § 122.61(a)(1)] has been changed to reflect the renumbering sequence of the April 1, 1983 deconsolidation.

N. Signatories to Reports (40 CFR 122.22(b)(2) [CPR § 122.6(b)(2)])

1. Existing rules. Under the NPDES regulations, all reports required by permits, and any other information requested by the Director, must be signed by a principal executive officer of a corporation or a duly authorized representative of the executive officer (§ 122.22(b)(2) [CPR § 122.6(b)(2)]). The authorization may be to either a person occupying a specified position or a named individual having responsibility for the overall operation of the regulated facility or activity. The signatory requirement is intended to ensure that the corporation is legally accountable for the information submitted. The signature on reports or authorization by a principal executive officer provides this accountability.

2. Proposed rules. Industry litigants complained that the signatory requirement was overly restrictive. Many companies have environmental managers who have responsibility within the corporation for ensuring compliance with environmental laws. Litigants argued that these managers would best be able to judge the accuracy and completeness of NPDES reports since they are often in charge of the personnel who do the monitoring and sampling. EPA accepted the litigants' contentions and proposed to allow the principal executive officer to authorize an individual or position having overall responsibility for environmental matters for the company to sign reports.

3. Comments and responses. All twelve comments received on this proposed revision supported the change. Commenters supported the idea that environmental managers were the most logical persons to sign reports since they are knowledgeable of the subject area. They suggested that the change would contribute to the accuracy of the reports, while ensuring high level attention to the facility's activities. EPA agrees with commenters that environmental managers will, in many cases, have the best knowledge of the company's facility. Since these managers must still have overall environmental responsibility within the company, and since their authorization to sign the report must come from a principal executive officer, the proposal will also ensure corporate responsibility.

Two commenters, citing the preamble discussion of the proposal (47 FR 52075), questioned whether the signatory provision applied to environmental managers at an individual facility within a company. They suggested that if it did not, the regulation should be further modified. The preamble to the proposed regulation did use language which might have implied that individuals with overall responsibility for a particular facility could be delegated authority to sign reports. EPA's intent, however, was to allow authorization only to an environmental manager having overall responsibility within a company. This would not normally include persons or positions that have responsibility for environmental matters at an individual facility, or even an operating division of a large corporation. This is necessary to assure high level corporate knowledge of and responsibility for a corporation's pollution control operations. Even though environmental managers of individual facilities may have greater personal familiarity with the discharging facility, these individuals may not have sufficient authority to direct activities and responsibilities within the corporation or require changes to corporate procedures which guarantee that all necessary actions are taken to assure accurate reports and compliance.

Several commenters advocated that EPA modify the signatory requirements for permit applications to allow a person with the level of responsibility for signing reports to sign the applications. EPA addressed signatories for applications under a separate settlement agreement with industry litigants and promulgated final regulations. A discussion of the issue can be found at 48 FR 39611 *et seq.*, September 1, 1983.

4. EPA action. EPA is adopting a final rule equivalent to the proposal. This action is consistent with the Agency's action concerning signatories for permit applications (see § 122.22(a), 48 FR 39611, September 1, 1983) in that EPA intends to relax the burdens of the signatory requirement where adequate responsibility is ensured. However, unlike the revision to application signatory requirements, this rulemaking will allow environmental managers having overall responsibility for a corporation to sign reports if authorized. The less stringent requirement for reports will provide additional relief, but still ensure responsibility.

O. Bypass (40 CFR 122.41(m) [CPR § 122.60(g)])

1. Existing rules. The NPDES regulations prohibit bypass, which is defined as the intentional diversion of waste streams from any portion of a treatment facility. The regulation thus requires permittees to operate their entire treatment facility at all times. There are, however, exceptions to the strict prohibition on bypass even where effluent limitations may be violated as a result. Bypass may be excused if the bypass was unavoidable to prevent loss of life, personal injury or severe property damage and there were no feasible alternatives to the bypass. The "no feasible alternatives" provision is not satisfied if the permittee could have installed adequate back-up equipment as preventative maintenance or to prevent a bypass which occurred during normal periods of equipment downtime.

The prohibition of bypass applies even where the permittee does not violate permit limitations during the bypass. However, permittees may bypass if they do not exceed effluent limitations and if the bypass was for essential maintenance to assure efficient facility operations.

The bypass provision was intended to accomplish two purposes. First, it excused certain unavoidable or justifiable violations of permit effluent limitations, provided the permittee could meet the bypass criteria. Second, it required that permittees operate control equipment at all times, thus obtaining maximum pollutant reductions consistent with technology-based requirements. Without such a provision, dischargers could avoid appropriate technology-based control requirements.

2. Proposed changes. Industry litigants argued that as long as a permittee complies with the effluent limitations in its permit, no further obligations are incurred. These litigants asserted that a decision to bypass treatment equipment is, and should be treated as, a part of the permittee's discretion in selecting how to treat his waste. At most, additional monitoring should be required during these periods of "in compliance" bypassing to assure permit limits are being met. Litigants from the oil and gas industry argued that even a requirement to monitor effluent during a bypass to ensure it was within permit limitations was too difficult and expensive at offshore facilities. They claimed the cost of transporting samples onshore for analysis would be a unique and significant burden on them.

In response to these concerns, EPA proposed to amend the provision prohibiting bypass where the resultant effluent is in compliance with permit limitations. The proposal would allow any bypass which does not cause a violation of permit limitations or other permit conditions. However, to ensure that permit limitations are, in fact, not exceeded during the bypass, the proposed amendment would require permittees to monitor all affected discharge points at the time of any bypass. In response to claims by offshore oil and gas facilities that they had special circumstances, the proposal allowed the Director to waive additional monitoring requirement if the permittee could otherwise demonstrate that effluent limitations will not be exceeded during the bypass.

EPA also proposed to revise the provision that the "no feasible alternatives" condition is not met if the permittee could have installed adequate back-up equipment. The proposal clarified that this provision is not intended to require the installation of back-up equipment in all cases merely because such equipment could prevent the need for a bypass. Rather, backup equipment would be required where the exercise of reasonable engineering judgment indicated that backup equipment was appropriate to prevent bypass during anticipated periods of equipment downtime or preventive maintenance.

3. Comments and responses. In general, industry supported the settlement agreement provision, while State environmental offices and environmental groups opposed the proposal. There are two issues involved in this bypass provision. The first is whether bypass should be allowed when no violation of permit effluent limits results. The second is under what circumstances a permittee must install backup equipment to avoid bypasses during periods of equipment downtime or preventive maintenance.

Supporters of the proposal on the first issue claim there is no justification for prohibiting bypasses that do not cause a violation of permit limits. They argued that the November 18 proposal provides more flexibility in operation and maintenance without decreasing water quality and possibly reduces a facility's operating costs. One commenter supported the relaxation arguing that under the existing regulation an industry might have to shut down operations in order to comply with its NPDES permit even though it was meeting its permit limitations.

Commenters opposed to the proposal stated that a bypass of treatment equipment should be allowed only during essential maintenance and unavoidable breakdown periods and/or only under stated conditions upon approval of the Director. To do otherwise, it was argued, might encourage facilities to "experiment" by eliminating certain unit processes in an effort to cut costs, with potentially disastrous impacts. This group of commenters contended that the CWA intended permittees to fully and effectively operate at all times wastewater treatment equipment installed to achieve permit limits. The proposed provision was regarded as negating this requirement to properly operate and maintain wastewater treatment facilities. Several States pointed out that allowing treatment systems to bypass or run at lower efficiencies, as long as effluent limits or water quality standards are met, undermines the concept of technology-based standards and well-run treatment systems.

The only comment on the provision concerning back-up equipment was a request for clarification of what constitutes "reasonable engineering judgment."

The range of comments on this issue and further analysis convinced EPA that the November 18 proposal on bypass needed further refinement.

EPA believes that the restriction on bypasses where permit limits are being met is necessary for several reasons. EPA's effluent limitations guidelines and standards-setting process are predicted upon the efficient operation and maintenance of removal systems. A number of the effluent limitations

guidelines and standards upon which NPDES permits are based do not contain specific limitations for all of the pollutants of concern for the given industry. For example in the aluminum forming industry, toxic metals such as cadmium, nickel, copper, lead, and selenium found in this industry's wastewaters are not specifically regulated. The data available to EPA show that effective control of these pollutants can be obtained by controlling the discharge of the pollutants regulated by the standard (i.e., chromium, zinc, and aluminum) to levels achievable by the model treatment technology upon which the effluent guideline limits are based. Effluent limitations guidelines imposed on the pulp, paper and paperboard industry are based, in part, upon biological treatment and several pollutants of concern are not specifically regulated due to their effective removal of good biological treatment. Resin acids, fatty acids, bleach plant derivatives, and chloroform are found in wastewaters from plants in this industry and are found to be effectively controlled by efficient biological treatment. If bypass of treatment equipment is allowed, there is no assurance that these unlimited pollutants will be controlled, even though those specifically limited still meet permit limitations.

Similarly, permit writers who establish permit limitations based on their best professional judgment (BPJ) generally evaluate the relevant treatment system and often decide that limitations on all pollutants of concern are not necessary. This may be because, as in the effluent limitations guidelines process, it is determined that limitations on only some of the pollutants will provide adequate control of remaining pollutants so long as treatment equipment is properly operated and maintained. This eliminates the need to impose numerous pollutant limitations and corresponding monitoring requirements which are burdensome and costly to the permittee. It may also be that the treatment system will remove some pollutants to de minimis levels or levels which are difficult to accurately detect. Again the permit writer may determine that it is unnecessary to limit such pollutants which properly run treatment systems will remove. If bypasses of treatment equipment are allowed, it is possible that all pollutants of concern will not receive the level of control anticipated in the establishment of permit limitations.

Several commenters raised questions related to the extent of additional monitoring which would be necessary if bypass up to permit limits was authorized. Some disagreed with the need for special treatment for oil and gas facilities. EPA's decision not to change the existing regulations render this issue moot. Nonetheless, the Agency believes it is appropriate to respond to certain comments on the issue. EPA is persuaded that the special provision allowing offshore oil and gas facilities to dispense with monitoring during periods of bypass was unjustified. Very few oil and gas facilities are situated such that it is unusually or unduly difficult and costly to maintain contact with mainland entities. Considering the unlikelihood that other demonstrations of compliance could be adequately made and the potential for serious adverse cumulative impacts from noncompliance by offshore facilities, EPA now believes the special treatment of these facilities was inappropriate.

The second major bypass issue was when back-up equipment is required to prevent bypass. The only comment on the provision was a request for clarification of what constitutes "reasonable engineering judgment." EPA has concluded that the term "reasonable engineering judgment" by its very nature requires a case specific determination and should not be defined in the regulation because of the complex circumstances that arise in individual cases.

4. EPA action. Today's final rule differs from the November 18 proposal. EPA is retaining the existing provision which prohibits bypass even if effluent limitations are not exceeded except for essential maintenance to assure efficient operation of the treatment facility. As described previously, bypassing may affect the effective removal of pollutants of concern which may not be specifically limited in the permit, but which are intended to be controlled.

In cases where in-process changes are made to eliminate or reduce pollutants limited in the permit, the permittee has the opportunity to petition the permitting authority to modify the permit limits. In addition, where a permittee wishes to permanently alter his treatment equipment, for example to replace an outdated component with more efficient, cost-effective equipment, a permit modification may be requested. At that time, the permitting authority may review the appropriateness of the request and the potential impacts of any changes to ensure all pollutants of concern continue to be adequately controlled.

Generally, maintenance is that which is necessary to maintain the performance, removal efficiency and effluent quality of the pollution control equipment. However, for purposes of this section, it is necessary to distinguish between maintenance that is "essential" and that wl ich is routine. Further, a distinction must be drawn between what is considered essential maintenance for industrial treatment systems and that for publicly-owned wastewater treatment plants (POTWs). Industrial facilities usually experience periods of nonprocess operation during which the facility operator can carry out the recommended maintenance procedures contained in the operation and maintenance manual for the facility and/or maintenance advised by the design engineer. Maintenance that can be performed during periods of nonprocess operation at an industrial treatment facility is considered to be routine maintenance, not essential maintenance. However, repairs and maintenance that cannot wait until the production process is not in operation would be deemed essential. If, for example, the seal on a valve malfunctions or a pipe bursts during production hours at an industrial facility and the facility operator bypasses that particular unit process in order to perform corrective maintenance, such maintenance would be considered essential. Of course, economic consideration alone would not be sufficient reason to qualify maintenance as essential.

Unlike most industrial facilities, POTWs are required to operate continuously. Therefore, maintenance must normally be conducted while the treatment facility is in operation. In this situation, it is often unavoidable to bypass certain equipment during maintenance. These maintenance activities would generally be classed as essential. However, since POTWs frequently have capacity exceeding normal loadings, maintenance can normally be conducted during periods of lower flow with no loss in treatment plant performance.

Seasonal effluent limitations which allow the facility to shut down a specific pollution control process during certain periods of the year are not considered to be a bypass. Any variation in effluent limits accounted for and recognized in the permit which allows a facility to dispense with some unit processes under certain conditions is not considered bypassing.

The bypass provision covering back-up equipment is promulgated as proposed. EPA believes that the existing provision could be interpreted to require unnecessary auxiliary treatment facilities. Necessary auxiliary facilities are those back-up systems which should have been installed in the exercise of reasonable engineering judgment to prevent a bypass from occurring during normal periods of equipment downtime or preventive maintenance.

P. Upset Defense (40 CFR 122.41(n), [CPR § 122.60(h)])

1. Existing rules. Several Courts have ruled that since the equipment underlying technology-based limitations is inherently subject to failure for reasons beyond the control of the operator, EPA must allow for upsets in applying these standards. *See Marathon Oil Co.* v. *EPA,* 564 F.2d 1253 (9th Cir. 1977); *FMC Corp.* v. *Train,* 539 F. 2d 973 (4th Cir. 1976). (For a full explanation of applicable case law, see 44 FR 32863, June 7, 1979.) An upset is an exceptional incident in which there is a temporary and unintentional noncompliance with permit effluent limitations because of factors beyond the reasonable control of the permittee (§ 122.41(n)(1)[CPR § 122.60(h)(1)]). For example, a power failure may cause a treatment system not to function, resulting in a permit violation before the facility can halt its discharge. Section 122.41(n) recognizes an upset as an affirmative defense to an enforcement action for violations of technology-based permit limitations. To establish an upset defense, a permittee must notify EPA of its occurrence within five days and, in any enforcement action, must demonstrate the specific cause of the upset and that the violation was beyond the permittee's reasonable control. Since permittees must develop the information necessary to establish the defense at the time of the upset, the demonstration requirements serve to encourage permittees to examine the treatment facility and to take steps to prevent future noncompliance resulting from the cause of the upset.

2. Proposed changes. Industry litigants argued that the upset defense should also apply to violations of water quality-based limitations, since compliance with these standards also depends upon technology. EPA proposed a change to extend the upset defense to permittees that violate water quality-based permit limitations. The proposal would require the permittee to demonstrate that instream water quality standards were achieved in all stream segments, and for all parameters that could have been affected by the discharge. EPA explained that it was not required to provide an upset defense for water quality standards, since the CWA requires strict compliance with water quality standards, regardless of the efficiency of treatment technology. Nevertheless, EPA reasoned, there was no reason to penalize a discharger that can prove the occurrence of an upset if water quality standards were met despite noncompliance with permit requirements.

EPA also proposed to modify the requirement that permittees demonstrate the specific cause of the upset. Litigants were concerned that identification of specific causes would make the defense useless in many cases. To prevent an overly literal application of this requirement that might require a discharger to produce a scientifically impossible level of proof, EPA proposed to delete the word "specific."

3. Comments and responses. A number of commenters supported the proposal, stating that dischargers should not be penalized for an upset that violates water quality-based permit limits, but not water quality standards. Another commenter supporting the proposal stated that EPA should not require permittees to demonstrate that water quality standards were maintained throughout the upset. Several other commenters questioned the feasibility of implementing the proposal and, in particular, whether it would be possible for permittees to make the required demonstration.

After reevaluating the proposal in light of the comments on implementation, it is apparent that it is not practical to extend the upset defense to violations of water quality-based limitations. Failures of pollution control equipment can occur on water quality limited stream segments. However, water quality standards are established to protect uses of the water, and are legally required to be met all times. See CWA section 310(b)(1)(C). Any defense for upsets must ensure that water quality standards are achieved at all times throughout the upset. The proposal to establish an upset defense in permits, consistent with the CWA emphasis on protection and enforcement of water quality, would require a showing that water quality standards continued to be achieved in all stream segments, and for all pollutants, potentially affected by the discharge. Permittees would be required to begin monitoring the receiving waters as soon as the upset occurred and to continue to monitor until it was certain that the upset could no longer cause a violation of the water quality standards in the stream segment. To establish the defense, permittees would need to do continuous monitoring on all stream segments that may be affected. If permittees were unable to perform such monitoring, they would be unable to use the defense.

Although the proposal would seemingly allow permittees to claim an upset defense, the costs, burdens, and technical difficulty of establishing that water quality standards were not violated would make the defense nearly impossible for permittees to establish. Since upsets are by definition unexpected, gaps in monitoring would inevitably occur at the onset of the upset condition. Gaps in the monitoring record could create uncertainty as to whether the permittee had complied with water quality standards at all times. In addition, questions could arise as to whether the permittee had monitored all appropriate stream segments. Monitoring and analytical costs for permittees trying to establish an upset defense are likely to be very high for all but minor upsets (for such upsets, EPA is likely to use its enforcement discretion anyway).

Since it would be almost impossible for a permittee to establish the upset defense, the proposed extension would be illusory; adding a provision to the regulations that suggests the existence of such a defense would merely create confusion, This does not mean that dischargers will be penalized whenever an equipment failure that is not within the operator's control occurs. EPA will continue to evaluate such discharges on a case-by-case basis and use its discretion in deciding whether to bring an enforcement action. This approach is more realistic than allowing an affirmative defense for upset that for most purposes cannot be substantiated by the requisite showing for water quality standard protection.

Several States opposed the proposal, suggesting that for violations of water quality-based permit limitations, the NPDES permitting authority should exercise its discretion to determine whether an upset was justifiable. One State went further to suggest that the entire upset provision be deleted and that enforcement discretion should be applied to all permit violations, with permittees left to establish their own defense. For upsets that result in violations of technology-based standards, EPA believes the upset provision is a more reasonable approach which is fully consistent with all legal opinions on the issue. Although most courts have concluded that EPA could rely on its enforcement discretion and need not provide a formal upset provision, EPA continues to believe that

all parties will benefit from allowing permittees an opportunity to present their claims in a formal judicial proceeding. The upset provision also comports with those decisions which have required some form of upset relief. (For a more thorough discussion of applicable case law, see 44 FR 32863 (June 7, 1979)). However, EPA agrees that reliance on enforcement discretion is best with respect to violations of water quality-based permit limitations.

Several persons commented on the proposed deletion of the word "specific" from § 122.41(n)(3)(i) [CPR § 122.60(h)(3)(i)]. Most supported the proposal, but one suggested the change was unnecessary. EPA believes the clarification is desirable since it will eliminate confusion over the meaning of § 122.41(n)(3)(i). This revision clarifies that the regulation does not require investigation to an impossible degree of certainty. For example, there may be cases where biological activity is disrupted in a treatment system, where no change in raw waste characteristics could be identified, and where a thorough investigation by the permittee could not identify the precise cause of the change resulting in the violation. Such evidence could be adduced to show the "cause" required by the regulation, even though the precise cause eluded detection.

EPA would also like to clarify whether a demonstration of "cause" of an upset required under § 122.41(n) can be based upon circumstantial evidence rather than direct evidence. It is EPA's intent that any demonstration of cause acceptable as proof of fact in court be available to a permittee seeking to utilize the upset defense. Proof of fact may be made through circumstantial as well as direct evidence. Indeed, circumstantial evidence may be all that is available. However, it is not enough simply to show that normal operating procedures were followed at the time effluent limitations were exceeded. The regulation requires at least a thorough investigation of the causes of an incident. Obviously, a claim of upset will be disfavored where previous violations have occurred and no efforts or insufficient efforts were made to identify and remedy the cause or causes.

One commenter felt that the upset defense should be available without limitation to all water quality limited dischargers in order to be consistent with the Agency's proposal of October 29, 1982 to revise regulations governing the adoption of water quality standards. The Agency has since promulgated water quality regulations different from the October 29, 1982 proposal (see 48 FR 51400 *et seq.*, November 8, 1983).

4. EPA action. In view of the comments, we have reevaluated the proposed revisions to § 122.41(n) and decided to retain the existing regulations, except for the minor clarifying revision to the requirement that permittees demonstrate the cause of an upset (§ 122.41(n)(3)(i)). The affirmative defense of upset will thus only apply to violations of technology-based permit limitations. The upset defense is not available to permittees for violations of water quality-based permit conditions. EPA will rely on prosecutorial discretion and the facts surrounding the upset to determine whether to institute an enforcement action in any such case.

Q. Proper Operation and Maintenance (40 CFR 122.41(e) [CPR § 122.7(e)])

1. Existing rule. The existing regulations require all permittees to properly operate and maintain their treatment systems. The regulations provide several specific examples of proper operation and maintenance (O & M). This gives permittees notice of their responsibilities and gives permit authorities an additional enforcement tool when permittees are negligent. The ultimate objective is to reduce pollution by ensuring that treatment facilities operate at maximum efficiency.

2. Proposed changes. Industry litigants challenged these regulations on the grounds that their specificity improperly infringed upon internal plant management. They also were concerned with language stating that backup equipment must be properly operated and maintained could be interpreted to require such equipment in all cases. In response, EPA proposed to delete most of the specific examples of proper O & M and to clarify that this provision did not impose a requirement to install backup equipment. The proposed deletion of the examples was not intended to remove any obligation of the permittee to properly operate and maintain its treatment equipment but rather to provide greater flexibility to ensure that this is done. The backup provision would still require *available* backup systems to be properly operated and maintained.

3. Comment and responses. Six comments were received on this proposal. Five comments were from industry and supported the change, generally citing the litigants' concerns discussed above. One State agency objected to the proposal on the grounds that it gave too much discretion to the permittee to decide what constitutes proper O & M, and stated that backup systems could be reasonably required in some cases. With regard to this comment, EPA has concluded that flexibility is justified and that the proposal still provides adequate environmental protection. The change is not meant to imply that the examples in the existing regulations are no longer considered elements of proper O & M. Permittees remain accountable for any O & M failings, as determined by the permitting authority, even if they occur in those areas deleted from the current regulations. With regard to the comment that installing backup equipment may often be reasonable, EPA agrees and emphasizes that such installation may still be required on a case-by-case basis by the permitting authority. Permit writers are also encouraged to be specific in formulating proper O & M requirements in the permit, especially where poor or inadequate O & M practices have caused problems in the past. This should help to avoid disputes later as to the degree of discretion allowed the permittee.

4. EPA action. The proposal does not restrict the permitting authority either in taking action for improper O & M or from requiring backup equipment to be installed on a case-by-case basis. It merely deletes certain examples of proper O & M and makes clear that installation of backup equipment is not a universal requirement. The final regulation is therefore promulgated as proposed.

R. Mistake and Failure of Technology To Meet Best Professional Judgment (BPJ) Limits as Grounds for Permit Modification (40 CFR 122.62(a) (16), (17) [CPR § 122.15(a)(5)])

1. *Existing rules.* The current regulations provide limited causes for modifying a permit during its term. These causes do not include as grounds for permit modification either correction of mistakes made at the time of permit issuance or failure of technology on which effluent limits were based to achieve the effluent limitations imposed in a best professional judgment (BPJ) permit. Under the current regulations, a permittee would have no immediate redress for BPJ permit limitations which appropriate, properly installed and operated treatment technology could not meet. A permittee would have to wait until its permit expired and was renewed before it could become eligible for different effluent limitations. In the case of technical mistakes, such as errors in calculations, or mistaken interpretations of law, the permittee would have no redress under the existing regulation expect to correct

typographical errors. The Agency's anti-backsliding policy (§ 122.44(1) [CPR § 122.62(1)]) would prohibit reissuing a permit with less stringent limitations (See discussion in Part C, above).

2. Proposed changes. Industry parties to the settlement agreement were concerned that permittees may remain in violation of their permits for years before a change of effluent limitations could be obtained in a renewed permit. They were also concerned that technical mistakes could never be corrected since a reissued permit would be required to be as stringent as the original BPJ permit under the Agency's anti-backsliding policy. In response to this concern, EPA proposed to make both mistaken permit conditions and failure of technology to achieve BPJ limitations causes for permit modification.

3. Comments and responses. We received six comments on this proposal; all from industry and all favorable. In general, commenters stated that it was practical and fair for EPA to allow permits to be modified when mistakes are discovered and when properly installed and operated technology required by the permit fails to meet BPJ limitations.

One commenter requested that water quality-based permits be allowed to be modified when there has been a failure of approved technology. This commenter proposed that such a modification of the permit should only be effective until the water quality standards can be reconsidered by the appropriate agency.

Water quality standards are developed by the States, and issued, after approval by EPA, to protect designated uses for particular water bodies or streams. NPDES permits must include water quality-based limitations where the applicable technology-based limitations, whether derived from effluent limitation guidelines or on a BPJ basis, are not stringent enough to ensure compliance with the applicable water quality standards. At the point water quality standards are implemented in the permit issuance process, permit writers do not have the flexibility to reconsider the water quality standards to determine whether they are appropriate or technically achievable. To authorize the modification of an NPDES permit on the basis of BPJ considerations so that it no longer ensures compliance with existing water quality standards clearly cannot be allowed. In addition, to grant the permittee's request pending reconsideration of the water quality standards would result in a de facto change to the standards that is neither within EPA's authority nor appropriate. Rather, the commenter's request should be dealt with in the State's standard setting process. Where a change has been agreed upon by the State, and approved by EPA, provisions for modifying an NPDES permit have already been provided for in the NPDES regulations at 40 CFR 122.62(a)(3) [CPR § 122.15(a)(3)].

One commenter was particularly concerned that the preamble discussion of the proposal drew an overly restrictive interpretation of the types of mistakes which would be grounds for permit modification. This commenter was especially concerned about permits written for new facilities well in advance of start-up and operation. The commenter urged that new information obtained about the particular situation surrounding a discharge be grounds for permit modification. The NPDES permit regulations already provide for permit modification in the event new information, which was not available at the time the permit was issued, is obtained after permit conditions have been established and where the information would have justified the inclusion of different limits at the time the permit is issued. See § 122.62(a)(2) [CPR § 122.15(a)(2)]. This cause adequately provides for permit modification in the circumstances reported by the commenter. However, if the permit was based on a promulgated new source standard, the permittee would be unable to obtain a permit modification (See Anti-backsliding discussion).

4. EPA action. As stated in the preamble to the proposal, whether a mistake results in overly lenient or overly stringent permit conditions, it makes sense to authorize permit modifications to correct the mistake. It also makes sense to modify permit conditions when the treatment technology upon which BPJ effluent limitations are based has been properly installed and operated but nonetheless fails to meet those limitations. In both cases, EPA acknowledges that it is unfair to force a permittee to remain in violation until the permit expires and is renewed. The change will allow EPA to correct earlier errors in permit conditions, such as the inclusion of incorrect compliance dates. The final regulation is promulgated as proposed.

S. Non-adversary Panel Procedures (40 CFR Part 124, Subpart F)

The Administrative Procedure Act (APA) allows decisions on the initial grant of a license or variance to be made by procedures less adversarial than traditional court room procedures, even where a formal hearing is required. Hearings on initial licensing are exempt from formal evidentiary hearing requirements for a number of reasons, most importantly because the complex policy decisions in initial licensing are more akin to rulemaking than adjudication. Additionally, initial licensing decisions do not involve accusation of wrongdoing and, therefore, do not require "separation of functions" within the agency or an initial decision by a statutorily independent individual, such as an administrative law judge (ALJ).

EPA's non-adversary panel procedures for initial licensing were originally promulgated for the NPDES program on June 7, 1979, and revised to include other permit programs on May 19, 1980. Conceived as an innovative and efficient means of resolving disputed scientific and technical issues, these procedures depart from traditional evidentiary procedures in which adversaries present separate cases to an ALJ on a challenge to a final permit decision. Under the non-adversary procedures, participants present their views and arguments to a panel of EPA experts during a two-phased hearing on a draft permit. During the "legislative" phase, the panel explores issues and asks questions. Cross-examination can be ordered during the "adjudicative" phase if certain threshold conditions are met. After the hearing, the panel prepares a recommended decision which may be appealed to the Administrator, whose decision constitutes final agency action subject to judicial review.

1. Applicability of panel hearing procedures to initial licensing permits and variances (40 CFR 124.111).—a. Existing rules. Non-adversary panel procedures are not mandatory. The current regulations grant the Regional Administrator the option to use either these procedures or traditional evidentiary hearing procedures for initial licensing and first grants of a variance. We acknowledge that panel hearings may not always be suitable for initial decisions, especially if the factual issues involved make the decisionmaking more akin to adjudication than to rulemaking. For these reasons, EPA made the decision to make use of non-adversary procedures dependent upon the discretion of the Regional Administrator.

b. Proposed changes. Industry litigants objected in general to the concept of non-adversary panel procedures, claiming that the procedures violate the formal hearing requirement of the Clean Water Act, that variance decisions do not constitute initial licensing, and that Congress never

intended the initial licensing section of the APA to apply to sharply contested issues of fact such as in NPDES permit proceedings. Specifically, litigants objected to the Regional Administrator's unilateral ability to invoke non-adversary procedures. EPA disagreed with industry's legal arguments and maintained its position that panel procedures are legal and provide an efficient, expeditious means of resolving technical and scientific issues. However, persuaded that panel hearings might not prove useful if invoked upon unwilling participants, EPA proposed that permit applicants must consent to the Regional Administrator's decision to use the panel procedures.

c. Comments and responses. EPA received eight comments on this issue, all favorable to the proposal. Some commenters repeated claims of illegal procedures and violations of procedural due process. EPA is unpersuaded by these legal arguments and continues to believe that non-adversary panel procedures for an initial grant of a permit or variance are authorized by the APA. (See 44 FR 32887–32891, June 7, 1979, for more detailed discussion of EPA's legal opinion.) Other commenters endorsed the non-adversary panel procedures, citing cost effectiveness, quicker permitting, better informed presentation of technical issues, and greater opportunity for public participation as the advantages of panel hearings. Nonetheless, they felt that use of such procedures should only be with the consent of the applicant.

d. EPA action. Based in part on an analysis of the legal arguments submitted by commenters and on a reevaluation of the role of panel hearings, EPA has decided to retain the regulation in its current form. Non-adversary panel procedures do not restrict the rights of applicants for first grants of permits or variances, and, therefore, the Agency considers it inappropriate to grant such applicants the authority to veto the informed decision of a Regional Administrator to convene a panel hearing. There is no evidence at all that Regional Administrators have invoked or will invoke panel hearings in inappropriate situations. Regional Administrators are in a better position than permit or variance applicants to decide whether certain procedures will aid decisionmaking or expedite permit issuance. For this reason, the sole authority to invoke the non-adversary panel procedures should remain with the Regional Administrator.

2. Role of panel members in panel hearings (40 CFR 124.120).—a. Existing rules. As stated above, the APA exempts from initial licensing a number of evidentiary hearing requirements, including the concept of "separation of functions" within the agency. This allows initial licensing decisions to be "institutional" rather than adjudicatory and allows EPA to draw on the training and experience of a number of agency employees, including persons who participated in developing the draft permit. The current EPA regulations restrict the number of permit writers on a panel and require that there be at least two panel members who did not participate in developing the draft permit.

b. Proposed changes. Industry parties to the settlement agreement objected to permit writers as panel members on the grounds that it deprives permit applicants of any independent review of the draft permit by the agency, and violates the hearing requirements of the APA. In response to industry's objections, EPA proposed to limit panel members to EPA employees who did not participate in developing the draft permit. As stated in the preamble to the proposal, EPA disagrees with industry's legal arguments on this issue, but proposed the change to avoid the appearance of unfairness.

c. Comments and responses. Comments received on this issue supported the proposal to exclude permit writers as panel members.

d. EPA action. The final regulation is promulgated as proposed.

3. Scope of cross-examination (40 CFR 124.121 (a), (b)).—a. Existing rules. The existing regulations allow cross-examination in a non-adversary panel hearing solely on factual issues. (See § 124.121(a).) The regulation was intended to limit the scope of cross-examination on non-factual issues, since these issues can be better resolved through oral arguments and written presentations. See 44 FR 32886, June 7, 1979.

b. Proposed changes. Litigants were concerned that the limitations would prevent cross-examination on factual issues related to policy decisions. EPA, therefore, proposed to relax the restriction and allow cross-examination on policy questions, but only to the extent required to disclose the factual basis for the permit requirements. The proposal was intended to clarify that all factual judgments are eligible for cross-examination, whether or not they are related to policy judgments.

c. Comments and responses. All comment received supported EPA's proposal. Several commenters argued that there is no basis for treating cross-examination in panel and evidentiary hearings differently. EPA disagrees with this view. The APA allows decision on the grant of an initial license or variance under procedures less adversarial than either courtroom or formal evidentiary hearings. Non-adversary panel hearings are initial licensing proceedings within the APA. However, while the law allows for different limitations on cross-examination, EPA believes it is reasonable to allow limited cross-examination on policy issues where necessary to resolve material factual issues.

d. EPA action. The final regulation on the scope of cross-examination is promulgated as proposed. The new regulation will extend to panel hearings the scope of cross-examination provisions now applicable to evidentiary hearings (§ 124.85(b)(16)). The regulation provides in § 124.121(b) (and in § 124.85(b)(16)), that no cross-examination shall be allowed on questions of policy except to the extent required to disclose the factual basis for permit requirements. This does not preclude cross-examination on facts which form the basis for EPA policy, if such cross-examination relates to the factual basis for permit requirements. Thus, for example, if it were EPA policy to require a specified frequency of monitoring for dischargers of certain pollutants, and if a permittee challenged such a proposed monitoring requirement in a permit subject to a hearing, the permit applicant would be allowed to cross-examine a witness on the factual basis for the required monitoring frequency or why the policy was applied to the applicant's situation. The witness (or EPA counsel) would not be able to terminate the examination simply by answering that the required frequency was EPA "policy."

T. Evidentiary Hearing Procedures

1. Obligation to submit evidence and raise issues (40 CFR 124.13, 124.14, 124.76).—a. Existing rules. The current regulations require all reasonably ascertainable issues to be raised and available arguments and supporting information to be submitted during the public comment period on a draft permit. If not raised or submitted during the public comment period, this information will not be allowed to be introduced in an evidentiary hearing without good cause. The purpose of these procedures is to encourage resolution of issues at the time comments are submitted on a draft permit, rather than in the far more burdensome context of an evidentiary hearing, and to link that hearing directly

to the preceding stages of permit issuance.

b. Proposed changes. Both environmental and industry litigants objected to these requirements on the grounds that the restriction on when evidence may be submitted conflicted with the formal hearing requirements of the Administrative Procedure Act. As a practical matter, litigants argued that the restrictions force parties to engage in "evidentiary overkill" when they disagree with permit terms at the draft permit stage. In response to these concerns, EPA proposed to require only that all reasonably ascertainable issues and available arguments to be raised during the public comment period. Generally, supporting information would not be required to be submitted during the comment period. Rather, all supporting material and factual grounds would be submitted during the public comment periods only if the Regional Administrator either believes that the permit will be contested or elects to reopen the public comment period. In either case, the Regional Administrator would have to determine that submission of evidence during the public comment period would expedite decisionmaking and therefore, require the upfront submission of supporting material in the public notice. If the Regional Administrator either decides that the permit will not be contested or elects not to reopen the public comment period, submission of supporting material and factual grounds would be allowed during an evidentiary hearing.

c. Comments and responses. The six comments EPA received on this proposal were from industry which generally supported the change. The American Petroleum Institute specifically endorsed the language in the preamble to the proposal which stated that Regional Administrators would most likely apply these procedures for submission of all information during the initial comment period primarily for major permits, such as for new factories or nuclear power plants, which are likely to be contested and which will involve complex technical issues.

d. EPA action. Based on these comments, the final regulation is promulgated as proposed. Section 124.14(a)(3) authorizes the Regional Administrator to require the submission of all evidence during the initial comment period where it reasonably appears that issuance of the permit will be contested and "collapsing the comment period" (i.e., requiring this information during the comment period) may substantially expedite the decisionmaking process. Collapsing the comment periods in this manner may impose greater burdens on participants in the permitting process. Accordingly, the Regional Administrators should exercise this discretion with care. Also, Regional Administrators are encouraged to consult with permit applicants and other known interested persons before exercising their discretion to collapse the comment periods. Such consultation will tend to ensure that the decision is an informed one.

2. Ex Parte Communications (40 CFR 124.78(a)(1)).—a. *Existing rules.* The Administrative Procedure Act (APA) prohibits agency decisionmakers in formal hearings from engaging in *ex parte* discussions of the merits with "interested person outside the agency." 5 U.S.C. 557(d) The APA also contains a "separation of functions" provision which requires that no one involved in "investigative or prosecuting functions" may participate or advise in the decision, recommended decision, or agency review * * *" 5 U.S.C. 554(d). The purpose of both requirements is to safeguard the administrative process and ensure impartial decisionmaking.

The current regulations refer to persons involved in "investigative or prosecuting functions" as members of the "agency trial staff" and, thereby, subject them to the *ex parte* rules during evidentiary hearings. Non-EPA witnesses are subject to *ex parte* prohibitions because they are considered "interested persons outside the agency." Under the current regulations, EPA witnesses in evidentiary hearings are not automatically included as part of the agency trial staff, nor are they considered "interested person outside the agency" for the purposes of *ex parte* communications.

b. Proposed changes. Industry parties to the settlement agreement objected to the special treatment afforded to EPA witnesses and claimed that these regulations violated the APA and that EPA's failure to designate its evidentiary hearing witnesses as part of the agency trial staff could result in improper *ex parte* contacts between those witnesses and the decisional body. In response to these concerns, EPA proposed to include as a member of the agency trial staff any EPA employee, consultant or contractor, who is either called as a witness by EPA or assisted in developing the draft permit that is the subject of the hearing. The preamble to the proposal emphasized, however, that EPA does not believe that this step is required by law. As stated in the preamble to the current regulations, witnesses from within EPA are subject to the "separation of functions" provision only if they have performed "investigative or prosecuting" functions. (45 FR 33415, May 19, 1980). However, in order to avoid any appearance of unfairness, EPA proposed the above revision.

c. Comments and responses. EPA received three comments on this proposal which were from industry and supported the proposed change.

d. EPA action. The final regulation is promulgated as proposed.

U. Deferral of Hearing on New Source Determination (40 CFR 122.21(k)(4) [CPR § 122.53(h)(4)])

The Clean Water Act treats new sources differently from existing sources. New sources are subject to new source performance standards (NSPS) promulgated pursant to section 306 which reflect the greatest degree of effluent reduction achievable through the application of best available demonstrated control technology (BADT). Existing sources, on the other hand are subject to different, often less stringent, technology-based effluent limitations, representing either best practicable control technology (BPT) or best available technology (BAT) or best conventional technology (BCT). The issuance of an NPDES permit to a new source may also constitute a major Federal action significantly affecting the quality of the human environment, triggering the environmental impact statement provisions of the National Environmental Policy Act (NEPA). (CWA section 511(c)). For these reasons, the decision of whether a facility is a new source (new source determination) is as important to the discharger as it is to the Agency. If dischargers or third parties disagree with the Agency's decision they may challenge the new source determination in an evidentiary hearing.

1. Existing rule. The current regulations allow the Regional Administrator to defer an evidentiary hearing on a new source determination until after a final NPDES permit decision is reached. The purpose of the regulation is to allow EPA to combine challenges to the final NPDES permit decision with challenges on the new source determination, and thus save Agency resources by conducting one evidentiary hearing.

2. Proposed changes. Litigants were concerned that deferral of a hearing on the new source determination could lengthen the permitting process and increase their costs if the original decision was changed in the hearing. EPA, therefore, proposed to authorized the Regional Administrator to defer an

evidentiary hearing on a new source determination only if all parties to the hearing agreed. The proposal would recognize that an early new source hearing could benefit the permit applicant by informing him of whether he would have to comply with BAT effluent guideline limitations or the generally more stringent new source performance standards. To defer such a hearing might later subject the applicant to potential additional construction costs to comply with new source requirements. The applicant might also be subject to unreasonable expense and delays caused by a NEPA evaluation, which was begun by EPA and later determined to be unnecessary by the hearing decision.

3. Comments and responses. The four commenters on this issue all supported the EPA proposal, noting that the Regional Administrator should not be allowed to defer the new source hearing where any party requested an early hearing. The commenters stated that an early hearing on a new source determination would resolve the important question of what treatment standards the facility must be constructed to meet. Three of the commenters were concerned that a deferred hearing would force the applicant to comply with costly additional new source requirements at the end of the permit issuance process (presumably when the facility plans to begin operation). Two commenters when the facility plans to begin operation). Two commenters also noted that an early hearing would help to resolve EPA's obligations under NEPA, since new sources requiring EPA-issued permits are subject to NEPA environmental review requirements.

EPA agrees that the permit applicant should not have to wait until the end of the permit issuance process for a final determination on whether he will be subject to treatment requirements for existing sources or new sources. Otherwise, there may be cases where the applicant designs a facility to meet requirements for existing sources, and subsequently learns that further costs must be allotted to meet a more stringent new source performance standard before the facility can begin operation. An early hearing on the new source determination would also allow EPA to begin its NEPA review work as early as possible, and to limit possible NEPA delays in issuing the final new source permit. In other cases, the early hearing could avoid the necessity of performing a potentially costly NEPA review.

4. EPA actions. EPA is promulgating the final rule as proposed. A timely hearing on the new source determination will provide permit applicants with greater certainty on the applicable treatment requirements, and on the costs to meet these requirements. The rule will also allow EPA to complete any required NEPA review (if the facility is a new source) at an early stage and thus limit delays in permit issuance. It will also resolve whether a facility is prohibited from constructing the source due to EPA's pre-permit construction ban (§ 122.29(c)(4) [CPR § 122.66(c)(4)], See Part C, above). These benefits override any additional burdens on EPA to conduct separate new source and permit hearings.

V. New Source Criteria (40 CFR 122.29(b) [CPR § 122.66(b)])

1. Existing rules. On May 19, 1980, EPA published criteria for new source determinations (40 CFR § 122.66(b)) under the NPDES program as part of its Consolidated Permit Regulations (45 FR 33290). Under that regulation a discharger would be classified as a new source if it was a new facility, if it totally replaced an existing source, or if the construction at the site of an existing facility changed the nature or quantity of pollutants discharged. The classification of a facility as a new or existing source is important because under the CWA existing sources are subject to best available technology (BAT) and best conventional technology (BCT) requirements, while new sources are subject to the generally more stringent new source performance standards (NSPS) under section 306 of the CWA. This distinction is based on the concept that new facilities have the opportunity to install the best and most efficient production processes and wastewater treatment technologies. Section 122.2 [CPR § 122.66(b)] is intended to ensure that all sources are properly classified.

2. Proposed changes. On September 9, 1980, EPA suspended CPR §122.66(b) (1) and (2) (45 FR 59317). This suspension responded to industry criticism that the language of the third criterion (CPR §122.66(b)(1)(iii)) was overly broad and could be interpreted as classifying some structures as new sources that more appropriately should be considered as modifications of existing sources. On the same day, (45 FR 59343), EPA proposed that, in those situations where there was new construction but less than total replacement at existing facilities, the classification decision should be based on the degree to which the constructed facility functions independently of the existing source. The substantial independence test was aimed at ascertaining whether an existing source which undertakes major construction that legitimately provides it with the opportunity to install the best and most efficient production processes and wastewater treatment technologies should be required to meet new source performance standards at that facility. Because EPA had already suspended the rule and proposed a new rule at the same time that settlement negotiations on the Consolidated Permit litigation began, EPA removed the issue from the scope of settlement discussions. However, to combine the two NPDES rulemakings, EPA is adopting the final new source criteria with the balance of the NPDES litigation issues.

3. Comments and responses. During the public comment period, EPA received twenty-one comments. Most of the commenters approved of the "substantial independence" test as a means of looking at the functional relationship between the existing facility and new facility.

One commenter suggested that further clarification was needed on the meaning of "substantially independent," and suggested a list of factors that should be considered in making such a determination. EPA agrees that such a clarification would help in making new source determinations. Today's amendment, therefore, adds two factors to be examined in deciding if new processes are substantially independent of existing facilities.

The first factor is the degree of integration of a new process with existing processes. Under this first factor, if the new facility is fully integrated into the overall existing plan, the facility will not be a new source. For example, a plant may decide to improve the quality of a product by installing a new purification step into its process, such as a new filter or distillation column. Such a minor change would be integral to existing operations and would not require the facility to be reclassified as a new source. However, on the other extreme, if the only connection between the new and old facility is that they are supplied utilities such as steam, electricity, or cooling water from the same source or that their wastewater effluents are treated in the same treatment plant, then the new facility will be a new source.

Four commenters argued that if a new process or plan uses existing wastewater treatment equipment, for that reason alone it should not be considered a new source. EPA disagrees with these comments. The legislative history of the CWA indicates that new

source requirements were intended to apply where new construction allows flexibility to incorporate new pollution control technology. The fact that a facility can be constructed to utilize an existing waste treatment plant does not address the issue of whether new technology could have been installed. To allow the use of an existing wastewater treatment system, by itself, to preclude the application of new source requirements would frustrate clear statutory intent.

One of the commenters went further and claimed that EPA had no legal authority to impose new requirements in this situation. The commenter argued that if a new facility's discharge is conveyed to waters of the United States through an existing waste treatment system, this new facility cannot itself be classified as a separate point source under the CWA. This claim is contradicted by language of the Act and by case law. A newly constructed facility can clearly meet the statutory definition of "source," which covers any "building, structure, facility, or installation from which there is or may be the discharge of pollutants" (section 306(a) of the Act). When a similar claim was raised in *Mahelona* v. *Hawaiian Electric Co.*, 9 ERC 1625 (D. Hawaii 1976), the Court held that the point source was the facility generating the discharge, not the system treating it.

The second clarifying factor that EPA has added is the extent to which the construction results in facilities or processes that are engaged in the same general type of activity as the existing source. Under this second factor, if the proposed facility is engaged in a sufficiently similar type of activity as the existing source, it will not be treated as a new source. For example, if a plant begins to produce a new product, e.g., nylon synthetic fiber, which is very similar to the product currently being produced by that plant, e.g., polyester synthetic fiber, using equipment that is essentially the same as the existing production equipment, this would likely be considered an existing source. However, if a plant producing a final product, e.g., polyester synthetic fiber, adds new equipment to produce the raw materials for that product, e.g. teraphtalic acid or ethylene glycol, the proposed structure would likely constitute a new source. Of course, to the extent the construction results in facilities engaged in the same type of activity because it essentially replicates, without replacing, the existing source, the new construction would result in a new source.

The proposed regulation provides that if there is no independently applicable new source performance standard a source being classified as a new source under this section would be considered a new discharger. Several industry commenters, all of whom are parties to the litigation, questioned EPA's authority for the new discharger category. EPA continues to believe that EPA has authority to establish the new discharger classification. By such classification EPA is not requiring new dischargers to meet new source performance standards. EPA has merely devised appropriate procedural and substantive requirements for issuing a discharger its first NPDES permit. (See also amendments to the new discharger definition—48 FR 39619, September 1, 1983.)

One commenter further argued that a new facility at the site of a plant in existence before October 18, 1972, could never fit the definition of "new discharger" because there will have been discharges from the existing plant at the site prior to October 18, 1972. This comment misinterprets the definition of "new discharger" in § 122.2 [CPR §122.3]. A new discharger includes a new facility at any site at which "it," the *new facility*, had not discharged pollutants before October 18, 1972; the fact that there may have been discharges from another facility at that same site is irrelevant.

Several commenters suggested that EPA should consider whether the new facility *actually* operates substantially independently of the existing facility, not whether it *could* operate substantially independently, as stated in the preamble to the September 9, 1980 proposal (45 FR 59344). EPA agrees with this interpretation and will so apply the substantial independence test. Because language suggesting a contrary interpretation appeared in the preamble to the proposed rule, no change in the regulatory language is necessary. The test in § 122.29(b)(1)(iii) [CPR § 122.66(1)(iii)] will continue to be whether the processes of the new facility *are* substantially independent.

One commenter suggested that "totally independent" should be substituted for "substantially independent." EPA disagrees with this comment, since it could be argued that any new building, structure, facility, or installation at the same site as an existing facility has some *de minimis* relation to that existing facility.

Some commenters suggested that modernization by means of total replacement of process or production equipment should not result in a new source determination unless it results in the discharge of significant new pollutants. EPA disagrees. Total replacement effectively involves the construction of a new facility, which Congress intended to make subject to new source requirements. An entirely new plant built at the site of an existing plant it totally replaces is no less a new source than the same plant built at a greenfield site, and should be required to build in new source treatment technology.

In a similar situation, if a facility replicates an existing facility, the fact that it shares or uses common land with another source does not prevent it from being considered a new source. The same criteria would be applied on a case specific basis. Thus, if a power company builds a new, but identical and completely separate power generation unit at the site of a similar existing unit, the new unit will be a new source. However, if a facility increases capacity merely by adding additional equipment in one or two production steps to remove a "bottleneck," it will not be a new source. For example, a plant which uses a four step process to convert ethylene oxide into ethylene glycol may increase capacity by installing additional equipment in steps 1 and 3. Such an expansion is likely to be a modification of the existing plant.

One commenter suggested that the phrase in proposed § 122.66(b)(1)(iii), "and it meets the definition of new source in [§ 122.2 [CPR §122.3]]," should more clearly modify all three items under (b)(1). EPA agrees and has placed this phrase at the beginning of (b)(1). This commenter also suggested that the two sentences beginning "A source meeting * * *" be made a separate paragraph (b)(2), with the succeeding paragraphs of (b) renumbered. EPA also agrees with this reformatting and has so amended the regulation. The NPDES new source criteria will apply to all industries where new source performance standards have been proposed or promulgated, except where new source definitions or criteria are otherwise specified in the industry effluent limitation guideline regulations. At the present time only two industries have such specific criteria—(1) the definition of new source in the wet process hardboard subcategory of the Timber Products effluent limitations guideline (See 46 FR 45382, October 13, 1982); and (2) the criteria for new source determinations in the Coal Mining effluent limitations guideline (See 46 FR 8260, January 26, 1981).

4. EPA action. In the final rule, EPA has retained the proposed substantially

independent test to ascertain whether construction at the site of an existing source, which does not involve total replacement of process or production equipment, would result in a new source. EPA has clarified this test by adding the following factors which should be considered in making the determination of whether construction at an existing facility results in processes that are substantially independent and therefore qualify as a new source: (1) The extent to which the new facility is integrated with the existing plant; and (2) the extent to which the new facility is engaged in the same general type of activity as the existing source.

W. Modification of NPDES Permits (40 CFR 122.62, 122.63 [CPR §§ 122.15, 122.17])

1. Existing rules. The NPDES permit regulations specify causes for permit modification. In general, permits are not modified to incorporate changes made in regulations during the term of the permit. This is to provide some measure of certainty to both the permittees and the Agency during the term of the permits. Thus, the changes made in today's final promulgation of regulations, with few exceptions, do not affect or provide cause for modification of existing permits. Permittees must comply with the terms of their permits, even if those terms might be different than the requirements of subsequent regulations. See CWA section 402(k).

2. Proposed changes. Industry litigants were concerned that current regulations would preclude modification of permits to incorporate changes made by today's regulations. Thus, in order to allow current permittees to benefit from today's final rules, EPA proposed to add a new subsection to § 122.62 [CPR § 122.15] allowing NPDES permits that became final after March 9, 1982, to be modified to conform to the final rules concerning bypass, actual production, total metals, and discharge into POTWs, wells, or by land disposal. (Specific discussions on each of these final rules appear above.) In order to prevent the administrative burden that would result if all currently issued permits were eligible for modification, EPA proposed to allow modification only for permits issued after March 9, 1982, and limited those provisions for which modification was available. Otherwise, permit modifications would create a severe administrative burden and divert Agency resources better spent in reissuing permits.

A permittee seeking modification would be required to demonstrate that it qualifies for the modification and that good cause exists to modify the permit. A permittee would also have to request modification within 90 days of the issuance of a final rule. The good cause requirements calls for the permittee to show something more than that it qualifies for the modification since such a showing must be made in any modification request. For example, the permittee might show good cause by demonstrating that the modification would result in cost savings, reduce energy consumption, allow the use of simpler or more reliable control technologies, or otherwise significantly alleviate the burdens imposed by its current permit terms and conditions, including permit limits.

EPA also proposed to add a new subsection to § 122.63 [CPR § 122.17] allowing modifications to incorporate certain newly modified provisions to be processed as minor permit modifications. These provisions are: proper operation and maintenance, planned facility change, bypass, upset, and toxics notification. (For specific discussions on each of these, see above.) Changes to a permit to reflect these revised rules could, under that proposal, be processed through the streamlined minor modification procedure which does not require public notice and comment. These provisions do not require recalculation of permit limits; they merely add boilerplate language to the permit. Therefore, full notice and opportunity for comment and public hearings on the changes to a specific permit are not essential. The notice and opportunity for comment on today's final rule have provided for adequate public participation on these provisions.

3. Comments and responses. Five comments were received on the modification of NPDES permits portion of the proposal. The commenters supported the proposal because it was believed it would prevent unnecessary applications for evidentiary hearings by applicants. The changes were viewed as conserving administrative resources while allowing a greater number of permittees to benefit from EPA's proposed revisions.

One commenter advocated allowing permits to be modified if the existing NPDES permit has been extended pending the issuance of a "second-round" permit; or if the permit is currently the subject of an enforcement proceeding which would be rendered moot by today's revisions; or if the permit has been subject to noncompliance problems which would be eliminated by today's revisions.

Permits which have "expired" cannot be modified. While expired permits may be continued in effect beyond the permit terms under the Administrative Procedure Act and § 122.6 [CPR § 122.5], these permits may only be changed by reissuance. The other two situations advocated by the commenter concern violations of existing regulations or permit conditions. To allow broad retroactive application of permit revisions thereby rendering moot enforcement and noncompliance actions would thwart the intent of the CWA and the NPDES permit regulations. Permit conditions must be met during the term of the permit. And, in the situations described, a violation of permit conditions has occurred and enforcement or noncompliance actions have been deemed warranted. Subsequent changes in the regulation do not change the fact that violations of permit conditions occurred under the applicable regulations.

4. EPA action. EPA agrees that the modification of permits to conform to today's regulations is appropriate in order to prevent unnecessary administrative hearings and litigation. The cutoff date precludes unnecessary modifications that could place a strain on Agency or State resources. Therefore, the proposal is adopted in the final regulations. However, since some of the subjects listed in the provisions qualifying for modifications under today's rulemaking are not being changed in accordance with the settlement agreement and instead EPA is retaining the existing regulations, there is no need to provide a cause for modification of permits for those provisions. Section 122.62 covers only actual production and total metals. Section 122.63 covers only operation and maintenance, planned facility change, one specific provision relating to bypasses, and toxics notification.

III. EFFECTIVE DATE

Section 553(d) of the Administrative Procedure Act (APA) generally requires publication of a substantive rule not less than 30 days before its effective date. The purpose of this requirement is to allow sufficient lead time to prepare for compliance with new regulatory requirements. EPA considers today's rulemaking of sufficient complexity and import that the regulations shall not go into effect until October 26, 1984.

IV. 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. These amendments generally make the

regulations more flexible and less burdensome for affected permittees. For some provisions they make no change from the existing regulations. These regulations do not satisfy any of the criteria specified in section 1(b) of the Executive Order and, as such, do not constitute major rulemakings. This regulation was submitted to OMB for review.

V. PAPERWORK REDUCTION ACT

In accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, EPA must submit to the Director of OMB for review and approval, new or revised requirements for collection of information. The amendments promulgated today generally decrease or eliminate requirements for the collection of information. The revised information collection requirements in this rule are not effective until OMB approves them and a technical amendment to that effect is published in the **Federal Register.**

VI. REGULATORY FLEXIBILITY ACT

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA is required to prepare a Regulatory Flexibility Analysis to assess the impact of rules on small entities. No regulatory flexibility analysis is required, however, where the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Today's amendments to the regulations generally make the regulations more flexible and less burdensome for permittees. For some provisions they make no change from the existing regulations. Accordingly, I hereby certify, pursuant to 5 U.S.C. 605(b), that these amendments will not have a significant impact on a substantial number of small entities.

List of Subjects

40 CFR Part 122

Administrative practice and procedure, Reporting and recordkeeping requirements, Water pollution control, Confidential business information.

40 CFR Part 124

Administrative practice and procedure, Air pollution control, Hazardous materials, Waste treatment and disposal, Water pollution control, Water supply, Indians—lands.

40 CFR Part 125

Water pollution control, Waste treatment and disposal.

(Clean Water Act, 33 U.S.C. 1251 *et seq.*)

Dated: September 4, 1984.

Alvin L. Alm,

Acting Administrator.

1. The heading for Part 122 is revised to read as follows:

PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

Subpart B—Permit Application and Special NPDES Program Requirements

1a. Section 122.21 is amended by designating the existing paragraph (c) as (c)(1) and adding new paragraphs (c)(2) and (f)(9), by revising paragraphs (f) (7), (g)(7) introductory text, (g)(7)(i)(B), (g)(7)(iii), (g)(9), (g)(10), and (k)(4) to read as follows:

§ 122.21 Application for a permit (applicable to State NPDES programs, see §123.25).

* * * * *

(c) * * *

(2) Any existing storm water discharger under § 122.26 that does not have an effective permit shall submit an application by March 26, 1985. Any discharger designated under § 122.26(c) shall submit an application within 6 months of notification of its designation.

* * * * *

(f) * * *

(7) A topographic map (or other map if a topographic map is unavailable) extending one mile beyond the property boundaries of the source, depicting the facility and each of its intake and discharge structures; each of its hazardous waste treatment, storage, or disposal facilities; each well where fluids from the facility are injected underground; and those wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant in the map area. Group II storm water discharges, as defined in § 122.26(b)(3), are exempt from the requirements of paragraph (f) (7) of this section.

* * * * *

(9) For Group II storm water dischargers (as defined in § 122.26(b)(3)) only, a brief narrative description of:

(i) The drainage area, including an estimate of the size and nature of the area;

(ii) The receiving water; and

(iii) Any treatment applied to the discharge.

(g) * * *

(7) *Effluent characteristics.* Information on the discharge of pollutants specified in this subparagraph. When "quantitative data" for a pollutant are required, the applicant must collect a sample of effluent and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR Part 136. When no analytical method is approved the applicant may use any suitable method but must provide a description of the method. When an applicant has two or more outfalls with substantially identical effluents, the Director may allow the applicant to test only one outfall and report that the quantitative data also apply to the substantially identical outfalls. The requirements in paragraphs (g)(7) (iii) and (iv) of this section that an applicant must provide quantitative data for certain pollutants known or believed to be present do not apply to pollutants present in a discharge solely as the result of their presence in intake water; however, an applicant must report such pollutants as present. Grab samples must be used for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, and fecal coliform. For all other pollutants, 24-hour composite samples must be used. However, a minimum of one grab sample may be taken for effluents from holding ponds or other impoundments with a retention period greater than 24 hours, and a minimum of one to four (4) grab samples may be taken for storm water discharges depending on the duration of the discharge. One grab sample shall be taken in the first hour (or less) of discharge with one additional grab sample taken in each succeeding hour of discharge up to a minimum of four grab samples for discharges lasting four or more hours. In addition, the Director may waive composite sampling for any outfall for which the applicant demonstrates that the use of an automatic sampler is infeasible and that the minimum of four (4) grab samples will be a representative sample of the effluent being discharged. An applicant is expected to "know or have reason to believe" that a pollutant is present in an effluent based on an evaluation of the expected use, production, or storage of the pollutant, or on any previous analyses for the pollutant. (For example, any pesticide manufactured by a facility may be expected to be present in contaminated storm water runoff from the facility.)

(i) * * *

(B) The Director may waive the reporting requirements for individual point sources or for a particular industry category for one or more of the pollutants listed in paragraph (g)(7)(i)(A) of this section if the applicant has demonstrated that such a waiver is appropriate because information adequate to support issuance of a permit

can be obtained with less stringent requirements.

* * * * *

(iii)(A) Each applicant must indicate whether it knows or has reason to believe that any of the pollutants in Table IV of Appendix D (certain conventional and nonconventional pollutants) is discharged from each outfall. If an applicable effluent limitations guideline either directly limits the pollutant or, by its express terms, indirectly limits the pollutant through limitations on an indicator, the applicant must report quantitative data. For every pollutant discharged which is not so limited in an effluent limitations guideline, the applicant must either report quantitative data or briefly describe the reasons the pollutant is expected to be discharged.

(B) Each applicant must indicate whether it knows or has reason to believe that any of the pollutants listed in Table II or Table III of Appendix D (the toxic pollutants and total phenols) for which quantitative data are not otherwise required under paragraph (g)(7)(ii) of this section, is discharged from each outfall. For every pollutant expected to be discharged in concentrations of 10 ppb or greater the applicant must report quantitative data. For acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-methyl-4,6 dinitrophenol, where any of these four pollutants are expected to be discharged in concentrations of 100 ppb or greater the applicant must report quantitative data. For every pollutant expected to be discharged in concentrations less than 10 ppb, or in the case of acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-methyl-4,6 dinitrophenol, in concentrations less than 100 ppb, the applicant must either submit quantitative data or briefly describe the reasons the pollutant is expected to be discharged. An applicant qualifying as a small business under paragraph (g)(8) of this section is not required to analyze for pollutants listed in Table II of Appendix D (the organic toxic pollutants).

* * * * *

(9) *Used or manufactured toxics.* A listing of any toxic pollutant which the applicant currently uses or manufactures as an intermediate or final product or byproduct. The Director may waive or modify this requirement for any applicant if the applicant demonstrates that it would be unduly burdensome to identify each toxic pollutant and the Director has adequate information to issue the permit.

(10) *Storm water point source exemption.*

(i) An applicant that qualifies as a Group II storm water discharger under § 122.26(b)(3) is exempt from the requirements of paragraphs (f)(7) and (g) of this section, unless the Director requests such information.

(ii) For the purpose of paragraph (g)(3) of this section, storm water point sources may estimate the average flow of their discharge and must indicate the rainfall event and the method of estimation that the estimate is based on.

(iii) The Director may require additional information under paragraph (g)(13) of this section, and may request any Group II storm water dischargers to comply with paragraph (g) of this section.

* * * * *

(k) * * *

(4) Any interested person may challenge the Regional Administrator's initial new source determination by requesting an evidentiary hearing under Subpart E of Part 124 within 30 days of issuance of the public notice of the initial determination. If all parties to the evidentiary hearing on the determination agree, the Regional Administrator may defer the hearing until after a final permit decision is made, and consolidate the hearing on the determination with any hearing on the permit.

* * * * *

2. Section 122.22 is amended by revising paragraph (b) introductory text and (b)(2) to read as follows:

§ 122.22 Signatories to permit applications and reports (applicable to State NPDES programs, see § 123.25).

* * * * *

(b) All reports required by permits, other information requested by the Director, and all permit applications submitted for Group II storm water discharges under § 122.26(b)(3) shall be signed by a person described in paragraph (a), or by a duly authorized representative of that person. A person is a duly authorized representative only if:

* * * * *

(2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.)

* * * * *

3. Section 122.26 is revised to read as follows:

§ 122.26 Storm water discharges (applicable to State NPDES programs, see § 123.25).

(a) *Permit requirement.* Storm water point sources, as defined in this section, are point sources subject to the NPDES permit program. The Director may issue an NPDES permit or permits for discharges into waters of the United States from a storm water point source covering all conveyances which are a part of that storm water discharge. Where there is more than one owner or operator of a single system of such conveyances, any or all discharges into the storm water discharge system may be identified in the application submitted by the owner or operator of the portion of the system that discharges directly into waters of the United States. Any such application shall include all information regarding discharges into the system that would be required if the dischargers submitted separate applications. Dischargers so identified shall not require a separate permit unless the Director specifies otherwise. Any permit covering more than one owner or operator shall identify the effluent limitations, if any, which apply to each owner or operator. Where there is more than one owner or operator, no discharger into the storm water discharge may be subject to a permit condition for discharges into the storm water discharge other than its own discharges into that system without its consent. All dischargers into a storm water discharge system must either be covered by an individual permit or a permit issued to the owner or operator of the portion of the system that directly discharges. (See § 122.21(c)(2) for application deadline for existing storm water point sources.)

(b) *Definitions.* (1) "Storm water point source" means a conveyance or system of conveyances (including pipes, conduits, ditches, and channels) primarily used for collecting and conveying storm water runoff and which;

(i) Is located at an urbanized area as designated by the Bureau of the Census according to the criteria in 39 FR 15202 (May 1, 1974);

(ii) Discharges from lands or facilities used for industrial or commercial activities; or

(iii) Is designated under paragraph (c) of this section. Conveyances that discharge storm water runoff combined with municipal sewage are point sources that must obtain NPDES permits, but are not "storm water point sources".

(2) "Group I storm water discharge" means any "storm water point source" which is:

(i) Subject to effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards;

(ii) Designated under paragraph (c) of this section; or

(iii) Located at an industrial plant or in plant associated areas. "Plant associated areas" means industrial plant yards, immediate access roads, drainage ponds, refuse piles, storage piles or areas and material or products loading and unloading areas. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots.

(3) "Group II storm water discharge" means any "storm water point source" not included in paragraph (b)(2) of this section. (See § 122.21(g)(10) for exemption from certain application requirements.)

(4) A conveyance or system of conveyances operated primarily for the purpose of collecting and conveying storm water runoff which does not constitute a "storm water point source" under paragraph (b)(1) of this section is not considered a point source subject to the requirements of CWA.

(5) Whether a system of conveyances is or is not a storm water point source for purposes of this section shall have no bearing on whether the system is eligible for funding under Title II of CWA. See 40 CFR 35.925–21.

(c) *Case-by-case designation of storm water discharges.* The Director may designate a conveyance or system of conveyances primarily used for collecting and conveying storm water runoff as a storm water point source. This designation may be made to the extent allowed or required by EPA promulgated effluent limitations guidelines for point sources in the storm water discharge category or when:

(1) A Water Quality Management plan under section 208 of CWA which contains requirements applicable to such point sources is approved; or

(2) The Director determines that a storm water discharge is a significant contributor of pollution to the waters of the United States. In making this determination the Director shall consider the following factors:

(i) The location of the discharge with respect to waters of the United States;

(ii) The size of the discharge;

(iii) The quantity and nature of the pollutants reaching waters of the United States; and

(iv) Other relevant factors.

4. Section 122.28 is amended by revising paragraph (a)(2) as follows:

§ 122.28 General permits (applicable to State NPDES Programs, see § 123.25).

(a) * * *

(2) *Sources.* The general permit may be written to regulate, within the area described in paragraph (a)(1) of this section, either:

(i) Storm water point sources; or

(ii) A category of point sources other than storm water point sources if the sources all:

(A) Involve the same or substantially similar types of operations;

(B) Discharge the same types of wastes;

(C) Require the same effluent limitation or operating conditions;

(D) Require the same or similar monitoring; and

(E) In the opinion of the Director, are more appropriately controlled under a general permit than under individual permits.

* * * * *

5. Section 122.29 is amended by revising paragraphs (b), (c)(3), and (d)(4), redesignating paragraph (c)(5) as (c)(5)(ii) and adding a new paragraph (c)(5)(i) to read as follows:

§ 122.29 New sources and new dischargers.

* * * * *

(b) *Criteria for new source determination.*

(1) Except as otherwise provided in an applicable new source performance standard, a source is a "new source" if it meets the definition of "new source" in § 122.2, and

(i) It is constructed at a site at which no other source is located; or

(ii) It totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or

(iii) Its processes are substantially independent of an existing source at the same site. In determining whether these processes are substantially independent, the Director shall consider such factors as the extent to which the new facility is integrated with the existing plant; and the extent to which the new facility is engaged in the same general type of activity as the existing source.

(2) A source meeting the requirements of paragraphs (b)(1) (i), (ii), or (iii) of this section is a new source only if a new source performance standard is independently applicable to it. If there is no such independently applicable standard, the source is a new discharger. See § 122.2.

(3) Construction on a site at which an existing source is located results in a modification subject to § 122.62 rather than a new source (or a new discharger) if the construction does not create a new building, structure, facility, or installation meeting the criteria of paragraphs (b)(1) (ii) or (iii) of this section but otherwise alters, replaces, or adds to existing process or production equipment.

(4) Construction of a new source as defined under § 122.2 has commenced if the owner or operator has:

(i) Begun, or caused to begin as part of a continuous on-site construction program:

(A) Any placement, assembly, or installation of facilities or equipment; or

(B) Significant site preparation work including clearing, excavation or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or

(ii) Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation with a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility engineering, and design studies do not constitute a contractual obligation under the paragraph.

(c) * * *

(3) The Regional Administrator, to the extent allowed by law, shall issue, condition (other than imposing effluent limitations), or deny the new source NPDES permit following a complete evaluation of any significant beneficial and adverse impacts of the proposed action and a review of the recommendations contained in the EIS or finding of no significant impact.

* * * * *

(5)(i) The commencement of on-site construction in violation of paragraph (c) of this section shall constitute grounds for denial of a permit.

* * * * *

(d) * * *

(4) The owner or operator of a new source, a new discharger which commenced discharge after August 13, 1979, or a recommencing discharger shall install and have in operating condition, and shall "start-up" all pollution control equipment required to meet the conditions of its permits before beginning to discharge. Within the shortest feasible time (not to exceed 90 days), the owner or operator must meet all permit conditions. The requirements of this paragraph do not apply if the owner or operator is issued a permit

containing a compliance schedule under § 122.47(a)(2)

* * * * *

Subpart C—Permit Conditions

6. Section 122.41 is amended by revising paragraphs (e), (l)(1), (m)(4)(i)(B), and (n)(3)(i) to read as follows:

§ 122.41 Conditions applicable to all permits.

* * * * *

(3) *Proper operation and maintenance.* The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

* * * * *

(l) *Reporting requirements.*—(1) *Planned changes.* The permittee shall give notice to the Director as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

(i) The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in § 122.29(b); or

(ii) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under § 122.42(a)(1).

* * * * *

(m) * * *

(4) * * *

(i) * * *

(B) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

* * * * *

(n) * * *

(3) * * *

(i) An upset occurred and that the permittee can identify the cause(s) of the upset;

* * * * *

7. Section 122.42 is amended by revising paragraphs (a)(1) introductory text, (a)(1)(iii), and (a)(2) to read as follows:

§ 122.42 Additional conditions applicable to specified categories of NPDES permits (applicable to State NPDES programs, see § 123.25).

(a) * * *

(1) That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

* * * * *

(iii) Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with § 122.21(g)(7); or

* * * * *

(2) That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

(i) Five hundred micrograms per liter (500 μg/l);

(ii) One milligram per liter (1 mg/l) for antimony;

(iii) Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with § 122.21(g)(7).

(iv) The level established by the Director in accordance with § 122.44(f).

* * * * *

8. Section 122.44 is amended by revising paragraphs (d)(3) and (d)(9); by removing paragraph (e)(1)(ii); and by redesignating paragraph (e)(1)(i) as paragraph (e)(1), to read as follows:

§ 122.44 Establishing limitations, standards, and other permit conditions (applicable to State NPDES programs, see § 123.25).

* * * * *

(d) * * *

(3) Conform to the conditions to a State certification under section 401 of the CWA that meets the requirements of § 124.53 when EPA is the permitting authority. If a State certification is stayed by a court of competent jurisdiction or an appropriate State board or agency, EPA shall notify the State that the Agency will deem certification waived unless a finally effective State certification is received within sixty days from the date of the notice. If the State does not forward a finally effective certification within the sixty day period, EPA shall include conditions in the permit that may be necessary to meet EPA's obligation under section 301(b)(1)(C) of the CWA;

* * * * *

(9) Incorporate any other appropriate requirements, conditions, or limitations (other than effluent limitations) into a new source permit to the extent allowed by the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.* and section 511 of the CWA, when EPA is the permit issuing authority. (See § 122.29(c)).

* * * * *

9. Section 122.45 is amended by revising paragraphs (b)(2), (c), and (g), deleting paragraph (h), and redesignating paragraphs (i) and (j) as (h) and (i) to read as follows:

§ 122.45 Calculating NPDES permit conditions (applicable to State NPDES programs, see § 123.25).

* * * * *

(b) * * *

(2)(i) Except in the case of POTWs or as provided in paragraph (b)(2)(ii) of this section, calculation of any permit limitations, standards, or prohibitions which are based on production (or other measure of operation) shall be based not upon the designed production capacity but rather upon a reasonable measure of actual production of the facility. For new sources or new dischargers, actual production shall be estimated using projected production. The time period of the measure of production shall correspond to the time period of the calculated permit limitations; for example, monthly production shall be used to calculate average monthly discharge limitations.

(ii)(A)(*1*) The Director may include a condition establishing alternate permit limitations, standards, or prohibitions based upon anticipated increased (not to exceed maximum production capability) or decreased production levels.

(*2*) *For the automotive manufacturing industry* only, the Regional Administrator shall, and the State Director may establish a condition under paragraph (b)(2)(ii)(A)(*1*) of this section if the applicant satisfactorily demonstrates to the Director at the time the application is submitted that its actual production, as indicated in paragraph (b)(2)(i) of this section, is substantially below maximum production capability and that there is a reasonable potential for an increase above actual production during the duration of the permit.

(B) If the Director establishes permit conditions under paragraph (b)(2)(ii)(A) of this section:

(*1*) The permit shall require the permittee to notify the Director at least two business days prior to a month in which the permittee expects to operate at a level higher than the lowest production level identified in the permit. The notice shall specify the anticipated level and the period during which the permittee expects to operate at the alternate level. If the notice covers more than one month, the notice shall specify the reasons for the anticipated production level increase. New notice of discharge at alternate levels is required to cover a period or production level not covered by prior notice or, if during two consecutive months otherwise covered by a notice, the production level at the permitted facility does not in fact meet the higher level designated in the notice.

(*2*) The permittee shall comply with the limitations, standards, or prohibitions that correspond to the lowest level of production specified in the permit, unless the permittee has notified the Director under paragraph (b)(2)(ii)(B)(*1*) of this section, in which case the permittee shall comply with the lower of the actual level of production during each month or the level specified in the notice.

(*3*) The permittee shall submit with the DMR the level of production that actually occurred during each month and the limitations, standards, or prohibitions applicable to that level of production.

(c) *Metals.* All permit effluent limitations, standards, or prohibitions for a metal shall be expressed in terms of "total recoverable metal" as defined in 40 CFR Part 136 unless:

(1) An applicable effluent standard or limitation has been promulgated under the CWA and specifies the limitation for the metal in the dissolved or valent or total form; or

(2) In establishing permit limitations on a case-by-case basis under § 125.3, it is necessary to express the limitation on the metal in the dissolved or valent or total form to carry out the provisions of the CWA; or

(3) All approved analytical methods for the metal inherently measure only its dissolved form (*e.g.*, hexavalent chromium).

* * * * *

(g) *Pollutants in intake water.*

(1) Upon request of the discharger, technology-based effluent limitations or standards shall be adjusted to reflect credit for pollutants in the discharger's intake water if:

(i) The applicable effluent limitations and standards contained in 40 CFR Subchapter N specifically provide that they shall be applied on a net basis; or

(ii) The discharger demonstrates that the control system it proposes or uses to meet applicable technology-based limitations and standards would, if properly installed and operated, meet the limitations and standards in the absence of pollutants in the intake waters.

(2) Credit for generic pollutants such as biochemical oxygen demand (BOD) or total suspended solids (TSS) should not be granted unless the permittee demonstrates that the constituents of the generic measure in the effluent are substantially similar to the constituents of the generic measure in the intake water or unless appropriate additional limits are placed on process water pollutants either at the outfall or elsewhere.

(3) Credit shall be granted only to the extent necessary to meet the applicable limitation or standard, up to a maximum value equal to the influent value. Additional monitoring may be necessary to determine eligibility for credits and compliance with permit limits.

(4) Credit shall be granted only if the discharger demonstrates that the intake water is drawn from the same body of water into which the discharge is made. The Director may waive this requirement if he finds that no environmental degradation will result.

(5) This section does not apply to the discharge of raw water clarifier sludge generated from the treatment of intake water.

* * * * *

10. Section 122.47 is amended by revising paragraph (a)(2) to read as follows:

§ 122.47 Schedules of compliance.

(a) * * *

(2) The first NPDES permit issued to a new source or a new discharger shall contain a schedule of compliance only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised after commencement of construction but less than three years before commencement of the relevant discharge. For recommencing dischargers, a schedule of compliance shall be available only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised less than three years before recommencement of discharge.

* * * * *

11. Section 122.49 is amended by revising paragraph (g) as follows:

§ 122.49 Considerations under Federal law.

* * * * *

(g) The National Environmental Policy Act, 42 U.S.C. 4321 *et seq.*, may require preparation of an Environmental Impact Statement and consideration of EIS-related permit conditions (other than effluent limitations) as provided in § 122.29(c).

12. Section 122.50 is amended by revising paragraph (a)(2) to read as follows:

§ 122.50 Disposal of pollutants into wells, into publicly owned treatment works or by land application (applicable to State NPDES programs, see § 123.25).

(a) * * *

(2) In all cases other than those described in paragraph (a)(1) of this section, effluent limitations shall be adjusted by multiplying the effluent limitation derived by applying effluent limitation guidelines to the total waste stream by the amount of wastewater flow to be treated and discharged into waters of the United States, and dividing the result by the total wastewater flow. Effluent limitations and standards so calculated may be further adjusted under Part 125, Subpart D to make them more or less stringent if discharges to wells, publicly owned treatment works, or by land application change the character or treatability of the pollutants being discharged to receiving waters. This method may be algebraically expressed as:

$$P = \frac{E \times N}{T}$$

where P is the permit effluent limitation, E is the limitation derived by applying effluent guidelines to the total wastestream, N is the wastewater flow to be treated and discharged to waters of the United States, and T is the total wastewater flow.

* * * * *

Subpart D—Transfer, Modification, Revocation and Reissuance, and Termination of Permits

13. Section 122.62 is amended by removing paragraph (a)(12), redesignating paragraphs (a) (13), (14), and (15) as (a) (12), (13), and (14) respectively and adding new paragraphs (a) (15), (16), (17), and (18) to read as follows:

§ 122.62 Modification or revocation and reissuance of permits (applicable to State NPDES programs, see § 123.25).

(a) * * *

(15) When the permittee's effluent limitations were imposed under section 402(a)(1) of the CWA and the permittee demonstrates operation and maintenance costs that are totally disproportionate from the operation and maintenance costs considered in the development of a subsequently promulgated effluent limitations guideline, but in no case may the limitations be made less stringent than the subsequent guideline.

(16) To correct technical mistakes, such as errors in calculation, or mistaken interpretations of law made in determining permit conditions.

(17) When the discharger has installed the treatment technology considered by the permit writer in setting effluent limitations imposed under section 402(a)(1) of the CWA and has properly operated and maintained the facilities but nevertheless has been unable to achieve those effluent limitations. In this case, the limitations in the modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by a subsequently promulgated effluent limitations guideline).

(18) When the permit becomes final and effective on or after March 9, 1982, and the permittee applies for the modification no later than January 24, 1985, if the permittee shows good cause in its request and that it qualifies for the modification, to conform to changes respecting the following regulations issued under that Settlement Agreement:

40 CFR 122.45(b)
40 CFR 122.45(c)
40 CFR 122.50

* * * * *

14. Section 122.63 is amended by adding a new paragraph (f) to read as follows:

§ 122.63 Minor modifications of permits.

* * * * *

(f) When the permit becomes final and effective on or after March 9, 1982, conform to changes respecting §§ 122.41(e), 122.41(l), 122.41(m)(4)(i)(B), 122.41(n)(3)(i) and 122.42(a) issued September 26, 1984.

Appendix D—NPDES Permit Application Testing Requirements (§ 122.21)

15. Appendix D of Part 122 is amended by revising the heading for Table III to read as follows:

Table III: Other Toxic Pollutants (Metals and Cyanide) and Total Phenols

PART 124—PROCEDURES FOR DECISIONMAKING

Subpart A—General Program Requirements

16. Section 124.13 is revised to read as follows:

§ 124.13 Obligation to raise issues and provide information during the public comment period.

All persons, including applicants, who believe any condition of a draft permit is inappropriate or that the Director's tentative decision to deny an application, terminate a permit, or prepare a draft permit is inappropriate, must raise all reasonably ascertainable issues and submit all reasonably available arguments supporting their position by the close of the public comment period (including any public hearing) under § 124.10. Any supporting materials which are submitted shall be included in full and may not be incorporated by reference, unless they are already part of the administrative record in the same proceeding, or consist of State or Federal statutes and regulations, EPA documents of general applicability, or other generally available reference materials. Commenters shall make supporting materials not already included in the administrative record available to EPA as directed by the Regional Administrator. (A comment period longer than 30 days may be necessary to give commenters a reasonable opportunity to comply with the requirements of this section. Additional time shall be granted under § 124.10 to the extent that a commenter who requests additional time demonstrates the need for such time.)

17. Section 124.14 is amended by redesignating paragraphs (a) through (d) as (b) through (e) and by adding a new paragraph (a) to read as follows:

§ 124.14 Reopening of the public comment period.

(a)(1) The Regional Administrator may order the public comment period reopened if the procedures of this paragraph could expedite the decisionmaking process. When the public comment period is reopened under this paragraph, all persons, including applicants, who believe any condition of a draft permit is inappropriate or that the Regional Administrator's tentative decision to deny an application, terminate a permit, or prepare a draft permit is inappropriate, must submit all reasonably available factual grounds supporting their position, including all supporting material, by a date, not less than sixty days after public notice under paragraph (a)(2) of this section, set by the Regional Administrator. Thereafter, any person may file a written response to the material filed by any other person, by a date, not less than twenty days after the date set for filing of the material, set by the Regional Administrator.

(2) Public notice of any comment period under this paragraph shall identify the issues to which the requirements of § 124.14(a) shall apply.

(3) On his own motion or on the request of any person, the Regional Administrator may direct that the requirements of paragraph (a)(1) of this section shall apply during the initial comment period where it reasonably appears that issuance of the permit will be contested and that applying the requirements of paragraph (a)(1) of this section will substantially expedite the decisionmaking process. The notice of the draft permit shall state whenever this has been done.

(4) A comment period of longer than 60 days will often be necessary in complicated proceedings to give commenters a reasonable opportunity to comply with the requirements of this section. Commenters may request longer comment periods and they shall be granted under § 124.10 to the extent they appear necessary.

* * * * *

Subpart D—Specific Procedures Applicable to NPDES Permits

18. Section 124.56 is amended by adding a new paragraph (b)(1)(iv) to read as follows:

* * * * *

§ 124.56 Fact sheets.

(b) * * *

(1) * * *

(iv) Limitations set on a case-by-case basis under § 125.3 (c)(2) or (c)(3).

* * * * *

Subpart E—Evidentiary Hearings for EPA-Issued NPDES Permits and EPA-Terminated RCRA Permits

19. Section 124.76 is revised to read as follows:

§ 124.76 Obligation to submit evidence and raise issues before a final permit is issued.

In any case where the Regional Administrator elected to apply the requirements of § 124.14(a), no evidence shall be submitted by any party to a

hearing under this Subpart that was not submitted to the administrative record required by § 124.18 as part of the preparation of and comment on a draft permit, unless good cause is shown for the failure to submit it. No issues shall be raised by any party that were not submitted to the administrative record required by § 124.18 as part of the preparation of and comment on a draft permit unless good cause is shown for the failure to submit them. Good cause includes the case where the party seeking to raise the new issues or introduce new information shows that it could not reasonably have ascertained the issues or made the information available within the time required by § 124.15; or that it could not have reasonably anticipated the relevance or materiality of the information sought to be introduced. Good cause exists for the introduction of data available on operation authorized under § 124.60(a)(2).

20. Section 124.78 is amended by revising paragraph (a)(1) to read as follows:

§ 124.78 Ex parte communications.

(a) * * *

(1) "Agency trial staff" means those Agency employees, whether temporary or permanent, who have been designated by the Agency under § 124.77 or § 124.116 as available to investigate, litigate, and present the evidence, arguments, and position of the Agency in the evidentiary hearing or nonadversary panel hearing. Any EPA employee, consultant, or contractor who is called as a witness by EPA trial staff, or who assisted in the formulation of the draft permit which is the subject of the hearing, shall be designated as a member of the Agency trial staff;

* * * * *

21. Section 124.85 is amended by adding a new paragraph (e) to read as follows:

§ 124.85 Hearing procedure.

* * * * *

(e) *Admission of Evidence on Environmental Impacts.* If a hearing is granted under this Subpart for a new source subject to NEPA, the Presiding Officer may admit evidence relevant to any environmental impacts of the permitted facility if the evidence would be relevant to the Agency's obligation under § 122.29(c)(3). If the source holds a final EPA-issued RCRA, PSD, or UIC permit, or an ocean dumping permit under the Marine Protection, Research, and Sanctuaries Act (MPRSA), no such evidence shall be admitted nor shall cross-examination be allowed relating to: (1) Effects on air quality, (2) effects attributable to underground injection or hazardous waste management practices, or (3) effects of ocean dumping subject to the MPRSA, which were considered or could have been considered in the PSD, RCRA, UIC, or MPRSA permit issuance proceedings. However, the presiding officer may admit without cross-examination or any supporting witness relevant portions of the record of PSD, RCRA, UIC, or MPRSA permit issuance proceedings.

Subpart F—Non-Adversary Panel Procedures

22. Section 124.120 is amended by revising paragraph (a) as follows:

§ 124.120 Panel hearing.

(a) A Presiding Officer shall preside at each hearing held under this Subpart. An EPA panel shall also take part in the hearing. The panel shall consist of three or more EPA temporary or permanent employees having special expertise or responsibility in areas related to the hearing issue, none of whom shall have taken part in formulating the draft permit. If appropriate for the evaluation of new or different issues presented at the hearing, the panel membership, at the discretion of the Regional Administrator, may change or may include persons not employed by EPA.

* * * * *

23. Section 124.121 is amended by revising paragraphs (a)(1), (b) and (f) to read as follows:

§ 124.121 Opportunity for cross-examination.

(a) * * *

(1) The disputed issue(s) of material fact. This shall include an explanation of why the questions at issue are factual, the extent to which they are in dispute in light of the then existing record, and the extent to which they are material to the decision on the application; and

* * * * *

(b) After receipt of all motions for cross-examination under paragraph (a) of this section, the Presiding Officer, after consultation with the hearing panel, shall promptly issue an order either granting or denying each request. No cross-examination shall be allowed on questions of policy except to the extent required to disclose the factual basis for permit requirements, or on questions of law, or regarding matters (such as the validity of effluent limitations guidelines) that are not subject to challenge in permit issuance proceedings. Orders granting requests for cross-examination shall be served on all parties and shall specify:

* * * * *

(f) The provisions of §§ 124.85(d)(2) and 124.84(e) apply to proceedings under this Subpart.

PART 125—CRITERIA AND STANDARDS FOR THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

24. Section 125.3 is amended by revising paragraph (c)(2), redesignating paragraphs (d) through (g) as (e) through (h) and adding a new paragraph (d) to read as follows:

§ 125.3 Technology-based treatment requirements in permits.

* * * * *

(c) * * *

(2) On a case-by-case basis under section 402(a)(1) of the Act, to the extent that EPA-promulgated effluent limitations are inapplicable. The permit writer shall apply the appropriate factors listed in § 125.3(d) and shall consider:

(i) The appropriate technology for the category or class of point sources of which the applicant is a member, based upon all available information; and

(ii) Any unique factors relating to the applicant.

* * * * *

(d) In setting case-by-case limitations pursuant to § 125.3(c), the permit writer must consider the following factors:

(1) For BPT requirements:

(i) The total cost of application of technology in relation to the effluent reduction benefits to be achieved from such application;

(ii) The age of equipment and facilities involved;

(iii) The process employed;

(iv) The engineering aspects of the application of various types of control techniques;

(v) Process changes; and

(vi) Non-water quality environmental impact (including energy requirements).

(2) For BCT requirements:

(i) The reasonableness of the relationship between the costs of attaining a reduction in effluent and the effluent reduction benefits derived;

(ii) The comparison of the cost and level of reduction of such pollutants from the discharge from publicly owned treatment works to the cost and level of reduction of such pollutants from a class or category of industrial sources;

(iii) The age of equipment and facilities involved;

(iv) The process employed;

(v) The engineering aspects of the application of various types of control techniques;

(vi) Process changes; and

(vii) Non-water quality environmental impact (including energy requirements).

(3) For BAT requirements:

(i) The age of equipment and facilities involved;

(ii) The process employed;

(iii) The engineering aspects of the application of various types of control techniques;

(iv) Process changes;

(v) The cost of achieving such effluent reduction; and

(vi) Non-water quality environmental impact (including energy requirements).

* * * * *

BILLING CODE 6560-50-M

INSTRUCTIONS — FORM 2c
Application for Permit to Discharge Wastewater
EXISTING MANUFACTURING, COMMERCIAL, MINING, AND SILVICULTURAL OPERATIONS

This form must be completed by all applicants who check "yes" to item II-C in Form 1.

Public Availability of Submitted Information.

Your application will not be considered complete unless you answer every question on this form and on Form I. If an item does not apply to you, enter "NA" *(for not applicable)* to show that you considered the question.

You may not claim as confidential any information required by this form or Form I, whether the information is reported on the forms or in an attachment. This information will be made available to the public upon request.

Any information you submit to EPA which goes beyond that required by this form or Form I you may claim as confidential, but claims for information which is effluent data will be denied. If you do not assert a claim of confidentiality at the time of submitting the information, EPA may make the information public without further notice to you. Claims of confidentiality will be handled in accordance with EPA's business confidentiality regulations at 40 CFR Part 2.

Definitions

All significant terms used in these instructions and in the form are defined in the glossary found in the General Instructions which accompany Form 1.

EPA ID Number

Fill in your EPA Identification Number at the top of each page of Form 2c. You may copy this number directly from item I of Form I.

Item I

You may use the map you provided for item XI of Form I to determine the latitude and longitude of each of your outfalls and the name of the receiving water.

Item II-A

The line drawing should show generally the route taken by water in your facility from intake to discharge. Show all operations contributing wastewater, including process and production areas, sanitary flows, cooling water, and stormwater runoff. You may group similar operations into a single unit, labeled to correspond to the more detailed listing in item II-B. The water balance should show average flows. Show all significant losses of water to products, atmosphere, and discharge. You should use actual measurements whenever available; otherwise use your best estimate. An example of an acceptable line drawing appears in Figure 2c-1 to these instructions.

Item II-B

List all sources of wastewater to each outfall. Operations may be described in general terms *(for example, "dye-making reactor" or "distillation tower")*. You may estimate the flow contributed by each source if no data are available. For stormwater discharges you may estimate the average flow, but you must indicate the rainfall event upon which the estimate is based and the method of estimation. For each treatment unit, indicate its size, flow rate, and retention time, and describe the ultimate disposal of any solid or liquid wastes not discharged. Treatment units should be listed in order and you should select the proper code from Table 2c-1 to fill in column 3-b for each treatment unit. Insert "XX" into column 3-b if no code corresponds to a treatment unit you list. If you are applying for a permit for a privately owned treatment works, you must also identify all of your contributors in an attached listing.

Item II-C

A discharge is intermittent unless it occurs without interruption during the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities. A discharge is seasonal if it occurs only during certain parts of the year. Fill in every applicable column in this item for each source of intermittent or seasonal discharges. Base your answers on actual data whenever available; otherwise, provide your best estimate. Report the highest daily value for flow rate and total volume in the "Maximum Daily" columns *(columns 4-1-2 and 4-b-2)*. Report the average of all daily values measured during days when discharge occurred within the last year in the "Long Term Average" columns *(columns 4-a-I and 4-b-I)*.

Item III-A

All effluent guidelines promulgated by EPA appear in the Federal Register and are published annually in 40 CFR Subchapter N. A guideline applies to you if you have any operations contributing process wastewater in any subcategory covered by a BPT, BCT, or BAT guideline. If you are unsure whether you are covered by a promulgated effluent guideline, check with your EPA Regional office *(Table 1 in the Form 1 instructions)*. You must check "yes" if an applicable effluent guideline has been promulgated, even if the guideline limitations are being contested in court. If you believe that a promulgated effluent guideline has been remanded for reconsideration by a court and does not apply to your operations, you may check "no."

Item III-B

An effluent guideline is expressed in terms of production *(or other measure of operation)* if the limitation is expressed as mass of pollutant per operational parameter; for example, "pounds of BOD per cubic foot of logs from which bark is removed," or "pounds of TSS per megawatt hour of electrical energy consumed by smelting furnace". An example of a guideline not expressed in terms of a measure of operation is one which limits the concentration of pollutants.

Item III-C

This item must be completed only if you checked "yes" to item III-B. The production information requested here is necessary to apply effluent guidelines to your facility and you cannot claim it as confidential. Report quantities in the units of measurement used in the applicable effluent guideline. The production figures provided must be based on actual daily production and not on design capacity or on predictions of future operations. To obtain alternate limits under 40 CFR 122.45(b)(2)(ii), you must define your maximum production capability and demonstrate to the Director that your actual production is substantially below maximum production capability and that there is a reasonable potential for an increase above actual production during the duration of the permit.

Item IV-A

If you check "yes" to this question, complete all parts of the chart, or attach a copy of any previous submission you have made to EPA containing same information.

Item IV-B

You are not required to submit a description of future pollution control projects if you do not wish to or if none is planned.

Item V-A, B, C, and D

The items require you to collect and report data on the pollutants discharged for each of your outfalls. Each part of this item addresses a different set of pollutants and must be completed in accordance with the specific instructions for that part. The following general instructions apply to the entire item.

General Instructions

Part A requires you to report at least one analysis for each pollutant listed. Parts B and C require you to report analytical data in two ways. For some pollutants, you may be required to mark 'X' in the "Testing Required" column *(column 2-a, Part C)*, and test *(sample and analyze)* and report the levels of the pollutants in your discharge whether or not you expect them to be present in your discharge. For all others, you must mark 'X' in either the "Believe Present" column or the "Believe Absent" column *(columns 2-a or 2-b, Part B, and columns 2-b or 2-c, Part C)* based on your best estimate, and test for those which you believe to be present. *(See specific instructions on the form and below for Parts A through D.)* Base your determination that a pollutant is present in or absent from your discharge on your knowledge of your raw materials, maintenance chemicals, inter-

FORM 2C — INSTRUCTIONS *(continued)*

ITEM V — A, B, C, and D *(continued)*

mediate and final products and byproducts, and any previous analyses known to you of your effluent or similar effluent. *(For example, if you manufacture pesticides, you should expect those pesticides to be present in contaminated stormwater runoff.)* If you would expect a pollutant to be present solely as a result of its presence in your intake water, you must mark "Believe Present" but you are not required to analyze for that pollutant. Instead, mark an 'X' in the "Intake" column.

A. Reporting. All levels must be reported as concentration and as total mass. You may report some or all of the required data by attaching separate sheets of paper instead of filling out pages V-1 to V-9 if the separate sheets contain all the required information in a format which is consistent with pages V-1 to V-9 in spacing and in identification of pollutants and columns. *(For example, the data system used in your GC/MS analysis may be able to print data in the proper format.)* Use the following abbreviations in the columns headed "Units" *(column 3, Part A, and column 4, Parts B and C).*

Concentration	Mass
ppm ..... parts per million	lbs ..... pounds
mg/l .... milligrams per liter	ton ..... tons *(English tons)*
ppb ..... parts per billion	mg ..... milligrams
ug/l .... micrograms per liter	g ..... grams
	kg ..... kilograms
	T ..... tonnes *(metric tons)*

All reporting of values for metals must be in terms of "total recoverable metal," unless:

(1) An applicable, promulgated effluent limitation or standard specifies the limitation for the metal in dissolved, valent, or total form; or

(2) All approved analytical methods for the metal inherently measure only its dissolved form (e.g., hexavalent chromium); or

(3) The permitting authority has determined that in establishing case-by-case limitations it is necessary to express the limitations on the metal in dissolved, valent, or total form to carry out the provisions of the CWA.

If you measure only one daily value, complete only the "Maximum Daily Values" columns and insert '1' into the "Number of Analyses" column *(columns 2-a and 2-d, Part A, and column 3-a, 3-d, Parts B and C).* The permitting authority may require you to conduct additional analyses to further characterize your discharges. For composite samples, the daily value is the total mass or average concentration found in a composite sample taken over the operating hours of the facility during a 24-hour period; for grab samples, the daily value is the arithmetic or flow-weighted total mass or average concentration found in a series of at least four grab samples taken over the operating hours of the facility during a 24-hour period.

If you measure more than one daily value for a pollutant and those values are representative of your wastestream, you must report them. You must describe your method of testing and data analysis. You also must determine the average of all values within the last year and report the concentration and mass under the "Long Term Average Values" columns *(column 2-c, Part A, and column 3-c, Parts B and C),* and the total number of daily values under the "Number of Analyses" columns *(column 2-d, Part A, and columns 3-d, Parts B and C).* Also, determine the average of all daily values taken during each calendar month, and report the highest average under the "Maximum 30-day Values" columns *(column 2-c, Part A, and column 3-b, Parts B and C).*

B. Sampling: The collection of the samples for the reported analyses should be supervised by a person experienced in performing sampling of industrial wastewater. You may contact your EPA or State permitting authority for detailed guidance on sampling techniques and for answers to specific questions. Any specific requirements contained in the applicable analytical methods should be followed for sample containers, sample preservation, holding times, the collection of duplicate samples, etc. The time when you sample should be representative of your normal operation, to the extent feasible, with all processes which contribute wastewater in normal operation, and with your treatment system operating properly with no system upsets. Samples should be collected from the center of the flow channel, where turbulence is at a maximum, at a site specified in your present permit, or at any site adequate for the collection of a representative sample.

For pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, and fecal coliform, grab samples must be used. For all other pollutants 24-hour composite samples must be used. However, a minimum of one grab sample may be taken for effluents from holding ponds or other impoundments with a retention period of greater than 24 hours. For stormwater discharges a minimum of one to four grab samples may be taken, depending on the duration of the discharge. One grab must be taken in the first hour *(or less)* of discharge, with one additional grab *(up to a minimum of four)* taken in each succeeding hour of discharge for discharges lasting four or more hours. The Director may waive composite sampling for any outfall for which you demonstrate that use of an automatic sampler is infeasible and that a minimum of four grab samples will be representative of your discharge.

Grab and composite samples are defined as follows:

Grab sample: An individual sample of at least 100 milliliters collected at a randomly-selected time over a period not exceeding 15 minutes.

Composite sample: A combination of at least 8 sample aliquots of at least 100 milliliters, collected at periodic intervals during the operating hours of a facility over a 24 hour period. The composite must be flow proportional; either the time interval between each aliquot or the volume of each aliquot must be proportional to either the stream flow at the time of sampling or the total stream flow since the collection of the previous aliquot. Aliquots may be collected manually or automatically. For GC/MS Volatile Organic Analysis (VOA), aliquots must be combined in the laboratory immediately before analysis. Four (4) *(rather than eight)* aliquots or grab samples should be collected for VOA. These four samples should be collected during actual hours of discharge over a 24 hour period and need not be flow proportioned. Only one analysis is required.

The Agency is currently reviewing sampling requirements in light of recent research on testing methods. Upon completion of its review, the Agency plans to propose changes to the sampling requirements.

Data from samples taken in the past may be used, provided that:

All data requirements are met;

Sampling was done no more than three years before submission; and

All data are representative of the present discharge.

Among the factors which would cause the data to be unrepresentative are significant changes in production level, changes in raw materials, processes, or final products, and changes in wastewater treatment. When the Agency promulgates new analytical methods in 40 CFR Part 136, EPA will provide information as to when you should use the new methods to generate data on your discharges. Of course, the Director may request additional information, including current quantitative data, if she or he determines it to be necessary to assess your discharges.

C. Analysis: You must use test methods promulgated in 40 CFR Part 136; however, if none has been promulgated for a particular pollutant, you may use any suitable method for measuring the level of the pollutant in your discharge provided that you submit a description of the method or a reference to a published method. Your description should include the sample holding time, preservation techniques, and the quality control measures which you used. If you have two or more substantially identical outfalls, you may request permission from your permitting authority to sample and analyse only one outfall and submit the results of the analysis

FORM 2C — INSTRUCTIONS *(continued)*

ITEM V — A, B, C, and D *(continued)*

for other substantially identical outfalls. If your request is granted by the permitting authority, on a separate sheet attached to the application form, identify which outfall you did test, and describe why the outfalls which you did not test are substantially identical to the outfall which you did test.

D. Reporting of Intake Data: You are not required to report data under the "Intake" columns unless you wish to demonstate your eligibility for a "net" effluent limitation for one or more pollutants, that is, an effluent limitation adjusted by subtracting the average level of the pollutant(s) present in your intake water. NPDES regulations allow net limitations only in certain circumstances. To demonstrate your eligibility, under the "Intake" columns report the average of the results of analyses on your intake water *(if your water is treated before use, test the water after it is treated)*, and discuss the requirements for a net limitation with your permitting authority.

Part V-A

Part V-A must be completed by all applicants for all outfalls, including outfalls containing only noncontact cooling water or storm runoff. However, at your request, the Director may waive the requirement to test for one or more of these pollutants, upon a determination that available information is adequate to support issuance of the permit with less stringent reporting requirements for these pollutants. You also may request a waiver for one or more of these pollutants for your category or subcategory from the Director, Office of Water Enforcement and Permits. See discussion in General Instructions to item V for definitions of the columns in Part A. The "Long Term Average Values" column *(column 2-c)* and "Maximum 30-day Values" column *(column 2-b)* are not compulsory but should be filled out if data are available.

Part V-B

Part V-B must be completed by all applicants for all outfalls, including outfalls containing only noncontact cooling water or storm runoff. You must report quantitative data if the pollutant(s) in question is limited in an effluent limitations guideline either directly, or indirectly but expressly through limitation on an indicator *(e.g., use of TSS as an indicator to control the discharge of iron and aluminum)*. For other discharged pollutants you must provide quantitative data or explain their presence in your discharge. Upon request the Director, Office of Water Enforcement and Permits, may waive the requirement to test for pollutantsfor an industrial category or subcategory. Your request must be supported by data representative of the industrial category or subcategory in question. The data must demonstrate that individual testing for each applicant is unnecessary, because the facilities in the category or subcategory discharge substantially identical levels of the pollutant or discharge the pollutant uniformly at sufficiently low levels.The "Long Term Average Values" column *(column 3-c)* and "Maximum 30-day Values" column *(column 30b)* are not compulsory but should be filled out if data are available.

Part V-C

Table 2c-2 lists the 34 "primary" industry categories in the left-hand column. For each outfall, if any of your processes which contribute wastewater falls into one of those categories, you must mark 'X' in "Testing Required" column *(column 2-a)* and test for (I) all of the toxic metals, cyanide, and total phenols, and (2) the organic toxic pollutants contained in Table 2c-2 as applicable to your category, unless you qualify as a small business *(see below)*. The organic toxic pollutants are listed by GC/MS fractions on pages V-4 to V-9 in Part V-C. For example, the Organic Chemicals Industry has an asterisk in all four fractions; therefore, applicants in this category must test for all organic toxic pollutants in Part V-C. The inclusion of total phenols in Part V-C is not intended to classify total phenols as a toxic pollutant. If you are applying for a permit for a privately owned treatment works, determine your testing requirements on the basis of the industry categories of your contributors. When you determine which industry category you are in to find your testing requirements, you are not determining your category for any other purpose and you are not giving up your right to challenge your inclusion in that category *(for example, for deciding whether an effluent guideline is applicable)* before your permit is issued. For all other cases *(secondary industries, nonprocess wastewater outfalls, and non-required GC/MS fractions)*, you must mark "X" in either the "Believed Present" column *(column 2-b)* or the "Believed Absent" column *(column 2-c)* for each pollutant. For every pollutant you know or have reason to believe is present in your discharge in concentrations of 10 ppb or greater, you must report quantitative data. For acrolein, acrylonitrile, 2, 4 dinitrophenol, and 2-methyl-4, 6 dinitrophenol, where you expect these four pollutants to be discharged in concentrations of 100 ppb or greater, you must report quantitative data. For every pollutant expected to be discharged in concentrations less than the thresholds specified above, you must either submit quantitative data or briefly describe the reasons the pollutant is expected to be discharged. At your request the Director, Office of Water Enforcement and Permits, may waive the requirement to test for pollutants for an industrial category or subcategory. Your request must be supported by data representatives of the industrial category or subcategory in question. The data must demonstrate that individual testing for each applicant is unnecessary, because the facilities in question discharge substantially identical levels of the pollutant, or discharge the pollutant uniformly at sufficiently low levels. If you qualify as a small business *(see below)* you are exempt from testing for the organic toxic pollutants, listed on pages V-4 to V-9 in Part C. For pollutants in intake water, see discussion in General Instructions to this item. The "Long Term Average Values" column *(column 3-c)* and "Maximum 30-day Values" column *(column 30-b)* are not compulsory but should be filled out if data are available.You are required to mark "Testing Required" for dioxin if you use or manufacture one of the following compounds:

(a) 2,4,5-trichlorophenoxy acetic acid, (2,4,5-T);

(b) 2-(2,4,5-trichlorophenoxy) propanoic acid, (Silvex, 2,4,5-TP);

(c) 2-(2,4,5-trichlorophenoxy) ethyl 2,2-dichloropropionate, (Erbon);

(d) 0,0-dimethyl 0-(2,4,5-trichlorophenyl) phosphorothioate, (Ronnel);

(e) 2,4,5,-trichlorophnol, (TCP); or

(f) hexachlorophene, (HCP).

If you mark "Testing Required" or "Believed Present," you must perform a screening analysis for dioxins, using gas chromotography with an electron capture detector. A TCDD standard for quantitation is not required. Describe the results of this analysis in the space provided; for example, "no measurable baseline deflection at the retention time of TCDD" or "a measurable peak within the tolerances of the retention time of TCDD." The permitting authority may require you to perform a quantitative analysis if you report a positive result. The Effluent Guidelines Division of EPA has collected and analyzed samples from some plants for the pollutants listed in Part C in the course of its BAT guidelines development program. If your effluents are sampled and analyzed as part of this program in the last three years, you may use these data to answer Part C provided that the permitting authority approves, and provided that no process change or change in raw materials or operating practices has occurred since the samples were taken that would make the analyses unrepresentative of your current discharge.

Small Business Exemption: If you qualify as a "small business," you are exempt from the reporting requirements for the organic toxic pollutants, listed on pages V-4 to V-9 in Part C. There are two ways in which you can qualify as a "small business." If your facility is a coal mine, and if your probable total annual production is less than 100,000 tons per year, you may submit past production data or estimated future production *(such as a schedule of estimated total production under 30 CFR § 795.14(c))* instead of conducting analyses for the organic toxic pollutants. If your facil-

FORM 2C — INSTRUCTIONS *(continued)*

ITEM V — A, B, C, and D *(continued)*

ity is not a coal mine, and if your gross total annual sales for the most recent three years average less than $100,000 per year *(in second quarter 1980 dollars)*, you may submit sales data for those years instead of conducting analyses for the organic toxic pollutants. The production or sales data must be for the facility which is the source of the discharge. The data should not be limited to production or sales for the process or processes which contribute to the discharge, unless those are the only processes at your facility. For sales data, in situations involving intracorporate transfer of goods and services, the transfer price per unit should approximate market prices for those goods and services as closely as possible. Sales figures for years after 1980 should be indexed to the second quarter of 1980 by using the gross national product price deflator *(second quarter of 1980 = 100)*. This index is available in *National Income and Product Accounts of the United States (Department of Commerce, Bureau of Economic Analysis)*.

Part V-D

List any pollutants in Table 2c-3 that you believe to be present and explain why you believe them to be present. No analysis is required, but if you have analytical data, you must report it.

Note: Under 40 CFR 117.12(a)(2), certain discharges of hazardous substances *(listed in Table 2c-4 of these instructions)* may be exempted from the requirements of section 311 of CWA, which establishes reporting requirements, civil penalties and liability for cleanup costs for spills of oil and hazardous substances. A discharge of a particular substance may be exempted if the origin, source, and amount of the discharged substances are identified in the NDPES permit application or in the permit, if the permit contains a requirement for treatment of the discharge, and if the treatment is in place. To apply for an exclusion of the discharge of any hazardous substance from the requirements of section 311, attach additional sheets of paper to your form, setting forth the following information:

1. The substance and the amount of each substance which may be discharged.
2. The origin and source of the discharge of the substance.
3. The treatment which is to be provided for the discharge by:
   a. An onsite treatment system separate from any treatment system treating your normal discharge;
   b. A treatment system designed to treat your normal discharge and which is additionally capable of treating the amount of the substance identified under paragraph 1 above; or
   c. Any combination of the above.

See 40 CFR §117.12(a)(2ind(C), published on August 29, 1979, in 44 FR 50766, or contact your Regional Office *(Table 1 on Form 1, Instructions)*, for further information on exclusions from section 311.

Item VI

This requirement applies to current use or manufacture of a toxic pollutant as an intermediate or final product or byproduct. The Director may waive or modify the requirement if you demonstrate that it would be unduly burdensome to identify each toxic pollutant and the Director has adequate information to issue your permit. You may not claim this information as confidential; however, you do not have to distinguish between use or production of the pollutants or list the amounts. Under NPDES regulations your permit will contain limits to control all pollutants you report in answer to this question, as well as all pollutants reported in Item V at levels exceeding the technology-based limits appropriate to your facility.

Item VII

Self explanatory. The permitting authority may ask you to provide additional details after your application is received.

Item IX

The Clean Water Act provides for severe penalties for submitting false information on this application form.

Section 309(c)(12) of the Clean Water Act provides that "Any person who knowingly makes any false statement, representation, or certification in any application, ... shall upon conviction, be punished by a fine of no more than $10,000 or by imprisonment for more than six months, or both."

40 CFR Part 122.22 requires the certification to be signed as follows:

(A) *For a corporation:* by a responsible corporate official. For purposes of this section, a responsible corporate official means (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25,000,000 *(in second-quarter 1980 dollars)*, if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

Note: EPA does not require specific assignments or delegation of authority to responsible corporate officers identified in §122.22(a)(1)(i). The Agency will presume that these responsible corporate officers have the requisite authority to sign permit applications unless the corporation has notified the director to the contrary. Corporate procedures governing authority to sign permit applications may provide for assignment or delegation to applicable corporate position under §122.22(a)(1)(ii) rather than to specific individuals.

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

(C) *For a municipality, State, Federal, or other public agency:* by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal Agency includes (i) the chief executive officer of the Agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the Agency *(e.g., Regional Administrators of EPA)*. Applications for Group II stormwater dischargers may be signed by a duly authorized representative *(as defined in 40 CFR 122.22(b))* of the individuals identified above.

CODES FOR TREATMENT UNITS

PHYSICAL TREATMENT PROCESSES

1–A . . . . . .Ammonia Stripping
1–B. . . . . .Dialysis
1–C. . . . . .Diatomaceous Earth Filtration
1–D . . . . . .Distillation
1–E. . . . . .Electrodialysis
1–F. . . . . .Evaporation
1–G . . . . . .Flocculation
1–H . . . . . .Flotation
1–I . . . . . .Foam Fractionation
1–J. . . . . .Freezing
1–K . . . . . .Gas–Phase Separation
1–L. . . . . .Grinding *(Comminutors)*
1–M . . . . . .Grit Removal
1–N . . . . . .Microstraining
1–O . . . . . .Mixing
1–P. . . . . .Moving Bed Filters
1–Q . . . . . .Multimedia Filtration
1–R . . . . . .Rapid Sand Filtration
1–S. . . . . .Reverse Osmosis *(Hyperfiltration)*
1–T. . . . . .Screening
1–U . . . . . .Sedimentation *(Settling)*
1–V . . . . . .Slow Sand Filtration
1–W . . . . . .Solvent Extraction
1–X . . . . . .Sorption

CHEMICAL TREATMENT PROCESSES

2–A . . . . . .Carbon Adsorption
2–B. . . . . .Chemical Oxidation
2–C. . . . . .Chemical Precipitation
2–D . . . . . .Coagulation
2–E. . . . . .Dechlorination
2–F. . . . . .Disinfection *(Chlorine)*
2–G . . . . . .Disinfection *(Ozone)*
2–H . . . . . .Disinfection *(Other)*
2–I . . . . . .Electrochemical Treatment
2–J. . . . . .Ion Exchange
2–K . . . . . .Neutralization
2–L. . . . . .Reduction

BIOLOGICAL TREATMENT PROCESSES

3–A . . . . . .Activated Sludge
3–B. . . . . .Aerated Lagoons
3–C. . . . . .Anaerobic Treatment
3–D . . . . . .Nitrification–Denitrification
3–E. . . . . .Pre–Aeration
3–F. . . . . .Spray Irrigation/Land Application
3–G . . . . . .Stabilization Ponds
3–H . . . . . .Trickling Filtration

OTHER PROCESSES

4–A . . . . . .Discharge to Surface Water
4–B. . . . . .Ocean Discharge Through Outfall
4–C. . . . . .Reuse/Recycle of Treated Effluent
4–D . . . . . .Underground Injection

SLUDGE TREATMENT AND DISPOSAL PROCESSES

5–A . . . . . .Aerobic Digestion
5–B. . . . . .Anaerobic Digestion
5–C. . . . . .Belt Filtration
5–D . . . . . .Centrifugation
5–E. . . . . .Chemical Conditioning
5–F. . . . . .Chlorine Treatment
5–G . . . . . .Composting
5–H . . . . . .Drying Beds
5–I . . . . . .Elutriation
5–J. . . . . .Flotation Thickening
5–K . . . . . .Freezing
5–L. . . . . .Gravity Thickening
5–M . . . . . .Heat Drying
5–N . . . . . .Heat Treatment
5–O . . . . . .Incineration
5–P. . . . . .Land Application
5–Q . . . . . .Landfill
5–R . . . . . .Pressure Filtration
5–S. . . . . .Pyrolysis
5–T. . . . . .Sludge Lagoons
5–U . . . . . .Vacuum Filtration
5–V . . . . . .Vibration
5–W . . . . . .Wet Oxidation

TABLE 2C-1

TESTING REQUIREMENTS FOR ORGANIC TOXIC POLLUTANTS INDUSTRY CATEGORY*

INDUSTRY CATEGORY	GC/MS FRACTION[1]			
	Volatile	Acid	Base/Neutral	Pesticide
Adhesives and sealants	X	X	X	–
Aluminum forming	X	X	X	–
Auto and other laundries	X	X	X	X
Battery manufacturing	X	–	X	–
Coal mining	X	X	X	X
Coil coating	X	X	X	–
Copper forming	X	X	X	–
Electric and electronic compounds	X	X	X	X
Electroplating	X	X	X	–
Explosives manufacturing	–	X	X	–
Foundries	X	X	X	–
Gum and wood chemicals	X	X	X	X
Inorganic chemicals manufacturing	X	X	X	–
Iron and steel manufacturing	X	X	X	–
Leather tanning and finishing	X	X	X	X
Mechanical products manufacturing	X	X	X	–
Nonferrous metals manufacturing	X	X	X	X
Ore mining	X	X	X	X
Organic chemicals manufacturing	X	X	X	X
Paint and ink formulation	X	X	X	X
Pesticides	X	X	X	X
Petroleum refining	X	X	X	X
Pharmaceutical preparations	X	X	X	–
Photographic equipment and supplies	X	X	X	X
Plastic and synthetic materials manufacturing	X	X	X	X
Plastic processing	X	–	–	–
Porcelain enameling	X	–	X	X
Printing and publishing	X	X	X	X
Pulp and paperboard mills	X	X	X	X
Rubber processing	X	X	X	–
Soap and detergent manufacturing	X	X	X	–
Steam electric power plants	X	X	X	–
Textile mills	X	X	X	X
Timber products processing	X	X	X	X

*See note at conclusion of 40 CFR Part 122, Appendix D (1983) for explanation of effect of suspensions on testing requirements for primary industry categories.

[1]The pollutants in each fraction are listed in Item V—C.

X = Testing required.

— = Testing not required.

TABLE 2C-2

TOXIC POLLUTANTS AND HAZARDOUS SUBSTANCES REQUIRED TO BE IDENTIFIED BY APPLICANTS IF EXPECTED TO BE PRESENT

TOXIC POLLUTANT

Asbestos

HAZARDOUS SUBSTANCES

Acetaldehyde
Allyl alcohol
Allyl chloride
Amyl acetate
Aniline
Benzonitrile
Benzyl chloride
Butyl acetate
Butylamine
Captan
Carbaryl
Carbofuran
Carbon disulfide
Chlorpyrifos
Coumaphos
Cresol
Crotonaldehyde
Cyclohexane
2,4-D (2,4-Dichlorophenoxyacetic acid)
Diazinon
Dicamba
Dichlobenil
Dichlone
2,2-Dichloropropionic acid

HAZARDOUS SUBSTANCES

Dichlorvos
Diethyl amine
Dimethyl amine
Dintrobenzene
Diquat
Disulfoton
Diuron
Epichlorohydrin
Ethion
Ethylene diamine
Ethylene dibromide
Formaldehyde
Furfural
Guthion
Isoprene
Isopropanolamine
Kelthane
Kepone
Malathion
Mercaptodimethur
Methoxychlor
Methyl mercaptan
Methyl methacrylate
Methyl parathion
Mevinphos
Mexacarbate
Monoethyl amine
Monomethyl amine

HAZARDOUS SUBSTANCES

Naled
Napthenic acid
Nitrotoluene
Parathion
Phenolsulfonate
Phosgene
Propargite
Propylene oxide
Pyrethrins
Quinoline
Resorcinol
Strontium
Strychnine
Styrene
2,4,5-T (2,4,5-Trichlorophenoxyacetic acid)
TDE (Tetrachlorodiphenyl ethane)
2,4,5-TP (2-(2,4,5-Trichlorophenoxy) propanoic acid)
Trichlorofon
Triethanolamine
Triethylamine
Trimethylamine
Uranium
Vanadium
Vinyl acetate
Xylene
Xylenol
Zirconium

TABLE 2C-3

HAZARDOUS SUBSTANCES

1. Acetaldehyde
2. Acetic acid
3. Acetic anhydride
4. Acetone cyanohydrin
5. Acetyl bromide
6. Acetyl chloride
7. Acrolein
8. Acrylonitrile
9. Adipic acid
10. Aldrin
11. Allyl alcohol
12. Allyl chloride
13. Aluminum sulfate
14. Ammonia
15. Ammonium acetate
16. Ammonium benzoate
17. Ammonium bicarbonate
18. Ammonium bichromate
19. Ammonium bifluoride
20. Ammonium bisulfite
21. Ammonium carbamate
22. Ammonium carbonate
23. Ammonium chloride
24. Ammonium chromate
25. Ammonium citrate
26. Ammonium fluoroborate
27. Ammonium fluoride
28. Ammonium hydroxide
29. Ammonium oxalate
30. Ammonium silicofluoride
31. Ammonium sulfamate
32. Ammonium sulfide
33. Ammonium sulfite
34. Ammonium tartrate
35. Ammonium thiocyanate
36. Ammonium thiosulfate
37. Amyl acetate
38. Aniline
39. Antimony pentachloride
40. Antimony potassium tartrate
41. Antimony tribromide
42. Antimony trichloride
43. Antimony trifluoride
44. Antimony trioxide
45. Arsenic disulfide
46. Arsenic pentoxide
47. Arsenic trichloride
48. Arsenic trioxide
49. Arsenic trisulfide
50. Barium cyanide
51. Benzene
52. Benzoic acid
53. Benzonitrile
54. Benzoyl chloride
55. Benzyl chloride
56. Beryllium chloride
57. Beryllium fluoride
58. Beryllium nitrate
59. Butylacetate
60. n-Butylphthalate
61. Butylamine
62. Butyric acid
63. Cadmium acetate
64. Cadmium bromide
65. Cadmium chloride
66. Calcium arsenate
67. Calcium arsenite
68. Calcium carbide
69. Calcium chromate
70. Calcium cyanide
71. Calcium dodecylbenzenesulfonate
72. Calcium hypochlorite
73. Captan
74. Carbaryl
75. Carbofuran
76. Carbon disulfide
77. Carbon tetrachloride
78. Chlordane
79. Chlorine
80. Chlorobenzene
81. Chloroform
82. Chloropyrifos
83. Chlorosulfonic acid
84. Chromic acetate
85. Chromic acid
86. Chromic sulfate
87. Chromous chloride
88. Cobaltous bromide
89. Cobaltous formate
90. Cobaltous sulfamate
91. Coumaphos
92. Cresol
93. Crotonaldehyde
94. Cupric acetate
95. Cupric acetoarsenite
96. Cupric chloride
97. Cupric nitrate
98. Cupric oxalate
99. Cupric sulfate
100. Cupric sulfate ammoniated
101. Cupric tartrate
102. Cyanogen chloride
103. Cyclohexane
104. 2,4-D acid (2,4-Dichlorophenoxyacetic acid)
105. 2,4-D esters (2,4-Dichlorophenoxyacetic acid esters)
106. DDT
107. Diazinon
108. Dicamba
109. Dichlobenil
110. Dichlone
111. Dichlorobenzene
112. Dichloropropane
113. Dichloropropene
114. Dichloropropene-dichloropropane mix
115. 2,2-Dichloropropionic acid
116. Dichlorvos
117. Dieldrin
118. Diethylamine
119. Dimethylamine
120. Dinitrobenzene
121. Dinitrophenol
122. Dinitrotoluene
123. Diquat
124. Disulfoton
125. Diuron
126. Dodecylbenzesulfonic acid
127. Endosulfan
128. Endrin
129. Epichlorohydrin
130. Ethion
131. Ethylbenzene
132. Ethylenediamine
133. Ethylene dibromide
134. Ethylene dichloride
135. Ethylene diaminetetracetic acid (EDTA)
136. Ferric ammonium citrate
137. Ferric ammonium oxalate
138. Ferric chloride
139. Ferric fluoride
140. Ferric nitrate
141. Ferric sulfate
142. Ferrous ammonium sulfate
143. Ferrous chloride
144. Ferrous sulfate
145. Formaldehyde
146. Formic acid
147. Fumaric acid
148. Furfural
149. Guthion
150. Heptachlor
151. Hexachlorocyclopentadiene
152. Hydrochloric acid
153. Hydrofluoric acid
154. Hydrogen cyanide
155. Hydrogen sulfite
156. Isoprene
157. Isopropanolamine dodecylbenzenesulfonate
158. Kelthane
159. Kepone
160. Lead acetate
161. Lead arsenate
162. Lead chloride
163. Lead fluoborate
164. Lead flourite
165. Lead iodide
166. Lead nitrate
167. Lead stearate
168. Lead sulfate
169. Lead sulfide
170. Lead thiocyanate
171. Lindane
172. Lithium chromate
173. Malathion
174. Maleic acid
175. Maleic anhydride
176. Mercaptodimethur
177. Mercuric cyanide
178. Mercuric nitrate
179. Mercuric sulfate
180. Mercuric thiocyanate
181. Mercurous nitrate
182. Methoxychlor
183. Methyl mercaptan
184. Methyl methacrylate
185. Methyl parathion
186. Mevinphos
187. Mexacarbate
188. Monoethylamine
189. Monomethylamine
190. Naled
191. Napthalene
192. Napthenic acid
193. Nickel ammonium sulfate
194. Nickel chloride
195. Nickel hydroxide
196. Nickel nitrate
197. Nickel sulfate
198. Nitric acid
199. Nitrobenzene
200. Nitrogen dioxide
201. Njtrophenol
202. Nitrotoluene
203. Paraformaldehyde

TABLE 2C-4

HAZARDOUS SUBSTANCES *(continued)*

204. Parathion
205. Pentachlorophenol
206. Phenol
207. Phosgene
208. Phosphoric acid
209. Phosphorus
210. Phosphorus oxychloride
211. Phosphorus pentasulfide
212. Phosphorus trichloride
213. Polychlorinated biphenyls (PCB)
214. Potassium arsenate
215. Potassium arsenite
216. Potassium bichromate
217. Potassium chromate
218. Potassium cyanide
219. Potassium hydroxide
220. Potassium permanganate
221. Propargite
222. Propionic acid
223. Propionic anhydride
224. Propylene oxide
225. Pyrethrins
226. Quinoline
227. Resorcinol
228. Selenium oxide
229. Silver nitrate
230. Sodium
231. Sodium arsenate
232. Sodium arsenite
233. Sodium bichromate
234. Sodium bifluoride
235. Sodium bisulfite
236. Sodium chromate
237. Sodium cyanide
238. Sodium dodecylbenzenesulfonate
239. Sodium fluoride
240. Sodium hydrosulfide
241. Sodium hydroxide
242. Sodium hypochlorite
243. Sodium methylate
244. Sodium nitrite
245. Sodium phosphate (dibasic)
246. Sodium phosphate (tribasic)
247. Sodium selenite
248. Strontium chromate
249. Strychnine
250. Styrene
251. Sulfuric acid
252. Sulfur monochloride
253. 2,4,5-T acid (2,4,5-Trichlorophenoxyacetic acid)
254. 2,4,5-T amines (2,4,5-Trichlorophenoxy acetic acid amines)
255. 2,4,5-T esters (2,4,5-Trichlorophenoxy acetic acid esters)
256. 2,4,5-T salts (2,4,5-Trichlorophenoxy acetic acid salts)
257. 2,4,5-TP acid (2,4,5-Trichlorophenoxy propanoic acid)
258. 2,4,5-TP acid esters (2,4,5-Trichlorophenoxy propanoic acid esters)
259. TDE (Tetrachlorodiphenyl ethane)
260. Tetraethyl lead
261. Tetraethyl pyrophosphate
262. Thallium sulfate
263. Toluene
264. Toxaphene
265. Trichlorofon
266. Trichloroethylene
267. Trichlorophenol
268. Triethanolamine dodecylbenzenesulfonate
269. Triethylamine
270. Trimethylamine
271. Uranyl acetate
272. Uranyl nitrate
273. Vanadium pentoxide
274. Vanadyl sulfate
275. Vinyl acetate
276. Vinylidene chloride
277. Xylene
278. Xylenol
279. Zinc acetate
280. Zinc ammonium chloride
281. Zinc borate
282. Zinc bromide
283. Zinc carbonate
284. Zinc chloride
285. Zinc cyanide
286. Zinc fluoride
287. Zinc formate
288. Zinc hydrosulfonate
289. Zinc nitrate
290. Zinc phenolsulfonate
291. Zinc phosphide
292. Zinc silicofluoride
293. Zinc sulfate
294. Zirconium nitrate
295. Zirconium potassium flouride
296. Zirconium sulfate
297. Zirconium tetrachloride

TABLE 2C-4 *(continued)*

LINE DRAWING

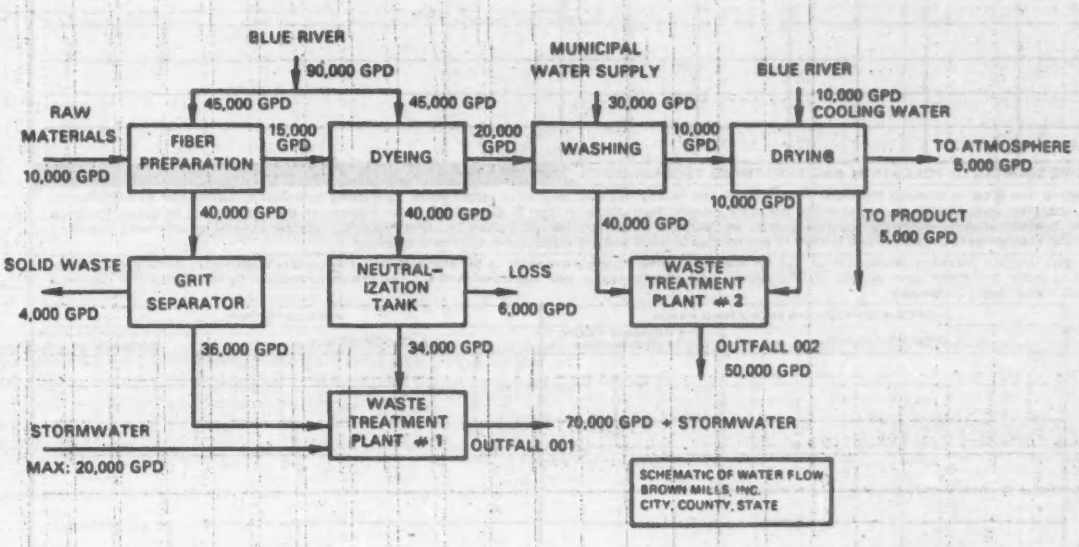

FIGURE 2C-1

EPA I.D. NUMBER *(copy from Item 1 of Form 1)*

Please print or type in the unshaded areas only.

FORM 2C NPDES

EPA

U.S. ENVIRONMENTAL PROTECTION AGENCY
APPLICATION FOR PERMIT TO DISCHARGE WASTEWATER
EXISTING MANUFACTURING, COMMERCIAL, MINING AND SILVICULTURAL OPERATIONS
Consolidated Permits Program

I. OUTFALL LOCATION

For each outfall, list the latitude and longitude of its location to the nearest 15 seconds and the name of the receiving water.

A. OUTFALL NUMBER *(list)*	B. LATITUDE			C. LONGITUDE			D. RECEIVING WATER *(name)*
	1. DEG.	2. MIN.	3. SEC.	1. DEG.	2. MIN.	3. SEC.	

II. FLOWS, SOURCES OF POLLUTION, AND TREATMENT TECHNOLOGIES

A. Attach a line drawing showing the water flow through the facility. Indicate sources of intake water, operations contributing wastewater to the effluent, and treatment units labeled to correspond to the more detailed descriptions in Item B. Construct a water balance on the line drawing by showing average flows between intakes, operations, treatment units, and outfalls. If a water balance cannot be determined *(e.g., for certain mining activities)*, provide a pictorial description of the nature and amount of any sources of water and any collection or treatment measures.

B. For each outfall, provide a description of: (1) All operations contributing wastewater to the effluent, including process wastewater, sanitary wastewater, cooling water, and storm water runoff; (2) The average flow contributed by each operation; and (3) The treatment received by the wastewater. Continue on additional sheets if necessary.

1. OUT-FALL NO *(list)*	2. OPERATION(S) CONTRIBUTING FLOW		3. TREATMENT		
	a. OPERATION *(list)*	b. AVERAGE FLOW *(include units)*	a. DESCRIPTION	b. LIST CODES FROM TABLE 2C-1	

OFFICIAL USE ONLY *(effluent guidelines sub-categories)*

CONTINUED FROM THE FRONT

C. Except for storm runoff, leaks, or spills, are any of the discharges described in Items II-A or B intermittent or seasonal?

☐ YES *(complete the following table)* ☐ NO *(go to Section III)*

1. OUTFALL NUMBER *(list)*	2. OPERATION(s) CONTRIBUTING FLOW *(list)*	3. FREQUENCY		4. FLOW				
		a. DAYS PER WEEK *(specify average)*	b. MONTHS PER YEAR *(specify average)*	a. FLOW RATE *(in mgd)*		b. TOTAL VOLUME *(specify with units)*		c. DURATION *(in days)*
				1. LONG TERM AVERAGE	2. MAXIMUM DAILY	1. LONG TERM AVERAGE	2. MAXIMUM DAILY	

III. PRODUCTION

A. Does an effluent guideline limitation promulgated by EPA under Section 304 of the Clean Water Act apply to your facility?

☐ YES *(complete Item III-B)* ☐ NO *(to to Section IV)*

B. Are the limitations in the applicable effluent guideline expressed in terms of production *(or other measure of operation)*?

☐ YES *(complete Item III-C)* ☐ NO *(go to Section IV)*

C. If you answered "yes" to Item III-B, list the quantity which represents an actual measurement of your level of production, expressed in the terms and units used in the applicable effluent guideline, and indicate the affected outfalls.

1. AVERAGE DAILY PRODUCTION			2. AFFECTED OUTFALLS *(list outfall numbers)*
a. QUANTITY PER DAY	b. UNITS OF MEASURE	c. OPERATION, PRODUCT, MATERIAL, ETC. *(specify)*	

IV. IMPROVEMENTS

A. Are you now required by any Federal, State or local authority to meet any implementation schedule for the construction, upgrading or operation of wastewater treatment equipment or practices or any other environmental programs which may affect the discharges described in this application? This includes, but is not limited to, permit conditions, administrative or enforcement orders, enforcement compliance schedule letters, stipulations, court orders, and grant or loan conditions.

☐ YES *(complete the following table)* ☐ NO *(go to Item IV-B)*

1. IDENTIFICATION OF CONDITION, AGREEMENT, ETC.	2. AFFECTED OUTFALLS		3. BRIEF DESCRIPTION OF PROJECT	4. FINAL COMPLIANCE DATE	
	a. NO.	b. SOURCE OF DISCHARGE		a. REQUIRED	b. PROJECTED

B. OPTIONAL: You may attach additional sheets describing any additional water pollution control programs *(or other environmental projects which may affect your discharges)* you now have underway or which you plan. Indicate whether each program is now underway or planned, and indicate your actual or planned schedules for construction. ☐ MARK "X" IF DESCRIPTION OF ADDITIONAL CONTROL PROGRAMS IS ATTACHED

EPA I.D. NUMBER (copy from Item 1 of Form 1)

CONTINUED FROM PAGE 2

V. INTAKE AND EFFLUENT CHARACTERISTICS

A, B, & C: See instructions before proceeding -- Complete one set of tables for each outfall -- Annotate the outfall number in the space provided. NOTE: Tables V-A, V-B, and V-C are included on separate sheets numbered V-1 through V-9.

D. Use the space below to list any of the pollutants listed in Table 2c-3 of the instructions, which you know or have reason to believe is discharged or may be discharged from any outfall. For every pollutant you list, briefly describe the reasons you believe it to be present and report any analytical data in your possession.

1. POLLUTANT	2. SOURCE	1. POLLUTANT	2. SOURCE

VI. POTENTIAL DISCHARGES NOT COVERED BY ANALYSIS

Is any pollutant listed in Item V-C a substance or a component of a substance which you currently use or manufacture as an intermediate or final product or byproduct?

☐ YES (list all such pollutants below) ☐ NO (go to Item VI-B)

CONTINUED FROM THE FRONT

VII. BIOLOGICAL TOXICITY TESTING DATA

Do you have any knowledge or reason to believe that any biological test for acute or chronic toxicity has been made on any of your discharges or on a receiving water in relation to your discharge within the last 3 years?

☐ YES *(identify the test(s) and describe their purposes below)* ☐ NO *(go to Section VIII)*

VIII. CONTRACT ANALYSIS INFORMATION

Were any of the analyses reported in Item V performed by a contract laboratory or consulting firm?

☐ YES *(list the name, address, and telephone number of, and pollutants analyzed by, each such laboratory or firm below)* ☐ NO *(go to Section IX)*

A. NAME	B. ADDRESS	C. TELEPHONE (area code & no.)	D. POLLUTANTS ANALYZED (list)

IX. CERTIFICATION

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

A. NAME & OFFICIAL TITLE *(type or print)*	B. PHONE NO. *(area code & no.)*
C. SIGNATURE	D. DATE SIGNED

PLEASE PRINT OR TYPE IN THE UNSHADED AREAS ONLY. You may report some or all of this information on seperate sheets *(use the same format)* instead of completing these pages. SEE INSTRUCTIONS.

V. INTAKE AND EFFLUENT CHARACTERISTICS *(continued from page 3 of Form 2-C)*

PART A - You must provide the results of at least one analysis for every pollutant in this table.

1. POLLUTANT	2. EFFLUENT					
	a. MAXIMUM DAILY VALUE		b. MAXIMUM 30 DAY VALUE *(if available)*		c. LONG TERM AV *(if availab*	
	(1) CONCENTRATION	(2) MASS	(1) CONCENTRATION	(2) MASS	(1) CONCENTRATION	
a. Biochemical Oxygen Demand *(BOD)*						
b. Chemical Oxygen Demand *(COD)*						
c. Total Organic Carbon *(TOC)*						
d. Total Suspended Solids *(TSS)*						
e. Ammonia *(as N)*						
f. Flow	VALUE		VALUE		VALUE	
g. Temperature *(winter)*	VALUE		VALUE		VALUE	
h. Temperature *(summer)*	VALUE		VALUE		VALUE	
i. pH	MINIMUM	MAXIMUM	MINIMUM	MAXIMUM		

PART B - Mark "X" in column 2-a for each pollutant you know or have reason to believe is present. Mark which is limited either directly, or indirectly but expressly, in an effluent limitations guideline, you column 2a, you must provide quantitative data or an explanation of their presence in your disch

1. POLLUTANT AND CAS NO. *(if available)*	2. MARK 'X'		3. EFFLUENT				
	a. BELIEVED PRESENT	b. BELIEVED ABSENT	a. MAXIMUM DAILY VALUE		b. MAXIMUM 30 DAY VALUE *(if available)*		c. LONG T
			(1) CONCENTRATION	(2) MASS	(1) CONCENTRATION	(2) MASS	(1) CONCENTR
a. Bromide (24959-67-9)							
b. Chlorine, Total Residual							
c. Color							
d. Fecal Coliform							
e. Fluoride (16984-48-8)							
f. Nitrate–Nitrite *(as N)*							

EPA I.D. NUMBER *(copy from Item 1 of Form 1)*

OUTFALL NO.

table. Complete one table for each outfall. See instructions for additional details.

RM AVRG. VALUE (if available)		d. NO. OF ANALYSES	3. UNITS (specify if blank)		4. INTAKE (optional)		
			a. CONCENTRATION	b. MASS	a. LONG TERM AVERAGE VALUE		b. NO. OF ANALYSES
ON	(2) MASS				(1) CONCENTRATION	(2) MASS	
					VALUE		
			°C		VALUE		
			°C		VALUE		
			STANDARD UNITS				

. Mark "X" in column 2-b for each pollutant you believe to be absent. If you mark column 2a for any pollutant e, you must provide the results of at least one analysis for that pollutant. For other pollutants for which you mark r discharge. Complete one table for each outfall. See the instructions for additional details and requirements.

ONG TERM AVRG. VALUE (if available)		d. NO. OF ANALYSES	4. UNITS		5. INTAKE (optional)		
			a. CONCENTRATION	b. MASS	a. LONG TERM AVERAGE VALUE		b. NO. OF ANALYSES
(1) NCENTRATION	(2) MASS				(1) CONCENTRATION	(2) MASS	

GE V-1

ITEM V-B CONTINUED FROM FRONT

1. POLLUTANT AND CAS NO. (if available)	2. MARK 'X'		3. EFFLUENT					
	a. BELIEVED PRESENT	b. BELIEVED ABSENT	a. MAXIMUM DAILY VALUE		b. MAXIMUM 30 DAY VALUE (if available)		c. LONG TERM AVG (if availa	
			(1) CONCENTRATION	(2) MASS	(1) CONCENTRATION	(2) MASS	(1) CONCENTRATION	
g. Nitrogen, Total Organic (as N)								
h. Oil and Grease								
i. Phosphorus (as P), Total (7723-14-0)								
j. Radioactivity								
(1) Alpha, Total								
(2) Beta, Total								
(3) Radium, Total								
(4) Radium 226, Total								
k. Sulfate (as SO_4) (14808-79-8)								
l. Sulfide (as S)								
m. Sulfite (as SO_3) (14265-45-3)								
n. Surfactants								
o. Aluminum, Total (7429-90-5)								
p. Barium, Total (7440-39-3)								
q. Boron, Total (7440-42-8)								
r. Cobalt, Total (7440-48-4)								
s. Iron, Total (7439-89-6)								
t. Magnesium, Total (7439-95-4)								
u. Molybdenum, Total (7439-98-7)								
v. Manganese, Total (7439-96-5)								
w. Tin, Total (7440-31-5)								
x. Titanium, Total (7440-32-6)								

...RM AVRG. VALUE (if available)		d. NO. OF ANALYSES	4. UNITS		5. INTAKE (optional)		
					a. LONG TERM AVERAGE VALUE		b. NO. OF ANALYSES
...TION	(2) MASS		a. CONCENTRATION	b. MASS	(1) CONCENTRATION	(2) MASS	

CONTINUE ON PAGE V - 3

EPA I.D. NUMBER (copy from Item 1 of Form 1) | OUTFA

CONTINUED FROM PAGE 3 OF FORM 2-C

PART C - If you are a primary industry and this outfall contains process wastewater, refer to Table 2c-2 in the instructi 2-a for all such GC/MS fractions that apply to your industry and for ALL toxic metals, cyanides, and total p *wastewater outfalls, and nonrequired GC/MS fractions)*, mark "X" in column 2-b for each pollutant you kn believe is absent. If you mark column 2a for any pollutant, you must provide the results of at least one analysis of at least one analysis for that pollutant if you know or have reason to believe it will be discharged in con dinitrophenol, or 2-methyl-4, 6 dinitrophenol, you must provide the results of at least one analysis for eac concentrations of 100 ppb or greater. Otherwise, for pollutants for which you mark column 2b, you must eithe be discharged. Note that there are 7 pages to this part; please review each carefully. Complete one table (a

1. POLLUTANT AND CAS NUMBER (If available)	2. MARK 'X'			3. EFFLUENT				
	a. TESTING REQUIRED	b. BELIEVED PRESENT	c. BELIEVED ABSENT	a. MAXIMUM DAILY VALUE (1) CONCENTRATION	a. MAXIMUM DAILY VALUE (2) MASS	b. MAXIMUM 30 DAY VALUE (If available) (1) CONCENTRATION	b. MAXIMUM 30 DAY VALUE (If available) (2) MASS	c. LONG TERM (If a (1) CONCENTRATIO
METALS, CYANIDE, AND TOTAL PHENOLS								
1M. Antimony, Total (7440-36-0)								
2M. Arsenic, Total (7440-38-2)								
3M. Beryllium, Total, 7440-41-7)								
4M. Cadmium, Total (7440-43-9)								
5M. Chromium, Total (7440-47-3)								
6M. Copper, Total (7440-50-8)								
7M. Lead, Total (7439-92-1)								
8M. Mercury, Total (7439-97-6)								
9M. Nickel, Total (7440-02-0)								
10M. Selenium, Total (7782-49-2)								
11M. Silver, Total (7440-22-4)								
12M. Thallium, Total (7440-28-0)								
13M. Zinc, Total (7440-66-6)								
14M. Cyanide, Total (57-12-5)								
15M. Phenols, Total								
DIOXIN								
2,3,7,8-Tetrachlorodibenzo-P-Dioxin (1764-01-6)				DESCRIBE RESULTS				

OUTFALL NUMBER

structions to determine which of the GC/MS fractions you must test for. Mark "X" in column
total phenols. If you are not required to mark column 2-a *(secondary industries, nonprocess*
ou know or have reason to believe is present. Mark "X" in column 2-c for each pollutant you
nalysis for that pollutant. If you mark column 2b for any pollutant, you must provide the results
in concentrations of 10 ppb or greater. If you mark column 2b for acrolein, acrylonitrile, 2,4-
or each of these pollutants which you know or have reason to believe that you discharge in
t either submit at least one analysis or briefly describe the reasons the pollutant is expected to
able *(all 7 pages)* for each outfall. See instructions for additional details and requirements.

TERM AVRG. VALUE (if available)		d. NO. OF ANALYSES	4. UNITS		5. INTAKE *(optional)*		
			a. CONCENTRATION	b. MASS	a. LONG TERM AVERAGE VALUE		b. NO. OF ANALYSES
TRATION	(2) MASS				(1) CONCENTRATION	(2) MASS	

CONTINUE ON REVERSE

CONTINUED FROM THE FRONT

1. POLLUTANT AND CAS NUMBER (If available)	2. MARK 'X'			3. EFFLUENT				
	a. TESTING REQUIRED	b. BELIEVED PRESENT	c. BELIEVED ABSENT	a. MAXIMUM DAILY VALUE		b. MAXIMUM 30 DAY VALUE (If available)		c. LONG T
				(1) CONCENTRATION	(2) MASS	(1) CONCENTRATION	(2) MASS	(1) CONCENTR
GC/MS FRACTION – VOLATILE COMPOUNDS								
1V. Acrolein (107-02-8)								
2V. Acrylonitrile (107-13-1)								
3V. Benzene (71-43-2)								
4V. Bis (Chloromethyl) Ether (542-88-1)								
5V. Bromoform (75-25-2)								
6V. Carbon Tetrachloride (56-23-5)								
7V. Chlorobenzene (108-90-7)								
8V. Chlorodibromomethane (124-48-1)								
9V. Chloroethane (75-00-3)								
10V. 2-Chloroethylvinyl Ether (110-75-8)								
11V. Chloroform (67-66-3)								
12V. Dichlorobromomethane (75-27-4)								
13V. Dichlorodifluoromethane (75-71-8)								
14V. 1,1-Dichloroethane (75-34-3)								
15V. 1,2-Dichloroethane (107-06-2)								
16V. 1,1-Dichloroethylene (75-35-4)								
17V. 1,2-Dichloropropane (78-87-5)								
18V. 1,3-Dichloropropylene (542-75-6)								
19V. Ethylbenzene (100-41-4)								
20V. Methyl Bromide (74-83-9)								
21V. Methyl Chloride (74-87-3)								

...ONG TERM AVRG. VALUE (if available)		d. NO. OF ANALYSES	4. UNITS		5. INTAKE (optional)		
					a. LONG TERM AVERAGE VALUE		b. NO. OF ANALYSES
(1) ...CENTRATION	(2) MASS		a. CONCENTRATION	b. MASS	(1) CONCENTRATION	(2) MASS	

CONTINUE ON PAGE V-5

EPA I.D. NUMBER (copy from Item 1 of Form 1)

CONTINUED FROM PAGE V-4

1. POLLUTANT AND CAS NUMBER (if available)	2. MARK 'X'			3. EFFLUENT				
	a. TESTING REQUIRED	b. BELIEVED PRESENT	c. BELIEVED ABSENT	a. MAXIMUM DAILY VALUE (1) CONCENTRATION	a. MAXIMUM DAILY VALUE (2) MASS	b. MAXIMUM 30 DAY VALUE (if available) (1) CONCENTRATION	b. MAXIMUM 30 DAY VALUE (if available) (2) MASS	c. LONG (1) CONCEN
GC/MS FRACTION – VOLATILE COMPOUNDS (continued)								
22V. Methylene Chloride (75-09-2)								
23V. 1,1,2,2-Tetrachloroethane (79-34-5)								
24V. Tetrachloroethylene (127-18-4)								
25V. Toluene (108-88-3)								
26V. 1,2-Trans-Dichloroethylene (156-60-5)								
27V. 1,1,1-Trichloroethane (71-55-6)								
28V. 1,1,2-Trichloroethane (79-00-5)								
29V. Trichloroethylene (79-01-6)								
30V. Trichlorofluoromethane (75-69-4)								
31V. Vinyl Chloride (75-01-4)								
GC/MS FRACTION – ACID COMPOUNDS								
1A. 2-Chlorophenol (95-57-8)								
2A. 2,4-Dichloro phenol (120-83-2)								
3A. 2,4-Dimethylphenol (105-67-9)								
4A. 4,6-Dinitro-O-Cresol (534-52-1)								
5A. 2,4-Dinitrophenol (51-28-5)								
6A. 2-Nitrophenol (88-75-5)								
7A. 4-Nitrophenol (100-02-7)								
8A. P-Chloro-M-Cresol (59-50-7)								
9A. Pentachlorophenol (87-86-5)								
10A. Phenol (108-95-2)								
11A. 2,4,6-Trichlorophenol (88-06-2)								

n 1) | OUTFALL NUMBER

LONG TERM AVRG. VALUE (if available)		d. NO. OF ANAL-YSES	4. UNITS		5. INTAKE (optional)		
			a. CONCEN-TRATION	b. MASS	a. LONG TERM AVERAGE VALUE		b. NO. OF ANAL-YSES
(1) CONCENTRATION	(2) MASS				(1) CONCEN-TRATION	(2) MASS	

V-5

CONTINUE ON REVERSE

CONTINUED FROM THE FRONT

1. POLLUTANT AND CAS NUMBER (if available)	2. MARK 'X'			3. EFFLUENT				
	a. TESTING REQUIRED	b. BELIEVED PRESENT	c. BELIEVED ABSENT	a. MAXIMUM DAILY VALUE (1) CONCENTRATION	a. MAXIMUM DAILY VALUE (2) MASS	b. MAXIMUM 30 DAY VALUE (if available) (1) CONCENTRATION	b. MAXIMUM 30 DAY VALUE (if available) (2) MASS	c. LO CONC
GC/MS FRACTION – BASE/NEUTRAL COMPOUNDS								
1B. Acenaphthene (83-32-9)								
2B. Acenaphtylene (208-96-8)								
3B. Anthracene (120-12-7)								
4B. Benzidine (92-87-5)								
5B. Benzo *(a)* Anthracene (56-55-3)								
6B. Benzo *(a)* Pyrene (50-32-8)								
7B. 3,4-Benzo-fluoranthene (205-99-2)								
8B. Benzo *(ghi)* Perylene (191-24-2)								
9B. Benzo *(k)* Fluoranthene (207-08-9)								
10B. Bis *(2-Chloro-ethoxy)* Methane (111-91-1)								
11B. Bis *(2-Chloro-ethyl)* Ether (111-44-4)								
12B. Bis *(2-Chloroe-propyl)* Ether (102-60-1)								
13B. Bis *(2-Ethyl-hexyl)* Phthalate (117-81-7)								
14B. 4-Bromo-phenyl Phenyl Ether (101-55-3)								
15B. Butyl Benzyl Phthalate (85-68-7)								
16B. 2-Chloro-naphthalene (91-58-7)								
17B. 4-Chloro-phenyl Phenyl Ether (7005-72-3)								
18B. Chrysene (218-01-9)								
19B. Dibenzo *(a,h)* Anthracene (53-70-3)								
20B. 1,2-Dichloro-benzene (95-50-1)								
21B. 1,3-Dichloro-benzene (541-73-1)								

c. LONG TERM AVRG. VALUE (if available)		d. NO. OF ANALYSES	4. UNITS		5. INTAKE (optional)		
			a. CONCENTRATION	b. MASS	a. LONG TERM AVERAGE VALUE		b. NO. OF ANALYSES
(1) CONCENTRATION	(2) MASS				(1) CONCENTRATION	(2) MASS	

AGE V-6

CONTINUE ON PAGE V-7

EPA I.D. NUMBER (copy from Item 1 of Form 1

CONTINUED FROM PAGE V-6

1. POLLUTANT AND CAS NUMBER (if available)	2. MARK 'X'			3. EFFLUENT				
	a. TESTING REQUIRED	b. BELIEVED PRESENT	c. BELIEVED ABSENT	a. MAXIMUM DAILY VALUE (1) CONCENTRATION	a. MAXIMUM DAILY VALUE (2) MASS	b. MAXIMUM 30 DAY VALUE (if available) (1) CONCENTRATION	b. MAXIMUM 30 DAY VALUE (if available) (2) MASS	c. LO CONC
GC/ME FRACTION — BASE/NEUTRAL COMPOUNDS (continued)								
22B. 1,4-Dichlorobenzene (106-46-7)								
23B. 3,3'-Dichlorobenzidine (91-94-1)								
24B. Diethyl Phthalate (84-66-2)								
25B. Dimethyl Phthalate (131-11-3)								
26B. Di-N-Butyl Phthalate (84-74-2)								
27B. 2,4-Dinitrotoluene (121-14-2)								
28B. 2,6-Dinitrotoluene (606-20-2)								
29B. Di-N-Octyl Phthalate (117-84-0)								
30B. 1,2-Diphenylhydrazine (as *Azobenzene*) (122-66-7)								
31B. Fluoranthene (206-44-0)								
32B. Fluorene (86-73-7)								
33B. Hexachlorobenzene (118-74-1)								
34B. Hexachlorobutadiene (87-68-3)								
35B. Hexachlorocyclopentadiene (77-47-4)								
36B. Hexachloroethane (67-72-1)								
37B. Indeno (*1,2,3-cd*) Pyrene (193-39-5)								
38B. Isophorone (78-59-1)								
39B. Naphthalene (91-20-3)								
40B. Nitrobenzene (98-95-3)								
41B. N-Nitrosodimethylamine (62-75-9)								
42B. N-Nitrosodi-N-Propylamine (621-64-7)								

Form 1) | OUTFALL NUMBER

c. LONG TERM AVRG. VALUE (if available)		d. NO. OF ANALYSES	4. UNITS		5. INTAKE (optional)		
			a. CONCENTRATION	b. MASS	a. LONG TERM AVERAGE VALUE		b. NO. OF ANALYSES
(1) CONCENTRATION	(2) MASS				(1) CONCENTRATION	(2) MASS	

CONTINUE ON REVERSE

CONTINUED FROM THE FRONT

1. POLLUTANT AND CAS NUMBER (if available)	2. MARK 'X' a. TESTING REQUIRED	b. BELIEVED PRESENT	c. BELIEVED ABSENT	3. EFFLUENT a. MAXIMUM DAILY VALUE (1) CONCENTRATION	(2) MASS	b. MAXIMUM 30 DAY VALUE (if available) (1) CONCENTRATION	(2) MASS	c. LONG T (1) CONCENTRA
GC/MS FRACTION – BASE/NEUTRAL COMPOUNDS *(continued)*								
43B. N-Nitrosodiphenylamine (86-30-6)								
44B. Phenanthrene (85-01-8)								
45B. Pyrene (129-00-0)								
46B. 1,2,4-Trichlorobenzene (120-82-1)								
GC/MS FRACTION – PESTICIDES								
1P. Aldrin (309-00-2)								
2P. α-BHC (319-84-6)								
3P. β-BHC (319-85-7)								
4P. γ-BHC (58-89-9)								
5P. δ-BHC (319-86-8)								
6P. Chlordane (57-74-9)								
7P. 4,4'-DDT (50-29-3)								
8P. 4,4'-DDE (72-55-9)								
9P. 4,4'-DDD (72-54-8)								
10P. Dieldrin (60-57-1)								
11P. α-Endosulfan (115-29-7)								
12P. β-Endosulfan (115-29-7)								
13P. Endosulfan Sulfate (1031-07-8)								
14P. Endrin (72-20-8)								
15P. Endrin Aldehyde (7421-93-4)								
16P. Heptachlor (76-44-8)								

ONG TERM AVRG. VALUE (If available)		d. NO. OF ANAL-YSES	4. UNITS		5. INTAKE (optional)		
			a. CONCEN-TRATION	b. MASS	a. LONG TERM AVERAGE VALUE		b. NO OF ANAL-YSES
(1) CENTRATION	(2) MASS				(1) CONCEN-TRATION	(2) MASS	

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CONTINUE ON PAGE V-9

CONTINUED FROM PAGE V-8

1. POLLUTANT AND CAS NUMBER (if available)	2. MARK 'X'			3. EFFLUENT				
	a. TESTING REQUIRED	b. BELIEVED PRESENT	c. BELIEVED ABSENT	a. MAXIMUM DAILY VALUE (1) CONCENTRATION	a. MAXIMUM DAILY VALUE (2) MASS	b. MAXIMUM 30 DAY VALUE (if available) (1) CONCENTRATION	b. MAXIMUM 30 DAY VALUE (if available) (2) MASS	c. LONG T... (1) CONCENTRA...
GC/MS FRACTION — PESTICIDES *(continued)*								
17P. Heptachlor Epoxide (1024-57-3)								
18P. PCB-1242 (53469-21-9)								
19P. PCB-1254 (11097-69-1)								
20P. PCB-1221 (11104-28-2)								
21P. PCB-1232 (11141-16-5)								
22P. PCB-1248 (12672-29-6)								
23P. PCB-1260 (11096-82-5)								
24P. PCB-1016 (12674-11-2)								
25P. Toxaphene (8001-35-2)								

[FR Doc. 84-25227 Filed 9-25-84; 8:45 am]
BILLING CODE 6560-50-C

)	OUTFALL NUMBER

ONG TERM AVRG. VALUE (if available)		d. NO. OF ANAL-YSES	4. UNITS		5. INTAKE (optional)		
			a. CONCEN-TRATION	b. MASS	a. LONG TERM AVERAGE VALUE		b. NO. OF ANAL-YSES
(1) CENTRATION	(2) MASS				(1) CONCEN-TRATION	(2) MASS	

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federal register

Wednesday
September 26, 1984

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Part 25

Implementation of SAFER Propulsion System Recommendations; Advanced Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. 24251; Notice No. 84-17]

Implementation of SAFER Propulsion System Recommendations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: This notice announces the FAA's preliminary intention to amend the airworthiness standards for transport category airplanes by adding a standard requiring fuel system protection during post-crash ground fires, and by requiring design features which would assure shutoff of engine fuel when post-crash ground fires occur. This proposal is the result of information from public hearings on aircraft fire safety and recommendations by the Special Aviation Fire and Explosion Reduction (SAFER) Advisory Committee. The objective of this rulemaking activity is to develop airworthiness standards which would provide protection against fuel tank explosions following a post-crash ground fire and which would assure engine fuel supply shutoff to reduce the fire hazard from spilled fuel. The purpose of this advance notice is to gain public participation in identifying and selecting a regulatory course of action by inviting interested persons to submit specific comments and arguments regarding this proposal.

DATES: Comments must be received on or before January 25, 1985.

ADDRESS: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-204), Docket No. 24251, 800 Independence Avenue SW., Washington, D.C. 20591, or delivered in duplicate to: Room 916, 800 Independence Avenue SW., Washington, D.C. Comments must be marked: Docket No. 24251. Comments may be inspected in Room 916 on weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. In addition, the FAA is maintaining an information docket of comments in the Office of the Regional Counsel (ANM-7), Federal Aviation Administration, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. Comments in the information docket may be inspected in the Office of the Regional Counsel weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. James Walker, Policy and Procedures Branch (ANM-111), Regulations and Policy Office, Aircraft Certification Division, FAA Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168; telephone (206) 431-2116.

SUPPLEMENTARY INFORMATION:

Comments Invited

This ANPRM is being issued under the FAA's policy for early public participation in rulemaking proceedings. An ANRPM is issued when it is found that reasonable outside inquiry is needed to identify and select a tentative or alternative course of action, or where it would be helpful to invite public participation in identifying and selecting a course of action.

Interested persons are invited to participate in these preliminary rulemaking procedures by submitting written data, views, or arguments. Commenters should identify the regulatory docket or notice number and submit comments in duplicate to the Rules Docket address above. All comments received on or before the closing date for comments will be considered by the Administrator before taking further rulemaking action. Comments are invited relating to the environmental, energy, or economic impact that might result from adopting these proposals. The proposals contained in this notice may be changed in light of comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, 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. If it is determined to be in the public interest to proceed with further rulemaking after considering the available data and comments received in response to this notice, a Notice or Proposed Rulemaking will be issued. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 24251." The postcard will be dated, time stamped, and returned to the commenter.

Availability of ANPRM

Any person may obtain a copy of this ANPRM 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 ANPRM. Persons interested in being placed on a mailing list for future ANPRMs or NPRMs should also request a copy of Advisory Circular No. 11-2, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

Background

As a result of information from public hearings on aircraft fire safety, the FAA established the Special Aviation Fire and Explosion Reduction (SAFER) Advisory Committee in June 1978, to "examine the factors affecting the ability of the aircraft cabin occupant to survive in the post-crash environment and the range of solutions available." The Committee consisted of 24 representatives of a wide range of aviation and general public interests. The technical support groups included approximately 150 of the world's top experts in fire research, accident investigation, materials development, and related fields. The Committee focused primarily on the problems of fuel spillage and cabin fire protection and looked into related aspects of post-crash survival.

The Committee reviewed worldwide transport aircraft accidents that have occurred since 1964 involving post-crash fuel tank explosions and identified 15 that were considered impact-survivable. The fuel tanks were initially undamaged in four of these accidents; two involved ground fires which propagated through the wing tank vent system into the fuel tanks and ignited the fuel vapors resulting in explosions; and two involved failure to stop fuel flow through a ruptured engine feedline downstream of the shutoff valve, which increased the ground fire intensity and externally heated the fuel tanks, causing explosions. The Committee concluded that the tank explosions could have been prevented or substantially delayed in these four accidents by design changes that have subsequently been developed and are included in this proposal. The remaining 11 tank explosion accidents involved major structural damage and large quantities of fuel spillage. The Committee concluded there was a low probability that any design change would have prevented or reduced the explosions that occurred in these accidents. Fuel tank explosions have a more severe effect on safe evacuation than post-

crash fires alone since the explosions tend to intensify the local fire which, in turn, impedes or prevents safe evacuation.

The Committee considered that vent flame arrestors or surge tank explosion suppression systems used in some current airplanes to protect against lightning-induced ignition at fuel vent outlets might also be able to delay propagation of ground fires and the resulting explosions in undamaged fuel systems by providing additional time for passenger evacuation. The Committee also considered a design practice in use on some current airplanes which provides closure of the fuel tank-to-engine shutoff valve with the engine fuel control shut off during the normal engine shutdown process. It was concluded that this could also greatly increase the probability of engine fuel supply shutoff in post-crash fires.

Vent flame arrestors and surge tank explosion suppression systems are used in some aircraft to protect against flame propagation due to lightning-induced ignition at fuel vent outlets on the undersurface of the wing near the wing tips in compliance with § 25.954 of the Federal Aviation Regulations (FAR), adopted August 11, 1967. Both of these systems are envisioned by the Committee as being capable of providing compliance with the requirements contained in proposed § 25.975(a)(7) and thereby minimize the possibility of flame propagation from ground fires. The effectiveness of these systems in a ground fire environment, however, has not been fully developed.

A flame arrestor consists of a stainless steel web of quenching cells or channels and is installed in the vent tube near the outlet at the undersurface of the wing. When a combustion wave enters a relatively cold quenching channel, heat from the flame front flows into the channel wall at a rate exceeding the rate of heat generation so that the temperature decreases and the combustion reaction ceases. However, if the total heat capacity of the arrestor is designed to accommodate the brief duration of combustion caused by a lightning strike and the arrestor is subjected to a sustained ground fire, the temperature of the arrestor will increase rapidly to a value where the arrestor will fail and the flames will penetrate the arrestor and propagate into the fuel tanks. Therefore, an arrestor designed for lightning-induced ignition may not provide protection against propagation of ground fires. To comply with proposed § 25.975(a)(7), it would be necessary to design an arrestor to prevent flame penetration and propagation through the vent system for a period of time equal to the time required for an external fire to heat the fuel and vapors in the wing tank to its ignition temperature or to heat the undersurface skin of the wing tank to ignite the vapors, whichever is greater. This period of time would be longer than the time it takes for a ground fire to propagate through an unprotected vent system.

One airplane manufacturer has conducted some flame holding tests on flame arrestors with 0.03 and 0.05 inch cell sizes at various hexane/air vapor outflow velocities. For the 0.03 inch cell size, tank ignition did not occur after 6.5–9.0 minutes of downstream flame exposure, depending upon the outflow velocity. Ignition occured for the 0.05 inch cell size at all outflow velocities tested with the minimum time for tank ignition occurring after 2.0 minutes of flame exposure. These test data indicate that flame propagation through the fuel vent and fuel tank explosions can be delayed by the use of vent flame arrestors which have been developed for that purpose.

An explosion suppression system includes a flame radiation sensor in the vent outlet tube to detect an oncoming flame front and to activate a one-shot fire extinguishment discharge system in a surge tank for automatic suppression of the combustion process when it reaches the tank. This system can provide fuel tank vent explosion protection during ground fires similar to a properly designed flame arrestor if provision is made for a multiple-shot extinguishment capability. This would require continued availability of electrical power to enable sensing of repeated flame fronts induced by an external fire and triggering of timely extinguishment discharges. In addition, the system must be capable of effective operation at elevated temperatures due to an external fire.

In one incident of a survivable crash, the tank-to-engine fuel shutoff valve was not closed by pulling the fire shutoff handle which allowed fuel to escape through a ruptured engine feedline and expand the ground fire. A design change following the accident was made in the fuel shutoff system to provide a redundant fuel tank shutoff valve actuation method under emergency conditions. Some airplanes currently incorporate the additional capability to close the fuel tank shutoff valve when the fuel shutoff lever on the throttle quadrant is moved to the cutoff position. This design practice or similar designs can easily be employed in all transport airplanes and is encompassed within this proposal.

On the basis of the considerations discussed above, the Committee made the following recommendations to the FAA (Reference SAFER Final Report, Vol. 1, No. FAA–ASF–80–4):

1. Amend Part 25 of the FAR to require fuel tank vent protection during ground fires by adding a new § 25.975(a)(7) to read: "Each vent to atmosphere must be designed to minimize the possiblity of external ground fires being propagated through the vent line to the tank vapor space, providing that the tank and vent structure remain intact."

2. Amend Part 25 of the FAR to require design practices that maximize the probability of engine fuel supply shutoff in potential fire situations.

The FAA generally concurs with the Committee's recommendations. The rule changes preliminarily proposed in this notice, in response to the Committee's recommendations, would require protection, in the case of survivable crashes, against propagation of post-crash ground fires through the intact fuel tank vent system into the fuel tanks, thereby preventing fuel tank explosions caused by this ignition source. They would also provide increased assurance of fuel tank shutoff valve actuation following an accident, thereby preventing release of fuel through a ruptured engine feedline from starting, expanding, or intensifying a ground fire. These measures would reduce the post-crash fire and explosion hazards and increase occupant survivability. The proposals are considered technically feasible and cost-effective, although further development and subsantiation will be necessary to verify the effectiveness of flame arrestor or explosion suppression system technology.

Economic Evaluation

The FAA expects that the most cost effective method of meeting the proposed new ground fire protection requirement will be an improved vent flame arrestor now used to comply with existing lightning protection requirements. Procurement and maintenance costs and the installed weight of this system are likely to be relatively low compared to an explosion suppression system. Costs are expected to be minor to incorporate designs for complying with the proposal to improve the probability of engine fuel supply shutoff in potential fire situations. Questions of an economic nature relating to these proposals are included for comment. If it is determined that

further rulemaking is appropriate, an NPRM and full regulatory evaluation will be issued containing an analysis of the costs and benefits of the proposed rules.

Request for Information

Persons responding to this notice are invited to specifically address the following questions and supply any other information considered pertinent to the FAA's decision in further rulemaking on this subject. Additionally, comments should address the proposed rule changes.

1. What safety benefits would be derived from the proposed rules?
2. What would the environmental impact be?
3. How would the proposed rules impact energy resources?
4. What alternative solutions would be equally effective?
5. Can modifications to existing equipment and fuel systems used for fuel system lightning protection be made to apply to the new regulation and what would be the estimated cost savings over a new system?
6. Should a flame arrestor test procedure and performance level be required? If so, what is a reasonable and representative requirement?
7. Should a flame suppression system test procedure and performance level be required? If so, what is a reasonable and representative requirement?
8. What would be the estimated cost for flame arrestor components and their installation?
9. What is the estimated life cycle cost for the flame arrestor system? Include costs for components, installation and maintenance, and the expected weight penalty.
10. What would be the estimated cost for purge tank flame suppression system components and their installation?
11. What is the estimated life cycle cost for a purge tank flame suppression system? Include component costs, installation and maintenance, and the expected weight penalty.
12. What would be the estimated cost for the dual shutoff feature and installation for the fuel tank shutoff valve requirement?
13. What is the estimated life cycle cost for the dual shutoff feature for the fuel tank shutoff valve requirement and its weight penalty?
14. How soon will production hardware be available for installation?
15. Should the proposed rule also apply to newly manufactured models of previously type certificated airplanes?
16. Should consideration be given to retrofitting transport airplanes in service?

List of Subjects in 14 CFR Part 25

Air transportation, Aircraft, Aviation safety.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend Part 25 of the Federal Aviation Regulations (14 CFR Part 25) as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

1. By amending § 25.975 by adding a new paragraph (a)(7) to read as follows:

§25.975 Fuel tank vents and carburetor vapor vents.

(a) * * *

(7) Each fuel system must be designed to minimize the possibility of external ground fires being propagated through the vent system and any other openings to fuel tank vapor spaces, providing the tank and vent system components and structure remain intact.

2. By amending § 25.1189 by adding a new paragraph (i) to read as follows:

§ 25.1189 Shutoff means.

* * * * *

(i) The engine and auxiliary power unit (APU) fuel supply and fuel crossfeed systems shall be designed to provide a positive or otherwise redundant means of isolating the tank fuel to prevent fuel spillage or discharge during post-crash groun fire condition.

(Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.45)

Note:This ANPRM seeks information from interested persons, including manufacturers and users of transport category airplanes and components, the general public, both foreign and domestic, and foreign airworthiness authorities in developing a proposed new airworthiness standard. Preliminary evaluation indicates that this document is not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) since information is being requested, and no economic or regulatory impact is imposed on any person by this action. A full regulatory evaluation will be prepared if further rulemaking is warranted based on the comments received as a result of this notice.

Issued in Seattle, Washington on September 4, 1984.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 84-25429 Filed 9-25-84; 8:45 am]

BILLING CODE 4910-13-M

federal register

Wednesday
September 26, 1984

Part VI

Department of Labor

Employment and Training Administration

20 CFR Ch. V

Unemployment Insurance Service
Proposed Quality Control Program;
Advance Notice of Proposed Rulemaking

Department of Labor

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Ch. V

Unemployment Insurance Service Proposed Quality Control Program; Under Secretary's Order No. 4–75, Dated April 16, 1975 (40 FR 18515) (5 U.S.C. 553) Interpreting and Applying Sections. 303 (a)(1) and (a)(6) and 303(b)(2) of the Social Security Act (42 U.S.C. 503 (a)(1), (a)(6), and 503(b)(2)

AGENCY: Employment and Training Administration, Labor.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Employment and Training Administration (ETA) will publish a Notice of Proposed Rulemaking in December 1984 or January 1985 to establish a permanent Quality Control (QC) program in the State Employment Security Agency (SESA) Unemployment Insurance (UI) system. The design of a QC system has been mandated by the Secretary of Labor and the President's Fiscal Year 1985 Budget includes provision for a UI QC program. The establishment of a UI QC program is a major initiative to reduce administrative errors in the UI system. ETA is publishing this notice to inform interested persons of its intentions.

DATE: Written comments must be received by the close of business on October 26, 1984.

ADDRESS: Submit comments to Carolyn M. Golding, Q.C. Task Force Director, U.S. Department of Labor, Room 7112, Patrick Henry Building, 601 D Street NW., Washington, D.C. 20213.

FOR FURTHER INFORMATION CONTACT: Carolyn M. Golding, Q.C. Task Force Director, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Room 7112, Washington, D.C. 20213. Telephone: 202–376–6636.

SUPPLEMENTARY INFORMATION:

Introduction:

The Federal/State unemployment insurance program has two major functions—the collection of employer payroll taxes and the payment of UI benefits to eligible workers. State employment security agencies collect employer taxes and determine individual eligibility for benefits in accordance with State employment insurance laws. Provisions in the Social Security Act and the Federal Unemployment Tax Act set requirements for State laws.

Statement of Problem

Random Audit results from 15 States show that nationwide a significant percentage of benefit payments for calendar year 1982 were in error. Under the Random Audit Program, States select a small sample of intrastate claims paid each week and determine the accuracy of the payment. Only partial data is available as to the magnitude of the revenue problem. These data indicate sizable lost revenue resulting from delinquent employer contributions, delayed identification of new employers, and untimely deposit of employer taxes. These losses are occurring at the same time that the UI system is heavily in debt. As of August 31, 1984 outstanding loans totaled $9.7 billion.

UI Objective for QC

The objective is to design and implement a system of data formatting and analysis precise and detailed enough to support the development and execution of corrective action plans to reduce the number and amount of inaccurate benefit payments (underpayments and overpayments), and corrective action plans to improve revenue collections in States. Key to the attainment of this objective is the collection and analysis of data that is timely and detailed. The QC principles address known limitations of Random Audit and reflect considerations as to appropriate Federal/State roles as well as resource, timing and capacity constraints.

QC Foundations: Within the framework of QC objectives and principles, the foundation for the detailed QC design and implementation activity planned for the next several years will have the following major characteristics:

—States will have primary responsibility for drawing samples, calculating error rates and initiating corrective action.

—There will be a strong Federal oversight role to ensure consistency of procedures and integrity of data.

—Sample sizes will be increased incrementally, where necessary, to increase the precision and confidence of the data. Alternative data collection and sampling methods will be tested to reduce costs and improve precision.

—Within resource and benefit/cost considerations, QC will target its resources on the permanently authorized programs of greatest size, on programs which are the Secretary's special responsibility and programs funded from Federal resources.

—Pilot tests will be conducted for the revenue and interstate programs, not currently measured by Random Audit.

—QC will be phased-in incrementally over 3 years consistent with resource, timing and capacity constraints.

Signed this 20th day of September 1984.

Patrick J. O'Keefe.

Deputy Assistant Secretary of Labor.

[FR Doc. 84-25539 Filed 9-25-84; 8:45 am]

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H.J. Res./Pub. L. 98-413

Designating the week beginning September 23, 1984, as "National Adult Day Care Center Week". (September 21, 1984; 98 Stat. 1581) Price $1.50