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Thursday
September 28, 1995

Briefings on How To Use the Federal Register
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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

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3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

[Two Sessions]

WHEN: October 17 at 9:00 am and 1:30 pm

WHERE: Office of the Federal Register Conference Room, 800 North Capitol Street NW., Washington, DC (3 blocks north of Union Station Metro)

RESERVATIONS: 202–523–4538

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Free Electronic Bulletin Board service for Public Law numbers, Federal Register finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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Presidential Documents

Title 3—

The President

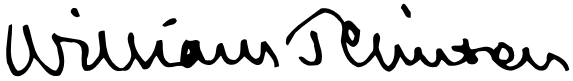
Presidential Determination No. 95–38 of August 22, 1995

Eligibility for Mongolia To Be Furnished Defense Articles and Services Under the Foreign Assistance Act and the Arms Export Control Act

Memorandum for the Secretary of State

Pursuant to the authority vested in me by section 503(a)(1) of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2311(a)), and section 3(a)(1) of the Arms Export Control Act as amended (22 U.S.C. 2753(a)(1)), I hereby find that the furnishing of defense articles and services to the Government of Mongolia will strengthen the security of the United States and promote world peace.

You are authorized and directed to report this finding to the Congress and to publish it in the Federal Register.



THE WHITE HOUSE,
Washington, August 22, 1995.

[FR Doc. 95–24296
Filed 9–26–95; 3:07 pm]
Billing code 4710–10–M

Presidential Documents

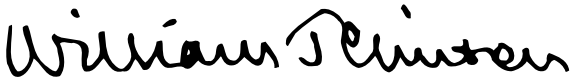
Presidential Determination No. 95–40 of September 1, 1995

Use of International Organizations and Programs Account Funds for an Initial U.S. Contribution to the Korean Peninsula Energy Development Organization (KEDO)

Memorandum for the Secretary of State

Pursuant to the authority vested in me by section 614(a)(1) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2364(a)(1) (the ''Act''), I hereby determine that it is important to the security interests of the United States to furnish up to $4 million in funds made available under chapter 3 of part I of the Act for fiscal year 1995 to provide the initial U.S. contribution to the Korean Peninsula Energy Development Organization (KEDO) without regard to any provision of law within the scope of section 614(a)(1). I hereby authorize the furnishing of such assistance.

You are hereby authorized and directed to transmit this determination to the Congress and to arrange for its publication in the Federal Register.



THE WHITE HOUSE,
Washington, September 1, 1995.

[FR Doc. 95–24297
Filed 9–26–95; 3:08 pm]
Billing code 4710–10–M

Presidential Documents

Presidential Determination No. 95–43 of September 18, 1995

Drawdown of Commodities and Services From the Inventory and Resources of the Department of the Treasury To Support Sanctions Enforcement Efforts Against Serbia and Montenegro

Memorandum for the Secretary of State [and] the Secretary of the Treasury

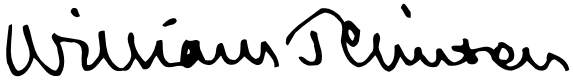
Pursuant to the authority vested in me by section 552(c)(2) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2348a(c)(2) (the ''Act''), I hereby determine that:

(1) as a result of an unforeseen emergency, the provision of assistance under Chapter 6 of Part II of the Act in amounts in excess of funds otherwise available for such assistance is important to the national interests of the United States; and

(2) such unforeseen emergency requires the immediate provision of assistance under Chapter 6 of Part II of the Act.

I therefore direct the drawdown of commodities and services from the inventory and resources of the Department of the Treasury of an aggregate value not to exceed $1.5 million to support the international Serbia and Montenegro sanctions program enforcement efforts.

The Secretary of State is authorized and directed to report this determination to the Congress and to arrange for its publication in the Federal Register.



THE WHITE HOUSE,
Washington, September 18, 1995.

[FR Doc. 95–24298
Filed 9–26–95; 3:09 pm]
Billing code 4710–10–M

Presidential Documents

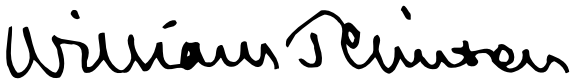
Presidential Determination No. 95–44 of September 20, 1995

Determination Pursuant to Section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as Amended

Memorandum for the Secretary of State

Pursuant to section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as amended, 22 U.S.C. 2601(c)(1), I hereby determine that it is important to the national interest that up to $20,000,000 be made available from the U.S. Emergency Refugee and Migration Assistance Fund to meet the urgent and unexpected needs of refugees and victims of conflict from Rwanda and Burundi. These funds may be used as necessary to provide U.S. contributions in response to the appeals of international and nongovernmental organizations for funds to meet the urgent and unforeseen humanitarian needs of victims of conflict from Rwanda and Burundi.

You are authorized and directed to inform the appropriate committees of the Congress of this determination and obligation of funds under this authority and to publish this memorandum in the Federal Register.



THE WHITE HOUSE,
Washington, September 20, 1995.

[FR Doc. 95–24299
Filed 9–26–95; 3:10 pm]
Billing code 4710–10–M

Rules and Regulations

Federal Register
Vol. 60, No. 188
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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

Agricultural Marketing Service

7 CFR Part 58

[DA–95–17]

RIN 0581–AB40

Grading and Inspection, General Specifications for Approved Plants and Standards for Grades of Dairy Products: Revision of User Fees

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service is increasing the fees charged for services provided under the dairy grading program. This rule will yield an estimated $87,000 of additional user fee revenue in FY 1996. The program is a voluntary, user-fee funded program conducted under the authority of the Agricultural Marketing Act of 1946, as amended. This action increases the hourly rate to $43.00 per hour for continuous resident services and $48.00 per hour for nonresident services between the hours of 6 a.m. and 6 p.m. These fees represent a $0.80 per hour increase for both resident and nonresident services. The fee for nonresident services between the hours of 6 p.m. and 6 a.m. is $52.80 per hour, which represents an increase of $0.80 per hour.

The fees need to be increased to cover the costs of recent salary increases and locality adjustments, the full funding of standardization activities, and normal inflationary pressures.

EFFECTIVE DATE: October 1, 1995.

FOR FURTHER INFORMATION CONTACT: Lynn G. Boerger, USDA/AMS/Dairy Division, Dairy Grading Branch, Room 2750–South Building, P.O. Box 96456, Washington, D.C. 20090–6456, (202) 720–9381.

SUPPLEMENTARY INFORMATION: This rule has been determined not significant for the purposes of Executive Order 12866 and has been reviewed by the Office of Management and Budget.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have preemptive effect with respect to any State or local laws, regulations or policies. This rule is not intended to have retroactive effect. There are no administrative procedures which must be exhausted prior to any judicial challenge to this rule or the application of its provisions.

This final rule has been reviewed in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, and the Administrator, Agricultural Marketing Service, has determined that the rule will not have a significant economic impact on a substantial number of small entities. The changes will not significantly affect the cost per unit for grading and inspection services. The Agricultural Marketing Service estimates that this rule will yield an additional $87,000 in user fee revenue during FY 1996. The Agency does not believe the increases will affect competition. Furthermore, the dairy grading program is a voluntary program.

The Agricultural Marketing Act of 1946, as amended, authorizes the Secretary of Agriculture to provide Federal dairy grading and inspection services that facilitate marketing and help consumers obtain the quality of dairy products they desire. The Act provides that reasonable fees be collected from the users of the services to cover the cost of maintaining the program.

Since the costs of the grading program are covered by user fees, it is essential that fees be increased to cover the cost of maintaining a financially self-supporting program. The last fee increase under this program became effective on February 9, 1994. Since that time, the salaries of Federal employees increased by 2.6 percent as of January 8, 1995. Also, there have been normal increases in other operating costs. In addition, recent congressional action may result in additional salary increases of varying amounts in 1996. Although the program's operating reserves were adequate to cover the January 8, 1995, salary increase, this will not be the case for 1996 salary increases, and a fee increase is needed.

The grading program fees also need to be increased to cover the remaining costs related to the development of dairy product standards and other activities now performed by the Dairy Division's Standardization Branch. In FY 1994, Congress appropriated money for the development of standards by the Agricultural Marketing Service but at the same time stipulated that the program costs be recovered through user fees, with the fees being turned over to the U.S. Treasury. The fee increase which took effect on February 9, 1994, provided for ⅔ of the cost of the program. Since the dairy standardization program is an essential part of the dairy grading program, it is appropriate that the standardization program costs be recovered through the fees charged the users of the grading program. The projected cost of the dairy standardization program for FY 1996 is $440,000.

On August 7, 1995, the Agricultural Marketing Service published in the Federal Register (60 FR 40115) for public comment a document proposing an $0.80 increase in the hourly fees for both the resident and nonresident programs. No comments were received.

Pursuant to 5 U.S.C. 553, it is hereby found that good cause exists for not delaying the effective date of this action until 30 days after publication of this final rule in the Federal Register. A revenue shortfall warrants putting the higher rates into effect as quickly as possible. The increase in fees is essential for effective management and operation of the program and to satisfy the intent of the Agricultural Marketing Act of 1946. A proposed rule setting forth proposed fee increases was published in the Federal Register on August 7, 1995 (60 FR 40115). Therefore, the provisions of this final rule are known to interested parties.

The supplemental information section of the proposed rule inadvertantly misstated, by one year, the approximate effective date of the fee increase. The approximate date read October 1, 1996, instead of October 1, 1995. We believe the effective date was understood by readers to be October 1, 1995 because the supplemental information referred to the implementation of the fee increase to be on an expedited basis,

and, in addition, the proposed rule allowed only a 30-day comment period.

Accordingly, the program fees are being increased as set forth below.

Program Changes Adopted in the Final Rule

This document makes the following changes in the regulations implementing the dairy inspection and grading program:

1. Increases the hourly fee for nonresident services from $47.20 to $48.00 for services performed between 6 a.m. and 6 p.m. and from $52.00 to $52.80 for services performed between 6 p.m. and 6 a.m.

The nonresident hourly rate is charged to users who request an inspector or grader for particular dates and amounts of time to perform specific grading and inspection activities. These users of nonresident services are charged for the amount of time required to perform the task and undertake related travel, plus travel costs.

2. Increases the hourly fee for continuous resident services from $42.20 to $43.00.

The resident hourly rate is charged to those who are using grading and inspection services performed by an inspector or grader assigned to a plant on a continuous, year-round, resident basis.

List of Subjects in 7 CFR Part 58

Food grades and standards, Dairy products, Food labeling, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 58 is amended as follows:

PART 58–GRADING AND INSPECTION, GENERAL SPECIFICATIONS FOR APPROVED PLANTS AND STANDARDS FOR GRADES OF DAIRY PRODUCTS

1. The authority citation for Part 58 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

2. In Part 58, subpart A, § 58.43 is revised to read as follows:

§ 58.43 Fees for inspection, grading, and sampling.

Except as otherwise provided in sections 58.38 through 58.46, charges shall be made for inspection, grading, and sampling service at the hourly rate of $48.00 for service performed between 6 a.m. and 6 p.m., and $52.80 for service performed between 6 p.m. and 6 a.m., for the time required to perform the service calculated to the nearest 15-minute period, including the time required for preparation of certificates and reports and the travel time of the inspector and grader in connection with the performance of the service. A minimum charge of one-half hour shall be made for service pursuant to each request or certificate issued.

3. Section 58.45 is revised to read as follows:

§ 58.45 Fees for continuous resident service.

Irrespective of the fees and charges provided in sections 58.39 and 58.43, charges for the inspector(s) and grader(s) assigned to a continuous resident program shall be made at the rate of $43.00 per hour for services performed during the assigned tour of duty. Charges for service performed in excess of the assigned tour of duty shall be made at a rate of 1½ times the rate stated in this section.

Dated: September 25, 1995.

M. Michael Holbrook,

Acting Administrator.

[FR Doc. 95–24122 Filed 9–27–95; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 928

[Docket No. FV95–928–1FIR]

Papayas Grown in Hawaii; Expenses and Assessment Rate for the 1995–96 Fiscal Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of the interim final rule which authorized expenses and established an assessment rate for the Papaya Administrative Committee (Committee) under M.O. No. 928 for the 1995–96 fiscal year. Authorization of this budget enables the Committee to incur expenses that are reasonable and necessary to administer this program. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATE: July 1, 1995, through June 30, 1996.

FOR FURTHER INFORMATION CONTACT: Karen T. Chaney, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, D.C. 20090–6456, telephone: (202) 720–5127; or Martin Engler, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, Suite 102 B, Fresno, California 93721, telephone: (209) 487–5901.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 928 [7 CFR Part 928], regulating the handling of papayas grown in Hawaii. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

The Department is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, papayas grown in Hawaii are subject to assessments. It is intended that the assessment rate specified herein will be applicable to all assessable papayas handled during the 1995–96 fiscal year, beginning July 1, 1995, through June 30, 1996. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

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

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

There are approximately 120 handlers of papayas regulated under the marketing order each season and approximately 400 papaya producers in Hawaii. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. A majority of these handlers and producers may be classified as small entities.

The marketing order, administered by the Department, requires that the assessment rate for a particular fiscal year apply to all assessable papayas handled from the beginning of such year. Annual budgets of expenses are prepared by the Committee, the agency responsible for local administration of this marketing order, and submitted to the Department for approval. The members of the Committee are handlers and producers of Hawaii papayas. They are familiar with the Committee's needs and with the costs for goods, services, and personnel in their local area, and are thus in a position to formulate appropriate budgets. The Committee's budget is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the Committee is derived by dividing the anticipated expenses by expected shipments of papayas. Because that rate is applied to actual shipments, it must be established at a rate which will provide sufficient income to pay the Committee's expected expenses.

The Committee met on April 28, 1995, and unanimously recommended expenses totaling $562,044 for its 1995–96 budget. The Committee met again on July 20, 1995, and unanimously recommended a new budget because the original budget contained inaccuracies. The revised recommendation contained expenses totaling $465,800 for the 1995–96 budget. This is a $123,400 reduction in expenses compared to the 1994–95 budget of $589,200.

The Committee also unanimously recommended an assessment rate of $.0089 per pound for the 1995–96 fiscal year, which is the same as was recommended for the 1994–95 fiscal year. The assessment rate, when applied to anticipated shipments of 33 million pounds, would yield $293,700 in assessment income. Other sources of program income include $40,000 from the Hawaii Department of Agriculture, $57,000 from the USDA's Foreign Agricultural Service, $7,800 from the Japanese Inspection program, $3,000 in interest income, and $4,766 from the County of Hawaii. Income from all sources will be adequate to cover estimated expenses.

Major expense categories for the 1995 fiscal year include $165,500 for the market expansion program, $145,000 for research and development, and $67,600 for salaries. Funds in the reserve at the end of the 1995–96 fiscal year, estimated at $112,279 will be within the maximum permitted by the order of one fiscal year's expenses.

An interim final rule was published in the Federal Register [60 FR 43352, August 21, 1995] and provided a 30-day comment period for interested persons. No comments were received.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs should be offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

It is found that the specified expenses for the marketing order covered in this rule are reasonable and likely to be incurred and that such expenses and the specified assessment rate to cover such expenses will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register [5 U.S.C. 553] because the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1995–96 fiscal year for the program began July 1, 1995. The marketing order requires that the rate of assessment apply to all assessable papayas handled during the fiscal year. In addition, handlers are aware of this action which was recommended by the Committee at a public meeting and published in the Federal Register as an interim final rule. No comments were received concerning the interim final rule that is adopted in this action as a final rule without change.

List of Subjects in 7 CFR Part 928

Marketing agreements, Papayas, Reporting and recordkeeping requirements.

PART 928—PAPAYAS GROWN IN HAWAII

Accordingly, the interim final rule amending 7 CFR part 928 which was published at 60 FR 43351 on August 21, 1995, is adopted as a final rule without change.

Dated: September 22, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–24044 Filed 9–27–95; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 929

[Docket No. FV95–929–2FIR]

Expenses and Assessment Rate for the 1995–96 Fiscal Year for the Marketing Order Covering Cranberries Grown in States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of the interim final rule which authorized expenses and established an assessment rate for the Cranberry Marketing Committee (Committee) under Marketing Order No. 929 for the 1995–96 fiscal year. Authorization of this budget enables the Committee to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Effective beginning September 1, 1995, through August 31, 1996.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella or Kathleen M. Finn, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, DC 20090–6456; telephone: (202) 720–5127.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 929 (7 CFR Part 929), as amended, regulating the handling of cranberries grown in Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York, hereinafter referred to as the ''order''. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act''.

The Department is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, cranberries grown in 10 states are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable cranberries during the 1995–96 fiscal year beginning September 1, 1995, through August 31, 1996. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

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

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

There are approximately 30 handlers of cranberries who are subject to regulation under the cranberry marketing order and approximately 1,050 producers of cranberries in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of cranberry producers and handlers may be classified as small entities.

The cranberry marketing order, administered by the Department, requires that the assessment rate for a particular fiscal year apply to all assessable cranberries handled from the beginning of such year. The budget of expenses for the 1995–96 fiscal year was prepared by the Committee, the agency responsible for local administration of this marketing order, and submitted to the Department for approval. The members of the Committee are producers of cranberries. They are familiar with the Committee's needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate an appropriate budget.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of cranberries. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the Committee's expected expenses. The recommended budget and rate of assessment are usually acted upon by the Committee shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, the budget and assessment rate approval must be expedited so that the Committee will have funds to pay its expenses.

The Committee conducted a mail vote and unanimously recommended 1995–96 marketing order expenses of $201,336 and an assessment rate of $0.03 per 100-pound barrel of cranberries. In comparison, 1994–95 budgeted expenses were $164,690. The 1995–96 marketing year budgeted expenditures of $210,336 are $36,646 more than the previous fiscal year. The increase is due to the funding of two new research projects for the 1995–96 season. The assessment rate will remain unchanged from the previous fiscal year.

Assessment income for 1995–96 is estimated to total $136,320 based on anticipated fresh domestic shipments of $4,544,000 barrels of cranberries. The assessment income, plus $4,375 in interest income and a withdrawal of $60,641 from the Committee's authorized reserve fund will be adequate to cover budgeted expenses. Funds in the reserve at the end of the 1994–95 fiscal year are estimated to be

$150,000. The reserve fund will be within the maximum permitted by the order of one fiscal year's expenses.

Major expense categories for the 1995–96 fiscal year include $71,345 for operating expenses, $41,000 for travel expenses, and $35,788 for research projects.

An interim final rule regarding this action was published in the August 10, 1995, Federal Register (60 FR 40745), with a 30-day comment period ending September 11, 1995. No comments were received.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

It is found that the specified expenses for the marketing order covered in this rule are reasonable and likely to be incurred and that such expenses and the specified assessment rate to cover such expenses will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1995–96 fiscal year for the program began September 1, 1995, and the marketing order requires that the rate of assessment apply to all assessable cranberries handled during the fiscal year; and (3) an interim final rule was published on this action and provided for a 30-day comment period; no comments were received.

List of Subjects in 7 CFR Part 929

Cranberries, Marketing agreements, Reporting and recordkeeping requirements.

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

Accordingly, the interim final rule amending 7 CFR Part 929 which was published at 60 FR 40745 on August 10, 1995, is adopted as a final rule without change.

Dated: September 22, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95– 24045 Filed 9–27–95; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 931

[Docket No. FV95–931–1FIR]

Fresh Bartlett Pears Grown in Oregon and Washington; Expenses and Assessment Rate for the 1995–96 Fiscal Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final, without change, the provisions of the interim final rule which authorized expenses and established an assessment rate for the Northwest Fresh Bartlett Pear Marketing Committee (Committee) under Marketing Order No. 931 for the 1995–96 fiscal year. Authorization of this budget enables the Committee to incur expenses that are reasonable and necessary to administer the program. Funds to administer the program are derived from assessments on handlers.

EFFECTIVE DATE: July 1, 1995, through June 30, 1996.

FOR FURTHER INFORMATION CONTACT: Karen T. Chaney, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, D.C. 20090–6456, telephone: 202–720–5127; or Teresa L. Hutchinson, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, Green-Wyatt Federal Building, room 369, 1220 Southwest Third Avenue, Portland, Oregon 97204, telephone: 503–326–2724.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 141 and Marketing Order No. 931, both as amended [7 CFR Part 931], regulating the handling of fresh Bartlett pears grown in Oregon and Washington. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

The Department is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order now in effect, Bartlett pears grown in Oregon and Washington are subject to assessments. Funds to administer the Bartlett pear marketing order are derived from such assessments. It is intended that the assessment rate as specified herein will be applicable to all assessable pears during the 1995–96 fiscal year beginning July 1, 1995, and ends June 30, 1996. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

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

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

There are approximately 65 handlers regulated under the marketing order each year and approximately 1,800 producers of Bartlett pears. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of Bartlett pear handlers and producers in Oregon and Washington may be classified as small entities.

The budget of expenses for the 1995–96 fiscal year was prepared by the Committee, the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Committee are producers and handlers of Bartlett pears. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of fresh Bartlett pears grown in Oregon and Washington. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

The Committee met on June 1, 1995, and unanimously recommended total expenses of $92,254 with an assessment rate of $0.02 per standard box or equivalent for the 1995–96 fiscal year. In comparison, 1994–95 budgeted expenses were $96,410, with an approved assessment rate of $0.02 per standard box or equivalent. This represents a $4,156 decrease in expenses and no change in the assessment rate from the amounts recommended for the current fiscal year.

The assessment rate, when applied to anticipated pear shipments of 3,152,300 standard boxes or equivalent, will yield $63,046 in assessment income. Assessment income, combined with $4,000 from other income sources, and $25,208 from the Committee's authorized reserve, will be adequate to cover budgeted expenses. The withdrawal of $25,208 from the Committee's authorized reserve fund will result in no reserve remaining at the end of the 1995–96 fiscal year. Major expense categories for the 1995–96 fiscal year include $44,135 for salaries, $9,195 for unshared contingency, and $4,989 in employee health benefits.

An interim final rule concerning this action was published in the August 7, 1995, Federal Register [60 FR 40058], with a 30-day comment period ending September 6, 1995. No comments were received.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order.

Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

It is found that the specified expenses for the marketing order covered in this rule are reasonable and likely to be

incurred and that such expenses and the specified assessment rate to cover such expenses will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1995–96 fiscal year for the program began July 1, 1995. The marketing order requires that the rate of assessment apply to all assessable Bartlett pears handled during the fiscal year. In addition, handlers are aware of this action which was recommended by the Committee at a public meeting and published in the Federal Register as an interim final rule. No comments were received concerning the interim final rule that is adopted in this action as a final rule without change.

List of Subjects in 7 CFR Part 931

Marketing agreements, Pears, Reporting and recordkeeping requirements.

PART 931—FRESH BARTLETT PEARS GROWN IN OREGON AND WASHINGTON

Accordingly, the interim final rule amending 7 CFR part 931 which was published at 60 FR 40058 on August 7, 1995, is adopted as a final rule without change.

Dated: September 22, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–24046 Filed 9–27–95; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 987

[Docket No. FV95–987–1FR]

Domestic Dates Produced or Packed in Riverside County, California; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes an assessment rate under Marketing Order No. 987 for the 1995–96 crop year. Authorization of this budget enables the California Date Administrative Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATE: October 1, 1995, through September 30, 1996.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918; or Maureen Pello, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, suite 102B, 2202 Monterey Street, Fresno, California 93721, telephone 209–487–5901.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 987, both as amended (7 CFR part 987), regulating the handling of dates produced or packed in Riverside County, California. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order now in effect, California dates are subject to assessments. Funds to administer the California date marketing order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable dates during the 1995–96 crop year which begins October 1, 1995, and ends September 30, 1996. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

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

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

There are approximately 135 producers of California dates under the marketing order and approximately 25 handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of California date producers and handlers may be classified as small entities.

The budget of expenses for the 1995–96 crop year was prepared by the California Date Administrative Committee, the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Committee are producers and handlers of California dates. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are, thus, in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of California dates. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

The Committee met on May 18, 1995, and by votes of 6 to 3 recommended a 1995–96 assessment rate and operating expenses and increased market promotion expenses to fund the Committee's marketing plan. The two handlers voting against the funding for the marketing plan believe individual handlers should do more advertising on their own; the other no vote came from a producer who expressed concerns about the outstanding assessments owed

the Committee. However, the majority of Committee members expressed the need for the industry to work together to promote California dates and help reduce current inventories.

The 1995–96 budget of $774,218 is $203,218 more than the previous year. Included in the budgeted expenditures is an operating budget of $160,000, $24,865 more than last year, with a 26.25 percent surplus account allocation, for a net operating budget of $118,000, or $18,000 more than last year. Also included is $656,218 allocated for market promotion, $206,218 more than last year.

Budget items for 1995–96 which have increased compared to those budgeted for 1994–95 (in parentheses) are: Executive Director's salary, $66,000 ($57,500), Marketing Assistant's Salary, $24,000 ($18,500), health and welfare benefits, $10,500 ($8,500), payroll taxes, $8,000 ($5,814), rent, $7,500 ($7,000), professional services-accounting, $3,000 ($2,000), contingency, $5,200 ($221), consumer public relations, $151,500 ($60,000), consumer media, $336,218 ($265,000), industrial promotion, $115,000 ($30,000), and $13,000 for a secretary/receptionist for which no funding was recommended last year. Items which have decreased compared to the amount budgeted for 1994–95 (in parentheses) are: Copier lease and maintenance, $2,100 ($2,400), retail trade promotion, $35,000 ($45,000), and ($4,000) for equipment for marketing efforts, for which no funding was recommended this year. All other items are budgeted at last year's amounts.

The assessment rate of $2.25 per hundredweight is $0.75 more than last season. This rate, when applied to anticipated date shipments of 36,000,000 pounds (360,000 hundredweight), will yield $810,000 in assessable income. This, along with $1,000 in interest income, will result in $36,782 in excess income which will be allocated to the Committee's reserve. Funds in the reserve as of September 30, 1996, which the Committee estimates will be $235,782, should be within the maximum amount permitted by the order. Funds held by the Committee at the end of the crop year, including the reserve, which are in excess of the crop year's expenses may be used to defray expenses for four months and thereafter the Committee shall refund or credit the excess funds to the handlers.

A proposed rule was published in the Federal Register on August 7, 1995 (60 FR 40116). That rule provided that interested persons could file written comments through September 6, 1995. No comments were received.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

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

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the Federal Register (5 U.S.C. 553) because the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1995–96 crop year begins on October 1, 1995. The marketing order requires that the rate of assessment for the crop year apply to all assessable dates handled during the crop year. In addition, handlers are aware of this rule which was recommended by the Committee at a public meeting and published in the Federal Register as a proposed rule. Written comments were invited, and none was received.

List of Subjects in 7 CFR Part 987

Dates, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 987 is amended as follows:

PART 987—DOMESTIC DATES PRODUCED OR PACKED IN RIVERSIDE COUNTY, CALIFORNIA

1. The authority citation for 7 CFR part 987 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 987.338 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 987.338 Expenses and assessment rate.

Expenses of $774,218 by the California Date Administrative Committee are authorized, and an assessment rate of $2.25 per hundredweight of assessable dates is established for the crop year ending September 30, 1996. Unexpended funds may be carried over as a reserve within the limitations specified in § 987.72 (c) and (d).

Dated: September 22, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–24047 Filed 9–27–95; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 997

[Docket No. FV95–997–2IFR]

Amendment of Provisions Regulating Domestically Produced Peanuts Handled by Persons Not Subject to the Peanut Marketing Agreement

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule amends for 1995 and subsequent crop years several certification and identification requirements established for peanuts handled by persons not signatory to Peanut Marketing Agreement No. 146 (Agreement). This rule provides for a chemical analysis exemption for superior grade shelled peanuts and establishes a maximum grade tolerance for reconditioning failing peanuts by blanching. Finally, this rule adds addresses and updates contact numbers of chemical analysis laboratories. The changes concerning peanuts for human consumption are consistent with industry operating practices and help bring the non-signatory handling requirements into conformity with requirements specified in the Agreement. The rule should reduce the regulatory burden and handling costs on non-signatory peanut handlers.

DATES: Effective September 28, 1995. Comments received by October 30, 1995, will be considered prior to issuance of any final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, D.C., 20090–6456, or Fax: (202) 720–5698. Comments should reference the docket number and the date and page number of this issue of the Federal Register and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Richard Lower, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O.

Box 96456, room 2523–S, Washington, D.C. 20090–6456, telephone (202) 720–2020, facsimile (202) 720–5698.

SUPPLEMENTARY INFORMATION: This interim final rule is issued pursuant to requirements of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. This action is not intended to have retroactive effect. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

There are approximately 45 handlers of peanuts who have not signed the Agreement and, thus, are subject to the regulations contained herein. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than $5,000,000. It is estimated that most of the non-signatory handlers are small entities. Most of the 47,000 peanut producers who might potentially do business with these handlers are also small entities. Small agricultural producers have been defined as those having annual receipts of less than $500,000.

In 1994, the reported U.S. production, mostly covered under the Agreement, was approximately 4.25 billion pounds of peanuts, a 25 percent increase from the short 1993 crop. The preliminary 1994 peanut crop value is $1.23 billion, up 19 percent from the 1993 crop value.

After aflatoxin was found in peanuts in the mid-1960's, the domestic peanut industry has sought to minimize aflatoxin contamination in peanuts and peanut products. Under authority of the Act, Peanut Marketing Agreement No. 146 and the Peanut Administrative Committee (Committee) were established by the Secretary in 1965. The Agreement was signed by a majority of domestic peanut handlers (signatory handlers).

Public Law 101–220, enacted December 12, 1989, amended section 608b of the Act to require that all handlers who have not signed the Agreement (non-signatory handlers) be subject to quality, handling, and inspection requirements to the same extent and manner as are required under the Agreement. Regulations to implement Pub. L. 101–220 were issued and made effective on December 4, 1990 (55 FR 49983). It is estimated that 5 percent of the domestic peanut crop is marketed by non-signatory handlers and the remainder of the crop is handled by signatory handlers.

The objective of the Agreement and the non-signatory handling regulations (7 CFR part 997) is to ensure that only wholesome peanuts enter edible market channels. Under both regulations, farmers stock peanuts with visible *Aspergillus flavus* mold (the principle source of aflatoxin) are required to be diverted to non-edible uses. Both regulations also provide that shelled peanuts meeting minimum outgoing quality requirements must be chemically analyzed for aflatoxin contamination.

Under the non-signatory provisions, no peanuts may be sold or otherwise disposed of for human consumption if the peanuts fail to meet the quality requirements of the Agreement. The non-signatory handler regulations have been amended several times thereafter and are published in 7 CFR part 997. All amendments have been made to ensure that the non-signatory handling requirements are the same as modifications made to the signatory handling requirements under the Agreement. Violation of non-signatory regulations may result in a penalty in the form of an assessment by the Secretary equal to 140 percent of the support price for quota peanuts. The support price for quota peanuts is determined under section 108B of the Agricultural Act of 1949 (7 U.S.C. 1445c–3) for the crop year during which the violation occurs.

Because aflatoxin appears most frequently in damaged, stressed, under-developed, and malformed peanut kernels, peanut lots with fewer poor quality kernels are less likely to be contaminated. Under § 998.200(a) of the Agreement, minimum quality requirements for shelled peanuts are found in the ''Other Edible Quality'' table of the Agreement. All shelled peanuts destined for edible consumption must meet these minimum requirements. Peanuts meeting this minimum grade must also be chemically tested for contamination.

The Agreement also has a higher level of quality requirements titled ''Indemnifiable Grades.'' Peanuts meeting the indemnifiable grades do not have to be chemically analyzed for aflatoxin.

The minimum quality requirements specified in the ''Other Edible Quality'' table of the Agreement are also specified in the non-signatory handler regulations in the table titled ''Minimum Grade Requirements—Peanut for Human Consumption'' (hereinafter referred to as Table 1) in § 997.30(a).

To be consistent with the Agreement, the Department is establishing in this interim final rule, a second table titled ''Superior Quality Exemption—Peanuts for Human Consumption'' (hereinafter referred to as Table 2) in the outgoing quality requirements in § 997.30(a). The quality requirements in Table 2 are the same as those established in the Indemnifiable Grades table of the Agreement. Non-signatory handler peanuts meeting the Superior Quality Exemption grades are not required to be chemically tested for aflatoxin. However, buyers often require chemical analysis as an assurance of minimum aflatoxin contamination.

The Superior Quality Exemption tolerances in these regulations are (in percentage of kernels): Unshelled and damaged kernels (1.25); combined unshelled, damaged kernels and kernels with minor defects (2.00); sound split and broken kernels (3.00 for most varieties); sound whole kernels that pass specified screens (3.00 for most varieties); combined sound split and broken kernels (4.00 for all varieties); foreign material (.10 for some varieties and .20 for other varieties), and moisture (9.00).

Amendments to handling requirements: The Committee meets in February or March each year and recommends to the Secretary such rules and regulations as may be necessary to keep the Agreement consistent with current industry practice. The Committee met on March 22 and 23, 1995, and unanimously recommended four relaxations in the Agreement handling requirements which the Department accepted. The changes were published in the July 14, 1995, issue of the Federal Register as an interim final rule (60 FR 36205). This interim final rule establishes the same relaxations, as appropriate, for the non-signatory handling regulations.

The first amendment relaxes Positive Lot Identification (PLI) and quality certification requirements specified in paragraph (g) of § 997.20 *Shelled*

peanuts by allowing movement of failing quality shelled peanuts, which originated from Segregation 1 peanuts, from one handler to another handler without requiring re-inspection and PLI certification by the receiving handler. Currently, paragraph (g) provides that handlers may acquire from other handlers for remilling, Segregation 1 shelled peanuts that fail to meet the requirements for human consumption. The peanuts must be accompanied by a valid inspection certificate and be positive lot identified. Further, the peanuts must be held and milled separate and apart from other receipts or acquisitions of the receiving handler and the transaction must be reported to the Division by both handlers.

Under the relaxed handling procedure, receiving handlers are not required to hold and remill such peanuts separate from other receipts and acquisitions of the handlers and the received peanuts do not have to be reinspected. Any peanuts so transferred and handled must still meet all the applicable edible quality requirements before being disposed of for human consumption.

Therefore, paragraph (g) of § 997.20 is revised by removing the second sentence requiring inspection certification and positive lot identification and changing the last sentence to remove reference to received peanuts being held and milled separate and apart from other peanuts.

The second amendment relaxes ownership requirements of paragraph (f) of § 997.30 *Outgoing regulations* by allowing handlers to transfer peanuts to another handler or to domestic commercial storage facilities. Currently, paragraph (f) applies to transfer of peanuts from one plant to another of a handler's plants or to commercial storage without having the peanuts PLI and certified as meeting quality requirements—provided that ownership is retained by the handler and that the transfer is only to points within the same production area.

The amendment extends the provisions of paragraph (f) to allow the transfer of peanuts from one handler's facility to another handler's facility for further handling. The relaxation allows handlers to make the most efficient use of other handling facilities without having to pay additional costs entailed in obtaining PLI and quality certification of the peanuts. Any peanuts so transferred are still subject to all applicable edible quality requirements before being disposed of for human consumption. Thus, paragraph (f) of § 997.30 is revised to include transfer of peanuts between facilities of different handlers without quality certification and PLI at the time of transfer.

Similarly, the third amendment revises some PLI and certification requirements of paragraphs (a)(1), (a)(2) and (a)(3) of § 997.40 *Reconditioning and disposition of peanuts failing quality requirements.* Paragraph (a)(1) currently provides that a handler of failing quality, Segregation 1 shelled peanuts may remill, move under PLI to a custom remiller, sell to another handler, or blanch such peanuts. Paragraph (a)(2) provides that such peanuts moved to blanching, or sold to another handler for blanching, must be moved under PLI. Paragraph (a)(3) requires peanut lots in such transactions to be accompanied by a valid grade certificate and moved under PLI. Peanuts so handled should be kept separate and apart from other peanuts at the remilling, blanching or receiving handler facility.

Under the relaxed handling procedure, the peanuts do not have to be moved under PLI to the remiller, blancher, or receiving handler. Further, to be consistent with the changes in the Agreement regulations, peanuts so moved no longer have to be kept separate and apart from other peanuts at the remilling, blanching or receiving handler facility. Thus, paragraphs (a)(1), (a)(2), and (a)(3) are revised by removing references to PLI and movement accompanied by valid certification. Additionally, provisions are added in the appropriate provisions to provide that the transferred peanuts do not have to be kept separate and apart at the receiving remilling, blanching, or handling facility.

The Committee members, in proposing the changes in the Agreement provisions, believed that the more restrictive level of regulatory control for each peanut lot is no longer needed. The changes in this rule are based on the fact that current shelling, processing, remilling and blanching technologies are generally more efficient than in the past. The rule makes it more economical for handlers to use blanchers' and remillers' facilities which are generally operated more efficiently. These facilities are now located throughout the different production areas which also encourages their use.

The rule is intended to provide handlers more reconditioning flexibility by eliminating some certification requirements and PLI of peanuts and reducing costs incurred during movement to different locations and facilities. The rule should improve handlers' competitive positions. Relaxing the regulations will allow freer movement of peanuts and more efficient use of facilities. The relaxation of PLI and certification requirements will reduce the number of inspections and result in lower costs to the entire industry. Fewer inspections are not expected to compromise the industry's quality control and lot identification objectives.

This interim final rule also adds and updates addresses and telephone and facsimile numbers, where applicable, of approved aflatoxin testing laboratories. The laboratories perform chemical analyses required by the non-signatory handling regulations. This information is provided in paragraph (c)(5)(i) of § 997.30 *Outgoing regulation*. Nine of the laboratories are approved by the USDA/AMS Science Division and eight are approved by the Committee. Non-signatory handlers may send peanut samples to any laboratory on the list, per instructions specified in paragraph (c) of the outgoing regulation. This rule also updates information in paragraph (c)(5)(ii) identifying the contact point of the USDA Science Division headquarter's office.

In accordance with the Paperwork Reduction Act of 1988 (44 U.S.C. Chapter 35), information collection requirements that are contained in this rule have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0163.

Based on the above, the Administrator of the AMS has determined that this interim final rule will not have a significant economic impact on a substantial number of small entities. Written comments, timely received, in response to this action, will be considered before any finalization of this rule.

After consideration of all relevant matter presented and other information, it is found that the changes set forth below will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good cause, that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because: (1) This rule relaxes several handling restrictions on peanut handlers not subject to the Agreement; (2) the 1995 peanut harvest is expected to begin soon and handlers should be aware of handling regulations prior to harvesting activities; (3) this rule brings the quality requirements under part 997 into conformity with those under the

Agreement, as required by the Act; and (4) this action provides a 30-day comment period and any comments received will be considered prior to issuance of any final rule.

List of Subjects in 7 CFR Part 997

Food grades and standards, Peanuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 997 is amended as follows:

PART 997—PROVISIONS REGULATING THE QUALITY OF DOMESTICALLY PRODUCED PEANUTS HANDLED BY PERSONS NOT SUBJECT TO THE PEANUT MARKETING AGREEMENT

1. The authority citation for 7 CFR part 997 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Paragraph (g) of § 997.20 is revised to read as follows:

§ 997.20 Incoming regulation.

* * * * *

(g) *Shelled peanuts.* Handlers may acquire from other handlers or a handler as defined in 7 CFR 998.8, for remilling and subsequent disposition to human consumption outlets, shelled peanuts (which originated from ''Segregation 1 peanuts'') that fail to meet the requirements specified for human consumption in § 997.30(a). Transactions made in this manner shall be reported to the Division on Form FV–117–3 ''Report of Disposition to and Acquisition from Another Handler—Shelled Peanuts Failing Edible Quality Requirements for Remilling and Further Handling'' by both the handler selling such peanuts and the handler acquiring such peanuts. Further disposition of such peanuts shall be regulated by § 997.40.

* * * * *

3. Section 997.30(a)(1) is amended by redesignating paragraph (a)(1) as paragraph (a)(1)(i), revising introductory text preceding the table, designating the table as ''Table 1'' and adding a new paragraph (a)(1)(ii) to read as follows:

§ 997.30 Outgoing regulation.

(a) *Shelled peanuts.* (1)(i) No handler shall ship, sell, or otherwise dispose of shelled peanuts for human consumption unless such peanuts are Positive Lot Identified and certified as meeting the requirements specified in Table 1 in this section. * * *

(ii) Peanuts meeting the specifications in paragraph (a)(1)(i) of this section must also be certified ''negative'' as to aflatoxin, prior to shipment, unless such peanuts are certified as meeting the superior quality requirements in Table 2, and, as such, are exempt from aflatoxin certification requirements.

TABLE 2.—SUPERIOR QUALITY EXEMPTION—PEANUTS FOR HUMAN CONSUMPTION

[Whole kernels and splits]

Maximum limitations							
Type and grade category	Unshelled peanuts and damaged kernels (percent)	Unshelled peanuts, damaged kernels and minor defects (percent)	Fall through			Foreign materials (percent)	Moisture (percent)
			Sound split and broken kernels (percent)	Sound whole kernels (percent)	Total		
Runner U.S. No.1 and better.	1.25	2.00	3.00%; 17/64 inch, round screen.	3.00%; 16/64×3/4 inch, slot screen.	4.00%; both screens.	.10	9.00
Virginia U.S. No.1 and better.	1.25	2.00	3.00%; 17/64 inch, round screen.	3.00%; 15/64×1 inch, slot screen.	4.00%; both screens.	.10	9.00
Spanish and Valencia U.S. No.1 and better.	1.25	2.00	3.00%; 16/64 inch, round screen.	2.00%; 15/64×3/4 inch, slot screen.	4.00%; both screens.	.10	9.00
Runner U.S. Splits (not more than 4% sound, whole kernels).	1.25	2.00	2.00%; 17/64 inch, round screen.	3.00%; 14/64×3/4 inch, slot screen.	4.00%; both screens.	.20	9.00
Virginia U.S. Splits (not less than 90% splits and not more than 3.00% sound whole kernels and portions passing through 20/64 inch round screen).	1.25	2.00	3.00%; 17/64 inch, round screen.	3.00%; 14/64×1 inch, slot screen.	4.00%; both screens.	.20	9.00
Spanish and Valencia U.S. Splits (not more than 4% sound, whole kernels).	1.25	2.00	2.00%; 16/64 inch, round screen.	3.00%; 13/64×3/4 inch, slot screen.	4.00%; both screens.	.20	9.00
Runner with splits (not more than 15% sound splits).	1.25	2.00	3.00%; 17/64 inch, round screen.	3.00%; 16/64×3/4 inch, slot screen.	4.00%; both screens.	.10	9.00

TABLE 2.—SUPERIOR QUALITY EXEMPTION—PEANUTS FOR HUMAN CONSUMPTION—Continued

[Whole kernels and splits]

Type and grade category	Maximum limitations						
	Unshelled peanuts and damaged kernels (percent)	Unshelled peanuts, damaged kernels and minor defects (percent)	Fall through			Foreign materials (percent)	Moisture (percent)
			Sound split and broken kernels (percent)	Sound whole kernels (percent)	Total		
Virginia with splits (not more than 15% sound splits).	1.25	2.00	3.00%; 17/64 inch, round screen.	3.00%; 15/64×1 inch, slot screen.	4.00%; both screens.	.10	9.00
Spanish and Valencia with splits (not more than 15% sound splits).	1.25	2.00	3.00%; 16/64 inch, round screen.	2.00%; 15/64×3/4 inch, slot screen.	4.00%; both screens.	.10	9.00

* * * * *

§ 997.30 [Amended]

3. Section 997.30(a)(2) is amended by removing the first sentence.

4. Section 997.30(c)(5) and (f) are revised to read as follows:

§ 997.30 Outgoing regulation.

* * * * *

(c) * * *

(5) Information on making arrangements for the required inspection and certification can be obtained by contacting the Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, USDA, P.O. Box 96456, room 2049–S, Washington, DC, 20250, telephone (202) 690–0604 or facsimile (202)720–0393.

(i) Laboratories at the following locations are approved to perform the chemical analyses required pursuant to this part. The sampling plan and procedures may be obtained from the Science Division.

USDA/AMS Science Division Aflatoxin Laboratories

USDA, AMS, Science Division, 1211 Schley Avenue, Albany, Georgia 31707, Tel: (912) 430–8490, Fax: (912) 430–8534

USDA, AMS, Science Division, c/o Golden Peanut Company, 200 W. Washington Street (Mail: P.O. Box 488), Ashburn, Georgia 31714, Tel: (912) 567–3703, Fax: (912) 567–2006

USDA, AMS, Science Division, c/o Golden Peanut Company, 301 W. Pearl Street (Mail: P.O. Box 279), Aulander, North Carolina 27805, Tel: (919) 345–1661, ext. 156, Fax: (919) 345–1991

USDA, AMS, Science Division, 610 North Main Street, Blakely, Georgia 31723, Tel: (912) 723–4570, Fax: (912) 723–3294

USDA, AMS, Science Division, c/o Golden Peanut Company, 42 North Ellis Street (Mail: P.O. Box 548), Camilla, Georgia 31730, Tel: (912) 336–0785, ext. 246, Fax: (912) 336–5776

USDA, AMS, Science Division, c/o Stevens Industries, Cargill, Inc., 715 North Main Street (Mail: P.O. Box 272), Dawson, Georgia 31742, Tel: (912) 995–7257, Fax: (912) 995–3268

USDA, AMS, Science Division, 107 S. Fourth Street, Madill, Oklahoma 73446, Tel: (405) 795–5615, Fax: (405) 795–3645

USDA, AMS, Science Division, 1411 Reeves Street (Mail: P.O. Box 1368), Dothan, Alabama 36302, Tel: (205) 792–5185, Fax: (205) 671–7984

USDA, AMS, Science Division, 308 Culloden Street (Mail: P.O. Box 1130), Suffolk, Virginia 23434, Tel: (804) 925–2286, Fax: (804) 925–2285

Aflatoxin Laboratories Approved by the Peanut Administrative Committee

Pert Laboratories, P.O. Box 267, Peanut Drive, Edenton, North Carolina 27932, Tel: (919) 482–4456, Fax: (919) 482–5370

J. Leek Associates, Inc., 1200 Wyandotte (Mail: P.O. Box 50395), Albany, Georgia 31705, Tel: (912) 889–8293, Fax: (912) 888–1166

J. Leek Associates, 675 E. Pine (Mail: P.O. Box 368), Colquitt, Georgia 31737, Tel: (912) 758–3722, Fax: (912) 758–2538

Pert Laboratory South, Highway 82 East Seabrook Drive (Mail: P.O. Box 149), Sylvester, Georgia 31791, Tel: (912) 776–7676, Fax: (912) 776–1137

ABC Research, 3437 SW 24th Avenue, Gainesville, Florida 32607–4502, Tel: (904) 372–0436, Fax: (904) 378–6483

J. Leek Associates, 502 West Navarro Street (Mail: P.O. Box 6), DeLeon, Texas 76444, Tel: (817) 893–3653, Fax: (817) 893–3640

Quanta Lab, 9330 Corporate Drive, Suite 703, Selma, Texas 78154–1257, Tel: (210) 651–5799, Fax: (210) 651–9271

Professional Service Ind., Inc., 3 Burwood Lane, San Antonio, Texas 78216, Tel: (210) 349–5242, Fax: (210) 342–9401.

(ii) Handlers should contact the nearest laboratory from the list in paragraph (c)(5)(i) of this section to arrange to have samples chemically analyzed for aflatoxin content, or for further information concerning the chemical analyses required pursuant to this part handlers may contact: The Science Division, Agricultural Marketing Service, USDA, P.O. Box 96456, room 3507–S, Washington, D.C., 20090–6456, telephone (202) 720–5231, facsimile (202) 720–6496.

* * * * *

(f) *Transfer between plants.* Handlers may transfer peanuts to any handler or to domestic commercial storage without having such peanuts positive lot identified and certified as meeting quality requirements. Prior to any subsequent disposition to human consumption outlets, such peanuts shall meet all quality requirements applicable for such disposition.

* * * * *

5. In § 997.40, paragraph (a)(1) and the first sentence in paragraph (a)(2) are revised, and the first sentence of paragraph (a)(3) is removed to read as follows:

§ 997.40 Reconditioning and disposition of peanuts failing quality requirements.

(a) *Further processing of shelled peanuts failing quality requirements—*

(1) Handlers may remill, move to a custom remiller, or sell to or contract with another handler, or handler as defined in 7 CFR 998.8, for remilling or further handling, shelled peanuts (which originated from Segregation 1 peanuts) that fail to meet the requirements of § 997.30(a). Transactions made in this manner shall be reported to the Department by both the buyer and seller on Form FV–117–4 provided by the Department. If, after further handling, such peanuts meeting the requirements of § 997.30(a) may be disposed of for human consumption. Such peanuts which still do not meet quality requirements of § 997.30(a) may be blanched as provided in paragraph (a)(2) of this section or disposed of and such disposition reported as provided in paragraph (b) of this section.

(2) Handlers may blanch, or cause to have blanched, shelled peanuts (which originated from Segregation 1 peanuts) that fail to meet the requirements for human consumption specified in § 997.30(a) because of excessive damage, minor defects, moisture, or foreign material or are positive to aflatoxin.

* * *

* * * * *

Dated: September 15, 1995.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 95–23897 Filed 9–27–95; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 1138

[DA–95–20]

Milk in the New Mexico-West Texas Marketing Area; Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This document continues the suspension of certain segments of the pool plant and producer milk definitions of the New Mexico-West Texas order for a two-year period. Associated Milk Producers, Inc., a cooperative association that represents a majority of the producers who supply milk to the market, requested continuation of the suspension. Continuation of the suspension is necessary to ensure that dairy farmers who have historically supplied the New Mexico-West Texas order will continue to have their milk priced under the order without incurring costly and inefficient movements of milk.

EFFECTIVE DATE: October 1, 1995, through September 31, 1997.

FOR FURTHER INFORMATION CONTACT: Clifford M. Carman, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–9368.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued July 14, 1995; published July 20, 1995 (60 FR 37373).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed rule would not have a significant economic impact on a substantial number of small entities. This rule will tend to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

The Department is issuing this final rule in conformance with Executive Order 12866.

This suspension of rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have a retroactive effect and will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act and of the order regulating the handling of milk in the New Mexico-West Texas marketing area.

Notice of proposed rulemaking was published in the Federal Register on July 20, 1995 (60 FR 37373) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views and arguments thereon. One comment supporting the suspension was filed and no opposing views were received.

After consideration of all relevant material, including the proposal in the notice, the comment received and other available information, it is hereby found and determined that for the months of October 1, 1995, through September 30, 1997, the following provisions of the order do not tend to effectuate the declared policy of the Act:

1. In § 1138.7, paragraph (a)(1), the words ''including producer milk diverted from the plant,'';

2. In § 1138.7, paragraph (c), the words ''35 percent or more of the producer''; and

3. In § 1138.13(d), paragraphs (1), (2), and (5).

Statement of Consideration

This rule continues the suspension of segments of the pool plant and producer milk definitions under the New Mexico-West Texas order. The provisions that are suspended limit the pooling of diverted milk. This suspension will be effective from October 1995 through September 1997. The current suspension will expire September 30, 1995.

This rule continues the suspension of:

1. The requirement that milk diverted to a nonpool plant be considered a receipt at the distributing plant from which it was diverted;

2. The requirement that a cooperative must deliver at least 35 percent of its milk to pool distributing plants in order to pool a plant that the cooperative operates which is located in the marketing area and is neither a distributing plant nor a supply plant;

3. The requirement that a producer must deliver one day's production to a pool plant during the months of September through January to be eligible to be diverted to a nonpool plant;

4. The provision that limits a cooperative's diversions to nonpool plants to an amount equal to the milk it caused to be delivered to, and physically received at, pool plants during the month; and

5. The provision that excludes from the pool milk diverted from a pool plant to the extent that it would cause the plant to lose its status as a pool plant.

Continuation of the current suspension was requested by Associated

Milk Producers, Inc., a cooperative association that represents a substantial number of dairy farmers who supply the New Mexico-West Texas market. The cooperative stated that marketing conditions have not changed since the provisions were suspended in 1993 and therefore should be continued until restructuring of the order can be achieved through the formal rulemaking process.

Mid-America Dairymen, Inc. (Mid-Am), filed a comment supporting continuation of the suspension. In their comment, Mid-Am stated that from 1993 to 1995 milk production in New Mexico had increased while the Class I utilization on the New Mexico-West Texas order had actually decreased. Mid-Am further stated that in the absence of a continuation of the current suspension, disorderly marketing conditions would prevail.

During the past two years since implementation of the current suspension, milk production in this region has continued to increase while Class I utilization has remained constant or decreased slightly. Continuation of the current suspension is necessary to insure that dairy farmers who have historically supplied the New Mexico-West Texas market will continue to have their milk priced under this order. In addition, the suspension will continue to provide handlers the flexibility needed to move milk supplies in the most efficient manner and to eliminate costly and inefficient movements of milk that would be made solely for the purpose of pooling the milk of dairy farmers who have historically supplied the market.

Accordingly, it is appropriate to suspend the aforesaid provisions from October 1, 1995, through September 30, 1997.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area, in that such rule is necessary to permit the continued pooling of the milk of dairy farmers who have historically supplied the market without the need for making costly and inefficient movements of milk;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. One comment supporting the suspension was received.

Therefore, good cause exists for making this order effective less than 30 days from the date of publication in the Federal Register.

List of Subjects in 7 CFR Part 1138

Milk marketing orders.

For the reasons set forth in the preamble, the following provisions in Title 7, Part 1138, are amended as follows:

PART 1138—MILK IN THE NEW MEXICO-WEST TEXAS MARKETING AREA

1. The authority citation for 7 CFR Part 1138 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 1138.7 [Suspended in Part]

2. In § 1138.7(a)(1), the words ''including producer milk diverted from the plant,'' are suspended;

3. In § 1138.7(c) introductory text, the words ''35 percent or more of the producer'' are suspended.

§ 1138.13 [Suspended in Part]

4. In § 1138.13, paragraphs (d)(1), (2), and (5) are suspended.

Dated: September 22, 1995.

Shirley R. Watkins,

Acting Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 95–24048 Filed 9–27–95; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–18–AD; Amendment 39–9354; AD 95–18–07]

Airworthiness Directives; Bombardier Model CL–600–1A11 (CL–600), CL–600–2A12 (CL–601), CL–600–2B16 (CL–601–3A and –3R), and CL–600–2B19 (Regional Jet Series 100) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Bombardier Model CL–600–1A11, CL–600–2A12, CL–600–2B16, and CL–600–2B19 series airplanes, that currently requires an inspection to detect cracking in the rudder control quadrant; replacement of any cracked quadrant with a new assembly; and retorquing of the castellated nut, as necessary. This amendment requires a follow-on inspection of certain rudder control quadrants to detect cracks that start at the inside root radius of the spigot; modification of any cracked quadrant; and eventual modification of certain quadrants. This amendment also adds airplanes to the applicability of the existing AD. This amendment is prompted by the development of a modification, which, when installed, will positively address the identified unsafe condition. The actions specified by this AD are intended to prevent loss of rudder control due to stress corrosion of the rudder control quadrant.

DATES: Effective October 30, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 30, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Quebec H3C 3G9, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Franco Pieri, Aerospace Engineer, Airframe Branch, ANE–172, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7526; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 93–22–04, amendment 39–8729 (58 FR 59161, November 8, 1993), which is applicable to certain Bombardier Model CL–600–1A11 (CL–600), CL–600–2A12 (CL–601), CL–600–2B16 (CL–601–3A and –3R), and CL–600–2B19 (Regional Jet Series 100) series airplanes, was published in the Federal Register on May 18, 1995 (60 FR 26700). The action proposed to require a one-time ultrasonic inspection of certain rudder control quadrants to detect cracks that start at the inside root radius of the spigot; modification of any cracked quadrant; and eventual modification of certain quadrants. The action also proposed to expand the

applicability of the existing rule to include additional airplanes that have been identified as subject to the addressed unsafe condition.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

The FAA has revised paragraphs (a)(1) and (b) of the final rule to correct a service bulletin citation for Model CL–600–2B19 series airplanes. The proposed rule incorrectly specified the service bulletin number for Canadair Service Bulletin S.B. 601R–27–015, Revision 'A,' dated October 31, 1994, as ''Canadair Service Bulletin S.B. A601R–27–015.'' (The preamble to the proposed rule reflected the correct service bulletin citation.)

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 212 airplanes of U.S. registry will be affected by this AD.

Accomplishment of the inspection will take approximately 4 work hours per airplane, at an average labor rate of $60 per work hour. Based on these figures, the total cost impact of the inspection action on U.S. operators is estimated to be $50,880, or $240 per airplane.

Accomplishment of the modification will take approximately 20 work hours per airplane, at an average labor rate of $60 per work hour. Required parts will be provided by the manufacturer at no cost to operators. Based on these figures, the total cost impact of the modification action on U.S. operators is estimated to be $254,400, or $1,200 per airplane.

Based on the figures discussed above, the total cost impact of this rule on U.S. operators is estimated to be $305,280. This total cost impact figure is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (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, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8729 (58 FR 59161, November 8, 1993), and by adding a new airworthiness directive (AD), amendment 39–9354, to read as follows:

95–18–07 Bombardier, Inc. (Formerly Canadair): Amendment 39–9354. Docket 95–NM–18–AD. Supersedes AD 93–22–04, Amendment 39–8729.

Applicability: Model CL–600–1A11 (CL–600) series airplanes, serial numbers 1004 through 1085 inclusive; Model CL–600–2A12 (CL–601) series airplanes, serial numbers 3001 through 3066 inclusive; Model CL–600–2B16 (CL–601–3A and –3R) series airplanes, serial numbers 5001 through 5147 inclusive; and CL–600–2B19 (Regional Jet Series 100) series airplanes, serial numbers 7003 through 7038 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of rudder control, accomplish the following:

(a) Within 45 days after the effective date of this AD, perform an ultrasonic inspection to detect cracks at the inside root radius of the spigot of the rudder quadrant, part number (P/N) 600–92614–1 (original quadrant) or P/N 600–92614–3 (quadrant modified with undercut), in accordance with the procedures specified in Canadair Challenger Service Bulletin No. 600–0637, Revision 1, dated November 15, 1994 (for Model CL–600–1A11 series airplanes); Canadair Challenger Service Bulletin No. 601–0426, Revision 1, dated November 15, 1994 (for Model CL–600–2A12 and –2B16 series airplanes); or Canadair Regional Jet Alert Service Bulletin S.B. A601R–27–011, Revision 'A,' dated September 21, 1993, as revised by Notice of Revision A601R–27–011A–1, dated October 6, 1993, and Notice of Revision A601R–27–011A–2, dated June 14, 1994 (for Model CL–600–2B19 series airplanes); as applicable. A fluorescent penetrant inspection may be accomplished in lieu of the ultrasonic inspection provided that the rudder control quadrant assembly is removed prior to inspection. Accomplishment of the modification required by paragraph (b) of this AD eliminates the need for the inspection required by this paragraph, provided that the modification is accomplished within 45 days after the effective date of this AD.

Note 2: Rudder quadrants having P/N's 600–92614–1 and –3 are part of the rudder quadrants having P/N's 600–92619–1 and –5, respectively.

(1) If any crack is detected, prior to further flight, modify the rudder control quadrant in accordance with Canadair Challenger Service Bulletin No. 600–0637, Revision 1, dated November 15, 1994 (for Model CL–600–1A11 series airplanes); Canadair Challenger Service Bulletin No. 601–0426, Revision 1, dated November 15, 1994 (for Model CL–600–2A12 and –2B16 series airplanes); or Canadair Service Bulletin S.B. 601R–27–015, Revision 'A,' dated October 31, 1994 (for Model CL–600–2B19 series airplanes); as applicable.

(2) If no crack is detected, no further action is required by paragraph (a) of this AD.

(b) Within 6 months after the effective date of this AD, modify the rudder control quadrant, P/N 600–92619–1 or 600–92619–5, in accordance with Canadair Challenger Service Bulletin No. 600–0637, Revision 1, dated November 15, 1994 (for Model CL–600–1A11 series airplanes); Canadair Challenger Service Bulletin No. 601–0426,

Revision 1, dated November 15, 1994 (for Model CL–600–2A12 and –2B16 series airplanes); or Canadair Service Bulletin S.B. 601R–27–015, Revision 'A,' dated October 31, 1994 (for Model CL–600–2B19 series airplanes); as applicable. Accomplishment of this modification eliminates the need for the inspection required by paragraph (a) of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The inspections and modifications shall be done in accordance with Canadair Challenger Service Bulletin No. 600–0637, Revision 1, dated November 15, 1994; Canadair Challenger Service Bulletin No. 601–0426, Revision 1, dated November 15, 1994; Canadair Regional Jet Alert Service Bulletin S.B. A601R–27–011, Revision 'A,' dated September 21, 1993, as revised by Notice of Revision A601R–27–011A–1, dated October 6, 1993, and Notice of Revision A601R–27–011A–2, dated June 14, 1994; or Canadair Service Bulletin S.B. 601R–27–015, Revision 'A,' dated October 31, 1994; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Quebec H3C 3G9, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on October 30, 1995.

Issued in Renton, Washington, on August 29, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–21593 Filed 9–27–95; 8:45 am]

BILLING CODE 4910–13–U

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release Nos. 33–7221; 34–36269; 35–26377; 39–2335; IA–1521; IC–21370]

Commission Records and Information; Incorporation by Reference

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission is updating its Records control schedule to identify new retention values for Commission records and to expand the availability of certain records for incorporation by reference into new filings.

EFFECTIVE DATE: October 30, 1995.

FOR FURTHER INFORMATION CONTACT: Wilson Butler, Associate Executive Director, Ann Sykes, Associate Director, or Suzanne McHugh, Records Officer, at (202) 942–8938, Office of Filings and Information Services, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Alexandria, Virginia 22312.

SUPPLEMENTARY INFORMATION: The Commission is required to create records containing accurate and complete documentation of its organization, functions, policies, decisions, procedures, and essential transactions, and to dispose of such records in accordance with prescribed standards. 44 U.S.C. 3102. The Commission's Records control schedule, at 17 CFR 200.80(f), states how long the Commission retains records on-site or at the Federal Records Center pending disposition or transfer for permanent retention to the National Archives and Records Administration (''NARA'').[1] The Commission is revising its Records control schedule to state new, NARA-approved administrative retention values for many Commission records.[2] The schedule also has been reorganized, includes certain new records, and identifies obsolete records. In addition, since the retention values in the Records control schedule limit the availability of Commission records for incorporation by reference (see Rule 10(d) of Regulation S–K (17 CFR 229.10(d)),[3] the amendment of the schedule also changes the length of time that records that previously have been filed with the Commission are available for incorporation by reference into new filings.[4] Amending the Records control schedule is action with respect to a matter of agency management and a rule of agency organization, procedure, or practice within the meaning of the Administrative Procedure Act (5 U.S.C. 553(a)(2) and (b)(A), respectively) and therefore is not subject to the Administrative Procedure Act's notice and comment requirement. For the same reason, these amendments also are not subject to the Regulatory Flexibility Act (5 U.S.C. 601–612).

List of Subjects in 17 CFR Part 200

Administrative practice and procedure; Reporting and recordkeeping requirements.

Text of the Amendment

For the reasons set forth in the preamble, title 17, chapter II of the Code of Federal Regulations is amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. The general authority citation for Subpart D is revised to read as follows:

Authority: 15 U.S.C. 77f(d), 77s, 77ggg(a), 78m(F)(3), 78w, 79t, 79v(a), 77sss, 80a–37, 80a–44(c), 80a–44(b), 80b–10(a), 80b–11, and 36 CFR 1228.10.

* * * * *

2. Section 200.80f is revised to read as follows:

§ 200.80(f) Appendix F—Records control schedule.

[1] The Records control schedule does not cover the Commission's electronic records or its generally scheduled records pursuant to 36 CFR 1228.44.

[2] The administrative retention value for a record is the length of time that NARA has authorized that it be retained by an agency for agency purposes.

[3] Until recently, rule 10 was rule 24 of the Commission's Rules of Practice. See Securities Exchange Act Release No. 34–35833 (June 9, 1995). Rule 10 provides, in pertinent part, that no document on file with the Commission for more than five years may be incorporated by reference except: ... (b) documents that the registrant specifically identifies by physical location and by SEC file number reference, *provided such materials have not been disposed of by the Commission pursuant to its Records control schedule at 17 CFR 200.80f* (emphasis added). See also Rule 10(f) of Regulation S–B at 17 CFR 228.10(f).

[4] For example, a registrant now will be allowed to incorporate into a current year's annual report on Form 10–K an exhibit that was filed with the Commission up to thirty years ago, rather than a maximum of only ten years ago under current practice.

File No.	Type of filing	Retention period
	Securities Act of 1933	
2–33	Registration statements and amendments thereto (Regulation C)	30 years.
2–33	Periodic reports (annual, quarterly, current, and proxy material)	30 years.
9–	Notice of proposed resale of restricted securities and resale of securities by control persons (Form 144).	21 years.
15–	Notice of sale of securities pursuant to Rule 242 (Form 242). (Obsolete).	6 years.
18–	Applications for exemption from section 5 registration for interests or participations issued in connection with Keogh Plans (section 3(a)(2)).	10 years.
19–	Notice of sale of securities pursuant to section 4(6) of the Securities Act of 1933 (Form 4(6)). (Obsolete).	6 years.
20–	Offering sheets for oil or gas royalties—Regulation B (Schedules A, B, C).	15 years.
20–	Reports of sale (accorded confidential treatment) (Form 1–G)	7 years.
20–	Reports after termination of offering (Form 3–G)	7 years.
21–	Notice of sale for offerings under Regulation D and section 4(6) (Form D).	6 years.
24–	Notification of exemption from registration (Regulation A)	Until completion or termination of offering plus 10 years or order of the Commission permanently suspending exemption, whichever comes first.
29–	Report of issuers of sale of securities deemed not to involve any public offering (Form 146). (Obsolete).	6 years.
92–	Application for relief from disability (Regulation A)	Until when final action on appeal is taken plus 10 years.
94–	Notification of exemption for assessment or assessable stock (Regulation F).	10 years.
95–	Notification of exemption for securities issued by a small business investment company (Regulation E).	Until completion or termination of offering plus 5 years or until order of Commission permanently suspending exemption, whichever comes first.
96–	Application for relief from disability (Regulation F)	Until final action on appeal is taken plus 5 years.
98–	Notice of proposed sale by non-controlling person of restricted securities of issuers which do not satisfy all of the conditions of Rule 144.	6 years.
100–	Notification of exemption pursuant to Rule 236	6 years.
	Securities Exchange Act of 1934	
0–1	Registration statements (sections 12(b) and 12(g), exemptions thereunder).	30 years.
0–1	Periodic reports (annual, quarterly, current and proxy materials)	30 years.
3–	Applications for continuance in membership and applications for review of disciplinary actions (self-regulatory organizations).	10 years.
4–281	Consolidated quotation system plan and amendments	For as long as plan remains approved plus 6 years.
4–208	Intermarket trading system plan and amendments	For as long as plan remains approved plus 6 years.
5–	Acquisitions, tender offers and solicitations	20 years.
6–	Reports of beneficial ownership of securities (Forms 3, 4, & 5)	6 years.
7–	Applications for permission to extend unlisted trading privileges and related applications pursuant to Rule 12(f).	10 years.
8–	Applications for registration as broker, dealer, municipal securities broker, or government securities broker or dealer and related reports.	For as long as broker-dealer is registered with the Commission plus 50 years.
8–00–2A	Annual audit report (fiscal or calendar year basis) (Form X–17A–5). (Non-public) Supplemental report detailing Securities Investor Protection Corporation assessment payment or overpayments (Rule 17a–5). (Non-public).	For as long as broker-dealer is registered with the Commission plus 13 years.
8–00–2A–19	Reports of changes in membership of any of its members required of national securities exchanges and registered national securities associations (Form X–17A–19). (Public).	For as long as broker-dealer is registered with the Commission plus 6 years.
8–00–3X	Examination/inspection reports of brokers and dealers, investment companies and investment advisors	
	1. Exam reports:	
	a. Home Office	13 years.
	b. Regional Offices	13 years.
	2. Exam workpapers	13 years.

File No.	Type of filing	Retention period
8–00–9	Uniform application for securities and commodities industry representative and/or agent; certification for associated persons engaged in securities activities outside the jurisdiction of the United States; annual assessment form for registered brokers and dealers not members of a registered national securities association (Forms U–4, SECO 2–F, SECO–4, 5).	For as long as broker-dealer is registered with the Commission plus 50 years.
8–2A10	Annual report of revenue and expenses filed by exchange members, brokers and dealers (Form X–17A–10). (Obsolete).	10 years.
8–2A12	Report by registered brokers and dealers who are over-the-counter market makers in any OTC margin securities (Form X–17A–12).	6 years.
8–2A16(1), –2A16(2)	Notification by qualified market makers at least five business days before such broker-dealers obtain third market maker exempt credit pursuant to Regulation U; and quarterly report by broker and dealer, who during a calendar quarter is or has been qualified as a third market maker (Forms X–17A–16(1); X–17A–16(2)) (Obsolete).	6 years.
8–2A17	Quarterly report filed by every broker-dealer block positioner who has filed a notice pursuant to paragraph (a) of Rule 17a–17 (Form X–17A–17) (Obsolete).	6 years.
10–	Applications by an exchange for registration as a national securities exchange.	For as long as exchange is registered with the Commission plus 6 years.
13–	Applications for listing securities on an exempted exchange, periodic reports.	10 years.
14–	Annual reports of issuers having securities listed on an exempted exchange.	10 years.
16–	Application for registration as a national securities association or affiliated securities associations.	For as long as association is registered with the Commission plus 6 years.
17–	Reports on stabilizing activities (Form X–17A–1). (Obsolete)	6 years.
23–	Applications for exemption pursuant to paragraph (g) of Rule 11Aa3–1	Until closed plus 6 years.
26–	Plans by exchanges authorizing payment of special commission in connection with a distribution of securities on exchanges (Rule 10b–2(d)).	For as long as exchange is registered with the Commission plus 50 years.
27–	Applications for exemption from section 13(f)	10 years.
28–	Reports by institutional investment managers of information with respect to accounts over which they exercise discretion. (Form 13F).	4 years.
80–	Annual and supplemental reports of Municipal Securities Rulemaking Board (Rule 17a–21).	Indefinitely (contingent).
81–	Exemptions from registration under section 12(g)	10 years.
82–	Exemptions—American depositary receipts	10 years.
83–1	Periodic reports and related correspondence by the Inter-American Development Bank.	3 years.
83–2	Periodic reports by the Asian Development Bank	3 years.
84–	Application for registration as a transfer agent (non-bank) and amendments thereto.	For as long as transfer agent is registered with the Commission plus 50 years.
85–	Application for registration as a transfer agent (bank) and amendments thereto (Form TA–1).	For as long as transfer agent is registered with the Commission plus 50 years.
86–	Application for registration as a municipal securities dealer which is a bank or separately identifiable department or division of a bank (Form MSD).	For as long as municipal securities dealer is registered with the Commission plus 50 years.
87–	Application for registration as a securities information processor and amendments thereto (Form SIP).	For as long as securities information processor is registered with the Commission plus 50 years.
88–	Application for exemption as a securities information processor correspondence.	For as long as securities information processor is registered with the Commission plus 50 years.
89–	Waiver for foreign issuers furnished by American depositary receipts; waiver of information furnished by American depositary receipts regarding foreign issuers for Form F–6; waiver of Rule 12g3–2(b) reporting requirements, annual reports to shareholders, F–6 waiver, proxy.	10 years.
89–	Other waivers for foreign issuers furnished by American depositary receipts..	3 years.
128–8	Reports of disciplinary actions by stock exchanges (Rule 19d–1)	6 years.
205–3c	Reports of disciplinary actions by NASD (Rule 19d–1)	6 years.
500–	Suspension of trading of securities other than on a national securities exchange.	10 years.
600–	Applications for registration as a (non-bank) clearing agency; amendments thereto.	For as long as clearing agency is registered with the Commission plus 50 years.
600–9	Reports of disciplinary actions by clearing agencies (Rule 19d–1)	6 years.

File No.	Type of filing	Retention period
601–	Applications for exemption from registration as a (non-bank) clearing agency.	For as long as clearing agency has reporting requirements with the Commission plus 20 years.
SR	Proposed rule changes and notice as to stated policies and interpretations by self-regulatory organizations.	For as long as self-regulatory organization is registered with the Commission plus 6 years.
XX	Reports for missing, lost or counterfeit securities (Form X–17F–1A)	Indefinitely.
Public Utility Holding Company Act of 1935		
12–	Statements pursuant to section 12(i) by persons employed or retained by a registered holding company or subsidiary thereof (Forms U–12(I)–A & B).	2 years.
30–	Notification and registration by public utility holding companies, annual supplements.	For as long as holding company has reporting requirements with the Commission plus 10 years.
31–	Statement of exemption from the Act by Commission order	For as long as company relies on exemption plus 10 years.
32–	Exemption of purchaser, assignee, etc. of leased facilities (Form U7D)	Until lease is terminated or cancelled plus 5 years.
33–1	Annual statement by banks holding public utility securities but claiming exemption under Rule 3.	2 years.
34–	Annual statement by banks holding public utility securities but claiming exemption under Rule 3 (Form U–3A3–1).	2 years.
37–	Applications and declarations for authorization of service companies (Form U–13–1).	For as long as service company is part of a registered holding company plus 5 years.
38–	Statement under Rule 70(a)(1) executed by financial authorizing representative to serve as officer/director of holding company, filed by representative.	For as long as officer/director serves plus 3 years.
40–	Certificates of notification by registered holding companies and subsidiaries of security issues exempted from section 6(a) by section 6(b) or exempt under Rule 47(b) and not the subject of an order of the Commission (Form U–6B–2).	3 years.
49–	Annual report by mutual and subsidiary service companies (Form U–13–60).	For as long as service company is part of a registered holding company system plus 15 years.
50–	Order granting or withdrawing exemptions from rules and related correspondence.	Until close plus 3 years.
52–	Application for approval or reorganization under section 11(f)	Until closed plus 3 years.
54–	Divestment of securities, assets or control (section 11(e))	Until closed plus 3 years.
55–	Application for approval of fees incurred in connection with plan under section 11(f).	Until closed plus 3 years.
59–	Simplification of corporate structure, sections 11(b) (1) and (2)	Until closed plus 3 years.
62–	Report by an affiliate service company or one engaged principally in the performance of services (Form U–13E–1).	For as long as service company is part of a registered holding company system plus 4 years.
68–	Declaration with respect to solicitations regarding reorganizations of registered holding companies or subsidiaries subject to Rule 62 (Form U–R–1).	10 years.
69–	Annual statements by holding companies claiming exemption pursuant to Rule 2 (intrastate or predominantly operating companies (Form U–3A–2).	2 years.
70–	Applications and declarations pursuant to sections 6(b), 7, 9, 9(c)(3), 10, 12(b), 12(c), 12(d), 12(f) and applicable rules thereunder (Form U–1).	Until closed plus 3 years.
72–	Report of communication with stockholders	2 years.
Trust Indenture Act of 1939		
22–	Statements of eligibility and qualification of corporations or individuals as trustees under qualified indenture under which debt security has been or is to be issued and exemptions thereto.	Until indenture is terminated or cancelled plus 30 years.
25–	Applications relative to affiliations between trustees and underwriters (Rule 10b–3).	Until applicable indenture is terminated or cancelled plus 33 years.
93–	Reports of indenture trustee to indenture security holders with respect to eligibility and qualification under Section 310.	1 year.

File No.	Type of filing	Retention period
	Investment Advisers Act of 1940	
801–	Application for registration as investment adviser and related correspondence.	For as long as investment adviser is registered with the Commission plus 9 years.
803–	Application for exemption from registered and other relief	For as long as investment adviser conducts business under an exemption plus 6 years.
	Investment Company Act of 1940	
90–	Notice of sales of securities by closed-end issuers (issuers with 100 or less beneficial owners) other than investment companies, registered or required to be registered.	6 years.
811–	Notifications and registration statements	For as long as registrant is registered with the Commission plus 30 years.
811–	Periodic reports (annual, quarterly, semi-annual, proxy material)	10 years.
812–	Applications for exemption and other relief	10 years.
812–	Application by foreign management investment companies for order permitting registration.	For as long as registrant has reporting requirement with the Commission plus 33 years.
813–	Applications for exemption of an employee's security company (Section (b)).	For as long as registrant has reporting requirement with the Commission plus 33 years.
814–	Notice of intent to elect to be subject to sections 55 and 65	2 years from filing date.
814–	Notification of withdrawal of election to be subject to sections 55 through 65.	2 years from filing date.
814–	Notification of election to be subject to sections 55 through 65	30 years or for as long as a class of the issuer's equity securities is registered under the Securities Exchange Act of 1934 plus 10 years, whichever comes first.
816–	Request for advisory report re reorganization of registered investment company (17 CFR 270.02), and related correspondence.	6 years.
817–	Report of repurchase of securities by closed-end investment company	6 years.
818–	Sales literature regarding securities of certain investment companies .	6 years.
819–	Statement of the Federal Savings and Loan Corporation relating to the exemption of certain issuers.	6 years.
820–	Reports showing that companies have complied with requirements of the rule in purchasing new issues of securities from underwriters.	6 years.
821–	Reports by registered small business investment companies and affiliated banks, with respect to investments.	10 years from date of such action(s).
	Miscellaneous Files and Reports	
3–	Disciplinary proceedings (broker-dealer and investment adviser)	25 years.
3–	Administrative proceeding stop orders	For as long as registrant has reporting requirement with the Commission plus 30 years.
4–	102(e) proceedings (previously 2(e) proceedings) (chaned to 3–)	25 years.
4–	Miscellaneous studies, general conferences, roundtable, etc., authorized by the Commission.	25 years.
111–	Federal government agencies miscellaneous correspondence	30 years.
119–	Securities violation files (information regarding persons against whom actions were reported on charges of violating state or federal laws in the purchase and sale of securities.	Until date of last reported action plus 10 years.
122–2	Members of Congress (inquiries relating to various subjects)	1 year after expiration of term in office.
122–3	Correspondence and other materials between the various Senate Committees and the Commission.	30 years.
122–4	Correspondence and other materials between the various House Committees and the Commission.	30 years.
122–6	Correspondence and other materials between Congressional Commissions and Joint Committees and the Commission.	30 years.
123–13	Correspondence relating to the development of a Canadian Extradition Treaty.	30 years.
124–	Stock exchanges (General Correspondence)	For as long as exchange is registered with the Commission.
124–1	Legislation and Laws: Drafts and comments concerning suggested amendments to the various Acts administered by the Commission.	30 years.
124–6		

File No.	Type of filing	Retention period
124–11		
124–20		
124–7, 124–7a	Subject files—Drafts, comments and correspondence concerning proposed legislation submitted by the Senate and the House to the Commission for comment.	30 years.
124–7b	Drafts of bills not yet reported in Congress that are submitted to the Commission for comment.	30 years.
132–3	General Correspondence—Active companies. Inquiries and complaints concerning companies registered under the various Acts administered by the Commission.	10 years.
132–3	General Correspondence—Inactive companies (no longer required to file reports with the Commission). Inquiries and complaints concerning companies registered under the various Acts administered by the Commission.	6 years.
132–3	General Correspondence—Miscellaneous. Requests for interpretation of rules and regulations under the Acts administered by the Commission.	6 years.
140–	Drafts, internal memoranda, correspondence concerning rules and regulations under each of the Acts administered by the Commission.	30 years.
206–, 207– to 215–, 917–	Reorganization proceedings under Chapters IX, X, XI of the Bankruptcy Act in which the Commission participates.	30 years.
265–	Advisory Committees established by the Commission (correspondence, questionnaires, reports).	30 years.
Confidential treatment materials	Periodic reports and other materials containing contracts, commercial and financial information, disclosure of which would impair the value thereof, submitted under confidential cover.	10 years.
CHR	SEC Chairman's Subject Case Files	20 years.
CHR	SEC Chairman's Chronological Files for Period 1972 to Present	Chairman's tenure in office plus 3 years.
CHR	SEC Chairman's General Subject File	Chairman's tenure in office plus 3 years.
COMM	SEC Commissioners' Files (excluding Chairman), 1934 to Present	Commissioner's tenure in office plus 1 year.
ENF	Investigative Case Files—Closed	Until closed plus 25 years.
ENF	Investigative Case Files—Inactive	Until inactive plus 25 years.
LIT	Litigation files:	
	1. Briefs	25 years.
	2. File contents other than briefs	10 years.
S7	Issuance, amendment or rescission of rules under the various Acts—public comments and views, transcript of hearings, correspondence.	30 years (permanent).
XX	Reports of internal inquiries:	
	1. Supporting documentation	Until date of final action plus 5 years, if no report is issued, or until date of final report plus 5 years.
	2. Final reports	5 years.

By the Commission.

Dated: September 22, 1995.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–24032 Filed 9–27–95; 8:45 am]

BILLING CODE 8010–10–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Milbemycin Oxime

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Ciba-Geigy Animal Health, Ciba-Geigy Corp. The supplemental NADA provides for the use of milbemycin oxime tablets in puppies 4 weeks of age or greater and 2 pounds (lb) of body weight or greater for the prevention of heartworm disease, control of adult hookworm infections, and removal and control of adult roundworm and whipworm infections.

EFFECTIVE DATE: September 28, 1995.

FOR FURTHER INFORMATION CONTACT: Marcia K. Larkins, Center for Veterinary Medicine (HFV–112), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–0614.

SUPPLEMENTARY INFORMATION: Ciba-Geigy Animal Health, Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419–8300, filed a supplement to NADA 140–915 for INTERCEPTOR® (milbemycin oxime) tablets. The NADA provides for veterinary prescription use of 2.3-, 5.75-, 11.5-, and 23.0-milligrams INTERCEPTOR® tablets for use as an anthelmintic in dogs in the prevention of heartworm disease caused by *Dirofilaria immitis*, control of adult *Ancylostoma caninum* (hookworm), removal and control of adult *Toxocara canis* (roundworm), and *Trichuris vulpis* (whipworm) infections in dogs. The supplement provides for use of the product to treat puppies 4 weeks of age or greater and 2 lb of body weight or greater for the same infections.

The supplemental NADA 140–915 is approved as of August 16, 1995, and the regulations are amended by revising 21 CFR 520.1445(c)(2) and (c)(3) to reflect

the approval. The basis of 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. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this supplemental approval qualifies for 3 years of marketing exclusivity for the new indications beginning August 16, 1995, because new clinical or field investigations (other than bioequivalence or residue studies) conducted by the sponsor were required for the approval.

The agency has carefully considered the potential environmental effects of this action. FDA 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, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 520.1445 [Amended]

2. Section 520.1445 *Milbemycin oxime tablets* is amended in paragraph (c)(2) by adding the phrase ''and in puppies 4 weeks of age or greater and 2 pounds of body weight or greater.'' at the end of the paragraph and in paragraph (c)(3) by adding the sentence ''Do not use in puppies less than 4 weeks of age and less than 2 pounds in body weight.'' at the beginning of the paragraph.

Dated: September 15, 1995.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 95–24160 Filed 9–27–95; 8:45 am]

BILLING CODE 4160–01–F

Food and Drug Administration

21 CFR Parts 520 and 556

Animal Drugs, Feeds, and Related Products; Sarafloxacin Hydrochloride

AGENCY: Food and Drug Administration, HHS.

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 by Abbott Laboratories. The NADA provides for use of sarafloxacin hydrochloride in turkey and broiler chicken drinking water for control of mortality associated with *Escherichia coli* organisms susceptible to sarafloxacin.

EFFECTIVE DATE: September 28, 1995.

FOR FURTHER INFORMATION CONTACT: George K. Haibel, Center for Veterinary Medicine (HFV–133), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1644.

SUPPLEMENTARY INFORMATION: Abbott Laboratories, 1401 Sheridan Rd., North Chicago, IL 60064–4000, filed NADA 141–017, which provides for use of sarafloxacin hydrochloride (SaraFlox® WSP) water soluble powder to make turkey and broiler chicken medicated drinking water used for control of mortality associated with *E. coli* organisms susceptible to sarafloxacin.

The NADA is approved as of August 18, 1995, and the regulations are amended by adding new § 520.2095 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In addition, part 556 (21 CFR part 556) is amended by adding new § 556.594 to reflect that a tolerance for residues of sarafloxacin in edible turkey and broiler chicken tissues is not required. At zero withdrawal, the total residue of sarafloxacin HC1 in the target tissue (liver) is less than half the safe concentration (5.25 ppm). The marker compound, parent sarafloxacin HC1, represents 20 to 80 percent of the total residue in liver of turkeys and 60 to 80 percent of the total residue in liver of chickens, depending upon the extraction procedure.

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. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(i)), this approval qualifies for 5 years of marketing exclusivity beginning August 18, 1995, because no active ingredient (including any ester or salt thereof) has been previously approved in any other application filed under section 512(b)(1) of the act.

The agency has carefully considered the potential environmental effects of this action. FDA 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, contained in an environmental assessment, 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 520

Animal drugs.

21 CFR Part 556

Animal drugs, foods.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 520 and 556 are amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. New § 520.2095 is added to read as follows:

§ 520.2095 Sarafloxacin soluble powder.

(a) *Specifications.* Each 145 grams (5.1 ounces) pouch contains sarafloxacin hydrochloride equivalent to 14.5 grams of sarafloxacin base.

(b) *Sponsor.* See No. 000074 in § 510.600(c) of this chapter.

(c) *Related tolerances.* See § 556.594 of this chapter.

(d) *Conditions of use.* Used in drinking water as follows: (1) *Amount.* Chickens—20 to 40 parts per million for 5 consecutive days as the only source of drinking water. Turkeys—30 to 50 parts per million for 5 consecutive days as the only source of drinking water.

(2) *Indications for use.* For control of mortality in growing turkeys and broiler chickens associated with *Escherichia coli* organisms susceptible to sarafloxacin.

(3) *Limitations.* No preslaughter drug withdrawal period is required when the product is used as directed. Use in a manner other than that indicated or with a dose in excess of that recommended may result in drug residues in edible tissues. Do not use in laying hens producing eggs for human consumption. The effects of sarafloxacin on the reproductive function of treated fowl have not been determined. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

3. The authority citation for 21 CFR part 556 continues to read as follows:

Authority: Secs. 402, 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342, 360b, 371).

4. New § 556.594 is added to subpart B to read as follows:

§ 556.594 Sarafloxacin.

A tolerance for residues of sarafloxacin in edible turkey and broiler chickens tissues is not required.

Dated: September 21, 1995.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 95–24159 Filed 9–27–95; 8:45 am]

BILLING CODE 4160–01–F

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21 CFR Part 579

[Docket No. 92F–0317]

Food Additives; Irradiation in the Production, Processing, and Handling of Animal Feed and Pet Food; Ionizing Radiation for Treatment of Poultry Feed or Poultry Feed Ingredients

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations for irradiation in the production, processing, and handling of animal feed and pet food to provide for the safe use of gamma radiation from cobalt-60 in an absorbed dose range of 2 kiloGrays (kGy) (0.2 Megarads) (Mrad) to 25 kGy (2.5 Mrad), for rendering complete poultry feeds or poultry feed ingredients salmonella negative. This action is in response to a food additive petition filed by Nordion International, Inc.

DATES: Effective September 28, 1995; written objections and request for a hearing by October 30, 1995.

ADDRESSES: Submit written objections to Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Sharon A. Benz, Center for Veterinary Medicine (HFV–226), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1724.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of August 20, 1992 (57 FR 37825), FDA announced that a food additive petition (animal use) (FAP 2216) had been filed by Nordion International, Inc., 447 March Rd., P.O. Box 13500, Kanata, Ontario, Canada K2K 1X8. The petition proposed that the feed irradiation regulations be amended to provide for the safe use of gamma radiation from cobalt-60, not to exceed 25 kGy (2.5 Mrad), to control salmonella in complete poultry (chickens, turkeys, ducks, geese, cornish hens, pheasant, and quail) feeds or feed ingredients.

The notice of filing of FAP 2216 provided for a 60-day comment period. No comments have been received.

The use of irradiation was evaluated based on its ability to render feed salmonella negative. Salmonella is known to cause animal disease. The effect of subclinical cases of salmonella on animal production is difficult to quantitate. There are, however, substantial circumstantial data suggesting a potential link between the organisms in feed and organisms causing human and animal salmonellosis. For this reason, in 1990, FDA announced a goal of salmonella negative for animal feed and feed ingredients. FDA has defined salmonella negative as 10 samples testing negative for salmonella using the culture procedure described in the 7th edition of FDA's Bacteriological Analytical Manual (BAM).

Data submitted by the sponsor indicate that an irradiation dose of 1.0 kGy effectively reduces salmonella count by 1 log cycle (one decimal reduction). To ensure that irradiation achieves the intended purpose, all portions of the feed must receive at least the minimum absorbed dose. The minimum absorbed dose should be based on initial salmonella concentration using the relationship that 1 kGy reduces salmonella concentration by 1 log cycle. Based on the statistical power of the sampling plan, the minimum dose should be no less than 2 kGy in order to meet the salmonella negative definition.

Data submitted by the sponsor indicates that irradiation does have a minimal effect on the content of some nutrients such as water soluble vitamins and some amino acids. Feeds treated by irradiation should be formulated to account for such nutritional loss.

FDA has evaluated the data in the petition and other relevant material. The agency concludes that irradiation of poultry feeds and poultry feed ingredients is safe when the feed is formulated to allow for nutritional loss, and that the regulations should be amended in part 579 (21 CFR part 579) by adding new § 579.40 as set forth below.

In accordance with § 571.1(h) (21 CFR 571.1(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 Veterinary Medicine by appointment with the information contact person listed above. As provided in 21 CFR 571.1(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. FDA 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, contained in an environmental assessment, may be seen at the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before October 30, 1995 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. 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 document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 579

Animal feeds, Animal foods, Radiation protection.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 579 is amended as follows:

PART 579—IRRADIATION IN THE PRODUCTION, PROCESSING, AND HANDLING OF ANIMAL FEED AND PET FOOD

1. The authority citation for 21 CFR part 579 continues to read as follows:

Authority: Secs. 201, 402, 403, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 343, 348, 371).

2. New § 579.40 is added to read as follows:

§ 579.40 Ionizing radiation for the treatment of poultry feed and poultry feed ingredients.

Ionizing radiation for the treatment of complete poultry diets and poultry feed ingredients may be safely used as follows:

(a) *Energy sources.* Ionizing radiation is limited to gamma rays from sealed units of cobalt-60.

(b) *Limitation.* The ionizing radiation is used for feed or feed ingredients that do not contain drugs.

(c) *Use.* Ionizing radiation is used as a single treatment for rendering complete poultry diets or poultry feed ingredients salmonella negative as follows:

(1) Minimum dose 2.0 kiloGrays (kGy) (0.2 megarad (Mrad)); maximum dose 25 kGy (2.5 megarads Mrad). The absorbed dose of irradiation is to be based on initial concentration of salmonella using the relationship that 1.0 kGy (0.1 Mrad) reduces salmonella concentration by one log cycle (one decimal reduction).

(2) Feeds treated by irradiation should be formulated to account for nutritional loss.

(3) If an irradiated feed ingredient is less than 5 percent of the final product, the final product can be irradiated without being considered to be reirradiated.

Dated: September 21, 1995.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 95–24154 Filed 9–27–95; 8:45 am]

BILLING CODE 4160–01–U

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Federal Highway Administration

23 CFR Parts 192 and 1212

[Docket No. 91–17; Notice 4]

RIN 2127–AF93

Drug Offender's Driver's License Suspension

AGENCY: National Highway Traffic Safety Administration (NHTSA) and Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Final rule; technical amendment.

SUMMARY: The Drug Offender's Driver's License Suspension Law, 23 U.S.C. 159, requires the withholding of certain Federal-aid highway funds from States that do not enact either legislation requiring the revocation or suspension of an individual's driver's license upon conviction for any violation of the Controlled Substances Act or any drug offense, or a resolution opposing such legislation. The NHTSA and the FHWA had joint responsibility for administering the law. The statute's implementing regulation appeared in Chapter II of 23 CFR, which contains regulations jointly administered by the two agencies.

Responsibility for administering the law has since been redelegated to FHWA alone. This final rule removes the implementing regulation from Chapter II of 23 CFR, and places it in Chapter I of 23 CFR, which contains regulations administered only by FHWA.

EFFECTIVE DATE: September 28, 1995.

FOR FURTHER INFORMATION CONTACT: In FHWA: Ms. Mila Plosky, Office of Highway Safety, Room 3407, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590, telephone (202) 366–6902; or Mr. Paul L. Brennan, Office of Chief Counsel, Room 4217, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590, telephone (202) 366–0834.

In NHTSA: Mr. Gary Butler, Office of State and Community Services, National Highway Traffic Safety Administration, 400 7th Street, SW., Washington, D.C. 20590, telephone (202) 366–2121; or Ms. Sharon Y. Vaughn, Office of Chief Counsel, Room 5219, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590, telephone (202) 366–1834.

SUPPLEMENTARY INFORMATION: The Department of Transportation and Related Agencies Appropriations Act for FY 1992, Pub. L. 102–143, added section 159 to title 23 of the United States Code. The new section required the withholding of certain Federal-aid highway funds from States that did not enact either legislation requiring the revocation or suspension of an individual's driver's license upon conviction for any violation of the Controlled Substances Act or any drug offense, or a resolution opposing such legislation.

On August 12, 1992 (57 FR 35989), NHTSA and FHWA published a final rule, promulgating a regulation to implement this requirement, 23 CFR 1212. The regulation appeared in Chapter II, Title 23 of the Code of Federal Regulations, which contains regulations administered jointly by NHTSA and FHWA.

The regulation required that each State certify by April 1, 1993, and by January 1 of each subsequent year, that it meets the requirements of 23 U.S.C. 159 and the implementing regulation.

NHTSA and FHWA had joint responsibility for administration of this program. NHTSA reviewed State laws and resolutions to determine compliance with the statutory provisions. FHWA administered the Act's penalty provisions.

All States have now submitted laws and resolutions that comply with 23 U.S.C. 159. Responsibility for administering this program has been redelegated to FHWA alone. This final rule removes the implementing regulation from Chapter II of 23 CFR, which contains regulations that are administered jointly by NHTSA and FHWA, and places it instead in Chapter I of 23 CFR, which contains regulations administered only by the FHWA.

Redelegating the entire responsibility for 23 U.S.C. 159 to FHWA will help in streamlining the certification process and eliminate the duplication of government efforts. This redelegation is also consistent with President Clinton's memorandum of March 4, 1995, titled

''Regulatory Reinvention Initiative'' which directed heads of departments and agencies to review all existing regulations to eliminate those that are outdated and modify others to increase flexibility and reduce burden.

This final rule also amends portions of the regulation to remove any references to NHTSA and to modify the number of copies of the certification to be submitted to the local FHWA Division Administrator for further FHWA distribution.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The agencies have determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. This final rule does not impose any additional burden on the public. It is technical in nature and does not change the requirements of the program. It is anticipated that the economic impact of this rulemaking will be minimal; therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the agencies have evaluated the effects of this rule on small entities. Based on the evaluation, the agencies hereby certify that this action will not have a significant economic impact on a substantial number of small entities. Any withholding of funds under the regulation will be from States. Accordingly, the preparation of a Regulatory Flexibility Analysis is unnecessary.

Executive Order 12612 (Federalism Assessment)

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

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The agencies have analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 192

Driver licensing, Drug abuse, Highway Safety, Reporting and recordkeeping requirements, Transportation.

In accordance with the foregoing, and under the authority of 23 U.S.C. 315, NHTSA and FHWA hereby amend chapters I and II of title 23, Code of Federal Regulations, as set forth below.

CHAPTERS I AND II [AMENDED]

1. Part 1212 (§§ 1212.1 through 1212.10) in chapter II is redesignated as part 192 (§§ 192.1 through 192.10, respectively) in chapter I, Subchapter B.

2. The authority citation for newly redesignated part 192 in chapter I is revised to read as follows:

Authority: 23 U.S.C. 159 and 315.

3. Redesignated § 192.5 is amended by revising paragraph (d) to read as follows:

§ 192.5 Certification requirements.

* * * * *

(d) The Governor each year shall submit the original and three copies of the certification to the local FHWA Division Administrator. The FHWA Division Administrator shall retain the original and forward one copy each to the FHWA Regional Administrator, FHWA Chief Counsel, and the Director of the Office of Highway Safety.

§ 192.10 [Amended]

4. In redesignated § 192.10 paragraph (a) is amended by removing the words ''NHTSA's and'' and paragraph (b) is amended by removing the words ''NHTSA and'' and replacing the words ''National Highway Traffic Safety Administration'' with the words ''Federal Highway Administration''; and paragraph (c) is amended by removing the words ''NHTSA's and''.

Issued on: September 22, 1995.

Rodney E. Slater,

Administrator, Federal Highway Administration.

Ricardo Martinez,

Administrator, National Highway Traffic Safety Administration.

[FR Doc. 95–23988 Filed 9–22–95; 3:19 pm]

BILLING CODE 4910–59–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy has determined that USS MITSCHER (DDG 57) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: September 13, 1995.

FOR FURTHER INFORMATION CONTACT: Commander K.P. McMahon, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400, Telephone number: (703) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS MITSCHER (DDG 57) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with the following specific provision of 72 COLREGS without

interfering with its special function as a naval ship: Annex I, paragraph 3(a), pertaining to the location of the forward masthead light and the horizontal distance between the forward and after masthead lights; Annex I, paragraph 2(f)(i) pertaining to the placement of the masthead light above and clear of all other lights and obstructions; and, Rule 21(a) pertaining to the forward masthead light arc of visibility. The Deputy Assistant Judge Advocate General (Admiralty) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine Safety, Navigation (Water), and Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Table Four of § 706.2 is amended by adding the following entry to paragraph 16:

Vessel	Number	Obstruction angle relative ship's headings
*	*	*
USS MITSCHER	DDG 57	102.27 thru 112.50°.
*	*	*

3. Table Five of 706.2 is amended by adding the following vessel:

TABLE FIVE

Vessel	Number	Masthead lights not over all other lights and obstructions. annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship, annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. annex I, sec. 3(a)	Percentage horizontal separation attained
*	*	*	*	*	*
USS MITSCHER	DDG 57	X	X	X	20.7
*	*	*	*	*	*

Dated: September 12, 1995.

K.P. McMahon,

CDR, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty).

[FR Doc. 95–24163 Filed 9–27–95; 8:45 am]

BILLING CODE 3810–01–P

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy has determined that Large Harbor Tug YTB 820 is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: September 13, 1995.

FOR FURTHER INFORMATION CONTACT: Commander K.P. McMahon, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400, Telephone number: (703) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy, under authority delegated by the Secretary of the Navy, has certified that Large Harbor Tug YTB 820 is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Rule 21(c), pertaining to the location and arc of visibility of the sternlight; Rule 24(c), pertaining to the towing lights displayed by power driven vessels when pushing ahead or towing alongside; Rule 27(b)(i), pertaining to the lights displayed by vessels restricted in their ability to maneuver; Annex I, paragraph 2(a)(i), pertaining to the height of the masthead light; and Annex I, paragraph 3(b), pertaining to the location of the sidelights. The Deputy Assistant Judge Advocate General (Admiralty) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine Safety, Navigation (Water), and Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Table Three of § 706.2 is amended by adding the following vessel:

TABLE 3

Vessel	No.	Masthead lights arc of visibility; rule 21(a)	Side lights arc of visibility; rule 21(b)	Stern light arc of visibility; rule 21(c)	Side lights distance inboard of ship's sides in meters 3(b) annex 1	Stern light, distance forward of stern in meters; rule 21(c)	Forward anchor light, height above hull in meters; 2(K) annex 1	Anchor lights relationship of aft light to forward light in meters 2(K) annex 1
* *		*	*		*	*		*
YTB–820	YTB–820 .	.....	.....	.....	3.08	14.20	.....	
* *		*	*		*	*		*

3. Table Four of § 706.2 is amended by adding the following vessel to Paragraph 14:

Vessel No.	Distance in meters of aux. masthead light below minimum required height. Annex I, sec. 2(a)(i)
* * * *	
YTB–820	3.30
* * * *	

Dated: September 12, 1995.

K.P. McMahon,

CDR, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty).

[FR Doc. 95–24162 Filed 9–27–95; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD01–95–036]

Special Local Regulation: Whatever Festival Hydroplanes, Kennebec River, Augusta, ME

AGENCY: Coast guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a permanent special local regulation for a racing event called the Whatever Festival Hydroplanes. The race will be held annually on the fourth weekend in June in the waters of the Kennebec River, Augusta, ME. This regulation is needed to protect the boating public from the hazards associated with high speed hydroplane racing in confined waters.

EFFECTIVE DATES: This rule is effective October 30, 1995.

FOR FURTHER INFORMATION CONTACT: Lieutenant (Junior Grade) B. M. Algeo, Chief, Boating Affairs Branch, First Coast Guard District, (617) 223–8311.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this rule are Lieutenant (Junior Grade) B. M. Algeo, Project Manager, First Coast Guard District, and Lieutenant Commander S. R. Watkins, Project Counsel, First Coast Guard District Legal Office.

Background and Purpose

On February 3, 1995, the sponsor, Kennebec Valley Chamber of Commerce, submitted a request to hold a hydroplane race on the Kennebec River, Augusta, ME. The sponsor plans to hold such a race every year in late June. In response, the Coast Guard is establishing a permanent special local regulation on the Kennebec River for this event known as the ''Whatever Festival Hydroplanes.'' This rule establishes a regulated area on the Kennebec River and provides specific guidance to control vessel movement during the race.

This event will include up to 50 hydroplanes competing on a rectangular course at speeds approaching 70 m.p.h. Due to the inherent dangers of a race of this type, vessel traffic will be temporarily restricted to provide for the safety of the spectators and participants.

The sponsor will provide a minimum of four safety boats, two manned with divers, and an EMT rescue ambulance on shore. All sponsor resources will be identified with regatta signs or flags in accordance with American Power Boat Association requirements. A Coast Guard patrol also will be assigned to the event. The race course will be well-marked and patrolled, but due to the speed and proximity of the participating vessels, it is necessary to establish a special local regulation to control spectator and commercial vessel movement within the confined area.

Regulatory History

A Notice of Proposed Rulemaking (NPRM) was published for this rule on 26 April 1995 (60 FR 20463); no comments were received and no changes were made to the original proposal.

Discussion of Rule

The Coast Guard is establishing a special local regulation on specified waters of the Kennebec River, Augusta, Maine. The regulated area will be closed to all traffic annually on the fourth weekend in June. In emergency situations, provisions will be made to establish safe escort by Coast Guard designated vessels for mariners requiring transit through any regulated area. This regulation is needed to

protect spectators and participants from the hazards that accompany a high speed powerboat race in a confined area.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact to be so minimal that a full Regulatory Evaluation, under paragraph 10e of the regulatory policies and procedures of DOT, is unnecessary. This conclusion is based on the limited duration of the race, the extensive advisories that will be made to the affected maritime community, and the fact that the event is taking place in an area where the only commercial interests affected are a few marinas.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*),the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' include independently owned and operated small businesses that are not dominant in their fields and that otherwise qualify as ''small business concerns'' under section 3 of the Small Business Act (15 U.S.C. 632).

For the reasons discussed in the Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

The Coast Guard has analyzed this rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impacts of this special local regulation as well as the Whatever Festival Hydroplanes race. An Environmental Assessment (EA) was prepared for the Whatever Festival Hydroplanes race for which a Coast Guard Marine Event Permit will be issued. A Finding of No Significant Impact (FONSI) was made; a copy of the EA and FONSI statement are available in the docket. Under paragraph 2.B.2.e.34(h) of COMDTINST 16475.1B, promulgation of this special local regulation is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A permanent section, § 100.109, is added to read as follows:

§ 100.109 Whatever Festival Hydroplanes, Augusta, ME.

(a) *Regulated Area.* This regulated area includes all waters within the following points and provides a 100 yard minimum safety zone around the race course:

Latitude	*Longitude*
44°19.01″ N	069°46.22″ W
44°19.00″ N	069°46.18″ W
44°18.37″ N	069°46.26″ W
44°18.36″ N	069°46.16″ W

(b) *Special Local Regulations.*

(1) Commander, U.S. Coast Guard Group Portland reserves the right to delay, modify, or cancel the race as conditions or circumstances require.

(2) No person or vessel may enter, transit, or remain in the regulated area during the effective period of regulation unless participating in the event or unless authorized by the Coast Guard patrol commander.

(3) Vessels desiring to transit the river may do so without Coast Guard approval as long as the vessel remains outside the regulated areas at specified times. In the event of an emergency, the Coast Guard patrol commander may authorize a vessel to transit through the regulated areas with a Coast Guard designated escort in between race heats. No vessel will be allowed to transit through any portions of the regulated area during the actual race. Vessels encountering emergencies which require transit through the regulated areas should contact the Coast Guard patrol commander on VHF Channel 16.

(4) Spectator craft are authorized to watch the race from any areas as long as they remain outside the designated regulated areas. There will be no movement of spectator craft during each heat of the race. Spectator craft area expected to remain outside the safety zone during race times unless permission has been granted by the patrol commander.

(5) All persons and vessels shall comply with the instructions of the Commander, U.S. Coast Guard Group Portland or the designated on-scene patrol commander. On-scene patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard. Upon hearing five or more short blasts from a U.S. Coast Guard vessel, the operator of a vessel shall stop immediately, then proceed as directed. Members of the Coast Guard Auxiliary also will be present to inform vessel operators of this regulation and other applicable laws.

(c) *Effective period.* This rule will be effective annually on the fourth weekend in June, at times to be prescribed in a Coast Guard Local Notice to Mariners and a notice in the Federal Register.

Dated: September 14, 1995.

J.L. Linnon,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 95–24107 Filed 9–27–95; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 62

[VA9–3–5469, VA9–8–5474; FRL–5262–7]

Approval and Promulgation of Air Quality Implementation Plans; Virginia (Approval of Miscellaneous Revisions); Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Virginia (Approval of Revision to the Section 111(d) Plan for Sulfuric Acid Mist)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving both a State Implementation Plan (SIP) revision and a Section 111(d) plan revision submitted by the Commonwealth of Virginia. These revisions incorporate changes which were adopted by Virginia in 1985 as part of a reorganization of Virginia's air pollution control regulations, and

which still represent current state law as of September 28, 1995. The intended effect of this action is to revise these federally-approved air quality plans to reflect the current State requirements. These actions are being taken under sections 110 and 111(d) of the Clean Air Act.

EFFECTIVE DATE: This final rule is effective on October 30, 1995.

ADDRESSES: Copies of the documents relevant to these actions are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Harold A. Frankford, (215) 597–1325.

SUPPLEMENTARY INFORMATION: On October 19, 1987 (47 FR 38787), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Virginia. The NPR proposed approval of a revised format and numerous amendments, both administrative and substantive, submitted by the Commonwealth of Virginia to EPA Region III on February 14, 1985. EPA approved the revised format and rule citations on February 25, 1993 (58 FR 11374), and incorporated them by reference into the Virginia SIP at 40 CFR 52.2420(c)(89). In this same action, EPA stated that the substance of certain regulations pertaining to volatile organic compounds (VOC) and sulfuric acid mist would be acted upon in a separate notice. At this time, EPA is taking final action on the above-mentioned provisions. The revised provisions are summarized below:

40 CFR Part 52

The revised VOC regulations submitted by Virginia on February 14, 1985 and not incorporated by reference at 40 CFR 52.2420(c)(89) consists of the following revisions:

1. Deletion of Virginia SIP Regulation 4.52 (Hydrocarbon Emissions), effective February 1, 1985. The provisions of this regulation were applicable only in Virginia Region 7, which for the purposes of this regulation consisted of the following municipalities: Arlington, Fairfax, Loudoun and Prince William Counties; Alexandria, Fairfax, and Falls Church Cities. The provisions of SIP Regulation 4.52 no longer represent current State law, and have been replaced or superseded since 1985 in the Virginia SIP with the source-specific rules for VOC source categories found in the federally-enforceable version of Part IV.

2. Administrative amendments to Rule 4–41 (Motor Vehicles), Sections 120–04–4103A. and 4103B.

Public hearings were held on June 15, 1984 in Richmond, as required by 40 CFR 51.102. Additional public hearings were held in Abingdon, Roanoke, Lynchburg, Virginia Beach, and Springfield.

SIP Regulation 4.52, originally approved by EPA in 1974, is applicable only to VOC sources located in the Virginia portion of the National Capital AQCR, was the original regulation adopted by Virginia to control emissions from sources of photochemically reactive organic compounds located in Northern Virginia. This regulation was approved by EPA prior to EPA's issuing of Round I, Round II and Round III Control Techniques Guideline (CTG) regulations. (See 40 CFR 52.2420 (c)(19),(c)(24)). Virginia has further revised its VOC regulations in response to the requirements of the 1990 Clean Air Act amendments.

Since SIP Regulation 4.52 ceased to be State law effective February 1, 1985, and since Virginia's current VOC regulations are far more comprehensive than the provisions of SIP Regulation 4.52, EPA sees no need to retain this provision as part of the federally-enforceable SIP.

The provisions of Sections 120–04–4103A (which prohibits the tampering of motor vehicle emission control systems) and 120–04–103B (which specifies allowable visible emissions) as revised, effective February 1, 1985, remain current State law as of the date of this document. EPA has determined that these revisions are administrative in nature, and serve to enhance the enforceability of this regulation. No public comments were received on the October 19, 1987 NPR.

Final Action

EPA is approving both the revised provisions of Section 120–04–4103 and the deletion of Section 4.52 as a revision to the Virginia SIP. The revised Virginia regulations will be incorporated by reference into the Virginia SIP, and codified at 40 CFR 52.2420(c)(104).

The Agency has reviewed this request for revision of the Federally-approved State implementation plan for conformance with the provisions of the 1990 amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment.

40 CFR Part 62

The reorganization of Virginia's air quality regulations also affects Virginia's Section 111(d) plan for sulfuric acid mist, as Rule 4–21 (Sulfuric Acid Plants) of the 1985 regulations replaces Regulation 4.51(c) of the pre-1985 format.

Virginia currently has an approved section 111(d) Plan for sulfuric acid mist. (See 40 CFR 62.11601). In its initial approval of the Section 111(d) plan for sulfuric acid mist (November 13, 1981, 46 FR 55972), EPA announced that all applicable provisions of the federally-enforceable Virginia SIP would also apply to control of sulfuric acid mist sources. The applicable SIP regulations, which are codified at § 52.2420(c)(89), are described in the technical support document (TSD) accompanying this action.

However, the February 14, 1985 version of Section 120–04–2104 (formerly Section 4.51(c)(2)) was not IBR'ed into the SIP, since it exclusively governs sulfuric acid mist, a noncriteria welfare pollutant controlled under section 111(d) of the Clean Air Act, and not section 110 of the Act. As such, revisions to Section 120–04–2104 would be codified in 40 CFR part 62 rather than 40 CFR part 52. This regulation is revised to conform with the revision of the term ''sulfuric acid plant'', which Virginia revised to ''sulfuric acid production unit.''

Public hearings were held on June 15, 1984 in Richmond, as required by 40 CFR Section 60.23. Additional public hearings were held in Abingdon, Roanoke, Lynchburg, Virginia Beach, and Springfield.

EPA Evaluation

The revised definition of ''sulfuric acid production unit'' found in Section 120–04–2104 conforms to Virginia's definitions format found throughout its air pollution control regulations. In combination with the remainder of the Rule 4–21 provisions incorporated by reference into the Virginia SIP at § 52.2420(c)(89), EPA concludes that all provisions in Rule 4–21 submitted as of February 14, 1985 which apply to sulfuric acid mist are federally enforceable.

The actions taken at § 52.2420(c)(89) allows EPA to revise other provisions under subpart VV of 40 CFR part 62. In its original approval action of November 13, 1981, sections 62.11601(c) and 62.11602(a) were added to indicate that no action on the applicability of the

monitoring provisions (Virginia regulation 120–04–04), the Notification, Records and Reporting provisions (120–04–05), and Appendix J (Emission Monitoring Provisions For existing Sources) would be taken on Virginia's Section 111(d) plan for sulfuric acid mist in part 62 until EPA incorporated these Commonwealth provisions in part 52. In this action, EPA is revising subpart VV of part 62 to reflect the action taken at § 52.2420(c)(89) to incorporate by reference the current provisions of Virginia regulations 120–04–04 and 120–04–05.

During the 30-day public comment period following the October 19, 1987 proposed rulemaking notice, no comments were received.

Final Action

EPA is approving the revised provisions of Rule 4–21, Section 120–04–2104 as a revision to Virginia's Section 111(d) plan for sulfuric acid mist. Therefore, the revised State regulations will be codified at 40 CFR 62.11601(g). At the same time, EPA is removing 40 CFR 62.11601(c) and 62.11602(a) to reflect the current status of the federally-enforceable Virginia SIP.

The Agency has reviewed this request for revision of the Federally-approved Section 111(d) plan for conformance with the provisions of the 1990 amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment.

Nothing in these actions should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed/promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of these actions pertaining to approval of revisions of Virginia's air pollution control regulations for mobile sources and sulfuric acid mist, as well as the deletion of the pre-1985 hydrocarbon emissions regulations, must be filed in the United States Court of Appeals for the appropriate circuit by November 27, 1995. Filing a petition for reconsideration by the Administrator of these final rules does not affect the finality of these rules for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. These actions may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

40 CFR Part 62

Environmental protection, Administrative practice and procedure, Reporting and recordkeeping requirements, Sulfuric acid plants.

Dated: July 7, 1995.

Stanley L. Laskowski,

Acting Regional Administrator, Region III.

Chapter I, title 40, of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart VV—Virginia

2. Section 52.2420 is amended by adding paragraph (c)(104) to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(c) * * *

(104) Revisions to the Virginia Regulations for the Control and Abatement of Air Pollution submitted on February 14, 1985 by the Virginia Department of Air Pollution Control:

(i) Incorporation by reference.

(A) Letter of February 14, 1985 from the Virginia Department of Air Pollution Control transmitting a revision to the Virginia State Implementation Plan.

(B) The following provisions of the Virginia regulations, effective February 1, 1985:

(*1*) Revisions to Part IV, Rule 4–41 (Mobile Sources), Sections 120–04–4103A. and 120–04–4103B.

(*2*) Deletion of SIP Regulation 4.52.

(ii) Additional material.

(A) Remainder of February 14, 1985 State submittal pertaining to the revised provisions of Section 120–04–4103 and the deletion of SIP regulation 4.52.

* * * * *

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7413 and 7601.

Subpart VV—Virginia

1. Section 62.11601 is amended by removing and reserving paragraph (c) and by adding paragraph (g) to read as follows:

Sulfuric Acid Mist Emissions From Existing Sulfuric Acid Plants

§ 62.11601 Identification of plan.

* * * * *

(g) Section 4.51(c)(2) is replaced with Rule 4–21 (Emission Standards from Sulfuric Acid Production Units), section 120–04–2104 (Standard for Sulfuric Acid Mist), effective February 1, 1985. This revision was submitted on February 14, 1985 by the Commonwealth of Virginia.

§ 62.11602 [Removed]

2. Section 62.11602 is removed.

[FR Doc. 95–24034 Filed 9–27–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 70

[AD–FRL–5305–5]

Clean Air Act Final Full Approval of Operating Permits Programs in Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is promulgating full approval of the operating permits program submitted by the Oregon Department of Environmental Quality (ODEQ) and Lane Regional Air Pollution Authority (LRAPA) for the purpose of complying with Federal requirements for an approvable State program to issue operating permits to all major stationary sources, and to certain other sources.

DATES: This action will be effective on November 27, 1995, unless adverse or critical comments are received by October 30, 1995. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Copies of Oregon's submittal and other supporting information used in developing the final full approval are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: David C. Bray, U.S. Environmental Protection Agency, 1200 Sixth Avenue, AT–082, Seattle, Washington 98101, (206) 553–4253.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

Title V of the Clean Air Act Amendments of 1990 (sections 501–507 of the Clean Air Act (''the Act'')), and implementing regulations at 40 Code of Federal Regulations (CFR) part 70 (part 70), require that States develop and submit operating permits programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within one year after receiving the submittal. EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to two years. If EPA has not fully approved a program by two years after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a Federal program.

On September 14, 1994, EPA proposed interim approval of the operating permits programs for ODEQ and LRAPA, provided certain proposed revisions to Oregon rules were adopted and submitted to EPA as a program revision prior to EPA's statutory deadline for acting on the State's submittal. In the alternative, EPA proposed disapproval of the Oregon programs if the proposed revisions were not adopted and submitted prior to the statutory deadline. See 59 FR 47105 (Sept. 14, 1994). The State adopted and submitted the revisions necessary to address the proposed disapproval items and, on December 2, 1994, EPA published final interim approval of the operating permits programs for ODEQ and LRAPA which identified two remaining deficiencies in Oregon's enforcement authorities. See 59 FR 68120 (December 2, 1994).

EPA received a letter from ODEQ on June 30, 1995 addressing the two interim approval issues identified in the December 1994 Federal Register notice. EPA has reviewed the submittal and has determined that the Oregon programs now qualify for full approval. Accordingly, EPA is taking final action to promulgate full approval of the operating permits programs for ODEQ and LRAPA.

II. Final Action and Implications

A. Resolution of Interim Approval Issues

1. Upset/Bypass as a Defense to Criminal Liability

ORS 468.959 provides an affirmative defense to criminal liability for violations that result from an ''upset'' or a ''bypass,'' as those terms are defined in the Oregon statute. In the December 2, 1994, Federal Register notice, EPA stated that in order to receive full approval, Oregon must demonstrate to EPA's satisfaction that ORS 468.959 is consistent with 40 CFR 70.6(g). That section establishes an affirmative defense to violations of technology-based standards due to an ''emergency'' provided certain specified procedures are met. EPA went on to state that the affirmative defense under ORS 468.959 appeared to be broader than the affirmative defense under 40 CFR 70.6(g) and therefore precluded full approval. See 59 FR 61827.

In response to this issue, ODEQ submitted an opinion letter from the Oregon Attorney General describing the legislative history of ORS 468.959 and opining that ORS 468.959 did not interfere with the enforcement requirements of part 70 (see Letter from Oregon Assistant Attorney General, Shelley McIntyre, to Phil Millam, May 22, 1995). The opinion letter notes that Oregon has enacted a regulation corresponding to the emergency provision of 40 CFR 70.6(g). See OAR 340–28–1430(1). The opinion letter states that ORS 468.959 is a completely different provision, which was patterned after the upset/bypass provisions under the Federal Clean Water Act and was enacted to provide two very narrow affirmative defenses to criminal liability under all of Oregon's environmental statutes for violations that the legislature considered either unavoidable or necessary to prevent more serious injury or damage.

After further consideration of the relationship between the emergency provision of 40 CFR 70.6(g) and the enforcement requirements of 40 CFR 70.11, EPA agrees with the Oregon Attorney General that the appropriate question is whether ORS 468.959 impermissibly interferes with the enforcement requirements of 40 CFR 70.11. Based on EPA's review of ORS 468.959 and the Attorney General's opinion letter, EPA believes that the affirmative defense to criminal liability available in Oregon for violations due to an upset or bypass does not unduly interfere with the State's enforcement authorities required under 40 CFR 70.11.

ORS 468.959 allows a source to assert an affirmative defense to violations resulting from an ''upset''. An upset is defined under this statute as an exceptional and unexpected occurrence in which there is an unintentional and temporary violation because of factors beyond the reasonable control of the violator and is not caused by operational error, improperly designed facilities, lack of preventive maintenance or careless or improper operation. See ORS 468.959(2)(b). By defining an upset as an ''unintentional'' violation, Oregon has greatly limited the scope of that affirmative defense. The class of violations that would be ''unintentional'' and yet ''knowing,'' so as to subject the violator to criminal liability, should be extremely narrow. Compare ORS 161.090(7) (definition of ''intentionally'') with ORS 161.090(8) (definition of ''knowingly'').

In addition, the procedural requirements a source must meet in Oregon in order to be excused from criminal liability for violations due to upsets are substantially equivalent to the procedural requirements a source must meet to establish the affirmative defense of emergency under 40 CFR 70.6(g). EPA believes that these procedural safeguards further minimize the likelihood that ORS 468.959 will

interfere with the criminal enforcement authorities required by part 70.

With respect to the bypass provisions of ORS 468.959, a ''bypass'' is defined as a temporary discharge under circumstances in which the defendant reasonably believed that the discharge was necessary to prevent the loss of life, personal injury or severe property damage. See 468.959(2)(a). The Attorney General's opinion states that the affirmative defense to criminal liability for violations due to a ''bypass'' is directly analogous to the criminal defense of necessity, which is available as a matter of Federal criminal common law. See *U.S.* v. *Schoon,* 971 F.2d 193, 195. The necessity defense ''justifies criminal acts to be taken to avert a greater harm, maximizing social welfare by allowing a crime to be committed where the social benefits of the crime outweigh the social costs of failing to commit the crime.'' *Id.* at 196. By limiting the affirmative defense of ''bypass'' to ''circumstances in which the defendant reasonably believed that the discharge was necessary to prevent the loss of life, personal injury, or severe property damage or to minimize environmental harm'', a defendant may avoid criminal liability under the Oregon statute for what would otherwise clearly be a knowing violation only in those limited situations where the violation will avert a more serious harm to society as a whole. As such, EPA believes that the Oregon affirmative defense to criminal liability for a ''bypass'' is substantially equivalent to the affirmative defense of necessity which would be available as a matter of Federal common law for criminal violations under the Clean Air Act. EPA does not believe that part 70 was intended to preclude a State from providing sources with affirmative defenses that would be available as a matter of Federal law to Clean Air Act violations. See 40 CFR 70.11(b) (requiring that the degree of knowledge and burden of proof required under State law can be no greater than that required under the Clean Air Act).

The Attorney General's opinion also points to the procedural requirements a source must meet to establish the affirmative defense of bypass as additional checks on the scope of that affirmative defense. In the determing that ORS 468.959 precluded full approval, EPA expressed concern that the statute appeared to allow a source to routinely bypass improperly designed control equipment with impunity simply by indicating that the control equipment would be severely damaged if operated during the periods of bypass. The Attorney General explains that because the affirmative defense of bypass is available only if the source took appropriate corrective action as soon as reasonably possibly, it should not be necessary to have a bypass day after day.

In summary, EPA believes that the Oregon statute providing an affirmative defense to criminal liability for violations due to an upset or bypass is sufficiently narrow so as not to interfere with the criminal enforcement requirements of 40 CFR 70.11. EPA notes that 40 CFR 70.4(b)(7) requires a permitting authority with an approved title V program to submit at least annually information regarding the State's enforcement activities and 40 CFR 70.10(c)(iii) allows EPA to withdraw program approval where a permitting authority fails to enforce its title V program consistent with the requirements of part 70. To ensure that ORS 468.959 does not impermissibly impinge on the State's enforcement authority, EPA intends to monitor the Oregon enforcement programs closely during implementation.

2. Small Business Assistance Program Provisions

The statute establishing the Oregon Small Business Program, ORS 468A.330, states that onsite technical assistance for the development and implementation of the Small Business Stationary Source Technical and Environmental Compliance Assistance Program shall not result in inspections or enforcement actions except where there is reasonable cause to believe that a clear and immediate danger to the public health and safety or to the environment exists. See ORS 468A.330(4)(a). In the Federal Register notice granting Oregon interim approval of its operating permits programs, EPA stated that, as a condition of full approval, Oregon must demonstrate to EPA's satisfaction that ORS 468A.330(4)(a) is consistent with the enforcement responsibilities of 40 CFR 70.11(a). EPA explained that ORS 468A.330(4)(a) does not simply give a source an opportunity to correct a violation observed during onsite technical assistance before being subject to enforcement action, but rather protects the source from follow-up inspections or enforcement activities that ''result from'' observations made during onsite technical assistance.'' 59 FR 61827. EPA therefore concluded that the Oregon statute interfered with the State's enforcement requirements under 40 CFR 70.11.

In discussing ORS 468.330(4)(a), EPA noted that EPA had issued a guidance memorandum dated August 12, 1994, entitled ''Enforcement Response Policy for Treatment of Information Obtained Through Clean Air Act Section 507 Small Business Assistance Programs'' signed by Steven A. Herman (herein referred to as the ''SBA Enforcement Guidance''). This guidance document sets forth EPA's enforcement response policy on the treatment of violations detected during compliance assistance visits under State Small Business Assistance Programs. The SBA Enforcement Guidance endorses State Small Business Assistance Programs that either (1) allow sources that voluntarily seek compliance assistance a limited period to correct violations observed or revealed as a result of compliance assistance or (2) if the State Small Business Assistance program is independent of the delegated State air enforcement program, keep confidential information that identifies the names and locations of specific small businesses with violations revealed through compliance assistance. It therefore interprets section 507 of the Clean Air Act as creating a limited exception to the enforcement requirements of title V and part 70 for those sources that qualify for assistance under section 507 of the Act.

In granting the Oregon operating permits programs interim approval, EPA determined that ORS 468.330(4)(a) did not meet the requirements of the SBA Enforcement Guidance because the Oregon statute permanently shields a source from inspections or enforcement actions resulting from observations during onsite technical assistance, rather than granting a limited correction period. See 59 FR 61826. Since that time, Oregon has submitted a guidance document entitled ''Air Quality Guidance: Restriction of Information Obtained by the AQ Small Business Assistance Program'' (hereinafter, ''Oregon's SBAP Confidentiality Guidance''). This document requires Oregon's Small Business Assistance Program to be operated independently from Oregon's air program enforcement efforts, and requires the Small Business Assistance Program to restrict access by Oregon air enforcement staff to information regarding violations detected through onsite technical assistance visits to small businesses. EPA has reviewed Oregon's SBAP Confidentiality Guidance and believes that it meets the conditions that apply to States choosing the confidentiality option under the SBA Enforcement Guidance. See 60 FR 46071 (September 5, 1995). EPA also believes that this document sufficiently minimizes the risk that ORS 468A.330(4)(a) will interfere with the State's enforcement

responsibilities under part 70 and allows full approval of the Oregon program. Because Oregon's air enforcement staff will not have access to information regarding violations detected during onsite technical assistance, Oregon sources should not be successful in arguing that inspections and enforcement actions initiated by air enforcement staff ''resulted from'' onsite technical assistance. Again, EPA intends to monitor the Oregon enforcement programs closely during implementation to ensure that ORS 468A.330(4)(a) does not interfere with the State's enforcement efforts against title V sources and will consider withdrawal of program approval if sources are successful in raising ORS 468A.330(4)(a) as a defense to title V enforcement actions.

B. Scope of Approval

The scope of the part 70 program approved in this notice for ODEQ and LRAPA applies to all title V sources (as defined in the approved program) within the State of Oregon and Lane County, respectively, except for sources within the exterior boundaries of Indian Reservations in Oregon. See 59 FR 61827.

III. Administrative Requirements

A. Docket

Copies of the State's supplemental submittal and other information relied upon for this direct final action are contained in the Oregon Title V docket maintained at the EPA Regional Office, docket number ORV100. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this final action. The docket is available for public inspection at the location listed under the **ADDRESSES** section of this document.

B. Direct Final Rulemaking

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, EPA is proposing to fully approve the ODEQ and LRAPA operating permits programs should adverse or critical comments be filed. This action will be effective November 27, 1995, unless, within 30 days of its publication, adverse or critical comments are received.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective November 27, 1995.

C. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

D. Regulatory Flexibility Act

EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

E. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 70

Administrative practice and procedure, Air pollution control, Environmental protection, Intergovernmental relations, Operating permits, and Reporting and recordkeeping requirements.

Dated: September 19, 1995.

Jane S. Moore,

Acting Regional Administrator.

Part 70, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Appendix A to part 70 is amended by revising the entry for Oregon to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Oregon

(a) Oregon Department of Environmental Quality: submitted on November 15, 1993, as amended on November 15, 1994, and June 30, 1995; full approval effective on November 27, 1995.

(b) Lane Regional Air Pollution Authority: submitted on November 15, 1993, as amended on November 15, 1994, and June 30, 1995; full approval effective on November 27, 1995.

* * * * *

[FR Doc. 95–24036 Filed 9–27–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 228

[FRL–5304–8]

Ocean Dumping; Designation of Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA designates an ocean dredged material disposal site, the Humboldt Open Ocean Dredged Site (HOODS), located offshore of Humboldt Bay, California, for the disposal of suitable dredged material removed from the Humboldt Bay region and other nearby harbors or dredging sites. EPA has determined that the site identified in the Final EIS as the environmentally preferred site, and selected in the Final EIS as the preferred site, will be the site designated as the HOODS in this Final Rule. The HOODS is located between approximately 3 and 4 nautical miles (5 and 7 kilometers) west of the Humboldt Bay entrance and occupies an area of 1 square nautical mile (3 square kilometers). Water depths within the area range from 160 to 180 feet (49 to 55 meters). The coordinates of the

corners of the square site are: 40°48′25″ North latitude (N) by 124°16′22″ West longitude (W); 40°49′03″ N by 124°17′22″ W; 40°47′38″ N by 124°17′22″ N; and 40°48′17″ N by 124°18′12″ W (North American Datum from 1983). This action is necessary to provide an acceptable ocean dumping site for disposal of suitable dredged material from Northern California dredging sites, including Humboldt Bay and Harbor; the suitability of proposed dredged material will be determined by appropriate sediment testing protocols. The designation of the HOODS is for a period of 50 years. Disposal operations at the site will be prohibited if the site management and monitoring program is not implemented.

EFFECTIVE DATE: Site designation will be effective October 30, 1995.

ADDRESSES: Send questions or comments to: Mr. Allan Ota, Ocean Disposal Coordinator, U.S. Environmental Protection Agency, Region IX (W–3–3), 75 Hawthorne Street, San Francisco, California 94105, telephone (415) 744–1980. The supporting document for this designation is the Final Environmental Impact Statement (EIS) for Designation of an Ocean Dredged Material Disposal Site off Humboldt Bay, California, July 1995, which is available for public inspection at the following locations:

A. EPA Public Information Reference Unit (PIRU), Room 2904 (rear), 401 M Street, SW., Washington, DC.

B. EPA Region IX, Library, 75 Hawthorne Street, 13th Floor, San Francisco, California.

C. Humboldt Bay Harbor, Recreation and Conservation District, PO Box 1030, Eureka, California.

D. Humboldt County Library, 421 I Street, Eureka, California.

E. Humboldt State University Library, Arcata, California.

F. Arcata City Library, 500 7th Street, Arcata, California.

FOR FURTHER INFORMATION CONTACT: Mr. Allan Ota, Ocean Disposal Coordinator, U.S. Environmental Protection Agency, Region IX (W–3–3), 75 Hawthorne Street, San Francisco, California 94105, telephone (415) 744–1980.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act (MPRSA) of 1972, as amended, 33 U.S.C. 1401 *et seq.*, gives the Administrator of EPA authority to designate sites where ocean dumping may be permitted. On October 1, 1986 the Administrator delegated authority to designate ocean dredged material disposal sites (ODMDS) to the Regional Administrator of the EPA Region in which the sites are located. The HOODS designation action is being made pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR 228.4) state that ocean dumping sites will be designated by publication pursuant to 40 CFR part 228. This site designation is being published as final rulemaking in accordance with § 228.4(e) of the Ocean Dumping Regulations, which permits the designation of ocean disposal sites for dredged material.

The HOODS is located between approximately 3 and 4 nautical miles (5 and 7 kilometers) west of the Humboldt Bay entrance and occupies an area of approximately 1 square nautical mile (3 square kilometers). Water depths within the area range from approximately 160 to 180 feet (49 to 55 meters). The coordinates of the corners of the square site are: 40°48′25″ North latitude (N) by 124°16′22″ West longitude (W); 40°49′03″ N by 124°17′22″ W; 40°47′38″ N by 124°17′22″ N; and 40°48′17″ N by 124°18′12″ W (North American Datum from 1983). EPA Region IX designates the HOODS as an ocean dredged material disposal site for continued use for a period of 50 years.

Site use is subject to implementation of site management and monitoring requirements contained in the Final EIS, which are now identified as the Site Management and Monitoring Plan (SMMP) for the HOODS. The SMMP incorporates a tiered site monitoring structure and MPRSA Section 103 permit review, and identifies standard conditions that must be included in any permit or authorization for disposal site use.

B. EIS Development

Section 102(c) of the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321 *et seq.*, requires that Federal agencies prepare an environmental impact statement (EIS) on proposals for major Federal actions significantly affecting the quality of the human environment. The object of NEPA is to build into the agency decision-making process careful consideration of all environmental aspects of proposed actions, including evaluation of reasonable alternatives to the proposed action.

A Notice of Availability of the Draft EIS was published in the Federal Register on April 21, 1995 discussing EPA's intent to designate an open ocean dredged material disposal site off Humboldt Bay, California (60 FR 19916). The Draft EIS, titled: Draft Environmental Impact Statement (EIS) for Designation of an Ocean Dredged Material Disposal Site off Humboldt Bay, California, evaluated a range of potential alternative disposal sites as summarized below. The comment period closed on June 5, 1995. EPA received 4 comment letters on the Draft EIS and incorporated changes where appropriate to the Final EIS. The Proposed Rule was published in the Federal Register on April 21, 1995 (60 FR 19872). No comments were received regarding the Proposed Rule. On August 4, 1995, a Notice of Availability for public review and comment on the Final EIS was published in the Federal Register (60 FR 39956). The comment period for the Final EIS closed on September 5, 1995. No comments were received following the 30-day comment period.

EIS Alternatives Analysis. On average, over 800,000 cubic yards of dredged material are generated annually as a result of routine federal maintenance dredging operations by the U.S. Army Corps of Engineers (Corps) in Humboldt Bay and Harbor. Historically, most of this dredged material has been disposed at 3 different sites offshore of Humboldt Bay. Although dredged material has been disposed at the sites known as ''SF–3'' and ''NDS'' in the past, environmental and navigational safety concerns shifted disposal operations to the HOODS for the last 3 years.

EPA's analysis of alternatives included detailed examination of several potential ocean dumping sites for dredged materials from the Humboldt Bay region and other nearby harbors or dredging sites, including potential alternative means of handling these dredged materials other than disposal at an ocean dump site. Alternatives evaluated in detail in the Final EIS are discussed below. Note that designation of an ocean dumping site does not authorize any actual dumping and does not preclude EPA or the Corps from finding in the future, or for individual projects, that alternative means of managing dredged materials from the Humboldt Bay region are available and environmentally preferable.

EPA has determined that it is necessary to designate an ocean dumping site for dredged materials from Humboldt Bay site now, even if alternatives to ocean dumping should eventually prove to be available, because it is unlikely that alternative means of managing dredged material will accommodate all of the dredged material that will be generated in the future. As discussed in the Final EIS, there are significant limitations at present to the potential alternatives to

ocean dumping of dredged material in the Humboldt Bay region. However, in all cases, the disposition of dredged materials from individual projects will be evaluated by EPA Region IX and the Corps' San Francisco District on a case-by-case basis, taking into account all the alternatives available at the time of permitting. Beneficial reuse alternatives will be preferred over ocean disposal whenever they are practicable and would cause less adverse impacts than ocean disposal.

The following ocean disposal alternatives were evaluated in the Final EIS:

1. No Action—Failure to designate a permanent ocean disposal site pursuant to section 102 of the MPRSA would have significant negative consequences. First, the continued foreseeable need to have an appropriate site for disposal of suitable sediments from various Humboldt Bay dredging projects would place pressure on the Corps and EPA to approve on a project-by-project basis the use of existing or temporary ocean dumping locations pursuant to MPRSA section 103. This could result in: increased cumulative effects if multiple disposal sites were used over time; projects delays (with potential navigation and human safety consequences); and the inefficient expenditure of limited government resources on multiple site designation actions and monitoring programs over time. Second, the Water Resources Development Act of 1992 prohibits the continued use of ocean dump sites which have not been designated by EPA as section 102 dump sites by January 1, 1997. If EPA fails to designate an ocean dredged material disposal site for the Humboldt Bay area by that date, then ocean disposal of dredged materials taken from Humboldt Bay projects will be effectively precluded under section 102 of the MPRSA.

2. Upland Disposal—Several upland sites were considered for disposal of dredged materials from Humboldt Bay, including the ''Superbowl'' site which was originally designed to contain approximately 1 million cubic yards of dredged material. EPA has eliminated the ''Superbowl'' site from further consideration in the Final EIS because of the nearby presence of an endangered plant species (Erysium menziesii, or Menzie's Wallflower) and the small capacity of the site relative to the needs of harbor maintenance and new work dredging over a 50-year period. Other land disposal sites were also considered, as described in the Final EIS, but were not investigated in detail because of the potential for adverse impacts on wetlands, inadequate capacity, and/or conflicts with other land uses.

3. Beach Nourishment—This disposal alternative was considered because much of the sediment dredged from the Humboldt Bay region is sand. (Sediments dredged from the Bar and Entrance, North Bay Channels, and the Field's Landing Channel in the area north of Buhne Point are predominately medium- to fine-grained sand. However, sediments in the southern reach of the Field's Landing Channel and the Samoa and Eureka Channels have historically been finer-grained material that would not be suitable for beach nourishment.) EPA has eliminated this alternative from further consideration for these areas because the dredging and disposal operations are not expected to be practicable for all of the material generated in the region. Stationary dredging plants cannot be used in the entrance and main channel areas because of exposure to rough sea conditions. Use of a hopper dredge would require rehandling which would result in adverse localized (in-bay) environmental impacts. The dredged sediments would be deposited at a sheltered in-bay site by hopper dredge (effects on in-bay biota), and hydraulically re-dredged for transport by slurry pipeline to the North or South Spit beach sites. Dredging and nearshore disposal directly via hopper dredge without rehandling is discussed below. This alternative would have greater overall adverse impacts than the preferred alternative (HOODS). (Note that EPA and the Corps may still determine that beach nourishment is the preferable alternative for individual projects on a case-by-case basis.)

4. Disposal off the Continental Shelf—The EPA Ocean Dumping Regulations (40 CFR 228.5(e)) state that the EPA will, whenever feasible, designate ocean dumping sites beyond the edge of the continental shelf and/or at sites that have been historically used (to minimize cumulative effects). Disposal off the continental shelf would require use of a site located 10 nautical miles (19 kilometers) or farther from Humboldt Bay. The Corps has determined that the Zone of Siting Feasibility (ZSF—the radius limit for economically feasible disposal operations for the Humboldt Bay area) is 4 nautical miles from the entrance to Humboldt Bay. EPA has therefore eliminated alternatives off the continental shelf because they would be outside the ZSF, and because historical disposal sites exist on the continental shelf within the ZSF.

5. Nearshore Disposal Site (NDS)—This alternative site is located approximately 2 nautical miles (4 kilometers) southwest of the Humboldt Harbor mouth. Two disposal episodes occurred at this site as part of a study to determine whether sediments discharged at the NDS would remain in the littoral zone and promote beach nourishment. The study indicated some shoaling and some evidence of shoreward transport. EPA has eliminated this alternative from further consideration because, while it provides a potential beneficial reuse of sandy sediments, there has been strong objection by local fishermen's groups to the use of this site based on adverse impacts on navigational safety in the vicinity of the southern approach to the Humboldt Harbor entrance channel and on commercial fishery resources that inhabit the nearshore area. These resources include egg-brooding Dungeness crab, juvenile Dungeness crab, and juvenile English sole. This alternative would have greater overall adverse impacts than the preferred alternative (HOODS).

6. Disposal Site SF–3—This alternative disposal site is located approximately 1 nautical mile (2 kilometers) southwest of the Humboldt Harbor mouth. This site has been used previously by the Corps for disposal of dredged material from Humboldt Bay. This site was de-designated as an interim site on December 31, 1988, although it had been used subsequently under authority of the provisions of section 103 of the MPRSA. EPA has eliminated this alternative from further consideration because of concerns about adverse impacts on safe navigation and on commercial and recreational fisheries. This site would have greater overall adverse impacts than the preferred alternative (HOODS).

7. Humboldt Open Ocean Disposal Site (HOODS)—The Final EIS identified this alternative site as the preferred alternative based on comparison to the alternative sites listed above, and to the specific selection criteria listed in 40 CFR 228.6(a). The HOODS is located furthest from the coast (between approximately 3 and 4 nautical miles west of the Humboldt Bay entrance) and in the deepest depth range (approximately 160 to 180 feet, or 49 to 55 meters). The 1 square nautical mile (3 square kilometer) site represents an extremely small area relative to the extent of similar habitat in the surrounding region. Bathymetric and sediment surveys indicate the HOODS is located in a depositional area which is likely to retain dredged material deposited on the sea floor. No significant impacts to other resources or amenity areas are expected to result

from the designation of the HOODS. Existing and potential fisheries resources within the HOODS are minimal relative to the other ocean or nearshore alternatives and the site is removed from more important fishing grounds located closer to or within the other alternative sites. Studies have shown that abundances and biomass of demersal fishes and megafaunal invertebrates, as well as abundances and diversity of infaunal invertebrates, at the HOODS are lower than those at the other alternative sites. Water column impacts resulting from disposal of dredged material are expected to be temporary and localized within the site. Therefore, potential impacts to surface and mid-water dwelling organisms, such as seabirds, marine mammals, and midwater fishes, are expected to be insignificant.

EPA has determined that the HOODS represents the environmentally preferred alternative for designation of an open ocean dredged material disposal site for the Humboldt Bay area. Its selection, along with the general and specific restrictions on site use, avoids and minimizes environmental harm from ocean disposal of suitable dredged material to the maximum extent practicable. A Record of Decision (ROD) will not be issued as a separate document; instead this Final Rule will serve as the ROD for designation of the HOODS.

C. Regulatory Requirements

Consistency with the Coastal Zone Management Act. EPA prepared a Coastal Consistency Determination (CCD) document based on the evaluations presented in the Final EIS. The CCD evaluated whether the action—designation of the HOODS as described in the Final EIS as an ocean disposal site for up to 50 years, for dredged material meeting ocean disposal criteria—would be consistent with the provisions of the Coastal Zone Management Act. The CCD was formally presented to the California Coastal Commission at a public hearing on September 13, 1995. The Commissioners voted unanimously to approve EPA's CCD for the HOODS.

Endangered Species Act Consultation. EPA initiated consultations with the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (FWS) pursuant to provisions of the Endangered Species Act, regarding the potential for designation and use of any of the alternative ocean disposal sites under study to jeopardize the continued existence of any federally listed threatened or endangered species. This consultation process is fully documented in the Final EIS. No negative comments were received from these agencies.

Compliance with Ocean Dumping Criteria. Five general criteria are used in the selection and approval of ocean disposal sites for continuing use (40 CFR 228.5). First, sites must be selected to minimize interference with other activities, particularly avoiding fishery areas or major navigation areas. Second, sites must be situated such that temporary (during initial mixing) water quality perturbations caused by disposal operations would be reduced to normal ambient levels before reaching any beach, shoreline, sanctuary, or geographically limited fishery area. Third, if site designation studies show that any interim disposal site does not meet the site selection criteria, use of such site shall be terminated as soon as an alternate site can be designated. Fourth, disposal site size must be limited in order to localize for identification and control any immediate adverse impacts, and to facilitate effective monitoring for long-range effects. Fifth, EPA must, wherever feasible, designate ocean dumping sites beyond the edge of the continental shelf and/or where historical disposal has occurred.

As described in the Final EIS, the HOODS was specifically selected to comply with these general criteria. First, as discussed further below in discussing the 11 specific site selection criteria, EPA has determined that the HOODS is not a significant fishery area, is not a major navigation area and otherwise has no geographically limited resource values that are not abundant in other parts of this coastal region. Second, as also discussed further below, dredged material deposited at the site is not expected to reach any significant area such as a marine sanctuary, beach, or other important natural resource area. Third, although it is a historically used site, the HOODS is not an interim disposal site. Fourth, the site has an appropriately limited size and has been selected to allow for effective monitoring. Fifth, although the site is not located beyond the continental shelf, it is located in an area historically used for dumping.

In addition to the 5 general criteria, 11 specific site selection criteria are listed in 40 CFR 228.6(a) of the EPA Ocean Dumping Regulations for evaluation of all candidate disposal sites. The 5 general criteria and the 11 specific factors overlap to a great degree. The HOODS site, as discussed below, is also acceptable under each of the 11 specific criteria.

1. Geographical position, depth of water, bottom topography and distance from coast (40 CFR 228.6(a)(1)). The HOODS is located between approximately 3 and 4 nautical miles (5 and 7 kilometers) west of the Humboldt Bay entrance and occupies an area of 1 square nautical mile (3 kilometers). Water depths within the area range from 160 to 180 feet (49 to 55 meters). Bathymetric and sediment surveys indicate that the site is located in a depositional area. The site's depositional nature and natural topography is expected to minimize the extent of potential impacts to the benthos, and is expected to facilitate long-term containment of deposited material as well as site monitoring activities.

2. Location in relation to breeding, spawning, nursery, feeding, or passage areas of living resources in adult or juvenile phases (40 CFR 228.6(a)(2)). The HOODS provides feeding and breeding areas for common resident benthic species. Floating larvae and eggs of various species are expected to be found at and near the water surface at the site as well as the alternative sites evaluated. However, the designation of the site is not expected to affect any geographically limited (i.e., unique) habitats, breeding sites, or critical areas that are essential to rare or endangered species. In comparison to the other alternative sites evaluated, the HOODS has the least potential for adverse impact to commercially important species.

3. Location in relation to beaches and other amenity areas (40 CFR 228.6(a)(3)). The HOODS is located between approximately 3 and 4 nautical miles (5 and 7 kilometers) west of the Humboldt Bay entrance and approximately 4 to 7 nautical miles from the closest nearshore resources, beaches, and other coastal amenity areas. Ocean currents in the vicinity of the HOODS flow predominately to the northwest and offshore in the winter and predominately to the southwest and offshore in the summer. Current speeds are usually on the order of 0.5 knot (25 centimeters per second) at the surface and less at depth. These flows may be strongly influenced by local winds and tides. Any residual suspended solids from disposal operations at the HOODS are expected to move primarily to the northwest or southwest depending on the oceanographic season during any one year and generally in the offshore direction throughout the year. Because of the relatively deep depths and slow current speeds, it is predicted that the vast bulk of the disposed material will remain within the disposal site. For the

above reasons, EPA has determined that aesthetic impacts of plumes, transport of dredged material to any shoreline, and alteration of any habitat of special biological significance or marine sanctuary is not expected to occur if this site is designated.

4. Types and quantities of wastes proposed to be disposed of, and proposed methods of release, including methods of packing the waste, if any (40 CFR 228.6(a)(4)). Over 800,000 cubic yards of dredged material are generated annually as a result of federal maintenance dredging operations by the Corps in Humboldt and Harbor. In addition, larger volumes of dredged material (e.g., from deepening projects) may also be generated periodically. Typical composition of dredged material disposed at the site is expected to range between two types: ''predominantly sand'' (grain size greater than 0.075 millimeters) versus ''predominantly silt-clay'' (grain size less than 0.075 millimeters). These material types are based on data from historical projects from the Humboldt Bay region. The expected typical disposal method would involve hopper dredges (hydraulic dredging), with a maximum capacity of up to 5,000 cubic yards but typically carrying loads of approximately 2,000–3,000 cubic yards of dredged material per trip. Dredged material would not be packaged. All dredged material proposed for disposal at the site must be suitable for ocean disposal. This determination will be made by EPA Region IX and the Corps' San Francisco District based upon the results of an evaluation of information developed in accordance with the 1991 EPA/Corps ''Green Book'' (e.g., physical, chemical and biological tests) before a MPRSA Section 103 permit can be issued. Dumping of prohibited materials or other industrial or municipal wastes will not be permitted at the site (40 CFR 227.5 and 227.6(a)).

Existing information suggests that it is appropriate to dispose, via hopper dredge or bottom-dump barge, of the type of dredged material that will be removed from the Humboldt Bay region at the HOODS. Because of the site's depths and slow current speeds, the dredged material is expected to settle rapidly to the ocean bottom within the boundaries of the site and not to create plumes which will reach significant areas such as marine sanctuaries, recreational areas, or geographically limited habitats at greater than background concentrations. Disposing dredged material at the site which meets regulatory criteria for ocean dumping is expected to create some limited alteration of benthic habitat within site boundaries, but should not create substantial adverse impacts extending beyond site boundaries. For these reasons, no significant adverse impacts are expected to be associated with the types and quantities of dredged material that may be disposed at the site.

5. Feasibility of surveillance and monitoring (40 CFR 228.6(a)(5)). EPA Region IX and the Corps' San Francisco District share the responsibilities of managing and monitoring the disposal site, and, with the on-site assistance of the U.S. Coast Guard (USCG), to enforce permit conditions within the limits of their jurisdiction. The HOODS is located between approximately 3 and 4 nautical miles (5 and 7 kilometers) offshore and occupies an area ranging in depth from 160 to 180 feet (49 to 55 meters). Standardized equipment and techniques would be used for surveillance and monitoring activities during transit to and at the site, as described in the SMMP included in the Final EIS. Based on previous experience at other ocean dredged material disposal sites located farther offshore and in deeper waters, EPA has determined that the surveillance and monitoring activities are fully feasible to implement at the HOODS.

6. Dispersal, horizontal transport and vertical mixing characteristics of the area, including prevailing current direction and velocity, if any (40 CFR 228.6(a)(6)). Ocean currents in the vicinity of the HOODS flow predominantly to the northwest and offshore in the winter and predominantly to the southwest and offshore in the summer. Current speeds are usually on the order of 0.5 knot (25 centimeters per second) at the surface and less at depth. These flows may be strongly influenced by local winds and tides. Any residual suspended solids from disposal operations at the HOODS are expected to move primarily to the northwest or southwest depending on the oceanographic season during any one year and generally in the offshore direction throughout the year. Because of the relatively deep depths and slow current speeds, it is predicted that the vast bulk of the disposed material will remain within the disposal site. For these reasons, EPA has determined that the dispersal, transport and mixing characteristics of the site, and its current velocities and directions, are appropriate for its designation as a dredged material disposal site.

7. Existence and effects of current and previous discharges and dumping in the area (including cumulative effects) (40 CFR 228.6(a)(7)). Under an MPRSA Section 103 permit, the Corps has been discharging on average over 800,000 cubic yards of dredged material at the HOODS. The NDS has been used for two disposal episodes, totaling over 1.4 million cubic yards. The SF–3 site has been used for dredged material from maintenance dredging operations since the 1940's. It is estimated that a total of 20 to 25 million cubic yards of dredged material from the Humboldt Bay federal navigation channels has been disposed at the SF–3 site. No other documented disposal of dredged material has occurred within or in the vicinity of the site.

In addition, no other discharges occur in the immediate vicinity of the HOODS. The Simpson Paper Company presently discharges freshwater through an outfall into ocean waters adjacent to the Samoa Peninsula, although historically it discharged bleached kraft pulp effluent. The outfall is approximately 3 nautical miles (5.5 kilometers) east of the HOODS, 3 nautical miles (5.5 kilometers) north of the SF–3 site, and 3.5 nautical miles (6.5 kilometers) north of the NDS. The Louisiana Pacific Corporation owns and operates a market bleached kraft pulp mill located on the Samoa Peninsula. The discharge from this outfall consists of: process wastewater from kraft pulping, pulp bleaching, and pulp drying; solids from its water treatment plant; power boiler effluent; and stormwater. As authorized under its National Pollutant Discharge Elimination System (NPDES) Permit, the Louisiana Pacific Corporation is prohibited from discharging waste water in violation of effluent standards or prohibitions established under Section 307(a) of the Clean Water Act, and it is prohibited from discharging sewage sludge. The outfall is located approximately 3.5 nautical miles (6.5 kilometers) east of the HOODS, 3.5 nautical miles (6.5 kilometers) north of the SF–3 site, and 4 nautical miles (7.5 kilometers) north of the NDS. Prevailing nearshore currents would direct discharge plumes from both outfalls up or down the coast, depending of the seasonal current regime, not offshore towards the HOODS. The effects of discharges are expected to be limited to local areas near the outfalls and to not extend to the vicinity of the ocean dredged material disposal site (HOODS).

For the above reasons, EPA has determined that there are no expected adverse cumulative or synergistic impacts from the use of the HOODS and discharges from the outfalls described above.

8. Interference with shipping, fishing, recreation, mineral extraction, desalination, fish and shellfish culture, areas of special scientific importance

and other legitimate uses of the ocean (40 CFR 288.6(a)(8)). In evaluating whether dumping activity at the site could interfere with shipping, fishing, recreation, mineral extraction, desalination, areas of scientific importance and other legitimate uses of the ocean, EPA considered both the direct effects from depositing dredged material on the ocean bottom within the HOODS boundaries and the indirect effects associated with vessel traffic that will result from transportation of dredged material to the dump site. Existing information indicates that the site is not a significant fisheries area, is not a significant recreational area, is not a significant area for harvestable minerals, is not a potential staging ground or intake area for desalination activity, is not scientifically important in itself, and otherwise has no geographically limited resource values that are not abundant in other parts of this coastal region. Accordingly, depositing dredged material at the site will not interfere with these activities. Finally, vessel traffic involved in transportation of dredged material to the HOODS should also cause no substantial interference with any of the activities discussed above.

9. The existing water quality and ecology of the site as determined by available data or by trend assessment or baseline surveys (40 CFR 228.6(a)(9)). Existing information and regional studies described in the Final EIS provide the following determinations: Water quality at the HOODS is indistinguishable from the water quality of nearby areas. Sediments contain background levels or low concentrations of trace metal and organic contaminants. The demersal fish community within the HOODS has lower numbers of species and lower abundances than the other alternative sites. The HOODS contains moderate numbers of megafaunal invertebrate species (Dungeness crab) but lower overall abundances compared to the other alternative sites. Infaunal invertebrates (polychaetes, amphipods, and mollusks) within the HOODS show higher diversity and abundance compared to the other alternative sites; however, these infaunal invertebrate trends are similar to the general depth-related trends of the surrounding region. Seabirds, marine mammals, and mid-water organisms including juvenile rockfishes are seasonally abundant; however, the HOODS is not considered to have geographically limited resource values that are not also abundant in other alternative sites or other parts of this coastal region. Based on these Final EIS conclusions, EPA has determined that, compared to the alternative sites evaluated, the HOODS is the environmentally preferred location for ocean disposal site designation.

10. Potentiality for the development or recruitment of nuisance species in the disposal site (40 CFR 228.6(a)(10)). Local opportunistic benthic species characteristic of disturbed conditions are expected to be present and abundant at any ocean dredged material disposal site in response to physical deposition of sediments. Opportunistic polychaetes, such as Capitella, may colonize the disposal site. However, these worms can become food items for local bottom-feeding fish and are not directly harmful to other species. No recruitment of species capable of harming human health or the marine ecosystem is expected to occur at the site. Previous studies of the benthic fauna present at the SF–3 site and at the NDS support the expectation that disposal of dredged material from the Humboldt Bay region will not promote the development of nuisance species.

11. Existence at or in close proximity to the site of any significant natural or cultural feature of historical importance (40 CFR 228.6(a)(11)). The ocean waters in the vicinity of Humboldt Bay contain sites of numerous vessel accidents and sinkings. Based on previous evaluations for and issuance of MPRSA Section 103 permits, no significant national or cultural features of historical importance have been identified in the vicinity of the HOODS. The California State Historic Preservation Office (SHPO) was contacted for an examination of their inventory and whether there are any known historic shipwrecks or any known aboriginal artifacts at the HOODS or in the vicinity. No negative comments have been received from the SHPO.

D. Site Management and Monitoring of the Hoods

Implementation of site management and monitoring activities for the HOODS is a requirement for site use. These activities must be performed in accordance with the Site Management and Monitoring Plan (SMMP) included in the Final EIS. Failure to implement the monitoring described in the SMMP precludes use of the site for disposal of dredged material until such time when monitoring can be resumed.

The SMMP, jointly administered by EPA Region IX and the Corps San Francisco District, embodies management and monitoring activities. Management activities consists of: Evaluating the suitability of sediments proposed for disposal at the HOODS for each project; evaluating the adequacy of permit conditions for ocean disposal relative to the performance of the site (e.g., dredged material footprint and overall environmental conditions) as indicated by results of periodic site monitoring; and conducting surveillance and enforcement of permits issued for use of the HOODS. Site monitoring activities are built upon a tiered monitoring approach. These monitoring activities are designed to ensure that the area of acceptable impact is primarily restricted to the disposal site and that unacceptable environmental impacts do not occur beyond the site boundaries. Management decisions at each tier are defined for sediment fate and effects, body burdens of chemicals of concern, or benthic biological community effects. Each tier will require a management decision based on the information gathered. If the null hypothesis for a particular tier is rejected, then a change in site management practices may be instituted, or a more complex set of tests are invoked at the next higher tier to determine the extent of impacts.

Physical monitoring (Tier 1) is expected to occur on an annual basis to determine changes in bathymetry and extent of the dredged material deposit (footprint) relative to the site boundaries. If the footprint extends beyond the site boundary and exceeds 10 centimeters of thickness outside of the site boundary, then an evaluation will be made to determine the potential of adverse physical impacts due to smothering of the benthic resources by the disposed sediments (Tier 2). If EPA determines that the extent of physical impact outside of the site boundary is unacceptable, a change in site management practices will be instituted. If the extent of the footprint is not unacceptable, but the adverse impacts to the benthic resources cannot be clearly attributed only to physical factors (i.e., burial), then an evaluation will be made to determine the potential for adverse impacts to the benthic resources due to elevated chemical contaminants and bioaccumulation (Tier 3).

This monitoring program is designed to facilitate detection of any potential unacceptable adverse impacts due to dredged material disposal, so that decisions about the need for changes in management practices may be made in a timely manner. Depending on the results of the periodic (e.g., annual) monitoring, EPA may at any tier determine that one or more of the following types of site management actions is required: Continue existing site use; implement higher tier monitoring; modify some or all site use

restrictions; or discontinue disposal activities. EPA expects that the SMMP will be revised and updated from time to time based on monitoring results, scientific advancements, and experience gained. EPA is committed to considering public comments prior to implementing substantive updates to the SMMP. To ensure that interested parties have the opportunity to comment, proposed substantive updates to the SMMP will distributed in draft form via a Public Notice or similar means.

E. Action

EPA Region IX has determined that there is a need for an ocean dredged material disposal site in the vicinity of Humboldt Bay, California. Based on evaluation of alternatives, EPA Region IX has tentatively determined that the HOODS may appropriately be designated for use over a period of 50 years. The designation of the HOODS complies with the general and specific criteria used for site evaluation. EPA, therefore, designates the HOODS as an EPA-approved Ocean Dumping Site in this final rulemaking. Management of this site will be the responsibility of the Regional Administrator of EPA Region IX in cooperation with the Corps' South Pacific Division Engineer and the San Francisco District Engineer, based on requirements defined in the Final EIS and Final Rule. The required management and monitoring activities is described in a SMMP prepared by EPA and incorporated in the Final EIS. Subsequent substantive revisions of the SMMP will be published and subjected to public review.

It is emphasized that ocean dumping site designation does not constitute or imply EPA Region IX's or the Corps San Francisco District's approval of actual ocean disposal of dredged materials. Before ocean dumping of dredged material at the site may begin, EPA Region IX and the Corps San Francisco District must evaluate permit applications according to EPA's Ocean Dumping Criteria. Permits cannot be issued if either EPA Region IX or the Corps San Francisco District determines that the Ocean Dumping Criteria of MPRSA would not be met. The requirement for compliance with the Ocean Dumping Criteria of the MPRSA may not be superseded by the provisions of any future comprehensive regional management plan for dredged material.

F. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all Rules which may have a significant impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on a substantial number of small entities since the site designation will only have the effect of providing a disposal option for dredged material. Consequently, this Final Rule does not necessitate preparation of a Regulatory Flexibility Analysis.

This action will not result in an annual effect on the economy of $100 million or more or cause any of the other effects which would result in its being classified by the Executive Order as a major Rule. Consequently, this Final Rule does not necessitate preparation of a Regulatory Impact Analysis.

G. Comments on the Site Designation Proposed Rule and the Final EIS

The 45-day comment period for the Proposed Rule ended on June 6, 1995. The Final EIS was available for a 30-day public review which ended on September 5, 1995. No comments were received by EPA Region IX regarding the Proposed Rule or Final EIS.

List of Subjects in 40 CFR Part 228

Environmental protection, Water pollution control.

Dated: September 19, 1995.

Felicia A. Marcus,

Regional Administrator, EPA Region IX.

In consideration of the foregoing, subchapter H of chapter I of title 40 is amended as set forth below.

PART 228—[AMENDED]

1. The authority citation for Part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

2. Section 228.15 is amended by adding paragraph (l)(10) to read as follows:

§ 228.15 Dumping sites designated on a final basis.

* * * * *

(l) * * *

(10) Humboldt Open Ocean Disposal Site (HOODS) Ocean Dredged Material Disposal Site—Region IX.

(i) Location: The coordinates of the corners of the square site are: 40°48′25″ North latitude (N) by 124°16′22″ West longitude (W); 40°49′03″ N by 124°17′22″ W; 40°47′38″ N by 124°17′22″ N; and 40°48′17″ N by 124°18′12″ W (North American Datum from 1983).

(ii) Size: 1 square nautical mile (3 square kilometers).

(iii) Depth: Water depths within the area range between approximately 160 to 180 feet (49 to 55 meters).

(iv) Use Restricted to Disposal of: Dredged materials.

(v) Period of Use: Continuing use over 50 years from date of site designation, subject to restrictions and provisions set forth in paragraph (l)(10)(vi) of this section.

(vi) Restrictions/Provisions: Site management and monitoring activities shall be implemented during the period of site use and in accordance with the Site Management and Monitoring Plan (SMMP) for the HOODS as incorporated in the Final EIS, and summarized in Section D of this final rule. All disposal activities shall be terminated if monitoring, as described in the SMMP, is not implemented. The SMMP may be periodically revised as necessary; proposed substantive revisions to the SMMP shall be made following opportunity for public review and comment.

* * * * *

[FR Doc. 95–24039 Filed 9–27–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 300

[FRL–5304–1]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of the Pesses Chemical Company Site (Site) from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) announces the deletion of the Pesses Chemical Company Site in Fort Worth, Tarrant County, Texas from the National Priorities List (NPL). The NPL is Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund), as amended, EPA and the State of Texas have determined that all appropriate Superfund-financed responses under CERCLA have been implemented and that no further cleanup by responsible parties is appropriate. Moreover, EPA and the State of Texas have determined that response activities conducted at the Site to date have been protective of public health, welfare, and the environment.

EFFECTIVE DATE: September 28, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Earl G. Hendrick, U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–8519 or 1–800–533–3508.

SUPPLEMENTARY INFORMATION: The Site to be deleted from the NPL is: Pesses Chemical Company Site, Fort Worth, Tarrant County, Texas, also known as the Pesses Company (S'West) Site.

A Notice of Intent to Delete for this Site was published on April 17, 1995, (60 FR 19203). The closing date for comments on the Notice of Intent to Delete was June 13, 1995. EPA received no letters or comments during the deletion period which opposed the deletion of this Site from the NPL. EPA received one telephone inquiry requesting information about the Site. A summary of this telephone conversation has been included in the EPA, Region 6, Deletion Docket for the Site.

The EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.425(e)(3) of the NCP, provides that in the event of a significant release from a site deleted from the NPL, the site shall be restored to the NPL without application of the Hazard Ranking System. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response actions.

List of Subjects in 40 CFR Part 300

Environmental protection, Hazardous waste.

Dated: September 13, 1995.

A. Stanley Meiburg,

Acting Regional Administrator, Environmental Protection Agency, Region 6.

40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR 1991 Comp., p. 351; E.O. 12580, 2 FR 2923, 3 CFR 1987 Comp., p. 193.

Appendix B—[Amended]

2. Table 1 of Appendix B to part 300 is amended by removing Pesses Chemical Company Site, Fort Worth, Tarrant County, Texas.

[FR Doc. 95–24037 Filed 9–27–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 431, 440, 442, 488, 489, and 498

[HSQ–156–CN]

RIN 0938–AD94

Medicare and Medicaid Programs; Survey, Certification and Enforcement of Skilled Nursing Facilities and Nursing Facilities

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule and correction to final regulations.

SUMMARY: In the November 10, 1994 issue of the Federal Register (FR Doc. 94–27703) (59 FR 56116), we established rules for survey of skilled nursing facilities that participate in the Medicare program, and nursing facilities that participate in the Medicaid program. We also established remedies that we impose on facilities that do not comply with Federal participation requirements, as alternatives to program termination. This document corrects errors made in that document.

EFFECTIVE DATE: This correction and amendments to §§ 493.53 and 493.90 are effective on July 1, 1995.

FOR FURTHER INFORMATION CONTACT: Deborah Kaplan Schoenemann (410) 786–6771.

SUPPLEMENTARY INFORMATION: On November 10, 1994, we published in the Federal Register, at 59 FR 56116, a final rule which established significant revisions to the process we use to survey skilled nursing facilities that participate in the Medicare program, and nursing facilities that participate in the Medicaid program. The rule also established remedies that we impose on facilities that do not comply with the Federal participation requirements, as alternatives to program termination. This notice corrects both typographical and technical errors made in that document.

I. Technical Corrections

In § 431.153(a), we are correcting an inadvertent error in terminology. Paragraph (a) states that, for actions specified in § 431.151, the ''Medicaid agency'' must give a provider the opportunity for a full evidentiary hearing. This change in reference was unintentional since we never intended to limit the latitude that States have had for many years under the existing regulation. The existing regulation provided only that the ''State'' had the hearing responsibility thereby leaving it to the discretion of each State how best to organize its hearing system. Some States chose to have the Medicaid agency conduct hearings, while others have left this responsibility to the survey agencies. We are correcting this regulation by restoring the original language as intended.

In §§ 442.13 and 489.13, we inadvertently carried forward provisions pertaining to the effective date of a provider agreement that we have had for many years, and that are inconsistent with other provisions of the November 10, 1994 rule. Sections 442.13 and 489.13, which cut across provider types, specify that a provider agreement is effective on the date that the provider meets all requirements or the date on which it meets condition level requirements with an acceptable plan of correction for lower level standard requirements, whichever is earlier. Because there are no longer standard level requirements for nursing homes, and because the definition of substantial compliance has been significantly redrawn, we need to conform these sections to reflect the new standard of compliance for nursing homes.

Under the rule published on November 10, 1994, a nursing home may continue to participate in the Medicare or Medicaid programs if it is in substantial compliance with Federal requirements. Because this standard is stricter than its predecessor, we now realize that once a nursing home achieves substantial compliance, it has made a sufficient demonstration to participate, and we do not require a plan of correction before the provider agreement is effective. Thus, if a nursing home is in substantial compliance on the date of the survey, its provider agreement is effective on the date of the survey. However, we still require that it submit an acceptable plan of correction at a later date for requirements that it does not fully meet. This is consistent with § 488.402(d), which provides that facility with deficiencies in program requirements must submit a plan of correction for approval except when the deficiencies are isolated and have a potential for minimal harm, but no actual harm has occurred. Therefore, we are removing the requirement in §§ 442.13(c)(3)(ii) and 489.13(b)(3)(ii) that a provider that is in substantial

compliance with Federal requirements submit a plan of correction before the provider agreement is effective.

In §§ 488.303(d) and 488.406(a) and (b), we are reordering the list of remedies to separate ''transfer of residents'' from ''closure of the facility in emergency situations or transfer of residents, or both.'' We are making this change to avoid any misunderstanding that might otherwise occur that would lead to a conclusion that in order for there to be a transfer of residents there must be a facility closure. A transfer of residents may occur when there is no facility closure, as would be the case when a facility's provider agreement is terminated. While we believe that the regulations provided the necessary separation of these two events, we are correcting the text to make certain that there is no chance for ambiguity.

In §§ 488.303(d) and 488.406(b), in reference to the remedies that the State must establish, we are clarifying that, ''in addition to termination of the provider agreement,'' the State must establish certain remedies or approved alternatives to these remedies. The reason for this clarification is that termination is a remedy that States must establish, but it is unlike the other remedies listed, because there are circumstances in which termination is the only option available.

In § 488.330(e)(1)(ii), we are replacing the phrase, ''the pendency of any hearing'' with ''any pending hearing'' because it is simpler, more easily understood, and consistent with paragraph (e)(2)(ii).

In § 488.335(f), regarding the report of findings that an individual has neglected or abused a resident or misappropriated resident property, we are correcting an unintentional error in the text, which resulted in the implication that it is always the State survey agency that must report the findings. In a particular State, an agency other than the State survey agency may be responsible for reporting the findings, except for reporting to the nurse aide registry. Only the State survey agency may report the findings to the nurse aide registry, and it may not delegate this responsibility, in accordance with § 483.156(b)(2). Therefore, we are revising § 488.335(f) to make this distinction clear. In §§ 488.335(c)(3)(iv) and 488.335(c)(3)(v), we are making conforming changes by removing references to the survey agency.

In § 488.401, in the definition of ''plan of correction,'' we are replacing the term, ''certifying agency'' with ''HCFA or the survey agency'' to make clearer the identity of the certifying agency.

Section 488.402(f)(1), regarding notification requirements for all facilities other than non-State operated NFs, provides that HCFA gives the provider notice of the remedy. As currently written, the regulation does not acknowledge that, while we impose all remedies on facilities other than non-State operated NFs, we permit States to send notices of adverse actions in certain cases of minimal noncompliance, but only as we direct. Leaving the regulation in its current published form would give the erroneous impression that HCFA must be the sole entity to provide such notice, which would not comport with program practice under these regulations. Therefore, we are revising § 488.402(f)(1) to specify that, except when the State is taking action against a non-State operated NF, HCFA ''or the State (as authorized by HCFA)'' gives the provider notice of the remedy.

In § 488.402(f)(7), regarding State monitoring, we are removing an incorrect reference to immediate jeopardy. We do not give a facility notice before we impose State monitoring, even when there is immediate jeopardy. We discussed this in the preamble (59 FR 56171, column two) and failed to correct this error in the text of the regulations.

Section 488.408(d)(3) concerns our option and a State's option to apply remedies in Category 2 to any deficiency. We are correcting an omission by clarifying that HCFA or the State may apply one or more of the remedies in Category 2 to any deficiency except when the facility is in substantial compliance, or when HCFA or the State imposes a civil money penalty for a deficiency that constitutes immediate jeopardy, in which case, the penalty must be in the upper range of penalty amounts, as specified in § 488.438(a).

In § 488.410(c)(2), we are correcting an inadvertent error. Paragraph (c)(2) provides that when a facility has deficiencies that pose immediate jeopardy, we will or the State must take immediate action to remove the jeopardy and correct the noncompliance through temporary management or terminate the facility's participation under the State plan (and we will terminate the facility's Medicare participation if it is a dually-participating facility).

In § 488.412(a)(2), we are changing ''State survey agency'' to ''State'' because we inadvertently failed to recognize that, in fact, the submission of plans and timetables for corrective action are as likely to be generated by agencies other than the State survey agency and it was not our intent to limit States' discretion. We are also changing ''plan of correction'' to ''plan and timetable for corrective action'' for consistency with terminology used in § 488.450.

In § 488.417(c)(1) and (c)(2), with regard to resumption of payments when a facility has repeated instances of substandard quality of care, we clarify that, when the facility is a State-operated NF participating in the Medicaid program, HCFA, rather than the State, makes the determination that the facility has achieved substantial compliance and is capable of remaining in substantial compliance. To permit a State to make this determination for a facility that the State itself operates, would be an obvious conflict of interest and inconsistent with the law's directive that the Secretary be the certifying entity for these facilities. We are also clarifying that HCFA makes the determination for all facilities except non-State operated NFs against which HCFA is imposing no remedies, and the State makes the determination for non-State operated NFs against which HCFA is imposing no remedies.

Section 488.422(c)(1) provides that State monitoring is discontinued when the facility demonstrates that it is in substantial compliance with the requirements, and it will remain in compliance for a period of time specified by HCFA or the State, or until termination procedures are complete. We are correcting an inadvertent error in the text by clarifying that the facility only has to demonstrate that it will remain in compliance, in addition to demonstrating that it has achieved substantial compliance, if the remedy was imposed for repeated instances of substandard quality of care.

In § 488.426, we are rewording the section title to remove the erroneous implication that closure of a facility can occur without transfer of residents. In paragraph (a), we are revising the heading to more accurately reflect the content of the paragraph. In paragraph (b), we are revising the heading to reflect the content, which is transfer of residents when HCFA or the State terminates the facility's provider agreement, and we are removing the reference to ''immediate jeopardy'' because we inadvertently failed to recognize in the final rule that provider agreement terminations cause residents to be transferred regardless of whether immediate jeopardy exists. We are also removing paragraph (c) because it would be redundant after the change to paragraph (b).

Section 488.432(a)(1)(i), regarding when a civil money penalty is collected after a facility requests a hearing,

provides that a facility must request a hearing within the time specified in § 498.40 for a SNF, a dually participating facility, or State-operated NF. We inadvertently omitted from the list, ''non-State operated NF against which HCFA is imposing remedies.'' Similarly, in § 488.432(a)(1)(ii), we are correcting an error by clarifying that a facility must request a hearing on the determination of noncompliance that is the basis for imposition of the civil money penalty within the time specified in § 431.153 for a non-State operated NF ''that is not subject to imposition of remedies by HCFA.''

In § 488.434, with regard to written notice of our intent to impose a civil money penalty, we are removing the phrase, ''intent to impose.'' The proposed rule provided that the effective date of a civil money penalty would be the 10th day after the last day of the survey in immediate jeopardy situations, and the 20th day after the last day of the survey in non-immediate jeopardy situations.

Consequently, the proposed rule referred to ''the intent'' to impose a civil money penalty because a provider always had a window of opportunity in which to correct the noncompliance and avoid the imposition of the civil money penalty. (If a facility corrected the deficiency before the 10th or 20th day, we would not impose a civil money penalty.) However, on page 56200 of the preamble to the final rule, we noted that a notice of imposition of the penalty is not required before a civil money penalty can begin to accrue, since the Act permits the imposition of a civil money penalty for past violations that have been corrected, and the civil money penalty may start accruing as early as the date that the facility was first out of compliance, as determined by HCFA or the State. For these reasons, we are removing the phrase, ''intent to impose,'' (the civil money penalty) in § 488.434.

In § 488.442(c)(2), we correct an inadvertent error regarding the Medicare rate of interest assessed on the unpaid balance of a civil money penalty. Paragraph (c)(2) should have specified that the Medicare rate of interest is ''the higher of'' the rate fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date of the notice of the penalty amount due (published quarterly in the Federal Register by HHS under 45 CFR 30.13(a)), or the current value of funds (published annually in the Federal Register by the Secretary of the Treasury, subject to quarterly revisions). Our intention to use ''the higher of'' the two amounts is indicated in the discussion of § 488.442(c) on page 56209 of the preamble.

Section 488.442 (d) and (e) concerns the disposition of civil money penalties and interest collected from long term care facilities. It was brought to our attention that the law specifically requires that, for Medicare-participating facilities, we deposit the funds as miscellaneous receipts of the U.S. Treasury (rather than ''return them to the Medicare Trust Fund''), and, for Medicaid-participating facilities, that we return the funds to the State. Section 488.442(e) concerns disposition of civil money penalties and interest collected from facilities that participate in both Medicare and Medicaid programs (dually participating facilities). Again, we believe it is more correct legally to refer not to the Medicare Trust Fund, but to ''miscellaneous receipts of the U.S. Treasury.'' Therefore, we have made these changes to § 488.442 (d) and (e). In addition, in § 488.442(f), we are making an editorial change by revising the term ''deficient'' with regard to facilities to ''noncompliant.''

In § 488.454, regarding the duration of remedies, paragraph (d) provides that, if the facility can supply documentation acceptable to us or the State that it was in substantial compliance, and was capable of remaining in substantial compliance, if necessary, on a date preceding that of the revisit, the remedies terminate on the date that we or the State can verify that the facility achieved substantial compliance. We inadvertently left off at the end of the sentence ''the facility demonstrated that it could maintain substantial compliance, if necessary.''

In § 489.3, we are correcting an error in the definition of immediate jeopardy, which is inconsistent with the definition of immediate jeopardy in § 488.301. As corrected, ''immediate jeopardy'' means a situation in which the provider's noncompliance with one or more requirements of participation has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident. We are removing the phrase, ''immediate corrective action is necessary because''.

In § 489.53, we removed the entire paragraph (b) in error, and should have removed only paragraph (b)(2) because it is no longer applicable. Paragraph (b)(1), which concerns termination of a provider agreement for a hospital or rural primary care hospital that has an emergency department, was inadvertently removed. Consequently, we are correcting this by reinstating the content of paragraph (b)(1) as paragraph (b).

Finally, we are correcting an error, which inadvertently gave the impression (by our not changing part 498) that judicial review of a civil money penalty was available to a facility in the United States District Courts. In fact, through the incorporation of parts of section 1128A of the Social Security Act (the Act) in sections 1819(h) and 1919(h) of the Act, judicial review of such actions may occur only in the appropriate United States Court of Appeals. Therefore, we are revising § 498.90 to reflect this fact. In addition, we are revising § 498.90 to make it conform to § 498.1(h), which makes it clear that Appeals Council decisions on civil money penalty cases are final once the Appeals Council makes a decision, regardless of whether judicial review occurs.

II. Other Corrections

In this document, we are making numerous corrections resulting from typographical errors, errors in cross references, omissions and conflicts within the November 10, 1994 rule.

III. Corrections to the Regulations Text of the November 10, 1994 Final Rule (59 FR 56116)

PART 431—[CORRECTED]

1. On page 56232, column three, § 431.153(a), line two, ''Medicaid agency'' is corrected to read ''State''.

PART 440—[CORRECTED]

§ 440.40 [Corrected]

2. On page 56234, column one, § 440.40(a)(2), line one, ''includes'' is corrected to read ''include''.

PART 442—[CORRECTED]

3. We make the following corrections to § 442.13:

a. On page 56235, column three, § 442.13(b), in the sixth line, ''survey'' is corrected to read ''survey,''.

b. On page 56235, column three, § 442.13(c)(3)(ii) is corrected to read as follows:

§ 442.13 Effective date of agreement.

* * * * *

(c) * * *

(3) * * *

(ii) Submits, if applicable, an approvable waiver request.

* * * * *

§ 442.30 [Corrected]

4. On page 56235, column three, in the amendatory language to item 10, the word ''and is inserted before ''(a)(4)'' in line two, and the words ''introductory paragraph of'' are inserted before ''(a)(7)'' in line three.

PART 488—[CORRECTED]

5. On page 56239, column one, § 488.303(d) is corrected to read as follows:

§ 488.303 State plan requirement.

* * * * *

(d) Required remedies for a non-State operated NF. A State must establish, in addition to termination of the provider agreement, the following remedies or an approved alternative to the following remedies for imposition against a non-State operated NF:

(1) Temporary management.

(2) Denial of payment for new admissions.

(3) Civil money penalties.

(4) Transfer of residents.

(5) Closure of the facility and transfer of residents.

(6) State monitoring.

* * * * *

§ 488.314 [Corrected]

6. On page 56240, column one, § 488.314(a)(4)(iii), line four, ''paragraphs (a)(2)(i) or (ii)'' is corrected to read ''paragraph (a)(4)(i) or paragraph (a)(4)(ii)''.

§ 488.325 [Corrected]

7. We make the following corrections to § 488.325:

a. On page 56241, column one, § 488.325(f)(2), line two, ''§ 488.206'' is corrected to read ''§ 488.406''.

b. On page 56241, column two, § 488.325(i), line eight, ''part 1002, subpart C,'' is corrected to read ''part 1007''.

§ 488.330 [Corrected]

8. On page 56241, column three, § 488.330(e)(1)(ii), line two, ''the pendency of any hearing'' is corrected to read ''any pending hearing''.

§ 488.335 [Corrected]

9. We make the following corrections to § 488.335:

a. On page 56242, column three, § 488.335(b), line three, ''their'' is corrected to read ''the''.

b. On page 56242, column three, § 488.335(c)(3)(iv), line one, ''Survey agency's intent'' is corrected to read ''Intent''.

c. On page 56242, column three, § 488.335(c)(3)(v), line four, ''the survey agency'' is removed.

d. On page 56243, column one, § 488.335(f), beginning on line six, ''survey agency, which may not delegate this responsibility,'' is removed.

e. On page 56243, column one, § 488.335(f)(5) is corrected to read as follows:

§ 488.335 Action on complaints of resident neglect and abuse, and misappropriation of resident property.

* * * * *

(f) * * *

(5) The nurse aide registry for nurse aides. Only the State survey agency may report the findings to the nurse aide registry, and this must be done within 10 working days of the findings, in accordance with § 483.156(c) of this chapter. The State survey agency may not delegate this responsibility.

* * * * *

§ 488.401 [Corrected]

10. On page 56243, column three, § 488.401, in the definition of *Plan of correction*, line three, ''the certifying agency which'' is corrected to read ''HCFA or the survey agency that''.

§ 488.402 [Corrected]

11. We make the following corrections to § 488.402:

a. On page 56243, column three, § 488.402(f)(1), beginning on line one, the paragraph heading is removed.

b. On page 56243, column three, § 488.402(f)(1), beginning on line five, ''HCFA'' is corrected to read ''HCFA or the State (as authorized by HCFA)''.

c. On page 56243, column three, § 488.402(f)(2), line one, the paragraph heading is removed.

d. On page 56244, column one, § 488.402(f)(7), line one, the paragraph heading ''State monitoring—immediate jeopardy.'' is corrected to read ''State monitoring.''

e. On page 56244, column one, § 488.402(f)(7), beginning on line two, ''imposed when there is immediate jeopardy'' is removed.

12. On page 56244, column two, § 488.406(a) and (b) are corrected to read as follows:

§ 488.406 Available remedies.

(a) *General.* In addition to the remedy of termination of the provider agreement, the following remedies are available:

(1) Temporary management.

(2) Denial of payment including—

(i) Denial of payment for all individuals, imposed by HCFA, to a—

(A) Skilled nursing facility, for Medicare;

(B) State, for Medicaid; or

(ii) Denial of payment for all new admissions.

(3) Civil money penalties.

(4) State monitoring.

(5) Transfer of residents.

(6) Closure of the facility and transfer of residents.

(7) Directed plan of correction.

(8) Directed in-service training.

(9) Alternative or additional State remedies approved by HCFA.

(b) *Remedies that must be established.* At a minimum, and in addition to termination of the provider agreement, the State must establish the following remedies or approved alternatives to the following remedies:

(1) Temporary management.

(2) Denial of payment for new admissions.

(3) Civil money penalties.

(4) Transfer of residents.

(5) Closure of the facility and transfer of residents.

(6) State monitoring.

* * * * *

13. We make the following corrections to § 488.408:

a. On page 56244, column three, § 488.408(b), line 10, ''set forth'' is corrected to read ''set forth in''.

b. On page 56244, column three, § 488.408(c)(2), line one, ''HCFA or'' is corrected to read ''HCFA does or''.

c. On page 56244, column three, § 488.408(d)(3), is corrected to read as follows:

§ 488.408 Selection of remedies.

* * * * *

(d) * * *

(3) HCFA or the State may apply one or more of the remedies in Category 2 to any deficiency except when—

(i) The facility is in substantial compliance; or

(ii) HCFA or the State imposes a civil money penalty for a deficiency that constitutes immediate jeopardy, the penalty must be in the upper range of penalty amounts, as specified in § 488.438(a).

* * * * *

d. On page 56245, column one, § 488.408(f)(1), line two, ''paragraph (F)(2)'' is corrected to read ''paragraph (f)(2)''.

§ 488.410 [Corrected]

14. We make the following changes to § 488.410:

a. On page 56245, column two, § 488.410(c)(2), line one, ''must—'' is corrected to read ''must do one or both of the following:''.

b. On page 56245, column two, § 488.410(c)(2)(i), line four, ''management; or'' is corrected to read ''management.''.

§ 488.412 [Corrected]

15. We make the following corrections to § 488.412:

a. On page 56245, column two, § 488.412(a)(2), line one, ''The State survey agency'' is corrected to read ''The State''.

b. On page 56245, column two, § 488.412(a)(2), line two, ''a plan of

correction'' is corrected to read ''a plan and timetable for corrective action''.

§ 488.417 [Corrected]

16. We make the following corrections to § 488.417:

a. On page 56246, column three, § 488.417(c)(1), beginning on line four, ''HCFA (under Medicare) or the State (under Medicaid)'' is corrected to read ''HCFA (for all facilities except non-State operated NFs against which HCFA is imposing no remedies) or the State (for non-State operated NFs against which HCFA is imposing no remedies)''.

b. On page 56246, column three, § 488.417(c)(2), beginning on line one, ''HCFA (under Medicare) or the State (under Medicaid)'' is corrected to read ''HCFA (for all facilities except non-State operated NFs against which HCFA is imposing no remedies) or the State (for non-State operated NFs against which HCFA is imposing no remedies)''.

§ 488.422 [Corrected]

17. On page 56247, column one, § 488.422(c)(1), line three, ''and it'' is corrected to read ''and, if imposed for repeated instances of substandard quality of care,''.

§ 488.425 [Corrected]

18. On page 56247, column two, § 488.425(b), line six, ''§ 488.206'' is corrected to ''§ 488.406''.

§ 488.426 [Corrected]

19. We make the following corrections to § 488.426:

a. On page 56247, column two, § 488.426, the section heading ''Closure of a facility or transfer of residents, or both.'' is corrected to read ''Transfer of residents, or closure of the facility and transfer of residents.''

b. On page 56247, column two, § 488.426(a), the paragraph heading ''Closure of a facility or transfer of residents, or both.'' is corrected to read ''Transfer of residents, or closure of the facility and transfer of residents in an emergency.''

c. On page 56247, column two, § 488.426(b), the paragraph heading ''Required transfer in immediate jeopardy situations.'' is corrected to read ''Required transfer when a facility's provider agreement is terminated.''

d. On page 56247, column two, § 488.426(b), beginning in line four, ''agreement for a deficiency that constitutes immediate jeopardy, the'' is corrected to read ''agreement, the''.

e. On page 56247, column two, § 488.426, paragraph (c) is removed.

§ 488.432 [Corrected]

20. We make the following corrections to § 488.432:

a. On page 56247, column two, § 488.432(a)(1), line 5, ''in—'' is corrected to read ''in one of the following sections:''

b. On page 56247, column two, § 488.432(a)(1)(i)(B), ''facility; or'' is corrected to read ''facility;''.

c. On page 56247, column two, § 488.432(a)(1)(i)(C), ''State-operated NF.'' is corrected to read ''State-operated NF; or''.

d. On page 56247, column two, § 488.432(a)(1)(i), a new paragraph (D) is added to read as follows:

''(D) Non-State operated NF against which HCFA is imposing remedies.''

e. On page 56247, column two, § 488.432(a)(1)(ii), line two, ''NF.'' is corrected to read ''NF that is not subject to imposition of remedies by HCFA.''

§ 488.434 [Corrected]

21. On page 56247, column three, § 488.434(a)(1), beginning on line two, ''notice of intent to impose the penalty'' is corrected to read ''notice of the penalty''.

22. We make the following corrections to § 488.442:

a. On page 56249, column two, § 488.442(c)(2), line two, ''interest is—'' is corrected to read ''interest is the higher of—''.

b. On page 56249, column two, § 488.442(c)(2)(i), line one, ''Fixed'' is corrected to read ''The rate fixed''.

c. On page 56249, column two, § 488.442(d) is corrected to read as follows:

§ 488.442 Civil money penalties: Due date for payment of penalty.

* * * * *

(d) *Penalties collected by HCFA.* Civil money penalties and corresponding interest collected by HCFA from—

(1) Medicare-participating facilities are deposited as miscellaneous receipts of the United States Treasury; and

(2) Medicaid-participating facilities are returned to the State.

* * * * *

d. On page 56249, column two, § 488.442(e), beginning on line four, ''returned to the Medicare Trust Fund and'' is corrected to read ''deposited as miscellaneous receipts of the United States Treasury and returned to''.

e. On page 56249, column two, § 488.442(f), line six, ''deficient,'' is corrected to read ''noncompliant,''.

§ 488.450 [Corrected]

23. On page 56249, column three, § 488.450(b), line five, ''if'' is corrected to read ''of''.

§ 488.454 [Corrected]

24. On page 56250, column two, § 488.454(d), the last line, ''achieved.'' is corrected to read ''achieved and the facility demonstrated that it could maintain substantial compliance, if necessary.''

PART 489—[CORRECTED]

§ 489.3 [Corrected]

25. On page 56250, column three, § 489.3, beginning on line two, ''in which immediate corrective action is necessary because the provider's'' is corrected to read ''in which the provider's''.

26. On page 56251, column one, § 489.13(b)(3)(ii) is corrected to read as follows:

§ 489.13 Effective date of agreement.

* * * * *

(b) * * *

(3) * * *

(ii) Submits, if applicable, an approvable waiver request.

27. Section 489.53 is amended by adding a new paragraph (b) to read as follows:

§ 489.53 Termination by HCFA

(b) *Termination of provider agreement.* In the case of a hospital or rural primary care hospital that has an emergency department, as defined in § 489.24(b), HCFA may terminate the provider agreement if—

(1) The hospital fails to comply with the requirements of § 489.24 (a) through (e), which require the hospital to examine, treat, or transfer emergency medical condition cases appropriately, and require that hospitals with specialized capabilities or facilities accept an appropriate transfer; or

(2) The hospital fails to comply with § 489.20(m), (q), and (r), which require the hospital to report suspected violations of § 489.24(d), to post conspicuously in emergency departments or in a place or places likely to be noticed by all individuals entering the emergency departments, as well as those individuals waiting for examination and treatment in areas other than traditional emergency departments, (that is, entrance, admitting area, waiting room, treatment area), signs specifying rights of individuals under this subpart, to post conspicuously information indicating whether or not the hospital participates in the Medicaid program, and to maintain medical and other records related to transferred individuals for a period of 5 years, a list of on-call physicians for individuals with emergency medical conditions, and a central log on each individual who comes to the emergency department seeking assistance.

* * * * *

PART 498—[CORRECTED]

§ 498.3 [Corrected]

28. We make the following corrections to § 498.3:

a. On page 56252, column one, § 498.3(b)(12), line two, ''§ 498.3(d)(11).'' is corrected to read § 498.3(d)(11)''.

b. On page 56252, column one, § 498.3(d)(10), line seven, ''(b)(14)'' is corrected to read ''(b)(13)''.

c. On page 56252, column two, § 498.3(d)(12), line two, ''(b)(14)'' is corrected to read ''(b)(13)''.

29. Section 498.90 is amended by redesignating existing paragraph (b) as paragraph (c), and adding a new paragraph (b) to read as follows:

§ 498.90 Effect of Appeals Council decision.

* * * * *

(b)(1) When HCFA imposes a civil money penalty on a SNF or NF, the decision of the Appeals Council is final upon issuance.

(2) Judicial review of an Appeals Council decision concerning the imposition of a civil money penalty on a SNF or NF is available in the appropriate United States Court of Appeals.

Authority: Sections 1819(g), 1819(h), 1919(g), and 1919(h) of the Social Security Act (42 U.S.C. 1395i–3(g), 1395i–3(h), 1395r(g), and 1395r(h)).

Dated: September 18, 1995.

Neil J. Stillman,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 95–23780 Filed 9–27–95; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 25, 28, 30, 31, 35, 37, 40, 50, 54, 55, 56, 57, 61, 67, 70, 71, 72, 76, 78, 79, 90, 91, 95, 97, 99, 106, 150, 154, 171, 174, 188, and 189

[CGD 95–012]

RIN 2115-AF03

Inspected and Uninspected Commercial Vessels; Removal of Obsolete and Unnecessary Regulations; Correction to Effective Date

AGENCY: Coast Guard, DOT.

ACTION: Final rule; correction to effective date.

SUMMARY: The Coast Guard is changing the effective date of the final rule, ''Inspected and Uninspected Commercial Vessels; Removal of Obsolete and Unnecessary Regulations'' published September 18, 1995 in the Federal Register (60 FR 48044) to October 1, 1995 to conform the effective date with the recodification of Title 46 of the Code of Federal Regulations. This final rule imposes no substantive requirements on the public.

EFFECTIVE DATE: September 28, 1995. The effective date of the final rule, ''Inspected and Uninspected Commercial Vessels; Removal of Obsolete and Unnecessary Regulations'' published September 18, 1995 in the Federal Register (60 FR 48044) is corrected to October 1, 1995.

FOR FURTHER INFORMATION CONTACT: LCDR R. K. Butturini, Design and Engineering Standards Division, Office of Marine Safety, Security and Environmental Protection, (202) 267–2206.

SUPPLEMENTARY INFORMATION:

Regulatory Information

This rulemaking merely removes and revises obsolete and unnecessary provisions of Title 46 of the Code of Federal Regulations and does not impose any substantive requirements on the public. Therefore, the Coast Guard, for good cause finds, under 5 U.S.C. 553(d), that a delayed effective date is not necessary. This action is being taken to conform the effective date of this rule with the recodification of Title 46 of the Code of Federal Regulations.

Dated: September 22, 1995.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 95–24106 Filed 9–27–95; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 69

[CC Docket No. 91–213; FCC 95–404]

Transport Rate Structure and Pricing

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this *Fourth Memorandum Opinion and Order on Reconsideration,* we address two issues raised by MCI on reconsideration of the *Third Reconsideration Order (Transport Rate Structure and Pricing,* Third Memorandum Opinion and Order and Supplemental Notice of Proposed Rulemaking)—the mid-course adjustment (or ''true up'') of the interconnection charge and the rules regarding discounted transport offerings and pricing flexibility. In addition, we address, on our own initiative, the expiration of the interim transport rate structure, which was initially set to expire on October 31, 1995. We dismiss in part MCI's Petition for Clarification or, in the Alternative, Reconsideration as moot, and grant in part that petition. We also reconsider the expiration date of the interim transport rate structure rules and extend the effectiveness of those rules pending further Commission action. The intended effect of this action is to maintain the interim transport rate structure.

EFFECTIVE DATE: October 30, 1995.

FOR FURTHER INFORMATION CONTACT: Matthew J. Harthun, (202) 418–1590 or David L. Sieradzki, (202) 418–1576, Policy and Program Planning Division, Common Carrier Bureau.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Fourth Memorandum Opinion and Order on Reconsideration* in CC Docket No. 91–213, adopted and released on September 22, 1995. The complete text of this *Fourth Memorandum Opinion and Order on Reconsideration* is available for inspection and copying during normal business hours in the FCC Reference Center, 1919 M Street, N.W., Room 239, Washington, D.C. 20554.

Synopsis of Memorandum Opinion and Order

A. MCI's Petition for Clarification or, in the Alternative, Reconsideration

1. On February 21, 1995, MCI filed a Petition for Clarification or, in the Alternative, Reconsideration of the *Third Reconsideration Order, 60 FR 4107 (January 20, 1995).* MCI asks the Commission to clarify or reconsider the procedure for LECs to implement a mid-course adjustment (or ''true up'') of the interconnection charge. In addition, MCI asks the Commission to clarify that LECs are not precluded from offering their access customers percentage and growth discounts, so long as they can demonstrate that such discounts are cost-based.

1. Interconnection Charge ''True Up''

2. In the *Third Reconsideration Order,* we required the LECs to file any requests for mid-course adjustment to the interconnection charge no later than March 31, 1995. No requests for mid-course adjustment were submitted by that date. Accordingly, MCI's request for clarification or reconsideration regarding the inclusion of non-recurring

costs in the mid-course adjustment is moot. The request is therefore dismissed.

2. Percentage and Growth Discounts

3. We reaffirm our conclusion in the *Third Reconsideration Order* that the discussion of discounted transport offerings in the *Switched Transport Expanded Interconnection Order (Expanded Interconnection with Local Telephone Company Facilities,* Second Report and Order and Third Notice of Proposed Rulemaking 58 FR 48756 (September 17, 1993)) and as reaffirmed and modified by the *Expanded Interconnection Remand Order (Expanded Interconnection with Local Telephone Company Facilities,* Memorandum Opinion and Order, 59 FR 38922 (August 1, 1994)) and the rules adopted in that Order do not contemplate percentage or growth discounts. As with any of the Commission's rules, a party may file for waiver if the party believes that, under the particular circumstances it faces, a waiver would better serve the public interest than application of the general rule. In the particular situation here at issue, a LEC is not precluded from seeking waiver of the transport access charge rules to offer its access customers a percentage or growth discount. Waivers will only be granted for good cause shown (*See* 47 CFR 1.3). Such a showing requires the petitioning party to demonstrate the special circumstances that warrant deviation from the general rule and to show how such deviation would better serve the public interest. A showing that such discounts would be cost-based in the particular circumstances at issue, as suggested by MCI, is only one of a number of potentially relevant factors. Accordingly, MCI's request is granted insofar as it seeks clarification that a LEC may seek a waiver of our rules under normal waiver standards to offer percentage or growth discounts.

B. Expiration Date of the Interim Transport Rate Structure Rules

4. We believe that the public interest requires retention of the existing transport rate structure and pricing rules beyond October 31, 1995, and therefore reconsider, on our own motion, the expiration date for those rules. The process of adjusting from the old equal charge rate structure to the interim transport rate structure appears to have required more time and effort than we originally anticipated, and we wish to avoid the disruption predicted by the parties. We also agree that consideration of a long-term transport rate structure would raise issues that are closely related to possible comprehensive reform of our access charge rules. Accordingly, we reconsider our original decision to impose the current transport rate structure and pricing rules only through October 31, 1995, and extend the effectiveness of the interim transport rate structure, pending further Commission action.

C. Ordering Clauses

5. Accordingly, IT IS ORDERED, pursuant to authority contained in Sections 1, 4 (i) and (j), 201–205, 218, 220 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154 (i) and (j) 201–205, 218, 220 and 403, Part 69 of the Commission's rules is amended as set forth below.

6. It is further ordered that MCI's Petition for Clarification or, in the Alternative, Reconsideration is dismissed in part as moot, and is granted in part as indicated herein.

7. It is further ordered that the Commission's rules as amended herein shall be effective 30 days after the date of publication in the Federal Register.

List of Subjects in 47 CFR Part 69

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Amendment to the Code of Federal Regulations

Part 69 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 69—ACCESS CHARGES

1. The authority citation for Part 69 continues to read as follows:

Authority: Secs. 4, 201, 202, 203, 205, 218, 403, 48 Stat. 1066, 1070, 1072, 1077, 1094, as amended 47 U.S.C. 154, 201, 202, 203, 205, 218, 403, unless otherwise noted.

2. Section 69.110 is amended by revising paragraphs (a) and (e) to read as follows:

§ 69.110 Entrance facilities.

(a) A flat-rated entrance facilities charge expressed in dollars and cents per unit of capacity shall be assessed upon all interexchange carriers and other persons that use telephone company facilities between the interexchange carrier or other person's point of demarcation and the serving wire center.

* * * * *

(e) Except as provided in paragraphs (f), (g), and (h) of this section, telephone companies shall not offer entrance facilities based on term discounts or volume discounts for multiple DS3s or any other service with higher volume than DS3.

* * * * *

3. Section 69.111 is amended by revising paragraphs (b) and (g) to read as follows:

§ 69.111 Tandem-Switched Transport and Tandem Charge.

* * * * *

(b) A tandem-switched transmission charge expressed in dollars and cents per access minute shall be assessed upon all interexchange carriers and other persons that use telephone company tandem-switched transport facilities.

* * * * *

(g) The tandem charge shall be set to recover twenty percent of the annual part 69 interstate tandem revenue requirement.

* * * * *

4. Section 69.112 is amended by revising paragraphs (a) and (e) to read as follows:

§ 69.112 Direct-Trunked Transport.

(a) A flat-rated direct-trunked transport charge expressed in dollars and cents per unit of capacity shall be assessed upon all interexchange carriers and other persons that use telephone company direct-trunked transport facilities.

* * * * *

(e) Except as provided in pagagraphs (f), (g), and (h) of this section, telephone companies shall not offer direct-trunked transport rates based on term discounts or volume discounts for multiple DS3s or any other service with higher volume than DS3.

* * * * *

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–24079 Filed 9–27–95; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 95–13; RM–8566 and RM–8628]

Radio Broadcasting Services; Cowden and Tower Hill, IL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 252A to Tower Hill, Illinois, in response to a petition filed by Randal J. Miller. *See* 60 FR 5887, January 31, 1995. The coordinates for Channel 252A at Tower Hill are 39–18–27 and 88–59–22. There

is a site restriction 9 kilometers (5.6 miles) south of the community. The counterproposal filed by Kimberly B. Studstill (RM–8628), proposing the allotment of Channel 252A at Cowden, Illinois, has been denied. With this action, this proceeding is terminated.

DATES: Effective November 9, 1995. The window period for filing applications will open on November 9, 1995, and close on December 11, 1995.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order,* MM Docket No. 95–13, adopted September 15, 1995, and released September 25, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Illinois, is amended by adding Tower Hill, Channel 252A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–24076 Filed 9–27–95; 8:45 am]

BILLING CODE 6712–01–F

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47 Parts 80, 90, 95, and 97

[DA 95–2005]

Amendments To Reflect Bureau Name Changes and To Make Other Editorial Changes

AGENCY: Federal Communications Commission.

ACTION: Final rules.

SUMMARY: On September 19, 1995, the Deputy Chief, Wireless Telecommunications Bureau adopted an *Order* that reflected the new names in the Commission's organizational structure and corrected typographical errors. The *Order* was released September 20, 1995. The amendments were necessary so that users of rules would have information that is accurate. The effect of the rule amendments is to give members of the public rules that are current and that can be relief on.

EFFECTIVE DATE: October 31, 1995.

FOR FURTHER INFORMATION CONTACT: Maurice J. DePont of the Wireless Telecommunications Bureau at (202) 418–0690.

SUPPLEMENTARY INFORMATION:

Order

Adopted: September 19, 1995.

Released: September 20, 1995.

In the Matter of: Amendment of Parts 80, 90, 95 and 97 of the Commission's Rules to reflect Bureau name changes and to make other editorial changes.

By the Deputy Chief, Wireless Telecommunications Bureau:

1. By this action, we are editorially amending various rules in the rule parts shown in caption. The amendments are necessary to reflect the new names in the Commission's organizational structure and correct typographical errors.

2. Because the rule amendments adopted herein are nonsubstantive in nature, the notice and comment provisions of Section 553 of the Administrative Procedure Act, 5 U.S.C. 553, are inapplicable. Authority for this action is contained in Section 0.331(a)(1) of the Commission's Rules, 47 C.F.R. 0.331(a)(1), and 47 U.S.C. 154(i) and 303(r).

3. Accordingly, Parts 80, 90, 95 and 97 of the Commission's Rules, 47 C.F.R. Parts 80, 90, 95 and 97, 47 C.F.R. Parts 80, 90, 95 and 97 ARE AMENDED, effective October 31, 1995, as set forth below.

List of Subjects

47 CFR Part 80

Communications equipment, Radio, Vessels.

47 CFR Part 90

Administrative practice and procedure, Communications equipment, Radio.

47 CFR Part 95

Radio, Reporting and recordkeeping requirements.

47 CFR Part 97

Communications equipment, Radio, Space station, Vanity call signs.

Federal Communications Commission.

Gerald P. Vaughan,

Deputy Chief, Wireless Telecommunications Bureau.

Parts 80, 90, 95 and 97 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

PART 80—STATIONS IN THE MARITIME SERVICES

1. The authority citation for part 80 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

§ 80.21 [Amended]

2. In § 80.21(b)(2), remove the words ''Chief, Field Operations Bureau'' and add in their place ''Chief, Compliance and Information Bureau.''

§ 80.59 [Amended]

3. In § 80.59, paragraph (e) introductory text, remove the words ''Field Operations Bureau of the Federal Communications Commission'' and add in their place ''Compliance and Information Bureau of the Federal Communications Commission.''

§ 80.417 [Amended]

4. In § 80.417, remove the words ''Office of Congressional and Public Affairs'' and add in their place ''Office of Public Affairs, Public Service Division''.

5. In § 80.514, the introductory text is revised to read as follows:

§ 80.514 Marine VHF frequency coordinating committee(s).

This section contains the names of organizations that have been recognized by the Commission to serve as marine VHF frequency coordinating committees for their respective areas. For frequency advisory committee mailing address information, write or call: FCC, Wireless Telecommunications Bureau, Customer Services Division, Consumer Assistance Branch, Gettysburg, PA 17326. Phone: 800–322–1117.

* * * * *

6. Section 80.1085(a)(3) is revised to read as follows:

§ 80.1085 Ship radio equipment—General.

* * * * *

(a) * * *

(3) A radar transponder capable of operating in the 9 GHz band, which must be stowed so that it is easily utilized (this transponder may be one of

those required by § 80.1095(b) for a survival craft);

* * * * *

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for part 90 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, and 332, unless otherwise noted.

§ 90.19 [Removed and Reserved]

2. Section 90.19(e)(5), (6), (7) and (8) are removed and reserved.

3. Section 90.129(n) is revised to read as follows:

§ 90.129 Supplemental information to be routinely submitted with applications.

* * * * *

(n) All applications for renewal of base/mobile station licenses by licensees who also operate wildlife tracking telemetry transmitters, as described in § 90.25(f), must include a statement detailing the number of units in service, by frequency, on Forestry-Conservation Radio Service frequencies at the time the renewal application is filed.

* * * * *

4. Section 90.235(e) is revised to read as follows:

§ 90.235 Secondary fixed signaling operations.

* * * * *

(e) Until December 31, 1999, for systems in the Public Safety Radio Services authorized prior to June 20, 1975, and in the Power and Petroleum Radio Services authorized prior to June 1, 1976, the maximum duration of any signaling transmission shall not exceed 6 seconds and shall not be repeated more than 5 times. For Power Radio Service systems authorized between June 1, 1976, and August 14, 1989, signaling duration shall not exceed 2 seconds and shall not be repeated more than 5 times. Such systems include existing facilities and additional facilities which may be authorized as a clear and direct expansion of existing facilities. After December 31, 1999, all signaling systems shall be required to comply with the two second message duration and three message repetition requirements.

* * * * *

5. Section 90.461(c)(4) is revised to read as follows:

§ 90.461 Direct and remote control of transmitters.

* * * * *

(c) * * *

(4) Any direct electrical connection to the telephone network shall comply with applicable tariffs and with part 68 of the Commission's Rules (See § 90.5(j)).

* * * * *

6. Section 90.635(b) is revised to read as follows:

§ 90.635 Limitations on power and antenna height.

* * * * *

(b) The effective radiated power and antenna height, for base stations used in suburban-conventional systems of communications, shall be no greater than 500 watts (27 dBw) and 152 m. (500 ft.) above average terrain (AAT), respectively, or the equivalent as determined from Table 2. These are maximum values, and applicants are required to justify power levels and antenna heights requested. For service area requirements less than 32 km. (20 mi.) in radius, see Table 3.

* * * * *

7. Section 90.737(e) is revised to read as follows:

§ 90.737 Supplemental reports required of licensees.

* * * * *

(e) All reports must be filed with the Land Mobile Branch, Licensing Division, Wireless Telecommunications Bureau, Gettysburg, PA 17326.

Part 95—Personal Radio Services

1. The authority citation for part 95 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. §§ 154, 303.

§ 95.39 [Amended]

2. In § 95.39, remove the words ''Chief, Field Operations Bureau'' and add in their place ''Chief, Compliance and Information Bureau.''

3. Section 95.72 is revised to read as follows:

§ 95.72 Applying for an STA or waiver of the rules.

Applicants requesting an STA or waiver of the rules should submit their requests, together with the filing fee, to the address specified in the Wireless Telecommunications Bureau Fee Filing Guide.

4. Section 95.107(d) is revised to read as follows:

§ 95.107 Keeping the license.

* * * * *

(d) If the license is lost, the licensee must request a duplicate document from the FCC. The request for a duplicate license, together with the filing fee, should be sent to the address specified in the Wireless Telecommunications Bureau Fee Filing Guide.

* * * * *

§ 95.111 [Amended]

5. In § 95.111, remove the words ''Private Radio Services Fee Filing Guide'' and add in their place ''Wireless Telecommunications Bureau Fee Filing Guide.''

6. Section 95.225(b) is revised to read as follows:

§ 95.225 (R/C Rule 25) How do I contact the FCC?

* * * * *

(b) Write to the FCC, Wireless Telecommunications Bureau, Private Wireless Division, Washington, DC 20554, if you have questions about the R/C Rules.

7. Section 95.428(b) is revised to read as follows:

§ 95.428 (CB Rule 28) How do I contact the FCC?

* * * * *

(b) Write to the FCC, Wireless Telecommunications Bureau, Private Wireless Division, Washington, DC 20554, if you have questions about the RC Rules.

Part 97—AMATEUR RADIO SERVICE

1. The authority citation for part 97 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609, unless otherwise noted.)

2. Section 97.15(a) is revised to read as follows:

§ 97.15 Station antenna structures.

(a) Unless the amateur station license has received prior approval from the FCC, no antenna structure, including the radiating elements, tower, supports and all appurtenances, may be higher than 61 m (200 feet) above ground level at its site.

* * * * *

3. Section 9719(b) is revised to read as follows:

§ 97.19 Application for a vanity call sign.

* * * * *

(b) Each application for a modification of an operator/primary or club station license, or the renewal thereof, to show a call sign selected by the vanity call sign system must be made on FCC Form 610–V. The form must be submitted with the appropriate fee to the address specified in the Wireless Telecommunications Bureau Fee Filing Guide.

* * * * *

4. In § 97.207(g) introductory text, (h) and (i) are revised to read as follows:

§ 97.207 Space station.

* * * * *

(g) The licensee of each space station must give two written, pre-space station notifications to the Wireless Telecommunications Bureau, FCC, Washington, DC 20554. Each notification must be in accord with the provisions of Articles 11 and 13 of the Radio Regulations.

* * * * *

(h) The licensee of each space station must give a written, in-space station notification to the Wireless Telecommunications Bureau, FCC, Washington, DC 20554, no later than 7 days following imitation of space station transmissions. The notification must update the information contained in the pre-space notification.

(i) The licensee of each space station must give a written, post-space notification to the Wireless Telecommuncations Bureau, FCC, Washington, DC 20554, no later than 3 months after termination of the space station transmissions. When the termination is ordered by the FCC, notification is required no later than 24 hours after termination.

[FR Doc. 95–23894 Filed 9–27–95; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 94–70, Notice 3]

RIN 2127–AF35

Federal Motor Vehicle Safety Standards; Door Locks and Door Retention Components

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule amends the Federal motor vehicle safety standard pertaining to door locks and door retention components. This rule extends the standard's requirements, currently applicable only to side doors, to the back doors of passenger cars and multipurpose passenger vehicles (MPV) so equipped, including hatchbacks, station wagons, sport utility vehicles, and passenger vans, with a gross vehicle weight rating (GVWR) of 4,536 kilograms (kg) (10,000 pounds) or less. Further, to allow for differences between side doors and back doors, including the different directions in which they open in relation to the vehicle, this rule amends certain performance requirements and test procedures to make them appropriate for back doors. Extension of the standard to back doors will reduce the likelihood of occupants being ejected through the back doors of vehicles in the event of a crash, thereby reducing fatalities and serious injuries.

DATES: This final rule is effective September 1, 1997.

The incorporation by reference of the Society of Automotive Engineers material listed in this document is approved by the Director of the Federal Register.

Any petition for reconsideration of this rule must be received by NHTSA not later than October 30, 1995.

ADDRESSES: Petitions for reconsideration should refer to the docket and notice numbers noted above for this rule and be submitted to Docket Section, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Room 5109, Washington, DC 20590. Docket hours are from 9:30 a.m. to 4:00 p.m., Monday through Friday. Telephone (202) 366–4949.

FOR FURTHER INFORMATION CONTACT: For other than legal issues: Dr. William Fan, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. Telephone (202) 366–4922; FAX (202) 366–4329.

For legal issues: Walter Myers, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. Telephone (202) 366–2992; FAX (202) 366–3820.

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I. Background

(a) Current Provisions

Federal Motor Vehicle Safety Standard (Standard) No. 206, *Door locks and door retention components* (49 CFR 571.206), specifies performance requirements for side door locks and retention components including latches, hinges, and other supporting means. These requirements are intended to minimize the likelihood of occupants being ejected from the vehicle in the event of a crash. The standard applies to passenger cars, MPVs, and trucks, and provides that components on any side door leading directly into a compartment containing one or more seating accommodations must comply with the standard. The full requirements of the standard apply to side doors other than sliding doors and cargo-type doors, to which more abbreviated requirements apply, as discussed below.

Excluded from the standard are folding doors, roll-up doors, doors designed to be easily attached to or removed from vehicles manufactured for operation without doors, and side doors equipped with wheelchair lifts that are linked to either an audible or visible alarm system that is activated when the door is open.

(1) Full Requirements

(i) Latch/striker assemblies. Each door latch and striker assembly must have a fully latched position and a secondary latched position. The secondary latched position serves as a backup to the fully latched position in the event the fully latched position is not properly engaged.

The standard requires that the latch and striker assembly, when in the fully latched position, must not separate when a longitudinal load of 11,000 Newtons (2,500 pounds) or a transverse load of 8,900 Newtons (2,000 pounds) is applied to the latch. A ''longitudinal'' load is applied parallel to the vehicle's longitudinal, or lengthwise, centerline and perpendicular to the latch face. A ''transverse'' load is applied perpendicular to the vehicle's longitudinal centerline, in the direction of door opening. Further, a door latch must not disengage from the fully latched position when an inertia load of 30g is applied to the latch/striker system in either the longitudinal or the transverse direction.[1] Finally, the standard requires that the latch/striker assembly must not separate when a longitudinal or a transverse load of 4,450 Newtons (1,000 pounds) is applied to the latch while in the secondary latched position.

(ii) Hinges. The standard requires each hinge system to support the door and not separate when a longitudinal load of 11,000 Newtons (2,500 pounds) is applied. Further, each hinge system must not separate when a transverse load of 8,900 Newtons (2,000 pounds) is applied.

(iii) Locks. Each door must be equipped with a locking mechanism that has an operating means on the interior of the vehicle. Further, when the locking mechanism is engaged in front side door locks, the outside handle or other outside latch release mechanism must be inoperative. In passenger cars and MPVs, when the locking mechanisms are engaged in rear side door locks, both the inside and outside door handles or other latch release mechanisms must be inoperative.

(2) Abbreviated Requirements

(i) Hinged cargo-type doors. ''Cargo-type door'' is defined in the standard as ''a door designed primarily to accommodate cargo loading including, but not limited to, a two-part door that latches to itself.'' These doors are required to have only the fully latched position, not the secondary latched position. Each latch system must not separate when a longitudinal load of 11,000 Newtons (2,500 pounds) or a transverse load of 8,900 Newtons (2,000 pounds) is applied. The hinges on these doors are required to support the door and shall not separate when a longitudinal load of 11,000 Newtons or a transverse load of 8,900 Newtons is applied.

(ii) Sliding doors. The track and slide combination or other supporting means for each sliding door shall not separate when a total transverse load of 17,792 Newtons (4,000 pounds) is applied with the door in the closed position.

(3) Test Procedures

Under Standard No. 206, latch and hinge assemblies are tested individually as components and not as part of the vehicle structure to which they are attached. The standard incorporates the test procedures set forth in Society of Automotive Engineers (SAE) Recommended Practice J839b, *Passenger Car Side Door Latch Systems,* May 1965 (SAE J839b), and SAE Recommended Practice J934, *Vehicle Passenger Door Hinge Systems,* July 1965 (SAE J934). The provisions of SAE J934 do not apply to piano-type hinges, however. For those hinges, the arrangement of the test fixture shall be altered as required so that the test load will be applied to the complete hinge.

(b) Agency Review of Back Door Openings

Although Standard No. 206 applies only to side doors of passenger cars, MPVs, and trucks, NHTSA has reviewed the potential safety problems associated with back door openings on vehicles so equipped several times in recent years. An agency report entitled *Hatchback, Tailgate, and Back Door Opening in Crashes and Occupant Ejection through the Back Area* issued on April 5, 1990 (1990 report) (NHTSA docket no. 90–08–GR–001) concluded that the back doors of vehicles so equipped opened in 5–6 percent of crashes that required towing from the scene (hereinafter referred to as ''towaway crashes''), while side doors opened in 1–3 percent of such crashes. The report was based on 1982–1986 and 1988 data from the National Accident Sampling System (NASS) and the 1988 Fatal Accident Reporting System (FARS). Further, a hatchback or tailgate was found to be about 3 times as likely to open as one of the front side doors and 7–8 times as likely to open as one of the rear side doors. The data also showed that rollovers accounted for about 53 percent of back door openings, 23 percent of left front door openings and 40 percent of right front door openings. However, although back doors opened more frequently than side doors, only 1 percent of back door openings resulted in occupant ejection, as opposed to 8–13 percent occupant ejections through front side door openings. Finally, depending on the methodology used to analyze the data, NHTSA calculated the fatalities due to back door ejections in 1988 to be between 93 and 130.

Also on April 5, 1990, NHTSA wrote to 9 manufacturers: Chrysler, Ford, General Motors, Honda, Mazda, Nissan, Toyota, Volkswagen, and Volvo asking their comments on the issue of back door openings and requesting information on their back door latch/lock designs. Of the 8 that responded, only Mazda reported that some of its models had back doors that met the requirements of Standard No. 206. All indicated, however, that they did not consider back door openings to be a significant safety problem and argued that the proper use of seat belts is the best way to prevent occupant ejections.

By Federal Register notice dated November 20, 1990 (55 FR 48261), the agency denied a June 19, 1990 petition for rulemaking from the Insurance Institute for Highway Safety (IIHS) to extend the requirements of Standard No. 206 to back doors. Citing the 1990 report and the comments of the 8 manufacturers responding to NHTSA's April 5, 1990 letter, the agency stated that of the 25 people ejected through back doors as reported in the 1982–1988 NASS data, only one was using a seat belt. Thus, the agency agreed at that time that the increased use of seat belts in rear seats would be a more effective means of reducing back door ejections. The agency determined, therefore, that there was not a safety need significant enough to justify the suggested rulemaking, and that extending the then-current side door requirements to back doors would not be the most effective means of reducing back door ejections.

On January 21, 1994, the agency issued a report entitled *Door Opening and Occupant Ejection through Rear Hatches, Tailgates, and Other Back Doors* (1994 report) (NHTSA docket no. 90–06–N03–001), which updated the 1990 report. Based on NASS and FARS data from 1988–1992, NHTSA estimated that there are 147 fatalities and 189 serious injuries annually resulting from ejections through hatches, tailgates, and other back doors. About 95 percent of those victims were not properly belted and about 10 percent of the improperly belted victims were children under 10.

[1] ''Inertia'' is the property of matter that requires that a load be applied on a body to accelerate it, calculated by multiplying the mass of a body by its acceleration.

Rollovers accounted for about 35 percent of left front door openings, 40 percent of right front door openings, and 42 percent of back door openings. Finally, the data showed that the most common damage associated with door openings was damage to the latch/striker assemblies: 60 percent for left front door openings, 50 percent for right front door openings, and 71 percent for back door openings.

(c) Notice of Proposed Rulemaking

(1) Rationale

In view of the number of fatalities and injuries resulting from back door ejections, NHTSA published a Notice of proposed rulemaking (NPRM) on August 30, 1994, proposing to extend the requirements of Standard No. 206 to the back doors of passenger cars and MPVs with a GVWR of 4,536 kg (10,000 pounds) or less, including hatchbacks, passenger vans, station wagons, and sport utility vehicles. In addition, the agency proposed certain modifications to the test procedures applicable to back doors.

Based on agency data, NHTSA believes that its side door latch requirements for passenger cars reduce the risk of ejection in rollover crashes by 15 percent, thereby saving an estimated 400 lives per year. Thus, although the agency has acknowledged that increased use of safety belts is effective in reducing vehicle ejections, extending Standard No. 206 requirements to back doors would help reduce injuries and fatalities resulting from back door ejections of unbelted occupants. Further, because of the increasing popularity of vehicles equipped with back doors, especially passenger vans, this safety problem may become more serious unless preventive measures are taken.

As noted in the NPRM, there is a greater variety of designs of back doors than of side doors. While most side doors open to the side and have hinges on their front and latches on the rear, back doors may open upward, rearward or to the side, and have latches and hinges on the top, bottom or side. In addition, back doors may be vertical or sloped when viewed from the side.

Nevertheless, the NPRM pointed out four basic designs of back doors typically used in production vehicles:

(i) Door opens upward, with a single latch (or striker) centered at the bottom of the door with a single striker (or latch) on the back door sill or floor panel;

(ii) Door opens sideways, with latch on the door and striker on the door frame, such as back doors on large station wagons;

(iii) Split doors with top, typically of glass, opening upward and bottom tailgate opening downward, with striker at the bottom of the top door and latches or rod/pin connectors at the top and sides of the tailgate, such as back doors of sport utility vehicles; and

(iv) Double cargo-type doors, a 2-part door that latches to itself with one latch located at the center between the doors, such as the back doors of some cargo vans.

Because of the wide variety of back door designs and the variation in latch and hinge orientations in relation to the vehicle, NHTSA indicated in the NPRM that directions in which test loads are applied should be specified in relation to the orientation of each latch and hinge. The agency further indicated that latches and hinges on doors that open upward should meet load requirements in 3 rather than in 2 directions. For those reasons, NHTSA proposed to modify the test procedures applicable to back door latches and hinges, as discussed below.

In addition to proposing modifications to the existing latch/striker test procedures, the agency announced that it was considering applying the secondary latched position requirement currently applicable to side door latches to some or all back door latches. The agency therefore requested comments on what types of back doors should be included or excluded from this requirement and why.

(2) Proposed Test Procedures for Back Door Latches

(i) Load Test One. For back doors, NHTSA proposed basically the same test as the longitudinal test, that is, applying a load perpendicular to the face of the latch, utilizing the same test loads. Rather than refer to the test as ''longitudinal load,'' however, NHTSA proposed to refer to it as ''Load Test One,'' since most back door latches are oriented so that a load applied parallel to the vehicle longitudinal centerline would not be equivalent to the longitudinal test of side door latches.

(ii) Load Test Two. The agency proposed to apply to back doors a test corresponding to the transverse load test for side doors, but rather than apply the load in the direction of door opening, NHTSA would apply the load in the direction of the fork-bolt opening and parallel to the plane of the latch face. The agency proposed to use the same test loads as in the transverse load test, but would refer to this test as ''Load Test Two.''

(iii) Load Test Three. NHTSA proposed to require latches on doors that open upward to meet load requirements in a third direction that is orthogonal, i.e. perpendicular, to both of the directions in which loads are applied in Load Tests One and Two. The set-up for Load Tests Two and Three would be identical, except that in Load Test Three, the latch would be mounted in a position perpendicular to those in Load Tests One and Two. The agency requested comments on whether a load of 11,000 Newtons (2,500 pounds) or 8,900 Newtons (2,000 pounds) should apply to Load Test Three.

(iv) Inertia load. In view of the many orientations of back doors, NHTSA proposed that back door latches meet the 30g inertia load requirement in any direction, as opposed to a limited number of directions for side door latches. The agency requested comments on the appropriateness of that proposal.

(3) Proposed Test Procedures for Back Door Hinges

The agency stated that the same considerations concerning load orientations apply to back door hinges as to back door latches. Accordingly, the agency proposed the following 3 load tests for hinges:

(i) Load Test One. Load is applied perpendicular to the hinge face plate;

(ii) Load Test Two. Load is applied perpendicular to the axis of the hinge pin and parallel to the hinge face plate; and

(iii) Load Test Three. In this test, which is applicable to the hinges on doors that open upward, the load is applied parallel to the axis of the hinge pin.

The agency requested comments whether the load for the three hinge tests should be 8,900 Newtons (2,000 pounds) or 11,000 Newtons (2,500 pounds).

(4) Back Door Locks

The agency stated that it was considering extending the door lock requirements of Standard No. 206 to some or all back door locks, and requested comments on that issue.

(5) Additional Considerations

The agency requested comments on the following issues:

(i) To what extent should full versus abbreviated requirements apply to back doors?

(ii) Are the proposed test requirements clear and appropriate for all back doors?

(iii) Which and how many hatchbacks, station wagons, passenger vans, and sport utility vehicles would need to be upgraded to meet the proposed requirements? What is the consumer cost and relative strength increase for each upgrade?

(iv) Identify and/or provide the agency with any data that would assist the agency in quantifying the safety or other benefits of the proposed requirements.

(6) Costs and Benefits

Assuming an effective date on or before September 1, 1997, the agency estimated that about 1.5 million hatchbacks, 0.4 million station wagons, 1.6 million sport utility vehicles, and 1.8 million passenger vans, for a total of 5.3 million vehicles expected to be produced during model year 1998, could be affected by these amendments. In a NHTSA evaluation of 8 passenger minivan back door latches (docket No. 97–70–N 01), representing about 1 million vehicles sold in 1993, 2 failed the longitudinal load test (equivalent to Load Test One) and another failed the transverse load test (equivalent to Load Test Two). All the others exceeded the proposed load requirements. The 5 complying latches represent about 50 percent (0.5 million) of the 1993 minivan sales. The agency concluded, therefore, that about half the minivan fleet already meets or exceeds the requirements proposed in the NPRM. Although the back door latch assemblies of hatchbacks, station wagons and sport utility vehicles were not tested, NHTSA considered that since most of the 1.6 million sport utility vehicles have back door latch systems similar to those of minivans, about 50 percent (0.8 million) of sport utility vehicles would also meet the proposed requirements. Although the remaining vehicles could require some upgrading of their current back door locks and retention components, the agency estimated that the proposed requirements would not require more than minor changes in either latch, hinge, or locking mechanisms.

The retail costs of the tested latches ranged from $22.03 to $81.74. The costs of the 3 failing latches were $23.52, $63.19, and $81.74. The tests showed that a latch that complies with Standard No. 206 need not be more expensive than one that does not. Assuming, therefore, that no more than 4.0 million vehicles may require upgrades and that the cost of the upgrades may not be higher than that of current designs, NHTSA estimated that the cost of extending the requirements of Standard No. 206 to the back doors of the proposed vehicles would be minimal.

Compliance tests for back door locks and retention components would typically be conducted with similar, but perhaps slightly modified, test equipment of the type currently used to evaluate side door locks and retention components. NHTSA estimated, therefore, that no significant test equipment costs should be incurred by manufacturers.

The agency pointed out that of the deaths and injuries that occur annually involving occupant ejection through back doors, over 80 percent involve hinge or latch damage. The agency anticipated, therefore, that the proposed upgrades should reduce such deaths and injuries, although the agency is not able to quantify such benefits or costs. Accordingly, the agency solicited comments and data on that issue.

II. Overview

Today's final rule is based on the NPRM of August 30, 1994, summarized above. This final rule:

* Extends the motor vehicle door latch, hinge, and lock requirements of Standard No. 206 to the back doors of passenger cars and MPVs so equipped, including hatchbacks, station wagons, sport utility vehicles, and passenger vans with a GVWR of 4,536 kg (10,000 pounds) or less;

* Revises existing performance requirements and test procedures, insofar as they apply to back doors, and establishes an additional test for back door latches and hinges;

* Requires inertia load testing of back door latches in 3 directions instead of in any direction, as proposed in the NPRM;

* Requires door locks and interior and exterior release mechanisms only for back doors equipped with interior door handles or that lead directly into compartments containing one or more seating accommodations, instead of all back doors as proposed in the NPRM;

* Revises definition of ''back door'' from that proposed in the NPRM to exclude passenger car trunk lids as well as doors and windows composed entirely of glazing materials where the latches and/or hinges are mounted directly onto the glazing;

* In addition to adding a definition of ''back door,'' adds definitions of ''auxiliary door latch,'' ''fork-bolt,'' ''fork-bolt opening,'' and ''primary door latch'' to the standard; and

* Replaces the reference to Society of Automotive Engineers (SAE) Recommended Practices J839b, *Passenger Car Side Door Latch Systems,* May 1965, in S5.1.1.1, S5.1.1.2, and S5.2.1 with reference to the revised version of J839, which is dated June 1991; and the reference in S5.1.2 and S5.2.2 to SAE J934, *Vehicle Passenger Door Hinge Systems,* July 1965, with reference to the revised version of J934, which is dated July 1982.

III. Public Comments and Agency Responses

Fourteen interested parties submitted comments in response to the NPRM, including 2 private citizens, 2 safety organizations, 2 automotive trade associations, and 8 motor vehicle manufacturers. A summary of their significant comments and the agency's responses are set forth below.

(a) Vehicle Population Trends

The American Automobile Manufacturers Association (AAMA) commented that, since 1989, sales of hatchback style vehicles have been steadily declining, being replaced by sales of passenger minivans and sport utility vehicles. Referring to NHTSA's 1994 report, AAMA stated that back door openings in towaway crashes were the highest for hatchback cars (18,059) and lowest for minivans (767). AAMA argued that minivan and sport utility vehicles are rapidly replacing hatchback style vehicles and that the already low incidence of door openings and ejections should further decline as the vehicle mix changes in the future.

While NHTSA does not dispute the fact that the total number of back door openings in minivans is lower than in hatchback cars, the agency believes this discrepancy to be due primarily to the larger number of hatchbacks on the road compared to minivans. In its 1994 report, NHTSA analyzed the incidence of back door openings as a rate per 100 towaway crashes for minivans, utility vehicles, and hatchback cars. The agency's analysis shows that back door openings for minivans is about 1.9 compared to 3.6 for hatchback cars. The back door opening rates for utility vehicles were 2.6 and 4.1 for large and compact utility vehicles respectively. The overall rate for all light trucks equipped with back doors and hatches is 2.7 percent. Based on this data, AAMA's contention that increasing numbers of minivans in the fleet will reduce the number of back door openings and ejections in future crashes is not well founded, although if the observed rates continue into the future, the problem size could diminish somewhat.

(b) Load Requirements and Test Procedures

(1) Magnitude of Test Load

Toyota Motor Corporate Services of North America, Inc. (Toyota) suggested

that a test load of 8,900 Newtons (2,000 pounds), as proposed for Load Test Two, be applied to all back doors. Toyota further suggested that since the NPRM made no reference to doors equipped with more than one latch/striker set, the specified load be divided by the number of latch/striker sets fitted to a single door, and that the load so divided be applied simultaneously to each latch/striker set. Advocates for Highway and Auto Safety (Advocates) suggested that a load of 11,000 Newtons (2,500 pounds) be applied in all tests. Mazda (North America), Inc. (Mazda) believed that NHTSA simply proposed the same test loads as presently specified in Standard No. 206 and, along with Rockwell, suggested that the test loads for back doors be based on real world test data.

In 1989, NHTSA published a study entitled *An Evaluation of Door Locks and Roof Crush Resistance of Passenger Cars—FMVSS Nos. 206 and 216* (1989 study). That study, based on actual crash data, showed that the requirements of Standard No. 206 are responsible for a 15 percent reduction in side door ejections in rollover accidents. Real world crash data also showed that latches that met the 11,000 (2,500 pounds) and 8,900 Newton (2,000 pounds) loads in the longitudinal and transverse directions respectively were effective in preventing door openings while latches that did not meet those test requirements were not effective in preventing door openings. NHTSA believes, therefore, that the extension of the requirements of Standard No. 206 to back doors as proposed, including the test loads proposed in the NPRM, would be effective in preventing back door openings and occupant ejection through that route.

Based on the real world crash data discussed above, NHTSA has also concluded that the appropriate test load for Load Test Three is 8,900 Newtons (2,000 pounds). In most production back door latch designs, the latch would fail only if the striker disengages. This is seldom likely when loads are applied in the third direction perpendicular to the directions of Load Tests One and Two. In this test, the striker is usually pressing against the side of the fork bolt and the latch casing. If properly designed, a latch should be able to sustain a large force in this third direction. The results of the agency's back door latch tests showed that most latches tested can sustain a load of 8,900 Newtons (2,000 pounds).

NHTSA does not agree with Toyota's suggestion that the specified test load should be divided by the number of latches fitted to a single door. Real world crash data show that latch failures are the dominant cause of door openings and that they are seldom loaded symmetrically. Since side door latches that individually meet the requirements of Standard No. 206 have significantly reduced side door openings in crashes and have saved an estimated 400 lives per year, NHTSA has decided that the proposed requirements should be applied to each back door latch tested. However, this final rule does specify separate requirements for the primary and auxiliary latches, as discussed in III(b)(5) below.

(2) Directions of Load Tests One and Two

AAMA commented that the proposed load test directions of Load Tests One and Two need clarification. AAMA argued that while side door latches and hinges are typically mounted in body and door planes that intersect at approximately 90° to each other, back door latches and hinges may be at angles other than 90°. Nissan stated that NHTSA's proposed definition of ''hinge face plate'' does not adequately describe certain hinge systems. Specifically, Nissan stated that in some vehicle back doors, when closed, their hinges are positioned such that the faces do not bear load perpendicular to the mounting surfaces. Nissan further stated that some hinge systems may not even have an actual ''face.'' Thus, for a more objective test procedure, Nissan suggested applying Load Test One at the intersection of a line along the longitudinal vertical plane that passes through the center points of 2 hinges and the plane passing through 2 hinges and the latch. Load Test Two would then be applied along the longitudinal vertical plane in a direction perpendicular to Load Test One. AAMA stated that the addition of a definition of ''latch face'' is necessary to determine the surfaces to which the test loads must be perpendicular or parallel. Nissan stated that it interprets the term ''face plate'' to mean the area of the hinge that is mounted to the body and to the door and that acts as the load-bearing surface that supports the weight of the door.

NHTSA believes that Nissan's suggested loading directions will not, in many cases, be consistent with the loading directions of the hinges in actual crashes and that a new set of test devices other than those called for in J934 might be necessary to conduct Nissan's tests. NHTSA believes that its 3 orthogonal tests will cover all loading directions experienced in real world tests, irrespective of the configuration or orientation of the back doors. The agency continues to believe that the hinge tests should be conducted in accordance with SAE J934 and that Load Tests One and Two correspond to the longitudinal and transverse loads, respectively, as called for in SAE J934. The third direction is orthogonal to the other two. The agency believes, therefore, that the proposed test procedures are appropriate.

NHTSA acknowledges that the NPRM did not contain definitions of ''face plate'' and ''latch face.'' The NPRM did, however, refer in proposed Load Test One to SAE J839 where details of load directions are given. NHTSA believes that SAE J839 provides sufficient explanation of those terms and that no further definition is necessary in this rule.

(3) Load Test Three

Toyota, AAMA, and Rockwell Automotive (Rockwell) opposed Load Test Three for doors that open upward. These commenters stated, without explaining the basis for their position, that Load Test Three is unnecessary, and that NHTSA has not demonstrated any benefits that support the need for the test. Rockwell commented that a third load test is not the most effective means of reducing occupant ejections. That commenter suggested instead that a systems approach be taken in which the vehicle body together with the door system, taken as a whole, should be required to pass load tests. Conversely, the Insurance Institute for Highway Safety (IIHS) and Advocates both supported Load Test Three and urged that a load of 11,000 Newtons (2,500 pounds) be applied. IIHS suggested that Load Test Three be applied to all doors, including side doors.

NHTSA does not agree with Toyota, AAMA, and Rockwell that Load Test Three is not necessary. NHTSA notes that there are many design differences between side doors and back doors with regard to their mounting locations and orientations. Except for cargo-type doors and side-swing station wagon doors, most back doors open either in the rearward (longitudinal) or upward (vertical) directions. Those directions correspond generally to the longitudinal and transverse loading directions of side doors. As opposed to side doors, however, latch/hinge failure can occur in upward or rearward-opening back doors due to force in the third direction orthogonal to those directions. For example, in the event of a rear side impact, the back door latches and hinges are subject to a large force perpendicular to the upward and rearward-opening directions. Agency tests showed that the back doors of

some minivans opened when struck at the rear quarter panel. NHTSA believes that this happens when the door panel is displaced sideways, away from the plane of the door frame, forcing the latch to disengage. NHTSA believes, therefore, that in view of the loads to which back doors are subjected in some crashes, it is necessary to test back door latches and hinges in a third direction, orthogonal to the directions of loading to which side doors are normally subjected.

NHTSA declines to adopt the suggestion of IIHS that Load Test Three be applied to all doors. It is beyond the scope of the NPRM and this final rule to amend the requirements applicable to side doors, since this rulemaking action applies only to back doors. In any case, since side doors of production vehicles normally do not open in a vertical direction, NHTSA sees no need at this time to require side door latch and hinge tests in the direction of Load Test Three.

When proposing in the NPRM to apply Load Test Three to doors that open upward, it was NHTSA's belief that such doors were equipped with latch/striker assemblies only on the bottoms of the doors (see II.A.(1) of the NPRM, 59 FR 44694). NHTSA has learned, however, that the upward-swinging back doors of certain models of MPVs are equipped with latch/striker assemblies on the sides of the doors. Testing those latches in the direction of Load Test Three would be meaningless because in that test the load is applied in a direction in which such doors are not likely to open in a crash. This is the same reason Load Test Three does not apply to side doors. Accordingly, NHTSA has decided to apply Load Test Three to the hinges of back doors that swing upward to open, and to the latch/striker assemblies of upward-swinging doors that are equipped with a single latch/striker assembly.

(4) Inertia Load Requirements

As previously noted (see section I(a) above), Standard No. 206 currently provides that side door latches shall not disengage when an inertia load of 30g is applied in the longitudinal and transverse directions. The NPRM proposed to require back doors to withstand an inertia load of 30g in any direction. Nine commenters addressed this issue, 7 of whom opposed and 2 supported the proposal.

Toyota and Nissan stated that the omni-directional inertia load requirement is unnecessary and impractical, and that the current requirements applicable to side doors are sufficient to simulate real world crash experience. AAMA, Rockwell, and Volkswagen of America, Inc. (VW) stated that the omni-directional inertia load requirement is not practical and suggested instead that the load be applied in not more than 3 directions. Isuzu Motors Limited, Japan (Isuzu) argued that there is no need for an inertia load test for back doors. Mitsubishi Motors America, Inc (Mitsubishi) stated that the requirement, as proposed, would create repeatability problems. On the other hand, Advocates and IIHS supported the proposal, IIHS stating that the proposal is reasonable because inertia loads can occur in any direction in real world crashes.

NHTSA proposed the inertia load test requirement in the NPRM in the belief that in view of the many different orientations of back door latches and because real-world inertia forces are omni-directional, a large number of inertia load tests in various directions would be required to ensure adequate latch performance. However, in view of the manufacturers' comments that the requirement to test in any direction would be impractical and almost impossible to achieve, NHTSA is persuaded that, for practicability reasons, the number of inertia tests needs to be limited. Manufacturers argued that a requirement to test in any direction would require testing in theoretically infinite directions, which not only is not practical, but may not give sufficient emphasis on the worst case loading directions in real-world crashes. While it is difficult to predict inertial loading directions in real-world crashes, test requirements in the 3 principal directions would suffice to ensure that the latch would be unlikely to fail in many of the crash modes. In view of this, NHTSA concludes that 3 test load directions are adequate to ensure acceptable latch performance in the various loading conditions experienced in real world crashes. NHTSA has decided, therefore, to require inertia loads of 30g be applied to back door latch systems in the 3 directions specified in Load Tests One, Two, and Three.

(5) Abbreviated Requirements for Back Doors

As stated in the summary of current provisions in section (I(a)) above, Standard No. 206 specifies a set of full requirements for regular side doors and abbreviated requirements for cargo-type and sliding side doors. Ford Motor Company (Ford) and Isuzu argued that back doors and hatches are used primarily for cargo area access rather than for passenger access, therefore the abbreviated requirements applicable to hinged cargo-type and sliding side doors would likewise be appropriate for all back doors.

The agency has evaluated this suggestion and disagrees that only the abbreviated requirements should be applicable to all back doors. The agency's intent in this rulemaking action is to prevent the back door ejection of occupants by upgrading the latch/striker and hinge systems of back doors to reduce the incidence of unintended back door opening. NHTSA believes that this cannot be achieved by applying only the abbreviated requirements of Standard No. 206 to all back doors. Accordingly, the agency has decided that the primary latches of all back doors must meet the requirements of both the fully latched and the secondary latched positions. Auxiliary latches, if any, defined as a latch other than the primary latch of a multi-latch door system, need only meet the abbreviated requirements, that is, the requirements for the fully latched position (they need not have a secondary latch position or meet the strength requirements for the secondary latch).

On a related issue, AAMA commented that certain vehicle models are manufactured with more than one back door latch/striker set. AAMA suggested that, in that situation, it should be sufficient that one latch include both a fully latched and a secondary latched position while the others, designated as auxiliary latches, have a fully latched position only. NHTSA considers the AAMA suggestion to be reasonable because typically, the primary latch/striker assembly directly connects the left and the right segments of a double cargo type door system to each other while the auxiliary latches connect one segment of the door system to the roof and/or floor of the vehicle. In a crash, door openings would occur as a result of primary latch failure. Thus, even if the auxiliary latch(es) failed, the door segments could still be held together by the primary latch set because the loading on the different latches is in different directions. For that reason, simultaneous failure of the primary and auxiliary latches is highly unlikely, occurring only in very severe crashes. Accordingly, only the primary latch system in multiple-latch door systems is required to meet both the fully latched and the secondary latched position requirements of Standard No. 206. Auxiliary latches are required to meet the fully latched requirements only. They are not required to have a secondary latch position or meet the strength requirements for a secondary latch. ''Primary'' and ''auxiliary'' latches

are defined in the regulatory text of this final rule.

(6) Secondary Latched Position

AAMA, Mazda, Nissan, and Toyota opposed the proposal to require a secondary latched position in back doors on the basis that such a requirement would increase costs to manufacturers. Advocates and Rockwell, on the other hand, supported the proposal. NHTSA disagrees that this proposal would increase costs. On current designs, both the fully latched and secondary latched positions are provided by the same fork bolt detent lever. Typically, side door latches have two teeth on the detent lever with one tooth corresponding to the fully latched position and the other to the secondary latched position. The design load specifications for the latch assembly must be based on the load requirements for the fully latched position. Since the test load for the secondary latched position is less than that for the fully latched position, NHTSA believes the incremental cost for providing an additional tooth on the fork bolt detent lever to be negligible. This belief is based on a NHTSA cost/weight study, *Cost Comparison—Two MY 93 Rear Door Latch and Striker Sets,* NHTSA docket no. 94–70, Notice 01–001, in which the agency examined the costs of the 2 least expensive back door latches from the 8 latches it evaluated. One of the latches complied with the current requirements of Standard No. 206, while the other did not. The better latch had the lowest production and purchase prices. In addition, the better latch had both the fully latched and the secondary latched positions, while the inferior latch had only the fully latched position. As previously noted, NHTSA believes that the back door latches of most current production minivans and station wagons already have 2 latch positions. Accordingly, the agency does not believe that back door latches would require any major design changes in order to comply with the proposed fully latched and secondary latched position requirements.

(7) Incorporating Latch/Hinge Tests With Other Tests

Rockwell commented that NHTSA should consider incorporating latch/hinge tests into an existing crash test or a modified existing crash test. Advocates suggested that NHTSA consider roof strength performance standards in determining how roof strength in full rollover crashes affects back door retention.

The agency agrees with the concept of combining tests where possible, and has done so in certain recent rules (see, for example, S5.3.1 and S5.3.2, Standard No. 214, *Side impact protection.* S5.3.1 requires that any side door struck by the moving deformable barrier shall not totally separate from the vehicle. S5.3.2 requires that any door, including a rear hatchback or tailgate, not struck by the moving deformable barrier shall not disengage from the latched position, nor shall the latches or hinges separate or pull out of their anchorages). Taking such a step would not eliminate the necessity of bench testing of latches as components, however, since the agency wishes to assure the safety of latches under all possible crash conditions and loadings. To ensure that latches are safe in all crash modes, a system level test would require several tests which would be impractical and costly. In addition, if such an approach were used, the agency would need to develop new test procedures for such latch evaluation.

(c) Interior Lock Mechanisms

Except for most station wagons with third seats in the rear of the vehicle, many production vehicles have neither locking mechanisms nor inside door handles on their back doors. Thus, unlatching cannot be accomplished from the inside. The agency has received several complaints about this, citing the potential danger of being trapped in the rear compartment area of a vehicle, especially young children, in fire or submersion situations. While agency accident data do not show this as a significant safety problem, NHTSA nevertheless requested comments in the NPRM on whether the requirements for front and/or rear side door locks should be extended to back doors.

Four commenters opposed requiring door locks on the back doors, one supported it, and one (Mitsubishi) requested clarification of the term ''locking mechanism with an operating means in the interior of the vehicle'' (S4.1.3, Standard No. 206). AAMA, Toyota, and VW argued that there is no need or justification for back door locks. AAMA and Toyota repeated their assertions that back doors are not intended for passengers, and Rockwell stated that a properly designed system does not need a lock. Nevertheless, Toyota stated that lock requirements would be appropriate for back doors designed for passenger ingress and egress. VW stated that if a back door locking requirement were adopted, both the inside and outside door handles or other release mechanism should be inoperative when the locking mechanism is engaged. Rockwell stated that if a locking requirement were adopted, the inside handle should be disengaged either electrically or manually when the vehicle is moving. Rockwell also stated that if a lock were required, an inside handle should also be required. Advocates stated that locking requirements should be prescribed for all back doors, regardless of design, in view of increased risk of multiple back door ejections because of back door lock disengagements.

Standard No. 206 requires door locks in order to reduce unintentional door openings due to impact upon or movement of the inside or outside door handles (see 33 FR 6465, April 27, 1968). The standard requires the locks to engage so as to render the exterior front door handles inoperative and both the exterior and interior rear side door handles inoperative. Standard No. 206 does not specifically require doors to have door handles. However, many manufacturers already voluntarily provide inside handles on back doors of station wagons with third seats.

NHTSA concludes that back doors that lead directly into a passenger compartment or that are otherwise already equipped with an interior door handle shall be equipped with a locking mechanism with operating means in both the interior and exterior of the door. The reason for this is similar to the reason door locks are required for side doors, i.e., to prevent inadvertent door openings due to impact upon or movement of the interior or exterior door handles. NHTSA acknowledges that the back doors of some vehicles so equipped are designed for loading and unloading cargo rather than passengers. Nevertheless, sometimes those doors are also used for ingress and egress of back seat occupants. Therefore, if doors designed primarily for loading and unloading cargo lack an interior door handle, no door lock is required. If an interior door handle is present, this rule requires a means for making the door handle (a door release mechanism) inoperative when the locking mechanism is engaged. Further, when the locking mechanism is engaged, both the inside and outside door handles or other latch release controls must be inoperative.

(d) Vehicle and Other Exclusions

Five commenters addressed the applicability of the proposal to passenger motor vehicles with a GVWR of 4,536 kg (10,000 pounds) or less. The National Truck Equipment Association (NTEA) stated that most multi-stage produced vehicles can demonstrate compliance with safety standards only to the extent that the chassis manufacturer passes through its

certification. NTEA stated further that many such manufacturers will permit their certification to pass through only if no changes or alterations are made to their components by the final-stage manufacturer. Thus, NTEA argued that in cases where doors are widened or lengthened, such as for ambulances and vehicles for physically challenged persons, there can be no pass-through. In those situations, NTEA said that final-stage manufacturers, most of which are small businesses, would be obliged to assume the burden and expense of compliance testing themselves. NTEA suggested, therefore, that NHTSA either lower the GVWR level for this rule to 2,721 kg (6,000 pounds) or exclude all vehicles built on a truck type chassis in 2 or more stages and equipped with a body designed for carrying cargo, or work-performing or specialty equipment such as that found on ambulances, fire trucks, and the like.

AAMA suggested that hinged windows, liftglass, and glass hatches should be exempt from the proposed requirements because glazing in those configurations typically would yield in a crash before the hinges and latches would fail. Similarly, Isuzu suggested that the glass top portion of split doors on which the striker and hinges are installed on the glass itself should be exempt. Mazda stated that extending Standard No. 206 requirements to back doors that have large window openings or large glass areas will have little or no effect in reducing unbelted back door ejections since occupants could be ejected through the window opening. Finally, similar to NTEA's suggestion, Nissan suggested that back doors designed for loading and unloading cargo be excluded from the rule.

NHTSA recognizes that there is a substantial number of vehicles produced by businesses involved in manufacturing vehicles in more than one stage, and in converting or altering MPVs (e.g., van converters). Many of these are small businesses. Final-stage manufacturers typically install truck bodies and/or work-related equipment on chassis. Alterers modify the structure of new, completed vehicles. Under NHTSA's regulations, a final-stage manufacturer must certify that the completed vehicle conforms to all applicable safety standards, and alterers must certify that the altered vehicle continues to comply with all applicable safety standards.

The impact of this rule on commercial vehicles will not be significant. This rulemaking does not apply to buses or trucks such as cargo vans and many specially-designed and equipped commercial vehicles. The proposal only applied to passenger motor vehicles such as station wagons, hatchbacks, and MPVs with a GVWR of 4,536 kg (10,000 pounds) or less. An MPV is defined in 49 CFR 571.3 as a motor vehicle ''designed to carry 10 *persons* or less'' (emphasis added). Examples of MPVs include passenger vans and sport utility vehicles. MPVs also include motor homes, ambulances, and other customized *passenger* vehicles. Except for ambulances, some of those vehicles do not have back doors and will therefore not be affected by this rule.

In response to NTEA's concerns, as to final-stage manufacturers and alterers that produce vehicles that are subject to today's rule, it should not be difficult for those entities to satisfy their certification responsibilities with respect to Standard No. 206. NHTSA believes that many final-stage manufacturers should be able to meet the requirements of Standard No. 206 by utilizing the latch and hinge systems that were originally certified by the incomplete vehicle manufacturer as complying with the standard. Even if the final-stage manufacturer or alterer cannot use the original latch and hinge systems, it should not be unduly burdensome for those entities to obtain back door latch systems that comply with Standard No. 206 and certify compliance of their vehicles with the standard. Latch designs similar to those used for side doors can be used for back doors in many MPVs and are commercially available at low cost. Side doors of new vehicles are currently subject to Standard No. 206, and this rule essentially only extends those side door requirements to back doors. Thus, the certification responsibilities of final-stage manufacturers and alterers under Standard No. 206 with respect to back doors should be very similar to their current responsibilities under Standard No. 206 with respect to side doors. Moreover, the test burdens associated with this final rule are not significant.

This rule specifies a relatively simple component test that provides for bench testing of latches and hinges. It does not specify a dynamic test requirement. Manufacturers and alterers may, but are not required, to test their vehicles using the test procedures specified by Standard No. 206. The test procedures of Standard No. 206, like those of all other Federal motor vehicle safety standards, set forth the test procedures NHTSA uses in its compliance testing. In view of the standards to which manufacturers and alterers already certify and the manufacturing operations they undertake, final-stage manufacturers and alterers should have the necessary technical expertise and resources to certify to the back door standards. Alternatively, those final-stage manufacturers and alterers who install back door latches could require that their suppliers provide certification that their back door latch systems comply with the requirements of the standard. NHTSA does not require final-stage manufacturers and alterers themselves to conduct the testing specified in this final rule.

NHTSA agrees with the suggestions of AAMA and Isuzu that windows and doors on which latch/hinge systems are mounted directly onto the glazing (glass, glass/plastic, or plastic) should be excluded from the standard. In virtually all such cases, the glazing would fail before the latch and/or hinge fails. Thus, strengthening the latches and hinges on those doors would not prevent them from opening. The agency disagrees, however, with Mazda's suggestion that doors containing large glass areas be excluded. While it may be true that occupants could be ejected through large windows in back doors, the agency believes that ejection is less likely when the doors remain closed than if they opened. With a closed door, the occupant may be retained by the door structure and not ejected through the window. Thus, the agency has included back doors in this final rule, regardless of the size of the windows in those doors, because upgrading the strength of latches and hinges is needed to better ensure that those doors remain closed in a crash.

Finally, the agency does not agree with Nissan's suggestion that back doors designed for loading and unloading cargo be excluded from the rule. Even though back doors in many vehicles may be designed primarily for cargo loading and unloading, an unbelted occupant can be ejected through those doors in a crash. NHTSA's data show that back doors in general open more frequently than side doors, and that the majority of back door ejections occurred from hatchback cars, passenger vans, and utility vehicles. The back doors of those vehicles are designed primarily for cargo loading and unloading. However, occupant ejections through those doors, especially unbelted occupants, are a serious safety problem. Accordingly, by this final rule the agency extends the requirements of Standard No. 206 to the latch and hinge assemblies of back doors of passenger cars and MPVs, and to the locks and interior release mechanisms of back doors equipped with interior door handles or that are designed for passenger ingress and egress. Nissan's suggestion, therefore, is not adopted.

(e) Lead Time

NHTSA proposed in the NPRM a lead time of 2 years following the first September 1 after publication of a final rule, i.e., a lead time of 2–3 years. Six comments were received on this proposal. AAMA stated that more lead time and an appropriate phase-in period would be necessary to allow the time to evaluate and make necessary changes. Nissan and Mazda urged an effective date of 3 and 4 years, respectively, after the issuance of the final rule to allow for revisions, possibly extensive, of function and styling of body structures. Ford commented that it could not meet the proposed date because of the testing necessary to determine what changes would be needed, and suggested a phase-in period starting with model year 1998. VW stated that it could meet the proposed 2-year lead time if NHTSA adopted the substantive suggestions in their comments. Advocates commented that the proposed effective date was reasonable.

The agency continues to believe that most of the latches and hinges currently installed in back doors would meet the requirements of this final rule with little or no design changes, as discussed above. Manufacturers did not provide an analysis of why they could not comply with the proposed lead time. They only requested generally more time, without explaining why more time was necessary. Therefore, in the absence of data to the contrary, the agency considers September 1, 1997 to be sufficient lead time to meet the new requirements.

(f) Definitions

AAMA, Toyota, Nissan, and Mitsubishi commented that the proposed definition of ''back door'' is not clear because it neither distinguishes between doors and cargo compartment covers such as trunk lids of passenger cars, nor between doors and hinged windows. AAMA also stated that latch ''face'' needs to be defined to facilitate identification of the surface to which the test load must be parallel or perpendicular. AAMA also said that while door latches typically have planar (flat 2-dimensional characteristic) mounting surfaces, some designs may have mounting surfaces which are not planar or which are multi-planar. Toyota and Nissan stated that ''hinge face plate'' needs to be defined, Toyota suggesting that it should be defined as the mounting side of the hinge on the body of the vehicle.

The agency has decided, in response to these comments, to modify the definition of ''back door'' so that it clearly excludes trunk lids on passenger cars. The agency does not, however, adopt Toyota's and Nissan's suggestions to define ''latch face'' and ''hinge face plate'' since SAE J839 and SAE J934 provide detailed drawings showing how to mount the component on the test fixture and how and where to apply the required test loads.

(g) Belt Use

AAMA, Mazda, and Rockwell referred to NHTSA's 1990 denial of the IIHS petition, commenting that the situation has not changed that much since then, and that the agency's current analysis still has not shown that upgrading latch and hinge performance will reduce back door ejections. IIHS expressed approval that NHTSA is conducting this rulemaking at this time.

The commenters are correct that seat belts are effective in preventing ejections. However, as explained above, more than 95 percent of the back door ejections are passengers who were unbelted at the time of the crash. Since NHTSA's data show that fatalities from back door ejections have increased from an estimated 93 to 130 in the time period 1982–1988 to an estimated 147 in the time period 1988 to 1992, finding innovative ways to encourage seat belt use, as suggested by Mazda, is not by itself sufficient to address the problem of unbelted occupants. Thus, the agency believes that the significant increase in fatalities through back door ejections now justifies rulemaking action to upgrade the performance requirements of back door latches, hinges, and locks.

IV. Cost/Benefit Analysis

(a) Projected Vehicle Fleet

According to 1992 data available to NHTSA, 20 percent of passenger cars were hatchbacks and station wagons, while approximately 54 percent of all light trucks and vans (LTVs) were sport utility vehicles and passenger vans. Also, based on available data, the agency estimates that approximately 9.4 million passenger cars and 6.2 million LTVs will be sold in 1997. Applying the 1992 percentages to those figures, NHTSA estimates that of the 15.6 million vehicles predicted to be sold in 1997, approximately 5.2 million will be equipped with back doors, compared to 4.2 million in 1992. This represents an estimated 24 percent increase in the number of model year 1997 vehicles potentially affected by this rule compared to the number of model year 1992 vehicles that could have been so affected.

Similarly, the total vehicle population has increased since 1990 and is expected to continue to increase in the future. While the passenger car fleet has held relatively steady since 1990, the LTV fleet has increased by 17 percent. Assuming the continuation of those trends, NHTSA estimates a total vehicle fleet of approximately 194 million passenger cars and LTVs in the 1998–1999 period, up from a total vehicle fleet of 181.5 million in 1992. This represents an increase of about 7 percent. Assuming a similar increase in the target vehicle population, the agency estimates that in 1998 and beyond there will be approximately 160 fatalities and 200 serious injuries annually resulting from back door ejections.

(b) Costs and Potential Benefits

(1) Agency Analysis of Cost Data

As discussed above in section I(c)(6) regarding the costs and benefits of the proposal, NHTSA tested the back door latches of eight 1993 model year minivans for compliance with the current requirements of Standard No. 206 for the fully latched position. Two failed the longitudinal load test (equivalent to proposed Load Test One) and 1 failed the transverse load test (equivalent to Load Test Two), while the remaining latches complied with the standard's current requirements. The 3 failing latches had the highest, second highest and second lowest purchase prices. The lowest price latch gave a performance superior to the others and included both the fully latched and the secondary latched positions. In addition, the agency conducted a cost/weight study using 2 minivan latches that had the lowest and the second lowest prices among the 8 latches tested. The results showed that the estimated production cost for those 2 latches was less than $4.00, which is less than 15 percent of the consumer replacement cost charged by dealers. All latches, except the one that failed the Load Test Two requirement, had secondary latched positions. That latch has since been modified. The 1995 model year latch complies with all three load tests.

The agency also conducted latch tests on 12 different model year 1995 vehicles, using Load Tests One, Two, and Three. A total of 6 tests were conducted, composed of Load Test One in the fully and secondary latched positions; Load Test Two in the fully and secondary latched positions; and Load Test Three in the left and right loading directions. The test vehicles included 5 hatchbacks, 2 station wagons, and 5 MPVs. The 5 hatchbacks and 1 MPV did not have the secondary latched position. Among the 5

hatchback latches tested, 1 failed all tests, another failed Load Test One in both positions and Load Test Two in the secondary latched position. The remaining 3 hatchback latches failed Load Tests One and Two in the secondary latched position. Two station wagons passed all 6 tests. The MPV which did not have a secondary latched position failed Load Test Two in the fully latched position. One MPV failed Load Tests One and Two in the secondary latched position, another failed Load Test One in the fully latched position. Finally, a sport van failed 4 of the 6 tests. These tests showed again that latch price is not directly related to the latch's level of performance. The tests also showed that many of the current production light passenger vehicles already comply with the back door latch requirements of this rule. NHTSA believes that all production latches could comply with the requirements of this rule with only minor modifications, and that the costs of complying with the secondary latched position requirement are negligible to none. Thus, NHTSA believes that extending the requirements of Standard No. 206, including the addition of Load Test Three, will not result in any significant increase in production costs. The agency also concludes that the cost of complying with the secondary latched position requirement, if needed, could cost up to $1.00 per latch.

The agency also tested the back door hinge systems of 11 production vehicles. Load Test Two was not conducted on one vehicle hinge and Load Test Three was not conducted on 2 others. Those three components were judged to be strong, however, and their ultimate strength is expected to exceed the requirements as proposed. Aside from those 3, all hinges passed all the tests to which they were subjected.

To estimate the incremental new vehicle costs from upgrading hinges, the agency began by examining the replacement part costs of both the side door and back door hinges of a series of production vehicles. All vehicles had side doors with 2 hinges, but some of their back doors had auxiliary hinges that allowed those doors to open in different directions. The consumer replacement prices for primary hinges ranged from $40 to $120 for a pair of side door hinges and $20 to $100 for a pair of back door hinges. The agency calculated that the weighted average consumer price of replacement side and back door hinges would be about the same, approximately $53 per pair. Thus, NHTSA estimates that the incremental consumer cost to upgrade back door hinges, if improvements were required, would range from $0 to $20 with an average of about $10 per pair of replacement hinges. NHTSA emphasizes that those prices are estimated consumer replacement costs which are usually much higher than new vehicle consumer costs. Thus, based on NHTSA's estimates that incremental production costs are less than 15 percent of retail consumer costs, NHTSA estimates that the incremental production costs for necessary hinge improvements, if needed, would range from $0 to $3.00.

With respect to the issue of back door locks and interior release handles, NHTSA examined 24 station wagons, some with back doors designed for passenger ingress. Fourteen had either rear or side-facing third seats in the rear of the vehicles, the other 10 did not have the third row of seats. Twelve of the 14 vehicles in the former group had inside door handles, while none in the latter group did. It appears, therefore, that most manufacturers have already voluntarily addressed the issue of occupant ingress and egress through back doors by providing inside door handles on their station wagons equipped with a third row of seats. Accordingly, since most mid and large size station wagons already have a locking system similar to that specified in this final rule, as do ambulances and motor homes, NHTSA estimates that incremental costs for lock improvements needed to comply with the requirements of this final rule are minimal, no more than $1.00 per vehicle.

(2) Estimated Lives Saved

NHTSA has previously noted that the door latch requirements of Standard No. 206 have reduced the risk of side door ejections in rollover crashes by at least 15 percent, saving at least 400 lives per year (see section I(c)(6) above on costs and benefits of the proposal). The 1990 report concluded that a hatchback or tailgate was 3 times as likely to open in a crash as one of the front doors and 7–8 times as likely to open as one of the rear side doors. Further, the back door of a van is 4 times as likely to open as one of the front doors and twice as likely to open as the right rear side door (passenger vans seldom have a left side rear door). NHTSA believes, therefore, that extending the requirements of Standard No. 206 to back doors will be as effective in reducing back door openings as the standard's requirements have been in reducing side door openings. This is because the back door requirements will include 3 tests instead of the 2 currently required. Accordingly, by applying that effectiveness value to the estimated noncomplying target vehicle population, NHTSA estimates that 13 lives will be saved and 17 serious injuries prevented annually by extending the requirements of Standard No. 206 to back doors.

(3) Estimated Cost/Benefit Ratio

As discussed in section IV(a) above on the projected vehicle fleet, NHTSA projects that approximately 5.2 million vehicles equipped with back doors will be produced in 1997. This target vehicle fleet is expected to consist of 1.9 million passenger cars and 3.3 million other types of light passenger vehicles. NHTSA further estimates that approximately 0.4 of the 1.9 million passenger cars will be station wagons (0.24 million mid and large size station wagons and 0.16 small station wagons) and 1.5 million will be hatchbacks. Based on the agency's test results, NHTSA estimates that approximately 190,000 of the mid and large size station wagons and approximately 20,000 small station wagons will be equipped with third seats and, therefore, required to meet the proposed door lock requirements. In addition to station wagons, an estimated 2,500 ambulances, mostly with 2 back doors, and 20,000 motor homes, mostly with 1 back door, will be produced in 1997. The agency estimates, therefore, that approximately 240,000 vehicles produced in 1997 will be required to be equipped with back door locks. The agency also estimates that 1.5 million hatchbacks and 1.1 million MPVs produced in 1997 may require some minor latch modifications other than providing a secondary latched position at minimal cost. In all, NHTSA estimates that about 55 percent of the vehicles expected to be produced in 1997 will require some minor improvements in their latch and/or lock designs under this rule at a total estimated cost of up to $1,740,000, not including potential costs for compliance testing. The agency also concludes that hinge improvements will not be necessary. Accordingly, using the projected safety benefits of this final rule, that is, prevention of approximately 13 fatalities and 17 serious injuries annually, the annual cost of this rulemaking action is estimated to be approximately $112,000 per equivalent life saved.

V. Rulemaking Analyses and Notices

(a) Executive Order No. 12866 and DOT Regulatory Policies and Procedures

This rulemaking document was not reviewed under E.O. 12866, *Regulatory*

Planning and Review. NHTSA has considered the impact of this rulemaking action under the DOT's regulatory policies and procedures and has determined that it is not ''significant'' within the meaning of those policies and procedures.

The amendments promulgated by this final rule extend the requirements of Standard No. 206 to back doors of passenger cars and MPVs, including hatchbacks, passenger vans, station wagons and sport utility vehicles with a GVWR of 4,536 kg (10,000 pounds) or less that are so equipped. The agency believes that the economic impact of this rulemaking action is minimal both to manufacturers and consumers since agency data indicate that many back door latches, hinges, and locks already comply with the requirements of this rule. If any changes must be made by manufacturers to comply with this rule, the agency believes that such changes will be minor in nature, of very little or no cost, and easily capable of being accomplished within the lead time provided. As noted above, the total cost of bringing the remaining noncompliant vehicles into compliance is estimated to be up to a total of $1,740,000. Accordingly, a full regulatory evaluation was not prepared.

(b) Regulatory Flexibility Act

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act. I hereby certify that the amendments promulgated by this final rule will not have a significant impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis has not been prepared.

The agency believes that few, if any, motor vehicle manufacturers qualify as small businesses. Small businesses, small organizations, and small governmental units may be affected by this rulemaking action only to the extent that they could pay a few dollars more for the vehicles that they purchase with the complying back door latches, hinges, and locks.

(c) Executive Order 12612, Federalism

NHTSA has analyzed this rulemaking action in accordance with the principles and criteria of Executive Order No. 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

(d) National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act and has determined that implementation of this rulemaking action will not have any significant impact on the quality of the human environment.

(e) Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, P.L. 96–511, NHTSA states that there are no information collection requirements associated with this rulemaking action.

(f) Civil Justice Reform

This rule does not have any retroactive effect. Under 49 U.S.C. 30103(b), whenever a Federal motor vehicle safety standard is in effect, a state or political subdivision thereof may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle only if the standard is identical to the Federal standard. However, a state may prescribe a standard for a motor vehicle or equipment obtained for its own use that imposes a higher performance requirement than the Federal standard. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. A petition for reconsideration or other administrative proceedings is not required before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires, Incorporation by reference.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

In consideration of the foregoing, 49 CFR Part 571 is amended as follows:

1. The authority citation for Part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegations of authority at 49 CFR 1.50.

2. Section 571.206 is amended by revising S1; adding the definitions of ''auxiliary door latch,'' ''back door,'' ''fork-bolt,'' ''fork-bolt opening,'' and ''primary door latch'', in alphabetical order, to S3; revising S4, S4.1.1.1, S4.1.1.2, S4.1.2, S4.2.1.1, S4.2.1.2, S4.2.2, and S4.3; adding S4.4 through S4.5; revising the heading of S5.1; revising S5.1.1.1, S5.1.1.2, S5.1.2, S5.2.1, S5.2.2, and S5.3; revising the heading of S5.2; adding S5.4 through S5.5; and adding Figure 1 to the end of the section, to read as follows:

§ 571.206 Standard No. 206, Door locks and door retention components.

S1. *Purpose and Scope.* This standard specifies requirements for door locks and door retention components including latches, hinges, and other supporting means, to minimize the likelihood of occupants being thrown from the vehicle as a result of impact.

* * * * *

S3. *Definitions.*

Auxiliary door latch means a latch or latches, other than the primary latch or latches, fitted to a back door or back door system that is equipped with more than one latch.

Back door means a door or door system on the back end of a vehicle through which passengers can enter or depart the vehicle, or cargo can be loaded or unloaded, except—

(1) the trunk lid of a passenger car whose trunk is separated from the passenger compartment by a partition; and

(2) a door or window composed entirely of glazing material whose latches and/or hinges are attached directly onto the glazing material.

* * * * *

Fork-bolt means the part of the door latch that engages the striker when in a latched position.

Fork-bolt opening means the direction opposite to that in which the striker enters to engage the fork-bolt.

Primary door latch means, with respect to a back door or back door system, the latch or latches equipped with both the fully latched position and the secondary latched position.

* * * * *

S4. *Requirements.* Components on any side door leading directly into a compartment that contains one or more seating accommodations, and components on any back door of a passenger car or multipurpose passenger vehicle manufactured on or after September 1, 1997 with a gross vehicle weight rating of 4,536 kilograms (10,000 pounds) or less shall conform to this standard. A particular latch or hinge assembly (i.e., test specimen) need not meet further requirements after having been subject to and having met any one of the requirements of S4 or S5.1 through S5.4. 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 doors that are equipped with wheelchair lifts and that are linked to an alarm system consisting of either a flashing visible signal located in the driver's compartment or an alarm audible to the driver that is activated when the door is open, need not conform to this standard.

S4.1 *Hinged Side Doors, Except Cargo-Type Doors.*

* * * * *

S4.1.1.1 *Longitudinal Load.* The door latch and striker assembly, when in the fully latched position, shall not separate when a longitudinal load of 11,000 Newtons (2,500 pounds) is applied. When in the secondary latched position, the door latch and striker assembly shall not separate when a longitudinal load of 4,450 Newtons (1,000 pounds) is applied.

S4.1.1.2 *Transverse Load.* The door latch and striker assembly, when in the fully latched position, shall not separate when a transverse load of 8,900 Newtons (2,000 pounds) is applied. When in the secondary latched position, the door latch and striker assembly shall not separate when a transverse load of 4,450 Newtons (1,000 pounds) is applied.

* * * * *

S4.1.2 *Door Hinges.* Each door hinge system shall support the door and shall not separate when a longitudinal load of 11,000 Newtons (2,500 pounds) is applied. Similarly, each door hinge system shall not separate when a transverse load of 8,900 Newtons (2,000 pounds) is applied.

* * * * *

S4.2 *Hinged Cargo-Type Side Doors.*

S4.2.1 *Door Latches.*

S4.2.1.1 *Longitudinal Load.* Each latch system, when in the latched position, shall not separate when a longitudinal load of 11,000 Newtons (2,500 pounds) is applied.

S4.2.1.2 *Transverse Load.* Each latch system, when in the latched position, shall not separate when a transverse load of 8,900 Newtons (2,000 pounds) is applied. When more than one latch system is used on a single door, the load requirement may be divided among the total number of latch systems.

S4.2.2 *Door Hinges.* Each door hinge system shall support the door and shall not separate when a longitudinal load of 11,000 Newtons (2,500 pounds) is applied, and when a transverse load of 8,900 Newtons (2,000 pounds) is applied.

S4.3 *Sliding Side Doors.* The track and slide combination or other supporting means for each sliding door shall not separate when a total transverse load of 17,800 Newtons (4,000 pounds) is applied, with the door in the closed position.

* * * * *

S4.4. *Hinged Back Doors.*

S4.4.1 *Door Latches.* Each back door system shall be equipped with at least one primary latch and striker assembly.

S4.4.1.1 *Load Test One.* The primary door latch and striker assembly, when in the fully latched position, shall not separate when a load of 11,000 Newtons (2,500 pounds) is applied in the direction perpendicular to the face of the latch (corresponding to the longitudinal load test for side door latches) such that the latch and the striker anchorage are not compressed against each other. When in the secondary latched position, the primary latch and striker assembly shall not separate when a load of 4,450 Newtons (1,000 pounds) is applied in the same direction.

S4.4.1.2 *Load Test Two.* The primary door latch and striker assembly, when in the fully latched position, shall not separate when a load of 8,900 Newtons (2,000 pounds) is applied in the direction of the fork-bolt opening and parallel to the face of the latch (corresponding to the transverse load test). Figure 1 depicts the loading direction for this test. When in the secondary latched position, the primary latch and striker assembly shall not separate when a load of 4,450 Newtons (1,000 pounds) is applied in the same direction.

S4.4.1.3 *Load Test Three.* The primary door latch and striker assembly on back doors equipped with a latch and striker assembly at the bottom of the door and that open upward shall not disengage from the fully latched position when a load of 8,900 Newtons (2,000 pounds) is applied in a direction orthogonal to the directions specified in S4.4.1.1 and S4.4.1.2 above.

S4.4.1.4 *Inertia Load.* The primary door latch shall not disengage from the fully latched position when an inertia load of 30g is applied to the door latch system, including the latch and its activation mechanism with the locking mechanism disengaged, in the directions specified in S4.4.1.1, S4.4.1.2, and S4.4.1.3.

S4.4.1.5 *Auxiliary Door Latches.* Each auxiliary back door latch and striker assembly shall be provided with a fully latched position and shall comply with the requirements specified in S4.4.1.1, S4.4.1.2, and S4.4.1.4.

S4.4.2 *Door Locks.* Each back door system equipped with interior door handles or that leads directly into a compartment that contains one or more seating accommodations shall be equipped with a locking mechanism with operating means in both the interior and exterior of the vehicle. When the locking mechanism is engaged, both the inside and outside door handles or other latch release controls shall be inoperative.

S4.4.3 *Door Hinges.*

S4.4.3.1 *Load Test One.* Each back door hinge system shall support the door and shall not separate when a load of 11,000 Newtons (2,500 pounds) is applied perpendicular to the hinge face plate (longitudinal load test) such that the hinge plates are not compressed against each other.

S4.4.3.2 *Load Test Two.* Each back door hinge system shall not separate when a load of 8,900 Newtons (2,000 pounds) is applied perpendicular to the axis of the hinge pin and parallel to the hinge face plate (transverse load test) such that the hinge plates are not compressed against each other.

S4.4.3.3 *Load Test Three.* Each hinge system on back doors that open upward shall not separate when a load of 8,900 Newtons (2,000 pounds) is applied in the direction of the axis of the hinge pin.

S4.5 *Sliding Back Doors.* The track and slide combination or other supporting means for each sliding door shall not separate when a total longitudinal load of 17,800 Newtons (4,000 pounds) is applied, with the door in the closed position. * * *

S5.1. *Hinged Side Doors, Except Cargo-Type Doors.* * * *

S5.1.1.1 *Longitudinal and Transverse Loads.* Compliance with paragraphs S4.1.1.1 and S4.1.1.2 shall be demonstrated in accordance with paragraph 5 of Society of Automotive Engineers Recommended Practice J839, *Passenger Car Side Door Latch Systems,* June 1991.

S5.1.1.2 *Inertia Load.* Compliance with S4.1.1.3 shall be demonstrated by approved tests or in accordance with paragraph 6 of Society of Automotive Engineers Recommended Practice J839, *Passenger Car Side Door Latch Systems,* June 1991.

S5.1.2 *Door Hinges.* Compliance with S4.1.2 shall be demonstrated in accordance with paragraph 4 or 5, as appropriate, of Society of Automotive Engineers Recommended Practice J934, *Vehicle Passenger Door Hinge Systems,* July 1982. For piano-type hinges, the hinge spacing requirements of SAE J934 shall not be applicable and arrangement of the test fixture shall be altered as required so that the test load will be applied to the complete hinge.

S5.2 *Hinged Cargo-Type Side Doors.*

S5.2.1 *Door Latches.* Compliance with S4.2.1 shall be demonstrated in accordance with paragraphs 5.1 and 5.3, SAE Recommended Practice J839, *Passenger Car Side Door Latch Systems,* June 1991. An equivalent static test fixture may be substituted for that shown in Figure 2 of SAE J839, if required.

S5.2.2 *Door Hinges.* Compliance with S4.2.2 shall be demonstrated in accordance with paragraph 4 or 5, as appropriate, of SAE Recommended Practice J934, *Vehicle Passenger Door Hinge Systems,* July 1982. For piano-type hinges, the hinge spacing requirement of SAE J934 shall not be applicable and arrangement of the test fixture shall be altered as required so that the test load will be applied to the complete hinge.

S5.3 *Sliding Side Doors.* Compliance with S4.3 shall be demonstrated by applying an outward transverse load of 8,900 Newtons (2,000 pounds) to the load-bearing members at the opposite edges of the door (17,800 Newtons (4,000 pounds) total). The demonstration may be performed either in the vehicle or with the door retention components in a bench test fixture.

S5.4 *Hinged Back Doors.*

S5.4.1 *Door Latches.*

S5.4.1.1 *Load Tests One, Two, and Three.* Compliance with S4.4.1.1, S4.4.1.2, and S4.4.1.3 shall be demonstrated in the same manner as specified in S5.1.1.1, except that the loads shall be in the directions specified in S4.4.1.1, S4.4.1.2, and S4.4.1.3. The same test device may be used for Load Tests Two and Three.

S5.4.1.2 *Inertia Load.* Compliance with S4.4.1.4 shall be demonstrated in the same manner as specified in S5.1.1.2.

S5.4.2 *Door Hinges.* Compliance with S4.4.3.1, S4.4.3.2, and S4.4.3.3 shall be demonstrated in the same manner as specified in S5.1.2, except that the loads shall be in the directions specified in S4.4.3.1, S4.4.3.2, and S4.4.3.3. The same test device may be used for Load Tests Two and Three.

S5.5 *Sliding Back Doors.* Compliance with S4.5 shall be demonstrated by applying an outward longitudinal load of 8,900 Newtons (2,000 pounds) to the load bearing members at the opposite edges of the door (17,000 Newtons (4,000 pounds) total). The demonstration may be performed either in the vehicle or with the door retention components in a bench test fixture.

BILLING CODE 4910–59–P

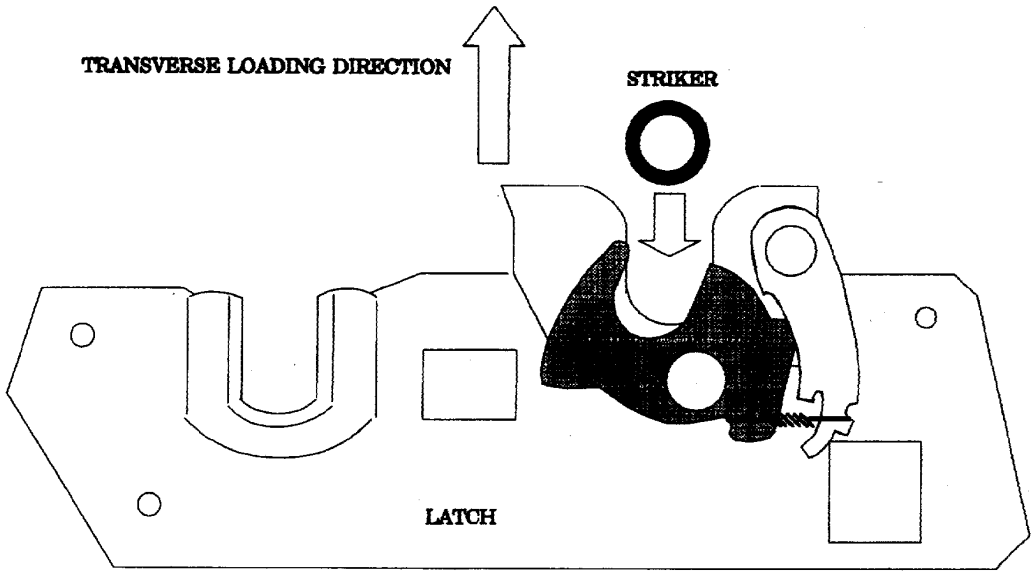

Figure 1.- Top View of a Typical Back Door Latch

Issued on: September 22, 1995.

Ricardo Martinez,

Administrator.

[FR Doc. 95–23986 Filed 9–27–95; 8:45 am]

BILLING CODE 4910–59–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 950206040–5040–01; I.D. 092295A]

Groundfish of the Bering Sea and Aleutian Islands Area; Pollock in the Bering Sea Subarea by the Inshore Component

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for pollock by vessels catching pollock for processing by the inshore component in the Bering Sea subarea (BS) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the second seasonal allowance of the pollock total allowable catch (TAC) for vessels catching pollock for processing by the inshore component in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), September 23, 1995, until 12 midnight, A.l.t., December 31, 1995.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

In accordance with § 675.20(a)(7)(ii), the second seasonal allowance of pollock for the inshore component in the BS was established by the Final 1995 Harvest Specifications of Groundfish (60 FR 8479, February 14, 1995) and augmented from the non-specific operational reserve (60 FR 32278, June 21, 1995) as 237,343 metric tons (mt). The amount actually available is 204,531 mt, subsequent to harvests from the first seasonal allowance.

The Director, Alaska Region, NMFS (Regional Director), has determined in accordance with § 675.20(a)(8), that the second seasonal allowance of pollock TAC for vessels catching pollock for processing by the inshore component in the BS soon will be reached. Therefore, the Regional Director has established a directed fishing allowance of 203,531 mt with consideration that 1,000 mt will be taken as incidental catch in directed fishing for other species in the BS. Consequently, NMFS is prohibiting directed fishing for pollock by vessels catching pollock for processing by the inshore component in the BS.

Maximum retainable bycatch amounts for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under § 675.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 22, 1995.

Richard W. Surdi,

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

[FR Doc. 95–24043 Filed 9–25–95; 2:29 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 60, No. 188
Thursday, September 28, 1995

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1131

[Docket No. AO–271–A32; DA–92–24]

Milk in the Central Arizona Marketing Area; Decision on Proposed Amendments to Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision revises the definition of producer-handler to prohibit deliveries of fluid milk products to a wholesale customer if the customer is also receiving the same products in the same-sized package with a similar label from a fully or partially regulated handler during the month. It also clarifies the limits and sources of supplemental supplies of producer-handlers. Finally, the decision removes the ''associated producer'' and ''associated producer milk'' provisions. The decision is based on proposals presented at a public hearing held in Phoenix, Arizona, on February 2–3, 1993.

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 690–1932.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The amended order will promote orderly marketing of milk by producers and regulated handlers.

These proposed amendments have been reviewed under Executive Order 12278, Civil Justice Reform. This rule is not intended to have retroactive effect. If adopted, this proposed rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Prior Documents in This Proceeding

Notice of Hearing: Issued December 21, 1992; published December 30, 1992 (57 FR 62241).

Recommended Decision: Issued December 15, 1993; published December 22, 1993 (57 FR 67703).

Extension of Time for Filing Exceptions: Issued February 4, 1994; published February 14, 1994 (59 FR 6916).

Revised Recommended Decision: Issued November 4, 1994; published November 14, 1994 (59 FR 56414).

Preliminary Statement

A public hearing was held to consider proposed amendments to the marketing agreement and the order regulating the handling of milk in the Central Arizona (Order 1131) marketing area. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice (7 CFR Part 900), in Phoenix, Arizona, on February 2–3, 1993. Notice of such hearing was issued on December 21, 1992, and published December 30, 1992 (57 FR 62241).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Administrator, on December 15, 1993, and November 4, 1994, issued a recommended decision and a revised recommended decision, respectively, containing notice of the opportunity to file written exceptions thereto.

The material issues, findings and conclusions, rulings, and general findings of the revised recommended decision are hereby approved and adopted and are set forth in full herein, subject to the following modifications:

1. The proposed pool payment by a producer-handler that was provided for in the proposed amendments to §§ 1131.60 and 1131.71 has been dropped;
2. A new paragraph (a)(3) has been added to the producer-handler definition (§ 1131.10) which prohibits a producer-handler from distributing fluid milk products to a wholesale customer who also is receiving the same product in the same-sized package with a similar label from a fully or partially regulated handler during the month; and
3. The discussion of Issue No. 1 in the findings and conclusions has been revised to reflect these changes.

The material issues on the record of hearing relate to:

1. The definition and treatment of producer-handlers;
2. The definition and treatment of associated producers; and
3. Conforming changes and non-substantive changes.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. The definition and treatment of producer-handlers. The order should be amended to prohibit producer-handlers (P–Hs) from distributing fluid milk products to wholesale customers [1] who

[1] As used in the amended order, the term ''wholesale customer'' means distributors or jobbers, stores that are owned or leased by others, or institutions such as schools, hospitals, prisons, and nursing homes. It does not mean retail sales to consumers at the P–H's dock, at the P–H's own

Continued

also receive the same products in the same-sized package with similar labels from a fully or partially regulated handler during the month. Additional amendments will clarify the limits and sources of supplemental supplies of the P–H. The basic intent of these provisions is to continue to allow the operations of P–Hs, while ensuring they bear the burden of their own reserve supply of milk.

At the time of the hearing, Heartland Dairy was the largest P–H in the Central Arizona market. Since then, it has sold its cows and dairy farms and has become a fully regulated handler under the order. Testimony at the hearing indicated that Heartland had been sharing a joint account with a fully regulated handler, Jackson Foremost Foods, to supply Fry's Food Stores, the dominant supermarket chain in the Phoenix area.

The Executive Director of The United Dairymen of Arizona (UDA), a cooperative association in the market, testified that Fry's Food Stores is the principal outlet for Heartland Dairy's fluid milk product distribution in the Central Arizona marketing area. The witness stated that Heartland shared the Fry's account with Jackson Foremost Foods, a fully regulated handler supplied by UDA. He said that when Heartland's deliveries to Fry's were insufficient to cover its commitment, Fry's called on Jackson to make up the deficit. Jackson, in turn, called on UDA to supply it with more milk. The witness indicated that this scenario had occurred repeatedly in the last three years, particularly during the low production months of July, August, September, and October, and throughout the year on Fridays and Saturdays.

The UDA spokesman testified that this pattern of operation by Heartland Dairy violated the spirit of the P–H provision. He referenced the Secretary of Agriculture's 1962 decision (27 FR 3923) which states that:

> A producer-handler should be required to maintain his own reserve supply since he is exempted from pooling his Class I sales with other producers. The limitation on the amount of milk which an exempt producer-handler may purchase from pool plants will make it necessary for him to maintain herd production equal to his Class I sales plus a reserve to cover variations in production and sales.
>
> * * * [P]roducer-handlers' milk sales represent a potential threat to orderly marketing if producer-handlers are permitted to shift their excess burden to other producers. The Central Arizona market is composed of large producers delivering nearly one million pounds a month. If such large volume producers could market their own production entirely as Class I and buy reserve milk to balance daily fluctuations in their production and sales, they would be a disturbing element in the market.

The Vice President of Sales for Shamrock Foods, one of the largest handlers in the Central Arizona market, testified that Heartland Dairy supplied private label milk to the Southwest Supermarket chain in December of 1992, when Shamrock was also supplying milk to Southwest stores. In addition, he said that from time to time Southwest would call Shamrock asking for additional milk when Southwest was not getting its orders filled by Heartland Dairy. It was his understanding, he testified, that when Southwest was required to buy this extra milk from Shamrock, Heartland Dairy would pay the difference in price between what it would have charged Southwest and what Shamrock charged Southwest for this milk.

In this market, the annual variation in producer milk from the lowest production month to the highest production month has averaged 28 percent during the past five years. Given this seasonality in production, a P–H must find a way to handle its seasonal production problem. One method would be to maintain a fluid milk distribution level equal to its highest month's production—typically, March—and purchase enough supplemental milk during the other eleven months. However, unrestricted supplemental purchases are conceptually antithetical to the principle of maintaining one's own reserve supply. Alternatively, a P–H could maintain a fluid milk product distribution level equal to its lowest month's production—typically, August—and send the additional production during the other 11 months to a manufacturing plant.

At the present time, the only manufacturing plant within reasonable distance of Heartland Dairy is UDA's butter-powder plant at Tempe, Arizona. There are no other manufacturing plants in the Central Arizona marketing area, except for a cheese plant which is under the same roof as UDA's butter-powder plant and which is fully supplied by UDA, and a yogurt processing plant, LaCorona Yogurt, which, according to the manager of Heartland Dairy, was under contract to buy its milk from Shamrock. Consequently, the only surplus outlet available to Heartland Dairy in this area is UDA's butter-powder plant.

The Heartland Dairy manager testified that when Heartland Dairy sent surplus milk to the UDA butter-powder plant for manufacturing use, it was in the position of having to accept whatever the cooperative was willing to pay for the milk. For example, he said that in December 1992 Heartland sold 427,210 pounds of surplus milk to UDA and was paid $10.25 per hundredweight for it, which was $1.09 less than the order's Class III price.

The evidence in the record indicates that Heartland used other ways to handle its seasonal production problem. It shared joint Class I sales accounts with fully regulated handlers and disposed of fluid milk products outside of the marketing area when extra milk was available.

UDA's proposal to address these practices would require the market administrator to closely monitor the P–H's operations and to make several subjective judgments regarding whether the P–H was maintaining its own reserve supply. Specifically, the market administrator would be asked to: (1) Compare weekly volumes sold to accounts serviced by the P–H and by other handlers under this or any other Federal milk order; (2) determine whether the P–H packaged milk in the same label as another handler under this or any other Federal milk order; (3) determine if the P–H's pro rata share of Class I route disposition in the marketing area during the flush milk production months (March, April, May) was substantially the same as during the short milk production months (July, August, September); and (4) use any other method that would indicate when the P–H was not maintaining the burden of its own reserve supply. Under the proposal, the P–H would be fully regulated for the next 12 months if the market administrator found that the P–H was not maintaining its own reserve supply.

Another part of the UDA proposal was designed to preclude P–Hs from sharing Class I accounts with fully regulated handlers. In this case, the order would treat packaged fluid milk that is delivered by a P–H to a market outlet which is also serviced by a pool plant (using the same label as the P–H) as having been ''acquired for distribution'' by the pool plant. In such circumstances, the P–H's milk would be assigned a Class III classification at the pool plant. This procedure would force an equal amount of ''producer milk'' into Class I and thereby increase the pool plant's obligation to the pool.

In its brief, UDA stated that, based on the evidence in the record, a producer-handler should be required to carry 135 percent of its monthly Class I sales in its own herd production. To implement

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retail stores (wherever located), or on the P–H's home delivery routes.

this requirement, the cooperative suggested that its proposal be amended by inserting a new paragraph in § 1131.10(a), which would read as follows:

(2) Produces in his own herd a rolling average during the preceding three months of 135 percent of Class I route disposition. If such person's milk production from his own herd falls below 135 percent of Class I route disposition in any such period, such person shall be pooled in the next succeeding month and continue to be pooled until production from his own herd equals or exceeds 135 percent of Class I route disposition for a three month period.

The UDA proposal should not be adopted. It lacks objective standards and instead relies on many subjective judgments, which would make it very difficult to administer and enforce. In addition, it would penalize P–Hs and fully regulated handlers even when a P–H was operating in a totally unobjectionable manner. For example, if a P–H serviced an account with a fully regulated handler and each party contributed a fixed amount of fluid milk products each month to the account, the order, as modified by UDA's proposal, would nonetheless treat the P–H's deliveries as receipts of the pool plant and penalize the pool plant as described above.

Although UDA did not include any specific order language to address the appropriate size of a P–H, the cooperative attempted to modify the language of its proposal to restrict the P–H exemption to a ''family-type farm operation.'' The Administrative Law Judge presiding at the hearing disallowed the modification but permitted the testimony as an ''offer of proof.'' We concur with the Judge that this modification is beyond the scope of the hearing.

A representative of the National Milk Producers Federation (NMPF) appeared at the hearing to present a proposal that was ruled by the Administrative Law Judge to be outside the scope of the hearing. The NMPF proposal would have limited the size of a P–H. The witness stated that the NMPF was offering the proposal as an alternative to the UDA proposal because, in his opinion, the UDA proposal would be impossible to administer or enforce.

A consultant for Heartland Dairy testified in support of a modified Heartland Dairy proposal that would enable a P–H to purchase unlimited supplies of supplemental milk from any source, but which also would require the P–H to make a payment into the order's marketwide pool each month to compensate the market's producers for carrying Heartland's reserve supply of milk. The consultant stated that the goal of the Federal order program is to insure minimum prices to dairy farmers. This goal, he said, could be accomplished without fully regulating producer-handlers.

The modified proposal of Heartland Dairy calls for the P–H to make a payment into the pool each month based on the difference between the P–H's production in the current month and its lowest month's production during the immediately preceding 12 months. The difference in production between the current month and the lowest month would be prorated to the P–H's utilization of milk in each class in the current month. The payment would then be computed by: (1) Multiplying the pounds assigned to Class I by the difference between the Class I price and the blend price (a positive value); (2) multiplying the pounds assigned to Class II by the difference between the Class II price and the blend price (a positive or negative value); (3) multiplying the pounds assigned to Class III by the difference between the Class III price and the blend price (a negative value); and (4) adding these products together. If the current month's production were less than the lowest month's production during the preceding 12 months, no payment would be required.

There can be no argument with certain basic facts that must be taken into consideration in resolving the problems described in the hearing record. First, the seasonal variation in production in this market is significant, and this variation in production adversely affects the cost of handling and manufacturing the market's reserve supply of milk. From the evidence in the record, it would appear that this burden falls largely on UDA.

Second, there is really only one place to economically dispose of surplus milk for manufacturing use: UDA's butter-powder plant at Tempe. This lack of viable economic alternatives leads to marketing practices which some parties in the market deem to be ''disruptive'' and which nearly all parties in the market concede result in an unequal sharing of the cost of maintaining the market's reserve supply of milk.

Third, there is really only one place to obtain supplemental supplies of milk in this market. UDA accounts for 88 percent of the producer milk in the market, and Shamrock Foods accounts for the remaining 12 percent, which is largely used for its own use, except for the amount which it supplies to LaCorona Yogurt.

The recommended and revised recommended decisions concluded that additional flexibility was needed in the order to permit a P–H to bear its pro rata share of the cost of maintaining the market's reserve supply while, at the same time, operating in a reasonably efficient manner. Those decisions recommended the adoption of a formula for computing the degree to which a producer-handler was relying on the market to bear its reserve supplies and the imposition of a pool payment to remunerate the market for carrying the P–H's reserve supply.

This final decision abandons that recommendation and substitutes, in its place, a far simpler provision which is designed to prevent a similar problem from ever occurring rather than to control it once it has started. It accomplishes this goal by inserting a new paragraph—(a)(3)—in the producer-handler definition (§ 1131.10) which specifically prohibits the type of activity that Heartland Dairy engaged in.

Heartland Dairy was able to manipulate the producer-handler provision of the order because Jackson Foremost Foods was willing to perform a balancing function for Heartland. Both Heartland and Jackson provided Fry's Food Stores with the same fluid milk product in the same-sized container with the same label on it. Consequently, specifically prohibiting similar types of practices now seems to us to be the least burdensome way to amend the order to insure that this situation does not arise again.

While we continue to believe in the viability of the approach taken in the recommended decisions, we also recognize that this approach may require further ''fine-tuning,'' may be difficult to administer or enforce, and surely would complicate the order. Therefore, given the changes which have occurred in this market since the time of the hearing, we must conclude that a simple provision that bars the activity which led to the problem is the most effective and least burdensome way to prevent its recurrence.

This final decision continues to embrace several of the other proposed changes adopted in the revised recommended decision. Specifically, it amends the order to permit a P–H to obtain supplemental fluid milk products by transfer or diversion from pool plants and other order plants, and by diversion from a cooperative bulk tank handler. However, it limits such receipts to 5,000 pounds or 5 percent of the P–H's monthly fluid milk product disposition. No other sources of supply will be allowed regardless of whether such purchases entered the P–H's plant or were acquired elsewhere.

The limit on supplemental purchases will not only apply to bulk or packaged fluid milk products that are received by transfer or diversion at the P–H's plant, but also will apply equally to packaged fluid milk products that are acquired for route disposition to any of the P–H's retail outlets. This means that any acquisition of a fluid milk product, whether it entered the P–H's plant or retail facility, was picked up by the P–H's truck, or was acquired in some other way, will still count against the monthly 5,000-pound/5 percent limit.

Currently, P–Hs are not permitted to purchase milk directly from dairy farms. However, as noted previously, UDA accounts for 88 percent of the producer milk in the Central Arizona market. Accordingly, the cooperative is the likely source for supplemental milk supplies. Even if the P–H were to obtain transfers from a pool plant operated by another handler, in all likelihood it would be UDA milk since the cooperative association supplies all of the pool plants in this market. In view of this, it is much more efficient to allow a P–H to obtain milk from a cooperative association in its capacity as a handler on milk delivered directly from producers' farms. This milk will be classified as Class I milk, and the cooperative association handler delivering the milk will account to the pool for it.

While a P–H may now receive transfers from pool plants and other order plants, it may not receive diverted milk from these plants. This restriction also is removed to allow a P–H to obtain supplemental milk by diversion from these plants directly from the farms of producers. Under most circumstances, this would be the most efficient way to obtain a load of supplemental milk, and there is no reason to preclude such shipments. Such receipts will be classified as Class I milk, and the diverting handler will account to the pool for this milk.

This final decision continues the earlier recommendations requiring a P–H to file monthly reports with the market administrator and giving the market administrator full access to all of a producer-handler's records, including all of the milk production and farm pickup records pertaining to the dairy operations of each of a P–H's farms. By having complete access to a P–H's records, the market administrator will be in a better position to enforce the order and to prevent or minimize a problem before it gets out of hand.

Exceptions to the Revised Recommended Decision

Three letters were received in response to the revised recommended decision.

Comment: UDA indicated in its letter that while it continues to believe that P–Hs should not be exempt from full regulation, it commended the Department ''for taking this first step toward an approach to competitive parity between P–Hs and the fully regulated handlers with whom they are in daily competition.''

Response: While some aspects of the revised recommended decision have not been carried forward in this final decision, several new provisions in the order should strengthen the hand of the market administrator to ensure that a similar situation does not again arise in this market. In particular, P–Hs will be required to report their receipts and utilization to the market administrator monthly. This will permit the market administrator to ascertain whether the P–H is operating in a manner that qualifies it for its exempt status under the order.

Comment: Sarah Farms, a P–H located in Yuma, Arizona, submitted the following comment:

> We feel that this recommended decision and proposed amendment * * * was for a particular situation that no longer exists. The P–H effectuating this action violated the spirit and intention of the laws governing a P–H, was held accountable to these existing regulations, failed the criterion, and because of this is no longer a P–H today. The order as it is written is correct, it worked, don't change a thing.

Response: At the time of the hearing, Sarah Farms was not fully operational and did not participate in the hearing. For this reason, there is no information in the record concerning its mode of operation.

We appreciate Sarah Farms' argument that they could be unnecessarily burdened by a provision that was designed for a situation that no longer exists. For this reason, we have significantly changed this final decision.

Sarah Farms exhibits an understanding of how Heartland Dairy manipulated its P–H exemption. For this reason, the new provision in § 1131.10(a)(3) should pose no burden to it. Under the order, as amended, Sarah Farms may supply wholesale accounts; they may deliver more products to such accounts in one month than in another month without penalty; they may even supply a wholesale account when that account is also supplied by a fully or partially regulated handler. What they may not do, however, is supply the same product (e.g., 2% milk) in the same-sized package and with a similar label as is being supplied to that customer by a fully or partially regulated handler during the same month.

While Sarah Farms would be subject to the new monthly reporting provisions that are contained in § 1131.30(d), this is not an unreasonable burden to ensure that it is properly entitled to its exemption under the order.

Comment: Goldenwest Dairies, another P–H under the Central Arizona order, suggested that mechanical breakdowns be included with natural disasters in computing a P–H's low month of production in § 1131.60(J)(4)(i).

Response: This suggestion is no longer relevant in view of the changes made in this final decision.

2. The definition and treatment of associated producers. A proposal by The United Dairymen of Arizona to remove all language from the order relating to ''associated producer'' should be adopted. UDA's general manager testified that UDA had proposed the associated producer provisions at a hearing held on November 9–10, 1982. The purpose of these provisions, he explained, was to enable a dairy farmer in the Phoenix area to retain ''producer'' status on a portion of his milk which he was unable to market to an Order 131 handler.

The UDA witness stated that the Phoenix producer never availed himself of these provisions, but that a dairy farmer from California had ''exploited'' the provision during a 21-month period from June 1987 through February 1989. He said that this dairy farmer had drawn $192,340 out of the pool in the form of ''phantom freight'' on more than 8 million pounds of milk diverted to a nonpool plant in California.

The ''associated producer'' provision now in the order is not a provision that is commonly found in Federal orders. Normally, a pool plant operator who regularly receives a dairy farmer's milk will willingly serve as the handler for the milk when it is not needed at the pool plant and must be diverted to a nonpool plant for manufacturing use. In the Central Arizona market, however, a pool plant operator who had received a dairy farmer's milk was not willing to bear responsibility for the milk when it was diverted to a nonpool plant. Accordingly, UDA proposed—and the Secretary adopted, with some modifications—the ''associated producer'' provisions.

The producer for whom the ''associated producer'' provision was intended did not appear at the hearing

to present any opposition testimony but did submit a brief in which he explained that he was unable to attend the hearing because of a flooding problem. In his brief, he stated that the associated producer provision is needed because ''the pool should service all producers in it, not just a select few.'' He suggested, however, that it be modified to restrict it to ''producer milk originating in the geographical boundaries of Order 131.'' He did not indicate that he has used the provision or plans to use it in the future but implied that it should be kept as a safeguard.

Under the associated producer provisions, a producer is permitted to divert a certain portion of his/her milk to a nonpool plant for Class III use if 50 percent of that person's milk is ''producer milk'' in the current month and in each of the immediately preceding two months. On the milk diverted to the nonpool plant, the producer draws a payment from the pool based on the difference between the order uniform price and the Class III price for the month.

The non-member dairy farmer who inspired the cooperative's 1982 proposal has never used the associated producer provision and now markets his milk through UDA. According to the UDA general manager, the California producer who had used the provision for a 21-month period joined UDA in the fall of 1989 and stopped using the provision in February 1989.

The associated producer provisions, when used, have been difficult to administer. In a letter referenced by the UDA witness at the hearing, the Order 131 market administrator is quoted as stating that he had ''no handle under the order for determining the volume of milk shipped from a producer's farm to a nonpool plant because there were no reporting requirements'' with which to verify the information supplied by the producer.

In view of the difficulty of administering the associated producer provision, its lack of use during the past three years, the potential for its abuse, and the limited opposition to its removal, there is no valid reason to keep it in the order. Under these circumstances, it no longer effectuates the declared policy of the Act and should be removed.

3. *Conforming and non-substantive changes.* Certain conforming changes are needed to implement the proposed changes adopted above. In particular, § 1131.13 (Producer milk) is changed to allow a cooperative bulk tank handler or a pool plant operator to divert milk for their accounts to a producer-handler; § 1131.30 (Reports of receipts and utilization) is modified to report the P–H's own-farm production and supplemental milk purchases each month; § 1131.42 (Classification of transfers and diversions) is modified to provide for the classification of milk diverted to a P–H from a cooperative bulk tank handler or a pool plant operator; and § 1131.61 (Computation of uniform price) is changed to remove obsolete language related to ''associated producer milk.''

Other changes of a minor and non-substantive nature have also been made to the order to remove obsolete language from the Class I price provision and to correct errors in § 1131.44 (i.e., change ''ilk'' to ''milk'') and § 1131.72 (i.e., change ''for'' to ''from'' and remove obsolete language related to associated producers).

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions, and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when Order 1131 was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the Central Arizona marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Rulings on Exceptions

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents, a Marketing Agreement regulating the handling of milk in the Central Arizona marketing area and an Order amending the order regulating the handling of milk in the Central Arizona marketing area, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions. It is hereby ordered that this entire decision and the two documents annexed hereto be published in the Federal Register.

Determination of Producer Approval and Representative Period

August 1995 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, as amended and as hereby proposed to be amended, regulating the handling of milk in the Central Arizona marketing area is approved or favored by producers as defined under the terms of the order (as amended and as hereby proposed to be amended) who during the representative period were engaged in the production of milk for sale within the Central Arizona marketing area.

List of Subjects in 7 CFR Part 1131

Milk marketing orders.

Dated: September 19, 1995.

Shirley R. Watkins,

Acting Assistant Secretary, Marketing and Regulatory Programs.

Order Amending the Order Regulating the Handling of Milk in the Central Arizona Marketing Area

This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Central Arizona marketing area. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the aforesaid marketing area. The minimum prices specified in the order as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order Relative to Handling

It is therefore ordered that on and after the effective date hereof, the handling of milk in the Central Arizona marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

PART 1131–MILK IN THE CENTRAL ARIZONA MARKETING AREA

1. The authority citation for 7 CFR Part 1131 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. § 1131.10, paragraph (a)(3) is redesignated as (a)(4), a new paragraph (a)(3) is added, and paragraph (a)(1)(ii) is revised to read as follows:

§ 1131.10 Producer-handler.

* * * * *

(a) * * *

(1) * * *

(ii) Fluid milk products obtained by transfer or diversion from pool plants, other order plants, or from a handler described in § 1131.9(b), in an amount not to exceed 5 percent of its fluid milk product disposition for the month or 5,000 pounds, whichever is less;

(2) * * *

(3) Does not distribute fluid milk products to a wholesale customer who also is serviced by a handler described in § 1131.9(a) or (d) that supplied the same product in the same-sized package with a similar label to the wholesale customer during the month; and

* * * * *

§ 1131.13 [Amended]

3. In § 1131.13 paragraphs (a)(2) and (b)(1), the words ''that is not a producer-handler plant'' are removed.

§§ 1131.21 and 1131.22 [Removed]

4. Sections 1131.21 and 1131.22 are removed.

5. In § 1131.30, paragraph (d) is redesignated as paragraph (e), in newly designated (e) the words ''(a) through (c)'' are revised to read ''(a) through (d)'', and a new paragraph (d) is added to read as follows:

§ 1131.30 Reports of receipts and utilization.

* * * * *

(d) Each handler described in § 1131.10 shall report:

(1) The pounds of milk received from each of the handler's own-farm production units, showing separately the production of each farm unit and the number of dairy cows in production at each farm unit;

(2) Fluid milk products and bulk fluid cream products received at its plant or acquired for route disposition from pool plants, other order plants, and handlers described in § 1131.9(b);

(3) Receipts of other source milk not reported pursuant to paragraph (d)(2) of this section;

(4) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1131.40(b)(1); and

(5) The utilization or disposition of all milk and milk products required to be reported pursuant to this paragraph.

* * * * *

§ 1131.33 [Removed]

6. Section 1131.33 is removed.

7. In § 1131.42 paragraph (d)(2)(vi), the words ''pursuant to § 1131.22 or'' are removed, and the introductory text of paragraph (c) and paragraph (c)(1) are revised to read as follows:

§ 1131.42 Classification of transfers and diversions.

* * * * *

(c) *Transfers and diversions to producer-handlers.* Skim milk or butterfat transferred or diverted from a pool plant or diverted from a handler described in § 1131.9(b) to a producer-handler under this or any other order shall be classified:

(1) As Class I milk, if transferred or diverted in the form of a fluid milk product; and

* * * * *

§ 1131.44 [Amended]

8. In § 1131.44(a)(4), the word ''.ilk'' is revised to read ''milk''.

9. In § 1131.50, paragraph (a) is revised to read as follows:

§ 1131.50 Class prices.

* * * * *

(a) The Class I price shall be the basic formula price for the second preceding month plus $2.52.

* * * * *

10. In § 1131.61, paragraph (b) is removed, paragraphs (c) through (f) are redesignated as paragraphs (b) through (e), and newly redesignated paragraph (d) is amended by removing paragraph (d)(3) and revising paragraphs (d)(1) and (2) to read as follows:

§ 1131.61 Computation of uniform price.

* * * * *

(d) * * *

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1131.60(f).

* * * * *

§ 1131.72 [Amended]

11. In § 1131.72, the word ''for'' is revised to read ''from'' in the section heading, paragraph (b) is removed, and paragraph (c) is redesignated as paragraph (b).

§ 1131.77 [Amended]

12. In § 1131.77, the last sentence is removed.

§ 1131.85 [Amended]

13. In § 1131.85, paragraph (b) is removed and reserved.

[FR Doc. 95–23896 Filed 9–27–95; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 103

[INS No. 1692–95]

RIN 1115–AD92

Fees Assessed for Defaulted Payments

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend existing Immigration and Naturalization Service (Service) regulations to increase the fee imposed when a check submitted to the Service in payment of a fee is not honored by the bank upon which it is drawn, from $5.00 to $30.00. The purpose of the proposed change is to enable the Service to recoup the administrative costs incurred in processing all returned checks and other defaulted payments. This action will result in the Service no longer losing money as a result of bad check activity.

DATES: Written comments must be submitted on or before November 27, 1995.

ADDRESSES: Written comments should be submitted, in triplicate, to Chief, Debt Collection and Cash Management Branch, Office of Finance, Immigration and Naturalization Service, 425 I Street, NW., Room 6309, Washington, DC 20536–0002. Facsimile submissions may be made to (202) 514–7860. To facilitate processing, please reference INS No. 1692–95 on all correspondence.

Before adopting this proposal, consideration will be given to any written comments that are submitted to the Service. All such comments received from the public pursuant to this notice of proposed rulemaking will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), during regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Debt Collection and Cash Management Branch, 425 I Street, NW., Room 6309, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Allen H. Sinsheimer, Systems Accountant, Debt Collection and Cash Management Branch, Office of Finance, Immigration and Naturalization Service, 425 I Street, NW., Room 6008, Washington, DC 20536, telephone (202) 616–7715.

SUPPLEMENTARY INFORMATION:

I. Introduction

Changes in the current regulation are needed to make the bad check charge consistent with the actual costs incurred by the Service in processing returned checks and other defaulted payments. The current bad check charge is $5.00.

The Service has studied the costs incurred by several Administrative Centers attributable to the return of a bad check from a financial institution. The Administrative Center, Dallas, and the Administrative Center, Twin Cities, were asked to identify each action that must be undertaken and quantify the time and costs involved in processing a bad check. Meaningful and reliable accumulations of the time and expense involved in the average costs of processing each bad check have been gathered, since these centers handle a substantial number of financial transactions each year. For example, three employees at the Dallas Administrative Center each spend 38 hours each month processing bad checks. Over 900 bad checks are processed each year at the Dallas Administrative Center. Data for over 1,800 bad checks were provided by the Administrative Centers.

As a result of our study, we have determined that the average cost to the Service to process each bad check received is $30.11. We have rounded off the cost to $30.00.

The Service notes that the United States Customs Service has recently completed a review of the costs incurred in processing bad checks and has also concluded that a $30.00 fee is appropriate compensation for the costs it incurs in processing bad checks.

Regulatory Flexibility Act and Executive Order 12866

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and for the reasons stated in the preamble, it is certified that the proposed rule would not have a significant impact on a substantial number of small entities. Accordingly, the proposed rule is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. The proposed rule would not result in a ''significant regulatory action'' under Executive Order 12866.

List of Subjects in 8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

Accordingly, part 103 of chapter I of title 8 of the Code of Federal Regulations is proposed to be amended to read as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552(a); 8 U.S.C. 1101, 1103, 1201, 1252 note, 1252(b), 1304, 1356; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

2. Section 103.7 is amended by:

a. Redesignating paragraph (a) as paragraph (a)(1);

b. Removing in the fifth sentence of newly designated paragraph (a)(1) the term ''$5.00'' and adding in its place the term ''$30.00''; and

c. Removing the sixth sentence of newly designated paragraph (a)(1); and

d. Adding a new paragraph (a)(2) to read as follows:

§ 103.7 Fees.

(a) * * *

(2) A charge of $30.00 will be imposed if a check in payment of a fee, fine, penalty, and/or any other matter is not honored by the bank or financial institution on which it is drawn. A receipt issued by a Service officer for any such remittance shall not be binding upon the Service if the remittance is found uncollectible. Furthermore, credit for meeting legal and statutory deadlines will not be deemed to have been met if payment is not made within 10 business days after notification by the Service of the dishonored check.

* * * * *

Dated: September 12, 1995.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 95–23917 Filed 9–27–95; 8:45 am]

BILLING CODE 4410–10–M

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 103

Appropriateness of Requested Single Location Bargaining Units in Representation Cases

AGENCY: National Labor Relations Board (NLRB).

ACTION: Notice of proposed rulemaking.

SUMMARY: To set forth the decisive factors for the appropriateness of most single location units, the National Labor Relations Board (the Board) proposes to amend its rules to include a new provision specifying the appropriateness of requested single location bargaining units. This rule, as proposed, would be applicable to all Board cases in which the issue arises as to whether a unit of unrepresented employees at a single location is an appropriate unit in all industries currently under the Board's jurisdiction, excluding the utility industry, construction industry, and seagoing crews in the maritime industry. The Board is publishing this notice to seek timely comments and suggestions from the public, labor organizations, employer groups, and other interested organizations on how the Board may best fulfill its statutory obligation to determine an appropriate unit when a single location bargaining unit is requested. Although the Board has given the matter considerable thought, we emphasize that the rule we are proposing is just that—a proposal—and not a final decision on what the rule, if any, should be. In some sections of this document we are more tentative than others and have specifically invited commentary or empirical information. In other sections we have not expressly asked for comments but nonetheless welcome them.

DATES: All responses to this notice must be received on or before November 27, 1995.

ADDRESSES: All responses should be sent to: Office of the Executive Secretary, 1099 14th Street, NW, Room 11600, Washington, DC 20570, Telephone: (202) 273–1940. All documents shall be filed in eight copies, double spaced, on 8½ by 11 inch paper and shall be printed or otherwise legibly duplicated.

FOR FURTHER INFORMATION CONTACT: John J. Toner, Acting Executive Secretary, Telephone: (202) 273–1940.

SUPPLEMENTARY INFORMATION: The following is an outline of the contents of this Notice:

I. Background
II. Validity and Continuing Desirability of Rulemaking
A. Opposition to Rulemaking
1. Adjudication should be retained
2. All factors should be retained
3. Lack of empirical evidence
4. Rule unnecessary
5. Other concerns
6. Summary and tentative conclusions
B. Support for Rulemaking
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III. The Proposed Rule
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1. Generally
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B. Content of the Proposed Rule
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5. Minimum unit size
d. Summary and tentative conclusions
IV. Extraordinary Circumstances Exception
V. Docket
VI. Regulatory Flexibility Act
VII. Statement of Member Cohen

I. Background

On June 2, 1994, the Board published an Advanced Notice of Proposed Rulemaking (ANPR) in the Federal Register entitled ''Appropriateness of Requested Single Location Bargaining Units in Representation Cases.'' 59 FR 28501 (June 2, 1994). The ANPR set forth several reasons why the Board was considering rulemaking to determine the appropriateness of single location units for initial organizing cases in the retail, manufacturing, and trucking industries. The Board specifically stated, however, that it had made no decision on the propriety of rulemaking in this area.

The Board sought comments on: (a) The wisdom of promulgating a rule or rules on the appropriateness of single location units in retail, manufacturing, and trucking industries; and (b) the appropriate content of such a rule or rules. The ANPR suggested that there could be separate rules for each industry, or a single rule applicable to all three industries. To encourage discussion and comments on the scope and content of a possible rule, the ANPR suggested language for a rule. The suggested rule was a single rule which set forth factors which would be necessary for the rule to apply, i.e., to grant a requested single location unit. The rule also provided for ''extraordinary circumstances'' which would render the rule inapplicable and require the case be decided by adjudication. Interested parties also were invited to address what constitutes a ''single facility.'' Member Cohen and former Member Stephens filed a separate joint statement in the ANPR. The comment period ended July 29, 1994.

The Board received 41 written comments. Five comments were received from unions: Amalgamated Clothing and Textile Workers (ACTWU, C–8 [1]); Retail, Wholesale and Department Store Union, AFL–CIO (RWDSU, C–14); International Brotherhood of Teamsters (IBT, C–21); International Federation of Professional and Technical Engineers (PTE, C–22); and the AFL–CIO (AFL, C–33).

Trucking industry employers submitted 17 comments. Retail industry employers submitted 2 comments.

Seven comments were received from trade associations: U.S. Chamber of Commerce (USCC, C–7); National Association of Manufacturers (NAM, C–12); American Trucking Associations (ATA, C–13); National Council of Chain Restaurants (NCCR, C–24); Ohio Grocers Association (OGA, C–29); National Retail Federation (NRF, C–32); and the International Mass Retail Association (IMRA, C–41).

Four responses were received from policy organizations: National Right to Work Legal Defense Foundation (NRW, C–16); Council on Labor Law Equality (COLLE, C–18); Labor Policy Association (LPA, C–19); and Society for Human Resource Management (HRM, C–38).

Six comments were submitted by individuals.

II. Validity and Continuing Desirability of Rulemaking

Commentators generally did not take issue with the Board's statutory authority to engage in rulemaking concerning bargaining units. The general validity of the Board's statutory power to engage in rulemaking under Section 6 of the National Labor Relations Act (Act) is set forth fully in

[1] C–8 denotes Comment Number 8, for example.

the notices of proposed rulemaking for units in the health care industry. See, Collective-Bargaining Units in the Health Care Industry, Notice of Proposed Rulemaking, 52 FR 25142, 25143–45 (July 2, 1987); Second Notice of Proposed Rulemaking, 53 FR 33900, 33901 (September 1, 1988) and Final Rule, 54 FR 16336, 16337–38 (April 21, 1989), reprinted at 284 NLRB 1516, 1519–20, 1528, 1529–30 and 1582–83. Moreover, in *American Hospital. Association* v. *NLRB*, 499 U.S. 606 (1991), the Supreme Court upheld the Board's authority under Section 9(b) of the Act to resolve disputes regarding appropriate bargaining units by using its rulemaking authority.

The ANPR set forth several reasons supporting the Board's desire to engage in rulemaking for single location units, including the historical likelihood in most cases that a single facility unit will be found appropriate, the extensive litigation currently involved, the unnecessary delays frequently caused by such litigation, the need for more certainty in such cases, and the fact that many of the factors considered in such cases have not affected the outcome of single location cases.

After carefully examining all the comments, the Board continues to believe its reasons for desiring to engage in this rulemaking are valid and appropriate to effectuate the purposes of the Act. This Notice of Proposed Rulemaking (NPR) clarifies the Board's principal purpose for engaging in this rulemaking. That purpose is to let the public and practitioners know what is required for a single location unit to be found appropriate. The Board will, however, continue to decide novel and unusual cases by adjudication under the extraordinary circumstances exception to the rule, and therefore does not foresee a major change in results of these cases but merely a more expeditious method of deciding them. The Board believes the major benefit of this rulemaking will be a reduction in litigation over this issue and more efficient use of Board resources as well as improved service to the parties. In addition, because the law in this area will be codified and clarified, we believe the rule will facilitate the negotiation of stipulated election agreements.

A. Opposition to Rulemaking

1. Adjudication Should Be Retained.

The major contention of the majority of the commentators opposing rulemaking was that the case-by-case adjudication approach should be retained. (USCC, C–7 ; SAIA MotorFreight, C–9; LPA, C–19; COLLE, C–18; and NCCR, C–24[2]). Commentators maintained that this approach is an invaluable tool to ensure that all facts and factors are considered in deciding a particular case. In their view, this approach has worked well over the many years that the Board has decided single location cases by adjudication.

Although it is true that the Board has previously decided these cases by adjudication, the Act also permits the Board to decide representation cases by rulemaking. As discussed in great detail in the health care rulemaking, the courts, commentators, and others have urged the Board to use its dormant rulemaking authority to decide representation cases. See Collective-Bargaining Units in the Health Care Industry, Notice of Proposed Rulemaking, 52 FR 25142, 25144–45 (1987), and Final Rule, 54 16336, 16337–39 (April 21, 1989), reprinted at 284 NLRB 1516, 1518–20, 1580, and 1583. We believe that a rule concerning the appropriateness of single location units would be a proper use of that authority.

The Board recognizes one of the most frequently made arguments favoring adjudication is that it allows the parties to put before the Board all the available evidence which may be relevant to this issue in each particular case. While adjudication affords the parties the opportunity to present voluminous evidence in the hope that some of it will be found critical, a rule tells the parties, in advance, which evidence the Board has decided is critical. By announcing an intention to decide these cases by rule over adjudication, the Board is tentatively choosing between two legitimate methods of deciding representation cases. The Board is exchanging what is sometimes thought of to be the enhanced individual justice of adjudication, with its vagaries and unpredictability as to which facts are important, for the clarity and predictability of a rule. This choice may not be appropriate for all representation cases, but for the many reasons outlined in the ANPR and this Notice, the Board believes it is appropriate for the majority of single location cases.

The arguments for retaining adjudication fail to address one of our major reasons for intending to use rulemaking in this area, most notably, our desire to reduce extensive litigation and use of Board and party resources to decide routine single location cases. Although the Board's only other bargaining unit rulemaking addressed a history of difficult and inconsistent health care precedent, rulemaking also is appropriate for other reasons, including the desire to use our limited and declining resources more efficiently.

A major reason for litigation of this issue is the attempt by the parties to prove the existence of certain factors and the ''significance'' of those factors. Were the Board to establish a rule specifying under which fact situations a single location unit will automatically be found appropriate, there would be considerably less litigation over the significance or lack of significance of these facts, and the factors to which they relate.

The desirability of reducing litigation is evident from the current approach. The Board currently considers a number of factors in single location cases to determine whether the presumptive appropriateness of a requested single location has been rebutted. Often, the parties seek to prove the existence or absence of various factors by introducing voluminous testimony and documentary evidence concerning a myriad of facts. The parties litigate the significance of each fact and factor, and then the Regional Director and, if a request for review is filed, the Board determines whether the various factors exist and are significant. The parties and the public are left to their own devices to deduce which facts and factors may or may not be deemed most significant in a particular case, although, as indicated, the result in the majority of cases is that the single facility unit requested is found appropriate.

We believe our decision to decide these cases under a rule will have little effect on the substantive results of most routine single location unit cases. Moreover, as described later in this document, the rule provides for an extraordinary circumstances exception to address those novel and difficult cases which should be decided by adjudication.

2. All Factors Should Be Retained

Most commentators also argued that the Board should retain all the factors historically considered in deciding single location cases by adjudication. (SAIA, C–9; NAM, C–12; LPA, C–19 and NRF, C–32.) These factors, they contend, should continue to be determinative in single location cases. Their comments, however, have not, to date, given reasons to support this contention. As discussed more fully below in Section III.B., it seems to us, based both on our experience and a

[2] Citation of a particular comment is intended to be illustrative of the comments made regarding a particular point. Such citation does not necessarily represent the entirety of the comments.

reexamination of prior and recent cases, that only a few of the several factors historically considered in single location cases actually have made, or in the future should make, a material difference in the outcome of these cases.

Moreover, the current multi-factor approach is difficult for lay people and even for lawyers to understand. The current approach represents itself as a shifting, unpredictable mix of many facts and factors. No single fact or factor is said to be determinative. Board decisions weigh the evidence supporting the factors and decide, without setting forth any precise standards, that there is sufficient evidence supporting the existence of certain factors in one case, but not in another. The Board then pronounces that certain factors are ''significant'' or ''substantial'' to support a particular result. There are no announced, pre-set standards, however, for what is ''significant'' interchange, a ''substantial'' distance between locations, or local autonomy which is ''severely circumscribed.'' These imprecise and vague litigation-producing factors are the very ambiguities which rulemaking appears well-suited to address.

We believe that for many cases this litigation is wasteful and that this area is ripe for consideration of the alternative approach of rulemaking. While there remain cases which will benefit from adjudication and a thorough consideration of all the facts and factors, our experience indicates that the results of most single location cases can be made more predictable.

3. Lack of Empirical Evidence

Several commentators challenged the rule because no supporting empirical evidence regarding the number of single location cases was cited in the ANPR. (USCC, C–7; NAM, C–12; and IMRA, C–41.) The comments argued, for example, that because 80 percent of Board elections are by stipulation and consent, few cases are litigated and still fewer are likely to involve single location issues. Representatives of the trucking industry in particular cited the paucity of recent published decisions in that industry. (SAIA MotorFreight, C–9; ATA, C–13; Viking Freight et al., C–30.) Commentators from the trucking industry also disputed that the single location unit is usually found appropriate, based on cases decided in the 1980's. (Viking Freight, et al., C–30.)

It is commonly recognized, however, that single location unit issues have arisen with some frequency since the inception of the Act. See P. Hardin, Developing Labor Law, 468–72 (3d ed. 1992). In any event, the Board's desire to engage in this rulemaking is not predicated solely on the number of cases involving this issue. This proposed rule merely recognizes that a group of cases which are periodically and repeatedly addressed by the Board are appropriate for rulemaking for the reasons stated in the ANPR and this Notice.

4. Rule Unnecessary

Several commentators argued that rulemaking is unnecessary because the circumstances here are unlike those which gave rise to the health care rules. (NAM, C–12; COLLE, C–18; LPA, C–19; and MotorFreight, C–35.) The ANPR, however, did not represent that the circumstances here are the same as those which resulted in the health care rulemaking. As we indicated above, we do not believe that the reasons supporting this rulemaking must mirror the circumstances or the reasons which supported the health care rulemaking. We believe the ANPR and this Notice set forth a number of legitimate reasons for this rule, particularly the Board's desire that, in a significant number of cases, the specific factors necessary for an appropriate single location unit be made clear and known in advance to all interested parties. There are, however, common goals and benefits between the two rulemakings. As with the health care rules, the Board is attempting to bring more clarity to the issue of appropriateness of bargaining units and to avoid lengthy litigation, possibly inconsistent results, and unnecessary expenditure of limited Board resources and the resources of the parties. See Collective-Bargaining Units in the Health Care Industry, Notice of Proposed Rulemaking, 52 FR 25142, 25144–45 (1987), reprinted at 284 NLRB 1516, 1518–20.

5. Other Concerns

Some commentators believe that a rule simply will add to the advantage they claim unions already have in these cases (NAM, C–12); that the result will be increased legal fees to conduct campaigns and to negotiate contracts, and impairment of an employer's efficiency and productivity (TNT Reddaway Truck, C–10; NCCR, C–24; and NAM, C–12;); that it will be harder to administer contracts and transfer employees between union and non-union locations (NCCR, C–24; NRF, C–32,); and that by representing splintered or fragmented units, unions may use whipsaw strikes to enforce their bargaining demands (NRF, C–32; NCCR, C–24.).

Most of these concerns, however, exist whenever single facility units are found appropriate, regardless of whether they would be decided by adjudication or rulemaking. The major fear of these commentators appears to be that a rule will exacerbate these perceived problems by increasing organizing activity. A major purpose of the Act, however, is to encourage collective bargaining; increased organizing is not, therefore, a proper basis for not engaging in rulemaking. Moreover, experience with the health care rules demonstrates that it cannot be presumed that increased organizing will materialize because of a rule. See Burda, Hospital Elections Continue to Decline, Modern Healthcare 26, May 2, 1994, in which it was reported, relying on Board statistics, that the Board's health care rules ''haven't led to unbridled organizing efforts at hospitals, as many executives had feared.'' It has also been our experience that the health care rule has benefited the Board by reducing the delay in processing health care cases caused by litigation of unit scope questions. These previous delays were caused by lengthy hearings and the substantial time necessary to prepare decisions.

Hence, we do not believe that these concerns about unions' organizing efforts, which exist even outside of rulemaking, should preclude the Board's attempt to decide these cases more expeditiously. Moreover, where novel and unusual situations are presented, the rule provides for continued decision by adjudication.

6. Summary and Tentative Conclusions

Although the general tenor of many opposing comments was that a rule would be a radical departure from the Board's current treatment of these cases, we believe, to the contrary, that for routine cases there will be little substantive change in results. Thus, under adjudication the Board applies a presumption that single location units are appropriate. The presumption is based on Board decisions which note that Section 9(b) lists the ''plant'' unit as one of the units appropriate for bargaining. See *Dixie Belle Mills,* 139 NLRB 629, 631 (1962); *Haag Drug Co.,* 169 NLRB 877 (1968).[3] This

[3] We recognize that two Courts of Appeals have questioned the presumption. See, *NLRB* v. *Cell Agricultural Manufacturing,* 41 F.3d 389 (8th Cir. 1994), denying enf. in relevant part of 311 NLRB 1228 (1993); *Electronic Data Systems Corp.* v. *NLRB,* 938 F.2d 570 n.3 (5th Cir. 1991), enfg. 297 NLRB No. 156 (1990) (not reported in printed Board volumes). On the other hand, at least seven circuits have recognized the validity of the presumption. *Staten Island University Hospital* v . *NLRB,* 24 F.3d 450, 456 (2nd Cir. 1994); *NLRB* v. *Aaron's Office*

presumption of appropriateness is, to some extent, already a ''rule,'' as the Board recognized in the health care rulemaking. See Collective Bargaining Units in the Health Care Industry, Final Rule, 54 FR 16336, 16338 (1989), reprinted at 284 NLRB 1580, 1583 (1989), in which the Board noted, in support of those rules, that the Board has long made use of ''rules'' of general applicability to determine appropriate units, citing, inter alia, the single facility unit presumption.

Moreover, the Board has recognized that a single location unit furthers certain policy considerations with regard to Section 9(b). In *Haag Drug Co.*, 169 NLRB 877 (1968), the Board stated that Section 9(b) directs the Board to ''assure employees the fullest freedom in exercising the rights guaranteed by this Act'' and, absent sufficient evidence to destroy the separate identity of the single location, the employees' ''fullest freedom'' is maximized by treating the single location unit as normally constituting the appropriate unit.

We recognize, however, that the statutory goal of assuring employees their fullest freedom in exercising their rights is tempered by the Board's desire not to unduly fragment an employer's workforce. Although we continue to believe that a rule is desirable, in view of the concerns of some commentators about the potential for fragmentation of an employer's workforce, we solicit comments addressing any available empirical evidence regarding the feasibility of bargaining as reflected in the relative success (or lack thereof) of administering contracts, transfers, etc., in workforces which are partially or completely organized by location versus those workforces which are organized on a multi-location basis. We invite these comments as to each of the specific elements of the rule outlined in Section III.B. of this proposed rule.

In sum, we believe the net effect on Board law of this proposed rule is that its results will largely be consistent with our current treatment of single location cases and, hence, not a significant departure from current law, although more rationally explained and more widely disseminated and understood. We believe, therefore, that the arguments for retention of the current adjudicatory approach appear to underestimate the benefits of the proposed rule, while overstating its practical impact on the substantive result in most routine single location cases.

B. Support for Rulemaking

All five unions which submitted comments reiterated the reasons mentioned in the ANPR supporting the decision to promulgate a rule or rules. The AFL (C–33) and ACTWU (C–8) also cited reasoning from the Board's health care rulemaking: that case by case analysis should be abandoned in favor of administrative rulemaking where an industry is susceptible to rules of general applicability; that courts and academics have long favored use of the Board's rulemaking powers because the current method is inefficient; that several state labor boards determine bargaining units by rules; and that by codifying its jurisprudence in this area, the Board can make its processes more understandable.

The AFL noted that the health care rulemaking has met with well deserved praise from commentators and the Administrative Conference of the United States. This praise should encourage the Board to continue to move away from ''Talmudist'' methods of adjudging the appropriateness of bargaining units and from making it difficult for the outside world to know which factors, if any, are crucial. The AFL contends that rulemaking on single location units is a particularly appropriate next step.

C. Conclusion

The Board believes that a rule will be of service to the public and the labor bar to set forth more clearly the decisive factors in most single location cases. Moreover, the public and the labor bar will know, in advance, which facts and factors are critical for most single location cases. Members of the labor bar will be better able to advise their clients about which issues should or should not be litigated. Parties will not have to engage in drawn out litigation to determine if a unit is appropriate; in many cases, simple application of the rule will tell them.

Knowing in advance what facts are determinative will eliminate much of the confusion and uncertainty inherent in the current approach. We believe much of the current litigation is driven either by parties' attempts to persuade the Board that facts and factors exist in support of a particular result, or by the mistaken belief as to which facts or factors are critical for finding a single location unit appropriate. This litigation exists despite the fact that, in the majority of cases, requested single location units are found appropriate. Through this proposed rule, we intend to define those facts and factors which will be determinative. It no longer will be necessary in most cases to persuade the Board that certain facts exist and then for the parties to place their interpretation of those facts before the Board, not knowing which facts or factors will be deemed determinative.

We believe, therefore, that the proposed rule will cut litigation costs and the time currently and unnecessarily expended by the parties and the Board in most single location cases. The Board and its Regional Directors should have fewer and hopefully shorter transcripts to read and decisions to write. Knowing in advance which facts are necessary to support a single location finding, the parties can concentrate their resources on the election or collective bargaining if the unit is appropriate under the rule.

We also anticipate that the proposed rule may lead to more stipulated election agreements. Currently, parties seeking to reach a stipulated election agreement for a single facility unit must negotiate over a number of often unclear and little understood factors. The proposed rule, however, codifies what will in most cases establish the appropriateness of a single facility unit and uses only a few reasonably clear factors. Because the parties will be better able to understand this area of the law, they will be in a better position to negotiate a stipulated election agreement; they will no longer need to waste time and effort in disputing what we have determined are essentially immaterial factors.

The parameters of the proposed rule, however, are not designed to decide every case involving single location units, only the large percentage of cases that are neither close nor novel. When the parameters of the proposed rule are met and there are no novel issues, litigation will be unnecessary. When, however, the parameters are not met, the rule will not apply. Furthermore, even if the proposed parameters are met,

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Furniture Co., 825 F.2d 1167, 1169 (7th Cir. 1987); *NLRB* v. *Child World, Inc.*, 817 F.2d 1251, 1253 (6th Cir. 1987); *Beth Israel Hospital* v. *NLRB*, 688 F.2d 697 (10th Cir. 1982), modifying and reaffirming en banc 655 F.2d 1028 (10th Cir. 1981); *NLRB* v. *Living and Learning Centers, Inc.*, 652 F.2d 209, 212 (1st Cir. 1981); *Spring City Knitting Co.* v. *NLRB*, 647 F.2d 1011, 1014 (9th Cir. 1981); *NLRB* v. *Western & Southern Life Ins. Co.* v. *NLRB*, 391 F.2d 119, 123 (3d Cir. 1978), cert. denied, 393 U.S. 978 (1968). We note that the facilities in *Cell* were less than a mile apart and thus, the rule we propose would not have applied in that case in any event. In *Electronic Data Systems*, the court pointed out in that in a prior case arising in that Circuit, *NLRB* v. *Purnell's Pride*, 609 F.2d 1153, 1160–61 & nn.4 and 5 (1980), that court expressed the opinion that the presumption was confusing and useless in practice. Without agreeing with this court's view of the presumption, we believe our clear delineation as to which factors are critical to finding a single location unit appropriate will remove much of the confusion regarding the appropriateness of most requested single locations units, will be useful in practice, and to that extent may satisfy some of the court's concerns.

extraordinary circumstances may be shown to exist, and cases will be adjudicated. It is only these unusual close cases which will benefit from and, absent stipulation, receive adjudication.

III. The Proposed Rule

A. Scope

1. Generally

The ANPR stated that the Board proposed promulgating a rule, or rules, to govern single location units in the retail, manufacturing, and trucking industries. The rationale for these three industries was that ''large groups of cases have centered'' on them, that factors considered in these cases are well-settled, and that the outcomes of single facility cases are reasonably predictable.

Many commentators opposed grouping all employers of a single industry under one rule, and others, particularly the trucking industry, objected to grouping their industry with retail and manufacturing. (ATA, C–13; NAM, C–12; NRF, C–32; SAIA, C–9; Con-Way Southern Express, C–26; Viking Freight System, et al., C–30). These comments generally asserted that industries and employers are too diverse to be covered by a single rule. They also contended that it would be difficult to define coverage of employers under a rule or rules, presumably because of the common and overlapping functions and services of employers. None of the commentators opposing a single rule, however, offered thoughts on how the Board could structure separate rules covering separate industries.

The AFL (C–33) and IBT (C–21), on the other hand, contended that a single rule is preferable to three separate rules for the three industries mentioned in the ANPR. The AFL contended that if the justification for the rule in the three industries is the large number of cases centered on them, there would seem to be no reason to distinguish among them for purposes of a rule. Moreover, the AFL contended that there was no reason to exclude non-trucking portions of the transportation industry from the rule.

2. Industries Covered

a. Reasons. The Board's original intention for this rulemaking was to limit the coverage to these three industries because it was our belief that the bulk of the single location cases fell into these categories. Although we approached the coverage issue from a quasi-statistical point of view, commentators representing unions, industry, and policy organizations approached this as a practical issue. While industry, policy organization, and trade association commentators generally thought any rulemaking was inappropriate, and union commentators thought rulemaking was appropriate, each discussed the problem of covering so many diverse employers under rules. All pointed to the difficulty of classifying industries and then determining which employers fall under a particular industrial category. All emphasized that many industries, particularly the transportation industry, are becoming difficult to categorize as they provide an array of services beyond their nominal industrial classification.[4]

The AFL suggested that the solution to these questions of categorization was to broaden coverage of the rules, while the industry, policy organization, and trade association commentators generally offered no specific suggestions on how to classify industries and employers. The LPA (C–19), however, although opposed to rulemaking in this area, suggested that if the Board does decide to adopt rules, ''[i]t would not be wise to formulate rules specifically tailored to each industry.'' The LPA apparently was concerned that industry-specific rules might lead to ''ever more narrow rules,'' presumably in other areas. The LPA thought any rule adopted should be as broad as possible.

The commentators' responses regarding the practical difficulty of attempting to narrow the scope of coverage reminded us that the Board's current approach generally does not provide for separate standards, or ''rules,'' for separate industries. With the few exceptions discussed below, the Board treats all industries the same with regard to single location units and applies the same standards. The Board applies the single location presumption to analyze the appropriateness of requested single location units, and considers the same factors relevant in determining whether the presumption has been rebutted. When the standard has been cited in trucking cases, the Board has cited and applied the same standard applied in retail cases. See *Bowie Hall Trucking,* 290 NLRB 41 (1988), citing *Sol's,* 272 NLRB 621 (1984). When the standard has been cited in retail cases, the Board has cited and applied the same standard applied in trucking industry cases. *Globe Furniture Rentals,* 298 NLRB 288 (1990), citing *Dayton Transport Corp.,* 270 NLRB 1114 (1984). The standard cited, therefore, is the same regardless of the industry. See *Esco Corp.,* 298 NLRB 837 (1990), in which the Board relied on cases from the manufacturing, retail drug store, retail apparel shop, and trucking industries; *Haag Drug Co.,* supra 169 NLRB at 878, in which the Board applied the presumption to retail chains, noting that the single location factors are no different from those applied to manufacturing or insurance industries.

Because the Board currently applies the same single location standards to most industries, we have concluded it does not make sense to change that practice and have different rules for different industries. We, therefore, in response to the comments, propose that the scope of the rule apply to all industries to which the Board currently applies the single location presumption. Besides conforming to the current practice, this coverage will be, practically speaking, simpler and easier to administer. Even were we to attempt to define industrial classifications of employers, the comments concerning the changing functions and services of employers indicate to us that in many instances we would still encounter difficulty, and parties may well have to resort to litigation to determine which set of rules apply. We also believe that a broad based rule will avoid the possibility of inconsistent findings based on different rules. Finally, even for cases that do not involve single location units, as for example cases involving unit placement or composition, the Board generally has applied the same community of interest standards without regard to the industries involved. Having a single rule for all industries for single location issues would be consistent with that approach as well.

b. Excepted industries. As indicated, we propose a few narrow exceptions to coverage under the rule, although as discussed below, we specifically invite comments on other exemptions from the rule and supporting reasons. The proposed exceptions involve industries or segments thereof as to which the single facility presumption has not been applied. Thus, public utilities would be excluded from coverage because in that industry the Board has traditionally

[4] This was vividly illustrated by the responses of some trucking industry commentators who persuasively contended that ''there is no such thing as the trucking industry,'' stating that the so-called trucking industry is evolving into much broader areas such as the ''delivery'' or ''transportation'' industry. (MotorFreight, C–35 at 3; Emery Air Freight, C–36 at 3.). The Board itself has addressed this same problem in recent cases involving segments of the package handling industry. See *United Parcel Services,* 318 NLRB No. 97 (Aug. 25, 1995), and *Federal Express,* 317 NLRB No. 175 (July 17, 1995); see also, *International Longshoremen's Association,* 266 NLRB 230 (1983), where in a similar vein the Board, inter alia, struggled with the appropriate characterization of containerization in the shipping industry (whether more like trucking or more like shipping) with regard to the lawfulness of the alleged work preservation objectives of the International Longshoremen's Association.

regarded a system-wide utility unit to be the ''optimal unit.'' See, e.g., *New England Telephone and Telegraph,* 280 NLRB 162 (1986). Likewise, crews on ocean-going vessels would be excluded, as the presumptively appropriate unit there historically has been found to be ''fleet-wide'' (which is different from employer-wide). See, e.g., *Moore—McCormack Lines, Inc.,* 139 NLRB 796 (1962). The Board proposes that employers primarily engaged in the construction industry will be excluded from coverage under the rule because identifying the ''location'' in a construction case would frequently be difficult and require litigation. Construction industry employers typically have several ongoing construction projects at different locations, each of which could be considered a separate site or location. Also, the separate projects are usually of short duration. Thus, the single facility presumption is not readily applicable to that industry.

As we noted above, although we believe a rule with broad scope is desirable, the Board is open to comments on whether other industries should be excluded. Although several comments to the ANPR argued that a single rule would fail to take account of the uniqueness and diversity of particular industries or employers, we believe that none of these commentators demonstrated this uniqueness or diversity in any persuasive manner. Indeed, none suggested a specific rule for their industry. We hope commentators who argue for an exception will justify why an industry which currently is subject to a uniform standard under adjudication nevertheless should not be subject to a uniform standard under a rule.

Several trucking industry commentators pointed out that unlike retail and manufacturing, requested single location units in this industry must be evaluated differently because drivers are mobile while employees in other industries remain relatively fixed in one location. (SAIA, C–9; Con-Way Southern Express, C–26; Viking Freight, et al., C–30.) We are cognizant of this concern and invite more specific commentary about the ambulatory nature of this industry, and whether and in what manner the final rule should take account of that difference.

c. Summary. Having a single rule and broadening the coverage of the rule to most industries is consistent with the Board's handling of single location cases by adjudication. Under adjudication, the Board generally has applied the same factors to all industries. By a single rule, the Board will avoid the possibility of confusion caused by different industry rules, and by the inconsistent results that might follow. Having a single rule also will be consistent with the goals of creating clear and uniform standards, reducing litigation, and processing these cases more efficiently.

3. Applicability to Board Cases

The ANPR stated that the proposed rulemaking would be applicable to ''initial organizing petitions.'' We have, however, modified the applicability of the rule in two respects. First, the proposed rule substitutes ''unrepresented'' for initial organizing to avoid possible confusion over the language ''initial organizing.'' We believe this better expresses our original intention in the ANPR of applying the rule to locations where the employees currently are not represented for collective bargaining. Thus, if a union previously but unsuccessfully attempted to ''organize'' the location separately or as part of a larger bargaining unit, the rule would still apply to any subsequent petition the union might file for a single location unit, provided the employees are not represented. The same would be true where other locations of the employer are already represented, including those separately represented on a multi-location basis.

Second, although the rule in the ANPR applied to representation petitions seeking an election (RC and RM petitions), we propose that it be applicable to any other type of Board case in which the issue of a single location unit involving unrepresented employees arises. We believe this approach is necessary to avoid potentially inconsistent treatment between single location cases arising under all election petitions (except decertification petitions), and those arising in unfair labor practice cases. See, e.g. *Gissel* bargaining unit cases, *NLRB* v. *Gissel Packing Co.,* 395 U.S. 575 (1969). The rule also would apply in cases presenting an accretion issue, since a group of separately located employees cannot be accreted if they can be considered a separate appropriate unit. See, *Compact Video Services,* 284 NLRB 117, 119 (1987); *Gitano Distribution Center,* 308 NLRB 1172 (1992). The applicable Board law in these cases would be the rule, unless extraordinary circumstances could be established.

The proposed rule, however, is subject to a number of limitations: 1. As the rule is limited to requested single facility units, it could not be invoked to defeat a request for a broader unit; in such situations the single facility unit presumption is inapplicable. See, *NLRB* v. *Carson Cable,* 795 F.2d 879 (9th Cir. 1986); *Capitol Coors Co.,* 309 NLRB 322 (1992). Thus, the rule will have no bearing on petitions for broader units. 2. The rule will not apply to petitions filed under *General Box Co.,* 82 NLRB 678 (1949), in which a voluntarily recognized union seeks an election for the benefit of certification. Such an election would involve employees currently represented, albeit through voluntary recognition. 3. As proposed, the rule does not address the question of the appropriate unit within a facility: that is, the proposed rule does not preclude units that are less than wall-to-wall at the facility requested. Our current case law does not require a wall-to-wall unit if the unit is otherwise appropriate.[5] 4. Although there were comments urging the Board to apply the rule more broadly to decertification petitions (NRW, C–16), the Board has long held that the appropriate unit for decertification elections must be coextensive with either the unit previously certified or the one recognized as the collective bargaining unit. *Delta Mills,* 287 NLRB 367, 368 (1987); *Campbell Soup Co.,* 111 NLRB 234 (1955). The Board applied this principle in the Health Care Rulemaking as well. See Collective-Bargaining in the Health Care Industry, Second Notice of Proposed Rulemaking, 53 FR 33900, 33930 (1988), reprinted at 284 NLRB 1528, 1570 (1988); *North Country Regional Hospital,* 310 NLRB 559 (1993). We see no reason to depart from well-established Board precedent, and thus, the proposed rule will not apply to decertification petitions.[6]

4. Summary and Conclusions

The scope of the rule as originally proposed would be revised, therefore, to make it applicable to all industries under the Board's jurisdiction, except the construction industry, public utilities, and the maritime industry with respect to ocean-going crews. The rule would apply to all Board cases in which an issue is whether a single location unit of unrepresented employees constitutes a separate appropriate unit. This would include election petitions, unit clarification petitions, and unfair labor practice cases. The rule could not be used to defeat broader units sought by a petitioner or other employee

[5] Moreover, as with the Health Care Rule, this rule does not prevent the parties from stipulating to a different unit.

[6] This also follows from the fact that decertification elections are by their nature conducted in units already represented, whereas the rule applies only to requested units of unrepresented employees.

representatives. The rule would not apply to decertification petitions.

We believe that we have excluded all those industries to which the Board does not apply the single facility presumption or that are not appropriate for this rule. As indicated above, however, the Board invites comments from other industries or employers which seek to justify exclusion from the rule. Moreover, as indicated, while the scope of this rule is broad and covers most industries under the Board's jurisdiction, if novel issues arise with regard to a particular industry, and extraordinary circumstances are established, the rule will not apply and the case will be litigated by adjudication.

B. Content of the Proposed Rule

1. Factors Recited in Prior Single Location Cases

a. Introduction. The Board's recent decision *J&L Plate,* 310 NLRB 429 (1993), set forth a large number of factors ostensibly applied in single location cases:

> A single plant or store unit is presumptively appropriate unless it has been so effectively merged into a comprehensive unit, or is so functionally integrated, that it has lost its separate identity. *Dixie Belle Mills,* 139 NLRB 629, 631 (1962). To determine if the presumption has been rebutted, the Board looks to such factors such as central control over daily operations and labor relations, including the extent of local autonomy; similarity of skills, functions and working conditions; degree of employee interchange; distance between locations; and bargaining history, if any. *Esco Corp.,* 298 NLRB 837, 839 (1990).

The suggested rule in the ANPR would find a requested single location unit an appropriate unit where: (a) A given number of employees were employed; (b) no other facility of the employer was located within a specified distance; and (c) a supervisor under the Act was located on the site, presumably to oversee the operation of the facility requested. A showing of extraordinary circumstances would render the rule inapplicable, and refer the case to adjudication, such as where a set percentage of the employees in the unit sought performed work at another location for a set percentage of the time.

In proposing the content of the rule, we have set forth those factors which in our experience have significantly affected the outcome of single location cases under adjudication. The Board noted in the ANPR that several factors, while cited and theoretically considered in single location cases, seldom have made a difference in the outcome. It would be difficult to prove which factors cited in hundreds of cases were, in fact, determinative. Nonetheless, part of rulemaking involves an effort to simplify, codify, and predetermine results by attempting to isolate the more significant factors. Discussed below are our reasons for selecting those factors which we believe should be (and for the most part, have been) most material to deciding single location cases, and an explanation of the evidence necessary to support the existence of those factors under the proposed rule.

Many commentators argued that the Board should retain all the factors historically said to be considered under adjudication. In the ANPR, we stated that most of these factors, while cited and ''considered,'' usually are not determinative and that only a handful of factors have had an important impact and effect on the outcome of single location cases. In our view, the factors of geographic distance, temporary employee interchange, and local autonomy as measured by a statutory supervisor on the site for a regular and substantial period are almost always material in single location cases. Factors such as functional integration, centralized control, common skills, permanent transfers, and bargaining history, while frequently mentioned, have for the most part not been material factors in deciding single location cases. Although not a current factor in single location cases, we propose that for the reasons stated below, the units granted under the rule should be limited to locations with a minimum number of employees. At this time we propose to adhere to 15 employees provided in the ANPR as the minimum size of a unit but are undecided whether this number of employees is too large or too small and request comments on the appropriate number.

b. Non-material factors.

1. Introduction. The factors which we have decided are not substantially material to requested single location units are generally relevant and material to community of interest issues and to other unit scope issues; they are particularly relevant and material to requested multi-facility units. We believe it is largely because of this relevancy to unit scope issues that the Board has traditionally, but nominally, included these factors in analyzing the appropriateness of single facility units. It does not, however, necessarily follow that because these factors are material to finding multi-facility units appropriate that they are also material to finding single facility units inappropriate. Any reasonably complex business enterprise has a multitude of potentially appropriate units. And a union is not required to seek the most appropriate unit but only an appropriate unit. *P. Ballentine & Sons,* 141 NLRB 1103 (1963). Although these factors may be material to deciding other unit scope issues, we find for the reasons discussed below that they are largely not material to deciding whether a requested single location unit is an appropriate unit.

2. Functional integration. The general standard for single location cases states that a single plant is presumptively appropriate ''unless it has so effectively merged into a comprehensive unit, or is so functionally integrated that it has lost its separate identity.'' *J&L Plate,* supra. Functional integration, therefore, is generally stated to be relevant to any unit scope issue, including the appropriateness of a single location unit. When applied, however, functional integration has been largely subsumed by the specific factors upon which the rule we now propose relies—geographic separation, lack of significant temporary interchange, and local autonomy. To the extent that other aspects of functional integration exist, we believe they are largely immaterial to determining the appropriateness of single location cases.

There have been Board decisions which have purported to rely, in part, on specific evidence of ''plant integration,'' citing the use of similar machinery, the transfer of machinery and materials between plants, and in general, collaboration of two or more plants to produce a common product. See, e.g., *Beaverite Products,* 229 NLRB 369 (1977); *Kent Plastics Corp.,* 183 NLRB 612 (1970); and *Kendall Co.,* 181 NLRB 1130 (1970). Other cases have recited evidence of the ''continuous flow'' of production or the ''single order flow process'' to find that there is integration. See, *Unelco Electronics,* 199 NLRB 1254 (1972); *Neodata Product Distribution,* 312 NLRB 987 (1993). In virtually all these cases, however, integration was supported by evidence of significant employee interchange, limited distance between plants, or limited local autonomy. Moreover, in many instances the Board has found that evidence of ''plant integration'' or the coordinated processing of orders was insufficient to rebut the single facility presumption in the absence of the critical factors of significant interchange, close geographic proximity, or too limited local autonomy. See *Courier Dispatch Group,* 311 NLRB 728, 731 (1993); *J&L Plate,* supra; *Hegins Corporation,* 255 NLRB 1236 (1981); *Penn Color,* 249 NLRB 1117 (1980); *Black & Decker Manufacturing,* 147 NLRB 825, 828 (1964).

Functional integration then, seems to be less significant as a separate factor than as another way of stating the conclusion that the evidence demonstrates that the single location has merged into the more comprehensive, or multi-facility unit. Thus, while a few Board decisions conclude that the single facility presumption has been rebutted because the single plant is ''highly integrated'' with other facilities, this conclusion is generally based on the more specific factors we propose now should be in the rule. In our view, it would be expected that plants that are so integrated as to rebut the presumption are close together, have significant interchange, and have little local autonomy.

Few would disagree that today most companies with more than one location are more or less functionally integrated in one form or another. Production may be integrated in the sense that different parts of the company's products are manufactured in different plants, and then shipped from one to another to be assembled. Records, orders, and other information may be integrated via computers or other means of direct communication. We believe, however, that product, administrative, or operational integration does not have any necessary or direct impact on the employees' relationship with their counterparts at other locations, absent evidence of the separate supporting factors we have included in the rule. See, *Penn Color*, 249 NLRB at 1119; *Black & Decker Manufacturing,* 147 NLRB at 828. The more significant principle in determining whether a single location unit is appropriate is not whether there is functional integration, but whether employees in the group sought have lost their ''separate identity.'' Our conclusion that, absent extraordinary circumstances, functional integration is immaterial to finding the single location unit appropriate is consistent with this standard.

3. Centralized control. Few businesses today with more than one location fail to maintain centralized control over the conduct of operations. In virtually all single location cases, this factor is essentially presumed and does not affect the Board's determinations. Centralized control over operations is a matter of good business practice and does not, in our view, affect the community of interest between employees at different locations. As with functional integration, although Board decisions may cite an employer's ''highly centralized operations'' as evidence supporting the multi-facility unit, it is our sense that other, more critical factors usually affect the outcome of the case. See *Courier Dispatch Group,* 311 NLRB 728, 731, in which the Board, while acknowledging the employer's centralized administrative and operational functions, nevertheless affirmed the Regional Director's finding that the employer had failed to rebut the single facility unit presumption, noting in particular the lack of significant employee interchange. Accord: *Haag Drug Co.*, 167 NLRB at 878. Moreover, even though personnel decisions ultimately may be decided at an employer's headquarters, that does not preclude the existence of sufficient local autonomy to support a single facility unit. See *J&L Plate,* 310 NLRB 429, in which personnel policies, as in most cases, were centrally determined but the single location unit was found appropriate as there were local autonomy, minimal interchange, and, as might be expected, separate functions performed at each plant.

4. Common skills, functions, and working conditions. Although common skills, functions, and working conditions among locations are often recited by the Board as factors to be considered in determining whether the single facility presumption has been rebutted, they seldom are relied on by the Board to find a requested separate unit appropriate. Logically, these factors may be relevant to show that there is a potential for interchanging employees from location to location; employees could not easily be interchanged if their skills were not similar. It is, however, the actual extent of temporary interchange, not its potential, that is material to determining whether the group of employees sought has retained a separate identity. We do not believe that, merely because employees at more than one location perform the same work, and use the same skills, employees necessarily lose their separate identity. Moreover, some businesses, including most chain stores, many warehouse and distribution facilities, and some manufacturers, operate with geographically dispersed but substantially identical facilities in which employee skills, functions, and working conditions would predictably be essentially identical. Yet, this does not mean that such facilities must be combined into a broader unit merely because of this factor.

5. Permanent transfers. We tentatively conclude that the factor of permanent transfers is immaterial to the appropriateness of a single location unit. Unlike temporary interchange, permanent transfers do not seem to us to demonstrate any continuing link between the employees at different locations. Even where the Board has stated it has considered permanent interchange supportive of a multi-facility unit, it is the temporary interchange which we think has proved significant in the Board's findings. See, *Sol's,* 272 NLRB 621, 623 (1984). Moreover, the Board recently stated in *Red Lobster,* 300 NLRB 908, 911 (1990), that permanent transfers are a ''less significant indication of actual interchange.'' Accord: *J&L Plate,* 310 NLRB at 430. Frequently, permanent transfers are voluntary or occur for the convenience of the employee involved and do not in any significant manner facilitate or foster a common identity among employees at two or more facilities. See, e.g., *Lipman's, A Division of Dayton—Hudson Corp.,* 227 NLRB 1436, 1438 (1977).

6. Bargaining history. Bargaining history is given substantial weight to support the continued appropriateness of an existing unit; the Board is reluctant to disturb an established unit that is not repugnant to the Act or does not clearly contravene established Board policy. *Washington Post Co.,* 254 NLRB 168 (1981). See also *Batesville Casket Co.,* 283 NLRB 795 (1987), in which the Board declined to clarify an existing two-company existing unit that had been in existence without substantial changes for many years. Cf. *Rock-Tenn Co.,* 274 NLRB 772 (1985). Although bargaining history has been cited as a relevant factor in determining the appropriateness of a single facility unit, we believe it is, for the most part, immaterial to cases covered by the proposed rule.

In cases involving petitions to represent single facility units the proposed rule applies only to unrepresented employees. Thus, there would be no immediate, current bargaining history affecting the requested employees, and the rule would not be disruptive of existing collective-bargaining units. Also the rule would not apply to petitions seeking to sever a group of employees from a larger group of currently represented employees, as for example, existing multi-facility units. Compare, e.g., *Kaiser Foundation Hospitals,* 312 NLRB 933 (1993).

Past bargaining history affecting currently unrepresented employees may be material in showing that a multi-facility unit is appropriate, and to that extent, may have some limited bearing on the appropriateness of a requested single facility unit. In those cases, however, we believe that the factors deemed significant by the rule—geographic separation, local autonomy, and lack of significant interchange—

would outweigh any recent, but extinguished, bargaining history.

In a few situations, however, bargaining history may play a material role in determining the appropriateness of a single-facility unit. In *Joseph E. Seagram & Sons*, 83 NLRB 167 (1943), the Board stated that it would require one group of employees to organize on a multi-plant basis whenever other classifications of employees of the employer had organized themselves on that basis. The Board deemed controlling the overall bargaining pattern in these circumstances. In a later case, *Seagram*, 101 NLRB 101 (1952), the Board modified this holding and concluded that although the bargaining history of one group of employees was ''persuasive,'' it would not necessarily control the bargaining pattern for every other group of unorganized employees. After considering the circumstances, the Board in the second *Seagram* case found the petitioned-for employees could constitute an appropriate unit. Accordingly, if an employer can demonstrate that other classifications of its employees currently are organized largely or exclusively on a multi-plant basis, we could arguably consider that as an extraordinary circumstance. The Board may wish to weigh the significance of that bargaining history, and hence, the appropriateness of the unit sought would be decided by adjudication and not under the rule. We solicit comments concerning these issues.

7. Conclusion. Our overall experience has been that these ''non-material'' factors have not been determinative in deciding single location cases, but, at best, have been used as secondary, bolstering rationale. Although these factors may be relevant to the extent that they show a requested broader unit to be appropriate, they will not, under the rule, be considered controlling to establish that a single location unit is or is not an appropriate unit.

c. Material factors. 1. Introduction. In setting forth the contents of the proposed rule, we reiterate that we have tried to formulate a clear and relatively straightforward rule for determining whether a single location unit is appropriate. Although prior Board decisions were used as guides for establishing material factors, the Board also was guided by which factors it believes are objective and easily ascertainable. We believe the factors chosen are consistent with these goals, but emphasize again that the rule is a proposal only.

The rule suggested in the ANPR incorporated the factors of interchange, geographic distance, local autonomy, and number of employees in the unit. Below are described in greater detail the reasons the Board believes these factors are material and why the rule has been drafted in this manner. Virtually none of the industry, policy organization, or trade association commentators commented on the factors or the language that was proposed as part of the rule. The Board expects with the publication of this Notice, however, that more comments will be forthcoming on the contents. As stated at several points in this document, this is merely a proposed rule. Comments are invited as to what should and should not be in the rule, consistent with our goals for this rulemaking.

2. Temporary employee interchange. In our opinion, no other factor is more commonly determinative for or against the appropriateness of a requested single location unit than temporary employee interchange. Very few cases have been decided without an evaluation of this factor. See, *Executive Resources Associates*, 301 NLRB 400 (1991), in which the Board noted that the lack of significant interchange of the employees in the requested single facility is a ''strong indicator'' that the employees enjoy a separate community of interest; *Spring City Knitting Mills* v. *NLRB*, 647 F.2d 1011, 1015 (9th Cir. 1981), stating that interchange is a ''critical factor'' in determining if employees share a community of interest. The presence or absence of temporary interchange is one of the clearest reflections of whether there is likely to be common or separate identity between two or more locations. The more that employees from one facility work at a second facility and with its employees, the greater will be their common interests in the working conditions of both plants.

Because evidence regarding the level of interchange usually is in the possession of the employer, we have drafted the proposed rule so that this element need not be established for the rule to apply, but rather the employer must prove it, in effect, as an affirmative defense. Thus, if the level of interchange exceeded a particular level, it would be an extraordinary circumstance, the rule would be inapplicable, and the case would be decided by adjudication. As described more fully in the section describing extraordinary circumstances (Section IV), the employer would have to demonstrate affirmatively, first by an offer of proof and then by supporting evidence, that the level of interchange involves 10 percent or more of the employees at the requested location for 10 percent or more of the employees' time. It would be presumed to be below 10 percent unless the contrary is shown.

We propose measuring interchange by percentage so that the relative amount of interchange can be compared uniformly. Requiring that interchange be judged both as to the relative number of employees and the relative amount of time they spend at the second facility is, we think, a more precise measurement of interchange. In a slight modification of the rule suggested in the ANPR, we have added a time frame of the one preceding year for measuring the interchange, with the year running from the date the petition is filed for election cases, and from the date a bargaining obligation would arise for unfair labor practice proceedings.

Our use of the 10 percent threshold arises from our view that, for interchange to be an extraordinary circumstance, it must be at a level greater than *de minimis*. We propose 10 percent, but are open to suggestions of alternative levels or measurements. The IBT (C–21) contended that the 10 percent threshold was too low and should be increased to 25 percent to be more consistent with Board precedent, but cited no cases for this assertion. We encourage comments on this alternative as well as on the entire method of judging interchange in the proposed rule. For example, the time employees spend at another location could be measured as percentage of the overall number of work hours at the requested location. Or, there could be one measure for the relative number of employees transferring and another measure for the amount of time the employees spend away from the requested facility. The interchange also could be measured by the number and frequency of employees transferring into the requested facility.

We reiterate that a level of interchange which exceeds the proposed level would not necessarily mean that the unit is inappropriate but only means that the case be decided by adjudication. The Board has not set a standard percentage in prior cases.[7] If there is to be a rule, however, there must be a standard against which the amount of interchange is judged, and we specifically invite suggestions and comments on how best to set forth a reasonable, clear, and workable standard.

3. Geographical separation.We also propose that the rule take account of distance between facilities. As

[7] The Ninth Circuit, however, has characterized levels of interchange of 10% and 8% as ''relatively low'' in cases enforcing Board orders to bargain in which the single facility was found appropriate. See, *Spring City Knitting Co.* v. *NLRB*, 647 F.2d 1011 (1981) and cases cited therein.

proposed, the rule requires that no other facility [8] be within one mile of the proposed unit. Although distance is not as significant a factor as interchange in single location decisions, we believe that where the facilities are a mile or more apart, there is sufficient separation to justify a separate unit, if the other factors are met. Although the AFL–CIO (C–33) and the International Federation of Professional and Technical Engineers (PTE, C–22) argued that interchange should be the only factor considered in single location cases, considering both the level of interchange and the distance between locations ensures that there is neither significant actual interchange nor an immediate potential for interchange. Although we recognize that there are Board decisions in which there has been significant interchange despite the distance of 1 mile that we propose here, or conversely, lack of interchange where the distance between facilities is less than a mile, we are satisfied that where both standards are met, a separate facility unit will be appropriate, absent extraordinary circumstances.

Although a trucking industry commentator contended that geography is an unreliable guide in that industry (MotorFreight, C–35), this is only one factor, and the factor of interchange will help determine if distance is significant. Another commentator noted that with today's communication technology, distance should not be a determinative factor. (NAM, C–12.) Access to communications, however, would not necessarily negate the possibility of employees having a separate identity at a separate location.

Other comments contend that reliance on geography will run afoul of the prohibition of Section 9(c)(5) of the National Labor Relations Act that ''the extent to which the employees have organized shall not be controlling.'' (Strauss, C–1; USCC, C–7, NAM, C–12; IMRA, C–41.) Contrary to this argument, the rule does not place determinative weight on extent of organization, but contains several objective factors, none of which is controlling. Moreover, geographical separation may or may not be related to the extent of organization, but, regardless, the factors are not the same.

As to our proposed distance of one mile between locations for the rule to apply, although single location units have been found appropriate where the distance between locations is less than a mile, the line for applicability must be drawn somewhere. There is no logically compelling ascertainable optimum distance for a rule since single location decisions do not precisely correlate with mileage. Moreover, although the rule applies to locations a mile or more apart, that does not mean locations less than a mile apart cannot be appropriate units. Those units may be found appropriate by adjudication, but we are not sufficiently sure of their appropriateness to render them automatically acceptable under the rule. For example, although many retail chains locate their stores less than a mile apart, a single store unit may be found appropriate. See *Haag Drug Co.,* 169 NLRB 877 (1968); *Sav-on Drugs,* 138 NLRB 1032 (1962). We do not intend for the rule to affect such Board precedent but only that such cases must be resolved through adjudication.

4. Local autonomy. The suggested rule in the ANPR incorporated local autonomy by requiring that the single location have a statutory supervisor on the site. Although the AFL and PTE contended that this factor is unnecessary, requiring some level of local control is consistent with the Board's traditional treatment of this factor as significant in single location decisions. See *Executive Resources,* 301 NLRB at 402, in which the Board noted that local authority in the form of separate supervision was an ''important'' factor demonstrating that the employees enjoy a separate community of interest; see also *Haag Drug,* 169 NLRB at 878, in which the Board pointed out the ''significance'' of local autonomy in determining if a single location unit is appropriate. We continue to believe that the rule must incorporate evidence of local autonomy in some meaningful way to insure that there is some degree of independence and control at the requested location apart from other facilities. We are inclined to adhere to the requirement that a statutory supervisor be present at the requested location. Among other reasons, the Section 2(11) standards for determining supervisory status are generally known and understood.

Board decisions have evaluated local autonomy by an open-ended inquiry of the authority of local managers versus central managers. The full range of their authority is often litigated in an effort to determine the relative scope of local autonomy. See, e.g., *Red Lobster,* 300 NLRB at 912, in which the Board cited and distinguished seven Board decisions in evaluating the authority of local managers versus central managers. Although Board decisions have detailed the extent of local authority of local managers, virtually all of these managers have been statutory supervisors. Rather than analyze the relative scope of each manager's authority, we believe that if a local manager has sufficient authority to be a statutory supervisor, this is sufficient evidence of local autonomy for purposes of unit appropriateness under the rule. Any greater inquiry would perpetuate what we believe is wasteful litigation and unnecessary use of the Board's resources. The purpose of including this factor in the rule is to insure some level of local independence from other locations; it is not an attempt to draw fine lines about the relative authority of local versus central managers. Our inclination, then, is to find that it is sufficient to establish local autonomy if the local individual is a statutory supervisor under any of the indicia.

Yet, we do have some reservations. We are concerned about whether requiring that a statutory supervisor be present is a better approach for the rule than the current open-ended approach of examining the full range of supervisory authority. Will requiring that a statutory supervisor be present result in more disputes about whether an individual is a statutory supervisor? Is it likely that the parties will stipulate in most cases as to the status of a local supervisor, or will the Regional Director have to decide the supervisory status of the local person in charge before determining whether the rule applies? Will requiring a statutory supervisor result in greater litigation than the open-ended approach now in use? The Board invites comments on whether this approach to deciding local autonomy will constitute a satisfactory method of determining whether this element of the rule exists, or whether, on the other hand, it will unnecessarily complicate the rule.

We also propose to modify slightly the language requiring that a local supervisor be on the site of the requested unit. We have added the requirement that the supervisor be present on the site for a regular and substantial period. This does not mean that a statutory supervisor need be present on each and every shift. Our purpose is to require that the supervisor have more than a casual and sporadic relationship to the requested location. In most cases this will mean that his or her supervisory authority will primarily be over the employees in the requested unit.

5. Minimum unit size. The rule as set forth in the ANPR applies only to requested units of 15 or more unit employees. It is our intention that a unit

[8] The Board received virtually no comments on the issue of whether, and how, the Board should define whether a location is, in fact, a single or separate location. After carefully considering the scope of this rulemaking, we have decided that this issue should at the present time be left to litigation and the rule will not apply to this issue.

appropriate under the rule must contain a minimum number of employees, or likely eligible voters. The NAM (C–12) argued that in multi-location cases, the number of employees at a location has never been a factor, and would result in separating employees despite their strong community of interest. We agree that seldom has the number of employees been listed as a factor, but neither has the Board ever used rulemaking on this issue; we feel more comfortable finding a requested separate location unit automatically appropriate if it contains more than a mere handful of employees. The rule was limited to the relatively large number of 15 employees with the belief that the rule should not apply to very small units as these are more problematical and their appropriateness should be left to adjudication. For example, locations with a smaller number of employees may be more likely to be satellites of other locations that might not be appropriate separate from the main facility.[9]

Because the specific figure of 15 employees in the requested unit is not grounded on any mathematical rationale, we invite comments on possible alternatives to this proposed minimum number of employees. One possibility is for the Board to reduce the number to 6 or more employees, which would be consistent with the minimum requisite number of unit employees to which the health care rule applies. Collective Bargaining Units in the Health Care Industry, 54 FR 16336, 16341–42 (1989), reprinted at 284 NLRB at 1580, 1589–90. There, the Board stated that petitions for 5 or fewer employees would be decided by adjudication. The Board noted that there was ''no ineluctable logic'' to the number five, but indicated it was concerned that units of smaller numbers of employees would be impractical in the health care industry and that the employees' concerns for a separate unit might be outweighed by concerns over disproportionate, unjustified costs, and undue proliferation of units. *Id.*, 54 FR at 16342, reprinted at 284 NLRB at 1588.

Another alternative figure could be based on statistics from the Board's annual reports. Those reports contain a table analyzing the size of units in RM and RC representation elections for closed cases in each fiscal year. The statistics are not broken down for single location elections, however. The tables specify the number and relative percentage of all Board elections based on the sizes of the units the eligible employees voted in. The size of the various categories of units begins ''Under 10'' and increases in increments of 10. The Board does not maintain statistics for any smaller units. For fiscal year 1992, 22.6% of all elections occurred in units of fewer than 10 employees; and 20.8% of elections occurred in units of 10 to 19 employees. Thus, 43.4% of all elections in fiscal year 1992 were in units of 19 or fewer eligible voters. 57 Ann. Rep. Appendices, Table 17 (RC and RM Elections). For 1993, 19.6% of the elections were in units of 10 or fewer eligible voters; 20.5% were in units of 10 to 19 eligible voters. 58 Ann. Rep., Appendices, Table 17. For fiscal year 1994, the Board's preliminary statistics indicate that 19.7% of the elections were in units of 10 or fewer employees, and 19.5% were in units of 10 to 19 employees. Thus, it could be that a smaller number should be used as the threshold for the rule's applicability.

Whatever figure ultimately is contained in the rule, smaller single location units will not be precluded from being found appropriate. Their appropriateness, however, will not be decided by application of the rule but rather by adjudication.

d. Summary and tentative conclusions. We believe that when locations are geographically distant, interchange is minimal, a statutory supervisor is present, and the requested unit contains 15 or more employees, in most single location cases, the Board will find the requested single location unit appropriate; these factors also are clear and easily ascertainable. The proposed rule sets forth these factors as standards. We are open to comments on all these factors, as well as suggestions on possible alternative standards.

This rulemaking is not an attempt to shoehorn all single location unit cases into decision by rulemaking; it is rather an attempt to decide the majority of routine single location cases in a more expeditious manner. Where the stated elements of the rule do not exist, or the cases otherwise present unusual or novel issues, the rule will not apply. As discussed in more detail in the next section on the extraordinary circumstances exception, the novel and unusual cases will fall outside the rule and will be decided by adjudication.

Finally, we are aware of the paucity of empirical information on the feasibility or practicality of bargaining in single facility as opposed to multi-facility units. We specifically invite comments as to feasibility of bargaining in units based on these proposed elements or other elements.

IV. Extraordinary Circumstances Exception

In order to ensure due process, the Board has included in the proposed rule an exception for ''extraordinary circumstances.'' Even when the rule otherwise applies, the extraordinary circumstances exception renders the rule inapplicable upon a showing of good cause, and allows for adjudication, or individual treatment of unique cases so as to avoid accidental or unjust application of the rule.[10] While the petitioner or representative of the employees in the requested unit has the burden of establishing the elements of the rule, the party seeking to invoke the extraordinary circumstances exception has the burden of establishing, at first by an offer of proof and later, if appropriate, by the introduction of evidence, that the extraordinary circumstances exist. If the evidence proffered constitutes an extraordinary circumstance, the case will be decided by adjudication. As is true with the health care rule, see 53 FR at 33932, reprinted at 284 NLRB 1573, our intent is to construe the extraordinary circumstances exception narrowly, so that it does not provide an excuse, opportunity, or ''loophole'' for redundant or unnecessary litigation and the concomitant delay that would ensue.

We have codified the definition of extraordinary circumstances in the rule, as well as the burden, so that it is clear what this provision means. One common misconception regarding this exception to the rule is evident from our experience with the health care rules. The Board decides first whether the proffered evidence is an extraordinary circumstance. But even where the Board finds that an extraordinary circumstance

[9] The rule would not apply if the unit did not contain the minimum number of employees at the requested location. With regard to situations where the unit contains a sufficient number of employees but another location is allegedly a satellite of the requested location, and by virtue of its very small size or other characteristics could not be represented separately from the requested unit, we would find this to be an extraordinary circumstance which would require the case be decided by adjudication. If the other location is so closely associated to the requested unit that it would constitute an accretion to that unit if it had been newly formed, then the petition would have to be decided under adjudication. Thus, in situations where it is established that there is a facility which is a satellite to the requested unit, the latent inappropriateness of this facility would be directly relevant to the separate appropriateness of the requested unit.

[10] Single location cases may also be decided by adjudication if one of the elements of the rule is not present, e.g., the locations are less than one mile apart. This, however, is not an extraordinary circumstance, but a case to which the rule does not apply. In extraordinary circumstances, the rule on its face applies, but once extraordinary circumstances are established, the rule is inapplicable and the case is decided by adjudication.

exists, this does not mean that the requested unit is ''excepted'' from being an appropriate unit. Rather, establishing extraordinary circumstances means that the case will be decided by adjudication and the requested unit may or may not be found appropriate.

We have codified one specific extraordinary circumstance in the rule: where 10 per cent or more of the unit employees have temporarily transferred to other facilities of the employer 10 per cent or more of the time during the prior year. We also have requested comments on whether this proposed level of interchange is appropriate.

The rule, however, also allows for other extraordinary circumstances. We have suggested some possibilities in this supplementary information. In Section III.B.1.b.6, we mentioned the possibility that a successful history of bargaining on a broader basis might be an extraordinary circumstance. Section III.B.1.c.5, footnote 9, suggests treating the existence of a small satellite facility as an extraordinary circumstance. These, however, are merely suggestive of the type of situations that might raise an extraordinary circumstance. Invited comments may lead to our reassessing them.

Although we have described possible extraordinary circumstances, there undoubtedly are others; obviously we cannot foresee all circumstances involving the appropriateness of a requested single facility unit. It is for this reason that we have included an extraordinary circumstances exception. To the extent that there is concern that by rulemaking we will preclude addressing unusual cases outside the routine cases, we believe this provision adequately addresses those concerns. We are not mandating any particular result by characterizing a circumstance as extraordinary, but are only requiring that it be decided by adjudication. In inviting comments, however, we emphasize that it is our intention to construe this provision narrowly.

V. Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by the NLRB in the development of this proposed rulemaking. The principal purposes of the docket are: (1) To allow interested parties to identify and locate documents so they can participate effectively in the rulemaking process; and (2) to serve as the record in case of judicial review. The docket, including a verbatim transcript of any hearings that may be held, the exhibits, the written statements, and all comments submitted to the Board, is available for public inspection during normal working hours at the Office of the Executive Secretary in Washington, DC.

VI. Regulatory Flexibility Act

As required by the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), the Board certifies that the proposed rule will not have a significant economic impact on small entities. Prior to this rule, parties before the Board were required to litigate the appropriateness of a single location unit if they could not reach agreement on the issue. On implementation of this rule, parties will no longer be required in every case involving this issue to engage in litigation to determine the appropriateness of units, thereby saving all the parties the expense of litigation before the Board and the courts in cases governed by the rule. To the extent that organization of employees for the purpose of collective bargaining will be fostered by this rule, thereby requiring small entities to bargain with unions, and that employees may thereby exercise rights under the National Labor Relations Act, as amended (29 U.S.C. 151, *et seq.*), the Board notes that such was and is Congress' purpose in enacting the Act.

VII. Statement of Member Cohen

On June 1, 1994, the Board issued an Advance Notice of Proposed Rulemaking (ANPR) with respect to a rule concerning single-facility units. Although I had reservations about the wisdom and necessity for such a rule, I joined my colleagues in issuing the ANPR. I did so because public comment would serve to clarify the issues and to enlighten the Board's decision-making processes concerning these matters.

The comments have now been received, and I have studied them carefully. Having done so, I am still not firmly persuaded that there is a need for a rule. Further, assuming arguendo that there is such a need, I have some reservations about the content of the rule proposed by my colleagues. However, I have decided to withhold final judgment on these matters, pending public response to the specific rule that is now being proposed. Accordingly, without necessarily endorsing all that my colleagues have said about the proposal, I join them in soliciting further public response to it.

As I see it, the proposed rule departs from the multi-factorial approach described in *J & L Plate,* 310 NLRB 429 (1993). Concededly, that departure has the potential advantage of bringing greater clarity and expedition to the processing and disposition of these cases. In addition, it may reduce occasionally burdensome and expensive litigation. On the other hand, the current system has its own values. The relevant factors are well known, and they can be applied to accommodate the peculiarities of individual cases. The Board decisions, with rare exceptions, have been upheld by the courts. In addition, the stipulation rate remains high. Finally, even the litigated cases are usually resolved within a reasonably short period of time.

To be sure, there is always room for improvement, and some cases linger far too long. As I see it, the issue before the Board is one of balance: whether the potential benefits of obtaining greater expedition and clarity under the proposed rule outweigh the potential risks of jeopardizing the precision, stability, and general judicial acceptance of the current approach. I welcome the public's experience and expertise concerning the resolution of this delicate balance.

List of Subjects in 29 CFR Part 103

Administrative practice and procedure, Labor management relations.

Regulatory Text

For the reasons set forth at 59 FR 28501 (June 2, 1994) as supplemented and modified by this Supplementary Information, 29 CFR Part 103 is proposed to be amended as follows:

PART 103—OTHER RULES

1. The authority citation for 29 CFR Part 103 is revised to read as follows:

Authority: 5 U.S.C. 553; 29 U.S.C.156.

2. Section 103.40 is added to subpart C to read as follows:

§ 103.40 Appropriateness of single location units.

(a) The rule in this section applies to all employers over which the Board asserts jurisdiction except: public utilities; employers engaged primarily in the construction industry; and employers in the maritime industry in regard to their ocean-going vessels.

(b) An unrepresented single location unit shall, except in extraordinary circumstances, be found appropriate for the purposes of collective bargaining; Provided:

(1) That 15 or more employees in the requested unit are employed at that location; and

(2) That no other location of the employer is located within one mile of the requested location; and

(3) That a supervisor within the meaning of Section 2(11) of the National Labor Relations Act is present at the

requested location for a regular and substantial period.

(c) Whenever a party, first through an offer of proof and then by supporting evidence, establishes that an extraordinary circumstance exists or where an employer falls outside the rule in this section, the Board shall determine the appropriateness of a requested single location unit by adjudication.

(d) An extraordinary circumstance will be found to exist, inter alia, if 10 percent or more of the unit employees have been temporarily transferred to other facilities of the employer for 10 percent or more of their time during the 12 month period preceding the filing of a petition for an election or, where no petition for election has been filed during the 12 month period preceding either the demand for recognition or the time when a bargaining obligation would arise.

Dated, Washington, DC, September 22, 1995.

By Direction of the Board.

National Labor Relations Board.

John J. Toner,

Acting Executive Secretary.

[FR Doc. 95–24001 Filed 9–27–95; 8:45 am]

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NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Parts 1228 and 1232

RIN 3095–AA18

Audiovisual Records Management

AGENCY: National Archives and Records Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: The National Archives and Records Administration (NARA) proposes to revise and expand the regulations pertaining to audiovisual records management and the transfer of permanent audiovisual records to NARA from Federal agencies. The revisions are necessary in order to update standards, to provide coverage for new audiovisual media that are used in the creation of Federal records, and to reflect the transfer to the Department of Commerce's National Technical Information Services of the centralized audiovisual distribution services formerly performed by the National Audiovisual Center. This regulation affects Federal agencies.

DATES: Comments must be received in writing on or before November 27, 1995.

ADDRESSES: Comments should be sent to the Director, Policy and Planning Division (PIRM–POL), National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740–6001.

FOR FURTHER INFORMATION CONTACT: Mary Ann Hadyka or Nancy Allard at 301–713–6730 or TDD 301–713–6760.

SUPPLEMENTARY INFORMATION: Following is a discussion of the significant changes proposed by this regulation:

Part 1228

Four significant changes are made to § 1228.184 of this part, which governs the transfer of permanent audiovisual records to NARA from Federal agencies. First, the revised regulation provides for the transfer of a videotape as well as a projection print for motion picture film, if both exist. The requirement for preprint (negatives, masters, etc.) is still the same, however. Second, the record elements for compact discs and video discs are described for the first time. Third, audio and video tape recordings are cross-referenced to § 1232.30 of this subchapter which requires the use of open-reel audiotapes and industrial-quality or professional videotapes for the creation of original audiovisual records. Fourth, the revision permits agencies to provide related captions or finding aids in electronic form that are in accordance with § 1228.188 of this part which governs the transfer of electronic records.

Part 1232

The revision includes audiovisual definitions and updates sources for various standards. Section 1232.20, Agency program responsibilities, remains essentially the same as the current § 1232.4, but requirements for training and inspection of contractor facilities have been added. Other sections have been reorganized and revised for greater emphasis and clarity and to provide more detailed instructions on nitrocellulose film, unstable cellulose acetate film, storage conditions, maintenance and operations, choosing formats, and disposition. The standard for residual sodium thiosulfate (hypo) on newly processed black-and-white film has been modified. The storage standard for relative humidity has been lowered to 30–40 percent from the earlier range of 40–60 percent. X-ray film is included in this regulation for the first time, because it is generally scheduled for long retention periods and must therefore be stored under controlled environmental conditions. The provision for temporary storage space in NARA's cold storage vaults has been deleted because the space has been reserved for color film materials that are transferred to the legal custody of the National Archives. The regulations governing centralized audiovisual services under the current § 1232.6 have been deleted from this regulation because of the transfer of this function to the Department of Commerce. NARA no longer offers the Stock Footage Depository Program which was described in the current § 1232.6. Agencies may establish their own programs or dispose of the footage in accordance with an approved records schedule.

This revision does not address digital photographic records, as standards have not been developed for these records. NARA is investigating the technology and plans to provide records management guidance for these records. Government-wide requirements cannot be established at this time.

This rule is a significant regulatory action for purposes of Executive Order 12866 of September 30, 1993. As such, it has been reviewed by the Office of Management and Budget. As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on small entities.

List of Subjects

36 CFR Part 1228

Archives and records.

36 CFR Part 1232

Archives and records, Incorporation by reference.

For the reasons set forth in the preamble, NARA proposes to amend 36 CFR chapter XII as follows:

PART 1228—DISPOSITION OF FEDERAL RECORDS

1. The authority citation for part 1228 continues to read as follows:

Authority: 44 U.S.C. chapters 21, 29, and 33.

2. Section 1228.184 is revised to read as follows:

§ 1228.184 Audiovisual records.

The following types of audiovisual records appraised as permanent shall be transferred to the National Archives as soon as they become inactive or whenever the agency cannot provide proper care and handling of the records, including adequate storage conditions, to facilitate their preservation by the National Archives (see part 1232 of this chapter). In general the physical types described below constitute the minimum record elements for archival purposes that are required to provide for future preservation, duplication, and reference needs.

(a) *Motion pictures.* (1) Agency-sponsored or produced motion picture films (e.g., public information films) whether for public or internal use:

(i) Original negative or color original plus separate optical sound track;

(ii) Intermediate master positive or duplicate negative plus optical track sound track; and,

(iii) Sound projection print and video recording, if both exist.

(2) Agency-acquired motion picture films: Two projection prints in good condition or one projection print and one videotape.

(3) Unedited footage, outtakes and trims (the discards of film productions) that are properly arranged, labeled, and described and show unstaged, unrehearsed events of historical interest or historically significant phenomena:

(i) Original negative or color original; and

(ii) Matching print or videotape.

(b) *Still pictures.* (1) For black-and-white photographs, an original negative and a captioned print although the captioning information can be maintained in another file such as a data base if the file number correlation is clear. If the original negative is nitrate, unstable acetate, or glass based, a duplicate negative is also needed.

(2) For color photographs, the original color transparency or color negative, a captioned print or captioning information as described above, and a duplicate color negative and duplicate slides and transparencies, if they exist.

(3) For slide sets, the original and a reference set, and the related audio recording and script.

(4) For other pictorial records such as posters, original art work, and filmstrips, the original and a reference copy.

(c) *Sound Recordings.* (1) Disc recordings:

(i) For conventional disc recordings, the master tape and two disc pressings of each recording, typically a vinyl copy for playback at 33⅓ revolutions per minute (rpm).

(ii) For compact discs, the origination recording regardless of form and two compact discs.

(2) For magnetic sound recordings on audio tape (open reel, cassette, or cartridge), the original tape or the earliest generation of the recording and a ''dubbing'' if one has been made. Section 1232.30(d) of this subchapter requires the use of open-reel tape for original audio recordings.

(d) *Video recordings.* (1) For videotape, the original or earliest generation videotape and a copy for reference. Section 1232.30(c) of this subchapter requires the use of industrial-quality or professional videotapes for use as originals, although VHS copies can be transferred as reference copies.

(2) For video discs, the premaster videotape used to manufacture the video disc and two copies of the disc. Video discs that depend on interactive software and nonstandard equipment may not be acceptable for transfer.

(e) *Finding aids and production documentation.* The following records shall be transferred to the National Archives with the audiovisual records to which they pertain.

(1) Existing finding aids such as data sheets, shot lists, continuities, review sheets, catalogs, indexes, list of captions, and other documentation that are helpful or necessary for the proper identification, or retrieval of audiovisual records. Electronic versions of these files shall be transferred in accordance with § 1228.188 of this part.

(2) Production case files or similar files that include copies of production contracts, scripts, transcripts, and appropriate documentation bearing on the origin, acquisition, release, and ownership of the production.

3. Part 1232 is revised to read as follows:

PART 1232—AUDIOVISUAL RECORDS MANAGEMENT

Subpart A—General

Sec.
1232.1 Applicability and scope.
1232.2 Objectives.
1232.10 Definitions.

Subpart B—Audiovisual Records Management

1232.20 Agency program responsibilities.
1232.22 Nitrocellulose film.
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1232.26 Storage conditions.
1232.28 Maintenance and operations.
1232.30 Choosing formats.
1232.32 Disposition.

Authority: 44 U.S.C. 2904 and 3101; and OMB Circular A–130.

Subpart A—General

§ 1232.1 Applicability and scope.

This part prescribes policies and procedures for managing audiovisual records to ensure adequate and proper documentation and authorized, timely, and appropriate disposition. The policies and procedures apply to all Departments and independent agencies of the Executive Branch.

§ 1232.2 Objectives.

The objectives of audiovisual records management are to achieve the effective creation, maintenance, use, and disposition of audiovisual and related records by establishing standards for maintenance and disposition, physical security, and preservation and by reviewing recordkeeping practices on a continuing basis to improve procedures.

§ 1232.10 Definitions.

Agency. Any department or independent establishment of the Executive Branch of the Federal Government. See § 1220.14, for general definitions.

Audiovisual. Any pictorial or aural means of communicating information.

Audiovisual equipment. Equipment used for recording, producing, duplicating, processing, broadcasting, distributing, storing or exhibiting audiovisual materials or for providing any audiovisual services.

Audiovisual production. An organized and unified presentation, developed according to a plan or script, containing visual imagery, sound, or both, and used to convey information. An audiovisual production generally is a self-contained presentation. Audiovisual productions may include motion media with synchronous sound such as motion picture film, videotape or other video formats, audio recordings, and other media such as synchronized audio and visual presentations such as multimedia productions.

Audiovisual records. Records in pictorial or aural form that include still and motion media, sound recordings, graphic works, mixed media, and related finding aids and production files.

Subpart B—Audiovisual Records Management

§ 1232.20 Agency program responsibilities.

Each Federal agency, in providing for effective controls over the creation of records, shall establish an appropriate program for the management of audiovisual records. This program shall be governed by the following requirements:

(a) Prescribe the types of records to be created and maintained so that audiovisual activities and their products are properly documented. (Regulations on the appropriate types of permanent audiovisual records are located in § 1228.184 of this chapter.)

(b) Ensure that adequate training is provided to:

(1) Agency personnel responsible for the disposition of audiovisual records;

(2) Contractor personnel who have temporary custody of audiovisual records; and,

(3) All users who create, handle, or maintain audiovisual records or operate equipment for their use.

(c) Ensure that contract provisions protect the Government's legal title and control over audiovisual records and related documentation produced or maintained by contract. Ensure that contract provisions identify as deliverables any working papers/files that are needed for adequate and proper documentation. Include a provision that permits the Government to inspect contractor facilities used for the storage and handling of permanent or unscheduled audiovisual records. Agencies shall inspect such facilities at least once each year.

(d) Keep inventories indicating the location of all generations of audiovisual records, whether in agency storage or in another facility such as a laboratory or library distribution center.

(e) Schedule disposition of all audiovisual records as soon as practicable after creation. General Records Schedule 21 provides mandatory disposal authorization for temporary audiovisual records common to most Federal offices. Agencies must submit an SF 115, Request for Records Disposition Authority, to NARA to obtain authorization for the disposition of all other audiovisual records. The schedules covering permanent records must specify the different record elements identified in § 1228.184, and must always include related finding aids.

(f) Periodically review agency audiovisual recordkeeping practices for conformance with requirements and take necessary corrective action.

§ 1232.22 Nitrocellulose film.

Nitrocellulose-base film once used in the manufacture of sheet film and motion pictures may be occasionally found in records storage areas. The nitrocellulose base, a substance akin to gun cotton, is chemically unstable and highly inflammable.

(a) Agencies must remove nitrocellulose film materials from records storage areas.

(b) Agencies must immediately notify the National Archives about the existence of nitrocellulose film materials because of their age and instability. The National Archives will determine if they may be destroyed or destroyed after a copy is made for transfer, as appropriate.

(c) If the National Archives appraises nitrate film materials as disposable, but the agency wishes to retain them, agencies must follow the guidance in NFPA 40–1988, Standard for the Storage of Handling of Cellulose Nitrate Motion Picture Film, which is incorporated by reference. NFPA 40–1988 is available from the National Fire Protection Association, Batterymarch Park, Quincy, MA 02269. This standard is also available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, D.C. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated by reference as they exist on the date of approval and a notice of any change in these materials will be published in the Federal Register.

(d) The packing and shipping of nitrate film are governed by the following Department of Transportation regulations: 49 CFR 172.101, Hazardous materials table; 172.504, Transportation; 173.24, Standard requirements for all packages; and 173.177, Motion picture film and X-ray film—nitrocellulose base.

§ 1232.24 Unstable cellulose-acetate film.

Cellulose-acetate film, also known as safety film, is nonflammable and does not represent the same degree of hazard as nitrate film materials. Nonetheless, cellulose-acetate film also deteriorates over time. Temperature, humidity, harmful storage enclosures, and gaseous products influence the rate of deterioration. Agencies shall inspect cellulose-acetate film periodically for an acetic odor, wrinkling, or the presence of crystalline deposits on the edge or surface of the film that indicate deterioration. Agencies shall notify the National Archives within 30 days after inspection about deteriorating permanent or unscheduled audiovisual records composed of cellulose acetate so that they can be copied.

§ 1232.26 Storage conditions.

Agencies must: (a) Provide audiovisual records storage facilities that are secure from unauthorized access and make them safe from fire, water, flood, chemical or gas damage and from other harmful conditions. See NFPA 232–1991, Standard for the Protection of Records issued by the National Fire Protection Association, which is incorporated by reference. The standard is available from the National Fire Protection Association, Batterymarch Park, Quincy, MA 02269. This standard is also available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, D.C. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated by reference as they exist on the date of approval and a notice of any change in these materials will be published in the Federal Register.

(b) Maintain good ambient storage conditions for permanent or unscheduled audiovisual records. Generally, the temperature should not exceed 70 degrees Fahrenheit and relative humidity should be maintained between 30–40% and not to exceed 50%. Avoid fluctuating temperatures and humidity. Cooler temperatures and lower relative humidity are recommended for the storage of all film, to prolong the useful life of the film base and image. Cold temperatures combined with 30–35% relative humidity are especially recommended to retard the fading of color film.

(c) For the storage of permanent or unscheduled records, use audiovisual storage containers or enclosures made of noncorroding metal, inert plastics, paper products and other safe materials recommended and specified in ANSI standards: IT9.11–1993, Processed Safety Photographic Films Storage; and IT9.2–1991, Filing Enclosures and Storage Containers for Photographic Processed Films, Plates and Papers. These standards, which are incorporated by reference, are available from the American National Standards Institute (ANSI), Inc., 11 West 42nd Street, New York, NY 10036. These standards are also available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700 Washington, D.C. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated by reference as they exist on the date of approval and a notice of any change in these materials will be published in the Federal Register.

(d) Store originals and use copies (e.g., negatives and prints) separately, whenever practicable.

(e) Store series of permanent and unscheduled x-ray films in accordance with this section, and store series of temporary x-ray films under conditions that will ensure their preservation for their full retention period, in accordance with ANSI/NAPM IT9.11–1993, Processed Safety Photographic Films—Storage. This requirement does not apply to x-rays that are interspersed among paper records, as in case files.

§ 1232.28 Maintenance and operations.

Agencies must: (a) Handle audiovisual records in accordance with

commonly accepted industry practices because of their extreme vulnerability to damage. For further information, consult the American National Standards Institute (ANSI), Inc., 11 West 42nd Street, New York, NY 10036; and the Society of Motion Picture and Television Engineers, 595 West Hartsdale Avenue, White Plains, NY 10607.

(b) Use only personnel trained to perform their audiovisual duties and responsibilities and ensure that equipment intended for projection or playback is in good working order.

(c) Loan permanent or unscheduled audiovisual records to non-Federal recipients only in conformance with the provisions of part 1228 subpart E of this chapter. Such records may be loaned to other Federal agencies only if a record copy is maintained in the agency's custody.

(d) Take all steps necessary to prevent accidental or deliberate alteration or erasure of audiovisual records.

(e) Ensure that no information recorded on permanent or unscheduled magnetic sound or video media is erased.

(f) If different versions of audiovisual productions (e.g., short and long versions or foreign-language versions) are prepared, keep an unaltered copy of each version for record purposes.

(g) Maintain the association between audiovisual records and the finding aids for them, such as captions and published and unpublished catalogs, and production files and similar documentation created in the course of audiovisual production.

(h) Maintain disposable audiovisual records separate from permanent ones in accordance with General Records Schedule 21 and a records schedule approved by NARA for the agency's other audiovisual records.

§ 1232.30 Choosing formats.

Agencies must: (a) When ordering photographic materials for permanent or unscheduled records, ensure that still picture negatives and motion picture preprints (negatives, masters, etc.) are composed of polyester bases and are processed in accordance with industry standards as specified in ANSI/ISO 543–1990 (ANSI IT9.6–1991) Specifications for Safety Film for Photographic Films; IT9.1–1991 Specifications for Stability for Silver Gelatin Type Imaging Media; and, ASC PH4.8–1985 Determination and Measurement of Residual Thiosulfate and Other Chemicals in Films, Plates and Papers, which are incorporated by reference. (Currently, not all motion picture stocks are available on a polyester base.) It is particularly important to limit residual sodium thiosulfate (hypo) on newly processed black-and-white photographic film to the range of .014 grams per square meter. Require laboratories to process film in accordance with this standard. Excessive hypo will shorten the longevity of film and accelerate color fading. Process color film in accordance with the manufacturer's recommendations. If using reversal type processing, request full photographic reversal; i.e., develop, bleach, expose, develop, fix, and wash. The standards cited in this paragraph are available from the American National Standards Institute (ANSI), Inc., 11 West 42nd Street, New York, NY 10036. These standards are also available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, D.C. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated by reference as they exist on the date of approval and a notice of any change in these materials be published in the Federal Register.

(b) Refrain from using motion pictures in a final ''A & B'' format (two precisely matched reels designed to be printed together) for the reproduction of excerpts or stock footage.

(c) Use only industrial or professional recording equipment and videotape, previously unrecorded, for original copies of permanent or unscheduled recordings. Limit the use of consumer formats to distribution or reference copies or to subjects scheduled for disposal. Video cassettes in the VHS format are unsuitable for use as originals of permanent or unscheduled records due to their inability to be copied without significant loss in image quality.

(d) Record permanent or unscheduled audio recordings on 1/4-inch open-reel tapes at 3 3/4 or 7 1/2 inches per second, full track, using professional unrecorded polyester splice-free tape stock. Audio cassettes, including mini-cassettes, are not sufficiently durable for use as originals in permanent records or unscheduled records although they may be used as reference copies.

§ 1232.32 Disposition.

The disposition of audiovisual records shall be carried out in the same manner as that prescribed for other types of records in part 1228 of this chapter. For further instructions on the transfer of permanent audiovisual records to the National Archives see § 1228.184 of this chapter, Audiovisual Records.

Dated: July 24, 1995.

John W. Carlin,

Archivist of the United States.

[FR Doc. 95–24024 Filed 9–27–95; 8:45 am]

BILLING CODE 7515–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[FRL–5301–1]

RIN 2060–AE39

National Emissions Standards for Radionuclide Emissions From Facilities Licensed by the Nuclear Regulatory Commission and Federal Facilities Not Covered by Subpart H

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of reopening of comment period.

SUMMARY: On December 1, 1992, EPA proposed to rescind 40 CFR part 61, subpart I, as it applies to facilities other than commercial nuclear power reactors licensed by the Nuclear Regulatory Commission (NRC) or NRC Agreement States. Subsequent to the publication of that proposal, EPA identified several concerns regarding the Agency's ability to make the substantive finding concerning the NRC program for these licensees necessary to support the proposed rescission under Clean Air Act Section 112(d)(9). As contemplated by Section 112(d)(9), EPA initiated consultations with NRC, and the agencies subsequently agreed on measures intended to resolve these concerns. EPA is today issuing this document because NRC has committed to propose a rule to constrain air emissions from licensees other than nuclear power reactors to a level which would result in a dose of no more than 10 mrem/year.

This document reaffirms the EPA proposal to rescind subpart I for NRC and Agreement State licensees other than nuclear power reactors, describes the expected proposed revisions to the NRC program which support such rescission, and invites additional comment on the sufficiency of the revisions of the NRC program to support the finding required by Section 112(d)(9). EPA is requesting comments only on the contents of this document and is establishing a 60 day period for receipt of all additional comments.

DATES: Comments concerning this document must be received by EPA on

or before November 27, 1995. EPA will hold a public hearing concerning the matters discussed in this document if a request for such a hearing is received by October 30, 1995. If such a hearing is requested, EPA will publish a separate document announcing the time and location of the hearing.

ADDRESSES: Comments should be submitted (in duplicate if possible) to: Central Docket Section LE–131, Environmental Protection Agency, Attn: Air Docket No. A–92–50, Washington, DC 20460. Requests to participate in the public hearing should be made in writing to the Director, Criteria and Standards Division, 6602J, Office of Radiation and Indoor Air, Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Requests to participate in the hearing may also be faxed to EPA at (202) 233–9629.

FOR FURTHER INFORMATION CONTACT: Eleanor Thornton, Risk Assessment and Air Standards Branch, Criteria and Standards Division, 6602J, Office of Radiation and Indoor Air, Environmental Protection Agency, Washington, DC 20460 (202) 233–9773.

SUPPLEMENTARY INFORMATION:

Docket

Docket A–92–50 contains the rulemaking record. The docket is available for public inspection between the hours of 8 A.M. and 5:30 P.M., Monday through Friday, in room M1500 of Waterside Mall, 401 M Street, SW, Washington, DC 20460. A reasonable fee may be charged for copying. The fax number is 202–260–4400.

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I. Background

A. Regulatory History

On October 31, 1989, EPA promulgated National Emission Standards for Hazardous Air Pollutants (NESHAPS) under Section 112 of the Clean Air Act to control radionuclide emissions to the ambient air from a number of different source categories. 54 FR 51654 (December 15, 1989). Subpart I of 40 CFR Part 61 covers two groups of facilities: (1) Facilities licensed and regulated by the Nuclear Regulatory Commission (NRC) and its individual Agreement States (''NRC licensed facilities''), and (2) federal facilities which are not licensed by the NRC and are not owned or operated by the Department of Energy (''non-DOE federal facilities''). The first group is quite diverse, and includes facilities which have received a license to use or possess nuclear materials such as hospitals, medical research facilities, radiopharmaceutical manufacturers, laboratories and industrial facilities, as well as facilities involved in the uranium fuel cycle (the conversion of uranium ore to electric power) such as uranium mills, fuel fabrication plants, and nuclear power reactors. EPA estimates there are over 18,000 such NRC-licensed facilities in the United States.

The present rulemaking concerns all NRC licensed facilities other than commercial nuclear power reactors, which are the subject of a separate rulemaking (60 FR 46206, Sept. 5, 1995). Non-DOE federal facilities are not affected in any way by the present rulemaking.

Subpart I limits radionuclide emissions from NRC-licensed facilities to the ambient air to that amount which would cause any member of the public to receive in any year an effective dose equivalent (ede) no greater than 10 millirem (mrem), of which no more than 3 mrem ede may be from radioiodine. These limits were established pursuant to an EPA policy for section 112 pollutants first announced in the benzene NESHAP (54 FR 38044, September 14, 1989), utilizing the two-step process outlined in the vinyl chloride decision. *Natural Resources Defense Council* v. *EPA*, 824 F.2d 1146, (D.C. Cir. 1987).

When subpart I was originally promulgated in December 1989, EPA simultaneously granted reconsideration of subpart I based on information received late in the rulemaking on the subject of duplicative regulation by NRC and EPA of NRC-licensed facilities and on the potential negative effects of the standard on nuclear medicine. EPA established a comment period to receive further information on these subjects, and granted a 90-day stay of subpart I as permitted by Clean Air Act Section 307(d)(7)(B), 42 U.S.C. 7607 (d) (7)(B). That stay expired on March 15, 1990, and was subsequently extended on several occasions. (See 55 FR 10455, March 21, 1990; 55 FR 29205, July 18, 1990; and 55 FR 38057, September 17, 1990).

EPA later stayed subpart I for NRC and Agreement State licensees other than nuclear power reactors while EPA was collecting additional information necessary to make a determination under Section 112(d)(9) of the 1990 Clean Air Act Amendments. See 56 FR 18735 (April 24, 1991), and 40 CFR 61.109(a). However, on September 25, 1992, the D.C. Court of Appeals issued a decision that EPA had exceeded its authority by staying subpart I while EPA was collecting information needed to make a determination under Section 112(d)(9). *Natural Resources Defense Council* v. *Reilly*, 976 F.2d 36 (D.C. Cir. 1992). The stay for licensees other than nuclear power reactors expired before the NRDC decision could be implemented on November 15, 1992, and subpart I took effect for these licensees on November 16, 1992. EPA subsequently issued a notice confirming the effectiveness of subpart I for licensees other than nuclear power reactors. 59 FR 4228 (January 28, 1994).

B. Clean Air Act Amendments of 1990

In 1990, Congress enacted legislation comprehensively amending the Clean Air Act (CAA), which included a section addressing the issue of regulatory duplication between EPA and NRC. CAA Section 112(d)(9) provides that, ''No standard for radionuclide emissions from any category or subcategory of facilities licensed by the Nuclear Regulatory Commission (or an Agreement State) is required to be promulgated under [section 112] if the Administrator determines, by rule, and after consultation with the Nuclear Regulatory Commission, that the regulatory program established by the Nuclear Regulatory Commission pursuant to the Atomic Energy Act for such category or subcategory provides an ample margin of safety to protect the public health.'' This provision enables EPA to eliminate duplication of effort between EPA and NRC in instances where EPA can determine that the NRC program provides protection of public health equivalent to that required by the Clean Air Act.

The legislative history of Section 112(d)(9) provides clear guidance as to what is meant by ''an ample margin of

safety to protect the public health,'' and what process the Administrator should follow in making that determination in a rulemaking proceeding under Section 112(d)(9). The Conference Report states that the ''ample margin of safety'' finding under Section 112(d)(9) is the same ''ample margin of safety'' that governed the development of standards promulgated under Section 112 prior to the 1990 amendments. The conferees also made it clear that the process the Administrator is expected to follow in making any such determination under Section 112(d)(9) is the process ''required under the decision of the U.S. Court of Appeals in *NRDC* v. *EPA*, 824 F.2d 1146 (D.C. Cir 1987)(*Vinyl Chloride*).'' H.R. Rep. 952, 101st Cong. 2d Sess. 339 (1990).

C. 1992 Proposal to Rescind Subpart I for Licensees Other Than Nuclear Power Reactors

After the adoption of Section 112(d)(9), EPA reviewed the information available to the Agency, including the information provided during the Agency's reconsideration of subpart I, to decide whether it could determine for particular categories of licensees that the NRC regulatory program protects public health with an ample margin of safety. EPA's initial analysis focused on two general issues: (1) Whether the NRC regulatory program in practice results in sufficiently low doses to protect the public health with an ample margin of safety; and (2) whether the NRC program is sufficiently comprehensive and thorough and administered in a manner which will continue to protect public health in the future.

After reviewing the available information for licensees other than nuclear power reactors, EPA concluded that it lacked sufficient information concerning actual emissions from these facilities to make the substantive determination contemplated by Section 112(d)(9). Accordingly, EPA undertook an extensive study in order to determine the doses resulting from radionuclide emissions at these facilities. EPA surveyed a randomly selected subset of all licensed facilities, as well as a group of ''targeted'' facilities chosen because of an expectation that they would have higher emissions. See Background Information Document, ''NESHAPs Rulemaking on Nuclear Regulatory Commission and Agreement State Licensees Other Than Nuclear Power Reactors'' EPA430–R–92–011 (November 1992), included in the docket for this rulemaking.

EPA evaluated the results of its study of NRC and Agreement State licensees other than nuclear power reactors using the COMPLY computer program. None of the facilities evaluated appeared to cause a dose exceeding the 10 mrem/year level established by subpart I. When the results of the survey were statistically extrapolated to the entire population of NRC and Agreement State licensees, EPA concluded that virtually all of the facilities would cause doses to members of the public which are below 10 mrem/year.

After reviewing the then current NRC regulatory program, and considering the likely effect of revisions of the NRC program which were pending at that time and of additional measures which NRC had agreed to adopt pursuant to a Memorandum of Understanding with EPA, EPA proposed to rescind subpart I for NRC and Agreement State licensees other than nuclear power reactors on December 1, 1992. See 57 FR 56877 (December 1, 1992). It is that pending rulemaking proposal which is the subject of today's notice inviting supplementary comment.

II. Events Subsequent to the 1992 Proposal

A. Changes to NRC Regulatory Program After the 1992 Proposal

After the Agency published its 1992 proposal to rescind subpart I, major revisions to NRC's regulations at 10 CFR Part 20 became effective. The revised rule (effective January 1994) implements 1987 Presidential guidance on occupational radiation protection and the recommendations of scientific organizations to establish risk-based limits and a system of dose limitation in accordance with the guidance published by the International Commission on Radiation Protection (ICRP). In adopting the risk-based methodology, the NRC reduced the allowable dose limit for members of the public from 500 mrem/yr ede to 100 mrem/yr ede from all pathways. Of the 100 mrem/yr ede, NRC allows only 50 mrem/yr ede by the air pathway, according to their Derived Air Concentration tables, which is then subject to further reduction under the As Low As Reasonably Achievable (ALARA) provisions.

Another significant revision of Part 20 codified the ALARA principle, which previously was only general guidance for NRC licensees other than nuclear power reactors. All licensees must now conduct operations in a manner that keeps doses to both workers and members of the public ''As Low as Reasonably Achievable'' (ALARA). This is defined to mean:

> Making every reasonable effort to maintain exposures to radiation as far below the dose limits in this part as is practical consistent with the purpose for which the licensed activity is undertaken, taking into account the state of technology, the economics of improvements in relation to state of technology, the economics of improvements in relation to benefits to the public health and safety, and other societal and socioeconomic considerations, and in relation to utilization of nuclear energy and licensed materials in the public interest.

10 CFR 20.1003, 56 FR 23360, 23392 (May 21, 1991).

B. Memorandum of Understanding (MOU) Between EPA and NRC

In addition to promulgating the proposed changes to 10 CFR Part 20, NRC committed in a Memorandum of Understanding (MOU) executed on September 4, 1992 to take several additional actions to implement ALARA requirements for NRC licensees other than nuclear power reactors. This MOU was published on December 22, 1992, at 57 FR 60778.

Although the NRC regulatory program contained dose limits that were higher than those established by subpart I, the actual operation of the existing NRC program had resulted in lower doses to the public than those which would be allowed under subpart I. The steps established by the MOU reflected an expectation by EPA that new mandatory ALARA requirements would operate to constrain future increases in radionuclide emissions by NRC licensees which might otherwise be permissible under the NRC program. Under the provisions of the MOU, NRC agreed to develop and issue a regulatory guide on the design and implementation of a radiation protection program to ensure that doses resulting from effluents from licensed facilities would remain ALARA. NRC agreed that the guide would describe the types of administrative programs and objectives which would be considered acceptable in satisfying the requirements of 10 CFR 20.1101(b), and establish a specific design goal of 10 mrem/y ede to the maximally exposed individual for radionuclide air emissions from affected NRC and Agreement State licensees. NRC finalized Regulatory Guide 8.37, ''ALARA Levels for Effluents from Materials Facilities,'' in July 1993.

C. EPA Concerns Regarding Basis for Required Statutory Finding Under Section 112(d)(9)

Based on the record compiled as part of its proposal to rescind subpart I for NRC licensees other than nuclear power reactors, EPA was able to conclude that the vast majority of NRC and Agreement State licensees were in compliance with the 10 mrem/yr standard established by

subpart I. However, after reviewing the language of the final Regulatory Guide issued by NRC pursuant to the September 4, 1992 MOU, EPA concluded that there was no element in the NRC regulatory program which expressly required or assured that licensees other than nuclear power reactors would maintain emissions below the 10 mrem/yr EPA standard. Thus, it was not possible for the Agency to determine that radionuclide emissions would consistently and predictably remain below the EPA standard in the future if EPA were to proceed with rescission, or that NRC or the individual Agreement States would be in a position to require a particular licensee who did exceed 10 mrem/yr to reduce radionuclide emissions.

Another concern regarding the adequacy of the NRC program to support rescission of subpart I for licensees other than nuclear power reactors arose as part of an investigation by the General Accounting Office (GAO) of NRC administration of the Agreement State program. Licenses for facilities other than nuclear power reactors are often administered by individual Agreement States rather than by NRC. In a report entitled ''Nuclear Regulation: Better Criteria and Data Would Help Ensure Safety of Nuclear Materials,'' the GAO found that ''NRC lacks criteria and data to evaluate the effectiveness of its two materials programs [agreement and non-agreement state],'' and that ''For agreement-state programs, NRC does not have specific criteria or procedures to determine when to suspend or revoke an inadequate or incompatible program.'' GAO/RCED–93–90 Nuclear Materials Regulation at 3 (April 1993). In subsequent Congressional testimony concerning the GAO findings, the NRC Commissioners acknowledged that NRC criteria and procedures should be improved, and stated that NRC was developing new criteria to assess the adequacy and compatibility of individual Agreement State programs, and new procedures which would govern suspension and termination of Agreement State programs.

As contemplated by CAA Section 112(d)(9), EPA and NRC entered into consultations intended to resolve these concerns. The ALARA program, which requires NRC licensees to reduce emissions to the extent feasible below the mandatory ceiling in 10 CFR Part 20, was the principal focus of subsequent discussions between EPA and NRC. In these discussions, EPA and NRC discussed various NRC proposals for a rule which would ''constrain'' emissions from NRC licensees other than nuclear power reactors, either by establishing a rebuttable presumption that emissions causing a dose exceeding 10 mrem/yr are not ALARA, or by expressly finding that ALARA requires licensees to maintain emissions at or below the 10 mrem/yr level. During the course of these discussions, a new concern also emerged as to whether the NRC policies on Agreement States which were under development would enable NRC to require that an ALARA ''constraint level'' be a mandatory element of compatibility. *See* letter from Mary D. Nichols, EPA Assistant Administrator for Air and Radiation, to NRC Chairman Ivan Selin, July 6, 1994, included in the docket.

On July 22, 1994, NRC proposed a ''constraint level'' rule which would have required each licensee to develop an ALARA program to maintain or achieve emissions resulting in a dose at or below 10 mrem/year or, in the alternative, to ''justify'' a conclusion that emissions resulting in a dose exceeding 10 mrem/year are ALARA. *See* letter from NRC Chairman Ivan Selin to EPA Administrator Carol M. Browner, July 22, 1994, included in the docket. That correspondence also noted that new procedures to assure the adequacy and compatibility of Agreement States were under development, and indicated that NRC would also propose to require Agreement States to adopt the proposed ''constraint level'' rule as a matter of compatibility.

After reviewing the ''constraint level'' rule proposed by NRC on July 22, 1994, EPA concluded that the proposed provision permitting licensees to ''justify'' emissions in excess of 10 mrem/yr left uncertainty as to whether NRC or an individual Agreement State might accept or countenance as ALARA emissions resulting in a dose exceeding 10 mrem/year. As a consequence, EPA was concerned that it would still not be able to determine that future radionuclide emissions from affected licensees would be consistently and predictably at levels resulting in a dose below 10 mrem/yr, or that NRC or an individual Agreement State would be able to compel a licensee to reduce emissions if the 10 mrem/yr level were exceeded. EPA then advised NRC that EPA did not consider it prudent to proceed with rescission of subpart I for NRC licensees other than nuclear power reactors based on a record which might not adequately support the legal determination required by Section 112(d)(9).

D. NRC Proposals and Actions Responsive to EPA Concerns

On December 21, 1994, after further considering the concerns expressed by EPA, NRC proposed a ''constraint'' rule construing ALARA as requiring each licensee to limit emissions to a level resulting in a dose no greater than 10 mrem/yr. *See* letter from NRC Chairman Ivan Selin to EPA Administrator Carol M. Browner, December 21, 1994, included in the docket. Under this proposal, exceeding the ALARA constraint level would not itself be a violation, but any licensee exceeding the 10 mrem/yr constraint would be required to report the exceedance and to take corrective measures to prevent a recurrence. On March 14, 1995, NRC confirmed that it intended to make the proposed constraint rule a matter of Division Level 2 compatibility, which requires each Agreement State to incorporate in its program provisions at least as stringent as those established by the NRC rule. *See* letter from Robert M. Bernero, Director of the NRC Office Of Nuclear Material Safety and Safeguards, to Mary Nichols, EPA Assistant Administrator for Air and Radiation, March 14, 1995, included in the docket.

NRC has also taken steps which address concerns regarding the adequacy of criteria and procedures for the Agreement State program. NRC has published a draft policy statement concerning adequacy and compatibility criteria, 59 FR 37269 (July 21, 1994), and a draft policy statement setting forth procedures which permit suspension or termination of individual Agreement State programs. 59 FR 40059 (August 5, 1994). In the March 14, 1995 letter, NRC assured EPA that the final policy statement on compatibility criteria would be consistent with the NRC proposal to make the ALARA ''constraint level'' rule a matter of Division Level 2 compatibility, and that NRC intends to finalize both policy statements shortly.

After reviewing the proposed rule described in the December 21, 1994 letter and the additional assurances provided in the March 14, 1995 letter, EPA advised NRC that it had concluded that adoption by NRC of the proposals and policies set forth in these letters should be sufficient to resolve the Agency's stated concerns regarding its ability to make the finding required to support rescission under CAA Section 112(d)(9). *See* letter from EPA Administrator Carol M. Browner to NRC Chairman Ivan Selin, March 31, 1995, included in the docket. In that correspondence, EPA also stated its intent to publish this notice requesting

supplementary comment concerning the proposed rule to rescind subpart I for NRC licensees other than nuclear power reactors in conjunction with the publication by NRC of its proposed ALARA constraint rule.

EPA is today issuing this notice because NRC has committed to propose a rule to constrain air emissions from licensees other than nuclear power reactors to a level which would result in a dose of no more than 10 mrem/year. The decision by EPA to reaffirm its proposal to rescind Subpart I for these facilities is expressly contingent on this commitment by NRC to propose an ALARA ''constraint level'' rule and on the stated intention of NRC to require that Agreement States adopt equivalent provisions. A draft of the proposed ''constraint level'' rule is attached to the December 21, 1994 letter from NRC Chairman Selin to EPA Administrator Browner, which is included in the public docket and available upon request. In addition, NRC has advised EPA that it expects to publish a proposed ''constraint level'' rule shortly and that this NRC proposal will not differ in any material respect from the draft rule provided to EPA on December 21, 1994. Therefore, the initial EPA determination and request for comments set forth below are based on the December 21, 1994 draft of the NRC proposal.

III. Initial Determination Concerning Sufficiency of NRC Proposals and Actions to Support Rescission of Subpart I for Licensees Other Than Nuclear Power Reactors

From the language of section 112(d)(9), it is apparent that where EPA has already specifically determined what level of emissions must be achieved to provide an ''ample margin of safety,'' that level is the benchmark by which EPA must evaluate the adequacy of the NRC program. EPA specifically found when it promulgated 40 CFR part 61, subpart I, that 10 mrem/yr would provide the requisite ''ample margin of safety.''

Section 112(d)(9) does not, however, require exact equivalence between the EPA and NRC programs applicable to a particular category of licensees before EPA may decline to regulate radionuclide emissions from that category. Rather, it requires that EPA conclude that implementation of the NRC program as a whole will achieve substantive protection of the public health equivalent to or better than that which would by achieved by enforcement of the EPA standard. Thus, if the NRC program as a whole will assure that emissions from all affected licensees remain below the EPA standard, the NRC program may be deemed to provide an ample margin of safety, regardless of whether this results from enforcement by NRC of a single numerical standard.

In deciding whether EPA may decline to regulate a particular category or subcategory of NRC or Agreement State licensees, EPA construes Section 112(d)(9) as requiring that EPA determine: (1) That emissions from NRC licensees (or Agreement State licensees when authority to regulate the licensees has been delegated by NRC) in that category or subcategory will be consistently and predictably at or below a level resulting in a dose of 10 mrem/year, and (2) that NRC (or the Agreement States) can and will require any individual licensee in that category or subcategory with emissions that cause a dose exceeding 10 mrem/year to reduce the emissions sufficiently that the dose will not exceed 10 mrem/year.

As explained above, EPA has concluded based on the information presented to date that radionuclide emissions from licensees other than nuclear power reactors under the current NRC program are generally well below the level that would result in a dose exceeding 10 mrem/yr. EPA experience in administration of subpart I since it became effective has tended to confirm this conclusion. Out of the thousands of licensees subject to the standard, only 16 facilities are presently reporting radionuclide emissions exceeding the EPA standard, and EPA expects that most of these reported violations will be resolved through EPA approval of adjustments in the COMPLY methodology for calculating doses.

EPA has concluded that the ALARA constraint rule and the other NRC proposals and policies described above, when adopted, will support the requisite determination for rescission under CAA Section 112(d)(9). Promulgation of the ALARA constraint rule will assure that radionuclide emissions by the affected licensees will be consistently and predictably below a level which would result in a dose exceeding 10 mrem/year, and that NRC can require an individual licensee who exceeds the 10 mrem/yr level to take corrective actions to reduce emissions. By making the ALARA constraint rule a matter of Division Level 2 compatibility, NRC will assure that those licensees regulated by individual Agreement States also will be subject to the 10 mrem/yr constraint level and will be required to report and correct any exceedances of that level. Finally, the final adoption by NRC of policy statements establishing specific criteria for adequacy and compatibility and adopting procedures for suspension or termination of Agreement State programs will resolve previous concerns regarding the ability of NRC to act if it determines that an Agreement State program is inadequate or incompatible.

Based on the above analysis, EPA is today making an initial determination that, if NRC adopts the proposals and policies described above, the NRC program will provide an ample margin of safety to protect the public health under CAA Section 112(d)(9). Based on this initial determination, EPA is also affirming its proposal to rescind subpart I for NRC and Agreement State licensees other than nuclear power reactors, and requesting further comment concerning the sufficiency of the proposed modifications of the NRC program to provide an ample margin of safety.

EPA will make a final determination under Section 112(d)(9) when it takes final action concerning the proposed rescission. EPA intends to take final action concerning its proposal to rescind subpart I for NRC and Agreement State licensees other than nuclear power reactors on or after the date that NRC takes final action on the proposed ALARA ''constraint level'' rule.

IV. Request for Comments

EPA invites additional comments concerning the following questions:

(1) If NRC adopts the proposed ALARA constraint level rule, will the resultant NRC regulatory program assure that routine radionuclide emissions from NRC licensees other than nuclear power reactors result in doses which are consistently and predictably no greater than 10 mrem/year ?

(2) If NRC adopts the proposed ALARA constraint level rule, will NRC have sufficient authority to require any affected facility with routine radionuclide emissions at a level which results in a dose exceeding 10 mrem/yr to reduce its emissions to a level resulting in a dose no greater than 10 mrem/yr?

(3) If NRC makes the proposed ALARA constraint level rule a matter of Division Level 2 compatibility, will this assure that each individual Agreement State establishes an ALARA constraint level for its licensees which is no greater than 10 mrem/yr, and requires its licensees to report and correct exceedances of that level?

(4) Are the NRC policies establishing criteria to evaluate the adequacy and compatibility of Agreement State programs, and adopting procedures to permit suspension or termination of Agreement State programs, sufficient to

enable NRC to take necessary action if it determines that an Agreement State program is inadequate or incompatible?

(5) Do these four actions, in addition to other actions taken by NRC combine to provide an ample margin of safety to protect public health?

EPA is not requesting further comments on the nature of current radionuclide emissions by facilities subject to subpart I, or any other issue not expressly addressed by this notice or the NRC proposals and policies on which it is based. EPA does not expect to respond to any specific comments which are outside the scope of this notice.

List of Subjects in 40 CFR Part 61

Environmental protection, Air pollution control, Arsenic, Asbestos, Benzene, Beryllium, Hazardous substances, Mercury, Radionuclides, Radon, Reporting and recordkeeping requirements, Uranium, Vinyl Chloride.

Dated: September 8, 1995.

Carol M. Browner,

Administrator.

[FR Doc. 95–24111 Filed 9–27–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 70

[AD–FRL–5305–4]

Clean Air Act Final Full Approval of Operating Permits Programs in Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is promulgating full approval of the operating permits programs submitted by the Oregon Department of Environmental Quality (ODEQ) and Lane Regional Air Pollution Authority (LRAPA) for the purpose of complying with Federal requirements for an approvable State program to issue operating permits to all major stationary sources, and to certain other sources. In the final rules section of this Federal Register, EPA is approving the ODEQ and LRAPA Operating Permits Programs as a direct final rule without prior proposal because the Agency views this as a noncontroversial rule revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this notice.

DATES: Comments on this proposed rule must be received in writing by October 30, 1995.

ADDRESSES: Written comments should be addressed to David C. Bray, (AT–082), Air Compliance and Permitting Section, at the EPA Regional Office listed below. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24-hours before the visiting day.

Copies of Oregon's submittal and other supporting information used in developing the final full approval are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: David C. Bray, U.S. Environmental Protection Agency, 1200 Sixth Avenue, AT–082, Seattle, Washington 98101, (206) 553–4253.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action which is located in the Rules Section of this Federal Register.

Dated: September 19, 1995.

Jane S. Moore,

Acting Regional Administrator.

[FR Doc. 95–24035 Filed 9–27–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 70

[AD–FRL–5300–3]

Clean Air Act Proposed Interim Approval Of Operating Permits Program; Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed action and proposed notice of correction.

SUMMARY: EPA is reproposing interim approval of one element of the State of Washington's title V air operating permits program. On November 9, 1994, EPA granted interim approval to Washington's operating permits program. 59 FR 55813 (November 9, 1994). One of the basis for granting Washington's program interim rather than full approval was that EPA determined that Washington's exemption for ''insignificant emission units'' exceeded the exemption authorized for such units under the Clean Air Act. A coalition of industries filed a petition for review of EPA's decision to condition full approval on changes to Washington's treatment of insignificant emission units. Upon EPA's request for a voluntary remand, the Court remanded this interim approval issue to EPA for reconsideration. EPA continues to believe that Washington has impermissibly expanded the exemption for insignificant emission units, but for somewhat different reasons, and therefore again proposes to condition full approval of the Washington operating permits program on changes to Washington's treatment of insignificant emission units.

EPA also proposes to approve a change to the jurisdiction of the Benton County Clean Air Authority.

Finally, EPA is proposing to correct the date for expiration of the interim approval and the due date of the required submission addressing the interim approval issues.

DATES: Comments on this proposed action must be received in writing by October 30, 1995.

ADDRESSES: Written comments should be addressed to: David C. Bray, Permits Program Manager, U.S. Environmental Protection Agency, Region 10, Air and Radiation Branch (AT–082), 1200 Sixth Avenue, Seattle, Washington 98101.

Copies of the State's submittal and other information supporting this proposed action are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 10, Air & Radiation Branch (AT–082), 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: David C. Bray, Permits Program Manager, Air and Radiation Branch (AT–082), U.S. Environmental Protection Agency, Region 10, Seattle, Washington, (206) 553–4253.

SUPPLEMENTARY INFORMATION

I. Background and Purpose

A. Introduction

As required under title V of the 1990 Clean Air Act Amendments (sections 501–507 of the Clean Air Act (''the Act'')), EPA has promulgated rules which define the minimum elements of an approvable State operating permits program and the corresponding standards and procedures by which the EPA will approve, oversee, and withdraw approval of State operating permits programs (see 57 FR 32250 (July

21, 1992)). These rules are codified at 40 Code of Federal Regulations (CFR) part 70. Title V requires States to develop, and submit to EPA, programs for issuing these operating permits to all major stationary sources and to certain other sources.

The Act requires that States develop and submit these programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by 2 years after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a Federal program.

B. Previous Action on Washington's Program

Washington submitted its operating permits program to EPA in November 1993. In August 1994, EPA proposed to grant interim approval to Washington's program and proposed to condition full approval on, among other things, revisions to Washington's regulations pertaining to the treatment of insignificant emission units (IEUs). See 59 FR 42552, 42557–42558 (August 18, 1994). In proposing that Washington be required to revise its IEU regulations as a condition of full approval, EPA stated:

> Under 40 CFR 70.5(c), EPA may approve as part of a State program a list of insignificant activities and emissions levels which need not be included in permit applications. However, no activity for which there is an applicable requirement may be defined as insignificant.

59 FR 42558. Several parties commented that Washington's IEU rules met the requirements of title V and part 70 and should therefore not be a basis for interim approval. These commenters disagreed with EPA's statement that no unit for which there is an applicable requirement could be defined as ''insignificant.'' The commenters further stated that such an interpretation would prevent Washington and most other States from granting any relief for insignificant emission units, which they argued is inconsistent with the intent of part 70, because it would subject all emissions, regardless of size and environmental impact to all part 70 requirements, including periodic monitoring, reporting, recordkeeping and compliance certification.

After reviewing the comments, EPA determined that Washington's IEU rules did in fact exceed the exemption authorized under part 70 for IEUs and therefore conditioned full approval of Washington's program on certain specified changes to Washington's IEU rules and changes to four other aspects of Washington's operating permits program. In responding to these comments in the final interim approval action, EPA stated:

> EPA maintains, however, that Title V and the Part 70 rules preclude the exemption of emission units as ''insignificant'' when such units are subject to an applicable requirement. Section 504(a) of the Act requires that ''each permit issued under this title shall include enforceable emission limitations and standards, a schedule of compliance, a requirement that the permittee submit to the permitting authority, no less often than every 6 months, the results of any required monitoring, and such other conditions as are necessary to assure compliance with *applicable requirements of the Act, including the requirements of the applicable implementation plan.*'' (emphasis added). Section 70.6(a)(1) provides that each permit shall include ''emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance''. Furthermore, § 70.6(c)(1) requires that each permit shall contain ''compliance, certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit.'' The fact that an emission unit may emit only small quantities of pollutants does not provide a basis to exempt it from the fundamental statutory requirement that the permit specifically include, and ensure compliance with, all applicable requirements.

59 FR 55814. EPA therefore required Washington, as a condition of full approval, to:

> (5) Revise WAC 173–401–530(2) to define an emission unit as insignificant only if it is subject to no federally enforceable applicable requirement and delete the last sentence in WAC 173–401–200(16) (''These units and activities are exempt from permit program requirements except as provided in WAC 173–401–530.'').

59 FR 55818. On January 9, 1995, the Washington States Petroleum Association, Northwest Pulp & Paper Association, Aluminum Company of America, Columbia Aluminum Corporation, Intalco Aluminum Corporation, Kaiser Aluminum & Chemical Corporation and Vanalco Inc. (collectively, ''Petitioners'') filed a petition with the United States Court of Appeals for the Ninth Circuit seeking review of the conditions in EPA's final interim approval of Washington's operating permits program. *Western States Petroleum Association, et al* v. *EPA, et al,* No. 95–70034 (9th Cir., Jan. 6, 1995). In their petition and subsequent brief, Petitioners claimed that EPA had exceeded its authority in requiring Washington to revise its IEU rules as a condition of full approval and that this condition was arbitrary, capricious, an abuse of discretion and not otherwise in accordance with the law. Petitioners' brief clarified that Petitioners were challenging only EPA's requirement that Washington revise its IEU rules to obtain full approval and did not challenge any of the four other conditions for full approval. The State of Washington filed a brief as intervenor in the matter.

In reviewing the issue, EPA determined Petitioners and the State of Washington had raised a substantial question concerning EPA's interpretation of the IEU provisions of part 70 and the specific regulatory revisions EPA had ordered the State to make to its IEU rules as a condition of full approval. EPA therefore moved the Court on May 23, 1995, to vacate and remand to EPA those portions of EPA's final interim approval of Washington's operating permits program concerning IEUs, specifically, Condition 5 of EPA's conditions for full approval of Washington's operating permits program as described in the November 9, 1994 Federal Register. 59 FR 55818. The Court granted EPA's motion on July 7, 1995, thereby vacating Condition 5 of EPA's conditions for full approval of the Washington program and remanding Condition 5 to EPA for reconsideration and amended decision.

Following the Court's order, EPA has again reviewed the part 70 regulations and Washington IEU provisions. EPA now believes that it was overly broad in stating that title V and part 70 preclude the designation of emission units as ''insignificant'' if such units are subject to a federally-enforceable applicable requirement and in requiring Washington to change its regulations to allow the designation of an emission unit as insignificant only if it is not subject to a federally-enforceable applicable requirement. As discussed below, EPA believes there are circumstances in which an emission unit or activity can be defined as ''insignificant'' under a State operating permits program, even if it is subject to an applicable requirement. However, a title V application must still contain information needed to determine the applicability of or to impose any applicable requirement or any required fee and a title V permit must still meet the requirements of § 70.6 for all emission units, including IEUs, subject

to applicable requirements. EPA therefore continues to believe that the Washington IEU provisions extend the exemption for IEUs beyond the limited exemption authorized by part 70. Accordingly, EPA is again proposing that full approval of the Washington operating permits program be conditioned on changes to Washington's treatment of IEUs.

II. Discussion

A. Proposed Interim Approval of Washington IEU Regulations

1. Part 70 Requirements for Insignificant Emission Units

EPA's regulations for operating permits programs authorize States to establish provisions for IEUs. Specifically, 40 CFR 70.5(c) states:

> The Administrator may approve as part of a State program a list of insignificant activities and emissions levels which need not be included in permit applications. However, for insignificant activities which are exempted because of size or production rate, a list of such insignificant activities must be included in the application. An application may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate the fee amount required under the schedule approved pursuant to § 70.9 of this part.

In addition, § 70.5(c)(3)(i) states:

> A permit application shall describe all emissions of regulated air pollutants emitted from any emissions unit, except where such units are exempted under this paragraph (c) of this section. The permitting authority shall require additional information related to the emissions of air pollutants sufficient to verify which requirements are applicable to the source, and other information necessary to collect any permit fees owed under the fee schedule approved pursuant to § 70.9(b) of this part.

Although both of these provisions authorize a State permitting program to grant certain relief for IEUs in its permit application, both provisions also require that the source submit sufficient information for the permitting authority to be able to verify the requirements applicable to the source and to collect appropriate permit fees. Where information about an IEU is necessary to determine the applicability of, or to impose in the permit, an applicable requirement, then the permit application must contain sufficient information to make that determination. Similarly, if the approved fee schedule imposes fees based on all emissions from a source, including emissions from IEUs, and requires the fee amount to be determined in the permit application, then the application must include emissions information for IEUs.

In addition, a title V permit must contain all requirements applicable to the source, including those requirements applicable to IEUs. Section 504(a) of the Act requires that ''each permit issued under this title shall include enforceable emission limitations and standards, a schedule of compliance, a requirement that the permittee submit to the permitting authority, no less often than every 6 months, the results of any required monitoring, and such other conditions as are necessary to assure compliance with *applicable requirements of (the Act), including the requirements of the applicable implementation plan*.'' (emphasis added). Section 70.6(a)(1) provides that each permit shall include ''emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance.'' Furthermore, § 70.6(c)(1) requires that each permit shall contain ''compliance, certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit.'' The fact that an emission unit may emit only small quantities of pollutants does not provide a basis for exempting it from the fundamental statutory requirement that the permit specifically include, and ensure compliance with, all applicable requirements.

As such, EPA interprets part 70 as allowing States to substantially reduce the burden of information required in permit applications for IEUs, but requiring that sufficient information still be provided in the application to determine the applicability of, and to impose in the permit, all applicable requirements that apply to IEUs. EPA also interprets part 70 as requiring a title V permit to contain all applicable requirements for all emission units, even for IEUs.

This means that some of the information required by §§ 70.5(c)(3) through (9) (Standard application form and required information) may need to be included in the permit application for IEUs in order for the permitting authority to draft an adequate operating permit. As an example, where an IEU is not in compliance with an applicable requirement at the time of permit issuance, the permit application would need to contain a compliance plan, including a compliance schedule, for achieving compliance with the applicable requirement. As another example, if a source has some IEUs within a category that are subject to an applicable requirement and some within that same category that are not subject to that applicable requirement because the applicability criteria for the applicable requirement are different from the applicability criteria for IEUs, the permit application would generally be required to include sufficient information on the IEUs for the permitting authority to determine which units are subject to the applicable requirement and to include that applicable requirement in the permit for the subject IEUs. EPA believes that part 70 would also authorize EPA to approve a State program that requires a permit application to simply list the applicable requirements that apply to IEUs generally, rather than requiring the permit application to explicitly identify which IEUs are subject to which applicable requirements. The State would then issue a permit imposing the applicable requirements in the permit, but not specifically identifying which IEUs are subject to those applicable requirements. In such a case, however, EPA believes that 40 CFR 70.6(f) would not authorize the State to grant a permit shield to IEUs because there would have been no determination in the permitting process that certain IEUs were or were not subject to certain applicable requirements.

2. Washington Requirements for Insignificant Emission Units

a. Definition of ''insignificant activities'' and ''insignificant emission units'' under the Washington program. WAC 173–401–200(16) defines an ''insignificant activity'' or an ''insignificant emission unit'' as any activity or emission unit located at a title V source which qualifies as insignificant under the criteria listed in WAC 173–401–530. Section 173–401–530(1) authorizes activities and emission units to be considered insignificant if (a) actual emissions of all regulated pollutants from the unit or activity are less than the emission thresholds established in WAC 173–401–530(4); (b) the activity or emission unit is listed in WAC 173–401–532 as ''categorically exempt''; (c) the activity or emission unit is listed in WAC 173–401–533 and is considered insignificant based on size or production rate; or (d) the activity or emission unit generates only fugitive emissions, which are subject to no applicable requirement other than generally applicable requirements of the Washington state implementation plan (SIP).

Although WAC 173–401–200(16) and WAC 173–401–530 meet the requirements of part 70 for designating

IEUs,[1] the Washington program contains unacceptably broad exemptions from permit program requirements. WAC 173–401–200(16) provides that activities and units deemed insignificant under WAC 173–401–530 are exempt from Washington's permit program requirements, except as provided in WAC 173–401–530. As discussed in more detail below, WAC 173–401–530 does not include all of the requirements of part 70 which are necessary to comply with the provisions of § 70.5 regarding permit applications and § 70.6 regarding permit content for those IEUs which are subject to applicable requirements. It also appears to exempt IEUs in determining whether a source is even subject to Washington's operating permits program. WAC 173–401–532 and 173–401–533 also state that IEUs are ''exempt from this chapter [WAC 173–401].'' [1a]

WAC 173–401–530(2)(a) does limit the exemption of WAC 173–401–200(16) by providing that no activity or emission unit subject to a federally enforceable applicable requirement (other than generally applicable requirements of the Washington SIP) shall qualify as insignificant. Nonetheless, EPA believes that the Washington program impermissibly exempts from many of the permit content requirements, certain permit application requirements, and possibly even applicability determinations those IEUs that are subject to federally enforceable generally applicable requirements of the Washington SIP, but no other federally enforceable applicable requirements. Thus, although the Washington regulations comply with part 70 regarding the designation of IEUs, they do not comply with the requirements for the treatment of IEUs.

b. Permit content. As stated above, WAC 173–401–200(16) exempts IEUs from Washington's ''permit program requirements except as provided in WAC 173–401–530.'' IEUs are therefore exempt from all of the permit content requirements in WAC 173–401–600 through 650.[2] In addition, WAC 173–401–530(2)(c) specifically (and redundantly) exempts IEUs from the testing, monitoring, reporting and recordkeeping requirements of WAC 173–401–615 and WAC 173–401–630(1) except where generally applicable requirements of the Washington SIP specifically impose such requirements, and WAC 173–401–530(2)(d) specifically (and again redundantly) exempts IEUs from the compliance certification requirements of WAC 173–401–630(5). Finally, WAC 173–401–532 and -533, which contain the lists of IEUs, specifically state that IEUs are ''exempt from this chapter (WAC 173–401).'' In place of those requirements, WAC 173–401–530(2)(b) simply requires the permit application to list and the permit to contain all generally applicable requirements that apply to IEUs.

Nothing in part 70 authorizes a State to omit from a title V permit applicable requirements or the elements of a title V permit specified in section 40 CFR 70.6. Although the Washington regulations ensure that all applicable requirements will be included in a title V permit, WAC 173–401–200(16) exempts IEUs from all of the required title V permit elements except for the generally applicable requirements of the Washington SIP. In other words, a title V permit would not be required to contain any elements required by § 70.6 for IEUs other than the generally applicable requirements themselves. Thus, a title V permit in Washington would not be required to include ''gapfilling'' testing, monitoring, recordkeeping and reporting requirements for IEUs, as required by 40 CFR 70.6(a)(3)(i), (ii) and (iii); compliance certification, testing, monitoring, reporting and recordkeeping requirements sufficient to assure compliance with the generally applicable requirements for subject IEUs, as required by 40 CFR 70.6(c)(1); compliance certification for IEUs, as required by 40 CFR 70.6(c)(5); and, for IEUs not in compliance, a compliance schedule and progress reports, as required by 40 CFR 70.6(c)(3) and (4).

For example, where a source had an IEU that was subject only to a generally applicable requirement in the Washington SIP, the title V permit would be required to contain only those permit provisions required by §§ 70.6(a)(1), 70.6(a)(3)(i)(A), 70.6(a)(3)(ii) and 70.6(a)(3)(iii) that are generally applicable requirements themselves. Washington would not be required to ''gapfill'' any testing or monitoring requirements for IEUs subject to applicable requirements which did not contain their own testing or monitoring methods, as required by § 70.6(a)(3)(i)(B). Washington would also not be required to include in permits compliance and compliance certification requirements for IEUs subject to applicable requirements, as required by § 70.6(c)(1) and (5). For these reasons, EPA believes that the Washington provisions for IEUs do not fully meet the requirements of § 70.6 with respect to the treatment of IEUs subject to applicable requirements.

c. Permit applications. The Washington program meets the requirements of 40 CFR 70.5 (Permit Applications), including the requirement of § 70.5(c) that an application may not omit information needed to determine the applicability of, or to impose, any applicable requirement or evaluate any required fee, with respect to all emissions units except for IEUs. *See* WAC 173–401–500 (Permit application), –510 (Permit application forms), and –520 (Certification). The definition of ''insignificant activity'' and ''insignificant emission unit'' in WAC 173–401–200(16), however, exempts IEUs from all of these requirements, except those contained in WAC 173–401–530. Furthermore, WAC 173–401–532(1) exempts categorically exempt units and activities from permit applications entirely and WAC 173–401–533(1) exempts emission units and activities deemed insignificant based on size or production rate from all permit application requirements except a requirement to include a list of such units and activities in the permit application. In place of the permit application requirements that apply to all other emission units at title V sources in Washington, WAC 173–401–530(2)(b) simply requires that the permit application list all generally applicable requirements that apply to insignificant emission units or activities at the source and, as stated above, WAC 173–401–530(1) requires that the permit application contain a list of IEUs which

[1] It is important to distinguish EPA's concept of ''insignificant activities and emission levels'' as envisioned in section 70.5(c) and Washington's definition of ''insignificant activity'' and ''insignificant emission unit'' in WAC 173–401–200(16) and WAC 173–401–530. Section 70.5(c) allows State programs to include a list of ''insignificant activities'' and ''insignificant emission levels'' which are based solely on classification by source category and/or emission rates. The Washington definition utilizes a similar approach but further restricts ''insignificant activities'' and ''insignificant emission units'' to those activities and units that are subject only to generally applicable requirements of the Washington SIP and no any other federally enforceable applicable requirements.

[1a] For purposes of this action, ''IEU'' refers to activities and emissions units that are defined as insignificant under WAC 173–401–200(16) and 173 401–530, when used in discussing the Washington program, and refers to the generic concept under part 70, when used in discussing the requirements of part 70.

[2] These include WAC 173–401–600 (Permit content); 173–401–610 (Permit duration); WAC 173–401–615 (Monitoring and related recordkeeping and reporting requirements); WAC 173–401–620 (Standard terms and conditions); WAC 173–401–625 (Federally enforceable requirements); 173–401–630 (Compliance requirements); 173–401–635 (Temporary sources); 173–401–640 (Permit shield); 173–401–645 (Emergency provision); 173–401–650 (Operational flexibility).

are so designated based on size or production rate.

As discussed in Section II.A.1 above, EPA believes that part 70 would authorize a State to require an applicant to simply list the applicable requirements that apply to IEUs, rather than requiring the applicant to specifically indicate which IEUs are subject to which applicable requirements, provided the permit shield does not extend to IEUs. In this respect, EPA believes that this aspect of Washington's approach to IEU's is acceptable because WAC 173–401–530(3) specifically states that the permit shield does not extend to IEUs designated under the Washington rules. The Washington regulations fail to satisfy the requirements of part 70 with respect to permit application requirements in several other respects, however. For example, the Washington program exempts sources from the requirement of 40 CFR 70.5(a)(2) and (d) that a responsible official certify the truth, accuracy and completeness of the provisions in the permit application that relate to IEUs. In addition, WAC 173–401–500(7), which contains criteria for determining when an application is complete, appears to contain an impermissible exemption for IEUs. That section defines an application as complete when it contains, among other things, ''the required information for each emission unit (other than insignificant emission units) at the facility.'' WAC 173–401–500(7)(a). This provision appears to define an application as complete even if it fails to include the information required by WAC 173–401–510(1) and (2)(c)(i) that would be necessary to determine the applicability of, or to impose, any applicable requirement or fee for IEUs. It would also define a permit application as complete even if it failed to include the information regarding IEUs required by WAC 173–401–530.

Although Washington does not appear to have intended to exclude IEUs from all of the requirements of WAC 173–401–501, –510, and –520, EPA believes that this is the clear effect of the exclusions contained in WAC 173–401–200(16) and 173–401–500(7)(a). EPA therefore believes that the provisions for permit applications in the Washington operating permits regulations do not fully meet the requirements of § 70.5 with respect to IEUs.[3]

d. Applicability determinations. Because WAC 173–401–530 does not specifically require emissions from IEUs to be included in applicability determinations, the exemption contained in the definition of IEU could be interpreted to allow emissions from IEUs to be excluded from the determination of whether a source is a major source under WAC 173–401–200(17) and (32) and thus subject to Washington's operating permits program in the first instance. In other words, the requirement to include emissions from IEUs in determining whether a source is a major source is a permit program requirement from which IEUs appear to be exempted under WAC 173–401–200(16). Nothing in title V or part 70 suggests that emissions from IEUs can be ignored in determining whether a source is a title V source. *See* 40 CFR 70.2 (Definition of ''major source''; 40 CFR 70.3 (Applicability). Although EPA does not believe that Washington intended that emissions from IEUs be excluded in applicability determinations, EPA is concerned that Washington's IEU regulations could be interpreted to have that effect.

3. Implementation Concerns

During the public comment period on EPA's initial interim approval of the Washington program, commenters expressed concern that permit applications would have to describe emissions from all units and responsible officials would be required to conduct extensive due diligence efforts in order to certify the compliance of emission units that emit very small quantities of pollutants. These parties argued that this was an unreasonable regulatory burden that would result in excessive paperwork and would likely decrease the ability of permitting agencies to effectively enforce title V permits. The Petitioners and the State echoed these concerns in their challenge of EPA's interim approval action before the Ninth Circuit Court of Appeals.

Such program implementation concerns should be reduced now that EPA has clarified that emission units subject to applicable requirements may be defined as ''insignificant,'' provided that the application contains sufficient information to determine the applicability of, and to impose in the permit, all applicable requirements and fees that apply to IEUs and that the permit contains all applicable requirements for all emission units, even IEUs. In addition, part 70 allows States flexibility in tailoring the quality of information required in the permit application and the rigor of compliance requirements in the permit to the type of emission unit and applicable requirement in question. *See White Paper for Streamlined Development of Part 70 Permit Applications*, from Lydia Wegman, Deputy Director of EPA's Office of Air Quality Planning and Standards, to EPA Regional Air Directors (July 10, 1995). For example, the requirement to include in a permit application information necessary to determine the applicability of an applicable requirement does not necessarily require an applicant to describe or quantify emissions of regulated pollutants. Units subject to an applicable requirement can be identified as a class along with the applicable requirement (e.g. valves and flanges subject to a leak detection and repair requirement). Furthermore, the requirement to include in a permit compliance certification, testing, monitoring, reporting, and recordkeeping *sufficient to assure compliance* with the terms and conditions of the permit does not require the permit to impose the same level of rigor with respect to small emission units that do not require extensive testing or monitoring in order to determine compliance with the applicable requirements as it does with respect to large emission units.

The State of Oregon, which received interim approval of its operating permit program effective January 3, 1995,[4] 59 FR 61820 (Dec. 2, 1994) has already issued several final title V operating permits. The Oregon program provides an example of how a State can meet the requirements of part 70 for IEUs and still successfully implement an operating permit program. The Oregon program defines certain activities as ''insignificant,'' based either on the amount of emissions or the activity itself. *See* OAR 340–28–110(5), (15), and (50). The program requires that a permit application contain a list of all categorically insignificant activities and an estimate of all emissions of regulated air pollutants from those activities which are designated insignificant because of nonexempt insignificant mixture usage or aggregate insignificant emissions. *See* OAR 340–28–2120(3)(e). The Oregon program, however, prohibits the omission of information needed to determine the applicability of, or to impose, an applicable requirement, or to evaluate a required

[3] In this regard, EPA believes its proposed interim approval of Washington's IEU provisions is consistent with EPA action in other title V program approvals. For example, in requiring Illinois to revise its IEU provisions as a condition of full approval, EPA stated that the Illinois program would impermissibly allow a permit application to omit information needed to determine the applicability of, or to impose, applicable requirements on IEUs. *See* 60 FR 12478 (March 7, 1995).

[4] Oregon's insignificant emissions unit provisions received full approval.

fee, *see* OAR 340–28–2120(3), and does not allow the exemption of IEUs from the permit content requirements of Oregon's program, *see* OAR 340–28–2130.

Permits issued by the State of Oregon have included generally applicable requirements contained in the Oregon State Implementation Plan (A final title V permit that has been issued by Oregon is in the docket). Permits contain provisions requiring sources to monitor IEUs subject to applicable requirements, for example, by estimating emissions once every five years and conducting semi-annual compliance inspections of IEUs, the results of which are recorded in a company log. Permits also contain a chart of test methods and procedures for determining compliance with generally applicable requirements. In short, by using standard permit terms to address compliance certification, testing, monitoring, recordkeeping and reporting requirements for common generally applicable requirements that apply to IEUs, the State of Oregon appears to have minimized the burden of ensuring that a permit meets the requirements of § 70.6.

4. Proposed Interim Approval

In summary, EPA continues to believe that the Washington program does not fully meet the requirements of title V and part 70 with respect to IEUs. Specifically, Washington's definition of ''insignificant activity'' and ''insignificant emission unit'' in WAC 173–401–200(16) exempts such activities and units from all of the permit program requirements of WAC 173–401 except those requirements contained in WAC 173–401–530. WAC 173–401–530, however, does not ensure that all of the necessary provisions of §§ 70.5 and 70.6 are met for those IEUs which are subject to applicable requirements and does not ensure that emissions from IEUs must be included in determining whether a source is even subject to Washington's operating permits program.

EPA does not believe, however, that the deficiencies in the Washington program with respect to IEUs warrant disapproval of the Washington program. Section 502(g) of the Act and 40 CFR 70.4(d) authorize EPA to grant interim approval to a State operating permits program if the program substantially meets the requirements of part 70, but does not qualify for full approval. Although § 70.4(d)(3)(ii) requires a program to have adequate authority to issue permits that assure compliance with all of the requirements of title V and part 70 in order to receive interim approval, EPA believes that the deficiencies in Washington's program with respect to IEUs are sufficiently narrow to qualify for interim approval. Specifically, WAC 173–401–530(2)(a) limits the exemption for IEUs to just those emission units and activities that are subject to no other federally enforceable applicable requirements than generally applicable requirements of the Washington SIP. Emission units or activities, regardless of size, emission rate, or category, which are subject to any other federally enforceable requirement do not qualify as IEUs and as such, do not qualify for the exemption from the permit application and permit content requirements provided by WAC 173–401–200(16) and WAC 173–401–530. Only IEUs subject solely to the generally applicable requirements of the SIP are exempted under the Washington program from many of the requirements for permit applications and permit content, and those exemptions would be limited to just those generally applicable requirements. As such, the Washington program meets the requirements of part 70 for most emission units and activities and EPA therefore proposes to grant interim approval to the Washington operating permits programs with respect to the IEU provisions.

B. Jurisdiction of the Benton County Clean Air Authority

On April 12, 1995, the Director of the State of Washington Department of Ecology submitted a revision to the State of Washington title V operating permits program, specifically, a change in the jurisdiction of the Benton-Franklin Counties Clean Air Authority. The submittal explained that on January 1, 1995 the Benton-Franklin Counties Clean Air Authority became the Benton County Clean Air Authority, returning jurisdiction for title V permitting and enforcement over sources in Franklin County to the Washington Department of Ecology as a matter of State law.

EPA has reviewed this revision to the Washington title V operating permits program and does not believe that the proposed change in the permitting authority for title V sources in Franklin County impacts the approvability of the operating permits programs submitted by the Benton County Clean Air Authority program or the Washington Department of Ecology. Therefore, EPA proposes to approve this revision to the Washington title V operating permits program.

C. Correction to Interim Approval Expiration Dates

EPA granted interim approval to the Washington title V operating permits program on November 9, 1994, which action became effective on December 9, 1994. *See* 59 FR 55813. Section 502(g) of the Act provides that an interim approval shall expire on a date set by the Administrator not later than 2 years after such approval. The Federal Register notice stated, however, that the interim approval of the Washington program would expire on November 9, 1996, which is 2 years from the date of publication of the notice, and not, as EPA intended, 2 years from the effective date of the notice, or December 9, 1996. The notice also set May 9, 1996 as the submittal date for a corrective program, which is only 17 months after the effective date of the interim approval, rather than June 9, 1996, which is 18 months after the effective date. EPA is therefore by this notice proposing to correct the dates in 40 CFR part 70, Appendix A for expiration of the interim approval of the Washington State title V operating permits program from November 9, 1996 to December 9, 1996, and proposing to correct the date by which the State must submit a corrective program from May 9, 1996 to June 9, 1996.

III. Proposed Action and Implications

A. Proposed Action

EPA is proposing to require that the State of Washington change its regulations addressing IEUs to conform to the requirements of part 70 as a condition of full approval of the operating permits program submitted by the State of Washington on November 16, 1993. If promulgated, the State must make the following revisions to its IEU provisions to receive full approval:

(5) Revise WAC 173–401–200(16) (Definition of ''insignificant activity'' and ''insignificant emission unit''), WAC 173–401–500 (Permit applications), WAC 173–401–510 (Permit application form), WAC 173–401–530 (Insignificant emission units), WAC 173–401–532 (Categorically exempt insignificant emission units) and WAC 173–401–533 (Units and activities defined as insignificant on the basis of size or production rate) to ensure that emissions from IEUs are not exempted from applicability determinations; that permit applications contain a list of all IEUs which are exempted because of size or production rate; that permit applications contain all information needed to determine the applicability of or to impose any applicable requirement or required fee; and that permits contain all applicable requirements and meet all permit content requirements of 40 CFR 70.6 for all emission units, even for IEUs.

This proposed requirement replaces Condition 5 under the heading ''Ecology'' in Section II.B. of EPA's November 9, 1994, Federal Register notice granting final interim approval of

the Washington operating permits program. See 59 FR 55818. Note that this proposal in no way affects the changes necessary to address all other interim approval issues identified in the November 9, 1994 Federal Register notice. In other words, as a condition of full approval, Washington must also correct the four other deficiencies in its program identified in the November 9, 1994, notice and the other Washington permitting authorities must correct all deficiencies in their respective programs identified in the November 9, 1994, notice. *See* 59 FR 55818–55819.

EPA is also proposing to approve as a program revision the transfer of title V permitting and enforcement authority for sources in Franklin County to the Washington Department of Ecology.

Finally, EPA is proposing to correct the expiration dates in Appendix A for the interim approval of the Washington State and local operating permits programs as well as the date by which the State is required to submit a corrective program.

B. Effective Date of Interim Approval

If EPA were to finalize this proposed interim approval, it will not change the time period for the initial interim approval, which is December 9, 1996. During this ongoing interim approval period, the State is protected from sanctions for failure to have a program, and EPA is not obligated to promulgate, administer and enforce a Federal permits program for the State of Washington. Permits issued under the Washington program have full standing with respect to part 70. In addition, the 1-year deadline for submittal of permit applications by subject sources and the 3-year time period for processing the initial permit applications began upon the effective date of interim approval, which in this case was December 9, 1994.

If the State of Washington were to fail to submit a complete corrective program for full approval by the date 6 months before expiration of the interim approval (by June 9, 1996) EPA would start an 18-month clock for mandatory sanctions. If the State of Washington were then to fail to submit a complete corrective program before the expiration of that 18-month period, EPA would be required to apply one of the sanctions in section 179(b) of the Act, which would remain in effect until EPA determined that the State of Washington had corrected the deficiency by submitting a complete corrective program. Moreover, if the Administrator were to find a lack of good faith on the part of the State of Washington both sanctions under section 179(b) would apply after the expiration of the 18-month period until the Administrator determined that the State of Washington had come into compliance. In any case, if, 6 months after application of the first sanction, the State of Washington still had not submitted a corrective program that EPA found complete, a second sanction would be required.

If, following expiration of final interim approval, EPA were to disapprove the State of Washington's complete corrective program, EPA would be required to apply one of the section 179(b) sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date the State of Washington had submitted a revised program and EPA had determined that it corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator found a lack of good faith on the part of the State of Washington both sanctions under section 179(b) would apply after the expiration of the 18-month period until the Administrator determined that the State of Washington had come into compliance. In all cases, if, 6 months after EPA applied the first sanction, the State of Washington had not submitted a revised program that EPA had determined corrected the deficiencies that prompted disapproval, a second sanction would be required.

In addition, discretionary sanctions may be applied where warranted any time after the end of an interim approval period if a State has not timely submitted a complete corrective program or EPA has disapproved a submitted corrective program. Moreover, if EPA has not granted full approval to a State program by the expiration of an interim approval and that expiration occurs after November 15, 1995, EPA must promulgate, administer and enforce a Federal permits program for that State upon expiration of interim approval.

IV. Administrative Requirements

A. Request for Public Comments

EPA is requesting comments on two issues addressed in this notice, specifically, (1) conditioning full approval of the Washington operating permits program on changes to Washington's regulations addressing insignificant emission units; and (2) approving a change to the jurisdiction of the Benton County Clean Air Authority. All other aspects of EPA's interim approval of Washington's operating permits program, as discussed in 59 FR 42552, including all other conditions on full approval of Washington's operating permit programs, remain unchanged by this proposal and are not open for public comment. Correction of the expiration date of the final interim approval of Washington's operating permits program and the date by which Washington must submit a corrective program are being made as an administrative correction and is not open for public comment.

Copies of the State's submittal and other information relied upon for this proposed action and notice are contained in a docket maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed interim approval. The principal purposes of the docket are:

(1) to allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process, and

(2) to serve as the record in case of judicial review.

The EPA will consider any comments received by October 30, 1995.

B. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

C. Regulatory Flexibility Act

EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Because this proposed action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

D. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the action proposed today does not include a Federal mandate that may result in estimated costs of $100 million or more

to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: September 14, 1995.

Chuck Clarke,

Regional Administrator.

Part 70, chapter I, title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, et seq.

2. Part 70 is proposed to be amended by revising the Washington paragraph of Appendix A to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Washington

(a) Department of Ecology (Ecology): submitted on November 1, 1993; effective on December 9, 1994; interim approval expires December 9, 1996.

(b) Energy Facility Site Evaluation Council (EFSEC): submitted on November 1, 1993; effective on December 9, 1994; interim approval expires December 9, 1996.

(c) Benton County Clean Air Authority (BCCAA): submitted on November 1, 1993 and amended on September 29, 1994 and April 12, 1995; effective on December 9, 1994; interim approval expires December 9, 1996.

(d) Northwest Air Pollution Authority (NWAPA): submitted on November 1, 1993; effective on December 9, 1994; interim approval expires December 9, 1996.

(e) Olympic Air Pollution Control Authority (OAPCA): submitted on November 1, 1993; effective on December 9, 1994; interim approval expires December 9, 1996.

(f) Puget Sound Air Pollution Control Agency (PSAPCA): submitted on November 1, 1993; effective on December 9, 1994; interim approval expires December 9, 1996.

(g) Southwest Air Pollution Control Authority (SWAPCA): submitted on November 1, 1993; effective on December 9, 1994; interim approval expires December 9, 1996.

(h) Spokane County Air Pollution Control Authority (SCAPCA): submitted on November 1, 1993; effective on December 9, 1994; interim approval expires December 9, 1996.

(i) Yakima County Clean Air Authority (YCCAA): submitted on November 1, 1993 and amended on September 29, 1994; effective on December 9, 1994; interim approval expires December 9, 1996.

* * * * *

[FR Doc. 95–23967 Filed 9–27–95; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AD47

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Juglans jamaicensis

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to determine *Juglans jamaicensis* (nogal or West Indian walnut) to be an endangered species pursuant to the Endangered Species Act (Act) of 1973, as amended. Nogal is known from the islands of Hispaniola, Cuba and Puerto Rico. In Puerto Rico, this large tree is known from only 14 individuals at one locality in Adjuntas. The area is located near the Monte Guilarte Commonwealth Forest but is in private ownership and threatened by land-clearing for agriculture and rural development. This proposal, if made final, would implement the Federal protection and recovery provisions afforded by the Act for *Juglans jamaicensis*.

DATES: Comments from all interested parties must be received by November 27, 1995. Public hearing requests must be received by November 13, 1995.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622. Comments and materials received will be available for public inspection, by appointment, during normal business hours at this office, and at the Service's Southeast Regional Office, 1875 Century Boulevard, Atlanta, Georgia 30345.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Silander at the Caribbean Field Office address (809/851–7297) or Mr. William C. Hunter at the Southeast Regional Office address (404/679–7130).

SUPPLEMENTARY INFORMATION:

Background

Juglans jamaicensis (nogal or West Indian walnut) was first described as *J. jamaicensis* by DeCandolle from a description and illustration of leaves, staminate catkin and fruit by Descourtilz which had been published under the name of *Juglans fraxinifolia*. DeCandolle mistakenly believed that the tree Descourtilz had illustrated originated in Jamaica, when in reality no walnut tree has ever been located in Jamaica. Synonyms which have been applied to the species include *Juglans fraxinifolia* Descourtilz, *J. cinerea* of Bello, *J. insularis* Griseb., *J. portoricensis* Dode, and *J. domingensis* (Proctor 1992).

Juglans jamaicensis is known from Cuba, Hispaniola and Puerto Rico but little information is currently available on its status in the first two countries (Liogier and Martorell 1982). It has been described by the Center for Plant Conservation (1992) as ''not common'' and by Proctor (1992) as becoming increasingly rare on these two islands.

Nogal was first collected from Puerto Rico by Augustin Stahl around 1865. This collection was from an area between Peñuelas and Adjuntas at an elevation of approximately 700 meters (2,297 feet). The species was subsequently collected by the German botanist Paul Sintenis in 1886 from somewhere near Adjuntas (Saltillo) and again in 1887 near Utuado (Santa Rosa). An additional collection was made by Bartolomé Barcela in 1915 from an area near Adjuntas (Little *et al.* 1974, Proctor 1992). Little *et al.* (1974) stated that the species might possibly be extinct.

Juglans jamaicensis was not reported again until 1974 when it was rediscovered by Roy O. Woodbury from the upper north slopes (an elevation of 1070 meters (3,510 feet)) of Cerro La Silla de Calderón, an area located near the southwest corner of the municipality of Adjuntas. A survey of these trees was made in 1992 by Salvador Alemañy of the U.S. Forest Service. Fourteen individuals were documented during this survey, the largest of which was more than 20 meters (66 feet) in height. The species has been reported from montane forests at elevations between 700 and 1,000 meters (2,297 and 3,281 feet) (Proctor 1992).

Juglans jamaicensis is a large tree which may reach up to 25 meters (82 feet) in height. Twigs, buds, and leaf-axes have minute rusty hairs. The leaves are alternate and compound and consist of 16 to 20 mostly paired, nearly stalkless leaflets. Leaflets are 5.5 to 9

centimeters (2.2 to 3.5 inches) long and 2.2 to 4 centimeters (0.9 to 1.6 inches) wide, thin and nearly hairless except on the veins beneath. Leaflets are lanceolate, finely toothed, long-pointed and rounded, and unequal at the base. Nogal is monoecious; male and female flowers are borne in different clusters or catkins on the same tree. Staminate or male flowers are numerous and in drooping catkins, 8.8 to 11 centimeters (3.5 to 4.3 inches) long, borne on the twigs of the previous year. Pistillate or female flowers are several along an axis 4.4 to 8.8 centimeters (1.7 to 3.5 inches) long, borne at the ends of the shoots of the season. Individual male flowers are composed of a 6-lobed calyx and many stamens. Female flowers are about 0.5 centimeters (0.2 inches) long, composed of a 4-toothed scale opening at one side and 4 sepals. The fruit, a drupe, is a walnut which is composed of a blackish husk, a brown rough-ridged hard shell from 1.6 to 2.75 centimeters (0.6 to 1.1 inches) wide and one large oily edible seed (Little *et al.* 1974, Proctor 1992).

Juglans jamaicensis may have been more widespread in Puerto Rico in the past, but much of the forested areas in the central mountain region were cut for the planting of coffee. The species, possibly never a common one, may also have been cut for the use of its valuable wood (Little *et al.* 1974). Today it is known from only one locality on privately-owned land where it is threatened by rural development and agricultural activity.

Previous Federal Action

Juglans jamaicensis was included among the plants being considered as endangered or threatened by the Service, as published in the Federal Register notice of review dated February 21, 1990 (55 FR 6184) and September 31, 1993 (58 FR 51144). The species was designated as a category 2 candidate species (species for which the Service has information which indicates that proposing to list the species is possibly appropriate but for which sufficient data are not currently available to support listing) but was subsequently reclassified as a category 1 candidate species (species for which the Service has substantial information supporting the appropriateness of proposing to list them as endangered or threatened). *Juglans jamaicensis* is considered a ''critical'' plant species by the Natural Heritage Program of the Puerto Rico Department of Natural and Environmental Resources. The Center for Plant Conservation (1992) has assigned the species a Priority Status of A (a species which could possibly go extinct in the wild in the next 5 years). This proposed rule constitutes the final 1-year finding in accordance with section 4(b)(3)(B)(ii) of the Act.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Juglans jamaicensis* C. DC. are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* *Juglans jamaicensis* is known only from Cuba, Hispaniola and Puerto Rico. Available information indicates that it is rare on the first two islands (CPC 1992, Proctor 1992). In Puerto Rico it is known from only one population consisting of 14 individuals on privately-owned land. Surrounding areas are currently planted in coffee. The expansion of the coffee plantation threatens these trees, particularly because the tendency to plant ''sun coffee'' is increasing and in such plantations all shade trees are eliminated. Located in a rural area, development for housing may threaten the species as well.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* The wood of the species is reported to be good quality and highly prized and indeed it is reported to have been cut in the past for such purposes (Little *et al.* 1974).

C. *Disease or predation*. Disease and predation have not been documented as factors in the decline of this species.

D. *The inadequacy of existing regulatory mechanisms.* The Commonwealth of Puerto Rico has adopted a regulation that recognizes and provides protection for certain Commonwealth listed species. However, *Juglans jamaicensis* is not yet on the Commonwealth list. Federal listing would provide immediate protection and, if this species is ultimately placed on the Commonwealth list, enhance its protection and the likelihood for funding needed research.

E. *Other natural or manmade factors affecting its continued existence.* One of the most important factors affecting the continued survival of this species is its limited distribution. Because so few individuals are known to occur in a limited area, the risk of extinction is extremely high. Catastrophic natural events, similar to the passing of Hurricane Hugo in 1989, may dramatically affect forest species composition and structure, felling large trees and creating numerous canopy gaps.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Juglans jamaicensis* as endangered. The species is known from only one locality in Puerto Rico. Deforestation for rural and agricultural development are imminent threats to the survival of the species. Therefore, endangered rather than threatened status seems an accurate assessment of the species' condition. The reasons for not proposing critical habitat for these species are discussed below in the ''Critical Habitat'' section of this rule.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection and; (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *Juglans jamaicensis.* Service regulations (50 CFR 424.12(a)(1) state that the designation of critical habitat is not prudent when one or both of the following situations exist—(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

The number of individuals of *Juglans jamaicensis* is small and vandalism and

collection could seriously affect the survival of the species. The wood of the species has been described as ''highly prized'' and cutting for timber has been identified as a factor affecting the species in the past. Publication of critical habitat descriptions and maps in the Federal Register would increase the likelihood of such activities. The Service believes that Federal involvement in the areas where these plants occur can be identified without the designation of critical habitat. All involved parties and landowners have been notified of the location and importance of protecting this species' habitat. Protection of this species' habitat will also be addressed through the recovery process and through the section 7 jeopardy standard. The precarious status of *Juglans jamaicensis* necessitates identical thresholds for determining adverse modification of critical habitat and jeopardizing the continued existence of the species. Therefore, no benefit from designating critical habitat would occur for this species.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, Commonwealth, and private agencies, groups and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the Commonwealth, and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. Protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, required Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. No critical habitat is being proposed for this species, as discussed above. Federal involvement may be through the use of Federal funding for rural housing and development (for example, the Farmer's Home Administration or Housing and Urban Development) or Federal activities or authorizations (for example, U.S. Forest Service forest management practices on private lands).

The Act and its implementing regulations set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any endangered plant, transport it in interstate or foreign commerce in the course of a commercial activity, sell or offer it for sale in interstate or foreign commerce, or remove and reduce to possession the species from areas under Federal jurisdiction. In addition, for plants listed as endangered plants, the Act prohibits the malicious damage or destruction on areas under Federal jurisdiction and the removal, cutting, digging up, or damaging or destroying of endangered plants in knowing violation of any Commonwealth law or regulation, including Commonwealth criminal trespass law. Certain exceptions to the prohibitions apply to agents of the Service and Commonwealth conservation agencies.

The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits for this species will ever be sought or issued, since the species is not known to be in cultivation and are uncommon in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Service's Southeast Regional Office, 1875 Century Boulevard, Atlanta, Georgia 30345 (404/679–7110).

It is the policy of the Service, published in the Federal Register on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable those activities that would or would not constitute a violation of section 9 of the Act at the time of listing. The intent of this policy is to increase public awareness of the effect of listing on proposed or ongoing activities. The only known population of *Juglans jamaicensis* is located on privately-owned land. Since there is no Federal ownership, and the species is not currently in trade, the only potential section 9 involvement would relate to removing or damaging the plant in knowing violation of Commonwealth law, or in knowing violation of Commonwealth criminal trespass law. Section 15.01(b) of the Commonwealth ''Regulation to Govern the Management of Threatened and Endangered Species in the Commonwealth of Puerto Rico'' states: ''It is illegal to take, cut, mutilate, uproot, burn or excavate any endangered plant species or part thereof within the jurisdiction of the Commonwealth of Puerto Rico.'' The Service is not aware of otherwise lawful activities being conducted or proposed by the public that will be affected by this listing and result in a violation of section 9.

Questions regarding whether specific activities will constitute a violation of section 9 should be directed to the Field Supervisor of the Service's Caribbean Field Office (see **ADDRESSES** section). Requests for copies of the regulations on listed species and inquiries regarding prohibitions and permits should be addressed to the U.S. Fish and Wildlife Service, Ecological Services (TE), 1875 Century Boulevard, Atlanta, Georgia 30345–3301 (404/679–7096).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Juglans jamaicensis*;

(2) The location of any additional populations of this species, and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject areas and their possible impacts on this species.

Final promulgation of the regulation on *Juglans jamaicensis* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for one or more public hearings on this proposal, if requested. Requests must be filed within 45 days of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

References Cited

Center for Plant Conservation. 1992. Report on the Rare Plants of Puerto Rico. Missouri Botanical Garden, St. Louis, Missouri.

Little, E.L. Jr, R.O. Woodbury, and F.H. Wadsworth. 1974. Trees of Puerto Rico and the Virgin Islands, Volume II. Agriculture Handbook No. 449. U.S. Department of Agriculture, Forest Service. Washington, DC. 1024 pp.

Liogier, H.L., and L.F. Martorell. 1982. Flora of Puerto Rico and Adjacent Islands: a systematic synopsis. Editorial de la Universidad de Puerto Rico, Río Piedras, Puerto Rico. 342 pp.

Proctor, G. R. 1992. Status report on *Juglans jamaicensis* C. DC. Unpublished report submitted to the U.S. Fish and Wildlife Service. 7 pp.

Author

The primary author of this proposed rule is Ms. Susan Silander, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622 (809/851–7297).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Section 17.12(h) is amended by adding the following, in alphabetical order under FLOWERING PLANTS to the list of Endangered and Threatened Plants:

§ 17.12 Endangered and Threatened Plants.

* * * * *

(h) * * *

Species		Historic range	Family name	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*	*	
Juglans jamaicensis	Nogal or West Indian walnut.	U.S.A. (PR), Hispaniola.	Juglandaceae	E	.....	NA	NA
*	*	*	*	*	*	*	

Dated: September 6, 1995.

John G. Rogers,

Acting Director, Fish and Wildlife Service.

[FR Doc. 95–24013 Filed 9–27–95; 8:45 am]

BILLING CODE 4310–55–P

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50 CFR Part 17

RIN 1018–AD48

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Plant Cordia Bellonis

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to determine *Cordia bellonis* (no common name) to be endangered pursuant to the Endangered Species Act (Act) of 1973, as amended. This shrub is endemic to Puerto Rico and restricted to three public forests: Maricao, Susúa, and Río Abajo. The species is threatened by habitat loss, some forest management practices, and restricted distribution. This proposal, if made final, would implement the Federal protection and recovery provisions afforded by the Act for *Cordia bellonis.*

DATES: Comments from all interested parties must be received by November 27, 1995. Public hearing requests must be received by November 13, 1995.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622. Comments and materials received will be available for public inspection, by appointment, at this office during normal business hours, and at the Service's Southeast Regional Office, 1875 Century Boulevard, Atlanta, Georgia 30345.

FOR FURTHER INFORMATION CONTACT: Ms. Marelisa Rivera at the Caribbean Field Office address (809/851–7297) or Mr. William C. Hunter at the Atlanta Regional Office address (404/679–7130).

SUPPLEMENTARY INFORMATION:

Background

Cordia bellonis was described by Urban in 1899 from specimens collected by Paul Sintenis at ''Monte Alegrillo'' in the municipality of Maricao, Puerto Rico (Urban 1899). The name of ''Monte Alegrillo'' has disappeared from use, but according to Proctor (1991), N.L. Britton referred to ''Monte Alegrillo'' as the peak at the extreme head of the Río Maricao, with an elevation of 900 meters (2,953 feet). This type location was developed for the installation of telecommunication towers. Paul Sintenis collected *Cordia bellonis* in the area known as Indiera Fría. The species was also collected by Britton and Brown in 1915 from Monte Cerrote near Adjuntas (Proctor 1991). Britton and Wilson (1925) described the species as

Varronia bellonis and identified its distribution as mountain-sides in the vicinity of Maricao. Liogier and Martorell (1982) stated that the species distribution was the mountain slopes and serpentine hills in northwestern districts of Puerto Rico. Proctor (1991) reported only 4 individuals of *Cordia bellonis* from Caín Alto Ward in the Maricao Commonwealth Forest. Breckon and Kolterman (1993) reported 87 individuals at 17 localities in three areas in Maricao. Half of the localities consist of isolated individuals.

The species was reported for the first time in Susúa in 1992, where a small population of 5 individuals was found (Breckon and Kolterman 1993). *Cordia bellonis* was also unknown from the Río Abajo Commonwealth Forest until 1994 (Federal Highway Administration and Puerto Rico Highway and Transportation Authority 1994). Approximately 116 individuals were found in 12 localities. Eighty-seven (75 percent) of these individuals were removed to a nursery (for possible transplantation) because of the construction of the road PR 10 (PR Highway and Transportation Authority 1995).

Cordia bellonis has been found in serpentine soils at Maricao and Susúa at road edges, river margins, and on steep slopes (Breckon and Kolterman 1993). In Río Abajo Forest, the species was found either on sunny banks along dirt roads growing in thickets of vegetation or in open saddles between limestone hills (Federal Highway Administration and Puerto Rico Highway and Transportation Authority 1994).

Cordia bellonis is an arching to erect shrub of about 1 to 2 meters (3.3 to 6.6 feet) high with very slender twigs appressed-puberulous. The leaves are alternate, oblong to oblong-lanceolate, chartaceous, 2 to 6 centimeters (0.79 to 2.36 inches) long, usually 2.5 to 3 times longer than wide, finely scabrous on upper side, and puberulous beneath. The apex is acute, the base acute or obtuse, the margins are dentate on the apical third, and the petioles are 2 to 7 millimeters (0.08 to 0.28 inches) long. The inflorescence is axillary, subglomerate, nearly sessile, and few-flowered. The calyx in bud is globose-obovoid, 2 millimeters (0.08 inches) long, appressed-puberulous, and with 4 triangular lobes. The corolla is white with 4 subcylindric lobes. The drupe is ovoid, pointed and 5 millimeters (0.20 inches) in length (Proctor 1991). Flowers are unisexual and the plants are dioecious (Breckon and Kolterman 1993).

The species is threatened by habitat destruction and modification, forest management practices, and restricted distribution. Seventy-five percent of the individuals known from Río Abajo Commonwealth Forest were removed from the forest for the construction of a highway. Breckon and Kolterman (1994) reported that 14 individuals from Maricao appeared to have been eliminated due to clearing along the roadside of the forest. Restricted distribution and its dioecious condition would be a limiting factor for the species. The dioecious condition would require outcrossing, and would pose a threat to a rare plant species. Furthermore, in a large number of the localities where the species is found, the shrub occurred as isolated individuals.

Cordia bellonis was designated a category 2 candidate species (species for which information in the possession of the Service indicates that proposing to list as endangered or threatened is possibly appropriate, but for which sufficient data on biological vulnerability and threat are not currently available to support proposed rules) in the Federal Register notice of review for plant taxa dated September 30, 1993 (58 FR 51144). The species was recommended for listing by Proctor (1991) in a Status Report prepared for the species. In further studies conducted for the species, Breckon and Kolterman (1993) also recommended the species for listing. *Cordia bellonis* is considered a critical plant by the Natural Heritage Program of the Puerto Rico Department of Natural and Environmental Resources.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Cordia bellonis* Urban [*Varronia bellonis* (Urban) Britton], are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Destruction and modification of the habitat may be one of the most significant factors affecting the numbers and distribution of *Cordia bellonis*. This species is only known from three areas in Puerto Rico; Maricao, Susúa, and Río Abajo. In Maricao, the species is found at 17 localities in three areas, for a total of 87 individuals. Fourteen of these individuals have been eliminated due to clearing along the roadside. Half of the localities consist of isolated individuals. The dioecious condition of the species would be a factor limiting reproduction by these individuals. Because the majority of these individuals occur along both sides of two public roads, maintenance of road sides, as well as fires and vandalism, would result in the loss of these individuals.

In Susúa, a small population of only 5 individuals was found in 1992. The species was previously unknown from this area. This small population may be affected by forest management practices. *Cordia bellonis* was also unknown from the Río Abajo forest until 1994. Approximately 116 individuals were found in 12 localities. The localities, each consisting of no more than a few individuals, were scattered along a proposed highway. All the individuals along the proposed route have been removed for possible future transplantation (87 individuals). An area designated for compensation (mitigation) for the proposed highway presently supports eight of the remaining 29 individuals from the original population (116 individuals). The species is also known from a private landholding where extraction of fill material for the construction of the road will likely result in the loss of these plants. The rareness and restricted distribution make this species very vulnerable to habitat destruction and modification.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Taking for these purposes has not been a documented factor in the decline of this species.

C. *Disease or predation.* Disease and predation have not been documented as factors in the decline of this species.

D. *The inadequacy of existing regulatory mechanisms.* The Commonwealth of Puerto Rico has adopted a regulation that recognizes and provides protection to certain Commonwealth listed species. *Cordia bellonis,* however, is not yet on the Commonwealth list. Federal listing would provide immediate protection and, if the species is ultimately placed on the Commonwealth list, enhance its protection and possibilities for funding needed for research.

E. *Other natural or manmade factors affecting its continued existence.* Two significant factors affecting this species are its limited distribution and dioecious condition. The limited distribution of this species makes it particularly vulnerable to extinction from catastrophic events and local land management practices. As a dioecious plant, *Cordia bellonis* requires

outcrossing to successfully reproduce. Being dioecious creates a serious limiting factor affecting the continued existence of this rare plant since most known individuals are widely separated from each other and, therefore, unlikely to reproduce.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Cordia bellonis* as endangered. The rarity of this plant and the loss of any individual makes the species ever more vulnerable to extinction. Only 121 individuals of *Cordia bellonis* are known to occur in the wild. Cutting and habitat modification may dramatically affect this endemic plant. Therefore, endangered rather than threatened status seems an accurate assessment of the species' condition. The reasons for not proposing critical habitat for this species are discussed in the ''Critical Habitat'' section of this rule.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection and; (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *Cordia bellonis*. Service regulations (50 CFR 424.12 (a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

The number of populations of *Cordia bellonis* is sufficiently small and accessible. Vandalism and cutting could seriously affect the survival of the species. Publication of critical habitat descriptions and maps in the Federal Register would increase the likelihood of such activities. The Service believes that Federal involvement in the areas where these plants occur can be identified without the designation of critical habitat. All involved parties and landowners have been notified of the location and importance of protecting this species' habitat. Protection of this species' habitat will also be addressed through the recovery process and through the section 7 jeopardy standard. The precarious status of *Cordia bellonis* necessitates identical thresholds for determining adverse modification of critical habitat and jeopardizing the continued existence of the species. Therefore, no benefit from designating critical habitat would occur for this species.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, Commonwealth, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorized, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may adversely affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The majority of the populations of *Cordia bellonis* known from Maricao are found along both sides of roads PR #120 and PR #362. Any widening of these roads, installation of water and sewer pipelines, and the installation of powerlines along these roads may adversely affect the species. These activities could be funded by Federal agencies (for example, the Federal Highway Administration, U.S. Housing and Urban Development, or Farmer's Home Administration). *Cordia bellonis* was seriously affected by the construction of a highway in the Río Abajo Commonwealth Forest. This road was funded by the Federal Highway Administration and 75 percent of the individuals of *Cordia bellonis* were removed from the Forest for possible future transplantation.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce the species to possession from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction on areas under Federal jurisdiction and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions to the prohibitions apply to agents of the Service and State conservation agencies.

The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plants under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. Few trade permits for this plant will ever be sought or issued, since the species is not known to be in cultivation and is uncommon in the wild. Requests for copies of the regulations on listed species and inquiries about prohibitions and permits may be addressed to

Service's Southeast Regional Office, 1875 Century Boulevard, Atlanta, Georgia 30345.

It is the policy of the Service, published in the Federal Register on July 1, 1994 (50 FR 34272), to identify to the maximum extent practicable those activities that would or would not constitute a violation of section 9 of the Act at the time of listing. The intent of this policy is to increase public awareness of the effect of listing on proposed or ongoing activities. The only known populations of *Cordia bellonis* are restricted to three Commonwealth forests: Maricao, Susúa and Río Abajo. Since there is no Federal ownership, and the species is not currently in trade, the only potential section 9 involvement would relate to removing or damaging the plant in knowing violation of Commonwealth criminal trespass law. Section 15.01(b) of the Commonwealth ''Regulation to Govern the Management of Threatened and Endangered Species in the Commonwealth of Puerto Rico'' states: ''It is illegal to take, cut, mutilate, uproot, burn or excavate any endangered plant species or part thereof within the jurisdiction of the Commonwealth of Puerto Rico.'' The Service is not aware of any otherwise lawful activities being conducted or proposed by the public that will be affected by this listing and result in a violation of section 9.

Questions regarding whether specific activities will constitute a violation of section 9 should be directed to the Field Supervisor of the Service's Caribbean Field Office (see ADDRESSES section). Requests for copies of the regulations on listed species and inquiries regarding prohibitions and permits should be addressed to the U.S. Fish and Wildlife Service, Ecological Services (TE), 1875 Century Boulevard, Atlanta, Georgia 30345–3301 (404/679–7096).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this plant species, and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution and population size of this species;

(4) Current or planned activities in the subject areas and their possible impacts on this species.

Final promulgation of a regulation(s) on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal in the Federal Register. Such requests must be made in writing and be addressed to the Field Supervisor, Caribbean Field Office, U.S. Fish and Wildlife Service. P.O. Box 491, Boquerón, Puerto Rico 00622.

National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Assessment and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

References Cited

Breckon, G.J., and D.A. Kolterman. 1993. *Cordia bellonis* Urban [Boraginaceae]. Final report under cooperative agreement No. 14–16–0004–92–970 between U.S. Fish and Wildlife Service and the University of Puerto Rico, Mayaguez Campus. 14 pp.

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Federal Highway Administration and the Puerto Rico Highway and Transportation Authority. 1994. Biological Assessment Relocation of PR–10 Utuado, Puerto Rico. Unpublished Report.

Liogier, H.A., and L.F. Martorell. 1982. Flora of Puerto Rico and adjacent islands: a systematic synopsis. Editorial de la Universidad de Puerto Rico, Río Piedras, Puerto Rico. 342 pp.

Proctor, G. 1991. Puerto Rican plant species of concern: Status and recommendations. Miscellaneous Scientific Publication No.2. Department of Natural and Environmental Resources, San Juan, Puerto Rico. 59–61 p.

Puerto Rico Highway and Transportation Authority. 1995. Report to U.S. Fish and Wildlife Service on plant species, Puerto Rican boa and monitoring program of the broad-winged hawk PR–10 Highway, Arecibo-Utuado. Unpublished report.

Urban. 1899. Symb. Antill. 1:393.

Author

The primary author of this proposed rule is Ms. Marelisa Rivera, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boqueŕn, Puerto Rico 00622 (809/851–7297).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Section 17.12(h) is amended by adding the following, in alphabetical order under FLOWERING PLANTS, to the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family name	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*	*	
Cordia bellonis	None	U.S.A. (PR)	Boraginaceae	E		NA	NA
*	*	*	*	*	*	*	

Dated: September 6, 1995.

John G. Rogers,

Acting Director, Fish and Wildlife Service.

[FR Doc. 95–24014 Filed 9–27–95; 8:45 am]

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Notices

Federal Register
Vol. 60, No. 188
Thursday, September 28, 1995

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

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

September 22, 1995.

The Department of Agriculture 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) since the last list was published. This list is grouped into new proposals, revisions, extension, 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) Who will be required or asked to report; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) 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, Jamie L. Whitten Bldg., Washington, D.C. 20250, (202) 690–2118.

New

- Animal and Plant Health Inspection Service

Importation of Animal and Poultry, Animal/Poultry Products, Certain Animal Embryos, and Zoological Animals—Addendum 3

VS Form 17–129

Business or other for-profit; 30 responses; 9 hours

Tom Cramer, (301) 734–3294

Reinstatement—Emergency

- Forest Service

Grazing Permit Administration Forms R1–FS–2230–5; R2–2200–6; R3–FS–2200–1; FS–2200–1, 2, 12, 13, 15, 16, 17, and R8–2200–23

Business or other for-profit; 4950 responses; 1455 hours

Berwyn Brown, (202) 205–1457.

Lary K. Roberson,

Deputy Departmental Clearance Officer.

[FR Doc. 95–24049 Filed 9–27–95; 8:45 am]

BILLING CODE 3410–01–M

Forest Service

Northwest Baranof Timber Sale(s) Draft Environmental Impact Statement, Tongass National Forest, Chatham Area, Sitka Ranger District, Sitka, Alaska

AGENCY: Forest Service, USDA.

ACTION: Notice of extension of comment period for subsistence testimony and public comments on the draft EIS.

SUMMARY: The Department of Agriculture, Forest Service will extend the period for written testimony regarding subsistence use and for public comment on the Draft Environmental Impact Statement (EIS) for the Northwest Baranof Timber Sale(s) in Sitka, Alaska. Comments on the Draft EIS and written testimony for the subsistence hearing must now be received by 5 p.m. October 16, 1995.

SUPPLEMENTARY INFORMATION: The period for public comment and written testimony regarding subsistence use in the Project Area will be extended for the following reasons: (1) The high level of local public interest in timber harvesting on National Forest lands and specifically within the Northwest Baranof Project Area; and (2) the possibility of confusion regarding the identification of the Forest Service's preferred Alternative. Appropriately, Chapter 2 of the Draft EIS identifies Alternative 2 as the preferred alternative, however, this would not be apparent if the reader relied solely on the Summary of the Draft EIS.

Copies of the Draft EIS and further information are available from the Northwest Baranof Planning Team, USDA Forest Service, Sitka Ranger District, 204 Siginaka Way, Sitka, Alaska, 99835, (907) 747–6671. For further information call (907) 747–6671.

Dated: September 19, 1995.

James S. Franzel,

Acting Forest Supervisor.

[FR Doc. 95–24150 Filed 9–27–95; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Malcolm Baldrige National Quality Award's Judges Panel

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Judges Panel of the Malcolm Baldrige National Quality Award will meet on Tuesday, October 10, 1995, from 8:00 a.m. to 5:30 p.m.; on Wednesday, October 11, 1995, from 8:00 a.m. to 5:30 p.m.; on Thursday, October 12, 1995, from 8:00 a.m. to 5:30 p.m., and on Friday, October 13, 1995, from 8:00 a.m. to 3:00 p.m. The Judges Panel is composed of nine members prominent in the field of quality management and appointment by the Secretary of Commerce. The Panel's agenda includes reviewing the 1995 award process and final judging of 1995 applicants, including a review of each of the 1995 site visits. The review process involves examination of records and discussions of applicant data, and will be closed to the public in accordance with Section 552b(c)(4) of Title 5, United States Code.

DATES: The meeting will convene October 10, 1995, at 8:00 a.m. and adjourn at 3:00 p.m. on October 13, 1995.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Administration Building, Gaithersburg, Maryland 20899.

FOR FURTHER INFORMATION CONTACT: Dr. Curt W. Reimann, Director for Quality Programs, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2036.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General

Counsel, formally determined on March 4, 1994, that the meeting of the Judges Panel will be closed pursuant to Section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, section 10(d) for those portions of the meeting which involve examination of records and discussion of matters mentioned above, may be closed to the public in accordance with section 552b(c)(4) of Title 5, United States Code, since those portions of the meeting are likely to disclose trade secrets and commercial or financial information obtained from a person which is privileged or confidential.

Dated: September 22, 1995.

Samuel Kramer,

Associate Director.

[FR Doc. 95–24153 Filed 9–27–95; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

[I.D. 090795A]

Taking and Importing of Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability; request for comments.

SUMMARY: NMFS announces the availability of, and requests comments on the draft Marine Mammal Incidental Take Reporting Form in accordance with the Marine Mammal Protection Act (MMPA).

DATES: Comments on the draft reporting form must be received by October 30, 1995.

ADDRESSES: Comments must be mailed to: Chief, Marine Mammal Division, Office of Protected Resources (F/PR), NMFS, 1335 East-West Hwy., Silver Spring, MD 20910, (fax 301–713–0376).

FOR FURTHER INFORMATION CONTACT: Wanda L. Cain, phone 301–713–2055, or fax 301–713–0376.

SUPPLEMENTARY INFORMATION: On August 30, 1995 (60 FR 45086), NMFS published a final rule implementing the new management regime for the taking of marine mammals incidental to commercial fishing operations established by section 118 of the MMPA. That regulation requires commercial fishers to report to NMFS the incidental mortality and injury of marine mammals in the course of commercial fishing within 48 hours of the end of each fishing trip, or, for non-vessel fisheries, within 48 hours of an occurrence of an incidental mortality or injury. The preamble to that rule also stated that NMFS would publish a draft of the reporting form for public comment.

Section 118(e) of the MMPA requires that the owner or operator of a commercial fishing vessel report all incidental mortality and injury of marine mammals in the course of commercial fishing operations to NMFS by mail or other means acceptable to NMFS within 48 hours after the end of each fishing trip on a standard postage-paid form. The form must be capable of being readily entered into and usable by an automated or computerized data processing system. The information required to be provided by vessel owners or operators is: (1) The vessel name, and Federal, state, or tribal registration numbers of the registered vessel; (2) the name and address of the vessel owner or operator; (3) the name and description of the fishery; and, (4) the species of each marine mammal incidentally killed or injured, and the date, time, and approximate geographic location of such occurrence.

NMFS has developed a two-sided reporting form to allow fishers to provide the information required by the MMPA. The form is designed to be folded when completed, sealed to preserve confidentiality, and mailed, postage paid, to NMFS (Figs. A & B). This form contains collection-of-information requirements subject to the provisions of the Paperwork Reduction Act. This collection has been approved by OMB under OMB control number 0648–0292.

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

Dated: September 21, 1995.

Patricia Montanio,

Acting Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

Instructions for Completing This Reporting Form

1 Last Name—Enter the first 10 characters of your last name.

2 First Name—Enter the first 10 characters of your first name.

3 MI—Enter your middle initial.

4 Address—Enter your street address or P.O. Box number.

5 City—Enter the first 15 characters of your city name.

6 State—Enter the 2-digit state code.

7 ZIP—Enter your zip code.

8 Vessel Name—Enter the first 24 characters of your vessel name.

9 Vessel State Registration Number—Enter the vessel's State registration number up to 24 characters.

10 MMPA Authorization Number—Enter the MMPA Authorization Number. Category I & II fisheries only. Category III fisheries will not have an MMPA authorization number, but are still required to make mortality/injury reports.

11 Fishery Code—Enter the fishery code for your fishery.

12 Target Species—If the name of your fishery as listed in the current list-of-fisheries does not identify your target species, please Print your target species.

13 Date of Interaction—Enter the date the interaction occurred. Example: January 1, 1996 is entered as 960101.

14 Time of Interaction—Enter the time of day the interaction occurred.

15 AM or PM—Enter a.m. if time was between midnight & noon, or p.m. if the take occurred at noon or before midnight.

16 Latitude—Use standard entries in degrees and minutes.

17 Longitude—Use standard entries in degrees and minutes.

18 Species—Enter the species code from the status of stocks.

19 Take Type—Enter type of take from codes on reporting form.

20 Number—Enter the number of animals involved in each take type. You may enter additional species or different types of take in Items 21–23 and 24–26.

27 Description of Unknown Species—If you have entered a species code for an unknown species, Please Print a description of the animal involved. State whether cetacean or pinniped.

BILLING CODE 3510–22–M

DRAFT

NATIONAL MARINE FISHERIES SERVICE MARINE MAMMAL INCIDENTAL TAKE MORTALITY/INJURY REPORT

1 LAST NAME 2 FIRST NAME 3 MI

4 NUMBER & STREET ADDRESS

5 CITY 6 STATE 7 ZIP

8 VESSEL NAME

9 VESSEL STATE REGISTRATION NO.

10 MMPA AUTHORIZATION NO. (Cat I & II only) - 11 FISHERY CODE 12 TARGET SPECIES

13 DATE OF INTERACTION (YYMMDD) 14 TIME OF INTERACTION : 15 AM OR PM

16 LOCATION OF INTERACTION Latitude ° ′ 17 Longitude ° ′

ENTER SPECIES CODE, TYPE OF INJURY (see codes on reverse) AND THE NUMBER INVOLVED IN THE INTERACTION. MAKE AS MANY ENTRIES AS APPLY TO THIS DATE, AND LOCATION.

18 Species 19 Take Type 20 Number

21 Species 22 Take Type 23 Number

24 Species 25 Take Type 26 Number

27 Description of unknown species:

Perforation here to remove sticky strip after receipt.

DRAFT

Postage Paid by Addressee

Marine Mammal Incidental Take (MMIT) Program
Office of Protected Resources (F/PR2)
National Marine Fisheries Service
1335 East-West Highway
Silver Spring, MD 20910

----------FOLD HERE----------

MARINE MAMMAL INCIDENTAL TAKE MORTALITY/INJURY REPORT

This reporting form is required **ONLY WHEN** there is an interaction with a marine mammal during commercial fishing activities. You are required to report the interaction within 48 hours after the end of the fishing trip, or, for non-vessel fisheries, within 48 hours of an occurrence of an incidental mortality or injury. A separate report form is required for each fishery, for each date, and for each location. Enter the name and address of the vessel owner or operator, and the Marine Mammal Protection Act (MMPA) exemption number, and other information as requested. **THIS FORM WILL BE READ BY A COMPUTER. PLEASE PRINT CLEARLY USING ONLY CAPITAL LETTERS.** Questions on completing this report, and requests for additional reporting forms, may be directed to the Office of Protected Resources (F/PR2), NMFS, 1335 East-West Hwy. Silver Spring, MD 20910, or by phone at 301-713-2055, or by fax at 301-713-0376. Injury codes are listed below.

----------FOLD HERE----------

[Remove strip here to seal for confidentiality]

CODES FOR TYPES OF TAKE

01 -- visible blood flow
02 -- loss of/damage to appendage/jaw
03 -- inability to use appendage(s)
04 -- asymmetry in shape of body or body position
05 -- any noticeable swelling or hemorrhage
06 -- laceration
07 -- puncture or rupture of eyeball
08 -- listlessness/inability to defend
09 -- inability to swim or dive
10 -- equilibrium imbalance
11 -- released trailing gear/gear perforating body
12 -- released unharmed
13 -- killed
14 -- required assistance to escape entanglement
15 -- ingestion of gear
16 -- other wound or injury

[FR Doc. 95–24054 Filed 9–27–95; 8:45 am]
BILLING CODE 3510–22–C

[I.D. 091595B]

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a public meeting.

DATES: The meeting will be held on October 30–November 1, 1995, beginning at 8:30 a.m. on October 30

and concluding at 5:00 p.m. on November 1.

ADDRESSES: This meeting will be held at the NMFS Southeast Fisheries Science Center Laboratory, 75 Virginia Beach Drive, Miami, FL; telephone: 305–361–4284.

Council address: Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 331, Tampa, FL 33609.

FOR FURTHER INFORMATION CONTACT: Antonio B. Lamberte, Economist, Gulf of Mexico Fishery Management Council; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION:

The Socioeconomic Assessment Panel (SEP) will review available social and economic information on the Gulf of Mexico red snapper fishery. The SEP will assess the social and economic implications of the levels of allowable biological catch (ABC) recommended by the Council's Reef Fish Stock Assessment Panel. The SEP will then recommend to the Council level(s) of total allowable catch for the 1996 red snapper season.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Cathy Readinger at the Council (see **ADDRESSES**) by October 11, 1995.

Dated: September 20, 1995.

Richard W. Surdi,

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

[FR Doc. 95–24016 Filed 9–27–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 091595A]

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a public meeting.

DATES: This meeting will be held on October 18, 1995, from 1:00 p.m. to 5:00 p.m.

ADDRESSES: This meeting will be held at the Quality Inn Beachside, 931 Highway 182 West, Gulf Shores, AL; telephone: 334–948–6874.

Council address: Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 331, Tampa, FL 33609.

FOR FURTHER INFORMATION CONTACT: Steven Atran, Biologist; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The Law Enforcement Advisory Panel will review a draft amendment that contains alternatives for modifying the Federal rules affecting mackerels and cobia. Public hearings will be held on this amendment throughout the Gulf area in December. The panel will also review and comment on the enforceability of proposed rules for implementing an individual transferable quota system for the commercial red snapper fishery. The panel will advise the Council on the enforceability of proposed Federal fishing rules.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Cathy Readinger at the Council (see **ADDRESSES**) by October 11, 1995.

Dated: September 20, 1995.

Richard W. Surdi,

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

[FR Doc. 95–24017 Filed 9–27–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 091995D]

South Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a public meeting with its Council members via conference call.

DATES: The meeting will be held on October 6, 1995, at 1:00 p.m. eastern standard time.

ADDRESSES: The listening phone locations will be as follows:

1. St. Petersburg, FL—NMFS Southeast Regional Office, 9721 Executive Center Drive North, St. Petersburg, FL 33702; telephone: (813) 570–4301.

2. Charleston, SC—South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699; telephone: (803) 571–4366.

Council address: South Atlantic Fishery Management Council; One Southpark Circle, Suite 306; Charleston, SC 29407–4699.

FOR FURTHER INFORMATION CONTACT: Susan Buchanan, Public Information Officer; telephone: (803) 571–4366; fax: (803) 769–4520.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to discuss the golden crab emergency action requested by the Council at its August meeting. The emergency action, if implemented by the Secretary of Commerce, would divide the golden crab fishery into three zones, provide criteria for access, and require vessel permits and 100 percent logbook reporting.

The proposed zones in the emergency action are as follows:

Northern Zone—North Carolina/Virginia border to the Volusia/Flagler line (29°25′ N. lat.)

Middle Zone—29°25′ N. lat. to 25° N. lat.

Southern Zone—South of 25° N. lat. to the South Atlantic/Gulf of Mexico Fishery Management Council border.

Criteria for access into the fishery would be documented landings by April 7, 1995, for access into the middle and southern zones and documented landings by September 1, 1995, for access into the northern zone. Documented landings must come from the Council's area of jurisdiction.

The Council also will discuss withdrawing the emergency action request and proceeding expediently with the fishery management plan.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Susan Buchanan at the Council office (see **ADDRESSES**) by October 2, 1995.

Dated: September 22, 1995.

Richard W. Surdi,

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

[FR Doc. 95–24105 Filed 9–27–95; 8:45 am]

BILLING CODE 3510–22–F

National Weather Service Modernization and Associated Restructuring

ACTION: Notice and opportunity for public comment.

SUMMARY: The National Weather Service (NWS) is publishing proposed certifications to consolidate the:

(1) Residual New Orleans Weather Service Office (WSO) into the future

New Orleans/Baton Rouge Weather Forecast Office (WFO);
(2) Residual Tulsa WSO into the future Tulsa WFO;
(3) Residual Oklahoma City WSO into the future Oklahoma City WFO; and
(4) Residual Phoenix WSO into the future Phoenix WFO.

In accordance with Public Law 102–567, the public will have 60 days in which to comment on these proposed certifications.

DATES: Comments are requested by November 27, 1995.

ADDRESSES: Requests for copies of the proposed consolidation packages can be sent to Janet Gilmer, Room 12316, 1325 East-West Highway, Silver Spring, Maryland 20910, telephone 301–713–0276. All comments should be sent to Janet Gilmer at the above address.

FOR FURTHER INFORMATION CONTACT: Julie Scanlon at 301–713–1413.

SUPPLEMENTARY INFORMATION: NWS anticipates consolidating:

(1) The residual New Orleans WSO with the future New Orleans/Baton Rouge WFO;
(2) The residual Tulsa WSO with the future Tulsa WFO;
(3) The residual Oklahoma City WSO with the future Oklahoma City WFO; and
(4) The residual Phoenix WSO with the future Phoenix WFO.

In accordance with section 706 of Public Law 102–567, the Secretary of Commerce must certify that these consolidations will not result in any degradation of service to the affected areas of responsibility and must publish the proposed consolidation certifications in the FR. The documentation supporting each proposed certification includes the following:

(1) A draft memorandum by the Meteorologist in Charge recommending the certification, the final of which will be endorsed by the Regional Director and the Assistant Administrator for Weather Services after consideration of public comments and completion of consultation with the Modernization Transition Committee (the Committee);

(2) A description of local weather characteristics and weather-related concerns which affect the weather services provided within the service area;

(3) A comparison of the services provided within the service area and the services to be provided after such action;

(4) A description of any recent or expected modernization of NWS operation which will enhance services in the service area;

(5) An identification of any area within the affected service area which would not receive coverage (at an elevation of 10,000 feet) by the next generation weather radar network;

(6) Evidence, based upon operational demonstration of modernized NWS operations, which was considered in reaching the conclusion that no degradation in service will result from such action including the WSR–88D Radar Commissioning Report, User Confirmation of Services Report, and the Decommissioning Readiness Report; and

(7) A letter appointing the Liaison Officer.

These proposed certifications do not include any report of the Committee which could be submitted in accordance with sections 706(b)(6) and 707© of Public Law 102–567. At its September 14, 1995, meeting, the Committee concluded that the information presented did not reveal any potential degradation of service at any office and decided not to issue any report. The Committee did offer a recommendation on these proposed certifications, which is attached to this notice.

Documentation supporting the proposed certifications is too voluminous to publish in its entirety. Copies of the supporting documentation can be obtained through the contact listed above.

Attached to this Notice are:

(1) Draft memoranda by the respective Meteorologists in Charge recommending the certifications, and

(2) The Committee's recommendation on these proposed certifications.

Once all public comments have been received and considered, the NWS will complete consultation with the Committee and determine whether to proceed with the final certifications. If decisions to certify are made, the Secretary of Commerce must publish the final certifications in the FR and transmit the certifications to the appropriate congressional committees prior to consolidating the offices.

Elbert W. Friday, Jr.,

Assistant Administrator for Weather Services.

Modernization Transition Committee

Completion of Initial Consultation on Proposed Consolidation for Oklahoma City, Phoenix, Tulsa and New Orleans

The Modernization Transition Committee (MTC) has reviewed the proposed consolidation certifications for Oklahoma City, Phoenix, Tulsa, and New Orleans and has determined that these actions will not result in degradation of services. We request documentation that all identified work-arounds have been adequately addressed prior to final certification.

In addition, the committee makes the following observations and recommendations to further enhance service to emergency management personnel throughout the nation:

(1) The National Weather Service Modernization Transition Committee has reviewed a number of comments from local emergency management personnel concerning the availability of weather information. These comments have included references to not understanding the information now available, and not being able to afford the corresponding cost.

Although these issues are beyond the purview of this Committee we are concerned with the issues behind these complaints. We feel that every emergency management office should have access to appropriate weather information, regardless of the size and financial condition of the community. Therefore, we urge the National Weather Service, Federal Emergency Management Agency and National Oceanic Atmospheric Administration to address these issues as part of their joint project addressing weather information needs of the emergency management community.

Dated: September 14, 1995.

Peter R. Leavitt,

Chair, Modernization Transition Committee.

Memorandum for: Harry S. Hassel, Director, W/SR
From: Paul S. Trotter, MIC/AM, NWSFO LIX
Subject: Recommendation for Consolidation Certification

A change of operations occurred at the New Orleans Weather Service Forecast Office (WSFO) in February, 1994, when most personnel were transferred to the facility of the future New Orleans/Baton Rouge Weather Forecast Office (WFO) in Slidell, Louisiana, to operate the WSR–88D and assume forecast and warning responsibility for the New Orleans/ Baton Rouge service area. At the same time, this office has been designated a Residual Weather Service Office (RWSO) at the original WSFO location to continue operating the existing WSR–57 radar.

After the review of the attached documentation and in my professional judgement, I have determined that consolidation of the old New Orleans Weather Service Forecast Office with the new modernized New Orleans/Baton Rouge Weather Service Forecast Office will not result in any degradation in weather services to the New Orleans service area. This proposed certification is in accordance with the advance announcement provided in the National Implementation Plan. I am requesting your recommendation and approval of the certification in accordance with Section 706 of Public Law 102–567. If you concur with this action, please endorse this recommendation and forward this package to the Assistant Administrator for Weather Services for final certification. If Dr. Friday, Assistant Administrator for Weather Services, approves, he will forward the certification to the Secretary of Commerce for approval and transmittal to Congress.

My recommendation is based on my review of the evidence and application of the modernization criteria noted for consolidation of a field office.

In summary:

1. A description of local weather characteristics and weather-related concerns affecting the weather services provided in the New Orleans service area is included as attachment A. As discussed below, I find that providing services which address these factors and concerns from the New Orleans/Baton Rouge Weather Service Forecast Office will not degrade these services.

2. A list of services currently provided within the New Orleans service area from the old New Orleans site and services to be provided from the new New Orleans/Baton Rouge location after consolidation is included in attachment B. Comparison of these services shows all current services provided will continue after the proposed consolidation. The enclosed map shows the old New Orleans Area of Responsibility and the new New Orleans/Baton Rouge Area of Responsibility. As noted below, I find that there will be no degradation in the quality of these services as a result of the consolidation.

3. A description of the recent or expected modernization of National Weather Service operations which enhance services in the New Orleans service area is included as attachment C. The new and improved technology inclusive of ASOS, WSR–88D, and AWIPS, etc. has or will be installed and will enhance services.

4. A map showing planned NEXRAD coverage at an elevation of 10,000 feet over Louisiana and parts of Mississippi is included as attachment D. National Weather Service operational radar coverage for the specific area will be increased and no area will be under-represented or missed due to inappropriate coverage.

5. The following evidence, based on operational demonstration of the modernized National Weather Service operations, played a key role in concluding there will be no degradation of service.

A. The WSR–88D RADAR Commissioning Report, attachment E, validates that the WSR–88D meets technical specifications and acceptance test; is fully operational (satisfactory operation in system interfaces and satisfactory support of associated National Weather Service forecasting and warning services); a full set of backup capabilities are functioning properly; a full set of operations and maintenance documentation is available; spare parts, test equipment, and trained operations and maintenance personnel are available on site. Base level training is in place and ongoing training continues. National Workarounds remain in effect.

B. The User Confirmation of Services, attachment F, documents one negative comment was received. The negative comment was addressed and answered to the satisfaction of the user as stated in the Service Confirmation Report.

C. The Decommissioning Readiness Report, attachment G, verifies the existing New Orleans WSR–57 radar is no longer needed to support services or products for local office operations.

6. A memorandum assigning the liaison officer for the New Orleans/Baton Rouge service area is included as attachment H.

I have considered recommendations of the Modernization Transition Committee (Attachment I) and the public comments received during the comment period (Attachment J). On _____, the Committee voted to endorse the proposed consolidation (Attachment K). I believe all negative comments have been addressed to the satisfaction of our customers and I continue to recommend this certification.

Endorsement

I, Harry S. Hassel, Director, Southern Region, endorse this consolidation certification.

_____

Harry S. Hassel

_____

Date

Attachments

Memorandum for: Harry S. Hassel, Director, Southern Region

From: Dennis H. McCarthy, MIC, NWSFO Norman, OK

Subject: Recommendation for Consolidation Certification

A change of operations occurred at the Oklahoma City Weather Service Forecast Office (WSFO) in 1987 when most of the personnel were transferred to the facility for the future Oklahoma City Weather Forecast Office (WFO) in Norman for operation of the WSR–88D and assumption of forecast and warning responsibility for the Oklahoma City service area. The office at the original WSFO location was designated a Residual Weather Service Office (RWSO) and continued to be the site for recording surface observations and operating the WSR–57 radar.

Based on the attached documentation, I have determined that, in my professional judgment, consolidation of the Oklahoma City Residual Weather Service Office (RWSO) with the future Oklahoma City Weather Forecast Office (WFO) in Norman will not result in any degradation in weather services to the Oklahoma City area. This proposed certification is in accordance with the advance notification provided in the National Implementation Plan. Accordingly, I am recommending that you approve this action in accordance with section 706 of Public Law 102–567. If you concur, please endorse this recommendation and forward this package to the Assistant Administrator for Weather Services for final certification. If Dr. Friday approves, he will forward the certification to the Secretary for approval and transmittal to Congress.

My recommendation is based on my review of the pertinent evidence and application of the modernization criteria for consolidation of a field office. In summary:

1. A description of local weather characteristics and weather-related concerns affecting the weather services provided in the Oklahoma City service area is included as attachment A. As discussed below, I find that providing the services which address these characteristics and concerns from the Oklahoma City WFO will not degrade these services.

2. A detailed list of services traditionally provided within the Oklahoma City service area from the Oklahoma City RWSO location and a list of services to be provided from the Oklahoma City WFO location at Norman after consolidation is included in attachment B. It should be noted that virtually all public services and forecast and warning services were moved to the future WFO site in Norman between 1987 and 1992 as part of a national modernization risk reduction activity. Comparison of these services shows that all services will continue to be provided after the proposed consolidation. Also, the enclosed map shows the RWSO area of responsibility (i.e. ''affected service area'') and the future WFO Oklahoma City area of responsibility. As discussed below, I find that there will be no degradation in the quality of these services as a result of the consolidation.

3. A description of the recent or expected modernization of National Weather Service (NWS) operations which will enhance services in the RWSO Oklahoma City service area is included as attachment C. The new technology (i.e. ASOS, WSR–88D, and AWIPS) has or will be installed and will enhance services.

4. A map showing NEXRAD coverage at an elevation of ten thousand feet for Oklahoma and portions of surrounding areas is included as attachment D. NWS operational radar coverage for the specific service area will be increased and no area will be missed in coverage.

5. The following evidence, based on operational demonstration of modernized NWS operations, played a key role in concluding there will be no degradation in service.

A. The WSR–88D Radar Commissioning Report, attachment E, validates that the WSR–88D meets technical specifications (acceptance test); is fully operational (satisfactory operation of system interfaces and satisfactory support of associated NWS forecasting and warning services); service backup capabilities are functioning properly; a full set of spare parts and test equipment and trained operations and maintenance personnel are available on site. Training was completed, but two national work-arounds remain in effect.

B. The User Confirmation of Services, attachment F, documents that only three negative comments were received. All of those have been answered to the satisfaction of the commentors as stated in the Service Confirmation Report.

C. The Decommissioning Readiness Report, attachment G, verifies that the existing Oklahoma City WSR–57 radar is no longer needed to support services or products for local office operations.

6. A memorandum assigning the liaison officer for the Oklahoma City service area is included as attachment H.

I have considered recommendations of the Modernization Transition committee (Attachment I) and the public comments received during the comment period (Attachment J). On _____, the Committee voted to endorse the proposed consolidation (Attachment K). I believe all negative comments have been addressed to the satisfaction of our customers and I continue to recommend this certification.

Endorsement

I, Harry S. Hassel, Director, Southern Region, endorse this consolidation certification.

_____
Harry S. Hassel
Date _____
Attachments

10159 E. 11th Street, Suite 300

Tulsa, Oklahoma 74128–3050

Memorandum for: Harry S. Hassel, Director, Southern Region
From: Donald R. Devore, MIC, NWSO Tulsa
Subject: Recommendation for Consolidation Certification

A change of operations occurred at the Tulsa Weather Service Office (WSO) in March, 1992 when most personnel were transferred to the facility of the future Tulsa Weather Forecast Office in Tulsa, Oklahoma, to operate the WSR–88D and assume forecast and warning responsibility for the Tulsa service area. At the same time, this office was designated a Residual Weather Service Office (RWSO) at the original WSO location to continue operating the existing WSR–74C radar and recording surface observations.

After reviewing the attached documentation, I have determined, in my professional judgement, that consolidation of the Tulsa Weather Service Office (WSO) with the future Tulsa Weather Forecast Office (WFO) will not result in any degradation in weather services to the Tulsa service area. This proposed certification is in accordance with the advance notification provided in the National Implementation Plan. Accordingly, I am recommending you approve this action in accordance with section 706 of Public Law 102–567. If you concur, please endorse this recommendation and forward this package to the Assistant Administrator for Weather Services for final certification. If Dr. Friday approves, he will forward the certification to the Secretary for approval and transmittal to Congress.

My recommendation is based on my review of the pertinent evidence and application of the modernization criteria for consolidation of a field office. In summary:

1. A description of local weather characteristics and weather-related concerns affecting the weather services provided in the Tulsa service area is included as Attachment A. As discussed below, I find that providing the services which address these characteristics and concerns from Tulsa WFO will not degrade these services.

2. A detailed list of the services currently provided within the Tulsa service area from the Tulsa WSO location and a list of services to be provided from the Tulsa WFO location after consolidation is included as Attachment B. Comparison of these services shows that all services currently provided will continue to be provided after the proposed consolidation. Also, the enclosed map shows the WSO Tulsa Area of Responsibility (i.e. ''Affected Service Area'') and the future WFO Tulsa Area of Responsibility. As discussed below, I find that there will be no degradation in the quality of these services as a result of the consolidation.

3. A description of the recent or expected modernization of National Weather Service (NWS) operations which will enhance services in the WSO Tulsa service area is included as Attachment C. The new Technology (i.e. ASOS, WSR–88D, and AWIPS) has been or will be installed and will enhance services.

4. A map showing planned NEXRAD coverage at an elevation of 10,000 feet for Oklahoma is included as Attachment D. NWS operational radar coverage for the Tulsa service area will be increased and no area will be missed in coverage.

5. The following evidence, based upon operational demonstration of modernized NWS operations, played a key role in concluding there will be no degradation of service.

A. The WSR–88D RADAR Commissioning Report, Attachment E, validates that the WSR–88D meets technical specifications (acceptance test); is fully operational (satisfactory operation of system interfaces and satisfactory support of associated NWS forecasting and warning services); service backup capabilities are functioning properly; a full set of operations and maintenance documentation is available; and spare parts and test equipment and trained operations and maintenance personnel are available on site. Training was completed but two national work-arounds remain in effect.

B. The User Confirmation of Services, Attachment F, documents that only one negative comment was received. The negative comment has been answered to the satisfaction of the commentator as stated in the Service Confirmation Report.

C. The Decommissioning Readiness Report, Attachment G, verifies that the existing Tulsa WSR–74C radar is no longer needed to support services or products for local office operations.

6. A memorandum assigning the liaison officer for the Tulsa service area is included as Attachment H.

I have considered recommendations of the Modernization Transition Committee (Attachment I) and the _____ public comments received during the comment period (Attachment J). On _____, the Committee voted to endorse the proposed consolidation (Attachment K). I believe all negative comments have been addressed to the satisfaction of our customers and I continue to recommend this certification.

Endorsement

I, Harry S. Hassel, Director, Southern Region, endorse this consolidation certification.

Harry S. Hassel.

Date _____
Attachments

NEXRAD Forecast Office
PAB 500
P.O. Box 52025
Phoenix, Arizona 85072–2025

Memorandum for: W/WR—Thomas D. Potter
From: Anton F. Haffer, Arizona Area Manager
Subject: Recommendation for Consolidation Certification

A change of operations occurred at the Phoenix Weather Service Forecast Office (WSFO) in May 1991 when most personnel were transferred to the facility of the future Phoenix Weather Forecast Office (WFO) in Tempe, Arizona to operate the WSR–88D and assume forecast and warning responsibility for the Phoenix service area. At the same time, the office at the original WSFO location was designated a Residual Weather Service Office (RWSO) to continue operating the WSR–74C radar.

After reviewing the attached documentation, I have determined, in my professional judgment, consolidation of the Phoenix Residual Weather Service Office (RWSO) with the future Phoenix Weather Forecast Office (WFO) will not result in any degradation in weather services to the Phoenix service area. This proposed certification is in accordance with the advance notification provided in the National Implementation Plan. Accordingly, I am recommending that you approve this action in accordance with section 706 of Public Law 102–567. If you concur, please endorse this recommendation and forward this package to the Assistant Administrator for Weather Services for final certification. If Dr. Friday approves, he will forward the certification to the Secretary for approval and transmittal to Congress.

My recommendation is based on my review of the pertinent evidence and application of the modernization criteria for consolidation of a field office. In summary:

1. A description of local weather characteristics and weather-related concerns affecting the weather services provided in the pre-modernized Phoenix service area is included as attachment A. The Phoenix service area is unique with 24-hour per day responsibility for Gila, Graham, Greenlee, Maricopa, Mohave, Pinal, and Yavapai Counties, and part-time responsibility, generally night-time hours, for Apache, Coconino, La Paz, Navajo, and Yuma Counties. As discussed below, I find that providing the services which address these characteristics and concerns from the Phoenix WFO will not degrade these services.

2. A detailed list of the services currently provided from the Phoenix RWSO location and comparable services to be provided from the Phoenix WFO location after consolidation is included as attachment B. Comparison of these services shows that all services currently provided will continue to be provided after the proposed consolidation. ASOS observations are currently augmented by NWS personnel, with augmentation scheduled to be taken over by a contractor. I find that there will be no degradation in the quality of these services as a result of the consolidation.

3. A description of the recent or expected modernization of National Weather Service (NWS) operations which will enhance services in the pre-modernized Phoenix service area is included as attachment C. The new technology (i.e. ASOS, WSR–88D, and AWIPS) has, or will be, installed and will enhance services.

4. A map showing planned WSR–88D coverage at an elevation of 10,000 feet for Arizona is included as attachment D. The NWS operational radar coverage for the Phoenix WFO service area will be vastly increased and will not degrade services.

5. The following evidence, based upon operational demonstration of modernized NWS operations, played a key role in

concluding there will be no degradation of service.

A. The WSR–88D RADAR Commissioning Report, attachment E, validates that the WSR–88D meets technical specifications (acceptance test); is fully operational satisfactory operation of system interfaces and satisfactory support of associated NWS forecasting and warning services); service backup capabilities are functioning properly; a full set of operations and maintenance documentation is available; and spare parts and test equipment and trained operations and maintenance personnel are available on site. Training was completed. There were two national work-arounds. One of these has been satisfied while the other one remains in effect.

B. The User Confirmation of Services, attachment F, documents that only one negative comment was received. The negative comment was answered to the satisfaction of the commentor as stated in the service Confirmation Report.

C. The Decommissioning Readiness Report, attachment G, verifies that the Phoenix WSR–74C radar is no longer needed to support services or products for local office operations.

6. A memorandum assigning the liaison officer for the Phoenix service area is included as attachment H.

I have considered recommendations of the Modernization Transition Committee (attachment I) and the _____ public comments received during the comment period (attachment J). On _____ the Committee voted to endorse the proposed consolidation (attachment K). I believe all negative comments have been addressed to the satisfaction of our customers and I continue to recommend this certification.

Endorsement

I, Thomas D. Potter, Director, Western Region, endorse this consolidation certification.

_____

Thomas D. Potter

Date _____

Attachments

[FR Doc. 95–24103 Filed 9–27–95; 8:45 am]

BILLING CODE 3510–12–M

[I.D. 092095B]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of application for a scientific research/enhancement permit (P45T).

SUMMARY: Notice is hereby given that the U.S. Fish & Wildlife Service has applied in due form for a permit to take listed species for the purpose of scientific research/enhancement.

DATES: Written comments or requests for a public hearing on this application must be received on or before October 30, 1995.

ADDRESSES: The application and related documents are available for review by appointment in the following offices:

Office of Protected Resources, F/PR8, NMFS, 1315 East-West Hwy., Room 13307, Silver Spring, MD 20910–3226 (301–713–1401); and

Director, Southeast Region, NMFS, 9721 Executive Center Drive, St. Petersburg, FL 33702–2432 (813–893–3141).

Written comments, or requests for a public hearing on this application should be submitted to the Chief, Endangered Species Division, Office of Protected Resources.

SUPPLEMENTARY INFORMATION: The application requests a permit under the authority of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217–227). The applicant requests authorization to use captive shortnose sturgeon broodstock to generate progeny for physiological/behavioral studies, and investigations leading to the improvement of health, culture technique, and management of cultured and wild shortnose sturgeon. Some collection of wild shortnose sturgeon is requested for marking, population estimates, genetic and contaminant testing, gamete preservation, and spawning studies.

Those individuals requesting a hearing should set out the specific reasons why a hearing on this particular application would be appropriate (see **ADDRESSES**). The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in this application summary are those of the applicant and do not necessarily reflect the views of NMFS.

Dated: September 21, 1995.

Russell J. Bellmer,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–24053 Filed 9–27–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D.092095A]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of public display permit no. 975.

SUMMARY: Notice is hereby given that the Children's Museum, Quebec J8X 4H2 Canada, (P592) has been issued a permit for public display purposes.

ADDRESSES: The permit is available for review upon written request or by appointment in the following office(s):

Permits Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Southeast Region, NMFS, NOAA, 9731 Executive Center Drive North, St. Petersburg, FL 33702 (813/570–5301);

Director, Northeast Region, NMFS, NOAA, One Blackburn Drive, Gloucester, MA 01930 (508/281–9250); and

Director, Northwest Region, NMFS, NOAA, 7600 Sand Point Way, NE, BIN C15700, Seattle, WA 98115 (206/526–6150).

FOR FURTHER INFORMATION CONTACT: Ann Hochman, 301/713–2289.

SUPPLEMENTARY INFORMATION: On Wednesday, July 19, 1995, notice was published in the Federal Register (60 FR 37054) that an application had been filed by the Children's Museum, Canadian Museum of Civilization, 100 Laurier Street, Hull, Quebec J8X 4H2 Canada. A scientific research permit was requested to import 24 handicraft artifacts made all or in part from Harp seal (Phoca groenlandica) for participation in a travelling exhibit at seven U.S. children's museums from July 1995 - October 1997. Upon the basis of further review of the application and the comments received, NMFS believes the applicant more appropriately meets the public display criteria and therefore has issued a public display permit subject to the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), and the conditions set forth therein.

Dated: September 22, 1995.

Ann D. Terbush,

Chief, Permits and Documentation, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–24057 Filed 9–27–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 091495C]

Marine Mammals and Endangered Species

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application for a scientific research permit (P595).

SUMMARY: Notice is hereby given that the Whale Conservation Institute, 191 Weston Road, Lincoln, MA 01773 has applied in due form for a permit to import several species of marine mammals for purposes of scientific research.

DATES: Written comments must be received on or before October 30, 1995.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Director, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298 (508/281–9250).

Written data or views, or requests for a public hearing on this request, should be submitted to the Director, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

FOR FURTHER INFORMATION CONTACT: Trevor Spradlin, Permits Division, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR parts 217–222).

The permit application requests authorization to import biopsy samples collected from both dead stranded and living, free-ranging animals in the territorial waters of Argentina, Mexico, Costa Rica, Ecuador, Peru, and Chile, over a 2-year period. The applicant proposes to initiate this research on November 10, 1995.

Concurrent with the publication of this notice in the Federal Register, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: September 18, 1995.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–24056 Filed 9–27–95; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[I.D. 091295C]

Marine Mammals and Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce; and Fish and Wildlife Service (FWS), Interior.

ACTION: Issuance of extension to scientific research permit no. 842.

SUMMARY: Notice is hereby given that Dr. Howard Braham, National Marine Fisheries Service, Alaska Fisheries Science Center, National Marine Mammal Laboratory, 7600 Sand Point Way, NE., Seattle, WA 98115 has been issued a modification to permit no. 842.

ADDRESSES: The modification and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Northwest Region, NMFS, 7600 Sand Point Way NE., BIN C15700 Building 1, Seattle, WA 98115–0070, (206/526–6150);

Director, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221); and

U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Arlington, VA 22203 (703/358–2104).

SUPPLEMENTARY INFORMATION: On August 1, 1995, a document was published in the Federal Register (60 FR 39152) that a request for a permit modification had been submitted by the above-named individual. The request was to extend the permit until June 30, 1999.

The modification was issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973 (ESA) as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing endangered species permits (50 CFR parts 217–227).

Issuance of this modification as required by the ESA of 1973 was based on a finding that such modification: (1) Was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which are the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: September 13, 1995.

Jeannie K. Drevenak,

Acting Chief, Permits and Documentation Division, National Marine Fisheries Service.

Dated: September 15, 1995.

Maggie Tieger,

Chief, Branch of Permits, U.S. Fish and Wildlife Service.

[FR Doc. 95–24055 Filed 9–27–95; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Department of the Army; Army Science Board

Notice of Partially Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 3 & 4 October 1995.

Time of Meeting: 0800–1700, 3 October 1995; 0800–1200, 4 October 1995.

Place: Edgewood Research Development and Engineering Center (ERDEC), U.S. Army Chemical Biological and Defense Command Aberdeen Proving Ground, MD.

Agenda:

The Army Science Board's Independent Assessment on ''Hit-To-Kill Interceptor Lethality'' will meet for a seminar on chemical and biological warfare agent characterization as related to Theater Missile Defense Lethality. The seminar format for the meeting supports a detailed study of biological and chemical agent capabilities, effects, and detection capabilities, decontamination/neutralization. The open portions of these meetings are open to the public. Any person may attend, appear before or file statements with the committee. The closed portions of these meetings will be closed to the public in accordance with Section 552b(c) of title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). For further information, please contact Michelle Diaz at (703) 695–0781.

Michelle P. Diaz,

Acting Administrative Officer, Army Science Board.

[FR Doc. 95–24025 Filed 9–27–95; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Notice of Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 4 & 5 October 1995.

Time of Meeting: 0900–1500, 4 & 5 October 1995.

Place: 4 October 1995, Pentagon—Washington, DC; 5 October 1995, Aberdeen Proving Ground, MD.

Agenda

The Army Science Board's Independent Assessment Panel on ''Crusader Liquid Propellant Technology'' will meet for briefings and discussions. These meetings will be closed to the public in accordance with Section 552b(c) of title 5, U.S.C., specifically subparagraph (4) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The proprietary matter to be discussed is so inextricably intertwined so as to preclude opening any portion of these meetings. For further information, please contact Michelle Diaz at (703) 695–0781.

Michelle P. Diaz,

Acting Administrative Officer, Army Science Board.

[FR Doc. 95–24033 Filed 9–27–95; 8:45 am]

BILLING CODE 3710–08–M

Department of the Navy

Redevelopment Authority and Available Surplus Land and Buildings at Military Installations Designated for Closure: Naval Station, Long Beach, CA

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: This Notice provides information regarding the redevelopment authority established to plan the reuse of the former Naval Station, Long Beach, CA, the surplus property that is located at that base closure site, and the timely election by the redevelopment authority to proceed under the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

FOR FURTHER INFORMATION CONTACT: John J. Kane, Director, Department of the Navy, Real Estate Operations Division, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300, telephone (703) 325–0474, or LCDR April Heinze, Base Closure Manager, Southwest Division, Naval Facilities Engineering Command, 1420 Kettner Blvd., Suite 507, San Diego, CA 92101–2404, telephone (619) 556–0259. For detailed information regarding particular properties identified in this Notice (i.e., acreage, floor plans, condition, exact street address, etc.), contact LCDR Kevin Barre, Base Transition Coordinator, Long Beach Naval Shipyard, Building 5, Long Beach, CA 90822–5080, telephone (310) 547–6875.

SUPPLEMENTARY INFORMATION: In 1991, the Naval Station, Long Beach, CA, was designated for closure pursuant to the Defense Base Closure and Realignment Act of 1990 (Public Law 101–510, as amended). Several parcels of property which formed a part of that installation have been determined to be surplus to the needs of the federal government and notice thereof has been previously published in the Federal Register. The remainder of the former Naval Station has now been determined to be surplus to the needs of the federal government and available for use by state and local governments, representatives of the homeless and other interested parties.

Election to Proceed Under New Statutory Procedures

The Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (Public Law 103–421) gives the redevelopment authority at base closure sites the option of following new procedures with regard to the manner in which the redevelopment plan for the installation is formulated and how requests are made for future use of the property by homeless assistance providers and non-federal public agencies. The City of Long Beach has elected to be covered by the Act.

Redevelopment Authority

The redevelopment authority for the former Naval Station, Long Beach, for purposes of implementing the provisions of the Defense Base Closure and Realignment Act of 1990, as amended, is the City of Long Beach. The City has established a local community advisory committee to provide recommendations to the City concerning the redevelopment plan. This committee is known as the ''Naval Properties Reuse Committee.'' Day-to-day operations of the committee are handled by Mr. Gerald Miller. The address of the committee is the Economic Development Bureau, City of Long Beach, 200 Pine Avenue, Suite 400, Long Beach, CA 90802. Telephone (310) 570–3851. Facsimile (310) 570–3897.

Surplus Property Descriptions

Pursuant to Section 2905(b)(7)(B) of the Defense Base Closure and Realignment Act of 1990, as amended, the following information regarding the surplus property at the former Naval Station, Long Beach, is published in the Federal Register.

Land

Approximately 83 acres of improved and unimproved fee simple land at the former Naval Station, Long Beach, in the City of Long Beach, Los Angeles County. This property will become available as the Naval Shipyard, Long Beach vacates various parcels being used for ship support functions.

Buildings

The following is a summary of the facilities located on the above described land that is available. Property numbers are available on request.

— Bachelor quarters housing (5 structures). Comments: Approximately 415,893 square feet. Used for up to 1,582 enlisted persons.
— Bowling alley (1 structure). Comments: Approximately 30,790 square feet with 32 lanes.
— Chapel (1 structure). Comments: Approximately 7,060 square feet.
— Child care center (1 structure). Comments: Approximately 6,092 square feet.
— Dental clinic (1 structure). Comments: Approximately 23,167 square feet. Designed for 41 operating units.
— Enlisted club (1 structure). Comments: Approximately 21,335 square feet.
— Enlisted dining facility (1 structure). Comments: 21,755 square feet. Designed to serve meals to 1500 enlisted persons.
— Fire station (3 structures). Comments: Approximately 10,088 square feet.
— Gymnasium (3 structures). Comments: Approximately 49,005 square feet. Gym, shower rooms, weight room, and racquetball courts.
— Library (1 structure). Comments: Approximately 8,562 square feet.
— Medical Clinic (2 structures). Comments: Approximately 57,741 square feet.
— Miscellaneous facilities (24 structures). Comments: Approximately 101,257 square feet. Small buildings and sheds.
— Navy Lodge (1 structure). Comments: Approximately 30,850 square feet.
— Office/administration buildings (9 structures). Comments: Approximately 155,656 square feet.
— Paved areas (various locations). Comments: Approximately 400,000 square yards. Roads, parking areas, sidewalks, etc.
— Piers (2 structures). Comments: Approximately 3,678 linear feet of berthing. Designed for 45 feet MLLW depth.

— Police station (3 structures). Comments: Approximately 11,807 square feet.
— Service station and garage (2 structures). Comment: Approximately 15,540 square feet.
— Small craft fuel piers (2 structures). Comment: Approximately 300 square feet.
— Softball fields (4 structures). Comments: None.
— Swimming pools (2 structures). Comments: One 36 meter pool and one wading pool.
— Utility facilities (25 structures). Comments: Measuring systems vary. Storm drainage system, fire alarms, and irrigation lines.
— Warehouse/storage facilities (8 structures) Comments: Approximately 63,536 square feet.

Expressions of Interest

Pursuant to section 2905(b)(7)(C) of the Defense Base Closure and Realignment Act of 1990, as amended, state and local governments, representatives of the homeless, and other interested parties located in the vicinity of the former Naval Station, Long Beach, may submit to said redevelopment authority (City of Long Beach) a notice of interest, of such government, representative, or party in the above described surplus property, or any portion thereof. A notice of interest shall describe the need of the government, representative, or party concerned for the desired surplus property. Pursuant to paragraphs (7)(C) and (D) of said section 2905(b), the redevelopment authority shall assist interested parties in evaluating the surplus property for the intended use and publish in a newspaper of general circulation in Long Beach the date by which expressions of interest must be submitted.

Dated: September 15, 1995.

M.A. Waters,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 95–24023 Filed 9–27–95; 8:45 am]

BILLING CODE 3810–FF–P

Government-Owned Inventions; Availability for Licensing

AGENCY: Department of the Navy, DoD.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are made available for licensing by the Department of the Navy.

Copies of patents cited are available from the Commissioner of Patents and Trademarks, Washington, D.C. 20231, for $3.00 each. Requests for copies of patents must include the patent number.

Copies of patent applications cited are available from the National Technical Information Service (NTIS), Springfield, Virginia 22161 for $6.95 each ($10.95 outside North American Continent). Requests for copies of patent applications must include the patent application serial number. Claims are deleted from the copies of patent applications sold to avoid premature disclosure.

FOR FURTHER INFORMATION CONTACT: Mr. R. J. Erickson, Staff Patent Attorney, Office of Naval Research (Code OOCC), Arlington, Virginia 22217–5660, telephone (703) 696–4001.

Patent 5,264,798: AUTONULLING AC BRIDGE USING DIFFERENTIAL AND INTEGRATION FEEDBACK; filed 29 October 1991; patented 23 November 1993.

Patent 5,379,699: ACTIVE SPRAY ROCKET PROPELLANT IGNITION CONTROLLER; filed 2 August 1993; patented 10 January 1995.

Patent 5,380,554: CHROMIC OXIDE COATINGS BY THERMAL DECOMPOSITION OF CHROMIC ACID ANHYDRIDE (CRO_3); filed 28 July 1993; patented 10 January 1995.

Patent 5,384,895: SELF-ORGANIZING NEURAL NETWORK FOR CLASSIFYING PATTERN SIGNATURES WITH 'A POSTERIORI' CONDITIONAL CLASS PROBABILITY; filed 29 August 1992; patented 24 January 1995.

Patent 5,386,177: PLASMA KLYSTRON AMPLIFIER; filed 20 May 1993; patented 31 January 1995.

Patent 5,388,210: PROGRAMMABLE MODULAR NETWORK INTERFACE FOR COUPLING A COMPUTER AND A PLURALITY OF WORKSTATION CONSOLES; filed 17 May 1993; patented 7 February 1995.

Patent 5,389,812: PHOTODETECTOR ARRAY HAVING HIGH PIXEL DENSITY; filed 20 April 1994; patented 14 February 1995.

Patent 5,391,463: SURFACE MODIFICATION TO CREATE REGIONS RESISTANT TO ADSORPTION OF BIOMOLECULES; filed 25 April 1991; patented 21 February 1995.

Patent 5,392,713: SHOCK INSENSITIVE INITIATING DEVICES; filed 14 February 1994; patented 28 February 1995.

Patent 5,396,598: EVENT-DRIVEN SIGNAL PROCESSOR INTERFACE HAVING MULTIPLE PARALLELED MICROPROCESSOR-CONTROLLED DATA PROCESSORS FOR ACCURATELY RECEIVING, TIMING AND SERIALLY RETRANSMITTING ASYNCHRONOUS DATA WITH QUICKLY VARIABLE DATA RATES; filed 7 May 1993; patented 7 March 1995.

Patent 5,399,941: OPTICAL PSEUDOSPARK SWITCH; filed 3 May 1993; patented 21 March 1995.

Patent 5,400,395: TELEPHONE LINE SELECTOR AND CALL ACCOUNTANT; filed 5 April 1993; patented 21 March 1995.

Patent 5,402,334: METHOD AND APPARATUS FOR PSEUDOPERIODIC DRIVE; filed 11 May 1992; patented 28 March 1995.

Patent 5,402,745: IN-LINE ROTATIONAL POSITIONING MODULE FOR TOWED ARRAY PARAVANES; filed 2 May 1994; patented 4 April 1995.

Patent 5,402,749: ULTRA-HIGH VACUUM/CHEMICAL VAPOR DEPOSITION OF EPITAXIAL SILICON-ON-SAPPHIRE; filed 3 May 1994; patented 4 April 1995.

Patent 5,402,984: JACK MECHANISM HAVING POSITIVE STOP MEANS FOR ITS CRANK HANDLE; filed 18 January 1994; patented 4 April 1995.

Patent 5,403,880: POLYURETHANE SELF-PRIMING TOPCOATS; filed 7 March 1994; patented 4 April 1995.

Patent 5,404,064: LOW-FREQUENCY ELECTROSTRICTIVE CERAMIC PLATE VOLTAGE SENSOR; filed 2 September 1993; patented 4 April 1995.

Patent 5,404,144: SIMULTANEOUS DETERMINATION OF INCOMING MICROWAVE FREQUENCY AND ANGLE-OF-ARRIVAL; filed 4 May 1994; patented 4 April 1995.

Patent 5,404,759: ACOUSTICALLY QUIET, PASSIVE LOAD FOR TESTING LOW-SPEED MOTORS; filed 26 January 1994; patented 11 April 1995.

Patent 5,405,677: FLUORINATED RESINS WITH LOW DIELECTRIC CONSTANT; filed 30 September 1993; patented 11 April 1995.

Patent 5,405,906: NONLINEAR OPTICAL COMPOSITES OF METAL CLUSTER LADEN POLYMERS; filed 29 April 1993; patented 11 April 1995.

Patent 5,406,298: SMALL WIDEBAND PASSIVE/ACTIVE ANTENNA; filed 1 April 1985; patented 11 April 1995.

Patent 5,406,531: LOW FREQUENCY FLEX-BEAM UNDERWATER ACOUSTIC TRANSDUCER; filed 30 April 1993; patented 11 April 1995.

Patent 5,406,858: GYRO PLATFORM ASSEMBLY; filed 22 October 1993; patented 18 April 1995.
Patent 5,406,903: STABILIZING JACKET FOR A TOWED CABLE OR ANTENNA STRUCTURE; filed 8 August 1994; patented 18 April 1995.
Patent 5,407,740: CERAMIC COMPOSITES WITH CERAMIC FIBERS; filed 7 January 1994; patented 18 April 1995.
Patent 5,407,787: PROCESS TO FABRICATE THICK COPLANAR MICROWAVE ELECTRODE STRUCTURES; filed 18 January 1993; patented 18 April 1995.
Patent 5,408,481: INTRACAVITY SUM FREQUENCY GENERATION USING A TUNABLE LASER CONTAINING AN ACTIVE MIRROR; filed 14 January 1994; patented 18 April 1995.
Patent 5,408,874: LOCATION OF FLUID BOUNDARY INTERFACES FOR FLUID LEVEL MEASUREMENT; filed 30 September 1993; patented 25 April 1995.
Patent 5,408,932: LONG ROD EXTENSION SYSTEM UTILIZING SHAPE MEMORY ALLOY; filed 7 September 1994; patented 25 April 1995.
Patent 5,410,079: 5–UREIDO–1,3–DIAMINO–2,4,5–TRINITRO-BENZENE: filed 2 April 1984; patented 25 April 1995.
Patent 5,410,404: FIBER GRATING-BASED DETECTION SYSTEM FOR WAVELENGTH ENCODED FIBER SENSORS; filed 30 November 1993; patented 25 April 1995.
Patent 5,410,499: PHASE SHIFTER FOR DIRECTLY SAMPLED BANDPASS SIGNALS; filed 31 March 1994; patented 25 April 1995.
Patent 5,410,575: DETECTION OF BURIED NITROGEN RICH MATERIALS; filed 27 January 1993; patented 25 April 1995.
Patent 5,410,906: METHOD FOR DETERMINING DAMPING COEFFICIENTS; filed 27 October 1993; patented 2 May 1995.
Patent 5,410,967: TARGET CAMOUFLAGING CHAFF DISPENSER WITH EJECTABLE CLOSURE; filed 1 June 1993; patented 2 May 1995.
Patent 5,410,978: FLOW-THROUGH ELASTOMERIC LAUNCH SYSTEM FOR SUBMARINES; filed 8 August 1994; patented 2 May 1995.
Patent 5,411,697: METHOD FOR PROCESSING CONTAMINATED PLASTIC WASTE; filed 30 September 1993; patented 2 May 1995.
Patent 5,412,391: ADAPTIVE DECORRELATING SIDELOBE CANCELLER; filed 6 October 1977; patented 2 May 1995.
Patent 5,412,674: COMPACT RAPIDLY MODULATABLE DIODE PUMPED VISIBLE LASER; filed 7 April 1994; patented 2 May 1995.
Patent 5,413,512: MULTI-PROPELLER DRIVE SYSTEM; filed 5 July 1994; patented 9 May 1995.
Patent 5,413,679: METHOD OF PRODUCING A SILICON MEMBRANE USING A SILICON ALLOY ETCH STOP LAYER; filed 30 June 1993; patented 9 May 1995.
Patent 5,413,694: METHOD FOR IMPROVING ELECTROMAGNETIC SHIELDING PERFORMANCE OF COMPOSITE MATERIALS BY ELECTROPLATING; filed 30 July 1993; patented 9 May 1995.
Patent 5,414,676: SONAR ARRAY WITH REDUCED GRATING LOSS; filed 16 March 1994; patented 9 May 1995.
Patent 5,414,789: OPTICAL LOGIC GATES WITH HIGH EXTINCTION RATIO USING INVERSE SCATTERING TECHNIQUE AND METHOD USING SAME; filed 30 July 1992; patented 9 May 1995.
Patent 5,414,814: I/O INTERFACE BETWEEN VME BUS AND ASYNCHRONOUS SERIAL DATA COMPUTER; filed 8 May 1992; patented 9 May 1995.
Patent 5,415,047: DIFFUSION WELD TEST FIXTURE; filed 9 June 1994; patented 16 May 1995.
Patent 5,415,122: TWISTED RUDDER FOR A VESSEL; filed 13 October 1993; patented 16 May 1995.
Patent 5,415,201: MULTI-STAGE FLUID FLOW CONTROL DEVICE; filed 27 June 1994; patented 16 May 1995.
Patent 5,415,202: MULTISTAGE VARIABLE AREA THROTTLE VALVE; filed 27 June 1994; patented 16 May 1995.
Patent 5,416,049: GLASSY BINDER SYSTEM FOR CERAMIC SUBSTRATES, THICK FILMS AND THE LIKE; filed 9 February 1989; patented 16 May 1995.
Patent 5,416,273: STRAIN RELIEF FOR FLEXIBLE WIRE AT FIXED JUNCTION; filed 22 November 1993; patented 16 May 1995.
Patent 5,416,320: CHLORINATED HYDROCARBON SENSOR FOR CONE PENETROMETER; filed 8 June 1993; patented 16 May 1995.
Patent 5,416,326: ANALOG SPATIAL FILTER FOR DETECTION OF UNRESOLVED TRAGETS AGAINST A CLOUD-CLUTTERED BACKGROUND; filed 3 June 1985; patented 16 May 1995.
Patent 5,416,856: METHOD OF ENCODING A DIGITAL IMAGE USING ITERATED TRANSFORMATIONS TO FORM AN EVENTUALLY CONTRACTIVE MAP; filed 30 March 1992; patented 16 May 1995.
Patent 5,416,859: BROADBAND, LOW DRIVE VOLTAGE, ELECTROOPTIC, INTEGRATED OPTICAL MODULATOR; filed 14 April 1993; patented 16 May 1995.
Patent 5,416,922: HELMET HEAD TRACKING MOUNTING DEVICE; filed 23 February 1993; patented 23 May 1995.
Patent 5,416,977: PITCH SENSOR SYSTEM; filed 24 March 1994; patented 23 May 1995.
Patent 5,417,176: UNDERWATER VORTEX SHEDDER; filed 27 July 1994; patented 23 May 1995.
Patent 5,417,597: VESSEL WITH MACHINERY MODULES OUTSIDE WATERTIGHT HULL; filed 28 April 1994; patented 23 May 1995.
Patent 5,418,060: INDIA-STABILIZED ZIRCONIA COATING FOR COMPOSITES; filed 18 February 1994; patented 23 May 1995.
Patent 5,418,403: SYSTEM FOR CONVENIENTLY PROVIDING LOAD TESTING TERMINATION OF AN AC POWER SOURCE HAVING AT LEAST ONE BATTERY; filed 3 October 1994; patented 23 May 1995.
Patent 5,418,797: TIME GATED IMAGING THROUGH SCATTERING MATERIAL USING POLARIZATION AND STIMULATED RAMAN AMPLIFICATION; filed 15 January 1993; patented 23 May 1995.
Patent 5,419,024: METHOD OF PRODUCING A CONTROLLED FRAGMENTATION WARHEAD CASE; filed 21 March 1994; patented 30 May 1995.
Patent 5,419,116: MINISCALE BALLISTIC MOTOR TESTING METHOD FOR ROCKET PROPELLANTS; filed 15 March 1994; patented 30 May 1995.
Patent 5,419,119: HIGH PRESSURE SLAB MOTOR; filed 29 July 1993; patented 30 May 1995.
Patent 5,419,232: ELASTOMERIC SHUTTER MECHANISM; filed 22 March 1994; patented 30 May 1995.
Patent 5,419,512: TOWED FIBER OPTIC DATA LINK PAYOUT SYSTEM; filed 5 September 1990; patented 30 May 1995.
Patent 5,419,785: INTRINSICALLY DOPED III–A AND V–A COMPOUNDS HAVING PRECIPITATES OF V–A ELEMENT; filed 12 April 1994; patented 30 May 1995.
Patent 5,419,800: SPLIT GASKET ATTACHMENT STRIP; filed 27 January 1994; patented 30 May 1995.
Patent 5,419,826: ION-SELECTIVE REFERENCE PROBE; filed 25 March 1994; patented 30 May 1995.

Patent 5,420,049: METHOD OF CONTROLLING PHOTOEMISSION FROM POROUS SILICON USING ION IMPLANTATION; filed 9 September 1993; patented 30 May 1995.

Patent 5,420,067: METHOD OF FABRICATING SUB-HALF-MICRON TRENCHES AND HOLES; filed 20 September 1993; patented 30 May 1995.

Patent 5,420,825: NOISE CONTROL COMPOSITE; filed 31 August 1982; patented 30 May 1995.

Patent 5,421,244: SEGMENTED FLOW-THROUGH PISTON FOR USE IN A TORPEDO LAUNCHING SYSTEM; filed 14 January 1994; patented 6 June 1995.

Patent 5,421,340: COMPACT, PORTABLE CRITICAL CARE UNIT FOR HYPERBARIC AND RECOMPRESSION CHAMBERS; filed 29 April 1993; patented 6 June 1995.

Patent 5,421,396: METHOD OF MAKING ULTRAHIGH DENSITY CHARGE TRANSFER DEVICE; filed 11 May 1993; patented 6 June 1995.

Patent 5,422,584: VARIABLE PHASE SINE WAVE GENERATOR FOR ACTIVE PHASED ARRAYS; filed 30 September 1992; patented 6 June 1995.

Patent 5,422,596: HIGH POWER, BROADBAND FOLDED WAVEGUIDE GYROTRON-TRAVELING-WAVE-AMPLIFIER; filed 30 June 1994; patented 6 June 1995.

Patent 5,422,609: UNIPLANAR MICROSTRIP TO SLOTLINE TRANSITION; filed 17 June 1994; patented 6 June 1995.

Patent 5,422,646: HIGH FREQUENCY MTI RADAR; filed 24 February 1983; patented 6 June 1995.

Patent 5,422,713: BI-REFRINGENT WAVEGUIDE ROTATIONAL ALIGNMENT METHOD USING WHITE LIGHT INTERFEROMETRY; filed 21 March 1994; patented 6 June 1995.

Patent 5,422,745: PREPARATION OF PERMANENT PHOTOWRITTEN OPTICAL DIFFRACTION GRATINGS IN IRRADIATED GLASSES; filed 30 October 1992; patented 6 June 1995.

Patent 5,422,966: MICROWAVE ELECTRO-OPTIC MIXER; filed 10 June 1994; patented 6 June 1995.

Patent 5,422,974: SHOCK RESISTANT OPTIC FIBER ROTARY SPLICE HOLDING DEVICE; filed 23 September 1994; patented 6 June 1995.

Patent 5,423,481: MENISCUS REGULATOR SYSTEM; filed 20 September 1993; patented 13 June 1995.

Patent 5,424,113: LATTICE CORE SANDWICH CONSTRUCTION; filed 23 June 1993; patented 13 June 1995.

Patent 5,425,886: ON DEMAND, NON-HALON, FIRE EXTINGUISHING SYSTEMS; filed 23 June 1993; patented 20 June 1995.

Patent 5,426,373: TWO ELECTRODE DEVICE FOR DETERMINING ELECTRIC PROPERTIES OF A MATERIAL ON A METAL SUBSTRATUM; filed 30 September 1992; patented 20 June 1995.

Patent 5,426,400: BROADBAND COPLANAR WAVEGUIDE TO SLOTLINE TRANSITION HAVING A SLOT CAVITY; filed 17 June 1993; patented 20 June 1995.

Patent 5,426,408: CERAMIC SUPERCONDUCTING MAGNET USING STACKED MODULES; filed 7 May 1993; patented 20 June 1995.

Patent 5,426,409: CURRENT CONTROLLED VARIABLE INDUCTOR; filed 24 May 1994; patented 20 June 1995.

Patent 5,426,434: SEMIAUTOMATIC JAM-ACCEPT (SAJAC) DECIDER FOR MODE–4 OF THE IFF MARK XII; filed 3 September 1970; patented 20 June 1995.

Patent 5,426,597: ADAPTIVE INFINITE IMPULSE RESPONSE (IIR) FILTER SYSTEM; filed 26 April 1994; patented 20 June 1995.

Patent 5,426,617: LONG BASELINE TRACKING SYSTEM; filed 24 July 1990; patented 20 June 1995.

Patent 5,426,646: INSTANTANEOUS BIT-ERROR-RATE METER; filed 25 June 1992; patented 20 June 1995.

Patent 5,426,905: INSULATION ATTACHMENT STUD FOR COMPOSITE MATERIAL SUBSTRATE; filed 13 September 1993; patented 27 June 1995.

Patent 5,427,032: FLARE-ANTENNA UNIT FOR SYSTEM IN WHICH FLARE IS REMOTELY ACTIVATED BY RADIO; filed 23 March 1994; patented 27 June 1995.

Patent 5,427,821: POLYURETHANE SELF-PRIMING TOPCOATS; filed 5 July 1994; patented 27 June 1995.

Patent 5,428,358: APPARATUS AND METHOD FOR IONOSPHERIC MAPPING; filed 3 May 1994; patented 27 June 1995.

Patent Application 08/010,986: BALANCED ON AIR AIRCRAFT; filed 21 July 1994.

Patent Application 08/254,087: INTERMEDIATE NETWORK AUTHENTICATION: filed 3 June 1994.

Patent Application 08/269,278: HIGH POWER, BROADBAND FOLDED WAVEGUIDE GYROTRON-TRAVELING-WAVE-AMPLIFIER; filed 30 June 1994.

Patent Application 08/319,688: DIFFERENTIAL PREAMPLIFIER AND PRE-EMPHASIS NETWORK; filed 7 October 1994.

Patent Application 08/320,616: VEHICLE RECOVERY DEVICE FOR USE BY HELICOPTER: filed 7 October 1994.

Patent Application 08/322,653: PERSONAL IDENTIFYING RECOGNITION SYSTEM; filed 11 October 1994.

Patent Application 08/326,518: FLUORESCENT DETECTION OF HYDRAZINE, MONOMETHYLHYDRAZINE, AND 1,1–DIMETHYLHYDRAZINE BY DERIVATIZATION WITH AROMATIC DICARBOXALDEHYDES; filed 20 October 1994.

Dated: September 20, 1995.

M.D. Schetzsle,

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

[FR Doc. 95–24161 Filed 9–27–95; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 30, 1995.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Wendy Taylor, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3507 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: September 25, 1995.

Gloria Parker,

Director, Information Resources Group.

Office of Elementary and Secondary Education

Type of Review: New.

Title: State or Court-Ordered Desegregated LEAs Submission for Title I Services.

Frequency: Annually.

Affected Public: State, Local or Tribal Governments.

Reporting Burden:

Responses: 275.

Burden Hours: 1,100.

Recordkeeping Burden:

Recordkeepers: 0.

Burden Hours: 0.

Abstract: LEAs under such desegregation plans may request the waivers in order to provide Title I services to schools where the concentrations of poverty have been altered by the plan. These waivers and the information collection and reporting entailed are necessary in order to ensure provision of Title I services to children who are, but for the desegregation plan, fully entitled to receive them.

Additional Information: Clearance for this information collection is requested for September 29, 1995. An expedited review is requested so that the schools may receive the waivers as soon as possible, since the school year has already begun.

[FR Doc. 95–24121 Filed 9–27–95; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG95–92–000, et al.]

The New World Village Power Company, et al.; Electric Rate and Corporate Regulation Filings

September 20, 1995

Take notice that the following filings have been made with the Commission:

1. The New World Village Power Company

[Docket No. EG95–92–000]

On September 14, 1995, The New World Village Power Company filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations. The New World Village Power Company is a wholly owned subsidiary of The New World Power Corporation. The New World Village Power Company will be engaged directly and exclusively in the business of owning and operating a 0.5 MW generating facility powered by solar energy and natural gas located at Chiriaco Summit, in Riverside County, California, and selling electricity at wholesale.

Comment date: October 12, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. UCH Power Limited

[Docket No. EG95–93–000]

On September 15, 1995, UCH Power Limited, a corporation formed under the laws of the Republic of Pakistan with offices at h.3, St.-33, F–8/1 Islamabad, Pakistan filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 35 of the Commission's Regulations.

Applicant is proposing to construct and own an independent power production facility near Dera Murad Jamali in the Province of Balochistan, Pakistan. Major plant equipment will consist of three combustion turbine-generators, three heat recovery steam generators and one steam turbine-generator with a nominal net plant output of 586 MW. The primary fuel supply for the facility will be natural gas. High speed diesel will be used as a back-up fuel supply. Net electric energy will be sold to the Water and Power Development Authority.

Upon completion of construction, Applicant will be engaged directly and exclusively in the business of owning the facility and selling electric energy at wholesale and possibly for sale at retail to consumer not located in the United States. No rate or charge for, or connection with, the construction of the Facility or for electric energy produced by the Facility was in effect under the laws of any state as of the date of enactment of Section 32 of the Public Utility Holding Company Act.

Comment date: October 12, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Kentucky Utilities Company

[Docket No. ER94–209–002]

Take notice that on August 28, 1995, Kentucky Utilities Company (KE) tendered for filing in compliance with Docket Nos. ER94–209–000 and ER94–209–001, a compliance reporting stating that no excess revenues were received above the settlement and interconnection agreement rates from East Kentucky Cooperative, Inc. In addition, there were no emission allowance revenues recovered in excess of the methodology accepted by the Commission in Docket No. ER95–529–000 on August 11, 1995.

Comment date: October 5, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. National Power Exchange, Corp.

[Docket No. ER94–1593–003]

Take notice that on September 11, 1995, National Power Exchange, Corp. tendered for filing certain information as required by the Commission's letter order dated October 7, 1994. Copies of the informational filing are on file with the Commission and are available for public inspection.

5. ICPM, Inc.

[Docket No. ER95–640–001]

Take notice that on September 7, 1995, ICPM, Inc. tendered for filing certain information as required by the Commission's letter order dated March 31, 1995. Copies of the informational filing are on file with the Commission and are available for public inspection.

6. PacifiCorp

[Docket No. ER95–727–000]

Take notice that on September 1, 1995, PacifiCorp tendered for filing an amendment in the above-referenced docket.

Comment date: October 5, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Public Service Company of Colorado

[Docket No. ER95–1207–000]

Take notice that on September 1, 1995, Public Service Company of Colorado tendered for filing an amendment in the above-referenced docket.

Comment date: October 5, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Black Hills Corporation

[Docket No. ER95–1343–000]

Take notice that on September 1, 1995, Black Hills Corporation tendered for filing an amendment in the above-referenced docket.

Comment date: October 5, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. CINergy

[Docket No. ER95–1424–000]

Take notice that on August 28, 1995, CINergy tendered for filing an amendment in the above-referenced docket.

Comment date: October 5, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Public Service Electric & Gas Company

[Docket No. ER95–1535–000]

Take notice that on September 9, 1995, Public Service Electric & Gas Company tendered for filing an amendment in the above-referenced docket.

Comment date: October 5, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. Public Service Electric & Gas Company

[Docket No. ER95–1610–000]

Take notice that on September 5, 1995, Public Service Electric & Gas Company tendered for filing an amendment in the above-referenced docket.

Comment date: October 5, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. South Carolina Electric & Gas Company

[Docket No. ER95–1712–000]

Take notice that South Carolina Electric & Gas Company on September 7, 1995, tendered for filing a Contract for Purchase and Sale of Power between South Carolina Electric & Gas Company and Jacksonville Electric Authority.

Under the proposed Contract between South Carolina Electric & Gas Company and Jacksonville Electric Authority, the parties establish terms, conditions, rights and obligations to provide power and energy to each other.

Copies of this filing were served upon Jacksonville Electric Authority.

Comment date: October 5, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Northern States Power Company (Minnesota), Northern States Power Company (Wisconsin)

[Docket No. ER95–1713–000]

Take notice that on September 7, 1995, Northern States Power Company-Minnesota (NSP–M) and Northern States Power Company-Wisconsin (NSP–W) jointly tender and request the Commission to accept a Transmission Service Agreement which provides for 50 MW of Reserved Transmission Service to Wisconsin Power and Light Company beginning August 12, 1995, through August 18, 1995. The source party is Otter Tail Power Company and the recipient party is Wisconsin Power and Light Company.

NSP requests that the Commission accept for filing the Transmission Service Agreement effective as of August 12, 1995. NSP requests a waiver of the Commission's notice requirements pursuant to Part 35 so the Agreement may be accepted for filing effective on the date requested.

Comment date: October 5, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. Northern States Power Company (Minnesota), Northern States Power Company (Wisconsin)

[Docket No. ER95–1714–000]

Take notice that on September 7, 1995, Northern States Power Company-Minnesota (NSP–M) and Northern States Power Company-Wisconsin (NSP–W) jointly tender and request the Commission to accept a Transmission Service Agreement which provides for 50 MW of Reserved Transmission Service to Wisconsin Power and Light Company beginning August 19, 1995, through August 25, 1995. The source party is Otter Tail Power Company and the recipient party is Wisconsin Power and Light Company.

NSP requests that the Commission accept for filing the Transmission Service Agreement effective as of August 19, 1995. NSP requests a waiver of the Commission's notice requirements pursuant to Part 35 so the Agreement may be accepted for filing effective on the date requested.

Comment date: October 5, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. Public Service Electric and Gas Company

[Docket No. ER95–1715–000]

Take notice that Public Service Electric and Gas Company (PSE&G) of Newark, New Jersey on September 7, 1995, tendered for filing an agreement for the sale of energy and capacity to Pennsylvania Power & Light Company (PP&L). PSE&G will sell to PP&L from time to time as scheduled by PP&L.

PSE&G requests the Commission to waive its notice requirements under Rules and to permit the Energy Sales Agreement to become effective as of September 11, 1995. Copies of the filing have been served upon PP&L.

Comment date: October 5, 1995, in accordance with Standard Paragraph E at the end of this notice.

16. Southern California Edison Company

[Docket No. ER95–1716–000]

Take notice that on August 31, 1995, Southern California Edison Company tendered for filing a firm transmission service agreement with Arizona Public Service Company.

Comment date: October 5, 1995, in accordance with Standard Paragraph E at the end of this notice.

17. Portland General Electric Company

[Docket No. ES95–39–002]

Take notice that on September 18, 1995, Portland General Electric Company (Portland General) filed an amendment to its application under § 204 of the Federal Power Act. Portland General requests that the application be amended to change the time for the proposed insurance of short-term debt securities from ''October 31, 1998, with a maturity date no later than October 31, 1999'' to ''October 31, 1997, with a maturity date no later than October 31, 1998.''

Comment date: October 5, 1995, in accordance with Standard Paragraph E at the end of this notice.

18. Lee T. Todd

[Docket No. ID–2914–000]

Take notice that on August 31, 1995, Lee T. Todd (Applicant) tendered for filing an application under Section 305(b) of the Federal Power Act to hold the following positions:

Director—Kentucky Utilities Company
Director—Bank One, Lexington, N.A.

Comment date: October 5, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–24060 Filed 9–27–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP95–742–000, et al.]

NorAm Gas Transmission Company, et al. Natural Gas Certificate Filings

September 19, 1995.

Take notice that the following filings have been made with the Commission:

1. NorAm Gas Transmission Company

[Docket No. CP95–742–000]

Take notice that on September 8, 1995, NorAm Gas Transmission Company (NorAm), 1600 Smith Street, Houston, Texas 77002, filed in Docket No. CP95–742–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon and remove an inactive 170 horsepower compressor, the Union City Compressor Station (Union City), located in Johnson County, Arkansas, all as more fully set forth in the application, which is on file with the Commission and open to public inspection.

NorAm states that Union City is in a state of disrepair and has not operated since January, 1993. NorAm states further that the compressor cylinders would be salvaged and returned to stock and the other equipment and facilities would be junked at no value.

It is said that the compressor station is no longer needed and that NorAm would continue to transport the gas located upstream of the compressor without any interruption or abandonment of production.

Comment date: October 10, 1995, in accordance with Standard Paragraph F at the end of this notice.

2. Transcontinental Gas Pipe Line Corporation

[Docket No. CP95–752–000]

Take notice that on September 13, 1995, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP95–752–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate a sales tap in Lafourche Parish, Louisiana, under Transco's blanket certificate issued in Docket No. CP82–426–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Transco proposes to construct and operate a new sales tap to Cameco Industries, Inc. (Cameco), a manufacturer of agricultural machinery. The sales tap would consist of a 2-inch hot tap approximately at milepost 0.57 on Transco's existing 10-inch Raceland Lateral in Lafourche Parish, Louisiana. Cameco would construct, or cause to be constructed, appurtenant facilities to enable it to receive gas from Transco at such point. Transco estimates the total cost of Transco's proposed facilities to be approximately $82,000 and states that Cameco would reimburse Transco for all costs associated with such facilities.

Transco states that the new sales tap would be used by Cameco to receive up to 360 Mcf of gas per day from Transco on an interruptible basis. Cameco is not currently a transportation customer of Transco, but Transco would provide interruptible transportation service to Cameco pursuant to Transco's Rate Schedule IT and Part 284(G) of the Commission's Regulations. Transco states that the addition of the sales tap would have no significant impact on Transco's peak day or annual deliveries.

Comment date: November 3, 1995, in accordance with Standard Paragraph G at the end of this notice.

3. Missouri Gas Energy, A Division of Southern Union Company v. Panhandle Eastern Pipe Line Company)

[Docket No. CP95–755–000]

Take notice that on September 13, 1995, Missouri Gas Energy, A Division of Southern Union Company (MGE), 504 Lavaca, Suite 800, Austin, Texas 78701, filed in Docket No. CP95–755–000 a complaint alleging that Panhandle Eastern Pipe Line Company (Panhandle) has acted in an unduly discriminatory manner and requesting that the Commission order Panhandle to construct and operate a new delivery point on its transmission system for interruptible service to MGE under Rate Schedule IT, all as more fully described in the complaint which is on file with the Commission and open to public inspection.

MGE states that it has requested that Panhandle provide an additional 300,000 million Btu's per day in interruptible or IT capacity for the delivery of gas at a new delivery point located on Panhandle's system in the vicinity of the Louisburg Compressor in Miami County, Missouri with the facility costs to be reimbursed by MGE. MGE alleges that Panhandle has refused to take the steps necessary to implement the new delivery point request and to provide the requested Rate Schedule IT service. MGE contends that Panhandle's actions violate the express prohibitions contained in Section 4(d) of the Natural Gas Act against unduly discriminatory conduct as well as the policies underlying the federal antitrust laws. MGE also states that its request is fully in accord with Panhandle's tariff and lists several other examples that it contends that Panhandle has requested and received Commission authorization to add new delivery points for other shippers.

Comment date: October 19, 1995, in accordance with the first paragraph of Standard Paragraph F at the end of this notice.

4. U–T Offshore System

[Docket No. CP95–756–000]

Take notice that on September 14, 1995, U-T Offshore System (U-TOS), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP95–756–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon a transportation service which was authorized in Docket No. CP75–104,[1] all as more fully set forth in the application on file with the Commission and open to public inspection.

U-TOS proposes to terminate the firm transportation service which is being rendered for Fina Natural Gas Company (Fina) under U-TOS' Rate Schedule T–11, as well as associated Interruptible Overrun Transportation Service rendered in accordance with U-TOS' Rate Schedule I. U-TOS states that, by letter dated November 1, 1994, Fina gave U-TOS official notice that Fina was

[1] See 3 FERC ¶ 61,232 (1978), 16 FERC ¶ 61,074 (1981) and 18 FERC ¶ 61,274 (1982).

exercising its right under the September 25, 1987, transportation agreement to terminate the agreement as of November 9, 1995.

U-TOS further states that Rate Schedule T–11 provides for 12,000 Mcf/day contract demand, and the associated interruptible overrun volume is 20,000 Mcf/day.

Comment date: October 10, 1995, in accordance with Standard Paragraph F at the end of this notice.

5. CNG Transmission Corporation

[Docket No. CP95–757–000]

Take notice that on September 15, 1995, CNG Transmission Corporation (CNGT), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP95–757–000, an abbreviated application pursuant to Section 7 of the Natural Gas Act (NGA) as amended, and the Commission's Rules and Regulations thereunder, for an order approving abandonment by sale to Hope Gas Inc. (Hope) of 9.19 miles of 12-inch pipeline, known as a portion of Line TL–255, located in Wirt and Wood Counties, West Virginia. The parties are making this sale pursuant to the Stipulation and Agreement filing, in Docket No. RP94–96., et al., on June 28, 1995. For this reason CNGT is also requesting that the Commission consolidate this proceeding with Docket No. RP94–96, et al., all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Comment date: October 10, 1995, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, 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.

Take further notice that, pursuant to the authority contained in and subject to the 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 and/or permission and approval for the proposed abandonment are 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.

G. 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 Section 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.

Lois D. Cashell,

Secretary.

[FR Doc. 95–24059 Filed 9–27–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER95–1423–000]

Mid American Natural Resources, Inc.; Notice of Issuance of Order

September 22, 1995.

On July 24, 1995, Mid American Natural Resources, Inc. (Mid American) submitted for filing a rate schedule under which Mid American will engage in wholesale electric power and energy transactions as a marketer. Mid American also requested waiver of various Commission regulations. In particular, Mid American requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Mid American.

On August 25, 1995, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Mid American should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Mid American is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Mid American's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests in this instance is October 6, 1995.

Copies of the full text of the order are available from the Commission's Public Reference Branch, Room 3308, 941 North Capitol Street NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 95–24063 Filed 9–27–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–1374–000]

National Fuel Resources, Inc.; Notice of Issuance of Order

September 22, 1995.

On July 14, 1995, as amended August 4, 1995, National Fuel Resources, Inc. (National Fuel) submitted for filing a rate schedule under which National Fuel will engage in wholesale electric power and energy transactions as a marketer. National Fuel also requested waiver of various Commission regulations. In particular, National Fuel requested that the Commission grant

blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by National Fuel.

On September 7, 1995, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by National Fuel should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, National Fuel is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of National Fuel's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is October 10, 1995.

Copies of the full text of the order are available from the Commission's Public Reference Branch, Room 3308, 941 North Capitol Street, N.E. Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 95–24062 Filed 9–27–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–1511–000]

PennUnion Energy Services, L.C.C.; Notice of Issuance of Order

September 22, 1995.

On August 9, 1995, PennUnion Energy Services, L.C.C. (PennUnion) submitted for filing a rate schedule under which PennUnion will engage in wholesale electric power and energy transactions as a marketer. PennUnion also requested waiver of various Commission regulations. In particular, PennUnion requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by PennUnion.

On September 11, 1995, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by PennUnion should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, PennUnion is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of PennUnion's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is October 11, 1995.

Copies of the full text of the order are available from the Commission's Public Reference Branch, Room 3308, 941 North Capitol Street, N.E. Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 95–24064 Filed 9–27–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–1234–000]

Prairie Winds Energy, Inc., Notice of Issuance of Order

September 22, 1995.

On June 19, 1995, as amended July 5, 1995, Prairie Winds Energy, Inc. (Prairie) submitted for filing a rate schedule under which Prairie will engage in wholesale electric power and energy transactions as a marketer. Prairie also requested waiver of various Commission regulations. In particular, Prairie requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Prairie.

On August 28, 1995, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Prairie should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Prairie is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Prairie's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests in this instance is October 6, 1995.

Copies of the full text of the order are available from the Commission's Public Reference Branch, Room 3308, 941 North Capitol Street, N.E. Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 95–24061 Filed 9–27–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT95–60–000]

Sumas International Pipeline Inc.; Notice of Tariff Filing

September 22, 1995.

Take notice that on September 15, 1995, Sumas International Pipeline Inc. (SIPI), tendered for filing as part of its

FERC Gas Tariff, Original Volume No. 2, the following tariff sheet, with a proposed effective date of October 31, 1995:

First Revised Sheet No. 13
Second Revised Sheet No. 34
First Revised Sheet No. 36
First Revised Sheet No. 43
Second Revised Sheet No. 46

SIPI states that the above tariff sheet reflects the new executive and operation appointments made with SIPI's organization

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 29, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 95–24065 Filed 9–27–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–437–001]

WestGas InterState, Inc.; Notice of Amendment to Proposed Changes in FERC Gas Tariff

September 22, 1995.

Take notice that on September 20, 1995, WestGas InterState, Inc. (WGI) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets:

Substitute First Revised Sheet No. 2
Substitute Second Revised Sheet No. 5
Substitute First Revised Sheet No. 29
Substitute First Revised Sheet No. 31
Substitute First Revised Sheet No. 36

The proposed effective date of these tariff sheets is November 1, 1995.

WGI states that the purpose of its filing is to correct the rates and certain other minor errors reflected in the proposed tariff sheets filed by WGI on September 12, 1995 in this proceeding, as part of WGI's Section 4 rate decrease filing. WGI states that after its September 12th filing, WGI discovered two mathematical errors contained in rate calculations—one reflected in the total cost of service and the other error reflected in the interruptible transportation design determinants in the cost allocation/rate design calculations. WGI proposes to correct its rates as compared to those proposed in the September 12th filing, as follows:

	Orig. proposed	Corrected
Rate Schedule FT:		
Maximum Reservation Charge	$1.2828	$1.3183
Rate Schedule IT:		
Maximum Commodity Charge ...	0.0401	0.0433

WGI states that a copy of its filing was served on each of its jurisdictional customers and affected state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20406, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before September 29, 1995. 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.

Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 95–24066 Filed 9–27–95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5305–3]

Agency Information Collection Activities Up for Renewal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) listed below is coming up for renewal. Before submitting the renewal package to the Office of Management and Budget (OMB), EPA is soliciting comments on specific aspects of the collection as described below.

DATES: Comments must be submitted on or before November 27, 1995.

ADDRESSES: Office of Enforcement and Compliance Assurance, Office of Compliance, Agriculture and Ecosystems Division, Agriculture Branch (2225A), 401 M Street, SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Phyllis Flaherty, Chief, Agriculture Branch, 202–564–4131/202–564–0028/ Steve Howie, 202–564–4146/202–564–0028.

SUPPLEMENTARY INFORMATION:

Affected entities: This action affects domestic and foreign entities which manufacture or produce pesticide products.

Title: Application for Registration of Pesticide-Producing Establishment (EPA Form 3540–8) and Pesticides Report for Pesticide-Producing Establishments (EPA Form 3540–16), OMB No. 2070–0078, Expiration Date: 02/28/96.

Abstract: The U.S. Environmental Protection Agency (EPA) must collect information on pesticide-producing establishments in order to meet the statutory requirements of Section 7 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). FIFRA requires producers of pesticide products, active ingredients, and devices to register their establishments with EPA and to submit an annual report on the types and amounts of products produced.

Section 7(b) of FIFRA requires that any person who manufactures pesticides or active ingredients subject to the Act must register the establishment in which the pesticide is produced with the Administrator of EPA. This section further requires that the application for registration of any establishment shall include the name and address of the establishment and of the producer who operates such an establishment. EPA Form 3540–8, Application for Registration of Pesticide-Producing Establishment, is used to collect the establishment registration information required by this section.

FIFRA Section 7(c) requires that any producer operating an establishment registered under Section 7 report to the Administrator 30 days after it is registered and annually thereafter. Producers must report which types and amounts of pesticides, active ingredients, or devices are currently being produced, were produced during the past year, and were sold or distributed in the past year. 40 CFR Part 167 outlines the requirements and time schedules for submitting production information. EPA Form 3540–16, Pesticides Report for Pesticide Producing Establishments, is used to

collect the pesticide production information required by Section 7(c) of FIFRA.

The purpose of this reporting requirement is to obtain pesticide production information, to maintain current and complete records of the locations of all pesticide-producing establishments. This information provides an overview of establishments engaged in pesticide activities and allows the Agency to target establishments for inspections with optimal utilization of limited inspection resources. Such production information permits EPA to trace ineffective, contaminated, or otherwise violative products to their source, and minimizes any adverse environmental impact that might arise from the production or distribution of violative products. In addition, the information is used extensively by the Agency, the USDA, the FDA, and other Federal agencies for various other purposes, such as risk/benefit analyses.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are displayed in 40 CFR Part 9. The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Estimating the Burden and Cost of the Collection

Estimating Respondent Burden

The estimates for 3540–8 are based on discussions with the industry. The one-time submission of information is of such a nature as to demand no research of company records or calculations; it is easily completed by clerical personnel and reviewed and signed by a company officer. The completion of the application rarely exceeds 30 minutes. Burden estimates for Form 3540–16 are based on the results of interviews with a cross-section of industry respondents. We asked six industry representatives of the respondent universe—small businesses, firms with multiple establishments, and repackagers—to estimate the amount of time they typically spent gathering, compiling, and filling out information for the report. From these interviews we learned that generally, the information is already assembled and compiled so filling out the form is very easy.

Estimating Respondent Cost

Since the regulation and associated information collection has a minor economic impact on respondents, a regulatory impact analysis was not conducted. Estimates of labor rates and associated costs are based on the Comprehensive Assessment and Information Rule economic analysis, which measured costs to the same industry affected by our collection. The estimated hourly labor rates are as follows: management @ $60.00, technical @ $34.00, and clerical @ $15.00.

Estimating Agency Burden and Cost

The costs to the Government for Form 3540–8 are based on one work-year to review and process applications at an average GS–11 step 1 grade, plus 10.4% estimated overhead costs. Other direct costs are limited to printing costs for instructions and reporting forms. The number of respondents are estimated based on the average annual number of applicants registering establishments over the past three years.

The costs to the Government for Form 3540–16 are based on one work-year to review and process production reports, at an average GS–11 step 1 grade, plus 10.4% overhead costs. Other direct costs are limited to printing costs for instructions and reporting forms. The number of respondents is the number of active pesticide-producing establishments registered with EPA.

Bottom Line Burden Hours and Costs

The estimates for respondent burden hours and costs for Forms 3540–8 and Form 3540–16 are discussed below. The annual burden costs for respondents associated with the submission of this information for EPA Form 3540–8 (Application for Registration of Pesticide-Producing Establishment) consist of: reading instructions, compiling information, completing forms provided by EPA, recording and storing copies of the submitted information. The total time associated with this effort is one-half hour, times approximately 700 respondents, which equals 210 hours at an annual cost of $4725.00.

The annual burden costs for respondents associated with the submission of this information for EPA form 3540–16 (Pesticides Report for Pesticide-Producing Establishments) consists of: reading instructions, planning and gathering information for the collection, inputting information on the reporting form, and storing the information. The total time associated with this effort is one-hour and thirty-three minutes for a cost of $36.45, times the number of respondents (12,382), for an annual cost of $451,323.90.

Send comments regarding these matters, or any other aspect of the information collection, including suggestions for reducing the burden, to the address listed above.

Dated: September 22, 1995.

Elaine S. Stanley,

Director, Office of Compliance, Office of Enforcement and Compliance Assurance.

[FR Doc. 95–24038 Filed 9–27–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections being Reviewed by the Federal Communications Commission

September 21, 1995.

The Federal Communications, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commissions burden estimates; (c)ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

Written comments should be submitted on or before November 27, 1995. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

Direct all comments to Dorothy Conway, Federal Communications, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to dconway@fcc.gov.

For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

OMB Approval Number: 3060–0329.

Title: Equipment Authorization Verification, Section 2.955.

Form No.: N/A.

Type of Review: Extension of existing collection.

Respondents: Businesses or other for-profit; Small businesses or organizations.

Number of Respondents: 5,655.

Estimated Time Per Response: 18 hours.

Total Annual Burden: 101,790

Needs and Uses: Equipment testing is performed, and data is gathered, to provide information to aid in controlling interference to radio communications. Data collected verifies compliance of equipment using the RF spectrum to the FCC rules. The information is retained by equipment manufactures, and made available to the Commission upon request.

OMB Approval Number: 3060–0384.

Title: Auditor's Certification Section 64.904.

Form No.: N/A.

Type of Review: Extension of existing collection.

Respondents: Businesses or other for-profit.

Number of Respondents: 19.

Estimated Time Per Response: 500 hours.

Total Annual Burden: 9,500.

Needs and Uses: Local exchange carriers required to file cost allocation manuals must have performed annually, by an independent auditor, and audit that provides a positive option on whether the applicable data shown in the carriers annual report presents fairly the information of the carrier required to be set forth in accordance with the carrier's cost allocation manual, the Commission's Joint Cost Orders and applicable Commission rules in Part 32 and 64 in force as of the date of the auditor's report. This requirement assist the Commission in effectively carrying out its responsibilites.

OMB Approval Number: 3060–0402.

Title: Application for a New or Modified Microwave Radio Station License under Part 21.

Form No.: FCC 494.

Type of Review: Extension of existing collection.

Respondents: Businesses or other for-profit; Small businesses or organizations.

Number of Respondents: 10,000.

Estimated Time Per Response: 2 hours.

Total Annual Burden: 20,000 hours.

Needs and Uses: The Commission requests this collection of information for telecommunications entities who wish to construct and operate a new or modified Microwave Radio Station facility under Part 21 of the Commission's Rules in the following radio services: point-to-point microwave; local television transmission service; multipoint distribution service; digital electronic message service; and fixed subsidiary communications authorizations. The data collected is necessitated by sections 308(a) and 309(i) of the Communications Act of 1934 as amended. The information collected is used by the Commission to determine if the applicant qualifies legally, technically and financially to be licensed to use microwave radio frequencies. The data is also used to issue authorizations and may be used for enforcement purposes.

OMB Approval Number: 3060–0289.

Title: Section 76.601 Performance Tests

Form No.: N/A.

Type of Review: Extension of existing collection.

Respondents: Businesses or other for-profit; Small businesses or organizations.

Number of Respondents: 12,000.

Estimated Time Per Response: 70 hours for the 4,390 cable systems conducting performance tests; 1 hour for the univers of 12,000 cable systems to maintain a list of current cable television channels.

Total Annual Burden: 319,300 hours.

Needs and Uses: Section 76.601 requres every cable system operator to maintain a current listing of cable television channels which that system delivers to its subscribers. Section 76.601(c) and (d) requires cable systems with over 1,000 subscribers to conduct semi-annual proof performance tests and triennial proof of performance tests for color testing. The data are used by FCC staff in field inspections and franchise authorities to ensure that an acceptable quality signal is being provided to cable subscribers, and to ensure that there are no signal leakage problems which could cause interference with over-the-air radio frequencies involving safety-of-life functions (i.e., police, fire, forestry, aeronautical, amateur radio). The lists of channels would be used to determine what program services are carried on which class of cable channel.

OMB Approval Number: 3060–0520.

Title: 90.127(e) Submission and filing of applications.

Form No.: N/A.

Type of Review: Extension of existing collection.

Respondents: Businesses or other for-profit; State or local governments; Non-for profit institutions; Small businesses or organizations.

Number of Respondents: 109,200.

Estimated Time Per Response: .083 hours.

Total Annual Burden: 9,100 hours.

Needs and Uses: Section 90.127(e) requries licensees to report the number of mobiles and pagers when license is modified or renewed. This information is used to maintain a database.

OMB Approval Number: 3060–0623.

Title: Application for Mobile Radio Service Authorization.

Form No.: FCC Form 600.

Type of Review: Revision to an existing collection.

Respondents: Businesses or other for-profit.

Number of Respondents: 193,186.

Estimated Time Per Response: 4 hours.

Total Annual Burden: 772,744 hours.

Needs and Uses: The information is used by the Commission to carry out its duties under the Communications Act. The information will be used by the Commission to determine whether the applicant is qualified legally6, technically, and financially to be licensed. Without this information the Commission could not determine whether to issue the licences to the applicants that provide telecommunications services to the public.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–24077 Filed 9–27–95; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL LABOR RELATIONS AUTHORITY

Privacy Act of 1974; Notice to Amend Systems of Records

AGENCY: Federal Labor Relations Authority (FLRA).

ACTION: Notice to amend and delete systems of records.

SUMMARY: The FLRA is deleting two and amending another of its systems of records notices subject to the Privacy

Act of 1974 (5 U.S.C. 552a), as amended. Further, the FLRA is amending all of its systems of records notices to reflect its current address.

EFFECTIVE DATE: The deletions and amendments are effective September 28, 1995.

FOR FURTHER INFORMATION CONTACT: Solly Thomas, Executive Director, Federal Labor Relations Authority, 607 Fourteenth St., NW., Washington, DC 20424.

SUPPLEMENTARY INFORMATION: The FLRA's systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a) have been published and are available from the above address.

The FLRA is deleting FLRA/FSIP–1–''Personnel Files on Current, Past and Prospective Employees''—FLRA/FSIP; and FLRA/FSIP–2–''Travel Records—FLRA/FSIP.'' The maintenance of these systems is no longer necessary as all the records referenced therein are maintained in other published systems of records. The FLRA is amending all of its systems of records to change its address to: 607 Fourteenth Street, NW., Washington, DC 20424.

The categories affected are systems location, system manager(s) and address and notification procedures.

The FLRA is amending FLRA-INTERNAL-14-''Motor Vehicle Operators and Motor Vehicle Accident Report Cards.''

The amendment reflects that the FLRA no longer maintains motor vehicle operators' records other than accident reports.

The amended notice for system FLRA/INTERVAL-14 is republished in its entirety below.

The amendments are not within the purview of subsection (r) of the Privacy Act (5 U.S.C. 552a) which requires the submission of an altered system report.

FLRA-INTERNAL-14–

SYSTEM NAME:

Motor Vehicle Accident Reports.

SYSTEM LOCATION:

Director, Administrative Services Division, Federal Labor Relations Authority, 607 Fourteenth St., NW, Washington, DC 20424.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of the Federal Labor Relations Authority. Categories of records in the system: This system contains reports, correspondence and fiscal documents concerning motor vehicle accidents occurring in Government owned or leased motor vehicles or privately owned motor vehicles while on official business.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Chapter 171 of Title 28, United States Code.

PURPOSE(S):

These records serve to document motor vehicle accident reports and related documents which may be used in claims settlement litigation regarding an accident involving a Government motor vehicle, or a leased or privately owned motor vehicle while being used on official business.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose pertinent information to the appropriate Federal, State or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the Federal Labor Relations Authority becomes aware of an indication of a violation or potential violation of a civil or criminal law or regulation.

b. To disclose information to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose of the request, and identify the type of information requested), where necessary to obtain information relevant to a Federal Labor Relations Authority decision concerning the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a grant or other benefit.

c. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

d. To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

e. By the National Archives and Records Administration (General Services Administration) in Records Management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

f. By the Office of Personnel Management in the production of summary description statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

g. To disclose information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation, the classifying of jobs, or the awarding of a contract, license, grant, or other benefit.

h. To disclose information to the General Services Administration about motor vehicle accidents involving Government-owned or leased motor vehicles.

i. To disclose information to insurance carriers about accidents involving privately owned motor vehicles.

j. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and on indexed application cards.

RETRIEVABILITY:

These records are retrieved under subject file ''Motor Vehicle Accident Reports.''

SAFEGUARDS:

These records are maintained in a secured area with access limited to authorized personnel whose duties require access.

RETENTION AND DISPOSAL:

Motor vehicle accident reports are maintained for six years after the date of the report, except in cases involving litigation. In cases involving litigation, records are to be maintained for a period of seven years. Records to be destroyed are destroyed by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Administrative Services Division, Federal Labor Relations Authority, 607 Fourteenth St., NW., Washington, DC 20424.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the system manager.

Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

Individuals making inquiries must comply with the Federal Labor Relations Authority's Privacy Act regulations regarding the existence of records (5 CFR 2412.4).

RECORD ACCESS PROCEDURES:

Individuals wishing to request an amendment to their records should contact the system manager. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

Individuals requesting amendment must also follow Federal Labor Relations Authority's Privacy Act regulations regarding amendment of records (5 CFR 2412.5).

CONTESTING RECORD PROCEDURES:

Individuals wishing to request access to records about them should contact the system manager. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

Individuals requesting access must comply with the Federal Labor Relations Authority's Privacy Act regulations regarding access to records (5 CFR 2412.5).

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by:

a. The individual to whom the record pertains.

b. Federal Labor Relations Authority employees and other parties involved in the motor vehicle accident.

c. Witnesses to the accident.

d. Police reports and reports of investigations conducted by Federal Labor Relations Authority investigators.

e. Officials of the Federal Labor Relations Authority and the General Services Administration.

Dated: September 22, 1995.

For the Authority.

Solly Thomas,

Executive Director, Federal Labor Relations Authority.

[FR Doc. 95–24021 Filed 9–27–95; 8:45 am]

BILLING CODE 6267–01–M

FEDERAL MARITIME COMMISSION

[Docket No. 95–14]

Michael A. Grant, doing business as Island Shipping Inc.; Order to Show Cause

This proceeding is instituted pursuant to sections 8, 11 and 23 of the Shipping Act of 1984 (''1984 Act''), 46 U.S.C. app. 1707, 1710 and 1721, and the Commission's regulations governing the tariffing and bonding of non-vessel operating common carriers, 46 C.F.R. parts 514 and 580.

Michael A. Grant is a resident of the State of Maryland. Since at least October 1994, Mr. Grant maintained offices at 8605 Cameron Street, Suite M1, Silver Spring, Maryland, from which premises Mr. Grant operates a business under the trade name of Island Shipping Inc.[1]

It appears that subsequent to November 1993, Michael A. Grant, doing business as Island Shipping, shipped or agreed to transport shipments of household goods, furniture and personal effects in the foreign commerce of the United States. In at least five (5) instances known to the Commission, Mr. Grant or his agents are alleged to have picked up the goods from various individuals or households within the Washington, D.C. area. A bill of lading in the name of Island Shipping was issued to the individual tendering the goods reflecting prospective delivery of the goods on behalf of the named shipper at overseas destinations.[2] A cash receipt, also known in the name of Island Shipping, was issued for compensation received with respect to the transportation.

In at least seventeen (17) additional instances, it appears Mr. Grant, doing business as Island Shipping, contracted for space aboard vessels by which the ocean transportation was to be provided. On each of these shipments via a vessel-operating common carrier, Island Shipping is identified on corresponding shipping documents, such as bills of lading, as the shipper.[3] In most instances, Island Shipping also appear as the billing party for the payment of freight on the subject shipments.

Section 8 of the 1984 Act, 46 U.S.C. app. § 1707, provides that no common carrier may provide service in the United States foreign trades unless the carrier has first filed a tariff with the Federal Maritime Commission showing all of its rates, charges and practices. Section 23 of the 1984 Act further provides that each non-vessel-operating common carrier must furnish to the Commission a bond, proof of insurance or other surety, *inter alia,* to insure the financial responsibility of the carrier to pay any judgment for damages arising from its transportation-related activities.[4] According to a review of records maintained by the Commission's Bureau of Tariffs, Certification and Licensing, no tariff or bond has been filed with the Commission in the name of Island Shipping or Mr. Grant. Therefore, it would appear that Michael A. Grant, doing business as Island Shipping, by providing and holding himself out to the public to provide transportation by water of cargo for compensation and by contracting in the capacity as a shipper in relation to an ocean common carrier for the carriage of cargo of other persons, has acted as a non-vessel-operating common carrier without a tariff or bond on file with the Commission, in violation of sections 8 and 23 of the 1984 Act.

Now therefore, it is ordered That pursuant to section 11 of the Shipping Act of 1984, Michael A. Grant, doing business as Island Shipping, show cause why he should not be found to have violated section 8 of the Shipping Act of 1984 by acting as a non-vessel-operating common carrier in each of twenty-two (22) instances, specified above, without a tariff for such service on file with the Commission;

It is further ordered That pursuant to section 11 of the Shipping Act of 1984, Michael A. Grant, doing business as Island Shipping, show cause why he should not be found to have violated section 23 of the Shipping Act of 1984 by acting as a non-vessel-operating common carrier in each of twenty-two (22) instances, specified above, without a bond for such service on file with the Commission;

It is further ordered That Michael A. Grant, doing business as Island Shipping, show cause why an order should not be issued directing Michael A. Grant to cease and desist from providing or holding himself out to provide transportation as a common carrier and from obtaining from any common carrier transportation by water of the cargo of any other person between the U.S. and a foreign country unless and until such time as Mr. Grant or Island Shipping shall have filed a tariff and a bond for such service with the Commission.

[1] It appears that, in March 1990, a corporation by the name of Island Shipping Inc. (''Island Shipping'') was established under the laws of Maryland. Its registered agent was Michael A. Grant of Silver Spring, Maryland. The corporate charter of Island Shipping was revoked by the State of Maryland in October 1992, for failure to file reports required by the State.

[4] Based on information currently available to the Commission, *see* fn. 2, at least four individuals who have utilized the services of Island Shipping claim to have suffered financial injury due to the action or inaction of Island Shipping in the transportation of their shipments. Claims by these shippers include property damage to goods in shipment (Xenia Bruce), loss of cargo (Owen White; and Collin Bruce), and payment of additional freight to obtain release of cargo by the ocean common carrier whose vessel transported the goods (Ethel Phillips).

It is furthered ordered That this proceeding is limited to the submission of facts and memoranda of law;

It is further ordered That any person having an interest and desiring to intervene in this proceeding shall file a petition for leave to intervene in accordance with Rule 72 of the Commission's Rules of Practice and Procedure, 46 CFR § 502.72. Such petition shall be accompanied by the petitioner's memorandum of law and affidavits of fact, if any, and shall be filed no later than the day fixed below;

It is further ordered That Michael A. Grant is named a Respondent in this proceeding. Affidavits of fact and memoranda of law shall be filed by Respondent and any intervenors in support of Respondent no later than October 16, 1995;

It is further ordered That the Commission's Bureau of Hearing Counsel be made a party to this proceeding;

It is further ordered That reply affidavits and memoranda of law shall be filed by the Bureau of Hearing Counsel and any intervenors in opposition to Respondent no later than November 6, 1995;

It is further ordered That rebuttal affidavits and memoranda of law shall be filed by Respondents and intervenors in support no later than November 6, 1995;

It is further ordered That:

(a) Should any party believe that an evidentiary hearing is required, that party must submit a request for such hearing together with a statement setting forth in detail the facts to be proved, the relevance of those facts to the issues in this proceeding, a description of the evidence which would be adduced, and why such evidence cannot be submitted by affidavit;

(b) Should any party believe that an oral argument is required, that party must submit a request specifying the reasons therefore and why argument by memorandum is inadequate to present the party's case; and

(c) Any request for evidentiary hearing or oral argument shall be filed no later than November 16, 1995;

It is further ordered That notice of this Order to Show Cause be published in the Federal Register, and that a copy thereof be served upon Respondent;

It is further ordered That all documents submitted by any party of record in this proceeding shall be filed in accordance with Rule 118 of the Commission's Rules of Practice and Procedure, 46 CFR 502.118, as well as being mailed directly to all parties of record;

Finally, it is ordered That pursuant to the terms of Rule 61 of the Commission's Rules of Practice and Procedure, 46 CFR 502.61, the final decision of the Commission in this proceeding shall be issued by February 29, 1996.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 95–24015 Filed 9–27–95; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License Revocations

The Federal Maritime Commission hereby gives notice that the following freight forwarder licenses are revoked 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, effective on the corresponding revocation dates shown below:

License Number: 2913
Name: Worldwide Shipping, Inc.
Address: 4705 Five Forks Ct., Virginia Beach, VA 23455
Date Revoked: July 27, 1995
Reason: Surrendered license voluntarily.

License Number: 3299
Name: Young M. Kay dba I.T.T.
Address: 18524 Jeffrey Ave., Cerritos, CA 90701
Date Revoked: July 31, 1995
Reason: Surrendered license voluntarily.

License Number: 3216
Name: Express International Cargo Services, Inc.

[2] Details of these five shipments are as follows:

Shipper or customer	Island shipping bill of lading No.	Destination
Rene Cooper, Camp Springs, MD	190 (issued on or about Mar. 23, 1995)	Surrey, England.
Owen O. White, Silver Spring, MD	298 (issued on or about Mar. 25, 1994)	Kingston, Jamaica.
Xenia Bruce, Silver Spring, MD	242 (issued on or about Jan. 21, 1994)	Trinidad.
Ethel Phillips, Washington, DC	179 (issued on or about Nov. 19, 1993)	Grenada
Colin Bruce, Olney, MD	053 (issued on or about Nov. 14, 1994)	Guyana.

[3] Details of shipment contracted in the name of Island Shipping are as follows:

Shipper	Tropical shipping B/L No.	Date	Destination
Island Shipping	94114422 MIA REG	Oct. 16, 1994	Belize.
Island Shipping	94114428 MIA REG	Dec. 8, 1994	St. Lucia.
Island Shipping	94140617 MIA REG	Dec. 8, 1994	Barbados.
Island Shipping	94140620 MIA REG	Dec. 9, 1994	Trinidad.
Island Shipping	94114431 MIA REG	Dec. 20, 1994	Barbados.
Island Shipping	94114425 MIA REG	Jan. 20, 1995	Trinidad.

Shipper	Evergreen marine B/L No.	Date	Destination
Island Shipping	EISU430500068272	Aug. 26, 1995	Kingston, Jamaica.
Island Shipping	EISU430400041593	Jul. 16, 1994	Kingston, Jamaica.
Island Shipping	EISU430400025814	May 6, 1994	Kingston, Jamaica.
Island Shipping	EISU430400009941	Feb. 21, 1994	Kingston, Jamaica.
Island Shipping	EISU430400009959	Feb. 21, 1994	Kingston, Jamaica.
Island Shipping	EISU430300078002	Dec. 4, 1993	Kingston, Jamaica.
Island Shipping	EISU430300077995	Dec. 4, 1993	Kingston, Jamaica.
Island Shipping	EISU430300072900	Nov. 8, 1993	Kingston, Jamaica.
Island Shipping	EISU430300069798	Oct. 20, 1993	Kingston, Jamaica.
Island Shipping	EISU430300061771	Sept. 14, 1993	Kingston, Jamaica.
Island Shipping	EISU430300056742	Aug. 19, 1993	Kingston, Jamaica.

Address: 3405 NW. 72nd Ave., Bldg. A, Ste. 101, Miami, FL 33122
Date Revoked: August 2, 1995
Reason: Failed to maintain a valid surety bond.

License Number: 2656
Name: Air Compak International Inc.
Address: 919 Conestoga Rd., Ste. 312, Rosemont, PA 19010
Date Revoked: August 4, 1995
Reason: Surrendered license voluntarily.

License Number: 287
Name: Lunham & Reeve, Inc.
Address: One World Trade Center, Ste. 3327, New York, NY 10048
Date Revoked: August 17, 1995
Reason: Failed to maintain a valid surety bond.

License Number: 3640
Name: Ruben Posada dba Posada International Cargo
Address: 9432 Bellanca Ave., Ste. 200, Los Angeles, CA 90045
Date Revoked: August 26, 1995
Reason: Failed to maintain a valid surety bond.

License Number: 2965
Name: Kamigumi U.S.A., Inc.
Address: 19401 S. Vermont Ave., Ste. J100, Torrance, CA 90502
Date Revoked: August 31, 1995
Reason: Surrendered license voluntarily.

License Number: 1886
Name: Ocean-Air Forwarding, Inc.
Address: R.D. #1, Burgettstown, PA 15021
Date Revoked: September 6, 1995
Reason: Surrendered license voluntarily.

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 95–24068 Filed 9–27–95; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Greene County Bancshares, Inc., 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 specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 20, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Greene County Bancshares, Inc., Greeneville, Tennessee; to acquire 100 percent of the voting shares of Premier Bancshares, Inc. (formerly Niota Bancshares, Inc.), Niota, Tennessee, and thereby indirectly acquire Premier Bank of East Tennessee (formerly Bank of Niota), Niota, Tennessee.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Thumb Bancorp, Inc., Pigeon, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of Thumb National Bank and Trust Company, Pigeon, Michigan.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Union Planters Corporation, Memphis, Tennessee; to acquire 100 percent of the voting shares of First Bancshares of Eastern Arkansas, Inc., West Memphis, Arkansas, and thereby indirectly acquire First National Bank in West Memphis, West Memphis, Arkansas.

2. Union Planters Corporation, Memphis, Tennessee; to acquire 100 percent of the voting shares of First Bancshares of N.E. Arkansas, Inc., Osceola, Arkansas, and thereby indirectly acquire First National Bank in Osceola, Osceola, Arkansas.

D. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Metropolitan Bancshares, Inc., Aurora, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of Wally Bancorp, Inc., Parker, Colorado, and thereby indirectly acquire Community Bank of Parker, Parker, Colorado.

E. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Neighborhood Bancorp, San Diego, California; to become a bank holding company by acquiring 50.1 percent of the voting shares of Neighborhood Development Bank, National Association (in Organization), San Diego, California.

2. Sacramento Commercial Bancorp, Sacramento, California; to become a bank holding company by acquiring 100 percent of the voting shares of Sacramento Commercial Bank, Sacramento, California.

Board of Governors of the Federal Reserve System, September 22, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–24074 Filed 9–27–95; 8:45 am]

BILLING CODE 6210–01–F

Peoples Savings Financial Corporation; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' Any request for a hearing on this question must be accompanied by a statement of the

reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 12, 1995.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. Peoples Savings Financial Corporation, Ridgway, Pennsylvania; to engage *de novo* in lending activities, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 22, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–24075 Filed 9–27–95; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Investigational New Biological Product Trials; Procedure to Monitor Clinical Hold Process; Meeting of Review Committee and Request for Submissions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a meeting of the clinical hold review committee, which reviews the clinical holds that the Center for Biologics Evaluation and Research (CBER) has placed on certain investigational new biological product trials. CBER held its first clinical hold review committee meeting on May 17, 1995. FDA is inviting any interested biological company to use this confidential mechanism to submit to the committee for its review the name and number of any investigational new biological products trial placed on clinical hold during the past 12 months that the company wants the committee to review.

DATES: The meeting will be held in October 1995. Biological companies may submit review requests for the October meeting before October 10, 1995.

ADDRESSES: Submit clinical hold review requests to Amanda B. Pedersen, FDA Chief Mediator and Ombudsman, Office of the Commissioner (HF–7), Food and Drug Administration, rm. 14–105, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3390.

FOR FURTHER INFORMATION CONTACT: Joy A. Cavagnaro, Center for Biologics Evaluation and Research (HFM–2), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–0379.

SUPPLEMENTARY INFORMATION: FDA regulations in part 312 (21 CFR part 312) provide procedures that govern the use of investigational new drugs and biologics in human subjects. These regulations require that the sponsor of a clinical investigation submit an investigational new drug application (IND) to FDA outlining the proposed use of the investigational product. The IND must contain the study protocol, a summary of human and animal experience with the product, and information on the product's characterization, chemistry and pharmacology. FDA reviews an IND to help ensure the safety and rights of human subjects of research and to help ensure that the quality of any scientific evaluation of a drug is adequate to permit an evaluation of the product's efficacy and safety.

If FDA determines that a proposed or ongoing study may pose significant risks for human subjects or is otherwise seriously deficient, as discussed in the investigational new drug regulations, it may impose a clinical hold on the study. The clinical hold is one of FDA's primary mechanisms for protecting subjects who are involved in investigational new drug or biologic trials. A clinical hold is an order that FDA issues to a sponsor to delay a proposed investigation or to suspend an ongoing investigation. The clinical hold may be placed on one or more of the investigations covered by an IND. When a proposed study is placed on clinical hold, subjects may not be given the investigational drug or biologic as part of that study. When an ongoing study is placed on clinical hold, no new subjects may be recruited to the study and placed on the investigational drug or biologic, and patients already in the study should stop receiving therapy involving the investigational drug or biologic unless FDA specifically permits it.

FDA regulations in § 312.42 describe the grounds for the imposition of a clinical hold. When FDA concludes that there is a deficiency in a proposed or ongoing clinical trial that may be grounds for the imposition of a clinical hold order, ordinarily FDA will attempt to resolve the matter through informal discussions with the sponsor. If that attempt is unsuccessful, the agency may order a clinical hold.

A clinical hold is ordered by or on behalf of the director of the division that is responsible for review of the IND. The order identifies the studies under the IND to which the clinical hold applies and explains the basis for the action. The clinical hold order may be made by telephone or other means of rapid communication, or in writing. Irrespective of the 30-day time limit permitted by § 312.42(d), CBER policy provides that within 15 days of the notification of the clinical hold by telephone or other method of rapid communication, the sponsor will be provided with a written explanation of the basis for the clinical hold. In addition to providing a statement of reasons, this ensures that the clinical hold is recorded in CBER's management information system.

The clinical hold order specifies whether the sponsor may resume the affected investigation without prior notification by FDA once the deficiency has been corrected. If the order does not permit the resumption without notification, an investigation may resume only after the division director or his or her designee has notified the sponsor that the investigation may proceed. Resumption may be authorized by telephone or other means of rapid communication. If all investigations covered by an IND remain on clinical hold for 1 year or longer, FDA may place the IND on inactive status.

FDA regulations in § 312.48 provide dispute resolution mechanisms through which sponsors may request reconsideration of clinical hold orders. The regulations encourage the sponsor to attempt to resolve disputes directly with the review staff responsible for the review of the IND. If necessary, the sponsor may request a meeting with the review staff and management to discuss the clinical hold.

Over the years, drug sponsors have expressed a number of concerns about the clinical hold process, including concerns about the scientific and procedural adequacy of some agency actions. FDA undertook several initiatives to evaluate the consistency and fairness of the Center for Drug Evaluation and Research's (CDER's) practices in imposing clinical holds. First, CDER completed a centerwide review of clinical holds recorded in their management information system. While some differences in practice and procedure were discerned among

divisions in CDER, it appeared that the procedures specified in the regulations were, in general, being followed, and that clinical holds were scientifically supportable. Second, FDA established a committee in CDER to review selected clinical holds for scientific and procedural quality. The committee held pilot meetings in 1991 and met quarterly through 1992. The committee currently meets semiannually as a regular program. The committee last met in June 1995.

CBER has now begun a similar process to evaluate the consistency and fairness of CBER's practices in imposing clinical holds. CBER is beginning by instituting a review committee to review recent clinical holds. CBER also plans to conduct further quality assurance oversight of the IND process. CBER held its first clinical hold review committee meeting on May 17, 1995, and intends to make the clinical hold review process a regular, ongoing program. The review procedure of the committee is designed to afford an opportunity for a sponsor who does not wish to seek formal reconsideration of a pending clinical hold to have that clinical hold considered ''anonymously.'' The committee consists of senior managers of CBER, a senior official from CDER, and FDA's Chief Mediator and Ombudsman.

Clinical holds to be reviewed will be chosen randomly. In addition, the committee will review clinical holds proposed for review by biological product sponsors. In general, a biological product sponsor should consider requesting review when it disagrees with the agency's scientific or procedural basis for the decision.

Requests for committee review of a clinical hold should be submitted to FDA's Chief Mediator and Ombudsman, who is responsible for selecting clinical holds for review. The committee and CBER staff, with the exception of the FDA Chief Mediator and Ombudsman, are never advised, either in the review process or thereafter, which of the clinical holds were randomly chosen and which were submitted by sponsors. The committee will evaluate the selected clinical holds for scientific content and consistency with agency regulations and CBER policy.

The meetings of the review committee are closed to the public because committee discussions deal with confidential commercial information. Summaries of the committee deliberations, excluding confidential commercial information, will be available from the FDA Chief Mediator and Ombudsman. If the status of a clinical hold changes following the committee's review, the appropriate division will notify the sponsor.

FDA invites biological product companies to submit to the FDA Chief Mediator and Ombudsman the name and IND number of any investigational new biological product trial that was placed on clinical hold during the past 12 months that they want the committee to review at its October 1995 meeting. Submissions should be made by October 10, 1995, to Amanda B. Pederson, FDA Chief Mediator and Ombudsman (address above).

Dated: September 20, 1995.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 95–24072 Filed 9–27–95; 8:45 am]

BILLING CODE 4160–01–F

Grassroots Regulatory Partnership; Northeast Region Importing Community; Notice of a Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of a public meeting.

SUMMARY: The Food and Drug Administration (FDA) (Office of Regulatory Affairs, Office of the Northeast Region, Office of External Affairs) is announcing a free public meeting to discuss ways FDA could regulate imported commodities more efficiently, improve levels of communication with industries and individuals associated with the importation of FDA-regulated commodities, and provide improved levels of consumer protection in connection with imported commodities. This meeting is intended to identify and evaluate opportunities for implementing the President's initiative for a partnership approach between the agency and the people affected by the work of this agency.

DATES: The public meeting will be held on September 28, 1995, from 9 a.m. to l p.m.

ADDRESSES: The public meeting will be held at the Fort Hamilton Community Club, Jackson and Washington Rooms, Fort Hamilton (Bay Ridge), Brooklyn, NY 11252.

FOR FURTHER INFORMATION CONTACT: Barbara A. Miller or Herman B. Janiger, Northeast Region, Food and Drug Administration, 850 Third Ave., Brooklyn, NY 11232, 718–965–5300, ext. 5754 (B. Miller) or ext. 5043 (H. Janiger).

To register for the meeting contact Barbara A. Miller by FAX 718–965–5117, or telephone 718–965–5300, ext. 5754 with the following information: Your name(s), affiliation, address, telephone and FAX numbers, and any specific questions you want addressed at the public meeting.

SUPPLEMENTARY INFORMATION: The meeting is free of charge, however, registration is required and due to space limitation, early registration is recommended. The meeting is intended to assist importers, brokers, and others associated with a wide variety of products being shipped through the east coast (the FDA Northeast and Mid-Atlantic Regions).

Dated: September 25, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–24155 Filed 9–25–95; 3:37 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. FR–3854–N–02]

Notice of Accepted Bid for the Section 221(g)(4) Multifamily Project Mortgage Auction

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

ACTION: Notice of Accepted Auction Bid.

SUMMARY: Section 221(g)(4)(C) of the National Housing Act requires that the Secretary of HUD cause Federal Register publication of the accepted bid in a multifamily project mortgage auction. Accordingly, this notice announces the name of the auction winner and the amount of the accepted bid for the auction conducted on June 28, 1995.

FOR FURTHER INFORMATION CONTACT: Audrey Hinton, Associate Director, Office of Multifamily Asset Management and Disposition, Dept. HUD, Room 6160, 451 Seventh Street, SE., Washington, DC, 20410, telephone (202) 708–3730. Hearing- or speech-impaired individuals may call HUD's TDD number (202) 708–4594. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The National Housing Act (12 U.S.C. 1701–1749aaa–5) (the Act) authorizes and governs the Department's mortgage insurance programs. On June 28, 1995, the Department, pursuant to the provisions of Section 221(g)(C)(i) of the Act, conducted the fifth auction of

221(g)(4) mortgages. The sale involved 81 mortgages where the mortgagee had elected to assign the mortgages to HUD under Section 221(g)(4). The Federal National Mortgage Association was the successful bidder for 80 mortgages. One of the mortgages was pulled from the auction because of prepayment in full before the auction date.

As required by Section 221(g)(4)(C)(ii)(IV), the Department is publishing details concerning the accepted bid, as follows:

Winning Bidder: Federal National Mortgage Association

Winning Bid: 7.16 percent

Dated: September 20, 1995.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 95–24069 Filed 9–27–95; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–1410–00–P; F–14939–C, F–14939–A2, F–14939–B2]

Alaska Native Claims Selection; Notice for Publication

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to Stebbins Native Corporation for approximately 37,582 acres. The lands involved are in the vicinity of Stebbins, Alaska, and are located within:

Kateel River Meridian, Alaska

T. 26 S., R. 18 W.,
T. 27 S., R. 18 W.,
T. 24 S., R. 19 W.,
T. 25 S., R. 19 W.,
T. 26 S., R. 19 W.,
T. 24 S., R. 20 W.,
T. 25 S., R. 20 W.

Containing approximately 37,582 acres.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Tundra Drums. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until October 30, 1995, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Gary L. Cunningham,

Land Law Examiner, Branch of Gulf Rim Adjudication.

[FR Doc. 95–24152 Filed 9–27–95; 8:45 am]

BILLING CODE 4310–JA–P

[MT–930–1430–01; MTM 83687]

Conveyance of Public Lands in Blaine County, Montana, and Order Providing for Opening of Public Land in Blaine County; MT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This order informs the public and interested state and local governmental officials of the conveyance of 80.00 acres of public lands out of Federal ownership and will open 160.00 acres of surface estate reconveyed to the United States in an exchange under the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701 et seq. (FLPMA), to the operation of the public land laws. The land that was acquired in the exchange provides valuable waterfowl habitat and access to other public land with wildlife habitat and livestock grazing potential. The exchange also allows for increased management efficiency of public land in the area. No minerals were exchanged by either party. The public interest was well served through completion of this exchange.

EFFECTIVE DATE: October 25, 1995.

FOR FURTHER INFORMATION CONTACT: Dick Thompson, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–255–2829.

SUPPLEMENTARY INFORMATION: 1. Notice is hereby given that in an exchange of land made pursuant to Section 206 of FLPMA, the following described lands were transferred to Doris E. Johnson and Bruce A. Johnson:

Principal Meridian, Montana

T. 32 N., R. 21 E.,
Sec. 13, NE¼SW¼ and NW¼SE¼.

Total acreage conveyed: 80.00 acres.

2. In exchange for the above lands, the United States acquired the following described lands from Doris E. Johnson and Bruce A. Johnson:

Principal Meridian, Montana

T. 35 N., R. 18 E.,
Sec. 22, SE¼.

Total acreage acquired: 160.00 acres.

3. The value of the Federal public land was appraised at $14,600.00 and the private land was appraised at $10,400.00. A Cash Equalization Payment was made to the United States in the amount of $4,200.00.

4. At 9 a.m. on October 25, 1995, the lands described in paragraph 2 above that were conveyed to the United States will be opened only to the operation of the public land laws generally, subject to valid existing rights and requirements of applicable law. All valid applications received at or prior to 9 a.m. on October 25, 1995, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Dated: September 19, 1995.

Thomas P. Lonnie,

Deputy State Director, Division of Resources.

[FR Doc. 95–24130 Filed 9–27–95; 8:45 am]

BILLING CODE 4310–DN–P

[NM–030–1430–01; NMNM94721]

Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; New Mexico

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Realty Action; R&PP Act Classification.

SUMMARY: The following public land in Dona Ana County, New Mexico has been examined and found suitable for classification for lease or conveyance to Dona Ana County under the provision of the R&PP Act, as amended (43 U.S.C. 869 et seq.) Dona Ana County proposes to use the land for the Talavera Fire Station.

T.23S., R. 3E., NMPM
Sec. 19, NE¼NE¼NE¼SE¼.

Containing 2.5 acres, more or less.

DATES: Comments regarding the proposed lease/conveyance or classification must be submitted on or before November 15, 1995.

ADDRESSES: Comments should be sent to the Bureau of Land Management, Las Cruces District Office, 1800 Marquess, Las Cruces, New Mexico 88005.

FOR FURTHER INFORMATION CONTACT: Marvin M. James at the address above or at (505) 525–4349.

SUPPLEMENTARY INFORMATION: Lease or conveyance will be subject to the

following terms, conditions, and reservations:

1. Provisions of the R&PP Act and to all applicable regulations of the Secretary of the Interior.

2. All valid existing rights documented on the official public land records at the time of lease/patent issuance.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

4. Any other reservations that the authorized officer determines appropriate to ensure public access and proper management of Federal lands and interests therein.

Upon publication of this notice in the Federal Register, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease conveyance under the R&PP Act and leasing under the mineral leasing laws. On or before November 15, 1995, interested persons may submit comments regarding the proposed lease/conveyance or classification of the lands to the District Manager, Las Cruces District Office, 1800 Marquess, Las Cruces, New Mexico 88005. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice.

Classification Comments: Interested parties may submit comments involving the suitability of the land for the Talavera Fire Station. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for the Talavera Fire Station.

Dated: September 20, 1995.

Linda S.C. Rundell,

District Manager, Las Cruces.

[FR Doc. 95–24067 Filed 9–27–95; 8:45 am]

BILLING CODE 4310–FB–M

[AZ–040–50–1040 00]

Establishment of a Supplementary Rule for Public Lands in the Hot Well Dunes Recreation Area Prohibiting Nude Bathing

AGENCY: Bureau of Land Management, Interior.

ACTION: Establishment of supplementary rule for public lands in the Hot Well Dunes Recreation Area prohibiting nude bathing.

SUMMARY: The purpose of this notice is to establish a supplemental rule to reduce conflicts related to use of hot tubs and enhance public safety at the Hot Well Dunes Recreation area. Therefore, nude bathing will be prohibited at all times within the area designated as the Hot Well Dunes Recreation Area. This supplementary rule applies to public lands in the Hot Well Dunes Recreation Area. Generally, the recreation area encompasses approximately 2,000 acres around the hot well located 32 miles southeast of Safford, Arizona. The entire recreation area is fenced and signed. A precise boundary map is available at the information address specified toward the end of this notice.

Background

Thousands of visitors use the Hot Well Dunes Recreation Area each year. The number of visitors has increased dramatically over the past few years and continues to do so each year. This area was designated a Special Recreation Management Area through the Safford District Resource Management Plan, completed in September 1992. The area was established as a Special Recreation Management Area because it provided opportunities for off-highway-vehicle riding in the sand dunes, hot water bathing from an artesian well, camping, picnicking and fishing.

There is an increasing number of complaints from visitors, especially family groups, about nude bathing in the area. There is also an increasing problem or arguments and fights between nude bathers and those offended by this activity. This rule will enable BLM to prevent conflicts between groups while still making the area available for everyone.

DATES: On or before October 15, 1995, interested parties may submit comments to the Safford District Manager, 711 14th Avenue, Safford, AZ 85546. Any adverse comments will be evaluated by the District Manager, who may vacate or modify these actions and issue a final determination. In the absence of any action by the District Manager, these actions will become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Tom Schnell, Outdoor Recreation Planner, Bureau of Land Management, San Simon Resource Area, 711 14th Avenue, Safford, Arizona 85546, (520) 428–4040.

SUPPLEMENTARY INFORMATION: The authority for establishing supplementary rules is contained in 43 CFR 8365.1–6. Copies of this rule will be available at the Safford District Office. This rule will be posted within the Hot Well Dunes Recreation Area.

Dated: August 30, 1995.

William T. Civish,

District Manager.

[FR Doc. 95–24022 Filed 9–27–95; 8:45 am]

BILLING CODE 4310–32–M

[CA–942–5700–00]

Filing of Plats of Survey; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested state and local government officials of the latest filing of Plats of Survey in California.

EFFECTIVE DATE: Unless otherwise noted, filing was effective at 10:00 a.m. on the next federal work day following the plat acceptance date.

FOR FURTHER INFORMATION CONTACT: Lance J. Bishop, Acting Chief, Branch of Cadastral Survey, Bureau of Land Management (BLM), California State Office, 2800 Cottage Way, Room E–2845, Sacramento, CA 95825, 916–979–2890.

SUPPLEMENTARY INFORMATION: The plats of Survey of lands described below have been officially filed at the California State Office of the Bureau of Land Management in Sacramento, CA.

Mount Diablo Meridian, California

T. 39 N., R. 9 W.,—Dependent resurvey, and metes-and-bounds survey (Group 1052) accepted August 8, 1995, to meet certain administrative needs of the U.S. Forest Service, Klamath and Shasta-Trinity National Forest.

T. 17 S., R. 10 E.,—Supplemental plat of sections 1, 2, 3, and 4, accepted August 14, 1995, to meet certain administrative needs of the BLM, Bakersfield District, Hollister Resource Area.

T. 17 N., R. 12 W.,—Dependent resurvey, and subdivision of section 6, (Group 1211) accepted August 17, 1995, to meet certain administrative needs of the BLM, Ukiah District, Clear Lake Resource Area.

T. 21 S., R. 32 E.,—Dependent resurvey, (Group 1225) accepted August 18, 1995, to meet certain administrative needs of the U.S. Forest Service, Sequoia National Forest.

T. 40 N., R. 9 W.,—Supplemental plat of the N ½ of section 6, accepted August 24, 1995, to meet certain administrative needs of the U.S. Forest Service, Klamath National Forest.

T. 17 N., R. 9 E.,—Supplemental plat of the N ½ of section 23, accepted August 30, 1995, to meet certain administrative needs of the U.S. Forest Service, Tahoe National Forest. All of the above listed survey plats are now the basic record for describing the lands for all authorized purposes. The survey plats have been placed in the open files in the BLM, California State Office, and are available to the public as a matter of information. Copies of the survey plats and related field notes will be furnished to the public upon payment of the appropriate fee.

Dated: September 22, 1995.

Lance J. Bishop,

Acting Chief, Branch of Cadastral Survey.

[FR Doc. 95–24151 Filed 9–27–95; 8:45 am]

BILLING CODE 4310–40–M

[CA–930–1430–00; CACA 7855, CACA 8039, CAS 076228, CAS 076627, CAS 4257]

Notice of Proposed Continuation of Withdrawals; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Department of Agriculture, Forest Service, has proposed to continue withdrawals on approximately 252 acres for 20 years within the Shasta-Trinity and Klamath National Forests. The segregative effect on these withdrawals remains unchanged.

DATES: Comments should be received on or before December 27, 1995.

ADDRESSES: Comments should be sent to the California State Director, BLM, 2800 Cottage Way, Room E–2845, Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: Marcia Sieckman, BLM California State Office, (916) 979–2858.

SUPPLEMENTARY INFORMATION:

1. CACA 7855

Station #24 Philpot Campground

The land is described as follows:

Mount Diablo Meridian

T.30 N., R. 12 W.,
Sec. 11, S½ SW¼NW¼, N½NW¼SW¼.

The area described contains approximately 40.00 acres in Trinity County. The purpose of this withdrawal is to protect the Philpot Campground.

Station #4 Big Bar Ranger Station

The land is described as follows:

Mount Diablo Meridian

T.33 N., R. 12 W.,
Sec. 5, NE¼NW¼SW¼, E½NW¼NW¼SW¼, SW¼NW¼SW¼, N½NW¼SW¼SW¼, SW¼NW¼SW¼SW¼.

The area described contains approximately 32.50 acres in Trinity County. The purpose of this withdrawal is to protect the Big Bar Ranger Station.

2. CACA 8039

The land is described as follows:

Mount Diablo Meridian

T.34 N., R. 12 W.,
Sec. 32, NW¼SW¼SE¼SE¼.

The area described contains approximately 2.50 acres in Trinity County. The purpose of this withdrawal is to protect the Big Bar Station.

3. CAS 076228

The land is described as follows:

Mount Diablo Meridian

T.34 N., R. 9 W.,
Sec. 9, SW¼SW¼NE¼SW¼, SW¼NE¼NW¼SW¼, NW¼NW¼SW¼, N½SW¼NW¼SW¼, SE¼NW¼SW¼, E½NE¼SW¼SW¼, SW¼NE¼SE¼SW¼, NW¼SE¼SW¼, N½SW¼SE¼SW¼, SE¼SW¼SE¼SW¼, SE¼SE¼SW¼.

The area described contains approximately 65.00 acres in Trinity County. The purpose of the withdrawal is to protect the Rush Creek Campground.

4. CAS 076627

Gottville Administrative Site

The land is described as follows:

Mount Diablo Meridian

T.46 N., R. 7 W.,
Sec. 8, S½SE¼SW¼NW¼, NE¼ NW¼SW¼.

The area described contains approximately 15.00 acres in Siskiyou County. The purpose of this withdrawal is to protect the Gottville Administrative Site.

Whites Bar Picnic Area

The land is described as follows:

Humboldt Meridian

T. 4 N., R. 8 E.,
Sec. 4, E½ Lot 2.

The area described contains approximately 19.88 acres in Trinity County. The purpose of this withdrawal is to protect the Whites Bar Picnic Area.

Elk Creek Administrative Site

The land is described as follows:

Humboldt Meridian

T.15 N., R. 8 E.,
Sec. 32, H.E.S. No. 293; sec. 33, H.E.S. No. 293.

The area described contains approximately 37.42 acres in Siskiyou County. The purpose of this withdrawal is to protect the Elk Creek Administrative Site.

5. CAS 4257

The land is described as follows:

Humboldt Meridian

T.3 N., R. 6 E.,
Sec. 22, SE¼NE¼.

The area described contains approximately 40.00 acres in Trinity County. The purpose of this withdrawal is to protect the Hyampom Administrative Site.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and the Congress, who will determine whether or not the withdrawal will be continued and, if so, for how long. The final determination on the continuation of the withdrawal will be published in the Federal Register. The existing withdrawals will continue until such final determination is made.

Dated September 21, 1995.

David McIlnay,

Chief, Branch of Lands.

[FR Doc. 95–24149 Filed 9–27–95; 8:45 am]

BILLING CODE 4310–40–P

Fish and Wildlife Service

Endangered and Threatened Species Permit Application

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of application.

The following applicant has applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

PRT–806718

Applicant: Platteville Public Schools/ O.E. Gray School, Platteville, Wisconsin.

The applicant requests a permit to purchase a wolf (*Canis lupus*) skull for educational use. Purchase is from Minnesota and will involve interstate transport to Wisconsin.

Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Division of Endangered Species, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, and must be received within 30 days of the date of this publication.

Documents and other information submitted with this application are

available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Division of Endangered Species, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056. Telephone: (612/725–3536, x 250); FAX: (612/725–3526).

Dated: September 22, 1995.

John A. Blankenship,

Assistant Regional Director, Ecological Services, Region 3, Fish and Wildlife Service, Fort Snelling, Minnesota.

[FR Doc. 95–24090 Filed 9–27–95; 8:45 am]

BILLING CODE 4310–55–M

Availability of Draft Recovery Plan for the Molokai Plant Cluster for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft Molokai Plant Cluster Recovery Plan. There are 16 taxa of plants included in this plan. Fourteen of the 16 taxa are known to be extant only on the island of Molokai, Hawaii; one species also is found on the islands of Hawaii and Oahu, the other is also on the island of Lanai.

DATES: Comments on the draft recovery plan must be received on or before November 27, 1995.

ADDRESSES: Copies of the draft recovery plan are available for inspection, by appointment, during normal business hours at the following locations: U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Boulevard, room 6307, P.O. Box 50167, Honolulu, Hawaii 96850 (phone 808/541–2749); U.S. Fish and Wildlife Service, Regional Office, Ecological Services, 911 N.E. 11th Ave., Eastside Federal Complex, Portland, Oregon 97232–4181 (phone 503/231–6131); and Molokai Public Library, 15 Ala Malama Street, Kaunakakai, Hawaii 96748 (phone 808/553–5483). Requests for copies of the draft recovery plan and written comments and materials regarding this plan should be addressed to Brooks Harper, Field Supervisor, Ecological Services, at the above Honolulu address.

FOR FURTHER INFORMATION CONTACT: Craig Rowland, Fish and Wildlife Biologist, at the above Honolulu address.

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act as amended in 1988 requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during the public comment period prior to approval of each new or revised Recovery Plan. Substantive technical comments will result in changes to the plans. Substantive comments regarding recovery plan implementation may not necessarily result in changes to the recovery plan, but will be forwarded to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions. Individualized responses to comments will not be provided.

The 16 taxa being considered in this recovery plan are: *Bidens wiebkei* (ko'oko'olau), *Brighamia rockii* (pua 'ala), *Canavalia molokaiensis* ('awikiwiki), *Clermontia oblongifolia* ssp. *brevipes* ('oha wai), *Cyanea mannii* (haha), *Cyanea procera* (haha), *Hedyotis mannii* (pilo), *Hibiscus arnottianus* ssp. *immaculatus* (koki'o ke'oke'o), *Melicope reflexa* (alani), *Phyllostegia mannii* (no common name (NCN)), *Pritchardia munroi* (loulu), *Schiedea lydgatei* (NCN), *Silene alexandri* (NCN), *Silene lanceolata* (NCN), *Stenogyne bifida* (NCN), and *Tetramolopium rockii* (NCN).

Tetramolopium rockii is listed as threatened, while the remaining 15 taxa are listed as endangered. Fourteen of the 16 taxa are known to be extant only on the island of Molokai, Hawaii; one species also is found on the islands of Oahua and Hawaii, the other is also on Lanai. The 16 plant taxa and their habitats have been variously affected and are threatened by 1 or more of the following: habitat degradation and/or predation by wild, feral, or domestic animals (axis deer, goats, pigs, sheep, and cattle); competition for space, light, water, and nutrients by naturalized, alien vegetation; habitat loss from fires; predation by rats; human recreational activities; and military training exercises. Because of the depauperate number of extant individuals and their severely restricted distributions, populations of these taxa are subject to an increased likelihood of extinction from stochastic events.

Fifteen of these taxa are known from East Molokai and one is also known from West Molokai. The 16 taxa included in this plan grow in a variety of vegetation communities (grassland, shrubland, and forests), elevational zones (coastal to montane), and moisture regimes (dry to wet).

The objective of this plan is to provide a framework for the recovery of these 16 taxa so that their protection by the Endangered Species Act (ESA) is no longer necessary. Immediate actions necessary for the prevention of extinction of these taxa include fencing for exclusion of ungulates, alien plant control, protection from fire, population and plant community monitoring and management, ex situ propagation, and augmentation of populations, as appropriate. Long-term activities necessary for the perpetuation of these taxa in their natural habitats additionally include baseline and long-term research, public education, maintenance of fenced areas, long-term monitoring and management of populations and communities, and re-establishment of populations within the historic ranges of some taxa. Further research regarding current range, reproduction and reproductive status, pollinators, life history, limiting factors, habitat requirements, and minimum viable population sizes is needed to facilitate appropriate management decisions regarding the long-term perpetuation of each of these taxa.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of these plans.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 20, 1995.

Michael J. Spear,

Regional Director, U.S. Fish and Wildlife Service, Pacific Region.

[FR Doc. 95–24089 Filed 9–27–95; 8:45 am]

BILLING CODE 4310–55–M

Notice of Availability of the Technical/Agency Draft Recovery Plan for Saint Francis' Satyr for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a technical/agency draft recovery plan for Saint Francis' satyr (*Neonympha mitchellii* ssp. *francisci*). This rare butterfly occurs in the sandhills of Cumberland County, North Carolina. Until its recent rediscovery, the species was believed to have been collected to extinction. One fragmented population is now known to survive. The Service solicits review and comments from the public on this draft plan.

DATES: Comments on the technical/agency draft recovery plan must be received on or before December 27, 1995 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the technical/agency draft recovery plan may obtain a copy by contacting the Asheville Field Office, U.S. Fish and Wildlife Service, 160 Zillicoa Street, Asheville, North Carolina 28801 (Telephone 704/258–3939). Written comments and materials regarding the plan should be addressed to the Field Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Nora Murdock at the address and telephone number shown above (Ext. 231).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for recognizing the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that a public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to the approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The primary species considered in this draft recovery plan is Saint Francis' satyr (*Neonympha mitchellii* ssp. *francisci*). The area of emphasis for recovery actions for this rare butterfly is the sandhills region of the Carolinas. Habitat protection and management, reintroduction, preservation of genetic material, and protection of the species from illegal collecting are the major objectives of this recovery plan.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority

The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 22, 1995.

Brian P. Cole,

Field Supervisor.

[FR Doc. 95–24091 Filed 9–27–95; 8:45 am]

BILLING CODE 4310–55–M

Notice of Availability of the Technical/Agency Draft Recovery Plan for Amaranthus Pumilus (Seabeach Amaranth), a Plant Species, for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a technical/agency draft recovery plan for *Amaranthus pumilus* (Seabeach amaranth). This rare annual plant grows on accreting beaches of barrier islands in New York, North Carolina, and South Carolina. Historically, it occurred on beaches all along the Atlantic Coast from Cape Cod, MA, to South Carolina. It has now been eliminated from two-thirds of its former range, primarily as a result of beach ''armoring'' with structures such as sea walls. Other potential threats to the species include mechanized beach grooming, herbivory by insects and feral animals, and, in certain circumstances, off-road vehicles. The Service solicits review and comments from the public on this draft plan.

DATES: Comments on the technical/agency draft recovery plan must be received on or before December 27, 1995, to receive consideration by the Service.

ADDRESSES: Persons wishing to review the technical/agency draft recovery plan may obtain a copy by contacting the Asheville Field Office, U.S. Fish and Wildlife Service, 160 Zillicoa Street, Asheville, North Carolina 28801 (Telephone 704/258–3939). Written comments and materials regarding the plan should be addressed to the Field Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Nora Murdock at the address and telephone number shown above (Ext. 231).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for recognizing the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species.

Section 4(f) of the Act, as amended in 1988, requires that a public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to the approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The primary species considered in this draft recovery plan is *Amaranthus pumilus* (Seabeach amaranth). The areas of emphasis for recovery actions for this plant are the Atlantic coastal areas from Massachusetts to South Carolina. Initial attention will be focused on those coastal areas in New York (Suffolk, Nassau, and Queens Counties); North Carolina (Currituck, Dare, Hyde, Carteret, Onslow, Pender, New Hanover, and Brunswick Counties); and South Carolina (Horry, Georgetown, and Charleston Counties) where the species still survives. Habitat protection, reintroduction, and the preservation of genetic material are the major objectives of this recovery plan.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority: The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 22, 1995.

Brian P. Cole,

Field Supervisor.

[FR Doc. 95–24092 Filed 9–27–95; 8:45 am]

BILLING CODE 4310–55–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Overseas Private Investment Corporation

Agency Report Form Under OMB Review

AGENCY: Overseas Private Investment Corporation, IDCA.

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.

DATES: Comments must be received on or before October 12, 1995. 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.

ADDRESSES: 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: Lena Paulson, Manager, Information Center, Overseas Private Investment Corporation, 1100 New York Avenue, NW., Washington, DC 20527; (202) 336–8565.

OMB Reviewer: Jeff Hill, Office of Information Regulatory Affairs, Office of Management & Budget, New Executive Office Building, Docket Library, Room 3201, Washington, DC 20503; (202) 395–7340.

Summary of Form Under Review

Type of Request: Amendment.

Title: Preliminary Application for Financing.

Form Number: OPIC 115.

Frequency of Use: Once per project sponsor per project.

Type of Respondents: Business or other institutions.

Standard Industrial Classification Codes: All.

Description of Affected Public: U.S. companies investing overseas.

Reporting Hours: 3 hours per application.

Number of Responses: 300 per year.

Federal Cost: $14,796.00 per year.

Authority for Information Collection: Sections 231 and 234 (b) and (c) of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses): This application is sent to U.S. companies requesting information concerning OPIC's finance program. The information provided by these companies is reviewed by OPIC finance officers to determine the soundness of the proposed project and the applicant's qualification for receiving OPIC financial assistance.

Dated: September 25, 1995.

James R. Offutt,

Assistant General Counsel, Department of Legal Affairs.

[FR Doc. 95–24120 Filed 9–27–95; 8:45 am]

BILLING CODE 3210–01–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–369]

Notice of Commission Determination Not to Review an Initial Determination Terminating the Investigation on the Basis of a Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

In the matter of: Certain Health and Beauty Aids and Identifying Marks Thereon.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (ALJ's) initial determination (ID) in the above-captioned investigation terminating the investigation on the basis of a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Rhonda M. Hughes, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3083.

SUPPLEMENTARY INFORMATION: On December 2, 1994, Redmond Products, Inc. filed a complaint with the Commission alleging a violation of section 337 of the Tariff Act of 1930 in the importation, the sale for importation, and the sale within the United States after importation of health and beauty aids bearing marks that infringe Redmond's registered and common law trademarks.

The Commission instituted an investigation of the complaint, and published a notice of investigation in the Federal Register on January 19, 1995. 60 Fed. Reg. 3,875 (1995). The notice named Belvedere International, Inc. of Ontario, Canada as respondent.

On July 13, 1995, complainant and respondent filed a joint motion to terminate the investigation on the basis of a settlement agreement. On August 25, 1995, the ALJ granted the joint motion and issued an ID (Order No. 17) terminating the investigation on the basis of a settlement agreement. No petitions for review were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, and Commission rule 210.42, 19 C.F.R. 210.42.

Copies of the ALJ's ID, and all other nonconfidential documents filed in connection with this investigation, are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

By order of the Commission.

Issued: September 19, 1995.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–24148 Filed 9–27–95; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–366]

Notice of Commission Decision Not To Review the Presiding Administrative Law Judges's Initial Determination on Remand; Denial of Motion for Oral Argument; and Schedule for the Filing of Written Submissions on Remedy, the Public Interest, and Bonding

AGENCY: International Trade Commission.

ACTION: Notice.

In the Matter of: Certain Microsphere Adhesives, Process for Making Same, and Products Containing Same, Including Self-Stick Repositionable Notes.

SUMMARY: Notice is hereby given that the Commission has determined not to review the initial determination (ID) on remand issued by the presiding administrative law judge (ALJ) on August 8, 1995, in the above-captioned investigation. The Commission also determined to deny complainant's request for oral argument.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202–205–3104.

SUPPLEMENTARY INFORMATION: This investigation was instituted by the Commission on June 8, 1994, based on a complaint filed by Minnesota Mining and Manufacturing Co. (3M). On March 23, 1995, then presiding ALJ (Chief Judge Janet Saxon) issued her final ID in this investigation. The ALJ determined that a violation of section 337 of the Tariff Act of 1930, as amended, has occurred by reason of infringement of certain claims of U.S. Letters Patent 4,166,152 (the '152 patent) in the importation or sale of certain products containing microsphere adhesives by Kudos Finder Tape Industrial Ltd. and Kudos Finder Trading Co. (collectively, Kudos). The finding of violation as to Kudos was based on adverse inferences drawn from Kudos' failure to cooperate in discovery. The ID found no violation as to respondents Taiwan Hopax Chemicals Manufacturing, Co., Ltd.; Yuen Foong Paper Co., Ltd.; Beautone Specialties Co., Ltd.; and Beautone Specialties Co. (collectively, Beautone).

On April 17, 1995, 3M, Beautone, and the Commission investigative attorney (IA) filed petitions for review of the ID. On April 27, 1995, they filed responses to each other's petitions. Under Commission interim rule 210.53(h), the ID would have become the determination of the Commission on May 8, 1995, unless review were ordered or the review deadline were extended. However, on March 31, 1995, the Commission extended the review deadline until May 23, 1995.

On May 23, 1995, the Commission determined to review the issues of (1) claim interpretation, (2) patent infringement by Beautone and Kudos, (3) patent validity under 35 U.S.C. §§ 102(f), 102(g), and 112, second paragraph, and (4) domestic industry. The Commission determined not to review the remainder of the ID. The Commission also determined to remand the ID to the ALJ for additional findings and for clarification of certain findings made in the ID concerning the issues under review.

Subsequent to remand of the ID, the investigation was reassigned to Judge Paul Luckern, who, on August 8, 1995, issued his ID on remand. 3M and Beautone filed petitions for review on August 18, 1995. 3M, Beautone, and the IA filed responses to the petitions. The Commission determined not to review the remand ID, thereby resolving the issues of claim interpretation and validity under 35 U.S.C. 112. Accordingly, the violation issues remaining on review are patent validity under 35 U.S.C. 102(f), 102(g); patent infringement by Beautone and Kudos; and domestic industry.

In connection with final disposition of this investigation, the Commission may issue (1) an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) cease and desist orders that could result in respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or are likely to do so. For background, see the Commission Opinion, *Certain Devices for Connecting Computers via Telephone Lines, Inc.,* Inv. No. 337–TA–360.

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, 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 submissions concerning the amount of the bond that should be imposed, if remedial orders are issued.

WRITTEN SUBMISSIONS: The Commission has received adequate briefing on the violation issues under review, and therefore will not accept submissions on those issues. The parties to the investigation, interested government agencies, and any other interested persons are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. The written submissions and proposed remedial orders must be filed no later than the close of business on October 6, 1995. Reply submissions must be filed no later than the close of business on October 13, 1995. No further submissions will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document and 14 true copies thereof with the Office of the Secretary on or before the deadlines

stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 C.F.R. 201.6. Documents for which confidential treatment is granted by the Commission will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and sections 210.53, 210.56, and 210.58 of the Commission's Interim Rules of Practice and Procedure (19 C.F.R. 210.53, 210.56, and 210.58).

Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

By order of the Commission.

Issued: September 22, 1995.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–24071 Filed 9–27–95; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32775]

Burlington Northern Railroad Company; Trackage Rights Exemption; Keokuk Junction Railway

Keokuk Junction Railway (KJ) has agreed to grant overhead trackage rights to Burlington Northern Railroad Company (BN) as follows: (1) Between milepost 176.63 and milepost 176.91, (2) between milepost 177.13 and milepost 177.22, and (3) between milepost 177.31 and milepost 177.58, at Keokuk, IA, a distance of approximately .64 miles. The proposed transaction will allow for improved operating efficiencies by the carriers. The trackage rights were scheduled to become effective on September 15, 1995.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission and served on: Michael E. Roper, 3800 Continental Plaza, 777 Main St., Fort Worth, TX 76102–5384.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

Decided: September 19, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–24098 Filed 9–27–95; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32778]

Marietta Industrial Enterprises, Inc.—Merger Exemption— Little Kanawha River Rail, Inc.

Marietta Industrial Enterprises, Inc. (MIE), filed a notice of exemption to merge Little Kanawha River Rail, Inc. (LKRR), into the operations of MIE, the parent company of LKRR. Under the plan of merger, MIE will assume LKRR's 3.1-mile right-of-way and associated property between Ohio River Junction, WV (Valuation Station 2+90, Valuation Section 61.1, Map 65a) to South Parkersburg, WV (end of tract 44+65, Valuation Section 58.1, Map 51). The transaction was consummated on July 31, 1995.[1]

Because the parties are members of the same corporate family, and the merger will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers operating outside the corporate family, the transaction qualifies for the class exemption at 49 CFR 1180.2(d)(3). The purpose of the transaction is to allow for better operating economies and improved financial viability for MIE.

As a condition to the use of this exemption, any employees adversely affected by the transaction will be protected by the conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.,* 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: John L. Alden, One East Livingston Avenue, Columbus, OH 43215–5700.

Decided: September 22, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–24101 Filed 9–27–95; 8:45 am]

BILLING CODE 7035–01–P

[1] Under the Commission's rules governing rail class exemptions, the exemption becomes effective 7 days after the verified notice is filed. 49 CFR 1150.32(b). The parties may consummate the underlying transaction on or after the exemption's effective date. 49 CFR 1180.4(g)(1). This notice was filed on May 18, 1995, but publication was delayed due to an administrative error.

[Finance Docket No. 32774]

Southern Pacific Transportation Company; Trackage Rights Exemption; Union Pacific Railroad Company

Union Pacific Railroad Company (UP) has granted trackage rights to Southern Pacific Transportation Company (SP) over approximately 13,000 feet of UP connecting and access trackage in Oakland, CA, to connect SP's existing trackage at Oakland with an industrial property on UP known as ''Schnitzer Steel.'' [1] The trackage rights were

[1] On August 4, 1995, Union Pacific Corporation, Union Pacific Railroad Company, Missouri Pacific Railroad Company, Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company filed a notice of intent to file a control and merger application in Finance Docket No. 32760. Under 49 CFR 1180.4(c)(2)(vi), any proceeding directly related to an application in a major transaction must be filed concurrently with the primary application. It does not appear that this notice is directly related to the intended application. SP, UP, and other interested persons are invited to comment on the relationship, if any, between this notice and the merger application to be filed in Finance Docket No. 32760.

Additionally, within 10 days after publication of this notice of exemption, SP must file a copy of the trackage rights agreement. 49 CFR 1180.4(g)(1)(i) and 1180.6(a)(7) (ii). If SP wishes to protect any commercially or competitively sensitive information in the agreement, as it suggests in its verified notice, it may file another, redacted version of the agreement for the public docket along with a request to keep the confidential copy under seal and outside of the public docket and to refrain from otherwise disclosing its contents to the public. The redacted version should adhere to the pagination scheme of the confidential version but should redact those details that warrant confidential treatment.

scheduled to become effective on September 15, 1995.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Gary A. Laakso, Southern Pacific Transportation Company, One Market Plaza, Room 846, San Francisco, CA 94105.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: September 18, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–24100 Filed 9–27–95; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32770]

Union Pacific Railroad Company—Trackage Rights Exemption—The Atchison, Topeka and Santa Fe Railway Company and Burlington Northern Railroad Company

The Atchison, Topeka and Santa Fe Railway Company (Santa Fe) has agreed to grant overhead trackage rights to the Union Pacific Railroad Company (UP) over a rail line between milepost 59+550 near Abilene, KS, and milepost 154+1980, near Superior, NE.[1] Also, the Burlington Northern Railroad Company (BN) has agreed to grant local trackage rights over a rail line between milepost 169.7 and milepost 171.0, near Superior, NE. The total distance is approximately 97 miles.[2] The trackage rights transaction is located in Dickinson, Clay, Ottawa, Cloud, Republic and Jewell Counties, KS, and Nucholls County, NE. The trackage rights will allow UP overhead trackage rights operation over the Santa Fe line between Abilene, KS, and Superior, NE, and permit UP's local service to facilities in Superior that are served by BN and Santa Fe. The trackage rights were to become effective on or after September 22, 1995.[3]

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Louise A. Rinn, General Attorney, 1416 Dodge Street, #830, Omaha, NE 68179.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: September 22, 1995.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–24102 Filed 9–27–95; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–55 (Sub-No. 512X)]

CSX Transportation, Inc.; Abandonment Exemption; in Ohio County, KY

CSX Transportation, Inc. (CSXT) has filed a verified notice under 49 CFR part 1152 subpart F—Exempt Abandonments to abandon 5.38-miles of rail line between milepost LHE–114.22 at Kronos and milepost LHE–108.84 at Centertown, in Ohio County, KY.

CSXT has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in complainant's favor within the last 2 years; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 1152.50(d)(1) (notice to government agencies), and 49 CFR 1105.12 (newspaper publication) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether employees are adequately protected, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

This exemption will be effective on October 25, 1995, unless stayed or a statement of intent to file an offer of financial assistance (OFA) is filed. Petitions to stay that do not involve environmental issues,[1] statements of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by October 5, 1995. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by October 16, 1995. An original and 10 copies of any such filing must be sent to the Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423. In addition, one copy must be served on Charles M. Rosenberger, 500 Water Street J150, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio.*

CSXT has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Commission's Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by August 29, 1995. A copy of the EA may be obtained by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking

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[1] The parties have agreed that 97 miles is the average distance between Abilene and all locations in Superior. Accordingly, a substraction of the mileposts may provide a slightly different figure.

[2] UP has the option to use Kyle Railroad Company (Kyle) as its operating agent. Kyle has the right of ingress and egress at Concordia, KS, in order to move both UP and its own traffic to and from points on former UP trackage which is now part of Kyle.

[3] This date coincides with the effective date of the merger in *Burlington Northern, Inc. and Burlington Northern Railroad Company—Control and Merger—Santa Fe Pacific Corporation and The Atchison, Topeka and Santa Fe Railway Company,* Finance Docket No. 32549 (ICC served Aug. 23, 1995). The trackage have been granted pursuant to a settlement agreement dated March 27, 1995, entered into in connection with the merger proceeding.

[1] The Commission will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Commission in its independent investigation) cannot be made before the exemption's effective date. See *Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Commission may take appropriate action before the exemption's effective date.

[2] See *Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987).

[3] The Commission will accept late-filed trail use requests so long as the abandonment has not been consummated and the abandoning railroad is willing to negotiate an agreement.

conditions will be imposed, where appropriate, in a subsequent decision.

Decided: September 20, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–24099 Filed 9–27–95; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Notice of Lodging a Final Judgment by Consent Pursuant to the Comprehensive Environmental Response Compensation and Liability Act (CERCLA)

Notice is hereby given that on September 14, 1995, a proposed consent decree in *United States* v. *Viacom International Inc.* Civ. A. No. 95–N–2360, was lodged with the United States District Court for the District of Colorado. The complaint in this action seeks recovery of costs under Section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), as amended by the Superfund Amendments and Reauthorization Act of 1986, Public Law 99–499, 42 U.S.C. 9606, 9607(a). This action involves the Eagle Mine Superfund Site in near Minturn, Colorado.

The consent decree requires that Viacom International perform future remedial action at the Site and reimburse the United States $3,428,581 for past response costs.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044, and should refer to *United States* v. *Viacom International Inc.,* DOJ Reference No. 90–11–3–1044. In accordance with Section 7003(d) of RCRA, 42 U.S.C. 6973(d), commenters may request a public meeting in the affected areas.

The proposed consent decree may be examined at the Office of the United States Attorney for the District of Colorado, 1961 Stout Street, Suite 1100, Denver, Colorado 80294; the Region VIII office of the Environmental Protection Agency, 999 18th Street, Suite 500, Denver, Colorado 80202; and at the Consent Decree Library, 1120 ''G'' Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed decree may be obtained in person or by mail from the Consent Decree Library at the address listed above. In requesting a copy, please refer to the referenced case and number, and enclose a check in the amount of $24.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Acting Section Chief, Environmental Enforcement Section, Environment and Natural Resources Div.

[FR Doc. 95–24131 Filed 9–27–95; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

National Advisory Committee on Occupational Safety and Health; HazCom Workgroup Meeting

Notice is hereby given that a workgroup of the National Advisory Committee on Occupational Safety and Health (NACOSH), established under section 7(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 646) to advise the Secretary of Labor and the Secretary of Health and Human Services on matters relating to the administration of the Act, will meet on October 19 and 20, 1995, in S4215 A–C of the Department of Labor Building located at 200 Constitution Avenue NW, Washington, DC. The meeting is open to the public and will begin at 9 a.m. each day lasting until approximately 4:30 p.m. on October 19 and 2:30 p.m. on October 20.

The Occupational Safety and Health Administration (OSHA) has asked NACOSH to form a workgroup to identify ways to improve chemical hazard communication and the right to know in the workplace. OSHA has asked the Committee to provide OSHA with recommendations in approximately six months to simplify material safety data sheets, reduce the amount of required paperwork, improve the effectiveness of worker training, and revise enforcement policies so that they focus on the most serious hazards. Four members of NACOSH have been assigned to the HazCom Workgroup which will be assisted by a variety of specialists in all aspects of hazard communication. In addition, two of the workgroup meetings will be devoted to hearing from representatives of labor organizations, employers, and the public. The workgroup will meet approximately once a month for several months and will prepare draft recommendations which will be submitted to the full committee for its deliberation in public session.

The agenda for the morning of October 19 will include a review of issues to be covered by the HazCom Workgroup and the confirmation of dates and agenda items for the remaining workgroup meetings. Beginning at 1:00 p.m. on October 19 and continuing the morning of October 20, representatives of small businesses and labor organizations are invited to address the workgroup. Presentations will be limited to 10 minutes with time allowed for questions from the workgroup members. Additional information and/or documentation may be submitted and will be entered into the record. A verbatim transcript will be made of the proceedings which will be available to the public in the OSHA Technical Data Center (TDC) located in Room N2625 of the Department of Labor Building (202)–219–7500).

Members of labor organizations and small businesses wishing to make presentations before the HazCom Workgroup on October 19 and 20 should notify, no later than October 13, Joanne Goodell, Directorate of Policy, OSHA, Room N–3641, 200 Constitution Avenue NW, Washington, DC, 20210, telephone (202) 219–8021, ext. 107, or FAX (202) 219–4383. Presenters must provide their name, the capacity in which the person will appear, a brief outline of the content of the presentation, their preference of appearance date, mail address, telephone and FAX numbers. Presenters' specific requests to appear on either the October 19 afternoon session or the October 20 morning session will be honored to the extent the schedule allows. If there is sufficient time, others who have not notified OSHA will be permitted to make presentations on October 20 after all those on the schedule have been heard.

Written data, views or comments for consideration by the workgroup may be submitted, preferably with 20 copies, to Joanne Goodell at the address provided above. Any such submissions received prior to the meeting will be provided to the members of the Committee and will be included in the record of the meeting. Individuals with disabilities who need special accommodations should contact Tom Hall by October 16 at the address indicated below.

For additional information contact: Joanne Goodell, Directorate of Policy, Occupational Safety and Health Administration, Room N–3641, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 219–8021.

Signed at Washington, D.C. this 21st day of September, 1995.

Joseph A. Dear,

Assistant Secretary of Labor.

[FR Doc. 95–24094 Filed 9–27–95; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Cell Biology; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Panel for Cell Biology (1136)—(Panel A)

Dates and Times: October 19–20, 1995, 8:30 a.m. to 6.00 p.m.

Place: Room 310, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Persons: Dr. Barbara Zain and Dr. Randolph Addison, Program Directors for the Cell Biology Program, National Science Foundation, Room 655 South, Arlington, VA 22230. Telephone: 703/306–1442

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals submitted to the Signal Transduction Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: September 25, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–24088 Filed 9–27–95; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Developmental Mechanisms; Notice of Meeting

In Accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Panel for Developmental Mechanisms (#1141).

Dates and Times: October 18–20, 1995, 8:30 am to 5:00 pm.

Place: Room 370, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

Type of Meeting: Part-Open.

Contact Person: Dr. Judith Plesset and Dr. Karen Bennett, Program Directors, Developmental Mechanisms, Room 685, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230. Telephone: (703) 306–1417.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Developmental Mechanism proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: September 25, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–24086 Filed 9–27–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Elementary, Secondary and Informal Education; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name of Committee: Special Emphasis Panel in Elementary, Secondary & Informal Education.

Dates and Times:

October 19, 1995; 8:00 a.m. to 5:00 p.m.
October 20, 1995; 8:00 a.m. to 5:00 p.m.
October 21, 1995; 8:00 a.m. to 3:00 p.m.

Place: Hyatt Rosslyn, 1325 Wilson Boulevard, Arlington, VA 22209.

Type of Meeting: Closed.

Contact Person: Dr. Joyce Evans, Program Director, Division of Elementary, Secondary and Informal Education, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1613.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 25, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–24087 Filed 9–27–95; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Genetics and Nucleic Acids; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Panel for Genetics and Nucleic Acids (1149) Panel B.

Date and Time: Monday October 16 and Tuesday October 17, 1995, at 8:30 am to 5:00 pm.

Place: Room 310, National Science Foundation 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. DeLill Nasser, Program Director for Eukaryotic Genetics, Division of Molecular and Cellular Biosciences, Room 655, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1439.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Eukaryotic Genetic Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: September 25, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–24084 Filed 9–27–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463) as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Materials Research (DMR) (#1203).

Date and Time: October 17, 1995, 8:30 am to 5:00 pm.

Place: NSF Conference Room 330, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Robert J. Reynik, Senior Staff Scientist, Division of Materials Research, Room 1065, NSF, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone (703) 306–1814.

Purpose of Meeting: To provide advice and recommendations concerning support for the 1996 Research Experience for Undergraduates (REU) Site Awards competition in the area of materials research.

Agenda: Evaluation of proposals

Reason for Closing: The proposals being reviewed including information of a

proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under USC 552 b. (c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 25, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–24081 Filed 9–27–95; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Physiology and Behavior

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Panel for Physiology and Behavior (#1160)

Date and Time: October 16 & 17, 1995, 8:30 a.m. to 5:00 p.m.

Place: Room 360, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230

Type of Meeting: Part-Open

Contact Person: Dr. Ronald J. Barfield, Program Director, IBN, Room 685, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230, (703) 306–1421.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: Open session: October 16, 5:00 p.m. to 6:00 p.m. to discuss research trends and opportunities in the area of Animal Behavior.

Closed session: October 16, 8:30 a.m. to 5:00 p.m., October 17, 8:30 a.m. to 5:00 p.m. To review and evaluate Animal Behavior proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 25, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–24080 Filed 9–27–95; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Physiology and Behavior; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting.

Name: Advisory Panel for Physiology and Behavior (Ecological & Evolutionary Physiology) (#1160).

Date and Time: October 18th–20th, 1995; 8:30 a.m.–5:00 p.m.

Place: National Science Foundation, Room 680, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Part-Open.

Contact Person: Dr. James Coleman, Program Director, Ecological & Evolutionary Physiology, Division of Integrative Biology and Neuroscience, Suite 685, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1421.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Minutes: May be obtained from the contact person listed above.

Agenda: Open Session: October 19th, 1995; 4:00 p.m. to 5 a.m.—for a discussion Integrative Biology and Neuroscience on research trends and opportunities assessment procedures in Ecological and Evolutionary Physiology.

Closed Session: October 18th and 20th, 8:30 a.m.–5:00 p.m.; October 19th, 8:30 a.m. to 4:00 p.m.; 5:00 p.m. to 6:00 p.m. To review and evaluate Ecological & Evolutionary Physiology proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: September 25, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–24083 Filed 9–27–95; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Physiology and Behavior; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Panel for Physiology and Behavior (#1160)

Dates and Times: October 16 and 17, 1995, 8:30 am to 5:00 pm

Place: Room 630, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia

Type of Meeting: Part-Open

Contact Person: Dr. Machi F. Dilworth, Program Director, Integrative Plant Biology, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia, 22230. Telephone: (703) 306–1422

Minutes: May be obtained from the contact person listed above

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support

Agenda: To review and evaluate Integrative Plant Biology proposals as part of the selection process for awards

Open Session: October 17, 1995, 1:30 to 2:30 pm—To discuss research trends and opportunities in Integrative Plant Biology

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: September 25, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–24085 Filed 9–27–95; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Social, Behavioral and Economic Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Committee for Social, Behavioral and Economic Sciences (#1171)

Date and Time: October 19, 1995; 9:00 a.m—5:00 p.m. and October 20, 1995; 8:30 a.m.—2:00 p.m.

Place: Room 1235, 4201 Wilson Blvd., Arlington, VA 22230

Type of Meeting: Open

Contact Person: Margaret L. Windus, Office of the Assistant Director for Social, Behavioral and Economic Sciences, Suite 905, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone (703) 306–1741

Minutes: May be obtained from the contract person listed above.

Purpose of Meeting: To provide advice, recommendations, and oversight concerning support for research, education, and human resources in the areas of the social, behavioral and economic sciences.

Agenda: Role and direction of the NSF Directorate for Social, Behavioral and Economic Sciences.

Dated: September 25, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–24082 Filed 9–27–95; 8:45 am]

BILLING CODE 7555–01–M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A

and B, and placed under Schedule C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Patricia Paige, (202) 606–0830.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR 213 on August 29, 1995 (60 FR 44907). Individual authorities established or revoked under Schedules A and B and established under Schedule C between August 1, 1995, and August 31, 1995, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30, will also be published.

Schedule A

No Schedule A authorities were established or revoked in August 1995.

Schedule B

No Schedule B authorities were established or revoked in August 1995.

Schedule C

The following Schedule C authorities were established in August 1995:

Department of Agriculture

Confidential Assistant to the Director, Office of Civil Rights Enforcement. Effective August 16, 1995.

Department of Commerce

Confidential Assistant to the Assistant Secretary for International Economic Policy, International Trade Administration. Effective August 1, 1995.

Special Assistant to the Deputy Under Secretary for Economic Affairs. Effective August 10, 1995.

Congressional Liaison Specialist to the Director of Congressional Affairs. Effective August 21, 1995.

Director, Office of White House Liaison to the Chief of Staff. Effective August 21, 1995.

Department of Defense

Staff Specialist to the Principal Deputy Assistant Secretary of Defense (Legislative Affairs). Effective August 25, 1995.

Department of Education

Confidential Assistant to the Director of Scheduling and Briefing Staff. Effective August 7, 1995.

Confidential Assistant to the Chief of Staff, Office of the Deputy Secretary. Effective August 11, 1995.

Confidential Assistant to the Director, Scheduling and Briefing Staff. Effective August 21, 1995.

Department of Energy

Staff Assistant to the Assistant Secretary for Fossil Energy. Effective August 10, 1995.

Confidential Assistant to the General Counsel, Office of the General Counsel. Effective August 10, 1995.

Confidential Assistant to the Assistant Secretary for Environmental Management. Effective August 10, 1995.

Special Assistant to the Director, Office of Worker and Community Transition. Effective August 10, 1995.

Department of Housing and Urban Development

Deputy Assistant Secretary for Long Range Planning to the Assistant Secretary for Public Affairs. Effective August 8, 1995.

Special Assistant to the Secretary's Representative. Effective August 16, 1995.

Special Assistant to the Assistant Secretary for Public Affairs. Effective August 28, 1995.

Staff Assistant to the Assistant Secretary for Community Planning and Development. Effective August 31, 1995.

Department of Justice

Public Affairs Specialist to the Director of Congressional and Public Affairs, Immigration and Naturalization Service. Effective August 17, 1995.

Special Assistant to the Assistant Attorney General, Office of Legislative Affairs. Effective August 28, 1995.

Staff Assistant to the Assistant Secretary for Community Planning and Development. Effective August 31, 1995.

Department of Justice

Public Affairs Specialist to the Director of Congressional and Public Affairs, Immigration and Naturalization Service. Effective August 17, 1995.

Special Assistant to the Assistant Attorney General, Office of Legislative Affairs. Effective August 24, 1995.

Counselor to the Commissioner. Effective August 25, 1995.

Special Assistant to the Assistant Attorney General, Office of Policy Development. Effective August 25, 1995.

Department of Labor

Deputy Chief Economist to the Chief Economist. Effective August 7, 1995.

Special Assistant to the Counselor to the Secretary. Effective August 7, 1995.

Special Assistant to the Assistant Secretary for Public Affairs. Effective August 25, 1995.

Department of State

Foreign Affairs Office to the Assistant Secretary, Bureau of Population, Refugees and Migration. Effective August 7, 1995.

Legislative Management Officer to the Assistant Secretary for Legislative Affairs. Effective August 7, 1995.

Senior Advisor to the Assistant Secretary, Bureau of Population, Refugees, and Migration. Effective August 17, 1995.

Staff Assistant to the Deputy Assistant Secretary, Bureau for International Narcotics and Law Enforcement Affairs. Effective August 22, 1995.

Special Advisor to the Senior Advisor to the Senior to Coordinate Economic Initiatives for Ireland. Effective August 25, 1995.

Senior Advisor to the Assistant Secretary for Democracy, Human Rights and Labor. Effective August 29, 1995.

Department of Transportation

White House Liaison to the Chief of Staff. Effective August 29, 1995.

Department of the Treasury

Special Assistant to the Assistant Secretary for Financial Institution. Effective August 17, 1995.

Export-Import Bank of the United States

Deputy Chief of Staff to the Chief of Staff and Vice President Congressional and External Affairs. Effective August 1, 1995.

Federal Maritime Commission

Counsel to the Commissioner. Effective August 25, 1995.

National Credit Union Administration

Staff Assistant to the Chairman of the Board, National Credit Union Administration. Effective August 16, 1995.

U.S. International Trade Commission

Congressional Liaison to the Chairman. Effective August 8, 1995

United States Information Agency

Chief, Voluntary Visitors Division to the Director, Office of International Visitors, Bureau of Educational and Cultural Affairs. Effective August 17, 1995.

Multi-Media Development Coordinator to the Director, Office of Information Resources. Effective August 21, 1995.

United States Tax Court

Trial Clerk to the Judge. Effective August 4, 1995

Trial Clerk to the Judge. Effective August 17, 1995

Trial Clerk to the Judge. Effective August 31, 1995

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P. 218.

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 95–24019 Filed 9–27–95; 8:45 am]

BILLING CODE 6325–01–M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Meeting of the President's Committee of Advisors on Science and Technology

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and summary agenda for a meeting of the President's Committee of Advisors on Science and Technology (PCAST), and describes the functions of the Committee. Notice of this meeting is required under the Federal Advisory Committee Act.

DATES AND PLACE: October 23 and 24, 1995. The White House Conference Center, Truman Room, Third Floor, 726 Jackson Place NW, Washington, DC 20500.

TYPE OF MEETING: Open.

PROPOSED SCHEDULE AND AGENDA: The PCAST will meet in open session on Monday, October 23, 1995, at approximately 9:00 AM on current activities of the Office of Science and Technology Policy (OSTP) and the National Science and Technology Council (NSTC). This session will end at approximately 12:00 Noon. The Committee will reconvene in open session at approximately 1:30 PM to discuss science and technology policies of national importance. This session will end at approximately 5:00 PM.

The Committee will meet again in open session on Tuesday, October 24, 1995, at approximately 9:00 AM, for a general discussion among Committee members and other Executive Office staff about future PCAST activities. This session will end at approximately 12:00 Noon.

Any of the morning or afternoon sessions may be interrupted for the PCAST to gather at the White House to be introduced to the President and/or Vice President of the United States.

FOR FURTHER INFORMATION CONTACT: For information regarding time, place, and agenda, please call Gail S. Williams or Laurel Kayse, (202) 456–6100, prior to 3:00 PM on Friday, October 20, 1995. Other questions may be directed to Angela Phillips Diaz, Executive Secretary of PCAST, or Gail S. Williams, (202) 456–6100. Please note that public seating for this meeting is limited, and is available on a first-come, first-served basis.

SUPPLEMENTARY INFORMATION: The President's Committee of Advisors on Science and Technology was established by Executive Order 12882, as amended, on November 23, 1993. The purpose of PCAST is to advise the President on matters of national importance that have significant science and technology content, and to assist the President's National Science and Technology Council in securing private sector participation in its activities. The Committee members are distinguished individuals appointed by the President from non-Federal sectors. The PCAST is co-chaired by John H. Gibbons, Assistant to the President for Science and Technology, and by John Young, former President and CEO of Hewlett-Packard Company.

Dated: September 25, 1995.

Barbara Ann Ferguson,

Assistant Director for Budget and Administration, Office of Science and Technology Policy.

[FR Doc. 95–24129 Filed 9–27–95; 8:45 am]

BILLING CODE 3170–01–P

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by the Office of Management and Budget

Agency Clearance Officer: Michael E. Bartell, (202) 942–8800

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Filings and Information Services, 450 Fifth Street, N.W., Washington, DC 20549

Proposed Amendments:

Form N–1A

File No. 270–21

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted for OMB approval proposed amendments to Form N–1A under the Securities Act of 1933 (the ''Securities Act'') and the Investment Company Act of 1940 [15 U.S.C. 80a *et seq.*] (the ''Investment Company Act'').

Form N–1A is the registration statement required for open-end registered investment companies (''funds'') under the Investment Company Act and the Securities Act. A registration statement on Form N–1A must contain such information as the Commission has determined to be necessary or appropriate in the public interest or for the protection of investors. Form N–1A requires funds to include in their prospectuses, among other items, disclosure about sales charges and a table setting forth those changes (the ''fee table'').

The Commission proposed amending Form N–1A to reflect the new types of deferred sales loads permitted by the amended rule 6c–10. The amendments would add new item 7(g) to Form N–1A to require funds to disclose in their prospectuses the price on which the load is based (e.g., whether the load is based on the fund's net asset value at the time of purchase or redemption), the amount of deferred sales loads, if any, imposed on shares acquired through reinvested distributions, and the way in which the load is calculated (e.g., a specified percentage of the fund's net asset value). This information also would have to be reflected in the fund's fee table. In addition, item 7(g) would require funds to disclose any deferred sales loads charged on reinvested dividends or other distributions and to disclose the way in which an investor may be required to pay any installment load (e.g., through the withholding of dividend payments). Under revised Guidelines to Form N–1A, funds would be required to briefly describe any tax consequences for shareholders related to an installment load. Finally, proposed amendments to Instruction 1 to Item 22(b)(i) of Form N–1A would require deferred sales loads to be included in calculating a fund's advertised total return. Some of these requirements do not entail any additional paperwork burden because the amendments cover many of the operational aspects that have been mandatory for all funds under rule 6c–10 and already are required to be disclosed in the prospectus. The fee tables of funds that impose contingent deferred sales loads (''CDSLs''), for example, must include certain information about these charges.

The Commission expects that funds that currently impose CDSLs are likely to continue to impose these charges or assess the other types of deferred sales loads permitted under the amendments. It is estimated that the number of funds that currently charge CDSLs is approximately 550. Based on its experience with the industry, the Commission estimates that, as a result of the disclosure requirements proposed by the amendments, the burden on a fund that imposes a deferred sales load would increase by 2/10 of an hour. It is estimated that an increase of 110 total burden hours would be expended in

connection with the proposed disclosure requirements.

General comments may be directed to the OMB Clearance Officer for the Securities and Exchange Commission at the address below. Comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to Michael E. Bartell, Associate Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, and to the Securities and Exchange Commission's Clearance Officer, Office of Information and Regulatory Affairs, Paperwork Reduction Act number 3235–0307, Office of Management and Budget, Room 3228, New Executive Office Building, Washington, DC 20543.

Dated: September 5, 1995.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–24095 Filed 9–27–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36270]

Order Extending Exemption for Certain Brokers and Dealers From Broker-Dealer Registration

September 22, 1995.

AGENCY: Securities and Exchange Commission.

ACTION: Extension of exemption.

SUMMARY: The Securities and Exchange Commission is extending the exemption for persons acting as brokers or dealers with respect to certain categories of over-the-counter derivative instruments, to the extent that such instruments are securities, from the broker-dealer registration requirement under Section 15(a) of the Securities Exchange Act of 1934. As extended, the exemption is retroactive to June 6, 1934, the date of the enactment of the Securities Exchange Act of 1934, and will expire September 30, 1996.

EFFECTIVE DATE: September 22, 1995.

FOR FURTHER INFORMATION CONTACT: Catherine McGuire, Chief Counsel, Patrice Gliniecki, Senior Counsel, or Glenn Jessee, Senior Counsel, (202) 942–0073, Office of Chief Counsel, Division of Market Regulation, Mail Stop 5–10, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

I. Background

On December 22, 1994, the Securities and Exchange Commission (''Commission'') issued an order under Section 15(a)(2) of the Securities Exchange Act of 1934 (''Exchange Act'') exempting persons acting as brokers or dealers with regard to certain categories of over-the-counter (''OTC'') derivative instruments, to the extent such instruments are securities, from the broker-dealer registration requirement under Section 15(a) (''Exemptive Order'').[1] In issuing the Exemptive Order, the Commission recognized the importance of derivative instruments as financial management tools, and sought to provide assurance to market participants in light of questions regarding the proper statutory and regulatory designation of certain OTC contracts. Such concerns, it was noted, are compounded by the trend among dealers to conduct a range of OTC derivatives activities in unregistered entities, either here or abroad, or in separately capitalized derivative product companies.

Market participants have indicated to the Commission staff that the exemption set forth in the Exemptive Order has proved useful in addressing concerns regarding the status of various OTC derivative instruments.[2] Therefore, in order to continue to provide certainty to participants in the OTC derivatives market with respect to their registration obligations under the Exchange Act, the Commission is exercising its authority under Section 15(a)(2) of the Exchange Act to extend the exemption covering persons acting as brokers or dealers regarding certain categories of OTC derivative instruments, to the extent such instruments are securities, from the broker-dealer registration requirement under Section 15(a).

II. Discussion

A. Scope of Order

This order extends the exemption for persons acting as brokers or dealers with regard to transactions in certain classes of OTC options, to the extend such options are securities, from the broker-dealer registration requirement under Section 15(a) of the Exchange Act. This exemption only applies to transactions involving individually negotiated, cash-settlement OTC options on debt securities or groups or indexes of such securities that (1) are documented as swap agreements, and (2) satisfy the terms of the exemption from regulation under the Commodity Exchange Act adopted by the Commodity Futures Trading Commission (''CFTC''), which is set forth at 17 CFR Part 35 (''Part 35 Rules'').[3] In addition, to the extent any person satisfies the conditions of the exemption, the Division of Market Regulation has indicated that it would not recommend enforcement action if such persons do not comply with the various statutory and regulatory requirements otherwise imposed on a ''broker'' or ''dealer'' as defined in Sections 3(a)(4) and 3(a)(5) of the Exchange Act.[4] Such persons, however, remain subject to the antifraud provisions under the federal securities laws including, but not limited to, the provisions of Section 17(a) of the Securities Act of 1933, Sections 10(b) and 15(c) of the Exchange Act, and Rules 10b–5 and 15c1–2 thereunder.

B. Clarification

The Commission notes that questions have arisen regarding the specific application of the requirements set forth above. For example, certain persons seeking to avail themselves of the exemption have asked whether transactions within the scope of the exemption must be documented using master agreements formulated by the International Swaps and Derivatives Association (''ISDA''). Some market participants prefer to use their own documentation for these transactions rather than standardized agreements. Also, certain OTC derivatives transactions based on foreign debt securities or documented using non-U.S. master agreements developed specifically for foreign domestic markets. Accordingly, the requirement

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[1] Exchange Act Release No. 35135 (Dec. 22, 1994), 59 FR 67358 (Dec. 29, 1994). The Exemptive Order was issued concurrently with the issuance of an order instituting proceedings pursuant to Section 8A of the Securities Act of 1933 and Sections 15(b) and 21C of the Exchange Act, and findings and other imposing remedial sanctions in the Matter of BT Securities Corporation. Exchange Act Release No. 35136 (Dec. 22, 1994).

[2] See Letter from Zachary Snow, Chairman, OTC Derivative Products Committee, Securities Industry Association (''SIA''), to Brandon Becker, Director, Division of Market Regulation, dated July 31, 1995; Letter from Brandon Becker, Director, Division of Market Regulation, to Zachary Snow, Chairman, SIA OTC Derivative Products Committee, dated June 28, 1995.

[3] Individually negotiated, cash-settled OTC options on debt securities that may satisfy these criteria could include (1) options on prices of debt securities; (2) options on yields of debt securities; (3) options on the difference, or spread, between the yields of two or more debt securities, the spread between the prices (or other value) of two or more debt securities, or the spread between yields and prices involving two or more debt securities; and (4) options on the spread between the price (or other value) or yield on one or more debt securities and the price (or other value) or yield of any other asset or index (other than a equity security or a group or index of equity securities).

[4] In addition, the Commission staff will respond promptly to no-action, exemptive, or other requests submitted by brokers or dealers that require relief from specific provisions of the federal securities laws.

that transactions under the exemption be documented as swaps may be satisfied by the use of ISDA master agreements, individually tailored agreements negotiated between specific counterparties that contain terms that are substantially equivalent to those terms contained in the ISDA master agreements, or non-U.S. master agreements developed specifically for documenting transactions effected in foreign domestic markets. Conventional option agreements or conventional forward agreements that are documented using ISDA master agreements or other forms of agreement are not included within the scope of this exemption.

Questions also have arisen regarding the requirement that swap agreements covered by this exemption satisfy the terms of the exemption in the Part 35 Rules. Specifically, questions have arisen whether swap agreements covered by this exemption also must be exempt under the Part 35 Rules. The Commission's intention in requiring that transactions eligible for the exemption satisfy the Part 35 Rules was to ensure that the exemption be available only to swap agreements that meet the terms and conditions set forth in the Part 35 Rules, specifically in Part 35.2 (17 CFR 35.2). Therefore, it is not necessary that swap agreements subject to the exemption also be exempt under the Part 35 Rules; rather, such swap agreements must satisfy the specified criteria set forth in the Part 35 Rules.

C. Public Interest

The Commission finds that extending the exemption is consistent with the public interest and the protection of investors. When used properly, OTC derivative instruments provide significant benefits to corporations, financial institutions, and institutional investors in managing the risks of their business exposures or financial assets. Derivatives also permit investors to lower their funding costs and, in many instances, can be a cheaper and more liquid way of attaining desired exposure than a position in the cast market. This exemption is intended to reduce or eliminate any legal risk arising from conducting certain OTC derivatives transactions in unregistered broker-dealers, and thus to reduce any financial risk within the securities markets. Legal certainty contributes to the preservation of the financial integrity and stability of OTC derivatives markets.

D. Effective Date; Future Regulatory Action

The exemption being extended by this order is retroactive and effective as of June 6, 1934, the date of the enactment of the Exchange Act, and will expire September 30, 1996. The Commission staff will continue its review of the OTC derivatives activities of U.S. broker-dealers and their affiliates, and prior to September 30, 1996, the Commission will consider whether to modify, condition, extend, or withdraw the exemption in whole or in part. Furthermore, this exemption is subject to modification or revocation at any time the Commission determines that such modification or revocation is consistent with the public interest or the protection of investors.[5]

It is therefore ordered, pursuant to Section 15(a)(2) of the Exchange Act, that to the extent brokers or dealers engage in transactions involving individually negotiated, cash-settled OTC options on debt securities or groups or indexes of such securities that (1) are documented as swap agreements, and (2) satisfy the terms of the exemption from regulation under the Commodity Exchange Act adopted by the Commodity Futures Trading Commission, which is set forth at 17 CFR Part 35, to the extent such instruments are securities, such brokers and dealers are exempt from the registration requirements of Section 15(a)(1) of the Exchange Act.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–24097 Filed 9–27–95; 8:45 am]

BILLING CODE 8010–01–M

[5] The extension of the exemption is intended to avoid any dislocation of existing OTC derivatives markets and to allow those broker-dealers who have not already done so time to move existing business covered by this exemption into entities that do not rely on this exemption. The extension of the exemption is not intended to permit registered broker-dealers conducting transactions in cash-settled OTC options on debt securities to move their activities involving such transactions to unregistered affiliates. The extension of the exemption also is not designed to facilitate the creation of new types of options on debt securities to be written, purchased, or sold by an unregistered broker-dealer, if such instruments are of the type that are written, purchased, or sold by registered broker-dealers or are similar to conventional option contracts. Indeed, were such conduct to occur, the Commission would move quickly to revise or withdraw this order to constrain such conduct prior to September 30, 1996. In this regard. it is the Commission's intent to continue monitoring developments in the OTC derivatives market during the period in which the exemption is effective and to take prompt action to protect investors and maintain fair and orderly markets.

[Release No. 34–36258; File No. SR–NSCC–95–09]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving Proposed Rule Change Relating to a Modification to its Procedures to Allow the Processing of Voluntary Reorganizations with Protect Periods of Three Days or Greater

September 21, 1995.

On July 27, 1995, National Securities Clearing Corporation (''NSCC'') filed a proposed rule change (File No. SR–NSCC–95–09) with the Securities and Exchange Commission (''Commission'') pursuant to Section 19(b) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the Federal Register on August 22, 1995, to solicit comments from interested persons.[2] The Commission did not receive any comments. As discussed below, this order approves the proposed rule change.

I. Description

The proposed rule change modifies NSCC's Procedures, Section VII.H.4(b), to allow the processing of voluntary reorganizations (*i.e.*, tender or exchange offers) with protect periods[3] of three days or greater through NSCC's Continuous Net Settlement (''CNS'') system. Previously, only voluntary reorganizations with protect periods of five days or greater were eligible for NSCC's CNS system. All other voluntary reorganizations with protect periods of four days or less had to be settled on a trade by trade basis through NSCC's balance order system. On June 7, 1995, Rule 15c6–1[4] adopted under the Act became effective requiring that most broker-dealer securities transactions be settled in three business days (''T+3''). Since the implementation of T+3, some voluntary reorganizations have had protect periods of three days rather than five days.

II. Discussion

The Commission believes that NSCC's proposed rule change is consistent with Section 17A of the Act.[5] Specifically, Section 17A(b)(3)(F)[6] states that the

[1] 15 U.S.C. 78s(b) (1988).

[2] Securities Exchange Act Release No. 36097 (August 11, 1995), 60 FR 43629.

[3] A protect period is generally understood to mean the amount of time after the expiration of a tender or exchange offer that the owner or record holder that has elected to participate in the offer has to submit the shares to the tender agent.

[4] 17 CFR 240.15c6–1 (1994).

[5] 15 U.S.C. 78q–1 (1988).

[6] 15 U.S.C. 78q–1(b)(3)(F) (1988).

rules of a clearing agency must be designed to promote the prompt and accurate clearance and settlement of securities transactions.

Currently, if an entity making a tender or exchange offer wants a protect period of three days, the entire reorganization must be settled on a trade-by-trade basis. By including these transactions within the CNS system, the rule change enhances the settlement procedure for such trades. Thus, the rule promotes the prompt and accurate clearance and settlement of securities transactions. Further, by including reorganizations with protect periods of three days within the CNS system, the proposed rule change may encourage the use of three day protect periods.[7] By limiting the time the tender or exchange offer remains unsettled, the goal of risk reduction contemplated by Rule 15c6–1 is furthered.

III. Conclusion

For the reasons stated above, the Commission finds that NSCC's proposal is consistent with Section 17A of the Act.[8]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (File No. SR–NSCC–95–09) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–24031 Filed 9–27–95; 8:45 am]

BILLING CODE 8010–01–M

[7] Buyers sometimes purchase securities on the last day of a tender offer and tender their shares that day. Such purchasers can not deliver the securities until their purchase transactions settle. Before the implementation of T+3, a three day protect period was not practical because purchasers would not receive their securities until the fifth business day after the trade date.

[8] 15 U.S.C. 78q–1 (1988).

[9] 15 U.S.C. 78s(b)(2) (1988).

[10] 17 CFR 200.30(a)(12) (1994).

[Release No. 34–36271; File No. SR-Phlx-95–66]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to P/A Orders

September 22, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 15, 1995, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx is proposing to amend: (i) Phlx Rule 1066[1] by adding new paragraph (h), P/A Orders (Principal Acting as Agent); and (ii) Phlx Rule 1015[2] by adding new paragraph (c). Below is the text of the proposed rule change. Proposed new language is in italics.

Options Rules

* * * * *

Certain Types of Orders Defined

Rule 1066

* * * * *

(h) P/A Order (''Principal Acting as Agent'')—A P/A order is an order received on the Exchange in the name (''give-up'') of a registered floor trader on another national options exchange (i.e., an ''N'' account type) sent while that floor trader is holding a similar customer order in that same option series for the account of a public customer for which price improvement is sought on the basis that the PHLX is displaying a superior bid or offer.

* * * * *

Quotation Guarantees

Rule 1015

* * * * *

(c) P/A Orders—the P/A order type shall only exist with respect to those multiply traded equity options for which the originating options exchange affords reciprocal P/A treatment. P/A orders received on the PHLX must be provided with the customer volume guarantees of Rules 1015 and 1033, if the PHLX specialist agreement to accept P/A orders is reciprocated by the sending floor trader in the same option on another national options exchange. P/A orders may not be for more than the number of contracts on the customer's order and must be market or marketable limit orders. An order does not qualify as a P/A order if the customer's order on the other exchange was given an execution prior to the time the P/A order is sent on its behalf.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments if received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to create a new equity options order designator, the P/A order, to ensure that when a floor trader (i.e., Specialist, market maker, Registered Options Trader, Lead Market Maker or Designated Primary Market Maker) from another options exchange in possession of a public customer order sends a mirror-image order[3] to the Phlx to obtain price improvement for that customer, the customer will receive the benefit of that better execution price, notwithstanding that the mirror-image order has been sent in the name of floor trader. Similarly, the P/A order is intended to ensure that when a Phlx floor trader sends such an order to another options exchange, the customer for whom the Phlx order is sent receives the benefit of the better price available on that exchange.

The proposed rule change recognizes that orders received on national options exchanges in the name of public customers are provided firm quotes and volume guarantees not available to orders received in the name of broker-dealers. These volume guarantees are not insignificant, established by rule as a minimum of ten contracts and are frequently much higher.

Because orders emanating from the floor of one exchange and sent to another in multiply-listed options normally are sent in the name of the floor trader, they are often deprived of the opportunity to receive such guarantees. For example, a customer buy order may be ''stopped'' by a floor trader on the receiving exchange at that

[1] *Philadelphia Stock Exchange Guide,* Options Rules, Rule 1066 (CCH) ¶3066.

[2] *Philadelphia Stock Exchange Guide,* Options Rules, Rule 1015 (CCH) ¶3015.

[3] A mirror-image order is an order sent by the floor trader for the exact number of contracts specified in the customer order.

exchange's displayed price of 2¾ while that floor trader sends a mirror-image order to an exchange displaying an offer price of 2⅝. The floor trader sends such order under his own broker-dealer give-up. The receiving exchange's floor traders do not know that the order is for the benefit of a customer and are under no obligation to provide the order with its exchange customer guarantee. Consequently, the order may not be executed and the quote, in accordance with the ''trade or fade'' rules on the options exchanges, may then be changed to a 2¾ offer. Once the quote has faded to 2¾, the customer is deprived of an opportunity to receive a 2⅝ fill, as the floor trader who sent the order may then fill the customer at his own exchange's displayed price of 2¾, without the concern of creating a trade-through.

As proposed herein, the P/A designator would serve to inform receiving markets that a customer order is being represented by the floor trader's order.[4] Knowledge that the order is for the benefit of a customer will form the basis for such orders to be provided with those customer volume guarantees currently afforded to customer orders received directly by the various exchanges. Use of the P/A designator therefore will ensure that the customer receives the volume guarantee provided on the exchange displaying the superior price and will reverse the deleterious effects the trade-or-fade rules may have had in promoting fades of such prices, at least in instances where a customer order is involved. By providing orders placed in the name of floor traders, but for the benefit of customers, with public customer volume guarantees, the proposal promotes objectives of the national market system in the options marketplace. Specifically, the proposal promotes the practicability of brokers executing investors' orders in the best market.[5] In addition, the proposal is intended to assure the economically efficient execution of securities transactions.[6]

As an interim step toward implementing these national market system objectives in the equity options marketplace, the use of the P/A designator would be adopted on a voluntary basis by Phlx floor traders and available to any reciprocating floor traders on other national options exchanges who have agreed to execute Phlx P/A orders in the same multiply-listed options on the same basis. In preparation for such implementation, the Exchange has identified its multiply-listed options participating in the voluntary P/A designation.

To qualify as a P/A order, the mirror-image order sent by the floor trader must be for no more than the number of contracts on the customer's order in-hand and must be either a market or a marketable limit order. An order would not qualify as a P/A order if the customer's order has already been executed prior to the time the mirror-image order is sent to the Phlx. To qualify as ''customer,'' the account for which price improvement is sought must be a non-broker-dealer account.

The proposed rule change is consistent with Section 6(b)(5) of the Act[7] in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, remove impediments to and perfect the mechanism of a free and open market and a national market system, as well as to protect investors and the public interest, by improving the execution procedure for principal-acting-as-agent orders in multiply-listed options.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Phlx consents, the Commission will:

(A) by order approve such proposed rule change, or,

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–95–66 and should be submitted by October 19, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–24096 Filed 9–27–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36263; File No. SR–Phlx–95–32]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Broker-Dealer Orders on PACE

September 21, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. § 78s(b)(1), notice is hereby given that on June 12, 1995, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. On September 19, 1995, the Exchange submitted to the Commission Amendment No. 1 to the proposed rule change, which is also described below.[1] The Commission is

[4] The Phlx will surveil for compliance with the provision to assure that its traders are sending orders on behalf of a bona fide customer account prior to such customer order being executed on the exchange where that order was routed to receive the benefit of the better price available on that exchange. The Phlx expects equivalent surveillance to be conducted on all participating exchanges.

[5] 15 U.S.C. 78k–1(a)(1)(C)(iv).

[6] 15 U.S.C. 78k–1(a)(1)(C)(i).

[7] 15 U.S.C. § 78f.

[1] *See* letter from Gerald D. O'Connell, First Vice President, Phlx, to Glen Barrentine, Team Leader,

publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx, pursuant to Rule 19b–4 of the Act, proposes to amend Rule 229, Philadelphia Stock Exchange Automated Communication and Execution System (''PACE''), to permit non-agency orders under certain circumstances. Specifically, Supplementary Material .02 is proposed to be amended to permit non-agency orders in situations where a Specialist Agreement is in effect. The Specialist Agreement is an Exchange form signed by a Phlx equity specialist who has agreed to accept non-agency orders through PACE. The Agreement shall identify the member firms responsible for the orders and shall set forth the execution parameters applicable to the orders. The text of the proposed rule change is available at the Exchange and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Rule 229 to permit non-agency orders on the PACE System. PACE is the Exchange's system for the automatic delivery and execution of orders on the Phlx equity floor. Currently, Supplementary Material .02 to Rule 229 states that only agency orders are eligible under PACE. Further, agency orders are defined as orders entered on behalf of public customers, which are not for the account of a broker-dealer or any account in which a broker-dealer or an associate person of a broker-dealer has any direct or indirect interest.

At this time, it is proposed that under certain circumstances non-agency orders be permitted over PACE. Phlx specialists may file a Specialist Agreement with the Exchange to allow the receipt and execution of such orders.[2] A Specialist Agreement is an Exchange form signed by a Phlx equity specialist who has agreed to accept non-agency orders through PACE. The Agreement shall identify the member firms responsible for the orders and shall set forth the execution parameters applicable to the orders (*i.e.*, order size guarantees).[3] The execution parameters need not include volume guarantees in excess of firm quote obligations to buy on the displayed bid or sell on the displayed offer for the displayed size in accordance with existing rules for orders not currently on PACE.

Moreover, the Exchange would require that any specialist who has entered into a Specialist Agreement to facilitate broker-dealer orders on PACE, pursuant to the proposed provision, must also provide the same execution parameters to any other member broker-dealer that desires the same parameters (*i.e.*, same order size guarantees) with that specialist.[4] This requirement is to ensure that all broker-dealers are afforded the opportunity to receive the same treatment by a specialist which that specialist has bestowed on any other individual broker-dealer. Lastly, the Exchange notes that the order designator ''P'' will be utilized by the PACE system to indicate when an order is for the account of a broker-dealer.

The purpose of permitting non-agency orders onto PACE is to extend the benefits of PACE to Phlx member firms for their proprietary as well as customer orders. The Exchange believes that allowing such orders onto PACE should serve the important function of adding liquidity and trading opportunities to the Phlx marketplace. In addition, the Exchange believes that PACE provides efficiencies to the Exchange's marketplace, which reduces costs incurred through the handling of orders on a more manual basis. This proposal contemplates that such savings can now be realized for proprietary as well as customer orders.

2. Statutory Basis

The proposed rule change is consistent with Section 6 of the Act in general, and in particular, with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, as well as to protect investors and the public interest, by reducing the costs and increasing the efficiencies of handling proprietary orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the Federal Register or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes

Division of Market Regulation, SEC, dated September 7, 1995.

[2] According to the Exchange, Phlx equity specialists who agree to accept non-agency orders through PACE would have the option of agreeing to execute non-agency orders on either a manual or automatic basis. Specifically, specialists who agree to accept such orders for manual execution would be using the PACE system as an order routing system and would be required to execute such orders manually in accordance with existing Phlx rules. Where the specialist agrees to provide for the automatic execution of non-agency orders, such orders would be executed automatically pursuant to the PACE execution parameters for public customer orders under Phlx Rule 229. Telephone conversation between Jerry O'Connell, Phlx, and Glen Barrentine and Jennifer Choi, SEC, on September 12, 1995.

[3] According to the Exchange, specialists who agree to accept non-agency orders through PACE would have the option of setting different size guarantees for agency and non-agency orders. For example, a specialist could agree to provide automatic execution of all agency orders up to 2,000 shares while limiting the size guarantee for non-agency orders to 1,000 shares. Conversely, a specialist could agree to provide a larger size guarantee to non-agency orders than to agency orders. Telephone conversation between Jerry O'Connell, Phlx, and Glen Barrentine and Jennifer Choi, SEC, on September 12, 1995. Except for such different size guarantees, a specialist who agrees to provide for the automatic execution of non-agency orders through PACE would not be allowed to vary any other PACE execution parameters. Accordingly, such specialist would be required to execute such orders through PACE in all other respects in the same manner as public agency orders are currently executed through PACE. Telephone conversation between Jerry O'Connell and Edith Hallahan, Phlx, and Glen Barrentine and Jennifer Choi, SEC, on September 20, 1995.

[4] As a result, a specialist who agrees to provide automatic execution for one member's non-agency orders, must be willing to provide automatic execution for such orders of any other member who requests it. Telephone conversation between Jerry O'Connell, Phlx, and Glen Barrentine and Jennifer Choi, SEC, on September 12, 1995.

its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–95–32 and should be submitted by October 19, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–24030 Filed 9–27–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36257; File No. SR–PHLX–95–31]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to the Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Compliance with Position and Exercise Limits for Non-PHLX Listed Options

September 20, 1995.

On March 22, 1995, the Philadelphia Stock Exchange, Inc. (''PHLX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend PHLX Rules 1001, ''Position Limits,'' [3] and 1002, ''Exercise Limits,'' [4] to require PHLX members who trade non-PHLX listed options and who are not members of the exchange where the options transactions are effected to comply with the applicable option position and exercise limits of the exchange where the options transactions are effected.

Notice of the proposed rule change appeared in the Federal Register on June 26, 1995.[5] No comments were received on the proposed rule change.[6]

The PHLX states that the purpose of the proposal is to eliminate a loophole in position and exercise limit jurisdiction among the options exchanges. According to the Exchange, a PHLX member entering into an opening transaction on another exchange in an option not listed on the PHLX and who is not a member of the exchange where the transaction is effected escapes the jurisdiction of both the PHLX and the other exchange for purposes of position limit compliance. The loophole occurs because Exchange Rule 1001 applies only to options dealt in on the PHLX. At the same time, the exchange where the options transaction is effected cannot enforce its position limit rule against a non-member.

The PHLX believes that the proposed amendments to PHLX Rule 1001 should enable the PHLX to exercise jurisdiction over a PHLX member violating the position or exercise limits in non-PHLX listed equity and index options. In pursuing such position and exercise limit violations, the PHLX will apply the position and exercise limits of the other exchange, together with any applicable exemption, interpretation or policy, to transactions in non-PHLX options by a PHLX member.[7] When a PHLX member enters into an opening transaction on another exchange in a PHLX-listed option, the PHLX will continue to apply the position and exercise limits and exemptions set forth in the PHLX's rules.

The Exchange believes that the proposal is consistent with Section 6 of the Act, in general, and, in particular, with Section 6(b)(5), in that it is designed to remove impediments to and perfect the mechanism of a free and open market as well as to protect investors and the public interest by expanding option exchange position and exercise limit jurisdiction to uniformly cover excessive transactions.

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(b)(5)[8] in that it is designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest. Specifically, the PHLX has noted that Exchange rules do not currently prohibit PHLX members from exceeding the position and exercise limits set by another exchange for non-PHLX listed option contracts. Thus, if the PHLX member is not a member of the exchange which lists the options, then neither the PHLX or the exchange that lists the options is able to enforce its position and exercise limits against the PHLX member. The proposal eliminates this loophole and strengthens the Exchange's rules by requiring a PHLX member who trades non-PHLX listed option contracts on another exchange, and who is not a member of that exchange, to comply with the option position and exercise limits set by the exchange where the transactions are effected.[9]

As the Commission has noted in the past,[10] options position and exercise limits are intended to prevent the establishment of large options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] Position limits impose a ceiling on the number of option contracts which an investor or group of investors acting in concert may hold or write in each class of options on the same side of the market (*i.e.,* aggregating long calls and short puts or long puts and short calls).

[4] Exercise limits prohibit an investor or group of investors acting in concert from exercising more than a specified number of puts or calls in a particular class within five consecutive business days.

[5] *See* Securities Exchange Act Release No. 35864 (June 19, 1995), 60 FR 33025.

[6] On July 6, 1995, the PHLX clarified the text of its proposal by (1) deleting a reference to ''stock'' in PHLX Rule 1001; and (2) adding a reference in PHLX Rule 1002 to options not dealt in on the Exchange and noting that index option position and exercise limits are governed by PHLX Rules 1001A and 1002A. Letter from Gerald D. O'Connell, First Vice President, Market Regulation and Trading Operations, PHLX, to Michael Walinskas, Branch Chief, Office of Market Supervision, Division of Market Regulation, Commission, dated July 6, 1995 (''Amendment No. 1'').

[7] The Commission notes that the position and exercise limits in equity options are uniform among all options markets.

[8] 15 U.S.C. 78f(b)(5) (1988 & Supp. V 1993).

[9] As noted above, the PHLX will also apply the exemptions, interpretations, and policies of the exchange where the options transactions are effected.

[10] *See, e.g.,* Securities Exchange Act Release No. 33283 (December 3, 1993), 58 FR 65204 (December 13, 1993) (order approving File No. SR–CBOE–93–43).

options position. In particular, position and exercise limits are designed to minimize the potential for mini-manipulations [11] and for corners or squeezes of the underlying market. They also impose a ceiling on the maximum position an investor with inside corporate or market information can establish through the use of options. In addition, they serve to reduce the possibility for disruption of the options market itself, especially in illiquid options classes. The proposal extends the benefits of the position and exercise limit rules to include all exchange-traded options transactions entered into by PHLX members. The Commission also notes that violations of the PHLX's position and exercise limits rules for transactions that do not comply with the position and exercise limits of another exchange will be subject to the same fines or disciplinary action for position and exercise limit violations as those applicable to PHLX options.[12]

The Commission finds good cause for approving Amendment No. 1 to the proposal prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register Specifically, Amendment No. 1 clarifies and strengthens the PHLX's proposal and therefore raises no new regulatory issues. Accordingly, the Commission believes that it is consistent with Section 6(b)(5) of the Act to approve Amendment No. 1 to the proposal on an accelerated basis.

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 19, 1995.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the amended proposed rule change (File No. SR-PHLX–95–31) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

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[11] Mini-manipulation is an attempt to influence, over a relatively small range, the price movement in a stock to benefit a previously established derivatives position.

[12] Minor violations of the PHLX's position and exercise limit rules for equity and index options are subject to Options Floor Procedure Advice F–15, ''Minor Infractions of Position/Exercise Limits and Hedge Exemptions.'' Other violations of the PHLX's position and exercise limits are subject to review by the Exchange's Business Conduct Committee in accordance with the PHLX's Disciplinary Rules (PHLX Rules 960.1 through 960.12).

[13] 15 U.S.C. 78s(b)(2) (1982).

[14] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–36255; International Series Release No. 858 File Nos. SR–Phlx–95–20 and SR–Phlx–95–21]

Self-Regulatory Organizations; Order Approving Proposed Rule Changes and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to Each of the Proposed Rule Changes by the Philadelphia Stock Exchange, Inc. Relating to the Listing of Customized Foreign Currency Options on the Italian Lira and Spanish Peseta

September 20, 1995.

On April 5, 1995, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] filed with the Securities Exchange Commission (''Commission'') two proposed rule changes—one to permit the listing of customized foreign currency options (''Customized FCOs'') on the Italian lira (''Lira'') and the other to list Customized FCOs on the Spanish peseta (''Peseta'').[3] Notices of the proposals appeared in the Federal Register on May 10, 1995.[4] No comment letters were received on either proposed rule change. The Exchange subsequently filed Amendment No. 1 to each of the proposals on August 21, 1995.[5] This order approves both of the Phlx proposals, as amended.

Currently the Phlx offers listed FCOs on the British pound, French franc, Swiss franc, Japanese yen, Canadian dollar, Australian dollar, German mark and European Currency Unit. Since November 1994, the Exchange has offered the ability to trade Customized FCOs on all of these currencies.[6] The Exchange now proposes to add the Lira and Peseta to the list of approved currencies on which Customized FCOs may be listed and traded pursuant to Exchange Rule 1069. Thus, there will be no continuously quoted series of Customized FCO contracts on either the Lira or Peseta.

Phlx Rule 1069(a)(1) provides that Customized FCOs may be traded on any approved underlying foreign currency pursuant to Exchange Rule 1009. Accordingly, the Exchange proposes to amend Rule 1009 to: (1) Add the Lira and Peseta to the list of approved underlying foreign currencies; and (2) specify that the Lira and Peseta are being added to the list of approved currencies solely for purposes of trading Customized FCOs pursuant to Exchange Rule 1069.[7] Additionally, Rules 1014 and 1069 are being amended to provide that there will be no quote spread parameters for Customized FCOs involving either the Lira or the Peseta.[8]

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] Customized FCOs provide investors with the ability, within specified limits, to trade FCOs with customized strike prices, cross-rate FCOs on any two approved currencies, and FCOs where the U.S. dollar is the underlying currency. In addition, FCO participants may express quotes for customized FCOs as a percentage of the underlying currency, in addition to quoting in terms of the base currency per unit of the underlying currency. *See* Securities Exchange Act Release No. 34925 (November 1, 1994), 59 FR 55720 (November 8, 1995) (''Exchange Act Release No. 34925'').

[4] *See* Securities Exchange Act Release Nos. 35678 (May 4, 1995), 60 FR 24945 (notice of File No. SR–Phlx–95–20), and 35677 (May 4, 1995), 60 FR 24941 (notice of File No. SR–Phlx–95–21).

[5] In Amendment No. 1 to each proposal, as discussed more fully herein, the Phlx: (1) increased the proposed margin levels for Customized FCOs on the proposed currencies; (2) proposed that cross-rate Customized FCOs involving the Lira or Peseta be subject to these increased margin requirements; (3) amended Phlx Rule 1009 to state in the rule that Exchange-traded FCOs on the Lira and Peseta are limited to Customized FCOs; and (4) made certain clarifying non-substantive amendments (*e.g.*, renumbering rule sections) that were necessary in order to incorporate the addition of both proposed currencies into the Exchange's rules. *See* Letter from Michele Weisbaum, Associate General Counsel and Assistant Vice President, Phlx, to Michael Walinskas, Branch Chief, Office of Market Supervision (''OMS''), Division of Market Regulation (''Division''), Commission, dated August 21, 1995 (''Amendment No. 1'').

[6] *See* Exchange Act Release No. 34925, *supra* note 3.

[7] *See* Amendment No. 1, *supra* note 5. The definitions of ''foreign currency'' and ''unit of underlying foreign currency'' in Rule 1000(a) are also being amended to add references to the Lira and the Peseta.

[8] Pursuant to Exchange Rule 1069(j)(1), quote spread parameters for customized strike FCOs on currently approved foreign currencies are twice

Continued

Consistent with the Phlx's other approved foreign currencies, Exchange Rule 1033 will be amended to specify the bid and offer rules for Customized FCOs based on the Lira and Peseta. Similarly, Rule 1034 will be amended to provide that the Exchange will determine the minimum fractional change applicable to Customized FCOs on the Lira and Peseta.

Contract Specifications

Customized FCOs based on the Lira will have the following characteristics: (1) the contract size will be 50,000,000 Lira; [9] (2) the premiums will be quoted in thousandths of a cent per unit for U.S. dollar/Italian lira contracts; and (3) the minimum premium will be $0. (00000) 01 per unit (*i.e.*, $5.00).

Customized FCOs based on the Peseta will have the following characteristics: (1) The contract size will be 5,000,000 pesetas; [10] (2) the premiums will be quoted in thousandths of a cent per unit for U.S. dollar/Spanish peseta contracts; and (3) the minimum premium will be $0. (0000) 01 per unit (*i.e.*, $5.00).

Customer Margin

For customer margin purposes, the Exchange is proposing to amend Rule 722 to set the customer margin ''add-on'' [11] percentage for Customized FCOs on both the Lira and Peseta at 7% for both initial and maintenance margin, with no adjustment for out-of-the-money Customized FCOs.[12] The Exchange will conduct a regular review of the margin levels for Customized FCOs involving either the Lira or Peseta.[13] In this review, which will be conducted at least quarterly,[14] the Exchange will determine the frequency distributions reflecting the percentage price returns for the Lira and Peseta, each in relation to the U.S. dollar, for all seven day periods during the preceding three year period. If the Exchange determines as a result of one of these reviews that the current margin add-on for each currency is not sufficient to cover at least 97.5% of all seven day price returns during that period, the Exchange will take immediate steps to increase the margin levels for each currency to one that will cover at least 97.5% of all such instances and will immediately notify the Commission of any such increases. In no event will the Exchange reduce the margin levels for Customized FCOs involving either the Lira or Peseta below the 7% level without the prior approval of the Commission pursuant to Section 19(b) of the Act. Whenever the customer margin levels for Customized FCOs on either the Lira or Peseta are changed, the Exchange will promptly notify the Exchange's membership and the public.

Customized Cross-Rates

Pursuant to Phlx Rule 1069(a)(1)(B), the Exchange may list cross-rate Customized FCOs on any two approved currencies, exclusive of the U.S. dollar (''Customized Cross-Rates'').[15] Customized Cross-Rates are currently margined using a two-tier system.

Because the margin add-on percentage for Customized FCOs on the Lira and Peseta are initially being set at levels significantly higher than those for the Phlx's other approved currencies, the Phlx will begin using a three-tier system for Customized Cross-Rates: [16] Tier I will consist of all approved currency pairings not involving the Lira or Peseta whose daily price changes have a correlation greater than or equal to .25 during the most recent 24 month period; Tier II will consist of all remaining pairings of approved currencies not involving the Lira or Peseta; and Tier III will consist of all Customized Cross-Rates involving the Lira or the Peseta. The initial and maintenance margin requirements for Tier I and Tier II Customized Cross-Rates will remain at current levels (*i.e*, 100% of the underlying value plus 4% and 6%, respectively), subject to any changes resulting from the Phlx's periodic reviews of margin adequacy.[17]

The initial and maintenance margin requirements for Tier III Customized Cross-Rates will initially be set at 100% of the underlying value plus 7%.[18] the Phlx will continue to conduct its regular periodic reviews of the margin adequacy for all approved currency combinations, however, Tier III currency pairings will not be eligible to be moved to either Tier I or Tier II based on such reviews. As a result, for Tier III currency pairings, the Phlx will need to conduct only the second stage of the review that it presently conducts for Customized Cross-Rates in Tiers I and II,[19] as modified below. Specifically, on at least a quarterly basis,[20] the Exchange will determine whether the actual margin level for Tier III (*i.e.*, 7% add-on) is adequate to cover seven day price changes for all possible cross-rate combinations within Tier III. If the margin add-on is not sufficient to cover at least 97.5% of all such changes during the preceding three year period, the Exchange will take immediate steps to increase the margin level to one that will cover at least 97.5% of all such instances and will immediately notify the Commission of such increases. In no event will the initial or maintenance

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those provided in Rule 1014(c). Because the Phlx does not list regular FCOs on either the Lira or Peseta (and will not be able to list regular FCOs on either currency pursuant to this approval order), Rules 1014(c) and 1069 will provide that there will be no quote spread parameters for Customized FCOs involving either the Lira or Peseta. The Exchange will conduct a study of the markets for Customized FCOs based on the Lira and Peseta to build an historical pricing reference database on which to analyze whether quote spread parameters should be imposed in the future for these Customized FCOs. Telephone conversation between Michele Weisbaum, Assistant General Counsel and Assistant Vice President, Phlx, and Brad Ritter, Senior Counsel, OMS, Division, Commission, on September 7, 1995.

[9] Based on an exchange rate of 1,615.00 Italian lira/U.S. dollars on August 23, 1995, as published in *The Wall Street Journal*, this would correspond to an opening position for an Italian lira customized FCO transaction (*i.e.*, 100 contracts) valued at approximately $3,096,000.

[10] Based on an exchange rate of 126.25 Spanish pesetas/U.S. dollars on August 23, 1995, as published in *The Wall Street Journal*, this would correspond to an opening position for a Spanish peseta customized FCO transaction (*i.e.*, 100 contracts) valued at approximately $3,960,000.

[11] For these purposes, ''add-on'' is the percentage of the current market value of the currency a Customized FCO that the holder of a ''short'' position must pay in addition to the current market value of each Customized FCO.

[12] According to the Exchange, the 7% margin add-on level is sufficient to cover 98.84% and 99.10% of all seven day price changes during the past three years involving the Lira and Peseta, respectively, in relation to the U.S. dollar. *See* Amendment No. 1, *supra* note 5.

[13] Telephone conversation between Michele Weisbaum, Associate General Counsel and Assistant Vice President, Phlx, and Brad Ritter, Senior Counsel, OMS, Division, Commission, on August 30, 1995.

[14] *Id.*

[15] *See* Exchange Act Release No. 34925, *supra* note 3.

[16] *See* Amendment No. 1, *supra* note 5.

[17] The Exchange conducts a regular two-step review of the margin levels for Customized Cross-Rates. The first review, which is conducted at least monthly, examines the correlations between all of the possible combinations of approved currencies for the most recent two-year period. If a monthly or any special review reveals that a combination of approved currencies should be in another tier based on the correlation of those approved currencies, the Exchange will take immediate steps to implement the change. The second review examines whether the actual margin levels are adequate to cover seven day price changes for all possible cross-rate combinations within Tiers I and II. Frequency distributions of seven day price movements for all currency combinations are reviewed on a monthly basis to determine whether the percentage of margin ''add-on'' is sufficient to cover 95% of all instances over the preceding two year period for all currency combinations within each tier. If the percentage falls to less than 95%, the Exchange will take steps to increase the margin level for those pairings to one that will cover at least 97.5% of all instances. If the margin adequacy level is greater than 99%, the Exchange will take steps to lower the margin requirements for those pairings to one which will cover 99%. In no event, however, will the initial or maintenance margin levels for any pairing of approved currencies be reduced below the 4% and 6% levels discussed above without the prior approval of the Commission. *See* Exchange Act Release No. 34925, *supra* note 3.

[18] *See* Amendment No. 1, *supra* note 5.

[19] *See supra* note 17.

[20] *See supra* note 13.

margin levels for any Tier III pairing be reduced below the 7% level discussed above without the prior approval of the Commission pursuant to Section 19(b) of the Act.[21]

As with Customized FCOs currently being listed by the Phlx, the Options Clearing Corporation (''OCC'') will clear and settle all trades in Customized FCOs involving the Lira or Peseta. Because quotes in these options will not be continuously updated or otherwise priced by the Phlx, the OCC will generate a theoretical price based on the prices and quotes of the Customized FCOs and the closing value of the relevant underlying currency. The OCC will use this price to make the Customized FCO contracts involving the Lira and Peseta daily and to calculate margin requirements.

The Commission finds that the proposed rule changes are 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(b)(5).[22] First, the Commission believes that the trading of listed Customized FCOs on the Lira and Peseta should provide investors with a hedging and risk transfer vehicle that will reflect the overall movement of the Lira and Peseta in relation to the U.S. dollar and the other Phlx approved currencies. In this regard, Customized FCOs on the Lira and Peseta should provide investors with an efficient and effective means of managing risk associated with those currencies.

Second, Customized FCOs on both the Lira and Peseta will trade within the Exchange's existing framework for Customized FCOs which the Commission has previously found to adequately address the Commission's regulatory concerns.[23] Specifically, this framework includes, among other things, rules pertaining to: obligations of specialists and registered options trades (Rule 1014); position limits (Rule 1001); exercise limits (Rule 1002); bids and offers (Rule 1033); minimum fractional changes (Rule 1034); and trading rotations, halts, and suspensions (Rule 1047).[24]

Third, the Exchange has proposed adequate customer margin requirements for Customized FCOs on both proposed currencies. The proposed add-on margin (*i.e.*, 7% for both the Lira and Peseta) provides sufficient coverage to account for historical and potential volatility in the Lira and the Peseta in relation to the U.S. dollar. As noted above, the 7% customer margin add-on level would cover 98.84% and 99.10% of all seven day price changes over the prior three-year period in the Lira and Peseta, respectively, in relation to the U.S. dollar. Moreover, all Customized Cross-Rates involving either the Lira or Peseta will be margined at the 7% margin add-on level as opposed to either the 4% or 6% levels that apply to Customized Cross-Rates involving the Exchange's other approved currencies. In addition, the Exchange must conduct periodic reviews of the volatility in the two currencies and must take immediate steps to increase the existing customer margin levels if the Exchange determines that the existing levels are no longer adequate.[25] As a result, the Commission believes that the proposed customer margin levels and the review and maintenance criteria for those margin levels will result in adequate coverage of contract obligations and are designed to reduce risks arising from inadequate margin levels for Customized FCOs (including Customized Cross-Rates) involving either the Lira or Peseta.

The Commission finds good cause for approving Amendment No. 1 to each of the proposed rule changes prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register. First, the changes increasing the margin levels for Customized FCOs (including Customized Cross-Rates) involving the Lira or Peseta serve an investor protection purpose by reducing the risks that can arise from inadequate margin levels. Additionally, the Commission notes that these changes impose more restrictive standards than those contained in the original proposals which were published in the Federal Register for the full 21-day comment without any comments being received by the Commission.

Second, the changes to the language in the Phlx's rules specifying that FCOs on the Lira and the Peseta are limited to Customized FCOs (including Customized Cross-Rates) and the remaining clarifying amendments in Amendment No. 1 serve to minimize any potential for investor confusion from the proposed rule changes.

Third, accelerated approval of the proposed amendments to the rule changes will allow the Exchange to begin offering these products without further delay to those investors who desire an exchange-traded product to hedge their currency exposure to the Lira and Peseta.

Accordingly, the Commission believes that the proposed rule changes are consistent with Section 6(b)(5) of the Act and that good cause exists to approve Amendment No. 1 to each of the Phlx's proposals on an accelerated basis.

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1 to each of the proposals. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to the File No. SR–Phlx–95–20 or File No. SR–Phlx–95–21, as appropriate, and should be submitted by October 19, 1995.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[26] that the proposed rule changes (File Nos. SR–Phlx–95–20 and SR–Phlx–95–21), as amended, are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[27]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–24026 Filed 9–27–95; 8:45 am]

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[21] *See* Amendment No. 1, *supra* note 5.

[22] 15 U.S.C. 78f(b)(5) (1988).

[23] *See* Exchange Act Release No. 34925, *supra* note 3.

[24] *id.*

[25] *See* ''Customer Margin'' and ''Customized Cross-Rates,'' *supra.*

[26] 15 U.S.C. 78s(b)(2) (1988).

[27] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–36264; File No. SR–PHILADEP–95–07]

Self-Regulatory Organizations; Philadelphia Depository Trust Company; Notice of Filing of Proposed Rule Change Seeking To Implement the Fully Automated Securities Transfer Reconciliation Accounting Control System on a Permanent Basis

September 21, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on July 14, 1995, the Philadelphia Depository Trust Company (''PHILADEP'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by PHILADEP. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

PHILADEP seeks permanent approval for its Fully Automated Securities Transfer Reconciliation Accounting Control System (''FASTRACS'').[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, PHILADEP included statements concerning the purpose of and the basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. PHILADEP has prepared summaries, as set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[3]

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

On July 19, 1994, the Commission approved a proposed rule change establishing a pilot program for FASTRACS for the transfer of certain securities between PHILADEP and certain transfer agents.[4] On March 10, 1995, the Commission extended its approval of the pilot program through December 29, 1995.[5] FASTRACS is an automated program by which PHILADEP and the participating transfer agents use a master balance certificate to evidence the number of securities of a particular issue that are registered in PHILADEP's nominee name. The transfer agents have custody of the securities in the form of balance certificates. The transfer agents adjust daily the balance certificates to reflect PHILADEP's withdrawal and deposit activity.

Since obtaining temporary approval of the original filing, PHILADEP has provided the Commission with copies of the test results of FASTRACS activity among the three designated transfer agents. PHILADEP now seeks permanent approval of FASTRACS and requests that the Commission allow it to implement FASTRACS with an unlimited number of transfer agents.

PHILADEP states that FASTRACS has enhanced PHILADEP's operational efficiency, has substantially reduced its burdens in reconciling its positions, and has saved costs associated with these functions. PHILADEP represents that it has encountered no significant operational problems and believes the system operated effectively during the testing phase. Furthermore, PHILADEP believes the current filing is consistent with the Commission's Direct Registration System (''DRS'') initiative[6] insofar as DRS compels PHILADEP and other participating clearing agencies to establish fully operational automated programs for the transfer of certain securities between participating clearing agencies and their transfer agents.

PHILADEP believes that the proposed rule change is consistent with its requirements under Section 17A of the Act because it is contemplated to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions by providing an efficient administrative mechanism to operate its deposit and transfer operation.

B. Self-Regulatory Organization's Statement on Burden on Competition

PHILADEP contends that the proposed rule change poses no appreciable threat or burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which PHILADEP consents, the Commission will:

(A) By order approve such proposed rule changes or

(B) Institute proceeding to determine whether the proposed rule changes should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making such submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements respecting the proposed rule change that are filed with the Commission, and all written communications concerning the proposed rule change between the Commission and any person, other than those that may be withheld from the public pursuant to the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C.

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] For a complete description of FASTRACS, refer to Securities Exchange Act Release Nos. 34404 (July 19, 1994), 59 FR 38010 [File No. SR–PHILADEP–90–03] (order approving proposed rule change relating to implementation of an automated balance certificate program on a temporary basis until December 30, 1994) and 35676 (May 4, 1995), 60 FR 24951 [File No. SR–PHILADEP–94–06] (order granting temporary approval of a proposed rule change extending the pilot program for FASTRACS until December 29, 1995).

[3] The Commission has modified the text of the summaries prepared by PHILADEP.

[4] Securities Exchange Act Release No. 34404 (July 19, 1994), 59 FR 38010 [File No. SR–PHILADEP–90–03] (order approving FASTRACS program on a temporary basis).

[5] Securities Exchange Act Release No. 35676 (May 4, 1995), 60 FR 24951 [File No. SR–PHILADEP–94–06] (order granting temporary approval of a proposed rule change extending the pilot program for FASTRACS until December 29, 1995). The Commission extended the temporary approval of the FASTRACS program so that PHILADEP could complete adequate testing. The program was limited to three transfer agents for the duration of the temporary approval period.

[6] For a complete description of DRS, refer to Securities Exchange Act Release No. 35038 (December 1, 1994), 59 FR 63652 [File No. S7–34–94] (concept release soliciting comment on proposed transfer agent operated direct registration system).

20549. Copies of such filings will also be available for inspection and copying at the principal office of PHILADEP. All submissions should refer to File No. SR–PHILADEP–95–07 and should be submitted within October 19, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–24028 Filed 9–27–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36265; File Nos. SR–SCCP–95–05, and SR–MCC–95–03]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia and Midwest Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Changes Incorporating Enhancements to the Fixed Income Transaction System

September 21, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on August 1, 1995, and August 23, 1995, respectively, the Stock Clearing Corporation of Philadelphia (''SCCP'') and the Midwest Clearing Corporation, filed with the Securities and Exchange Commission (''Commission'') the proposed rule changes as described in Items I, II, and III below, which Items have been prepared primarily by SCCP and MCC. On August 3, 1995, SCCP amended its filing to request approval pursuant to Rule 19b–4(e)(6) rather than pursuant to Rule 19b–4(e)(4) as requested in the original filing.[2] On August 18, 1995, SCCP amended the filing to clarify the parameters defining the seller's value tolerance for the comparison of all fixed income securities.[3] The Commission is publishing this notice to solicit comments on the proposed rule changes from interested parties.

I. Self-Regulatory Organizations' Statements of the Terms of Substance of the Proposed Rule Changes

SCCP and MCC propose to offer their participants the benefits of a recent enhancement to the National Securities Clearing Corporation's (''NSCC'') Fixed Income Transaction System (''FITS'').[4] The enhancement expands the parameters for the seller's trade input and trade comparison for FITS transactions.

II. Self-Regulatory Organizations' Statements of the Purpose of and Statutory Basis for, the Proposed Rule Changes

In their filings with the Commission, SCCP and MCC included statements concerning the purpose of and the basis for the proposed rule changes and discussed any comments received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. SCCP and MCC have prepared summaries, as set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[5]

A. Self-Regulatory Organizations' Statements of the Purpose of and the Statutory Basis for the Proposed Rule Changes

In previous filings, the Commission approved SCCP's and MCC's interfaces with NSCC's FITS service so that SCCP's and MCC's participants can take full advantage of the benefits and features offered by FITS.[6] The current proposed rule changes expand the comparison parameters for trade input and comparison for transactions in debt securities. The comparison parameters have been increased from $.05 per $1,000 of contract amount to $.10 per $1,000 of contract amount for trades greater than $100,000 and to a net contract amount difference of $10.00 for trades of $100,000 or less. The rule changes are being made in accordance with NSCC's recent changes to FITS.[7]

SCCP and MCC believe the proposed system enhancements comply with Section 17A(b)(3)(F)[8] of the Act because the enhancements should promote the prompt and accurate clearance and settlement of securities transactions by increasing the initial comparison rates of FITS trade activity.

B. Self-Regulatory Organizations' Statements on Burden on Competition

SCCP and MCC do not believe that the proposed rule changes will impose any burden on competition.

C. Self-Regulatory Organizations' Statements on Comments on the Proposed Rule Changes Received from Members, Participants or Others

Written comments were neither solicited nor received with respect to the proposed rule changes.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

The foregoing rule changes have become effective upon filing pursuant to Section 19(b)(3)(A)[9] of the Act and Rule 19b–4(e)(6)[10] thereunder because the rule changes do not significantly affect the protection of investors or the public interest; do not impose any significant burden on competition; and by their terms, do not become operative for thirty days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Commission has designated that these proposed rule changes (File Nos. SR–SCCP–95–05 and SR–MCC–95–03) become effective upon filing. The proposals are consistent with the protection of investors and the public interest because the expanded trade comparison parameters at SCCP and MCC now will be consistent with the parameters used by NSCC. At any time within sixty days of the filing of such proposed rule changes, the Commission may summarily abrogate such rule changes if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the

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[7] 17 CFR 200.30–3(a)(12)(1994).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Letter from J. Keith Kessel, Compliance Officer, SCCP, to Peter R. Geraghty, Esq., Division of Market Regulation (''Division''), Commission (August 3, 1995).

[3] Letter from J. Keith Kessel, Compliance Officer, SCCP, to Margaret J. Blake, Esq., Staff Attorney, Division, Commission (August 16, 1995).

[4] For a complete description of the enhancement to NSCC's FITS, refer to Securities Exchange Act Release No. 35853 (June 16, 1995), 60 FR 32722 [File No. SR–NSCC–95–05] (order granting accelerated approval of a proposed rule change modifying procedures relating to the trade comparison service for debt securities).

[5] The Commission has modified the text of the summaries prepared by SCCP and MCC.

[6] Securities Exchange Act Release No. 33524 (January 26, 1994), 59 FR 4958 [File Nos. SR–MCC–93–04 and SCCP–93–03] (order granting accelerated approval of proposed rule changes relating to the establishment of interfaces with NSCC's FITS).

[7] *Supra* note 4.

[8] 15 U.S.C. 78q–1(b)(1)(F) (1988).

[9] 15 U.S.C. § 78s(b)(3)(A) (1988).

[10] 17 CFR 240.19b–4(e)(6) (1994).

Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filings will also be available for inspection and copying at the principal offices of SCCP and MCC. All submissions should refer to the File Nos. SR–SCCP–95–05 and SR–MCC–95–03, and should be submitted by October 19, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–24029 Filed 9–27–95; 8:45 am]

BILLING CODE 8010–01–M

SOCIAL SECURITY ADMINISTRATION

1994–95 Advisory Council on Social Security; Meeting

AGENCY: Social Security Administration.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice announces a meeting of the 1994–95 Advisory Council on Social Security (the Council).

DATES: Thursday, October 12, 1995, 9 a.m. to 5 p.m. and Friday, October 13, 1995, 9 a.m. to 3 p.m.

ADDRESSES: Sheraton City Centre, 1143 New Hampshire Avenue, NW, Washington D.C., 20037, (202) 775–0800.

FOR FURTHER INFORMATION CONTACT: By mail—Nick Curabba, 1994–95 Advisory Council on Social Security, Suite 705, 1825 Connecticut Avenue, NW, Washington, DC 20009; By telephone—(202) 482–7119; By telefax—(202) 482–7123.

SUPPLEMENTARY INFORMATION:

I. Purpose

Under section 706 of the Social Security Act (the Act), the Secretary of Health and Human Services (the Secretary) appoints the Council every 4 years. The Council examines issues affecting the Social Security Old-Age, Survivors, and Disability Insurance (OASDI) programs, as well as the Medicare program and impacts on the Medicaid program, which were created under the Act.

In addition, the Secretary has asked the Council specifically to address the following:

- Social Security financing issues, including developing recommendations for improving the long-range financial status of the OASDI programs;
- General program issues such as the relative equity and adequacy of Social Security benefits for persons at various income levels, in various family situations, and various age cohorts, taking into account such factors as the increased labor force participation of women, lower marriage rates, increased likelihood of divorce, and higher poverty rates of aged women.

In addressing these topics, the Secretary suggested that the Council may wish to analyze the relative roles of the public and private sectors in providing retirement income, how policies in both sectors affect retirement decisions and the economic status of the elderly, and how the disability insurance program provisions and the availability of health insurance and health care costs affect such matters.

The Council is composed of 12 members in addition to the chairman: Robert Ball, Joan Bok, Ann Combs, Edith Fierst, Gloria Johnson, Thomas Jones, George Kourpias, Sylvester Schieber, Gerald Shea, Marc Twinney, Fidel Vargas, and Carolyn Weaver. The chairman is Edward Gramlich.

The Council met previously on June 24–25, 1994 (59 FR 30367), July 29, (59 FR 35942), September 29–30 (59 FR 47146), October 21–22 (59 FR 51451), November 18–19 (59 FR 55272), January 27, 1995 (60 FR 3416), February 10–11 (60 FR 5433), March 8–9 (60 FR 10091), March 10–11 (60 FR 10090), April 21–22 (60 FR 18419), May 19–20 (60 FR 24961), June 2–3 (60 FR 27372) July 27–28 (60 FR 35097), August 31–September 1 (60 FR 41142).

II. Agenda

The following topics will be presented and discussed:

* Previously developed plans that would revise the OASDI program along different lines;

* Preliminary findings from stochastic simulation model analysis of Social Security Trust Funds asset allocation policies.

* The organization and initial drafting of the Council's Final Report.

The meeting is open to the public to the extent that space is available. Interpreter services for persons with hearing impairments will be provided. A transcript of the meeting will be available to the public on an at-cost-of duplication basis. The transcript can be ordered from the Executive Director of the Council.

(Catalog of Federal Domestic Assistance Program Nos. 93.802, Social Security-Disability Insurance; 93.803, Social Security Retirement Insurance; 93.805, Social Security-Survivors Insurance.)

Dated: August 21, 1995.

Daniel Wartonick,

Acting Executive Director, 1994–95 Advisory Council on Social Security.

[FR Doc. 95–24018 Filed 9–27–95; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 95–015]

Load Lines: Barges on Lake Michigan

AGENCY: Coast Guard, DOT.

ACTION: Notice.

SUMMARY: The Coast Guard is amending its policy regarding the limited service domestic load line routes for unmanned, river-service, dry-cargo barges operating on Lake Michigan between Chicago (Calumet Harbor), Illinois, and Milwaukee, Wisconsin, and between Chicago and St. Joseph, Michigan. This amendment is in response to a request for comments.

EFFECTIVE DATE: September 28, 1995.

ADDRESSES: Documents referred to in this preamble are available for inspection or copying at the Office of the Executive Secretary, Marine Safety Council (G–LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street SW., room 3406, Washington, DC 20593–0001 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

FOR FURTHER INFORMATION CONTACT: Mr. William Hayden, Office of Marine Safety, Security and Environmental Protection, U.S. Coast Guard (G–MMS–2), room 1308, 2100 Second Street SW., Washington, DC 20593–0001. The telephone number is (202) 267–2988.

SUPPLEMENTARY INFORMATION:

Background

On March 31, 1995, the Coast Guard published a notice in the Federal Register (60 FR 16693) concerning its policy for unmanned, river-service, dry-cargo barges operating on Lake Michigan between Chicago (Calumet Harbor), Illinois, and Milwaukee, Wisconsin, and between Chicago and St. Joseph (Benton Harbor), Michigan. Under that policy, these barges are exempt from the requirement that they

[11] 17 CFR 200.30–3(a)(12) (1994).

have a Great Lakes Load Line Certificate under 46 CFR part 45 if they have a Limited Service Domestic Voyage Load Line Certificate and meet certain special operating restrictions and conditions.

The Coast Guard received 16 comments on the March 31, 1995, notice.

Discussion of Comments and Changes

1. One comment stated that river barges should not be permitted to operate on the Great Lakes unless they meet the same requirements as lakes barges.

This comment was based on the misunderstanding that the barges operating in this service are exempt from all load line requirements. Although the barges do not receive a Great Lakes load line certificate, thereby precluding their use in unlimited Great Lakes service, they are required to have a limited service domestic load line. The limited service domestic load line is required to be maintained like any other load line (i.e., the barges must be surveyed annually, be kept in good repair, and be drydocked every 5 years).

2. One comment supported the requirement in paragraph II.4. that a rake barge be used as the lead in the tow. Fourteen comments opposed the requirement and requested that it be dropped. Several comments pointed out that this requirement was not part of the original policy for the Chicago to Milwaukee route and should not have been added later.

The main oppositions to the rake-barge requirement seem to be economic, that a rake barge carries less cargo than a box barge, and logistical, that there are not enough rake barges currently certified to operate on Lake Michigan. The rake-barge requirement was based on the fact that the use of a rake barge in the lead tends to reduce transit time and better enable the tow to escape rough weather. However, in light of the burdens imposed by this requirement and the good safety record on the Chicago-to-Milwaukee route, the Coast Guard is removing this requirement until it can assess operations on the new Chicago-to-St. Joseph route.

For the reasons set out above, the Coast Guard, under 46 U.S.C. 5108 and 46 CFR 45.15(a), amends paragraph II.4. of the exemption announced in the notice of March 31, 1995, (60 FR 16693) to read as follows:

Limited Service Domestic Voyage Load Line Routes: Chicago, Illinois, to Milwaukee, Wisconsin, and Chicago, Illinois, to St. Joseph, Michigan

II. Operating Restrictions

* * * * *

4. The towing vessel must have adequate horsepower to handle the size of the tow, with a minimum of 1,000 horsepower. The tow is limited to a maximum of three barges.

* * * * *

Dated: September 22, 1995.

Joseph J. Angelo,

Director For Standards, Office of Marine Safety, Security, and Environmental Protection.

[FR Doc. 95–24110 Filed 9–27–95; 8:45 am]

BILLING CODE 4910–14–M

[CGD 95–074]

Oil Spill Removal Organization Classification Guidelines

AGENCY: Coast Guard, DOT.

ACTION: Notice of availability.

SUMMARY: The Coast Guard has developed revised guidelines for classifying Oil Spill Removal Organizations (OSRO). These organizations provide oil spill response capabilities to vessel and facility owners and operators. OSROs are classified based on their oil spill response resources. The revised OSRO guidelines make fundamental changes in the Coast Guard's OSRO classification process. This notice announces the availability of the revised OSRO guidelines and solicits comments on them.

DATES: Comments must be received on or before October 30, 1995.

ADDRESSES: Comments should be mailed to Commandant (G–MRO–3), Room 2100, U.S. Coast Guard, 2100 Second Street, SW, Washington, DC, 20593–0001, ATTN: LT Terry Hoover.

Copies of the revised OSRO guidelines may be obtained by contacting LT Terry Hoover at (202) 267–0448 or faxing a request at (202) 267–4085.

FOR FURTHER INFORMATION CONTACT: LT Terry Hoover, Response Division (G–MRO), U.S. Coast Guard, 2100 Second Street, SW, Washington, DC, 20593–0001, telephone (202) 267–0448.

SUPPLEMENTARY INFORMATION: Vessel and facility owners and operators are required to have oil spill response plans which identify oil spill response resources. The OSRO program was established to allow vessel and facility owners and operators to list an OSRO in an OPA 90 response plan instead of providing a detailed list of oil spill response equipment. Through the plan development and plan review processes, inefficiencies have been identified in the OSRO classification process. Because of these identified inefficiencies, the Coast Guard has revised the OSRO classification process. The process has been changed to make the classification process a better representation of an OSRO's capability to respond to an oil spill.

Dated: September 21, 1995.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 95–24109 Filed 9–27–95; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

[Summary Notice No. PE–95–35]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before October 18, 1995.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

Comments may also be sent electronically to the following internet address: nprmcmtsmail.hq.faa.gov. The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. D. Michael Smith, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7470.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on September 25, 1995.

Michael Chase,

Acting Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 28296
Petitioner: FlightSafety International
Sections of the FAR Affected: 14 CFR 61.57 (c) and (d), 61.58(b), and 61.157 (a) and (f)(1)
Description of Relief Sought: To permit FlightSafety International to establish a continuous qualification training program for pilots flying for operations conducted under part 91 that would allow the participants to (1) Satisfy certain training and recent flight experience requirements in Level B and Level C simulators; (2) act as pilot in command of aircraft type certificated for more than one required pilot without satisfactorily completing, within the previous 12 calendar months, one of the flight checks or tests specified in § 61.58(b); and (3) obtain an airline transport pilot certificate or an additional type rating without passing the practical test as prescribed in § 61.157(a).

Docket No.: 28318
Petitioner: Ogden-Hinckley Airport
Sections of the FAR Affected: 14 CFR 91.215(b)(2)
Description of Relief Sought: To permit operations at Ogden-Hinckley Airport to be conducted in aircraft that are not equipped with transponders that have automatic pressure altitude reporting capability.

Docket No.: 28338
Petitioner: Rich International Airways, Inc.
Sections of the FAR Affected: 14 CFR 121.310(m)
Description of Relief Sought: To allow Rich International Airways, Inc., to operate two L–1011–385–3 aircraft, also known as L–1011–500 aircraft, that have more than 60 feet between emergency exits.

Dispositions of Petitions

Docket No.: 20049
Petitioner: T.B.M., Inc.
Sections of the FAR Affected: 14 CFR 91.529(a)(1)
Description of Relief Sought/ Disposition: To extend Exemption No. 2956, as amended, which permits T.B.M., Inc., to operate McDonnell Douglas DC–6 and DC–7 aircraft without a flight engineer during flightcrew training, ferry operations, and test flights that are conducted to prepare for firefighting operations conducted under part 137.
Grant, September 11, 1995, Exemption No. 2956I

Docket No.: 24041
Petitioner: Butler Aircraft Co.
Sections of the FAR Affected: 14 CFR 91.529(a)(1)
Description of Relief Sought/ Disposition: To extend Exemption No. 2989, as amended, which permits Butler to operate McDonnell Douglas DC–6 and DC–7 aircraft without a flight engineer during flight crew training, ferry operations, and test flights that are conducted to prepare for firefighting operations conducted under part 137.
Grant, September 11, 1995, Exemption No. 2989H

Docket No.: 27832
Petitioner: John L. Geitz
Sections of the FAR Affected: 14 CFR 91.109 (a) and (b)(3)
Description of Relief Sought/ Disposition: To allow Mr. Geitz to conduct certain flight training and to provide simulated instrument flight experience in certain Beech airplanes that are equipped with a functioning throwover control wheel.
Grant, September 11, 1995, Exemption No. 6165

Docket No.: 28223
Petitioner: Executive Air Fleet, Inc.
Sections of the FAR Affected: 14 CFR 135.25 (b) and (c)
Description of Relief Sought/ Disposition: To permit Executive Air Fleet, Inc., (EAF) to operate its aircraft without having the executive use of at least one aircraft that meets the requirements for at least one kind of operation authorized by EAF's Operations Specifications.
Grant, September 11, 1995, Exemption No. 6158

Docket No.: 28244
Petitioner: Puget Sound Seaplanes
Sections of the FAR Affected: 14 CFR 135.203(a)(1)
Description of Relief Sought/ Disposition: To allow Puget Sound Seaplanes to conduct operations under visual flight rules (VFR) outside controlled airspace, over water, at an altitude below 500 feet.
Grant, September 11, 1995, Exemption No. 6157

Docket No.: 28277
Petitioner: Great Lakes Helicopters, Inc.
Sections of the FAR Affected: 14 CFR 133.1(d) and 133.34(e)(1)
Description of Relief Sought/ Disposition: To permit external-load operations in support of rescue operations with live personnel (both rescuer and victim) for the Sonoma County, California, Sheriff Department.
Denial, September 11, 1995, Exemption No. 6160

[FR Doc. 95–24127 Filed 9–27–95; 8:45 am]

BILLING CODE 4910–13–M

Civil Tiltrotor Development Advisory Committee

Pursuant to Section 10(A)(2) of the Federal Advisory Committee Act Public Law (72–362); 5 U.S.C. (App. I), notice is hereby given of the cancellation of a meeting of the Federal Aviation Administration (FAA) sponsored Civil Tiltrotor Development Advisory Committee (CTRDAC) previously announced for October 11 in Washington, DC. The meeting will be rescheduled on a later date. A Federal Register announcement will be published once a date has been chosen.

For further information, contact Ms. Karen Braxton (202) 267–9451.

Dated: September 22, 1995.

Richard A. Weiss,

Designated Federal Official, Civil Tiltrotor Development Advisory Committee.

[FR Doc. 95–24125 Filed 9–27–95; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc.; "Technical Management Committee"; Notice of RTCA Technical Management Committee Meeting To Be Held September 29, 1995; Cancellation

AGENCY: Federal Aviation Administration, DOT.

ACTION: Cancellation.

SUMMARY: The RTCA Technical Management Committee meeting scheduled to be held on September 29, 1995, announced in a notice published on page 47640 on the third column in the issue of September 13, 1995, volume 60, has been canceled due to unforeseen circumstances. The meeting has been rescheduled for October 20, 1995. An announcement containing further details of the October 20 meeting will be published within the next few days.

Issued in Washington, D.C., on September 26, 1995.

Janice L. Peters,

Designated Official.

[FR Doc. 95–24256 Filed 9–26–95; 2:06 pm]

BILLING CODE 4910–13–M

Notice of Intent to Rule on Application (#95–02–C–00–EGE) To Impose and Use the Revenue from a Passenger Facility Charge (PFC) at Eagle County Regional Airport, Submitted by Eagle County, Colorado, Eagle, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at Eagle County Regional Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before October 30, 1995.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Alan Weichmann, Manager; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 5440 Roslyn, Suite 300; Denver, CO 80216–6026.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Jim Fritze, County Attorney at the following address: Eagle County Regional Airport, 517 Airport Road North Ramp, P.O. Box 850, Eagle, CO 81631.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Eagle County Regional Airport, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Chris Schaffer, (303) 286–5525; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 5440 Roslyn, Suite 300; Denver, CO 80216–6026. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application (#95–02–C–00–EGE) to impose and use PFC revenue at Eagle County Regional Airport, under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On September 20, 1995, the FAA determined that the application to impose and use the revenue from a PFC submitted by Eagle County, Colorado, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than December 29, 1995.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Actual charge effective date: March 1, 1996.

Proposed charge expiration date: January 30, 1998.

Total estimated PFC revenues: $381,276.00.

Brief description of proposed project: Terminal planning/design; Land acquisition for runway protection zone (RPZ); Install approach light system to Runway 25.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW., Suite 540, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Eagle County Regional Airport.

Issued in Renton, Washington, on September 20, 1995.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 95–24126 Filed 9–27–95; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent to Rule on Application (#95–01–C–00–SHR) to Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Sheridan County Airport, Submitted by Sheridan County, Wyoming, Sheridan, Wyoming

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at Sheridan County Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before October 30, 1995.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Alan Wiechmann, Manager; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 5440 Roslyn, Suite 300; Denver, CO 80216–6026.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Norman Feck, Airport Manager, at the following address: Sheridan County Airport, Airport Terminal Building, Sheridan, WY 82801.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Sheridan County Airport, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Chris Schaffer, (303) 286–5525; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 5440 Roslyn, Suite 300; Denver, CO 80216–6026. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application (#95–01–C–00–SHR) to impose and use PFC revenue at Sheridan County Airport, under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On September 20, 1995, the FAA determined that the application to impose and use the revenue from a PFC submitted by Sheridan County, Wyoming, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than December 26, 1995.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00 .

Actual charge effective date: March 1, 1996.

Proposed charge expiration date: August 31, 2001.

Total estimated PFC revenues: $211,299.00.

Brief description of proposed project: Conduct airport planning studies; aircraft rescue and fire fighting (ARFF) improvements; airfield capacity and safety improvements—construct new runway 14/32 including parallel taxiway ''B''.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: None.

Any person may inspect the application in person at the FAA office

listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division ANM–600, 1601 Lind Avenue SW., Suite 540, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Sheridan County Airport.

Issued in Renton, Washington on September 20, 1995.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 95–24124 Filed 9–27–95; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement; Franklin, Gasconade and Osage Counties, Missouri

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Franklin, Gasconade and Osage Counties, Missouri.

FOR FURTHER INFORMATION CONTACT: Mr. Donald Neumann, Programs Engineer, Federal Highway Administration, P.O. Box 1787, Jefferson City, Missouri 65102, Telephone: (314) 636–7104; or Mr. Bob Sfreddo, Design Engineer, Missouri Highway and Transportation Department, P.O. Box 270, Jefferson City, Missouri 65102, Telephone: (314) 751–2876.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Missouri Highway and Transportation Department will prepare an Environmental Impact Statement (EIS) for a proposal to improve transportation in the US–50 corridor in Franklin, Gasconade and Osage Counties, Missouri. A Major Transportation Investment Analysis will be required for the Franklin County portion which lies within the St. Louis metropolitan area. The study area extends from Interstate Route 44 to US–63, a distance of 110 km along the US–50 corridor. Improvements to the corridor are considered necessary to provide for the existing and projected traffic demand. Alternatives will be determined subsequent to all scoping meetings.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies, and to private organizations and citizens who have expressed interest in this proposal. A series of public meetings will be held in Linn, Osage County and Union, Franklin County, between November 1995 and July 1996. In addition, public hearings will be held. Public notice will be given of the time and place of the meetings and hearings. The draft EIS will be made available for public and agency review and comment.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA or to the MHTD at the addresses provided above.

Don Neumann,

Programs Engineer, Jefferson City, Missouri.

[FR Doc. 95–24132 Filed 9–27–95; 8:45 am]

BILLING CODE 4910–22–M

Intelligent Transportation Society of America; Public Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The Intelligent Transportation Society of America (ITS America) will hold a meeting of its Coordinating Council on October 24, 1995. The session is expected to focus on: (1) Federal Intelligent Transportation Systems (ITS) reports; (2) ITS America Executive Director's report; (3) Report of ITS America ITS Planning Committee; (4) Report on ITS America International activities; (5) Report from the ITS America Commercial Vehicle Operations Committee; (6) ITS America Committee Action Plan discussion; (7) Discussion of study recommendations on requirements for a map data base Spatial Data Transfer Standard for ITS applications; (8) Discussion of the ITS America Coordinating Council retreat, including advanced rural transportation systems and intermodalism; (9) Discussion of Education and Training Workshop recommendations; (10) Report on system architecture development activities; (11) Discussion of privacy issues. ITS America provides a forum for national discussion and recommendations on ITS activities including programs, research needs, strategic planning, standards, international liaison, and priorities. The charter for the utilization of ITS America establishes this organization as an advisory committee under the Federal Advisory Committee Act (FACA), 5 U.S.C. app. 2, when it provides advice or recommendations to DOT officials on ITS policies and programs. (56 FR 9400, March 6, 1991).

DATES: The Coordinating Council of ITS America will meet on October 24 from 9:30 a.m. to 2:00 p.m. (Rocky Mounain time).

ADDRESSES: Hotel Santa Fe, 1501 Paseo de Peralta, Santa Fe, New Mexico, 87501, (505) 982–1200.

FOR FURTHER INFORMATION CONTACT: Materials associated with this meeting may be examined at the offices of ITS America, 400 Virginia Avenue, SW., Suite 800, Washington, D.C. 20024. Persons desiring further information or to request to speak at this meeting should contact Mr. Chris Body at ITS America by telephone at (202) 484–4131, or by FAX at (202) 484–3483. The DOT contact is Mr. Gary Euler, FHWA, HVH–1, Washington, D.C. 20590, (202) 366–2201. Office hours are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except for legal holidays.

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Issued on: September 25, 1995.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 95–24128 Filed 9–27–95; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

[Treasury Directive Number 12–36]

Redelegation of Agency Head Review Authority

Dated: September 21, 1995.

1. *Delegation.* By virtue of the authority vested in the Secretary of the Treasury by 5 U.S.C. 7114(c); and pursuant to the authority delegated to me by Treasury Order (TO) 101–08, there is hereby delegated to the Director, Office of Personnel Policy, the authority to conduct agency head review of collective bargaining agreements negotiated at the national and bureau level.

2. *Authorities.*

a. 5 U.S.C. 7114(c).

b. TO 101–08, ''Delegation of Authority to Conduct Agency Head Review of Labor Agreements Under 5 U.S.C. 7114(c)—Assistant Secretary (Administration) and Bureau Heads,'' dated December 30, 1980.

3. *Cancellation.* Treasury Directive 12–36, ''Redelegation of Agency Head Review Authority,'' dated February 3, 1989, is superseded.

4. *Expiration Date.* This Directive expires three years after the date of issuance unless superseded or cancelled by that date.

5. *Office of Primary Interest.* Office of Personnel Policy, Office of the Deputy Assistant Secretary (Departmental Finance and Management), Office of the Assistant Secretary for Management & CFO.

George Muñoz,

Assistant Secretary for Management & CFO.

[FR Doc. 95–24093 Filed 9–27–95; 8:45 am]

BILLING CODE 4810–25–P

Customs Service

List of Foreign Entities Violating Textile Transshipment and Country of Origin Rules

AGENCY: Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: This document notifies the public of foreign entities identified by Customs as having violated the textile transshipment rules. This list is authorized to be published by section 333 of the Uruguay Round Agreements Act.

FOR FURTHER INFORMATION CONTACT: For information regarding any of the operational aspects, contact Michael Compeau, Branch Chief, Seizures and Penalties Division, at 202–927–0762. For information regarding any of the legal aspects, contact Lars-Erik Hjelm, Office of Chief Counsel, at 202–927–6900.

SUPPLEMENTARY INFORMATION:

Background

Section 333 of the Uruguay Round Agreements Act (URAA)(Public Law 103–465, 108 Stat. 4809)(signed December 12, 1994), entitled Textile Transshipments, amended Part V of title IV of the Tariff Act of 1930 by creating a new section 592A (19 U.S.C. 1592A), which authorizes the Secretary of the Treasury to publish in the Federal Register, on a biannual basis, a list of the names of any producers, manufacturers, suppliers, sellers, exporters, or other persons located outside the Customs territory of the United States, when these entities have been issued a penalty claim under section 592 of the Tariff Act, for certain violations of the customs laws, provided that certain conditions are satisfied.

The violations of the Customs laws referred to above are the following: (1) Using documentation, or providing documentation subsequently used by the importer of record, which indicates a false or fraudulent country of origin or source of textile or apparel products; (2) Using counterfeit visas, licenses, permits, bills of lading, or similar documentation, or providing counterfeit visas, licenses, permits, bills of lading, or similar documentation that is subsequently used by the importer of record, with respect to the entry into the customs territory of the United States of textile or apparel products; (3) Manufacturing, producing, supplying, or selling textile or apparel products which are falsely or fraudulently labelled as to country of origin or source; and (4) Engaging in practices which aid or abet the transshipment, through a country other than the country of origin, of textile or apparel products in a manner which conceals the true origin of the textile or apparel products or permits the evasion of quotas on, or voluntary restraint agreements with respect to, imports of textile or apparel products.

If a penalty claim has been issued with respect to any of the above violations, and no petition in response to the claim has been filed, the name of the party to whom the penalty claim was issued will appear on the list. If a petition, supplemental petition or second supplemental petition for relief from the penalty claim is submitted under 19 U.S.C. 1618, in accord with the time periods established by sections 171.32 and 171.33, Customs Regulations (19 CFR 171.32, 171.33) and the petition is subsequently denied or the penalty is mitigated, and no further petition, if allowed, is received within 30 days of the denial or allowance of mitigation, then the administrative action shall be deemed to be final and administrative remedies will be deemed to be exhausted. Consequently, the name of the party to whom the penalty claim was issued will appear on the list. However, provision is made for an appeal to the Secretary of the Treasury by the violator named on the list, for the removal of its name from the list. If the Secretary finds that such person or entity has not committed any of the enumerated violations for a period of not less than 3 years after the date on which the person or entity's name was published, the name will be removed from the list as of the next publication of the list.

Reasonable Care Required

New section 592A also requires any importer of record entering, introducing, or attempting to introduce into the commerce of the United States textile or apparel products that were either directly or indirectly produced, manufactured, supplied, sold, exported, or transported by such named person to show, to the satisfaction of the Secretary, that such importer has exercised reasonable care to ensure that the textile or apparel products are accompanied by documentation, packaging, and labelling that are accurate as to its origin. Reliance solely upon information regarding the imported product from a person named on the list is clearly not the exercise of reasonable care. Thus, the textile and apparel importers who have some tangential relationship with one or more of the listed parties must exercise a degree of reasonable care in ensuring that the documentation covering the imported merchandise, as well as its packaging and labelling, is accurate as to the country of origin of the merchandise. This degree of reasonable care must rely on more than information supplied by the named party.

In meeting the reasonable care standard when importing textile or apparel products and when dealing with a party named on the list published pursuant to new section 592A of the Tariff Act of 1930, an importer should consider the following questions in attempting to ensure that the documentation, packaging, and labelling is accurate as to the country of origin of the imported merchandise. The list of questions is not exhaustive but is illustrative.

(1) Has the importer had a prior relationship with the named party?

(2) Has the importer had any detentions and/or seizures of textile or apparel products that were directly or indirectly produced, supplied, or transported by the named party?

(3) Has the importer visited the company's premises and ascertained that the company has the capacity to produce the merchandise?

(4) Where a claim of substantial transformation is made, has the importer ascertained that the named party actually substantially transforms the merchandise?

(5) Is the named party operating from the same country as is represented by that party on the documentation, packaging or labelling?

(6) Have quotas for the imported merchandise closed or are they nearing closing from the main producer countries for this commodity?

(7) What is the history of this country regarding this commodity?

(8) Have you asked questions of your supplier regarding the origin of the product?

(9) Where the importation is accompanied by a visa, permit, or license, has the importer verified with the supplier or manufacturer that the

visa, permit, and/or license is both valid and accurate as to its origin? Has the importer scrutinized the visa, permit or license as to any irregularities that would call its authenticity into question?

The new law authorizes a biannual publication of the names of the foreign violators. In the first publication which covered the period ending on March 31, 1995, a Federal Register notice published on April 3, 1995 (60 FR 16917) notified the public that no foreign entity fell within the purview of the new law within the period from the enactment of the new law on December 12, 1994 to the March 31, 1995 first publication date. Accordingly, no list was published for the period ending March 31, 1995.

592A List

For the period ending September 30, 1995, Customs has identified 9 (nine) foreign entities that fall within the purview of new section 592A of the Tariff Act of 1930. These parties were assessed a penalty claim under 19 U.S.C. 1592, for one or more of the four above-described violations. The administrative penalty action was concluded against the parties by one of the actions noted above as having terminated the administrative process.

The names and addresses of the 9 foreign parties are as follows:

Beijing Garments Import & Export, No. 22 Fu Wai Street, Beijing, China.
China Artex Corporation Guandong Company, 119 (2nd Building) Liuhua Road, Guangshou, China.
China National Silk, Shangdong Branch, Silk Building, Zhan Liu Gan Road, Qingdao, China.
Cotton Breeze International, 13/1578 Govindpuri, New Delhi, India.
Hangzhou Tongda Textile Group, Room 918, Hangzhou Mansion, No. 1 Wulin Square, Hangzhou, China.
Hebei Garment I/E Corporation, 8 Jichang Road, Shijazhuang, China.
Poshak International, H–83 South Extension, Part-I (Back Side), New Delhi, India.
Shangdong Silk, Silk Building, Zhan Liu Gan Road, Qingdao, China.
United Fashions, C–7 Rajouri Garden, New Delhi, India.

Any of the above parties may petition to have its name removed from the list. Such petitions, to include any documentation that the petitioner deems pertinent to the petition, should be forwarded to the Assistant Commissioner, Office of Field Operations, United States Customs Service, 1301 Constitution Avenue, Washington, D.C. 20229.

Additional Foreign Entities

Customs is soliciting information regarding the whereabouts of the following 40 foreign entities concerning alleged violations of section 592A. Their name and last known address are listed below:

Bahadur International, 250 Naraw Industrial Area, New Delhi, India.
Madan Exports, E–106 Krishna Nagar, New Delhi, India.
Gulnar Fashion Export, 14 Hari Nagar, Ashram, New Delhi, India.
Janardhan Exports, E–106 Krishna Nagar, New Delhi, India.
Morrin International, E–106 Krishna Nagar, New Delhi, India.
Jai Arjun Mfg., Co., B 4/40 Paschim,Vihar, New Delhi, India.
Eroz Fashions, 535 Tuglakabad Extension, New Delhi, India.
China Tiancheng Corp.,191 Changle, Shanghai, China.
China Artex Corp. Beijing Arts, 132–16 Changan Avenue, Beijing, China.
Shenzhen Long Gang Ji Chuen, Shenzhen, Long Gang Zhen, China.
Traffic, D1/180 Lajpat Nagar, New Delhi, India.
Raj Connections, E–106 Krishna Nagar, Delhi, India.
Bao An Wing Shing Garment Factory, Ado Shi Qu, Bao An Shen Zhen, China.
Guidetex Garment Factory, 12 Qian Jin Dong Jie, Yao Tai Xian Yuan Li, Canton, China.
Dechang Garment Factory, Shantou S.E.Z., Cheng Hai, Cheng Shing, China.
Guangdong Provincial Improved, 60 Ren Min Road, Guangdong, China.
Kin Cheong Garment Factory, No. 13 Shantan Street, Sikou Country, Taishan, Kwangtong, China.
Gold Tube Ltd., No. 55 Hung To Road, Kwun Tong, Kowloon, Hong Kong.
Sam Hing Bags Factory, Ltd., #35 Tai Ping West Road, Jiu Jaing, Ghangdong, China.
Luen Kong Handbag Factory, 33 Nanyuan Road, Shenzhen, Guangdong, China.
NH Industries Ltd., 1507–8A Nan Fung Centre, 264–298 Castle Peak Road, Kowloon, Hong Kong.
Daiphi Enterprise Co. Ltd., 1/FL., No. 6–2, Lane 78 Sung Chiang Rd., Taipei, Taiwan.
Changping High Stage Knitting, Yuan Jing Yuan, Chau Li Qu Chang, Guandong, China.
Arsian Company Ltd, XII Khorcolo, Waanbaatar, Mongolia.
Kin Fung Knitting Factory, Block A&B, 4th Flr Por Mee Bldg., 500 Casle Peak Rd., Kowloon, Hong Kong.
Cahaya Suria Sdn Bhd, Lot 5, Jalan 3, Kedah, Malaysia.
Domincan Do Sung Textile Co., Zona Franca Industrial, Bonca, Dominican Republic.
Crown Garments Factory Sdn Bhd, Lot 112, Jalan Kencana, Bagan Ajam, Malaysia.
Glee Dragon Garment Mfg. Ltd., 328 Castle Peak Rd., Room G 10Fl, Tsuen Kam Centre, Kowloon, Hong Kong.
Jentex Industrial Co., Ltd., P.O. Box 9–129, Rm 7–1, No. 246, Sec. 2, Chand-An Rd., Taipei, Taiwan.
Richman Garment Manufacturing Co., Ltd., 7th Fl, Singapore Industrial Bldg., 338 Kwun Tong Road, Kowloon, Hong Kong.
Herrel Company, 64 Rowell Road, Suva, Fiji.
Belwear Co., Ltd., Flat C, 3rd Floor, Yuk Yat Street, Kowloon, Hong Kong.
Hambridge Ltd., 9 Fl., Lladro Building 72–80, Hoi Yuen Road, Kwun Tong, Kowloon, Hong Kong.
Kingston Garment Ltd., Lot 42–44 Caracas Dr., Kingston, Jamaica.
Moderntex International Inc., 3941, Kowloon, Hong Kong.
Poltex Sdn, 8 Jalan Serdang, Kedah, Malaysia.
Sam Hing International Enterprise, 5 Guernsey St., Guilford NSW, Australia.
Societe Prospere De Vetements S.A., Lome, Togo.
Yueh Wah Trading Co., Ltd., 6 Lane 299 Chung Cheng Road, Taipei, Taiwan.

If you have any information as to a correct mailing address for any of the above 40 firms, please send that information to: Assistant Commissioner, Office of Field Operations, United States Customs Service, 1301 Constitution Avenue, Washington, D.C. 20229.

Dated: September 22, 1995.

Samuel H. Banks,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 95–24012 Filed 9–27–95; 8:45 am]

BILLING CODE 4820–02–P

Office of Thrift Supervision

Public Information Collection Requirements Submitted to OMB for Review

September 22, 1995.

The Office of Thrift Supervision (OTS) has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–11. Copies of the submission(s) may be obtained by calling the OTS Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed

and to the OTS Clearance Officer, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC. 20552.

OMB Number: 1550–0047 .

Form Number: OTS Forms 1393 and 1606.

Type of Review: Revision of a Currently Approved Collection

Title: Notice of Hiring or Indemnifying Senior Executive Officer or Director.

Description: Congress requires agency notification and approval for new senior executive officers and directors of financial institutions. Both forms are used in this approval process. OTS requires that institutions notify OTS when they intend to indemnify an officer, director, or employee.

Respondents: Savings and Loan Associations and Savings Banks.

Estimated Number of Respondents: 1,524.

Estimated Burden Hours Per Respondent: 3 Hrs. Avg.

Frequency of Response: Once per application.

Estimated Total Reporting Burden: 4582 Hrs.

Clearance Officer: Colleen M. Devine, (202) 906–6025, Office of Thrift Supervision, 1700 Street, N. W., Washington, D.C. 20552.

OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, D.C. 20503.

Collen M. Devine,

Manager, Policy and Support Branch, Office of Thrift Supervision.

[FR Doc. 95–24164 Filed 9–27–95; 8:45 am]

BILLING CODE 6720–01–P

Sunshine Act Meetings

Federal Register
Vol. 60, No. 188
Thursday, September 28, 1995

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).

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Finance Committee Meeting

TIME AND DATE: The Legal Services Corporation Board of Directors Finance Committee will meet on October 6, 1995. The meeting will commence at 8:30 a.m.

PLACE: Legal Services Corporation, 750 First Street NE, Board Room, 11th Floor, Washington, DC 20002, (202) 336–8800.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

OPEN SESSION:

1. Approval of Agenda.
2. Approval of Minutes of September 10, 1995, Meeting.
3. Consideration and Review of Budget and Expenses for the Period Ending August 31, 1995.
4. Consider and Act on Proposed Revisions to the Corporation's Fiscal Year 1995 Consolidated Operating Budget.
5. Consideration of Proposed Fiscal Year 1996 Consolidated Operating Budget.
6. Consideration of Proposed Fiscal Year 1997 Budget Mark.
7. Consider and Act on Proposed Audit Guide.
8. Consider and Act on Other Business.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, General Counsel, (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Victor M. Fortuno at (202) 336–8800.

Dated: September 26, 1995.

Victor M. Fortuno,

General Counsel.

[FR Doc. 95–24346 Filed 9–26–95; 3:59 pm]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Board of Directors Meeting

TIME AND DATE: The Legal Services Corporation Board of Directors will meet on October 6, 1995. The meeting will commence at 10 a.m.

PLACE: Legal Services Corporation, 750 First Street NE, Board Room, 11th Floor, Washington, DC 20002, (202) 336–8800.

STATUS OF MEETING: *Open,* except that a portion of the meeting may be closed pursuant to a unanimous vote of the Board of Directors to hold an executive session. At the closed session, in accordance with the aforementioned vote, the Board may discuss matters related to internal operational and personnel matters. In addition, the Board may hear and consider the General Counsel's report on litigation in which the Corporation is or may become a party. Finally, the Board may be briefed by the inspector General on Office of the Inspector General Activities.[1] The closing will be authorized by the relevant sections of the Government in the Sunshine Act [5 U.S.C. section 552b(c) (2) and (10)], and the corresponding regulation of the Legal Services Corporation [45 C.F.R. section 1622.5 (a) and (h)]. The closing will be certified by the Corporation's General Counsel as authorized by the above-cited provisions of law. A copy of the General Counsel's certification will be posted for public inspection at the Corporation's headquarters, located at 750 First Street NE, Washington, DC 20002, in its 11th floor reception area, and will otherwise be available upon request.

MATTERS TO BE CONSIDERED:

OPEN SESSION:

1. Approval of Agenda.
2. Approval of Minutes of June 24–25, 1995, Meeting.
3. Approval of Minutes of June 25, 1995, Executive Session.
4. Chairman's and Members' Reports.
5. President's Report on Status of Appropriations and Authorization Proceedings.
6. Report and Discussion of Planning for the Future of Legal Services.
7. Inspector General's Report.
8. Consider and Act on Question of the Manner in which the Duties of the Corporation Secretary Will Be Carried Out in Light of the Departure of the Current Corporation Secretary.
9. Consider and Act on Finance Committee Report.
   a. Consider and Act on Proposed Revisions to Fiscal Year 1995 Consolidated Operating Budget.
   b. Consider and Act on Proposed Fiscal Year 1996 Consolidated Operating Budget.
   c. Consider and Act on Proposed Fiscal Year 1997 Budget Mark.
   d. Consider and Act on Proposed Audit Guide.
10. Consider and Act on Operations and Regulations Committee Report.
11. Consider and Act on Provision for the Delivery of Legal Services Committee Report.
12. Public Comment

CLOSED SESSION:

13. Consider and Act on Request from Former LSC Employee for Indemnification in *Gent v. LSC.*
14. Discussion of Issues Relating to Internal Operational and Personnel Matters.
15. Briefing of Board by the Inspector General on Office of Inspector General Activities.
16. Consider and Act on the General Counsel's Report on Litigation.

OPEN SESSION:

17. Consider and Act on Other Business.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, General Counsel, (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Victor M. Fortuno at (202) 336–8800.

Dated: September 26, 1995.

Victor M. Fortuno,

General Counsel.

[FR Doc. 95–24345 Filed 9–26–95; 3:59 pm]

BILLING CODE 7050–01–P

[1] Briefings do not constitute ''meetings'' as defined by the Government in the Sunshine Act. Notice of the briefing is being provided solely as a courtesy to the public.

U.S. COMMISSION ON CIVIL RIGHTS

DATE AND TIME: Friday, October 6, 1995, 9:30 a.m.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street, NW, Room 540, Washington, DC 20425.

STATUS:

Agenda

I. Approval of Agenda
II. Approval of Minutes of September 8, 1995 Meeting
III. Announcements
IV. Staff Director's Report
V. Affirmative Action Hearing Update
VI. State Advisory Committee Report
—''Race Relations and Equal Education Opportunities at Proviso West High School'' (Illinois)
—''Civil Rights Issues in Maine: A Briefing Summary of Hate Crimes, Racial

Tensions, and Migrant/Immigrant Workers'' (Maine)
—''Discipline in Michigan Public Schools and Government Enforcement of Equal Education Opportunity'' (Michigan)
—''Equality Issues in South Dakota Women's Employment'' (South Dakota)
VII. Future Agenda Items

10:30 a.m. Briefing on Police Conduct

CONTACT PERSON FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications (202) 376–8312.

Dated: September 26, 1995.

Miguel A. Sapp,

Acting Solicitor.

[FR Doc. 95–24243 Filed 9–26–95; 3:21 pm]

BILLING CODE 6335–01–M

AGENCY: FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, October 3, 1995 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This Meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

DATE AND TIME: Thursday, October 5, 1995 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor).

STATUS: This Meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED: Correction and Approval of Minutes.

Thursday, October 5, 1995 at 10:00 a.m.

Advisory Opinion 1995–27: Tony M. Edwards, General Counsel, National Association of Real Estate Investment Trusts
MCFL Regulations: Defining Restricted Class; Logos and Letterhead; Registration & Voting Information and Communications; GOTV Drives (if not concluded at the meeting of September 28, 1995)
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 24315 Filed 9–26–95; 3:22 pm]

BILLING CODE 6715–01–M

Corrections

Federal Register
Vol. 60, No. 188
Thursday, September 28, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 4, 30, 150

Amendments to Commodity Pool Operator and Commodity Trading Advisor Disclosure Rules

Correction

In rule document 95–17871 beginning on page 38146 in the issue of Tuesday, July 25, 1995 make the following corrections:

(1) On page 38147, in the third column, in footnote 15, in the fifth line ''pools; CFTC'' should read ''pools); CFTC''.

(2) On page 38162, in the first column, in footnote 95, in the third line ''4.10(d)93)'' should read ''4.10(d)(3)''.

(3) On page 38164, in the table, all entries corresponding to the Category heading ''All'' should be separated from the previous entries and placed under the heading ''Summary of Required Performance Disclosures -- CTA Disclosure Documents''.

(4) On page 38165, in the table ''Capsule Performance Examples Under Rule 4.25 Capsule Performance of the Offered Pool'', the headings ''Percentage rate of return (computed on a compounded monthly basis)'' and ''Month'' should be transposed.

(5) On the same page, in the ''Capsule Performance of Other Pools Operated by the Offered Pool's CPO'' table, the heading ''Percentage rate of return'' should read ''Percentage rate of return * *''.

(6) On the same page, in the same table, under the ''Name of pool'' heading, the entries ''Other pools operated by X, different class from offered pool'' and ''Other pools operated by X, same class as offered pool'' should be transposed.

(7) On the same page, in the same table, the second footnote ''1 -- Privately offered pool'' should read ''2 -- Privately offered pool''.

(8) On page 38167, in the first column, in the first full paragraph, in the seventh line ''4.4(v)'' should read ''4.24(v)''.

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[ND6-1-6534a, ND2-1-6064a; FRL-5261-6

Clean Air Act Approval and Promulgation of State Implementation Plan for North Dakota; Revisions to the Air Pollution Control Rules

Correction

In rule document 95–20601 beginning on page 43396 in the issue of Monday, August 21, 1995, make the following correction:

§ 61.04 [Corrected]

On page 43401, in the table for § 61.04, under Subpart E, the asterisk under the column ''SD²'' should be removed.

BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1301, 1303, 1304 and 1305

[DEA–108P]

RIN 1117-AA19

Definition and Registration of Disposers

Correction

In proposed rule document 95–20890 beginning on page 43732 in the issue of Wednesday, August 23, 1995, make the following corrections:

1. On page 43732, in the third column, in the first line, ''proposes'' should read ''proposed''. And in the same column, in the 10th line from the bottom of the page, ''III'' should read ''II''.

§1301.26 [Corrected]

2. On page 43733, in the third column, in §1301.26(a)(2), in the 7th line, ''posses'' should read ''possess''.

§1304.34 [Corrected]

3. On page 43734, in the third column, in §1304.34(b), in the third line, ''medial'' should read ''media''.

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 21

[Docket No. 28334; Notice No. 95-15]

RIN 2120-AF10

Proposed Amendment of the Type Certification Procedures for Changes in Helicopter Type Design To Attach or Remove External Equipment

Correction

In proposed rule document 95–23208 beginning on page 48790 in the issue of Wednesday, September 20, 1995, the docket number should read as set forth above.

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Dynamic Testing of Seats

Correction

In notice document 95–22862 appearing on page 47798 in the issue of Thursday, September 14, 1995, make the following corrections:

1. In the second column, under the heading ''For Further Information Contact:'', in the first line, ''Jeff Gardin'' should read ''Jeff Gardlin''.

2. In the same column, under the same heading, beginning in the seventh line, ''Internet:Jeff Gardin at ANM100@mail.hq.faa.gov.'' should read ''Internet:Jeff_Gardlin_at_ANM100 @mail.hq.faa.gov.''

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 48

[TD 8609]
RIN 1545-AS10

Gasohol; Compressed Natural Gas

Correction

In rule document 95–19284 beginning on page 40079 in the issue of Monday, August 7, 1995, make the following correction:

§ 48.4041-21 [Corrected]

On page 40082, in the second column, in § 48.4041-21(c)(4), in the Certicate, in the seventh line, insert an open parens before the quotation marks preceding ''Buyer''.

BILLING CODE 1505–01–D

federal register

Thursday
September 28, 1995

Part II

Nuclear Regulatory Commission

10 CFR Part 71

Compatibility With the International Atomic Energy Agency (IAEA); Final Rule

NUCLEAR REGULATORY COMMISSION

10 CFR Part 71

RIN 3150–AC41

Compatibility With the International Atomic Energy Agency (IAEA)

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is revising the regulations governing the transportation of radioactive material. The final rule conforms NRC regulations with those of the International Atomic Energy Agency, and codifies criteria for packages used to transport plutonium by air. This action is necessary to ensure that NRC regulations reflect accepted international standards and comply with current legislative requirements.

EFFECTIVE DATE: April 1, 1996. Section 71.52 expires April 1, 1999.

ADDRESSES: Single copies of the regulatory analysis for this rule may be obtained on request from the contact. Copies of the regulatory analysis may be examined and copied, for a fee, in the Commission's Public Document Room, at 2120 L Street (Lower Level), NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: John R. Cook, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: (301) 415–8521.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Nuclear Regulatory Commission is revising its regulations, for the safe transportation of radioactive material to make them compatible with those of the International Atomic Energy Agency (IAEA) and to incorporate new criteria for packages used to transport plutonium by air. The revised rule, in combination with a corresponding amendment of Title 49, Code of Federal Regulations, by the U.S. Department of Transportation (DOT), would bring U.S. regulations into general accord with IAEA regulations (Regulations for the Safe Transport of Radioactive Material, 1985 Edition, Safety Series No. 6). The final rule also adopts approval criteria for packages used to transport plutonium by air. These criteria were developed in response to Public Law 94. Except for these revisions, NRC's basic standards for packaging and transportation remain essentially unchanged. These regulations apply to all NRC licensees who transport, or offer for transport, byproduct, source, or special nuclear material, and will help ensure the continued safe transportation of radioactive materials in domestic and international commerce.

In addition, three Petitions for Rulemaking, concerning the transportation of Low Specific Activity (LSA) radioactive material, are denied in this action.

In 1969, the IAEA, recognizing that its international transport regulations should be revised from time to time on the basis of scientific and technical advances, as well as accumulated experience, invited member states to submit comments and suggested changes to the regulations. As a result of this initiative, the IAEA issued revised regulations in 1973 (Regulations for the Safe Transport of Radioactive Material, 1973 Edition, Safety Series No. 6). The IAEA also decided to periodically review its transportation regulations, at intervals of about 10 years, to ensure that the regulations are kept current. As a result, a review of IAEA regulations was initiated, in 1979, that resulted in the publication of revised regulations in 1985 (Regulations for the Safe Transport of Radioactive Material, 1985 Edition, Safety Series No. 6).

On August 5, 1983 (48 FR 35600) NRC published, in the Federal Register a final revision to 10 CFR Part 71, ''Packaging and Transportation of Radioactive Material.'' That revision, in combination with a parallel revision of the hazardous materials transportation regulations of DOT, brought U.S. domestic transport regulations at the Federal level into general accord with the 1973 edition of IAEA transport regulations. Some of the revisions that were eventually included in the 1985 IAEA regulations were anticipated by NRC and DOT when they were finalizing their transportation regulations in 1983. These changes were incorporated in Titles 10 and 49 of the Code of Federal Regulations at that time.

On June 8, 1988 (53 FR 21550) NRC published a proposed revision to its regulations in 10 CFR Part 71 in the Federal Register for the purpose of making U.S. transportation regulations compatible with the 1985 edition of the IAEA regulations. In a parallel rulemaking, DOT published a proposed revision to its radioactive material transportation regulations on November 14, 1989 (54 FR 47454). Several corrections to the NRC proposed rule were published in the Federal Register on June 22, 1988 (53 FR 23484). Interested persons were invited to submit written comments and suggestions on the NRC proposal and/or the supporting regulatory analysis by October 6, 1988. The public comment period was subsequently extended to February 9, 1990. On December 8, 1994, the NRC staff provided a briefing on the proposed LSA requirements and the other revisions at the 416th meeting of the Advisory Committee on Reactor Safeguards (ACRS). This meeting also provided industry and the public another opportunity to present their views on the revisions. Based on the public comments, consultations with DOT, and other considerations, the Commission is adopting the proposed rule, with some modifications.

Discussion of Major Changes From Current Requirements

Most of the revisions presented in the proposed rule are being adopted in the final rule. These include additional hypothetical accident test criteria for certain types of packages, an increase in the number of radionuclides with listed A_1 and A_2 values, changes in the currently listed A_1 and A_2 values for some radionuclides, simplification of fissile material transport classes, revised requirements for shipment of LSA materials, and inclusion of criteria for packages used to transport plutonium by air. These changes are discussed in more detail in the following paragraphs.

Additional Accident Test Requirements

IAEA deep-water immersion and dynamic crush tests are adopted in the final rule. The 200 meter (656 ft) deep-water immersion test has been added to the requirements for Type B packages (casks) authorized for irradiated fuel content in excess of 37 PBq (10^6 Ci)(§ 71.61 Special requirement for irradiated nuclear fuel shipments). The purpose of the deep immersion test, which can be satisfied through engineering evaluation or actual physical test (§ 71.41), is to ensure that the cask containment system does not collapse, buckle, nor allow inleakage of water, if submerged at 200 m (656 ft).

A dynamic crush test (§ 71.73(c)(2) *Crush*) has also been added to Type B package requirements, for certain lightweight packages that are minimally vulnerable to damage in the 9 m (30 ft) drop test, but which have a high potential for radiation hazard, if package failure occurs. IAEA regulations require the crush test in place of the 9 m (30 ft) drop test, for these packages. NRC is requiring both the crush test and drop test, for lightweight packages, to ensure that package response to both crush and drop forces is within applicable limits.

These requirements only apply to package designs certified after this final

rule becomes effective. Further, this rule does not apply to packages fabricated under previous versions of Part 71; however, previously fabricated packages are subject to multilateral approval, when used for international transport (§ 71.13(b)).

Expansion of Radionuclide List and Changes in Radionuclide Limits

Table A–1, in 10 CFR Part 71, Appendix A, lists the Type A package quantity limits (A_1 and A_2 values) for many radionuclides. The final rule increases the number of radionuclides listed, from 284 to 378. The final rule also adopts the revised A_1 and A_2 values contained in the 1985 edition of the IAEA regulations. As a result, 144 A_1 values previously listed in Table A–1 are being increased, and 73 are being decreased, while 129 A_2 values are being increased, and 95 decreased. In addition, the final rule modifies the method used to determine A_1 and A_2 values for unlisted radionuclides.

Simplification of Fissile Material Classes

The final rule revises the criteria for shipment of fissile material. Specifically, the rule eliminates the three fissile class designations currently used establishes a single set of criteria for all packages of fissile material, uses the transport index as the primary control for the number of fissile packages that may be transported together, and requires special arrangements for fissile packages that do not meet the established criteria.

Inclusion of Criteria for Air Shipment of Plutonium

The final rule amends Part 71 to include approval criteria for packages used to transport plutonium by air (§§ 71.64, 71.74, and 71.88). These criteria were developed as a result of Pub. L. 94–79, which prohibited NRC from licensing the air shipment of plutonium, in any form, until NRC certified to the Congress that a safe container had been developed. The NRC subsequently developed and certified package criteria to Congress and published the criteria in NUREG–0360, Qualification Criteria to Certify a Package for Air Transport of Plutonium, dated January 1978. This final rule incorporates these criteria. There are no corresponding criteria in IAEA regulations.

Modifications From Proposed Rule

The final rule differs from the proposed rule in several significant respects and are described as follows:

1. Package limit for Shipment of LSA and Surface-Containment-Object (SCO) Material. In its 1985 regulations, the IAEA added a limit of 10 mSv/hour (1 rem/hour) at 3 meters for the radiation level from the unshielded contents of LSA and SCO (Surface Contaminated Object) packages not designed to withstand accidents. This radiation level limit controls the external radiation exposures to individuals if an LSA package is severely damaged in a transportation accident.

The IAEA limit considers the loss of package shielding during an accident but it does not consider the possibility that a package's contents might be released and redistributed, causing a reduction in self-shielding of the contents. The reduction in self-shielding could result in potential accident radiation levels that significantly exceed IAEA's 10 mSv/hour (1 rem /hour) at 3 meters limit.

The IAEA dose rate limit provides a significant added degree of protection over the 1973 IAEA regulations (which specify no quantity limit for LSA packages). NRC and DOT did not believe, however that the IAEA limit provided the same level of safety for all types of LSA material, particularly for relatively large quantities of radioactive materials contained in dispersible LSA materials (e.g., resins and other media used in liquid radioactive waste treatment).

In lieu of the radiation level limit, DOT and NRC proposed a $2A_1$ quantity limit for all LSA packages. Although this proposal addressed the accident concern by directly limiting package quantity, it was not compatible with the IAEA provisions. Both agencies received many comments from industry on the proposed $2A_1$ quantity limit that objected to the impacts on occupational dose and shipping costs. Further, after a briefing on the draft final rule on December 8, 1994, the Advisory Committee on Reactor Safeguards (ACRS) issued a letter report, dated December 19, 1994, recommending, inter alia, that the requirements again be reevaluated with the objective of making them equivalent to the IAEA regulations.

After consideration of comments from ACRS and industry, DOT and NRC have agreed to adopt the IAEA LSA provisions. Accordingly, the final rule imposes a limit on the external radiation level at 3 meters from the unshielded contents of LSA–II, LSA–III, or SCO–II packages of 10 mSv/hour (1 rem/hour) (§ 71.10(b)).

2. The final rule delays imposing the LSA package external radiation level limit for 3 years. The effect of imposing the LSA package limit is to reduce the quantity of LSA materials that can be transported in non-Type B, LSA packages. The final rule may increase demand for Type B packages, and there are very few currently available. NRC had proposed a 1 year delay in implementing the new LSA rules. Industry comments expressed the view that 1 year is not an adequate period of time to design a package, have it approved by NRC, and manufacture a reasonable number of Type B waste packages. NRC agrees, and has included a delay of 3 years from the effective date of this rule for implementation of this provision of the final rule (§ 71.52).

3. The proposed rule would have adopted $2A_1$ as the threshold below which licensees are exempt from NRC requirements for packages containing LSA material (except for §§ 71.5, 71.88 and 71.53). Because NRC and DOT are adopting the IAEA LSA package limit, the final rule changes the exemption threshold to 1 rem/h at 3 m (§ 71.10(b)(2)). Thus, designs for packages used to ship LSA or SCO in quantities where the external dose rate exceeds 1 rem/h at 3 m from the unshielded material will be subject to NRC Type B package regulations. Package designs for lesser quantities of LSA or SCO will be self-certified, by package designers, as meeting applicable DOT IP–1, IP–2, IP–3, Type A, or strong tight, package regulations. [Licensees should note that DOT has prescribed, in its final rule, the use of IAEA Industrial Packages (IP–1, IP–2, and IP–3) for LSA and SCO material. For domestic transportation only, DOT also provides for the use of Type A, and strong tight, containers.]

4. For compatibility with IAEA and DOT requirements, a new, ''§ 71.77 Qualification of LSA–III Material,'' has been added to Subpart F. This section prescribes assessment of LSA–III material leaching. (In the proposed rule, § 71.77 contained ''Tests for special form radioactive material.'' Those requirements have been moved to § 71.75 ''Qualification of special form material,'' in the final rule.)

Other Administrative Actions

The final rule corrects numerical errors in §§ 71.20(b)(3) and 71.24(b)(4) of the current rule (§§ (71.20(c)(3) and 71.24(c)(4), respectively, of the proposed rule). These errors, which were not identified at the time the proposed rule was published, resulted when the limit for graphite was expressed as an atomic ratio, instead of a mass ratio. The errors were inadvertently adopted, in Part 71, during a rulemaking in 1983, to make

NRC regulations compatible with 1973 IAEA transportation regulations. IAEA has subsequently corrected these errors in the 1985 edition of its transportation regulations.

Section 71.20(b)(3), as currently written, limits the mass of graphite to ''* * * 150 times the total mass of uranium-235 plus plutonium.'' Section 71.20(c)(3), in the final rule, would be amended to read as follows: ''The total mass of graphite present does not exceed 7.7 times the total mass of uranium-235 plus plutonium.'' Section 71.24(c)(4) would be similarly revised to change the limits on graphite from 150 to 7.7 times the total mass of uranium-235 plus plutonium.

NRC is correcting these errors in this final rule. The affected sections may bear on the criticality safety of fissile materials in transport. In addition, these corrections are expected to have minimal impact because there are no shipping casks currently being used that were designed using the erroneous provisions.

Summary and Resolution of Public Comments

There were 171 letters of comment received on the proposed rule from industry, State, and local governments; environmental organizations; medical facilities; and members of the public. A discussion of general comments is presented below, followed by responses to comments on specific sections of the proposed rule.

One of the most frequent comments noted differences among NRC, DOT, and IAEA definitions and requirements where there were no reasons for the differences. Many of the differences between NRC and DOT requirements resulted from the long period of time between publication of the NRC proposed rule (June 8, 1988) and publication of the DOT proposed rule (November 14, 1989; 54 FR 47454). The two proposed rules were intended to be published on or about the same date but circumstances did not permit concurrent publication. Between publication of the NRC and DOT rules, IAEA published a complete set of minor changes and changes of detail to its regulations. These changes were not contained in the NRC proposed rule, but were introduced in the DOT proposed rule. In addition, a large number of printing errors appeared in the text of the NRC proposed rule. Only the most significant errors were rectified in a correction notice published June 22, 1988 (53 FR 23484). The remaining inconsistencies have been corrected in the final rule.

Another frequently raised comment was in response to NRC's inclusion of new criteria for the air transportation of plutonium. Out of 171 total letters of comment on the proposed rule, 119 of those letters were concerned with the single issue of air transportation of plutonium. In general, these letters requested that NRC codify the NUREG–0360 criteria for the safe air transportation of plutonium, notwithstanding urging by the U.S. Department of Energy (DOE) that NRC withhold codification until it could consider rules being developed by IAEA for the safe air transportation of plutonium. Many of these letters, primarily from residents of Alaska, attributed development of the NUREG–0360 [1] criteria to U.S. Senator Frank Murkowski. However, the criteria in NUREG–0360 were developed by the NRC in response to Public Law 94–79, enacted in 1975. (Senator Murkowski sponsored much more recent legislation on transportation of plutonium by air, identified as Section 5062 of Public Law 100–203, for which regulatory criteria have not been developed.) NRC has relied on the NUREG–0360 criteria for plutonium transportation by air since the criteria were published in 1978. DOE's request that NRC withhold the codification of the NUREG–0360 criteria while NRC considers the IAEA alternative cannot be accommodated because there is no existing IAEA alternative to consider and none is expected for several years. Although the IAEA development process has begun, the process is long and multifaceted. Predictions as to final content of an IAEA alternative cannot be made at this time. It also should be noted that, under Public Law 94–79, the proposed criteria would apply to any U.S. import, export, or domestic plutonium air transport regardless of IAEA regulations. Accordingly, the plutonium air transport criteria are incorporated in the final rule.

Section 71.0 Purpose and Scope

One comment suggested that § 71.0 (a) could be clarified by referring to the need for a Type B package rather than to licensed material in excess of a Type A quantity. Section 71.0 (a)(2) would then read ''Procedures and standards for NRC approval of packaging and shipping procedures for fissile material and for other licensed material required by this Part to be transported in a Type B packaging.''

Although the suggested wording may be a good description of Part 71, Fissile Type A packages are still subject to NRC approval. Therefore a scope based on quantity of radioactive material is better than a scope based on a single type of package.

Section 71.4 Definitions

One comment noted that the term ''licensed material'' is used in Part 71, in several locations, but is not defined in Part 71. In response to this comment, NRC has added the definition of ''licensed material,'' as codified in 10 CFR Part 39, to the definitions in Part 71. The term ''licensed material'' only includes radioactive material licensed by the NRC. One comment noted that in defining the term ''exclusive use,'' the parenthetical note ''* * * also referred to in other regulations as 'sole use' or 'full load' '' is no longer necessary. Those other terms have been almost completely phased out, and IAEA has eliminated the clarifying note. NRC agrees and also has eliminated the clarifying note.

One comment noted that the definition of ''exclusive use'' requires that loading and unloading be performed by personnel having radiological training and resources appropriate for safe handling of the consignment. However, the definition provides no criteria to indicate what that training should be. NRC believes this is an area where the regulation includes a sufficient level of detail to define the intent of the provision. NRC further notes that DOT has established requirements for hazardous material employee training (see 49 CFR Part 172, Subpart H, §§ 172.700–172.704, effective July 2, 1992).

One comment suggested that the term ''transport index'' specify that the number be rounded up ''to the next tenth'' rather than ''to the first decimal place.'' NRC believes that either terminology is adequately clear, and is retaining the original wording for uniformity. This wording has been used satisfactorily over a number of years.

One comment suggested that the ''Natural uranium'' definition should be clarified to indicate that the phrase ''the remainder being uranium-238'' refers strictly to a weight basis, not to a radioactivity basis. NRC has made the clarification.

One comment raised the question whether ''licensee'' and ''licensee of the Commission'' are synonymous, and whether the terms include ''persons

[1] Copies of NUREG–0360 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is also available for inspection and copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

licensed by an Agreement State,'' so that the general licenses of §§ 71.12–71.24 could apply. NRC asserts that the terms ''licensee'' and ''licensee of the Commission'' are synonymous. For uniformity, the NRC has eliminated the longer of the two terms in the final rule. Neither term includes Agreement State licensees. However, Agreement State licensees engaging in activities in non-Agreement States, or in offshore waters, under the reciprocity provisions of 10 CFR Part 150, ''Exemptions and Continued Regulatory Authority in Agreement States and in Offshore Waters under Section 274,'' are subject to the requirements of 10 CFR Part 71. In such instances, the NRC general licenses mentioned above apply to Agreement State licensees.

One comment noted that the term ''specific activity'' should only be used when describing the radioactivity of a radionuclide per unit mass of the element. When describing the radioactivity per unit mass of a material in general, the comment suggested the use of the words ''concentration of radioactivity.'' NRC has been unable to confirm any preferred limited use of the term ''specific activity,'' and, in view of the years of successful international use of the term in its broader sense, plans to continue that broader use.

One comment noted that the NRC and DOT definitions of ''exclusive use'' are not identical, and that the DOT definition appears preferable. In the final rules promulgated by NRC and DOT, the definitions of ''exclusive use'' are identical.

One comment noted a difference in quantities, for DOT's proposed rule ''highway route controlled quantities,'' in 49 CFR 173.403, and for NRC's ''advanced notification of shipment of nuclear waste'' requirements in 10 CFR 71.97. The limits were intended to be the same. As the comment suggested, the error (by NRC) was caused by the rounding of the International System (of units) (SI) and customary units and has been corrected in this final rule.

Section 71.4 Definitions (Dual Unit System—The International System of Units Followed or Preceded by U.S. Standard or Customary Units).

Ten comments suggested both support for the dual unit system used in both NRC and DOT proposed regulations and potential problems that might result from a dual unit system. Several other comments suggested that NRC and DOT be consistent in the use of units. NRC and DOT intend to use dual units in specifying the regulatory requirements. The introductory language to § 71.4 states that the different units are functionally equivalent and can be used interchangeably for purposes of this part. There are no paperwork requirements in Part 71 (e.g., records, reports) where the mandatory use of units is specified. DOT regulations also specify regulatory requirements in terms of dual units. In 49 CFR 171.10, DOT specifies that the SI units are intended to serve as the standard, but that the customary units (rounded) are included to provide a functionally equivalent limit. The dual unit approaches used by NRC and DOT are compatible.

In addition, DOT specifies, in 49 CFR Part 172, the units that must be used to satisfy the communication standards for shipping papers and package labels. Sections 172.203(d)(4)and 172.403(g)(2) require that shipping papers and package labels be completed either in SI units alone or in SI units and customary units. These requirements also permit, for a period of one year after the effective date of the final rule, the use of customary units on shipping papers and package labels for domestic shipments only.

One comment noted that the double conversion from customary units to SI units, and back to customary units produces specifications that are out of line with standard material sizes. For example, a test with what was a standard 6-inch-diameter mild steel bar, with an edge radius of ¼ inch, was proposed as a test with a 5.91-inch diameter mild steel bar, with an edge radius of 0.236 inch. The converted customary units of length and weight have been returned to their original values in the final rule.

One comment suggested greater consistency of units between the NRC and DOT transportation regulations and the Commission's ''Standards for Protection against Radiation'' in 10 CFR Part 20. Since the NRC and DOT transportation rules were proposed, NRC has revised 10 CFR 20.1004, ''Units of Radiation Dose,'' and 10 CFR 20.1005, ''Units of Radioactivity,'' to permit the use of either customary or SI units, These revisions achieve greater consistency of units among transportation and radiation protection regulations.

One comment noted that differences between IAEA and Part 71 A values (expressed in conventional units) may cause problems in international transport. The curie values in Safety Series #6, Table I are approximate, rounded down from the TBq values after conversion to Ci, whereas the curie values in Table A–1 Part 71 are converted from the TBq values to three significant figures without rounding down. The Part 71 method was used because it yields values that more closely approximate previous Table A–1 values. As noted earlier in this preamble, DOT regulations will require the use of the SI units in shipping papers and labels for international shipments (although conventional units may be used in addition to the SI units). The use of SI units should retain consistency with the IAEA regulations.

One comment suggested that the term ''transport index'' be defined using both customary and SI units, as IAEA has done. The proposed definition was expressed only in customary units. NRC agrees with this suggestion and has adopted the DOT definition of ''transport index'' which includes both customary and SI units.

Section 71.4 Definitions (LSA and SCO in Particular)

Several comments related to clarification of LSA definitions.

Two comments noted the typographical error in the proposed rule in which the ''water with tritium'' concentrations for LSA–II were printed as 27.0 Ci/**λ** (1 TBq/**λ**), rather than as 27.0 Ci/l (1 TBq/l). Two other comments noted that the numerical values differed from those in the DOT proposed rule (20 Ci/l and 0.8 TBq/l, respectively). One comment stated a preference for the 27.0 Ci/l limit.

NRC values in the proposed rule were derived from the IAEA and DOT values by rounding up the terabequerel limit and then converting to curies. For consistency, NRC has adopted the IAEA and DOT values in the final rule.

Three comments were concerned with the definition of LSA–I. The first comment noted that material generated from the extraction of uranium or thorium was not classified into any LSA category. The comment recommended an LSA–I classification for this material. Another comment recommended that the term ''contaminated earth'' in LSA–I be expanded to include ''soil, earth, concrete rubble, and other bulk debris.'' A third comment expressed concern that mill tailings exceeding 10^{-6} A_2/g could not be shipped in bulk under the proposed rule. The comment recommended that either mill tailings be specifically included in the definition of LSA–I without an activity or concentration limit, or the specific activity limit for LSA–I be increased to $4x10^{-6}$ A_2/g.

NRC agrees that ore-like materials (materials with highly uniform distribution of small quantities of radionuclides) should be transported as LSA–I material. Accordingly, the definition of LSA–I has been changed from ''contaminated earth * * * '' to

''contaminated earth, mill tailings, concrete rubble and other bulk debris * * *'' Further, NRC believes that mill tailings will meet the proposed 10^{-6} A_2/g specific activity limit, and therefore has not increased the limit.

Two comments suggested that NRC include a definition of the term ''closed transport vehicle'' used in the definition of LSA–I. This term has been removed from the definition of LSA–I because NRC and DOT concluded the use of a vehicle-based term in the definition of a material was inappropriate. ''Closed transport vehicle'' is defined in DOT's rule (49 CFR 173.403(c)).

One comment suggested that LSA–II material definition be expanded to include activated materials, consolidated wastes, and materials intrinsically contained in a relatively insoluble matrix. LSA–II is expected to include primarily unsolidified material in which the radioactive material may or may not be uniformly distributed, including lesser activity resins and filter sludges, other similar materials from reactor operations, similar materials from other fuel cycle operations, scintillation vials, and hospital, biological, and decommissioning wastes. There is, however, no prohibition against activated materials, consolidated wastes, and materials intrinsically contained in a relatively insoluble matrix in group LSA–II, provided the specific activity limit is met. The IAEA established the LSA–III group principally for irradiated reactor parts and other activated, or activated and contaminated, equipment that exceed the limits for the other LSA groups. NRC does not believe it is necessary to expand the LSA–II group definition to include these materials. The NRC believes that to do so might cause confusion with the LSA–III definition.

One comment stated that dewatered material should be defined as a solid for LSA–II. NRC agrees that dewatered resins should be subject to the specific activity for solids under LSA–II and notes that there is no prohibition against dewatered resins in LSA–II.

One comment asked whether the specific activity limits for LSA–II and LSA–III materials were pre- or post-solidification. The specific activity limits apply to materials as prepared for shipment, i.e., post-solidification. However, licensees should note that packaging or shielding material may not be considered in determining either the specific activity or the radiation level at 3 m.

One comment recommended that NRC remove the criterion for leaching that is applicable to LSA–III solids. The criterion limits the loss of radioactive material per package, when the package is placed in water for 7 days, to 0.1 A_2. Another comment stated that the criterion for leaching in the definition of LSA–III needed to be compatible with the leachability index requirements for solidified waste in 10 CFR Parts 60 and 61.

A control on the potential intake of these LSA–III materials is necessary because the radioactivity is not entirely insoluble. Because non-Type A packaging might be used in transporting these materials, a release of 10^{-2}A in an accident is assumed, with a possible bystander uptake of 10^{-3} A_2, under the standard model for determining A_2 values. Because the total body uptake must be limited to 10^{-6} A_2, the package's dispersible radioactive contents (i.e., the leachate liquid), must not exceed 0.1 A_2. For purposes of compatibility with IAEA and DOT requirements, a new § 71.77, ''Qualification of LSA–III Material,'' has been added to Subpart F. This section prescribes testing requirements for assessment of LSA–III material leaching. The hazard from the transportation of these materials is different from that posed by their disposal; therefore, no attempt has been made to achieve compatibility between transportation and disposal leachability limits.

One comment found the proposed rule unclear on the need for three LSA categories and how to classify materials under the criteria, including compacted dry active waste. IAEA developed the three LSA groups to differentiate controls based on the activity, distribution, and form of LSA material. The LSA–I group accommodates very uniformly distributed materials, such as ores. LSA–III accommodates large activated parts or solidified materials. LSA–II accommodates less uniformly distributed materials, such as compacted dry active waste.

One comment described radioactive atoms in activated products as inherently non-dispersible and relatively non-leachable. The comment recommended that activated materials be authorized for shipment as LSA–I, provided other transportation requirements are met. Although activated materials do not pose a dispersibility hazard, these materials are subject to localized concentrations of non-uniformly distributed material. Consequently activated materials are included in groups LSA–III and LSA–II.

One comment suggested changing the definition of SCO from ''* * * not itself radioactive * * *'' to ''* * * not classed as radioactive material under these rules * * *,'' since nothing is free of radioactive material. NRC and DOT have adopted this comment.

Several comments identified a typographical error in the limit for non-fixed contamination from beta and gamma emitters on the accessible surface of SCO–I objects. That value has been changed from 1.08×10^{-5} Ci/cm^2 to 10^{-4} microcurie/cm^2. These comments also noted inconsistencies in the NRC and DOT contamination limits e.g., (1.08×10^{-4} πCi/cm^2 and 10^{-4} microcurie/cm^2, respectively). NRC has adopted the DOT convention for these limits in the final rule.

One comment inquired as to whether it was consistent for NRC not to exempt SCO–I from transportation requirements when facilities with similar contamination levels may be released for unrestricted use according to NRC Regulatory Guide 1.86. Under the final rule, SCO–I group materials are exempt from NRC regulations, except for one § 71.5 requirement that licensees comply with DOT requirements. Further, the SCO–I non-fixed surface contamination limits are greater than, not similar to, the corresponding acceptable surface contamination levels in Table 1 of NRC Regulatory Guide 1.86.

Several comments noted that the term ''inaccessible surface'' used in the SCO–I definition is not defined and that it was not clear how to comply with a limit for surfaces that were inaccessible. This provision provides for the disposal of materials that have contaminated surfaces that are not readily accessible. Examples of inaccessible surfaces include: inner surfaces of pipes, inner surfaces of maintenance equipment for nuclear facilities, and inner surfaces of glove boxes. Compliance can be achieved by sampling a small area of the surface that may be accessible or by a documented estimate of the inaccessible surface contamination.

One comment stated a belief that the implementation of SCO groups would: (a) Further complicate the preparation and shipment process, without an increase in the safety and quality of waste shipments; (b) result in a significant increase in personnel exposure costs, and delays for preparation and disposal of radioactive waste; (c) require substantial initial personnel training; and (d) require extensive revisions of existing procedures and waste shipping computer programs. NRC acknowledges that the introduction of multiple LSA and SCO groups complicates the transportation of LSA materials. The IAEA consensus was that it was appropriate to regulate SCO separately from LSA materials. The purpose of

these groups is to recognize the lesser hazard of LSA and SCO relative to other radioactive materials, and to provide relief from shipment requirements that would otherwise apply to these materials, while still assuring safety.

With regard to exposure, it is true that the LSA groups will require some increased material treatment or handling. However, this handling is necessary to eliminate the current practice in which there is no quantity limit on LSA packages. This situation poses a risk to the public during transport. Costs will increase, but not by an amount considered significant for the industry. Training with regard to the LSA groups, or any new provision, will be required. Periodic training of hazardous material employees regarding the safe transportation of hazardous materials is required by DOT regulations (49 CFR Part 172 Subpart H); instruction with regard to the LSA and SCO groups may be included at that time.

Implementing the LSA groups will require revision of procedures and computer codes. These costs are judged to be acceptable in order to achieve compatibility with the IAEA regulations for the safe transport of radioactive materials.

A comment noted that the SCO classification ''appears to be well-meaning,'' but that the proposed criteria (presumably the proposed $2A_1$ limit) ''detract from its potential benefit and utility,'' and that it would be easier and less expensive for both producers and consumers of electricity to enjoy the benefits of new transportation systems without the related restrictions. As stated previously, NRC has adopted the IAEA 10 mSv/h (1 rem/h) at 3 m limit for LSA packages, and believes that a limit is needed to protect the public from the potential for excessive external radiation exposure in the case of a severe transportation accident.

One comment suggested that the rule make clear that not every SCO needs to be surveyed and that a random representative survey is adequate. There is no requirement that each SCO in a package be surveyed. The shipper must be able to demonstrate, however, that the package contents comply with applicable SCO definitions.

One comment objected to the upper limit for removable surface contamination for SCO–II (10^{-2} πCi/cm^2 for beta and gamma emitters) because this limit is a factor of 90 less than current LSA limits, and would require extensive decontamination of reactor outage equipment at each site. The comment stated such decontamination is not warranted because it violates the as low as reasonably achievable (ALARA) principle, and is not justified based on shipping experience. The comment suggested that an SCO–III group be defined for materials exceeding SCO–II, and that Type A packaging be required for such materials.

Apparently, this comment is comparing the SCO–II limit for removable (non-fixed) surface contamination with the current LSA limit that applies to nonradioactive material objects that are externally contaminated with radioactive material that is not readily dispersible. The SCO–II limit for fixed surface contamination is a more appropriate comparison with the current limit for not readily dispersible contamination. The SCO–II fixed contamination limit is 20 times greater than the current LSA limit for not readily dispersible contamination.

Section 71.5 Transportation of Licensed Material

Two comments asked for clarification of the specification ''* * *outside of the confines of its plant or other place of use,'' when describing transportation made subject to DOT regulations. One of those comments suggested that the provision be reworded as ''* * *outside the site of usage, as specified in the NRC license, or where transport is on public highways.'' This wording clarifies the provision and has been included in the final rule. Similar wording has been substituted in § 71.0(c).

A comment asked whether § 71.5(b) means ''that an approval must be obtained when the shipment is covered by local State regulations and those regulations will be followed.'' The purpose of § 71.5(b) is to impose, by NRC authority, pertinent DOT requirements on shipments, by NRC licensees, that are not normally subject to DOT requirements. There is no exemption from the requirement of § 71.5(b) regarding compliance with State or local regulations.

Section 71.10 Exemption for Low Level Materials

A comment noted that the SI unit specification of 74 kBq/kg (0.002μCi/g) for exempted low-level radioactive material in § 71.10(a) is not consistent with the 70 Bq value specified in the DOT proposed rule. The specification in § 71.10(a) has been changed to 70 Bq/g, the value in the DOT's final rule. This exemption is applicable only with respect to transportation, and is not generally applicable to other Commission-regulated activities.

A comment noted that it would be useful to have an exemption for small quantities of radioactive material in § 71.10(a) as well as the exemption for LSA material. The safety rationale developed by IAEA [2] for LSA material does not extend to other radioactive materials. IAEA has been informed that a small quantity exemption may be a useful concept. However, this exemption has not been developed yet.

One comment asked that NRC clarify the use of a reference to § 71.53 in the ''Exemption for low-level materials'' provision of § 71.10(b), a provision that pertains to Type A and LSA packages. In addition to control over excessive radiation, the Commission's responsibility with respect to fissile material is to provide reasonable controls to avoid the occurrence of accidental criticality. The regulatory standards for this are found in §§ 71.55 and 71.59. There are some relatively common types of fissile material packages for which there is no credible risk of criticality in transport, even in the absence of controls. These packages are described in § 71.53, and are exempted from the criticality controls of §§ 71.55 and 71.59, because the controls are unnecessary.

The provisions of § 71.10, ''Exemption for low-level materials,'' provide broad exemptions from 10 CFR Part 71 rules that relinquish to DOT the control of types of shipments that are of low risk both from radiation and criticality standpoints. To ensure that only low criticality risk shipments are included in § 71.10(b), NRC restricts the exemption to Type A and LSA packages that either contain no fissile material or satisfy the fissile material exemptions in § 71.53. It should be noted that the exemption does not relieve licensees from DOT transportation requirements by reason of NRC authority, nor does the exemption relieve licensees from the restrictions on air transportation of plutonium imposed by Congress.

The proposed rule introduced a $2A_1$ quantity limit, for LSA packages not designed to withstand accidents (non-Type B packages), to control potential external radiation exposures. Thirty comments were received requesting that the limit be changed in the final rule. Two comments supported no limit; nine supported the IAEA dose limit of 10 mSv/h (1 rem/h)r at a distance of 3 meters for an unshielded package; 4 supported higher multiples of A_1; and 15 supported the optional use of either the IAEA limit or a higher multiple of A_1. As described previously in this

[2] International Atomic Energy Agency Safety Series #7—''Explanatory Material for the IAEA Regulations for the Safe Transport of Radioactive Material'' (1985 Edition). Available from Bernam-Unipub, 4611–F Assembly Drive, Lanham, MD 20706–4391. Tel. (301) 459–7666.

preamble, NRC and DOT have decided that the best overall response on the LSA issue and these comments is to drop the proposed $2A_1$ quantity limit, and to adopt the IAEA radiation level limit of 10 mSv/h (1 rem/h) at 3 m from the unshielded contents.

One comment suggested that the need for labels on LSA packages should be reconsidered. Package labelling falls under DOT jurisdiction. In its final rule, DOT has retained the exception from package marking and labeling requirements for domestic LSA shipments consigned as exclusive use (see 49 CFR 173.427).

One comment expressed concern over the transition of control of packages for shipping Type B quantities of LSA radioactive material from NRC to DOT. NRC has a centralized package design approval authority, whereas DOT authority allows a shipper to determine acceptable package designs (i.e., self-certify package designs). The comment expressed apprehension about permitting each shipper to review package and shipping restrictions against DOT regulations, a situation that could result in some confusion and different interpretations of the regulations.

In the final rule, the IAEA limit of 1 rem/h at 3 m from the unshielded material contents has been established as the threshold for NRC regulation of LSA or SCO package designs. NRC will review and approve, if adequate, designs for packages that contain quantities of LSA or SCO material that exceed that limit. The review by regulatory authority of package designs for quantities that exceed the IAEA limit is consistent with the approach used by other IAEA member states.

Section 71.13 Previously Approved Package

One comment proposed that the date specified in § 71.13(b)(2) be December 31, 1990, instead of December 31, 1992, to be consistent with IAEA transportation regulations. The original 1985 IAEA transport regulations specified December 31, 1990, as the cutoff date for the routine use of packages manufactured under the 1973 edition of the regulations. That date was subsequently extended for 2 years by one of the periodic updates of IAEA regulations and was properly used in the proposed rule. However, since the proposed date of December 31, 1992, has passed, the final rule has been revised (by eliminating reference to any particular date) to make this provision effective on the date that the final rule becomes effective.

Two comments noted that the preamble to the proposed Part 71 indicated that Type B and fissile packages fabricated before a certain date and not used internationally could continue to be used domestically until the end of their useful lives. The licensee would not need to demonstrate that the packages satisfy the new crush test or deep-immersion test. The comments would take that provision one step further and require the crush and deep-immersion tests only for international use packages.

NRC believes that the international package standards should be used by the United States for both domestic and international shipments, to the extent practicable. However, based on a history of safe use under earlier safety standards, and the absence of unfavorable operational data, NRC will allow the continued use of existing packages in domestic transport until the end of their useful lives. NRC will not allow, however, the continued fabrication of packages to the old designs. This action permits use of existing packages. It does not perpetuate package designs that can be discarded or upgraded to satisfy the new standards.

Another comment suggested grandfathering the existing Type A casks now approved for transporting Type B quantities of LSA radioactive material, until the Type B waste casks required to satisfy the new standards become available. NRC has adopted the suggestion, extending the proposed provisions in § 71.52, ''Exemption for low-specific-activity (LSA) packages,'' to a 3 year period, to give the industry time to design, receive approval, and fabricate new Type B waste packages.

Section 71.22 General license: Fissile Material, Limited Quantity, Controlled Shipment

One comment requested clarification as to whether the Type A limit imposed in § 71.22(c) also applies to § 71.22(d).

The requirements of §§ 71.22(a) through 71.22(e) are cumulative, each imposing additional requirements on the use of the general license. The radioactivity limit and mass limits of § 71.22(c) apply to packages, whereas the mass and mass ratio limits of § 71.22(d) apply to shipments.

A comment noted an error, in § 71.22(d)(3), which changed the intent of the section. The commenter suggests that the phrase ''exceeds unity'' at the end of § 71.22(d)(3) be replaced by the phrase ''does not exceed unity.'' NRC agrees and has made that change.

Section 71.24 General License: Fissile Material, Limited Moderator, Controlled Shipment

One commenter asked if the statement in § 71.24(b), ''* * * a quality assurance program approved by the Commission as satisfying the provisions of Subpart H of this part,'' is any different from ''* * * a quality assurance program approved by the Commission.'' The two statements are different in that the first is more specific and provides more detail. There are several different quality assurance programs, in different licensing areas, approved by the Commission. Specifying that the program must satisfy Subpart H makes it clear as to the type of quality assurance program is required.

One commenter recommended inserting ''by weight'' after ''1 percent'' in § 71.24(c)(6). NRC agrees and has made this change in § 71.24(c)(7), as well.

With respect to a general license for a package containing fissile contents, one commenter requested clarification of what is meant by ''no uranium-233'' in § 71.24(c)(6). For a general license under § 71.24(c)(6), a package containing fissile contents must have no detectable U–233. The method for making this determination can be decided by the licensee. For example, the licensee can make this determination by performing an assay or by knowing the history of the material.

Subpart D—Application for Package Approval

One comment suggested changing the title of Subpart D to ''Application for Type B Package Approval'' for clarity. Because NRC also approves Type A packages for fissile material, the title of Subpart D continues to refer to ''Package Approval.''

Section 71.38 Renewal

One comment suggested that NRC provide some administrative acknowledgment when a timely application for renewal of a certificate of compliance has been received to provide proof that timely renewal is in effect. The Commission does not believe that proof of timely renewal is particularly important and that providing an acknowledgment to each registered user of a package would be too burdensome for the benefit gained.

Section 71.43 General Standards for All Packages

Four comments suggested the addition of IAEA regulations relating to packaging of liquids and gases to Part 71, including those pertaining to the special free drop and penetration tests

for liquids and gases. The NRC approves only Type B and fissile material packages. The NRC also notes that fissile material packages must be evaluated for hypothetical accident conditions more severe than the tests for liquids. Furthermore, there are currently no NRC-licensed packages designed for gaseous fissile materials and NRC does not anticipate any future applications for such packages. These additional provisions would complicate regulations that are presently adequate. IAEA standards on absorbent material and double containment have been selectively included in DOT regulations.

Eight comments disagreed with the NRC view that § 71.43(f) should continue to restrict to ''no significant increase'' any change in external surface radiation levels, as a result of subjecting a package to the defined normal conditions of transport. The comments argued that the 20 percent increase specified in IAEA regulations is a safe, reasonable, and practical number that could not reasonably be lower, and that specifying a value in the rule provides the package design engineer and the NRC review engineer a measurable goal that is consistent both with IAEA and with engineering practice.

Type B and fissile material packages can be readily designed so that normal conditions of transport result in no significant increase in dose rates, and that a twenty percent increase in dose rates because of normal handling is excessive. In addition, if a package were designed so that the external dose rate could increase 20 percent during normal handling, the package could exceed the dose rate limits in § 71.47 during transport, and would be an item of non-compliance. NRC and DOT have therefore decided to not adopt the IAEA ''20 percent increase'' provision, and to retain the current ''no significant increase'' provision.

Four comments suggest the addition of the special provisions of IAEA regulations pertaining to the transportation of radioactive material by the air mode. NRC has determined that special requirements for transport of packages by air should be excluded from Part 71 because these provisions are properly incorporated in the carrier restrictions imposed by the Department of Transportation.

Two comments suggested that the phrase ''Account must be taken of the behavior of materials under irradiation'' be clarified and quantified, perhaps in a regulatory guide, or deleted from Part 71. Although there is no regulatory guidance now available relating this requirement to transportation packages, it is clear that any effects of irradiation on materials used in the package must be taken into account. These effects could be the accelerated aging or embrittlement of elastomers or elastics and may result in requiring a frequent change of gaskets, for example.

One comment suggested the performance requirement of § 71.43(f) be changed to include a numerical sensitivity for the requirement that there be ''no loss or dispersal of radioactive contents'' as a result of subjecting a package to the specified normal conditions of transport. The equivalent paragraph in the IAEA regulations for Type A packages is paragraph 537, and does not contain a numerical sensitivity. Paragraph 548, of IAEA Safety Series #6, is the equivalent of 10 CFR 71.51, for Type B package leaktight sensitivity. Both those provisions require Type B packages to be leaktight to a sensitivity of 10^{-6} A_2/h.

Three comments noted that IAEA no longer prohibits continuous venting of packages in its 1985 edition and urged the NRC to allow the practice domestically for Type B packages. The commenters argued that although NRC took a strong position, in the preamble to the proposed rule, that continuous package venting is ''poor engineering practice,'' NRC did not explain why. The commenters noted that DOT regulations do not prohibit continuous venting for Type A packages, leaving the acceptability of continuous venting to be decided by performance requirements. The commenters stated that in some cases it would make good sense to allow continuous venting to provide pressure equalization and discharge of organically generated hydrogen gas.

NRC is continuing its ban on continuous venting of Type B packages for the following reasons:

1. Venting of a package containment system during normal conditions of transport defeats the purpose of the containment system;

2. It is practical to design packages that do not rely on venting, to relieve pressure under normal conditions of transport;

3. The use of a vent does not necessarily prevent the generation of potentially flammable or explosive gas mixtures; and

4. The reliability of filters under temperature extremes, varied operating conditions, and sustained service has not been established.

Two comments stated that Mo–99/Tc–99m radiopharmaceutical generators are open to the atmosphere to allow changes in ambient pressure and that the generators do not vent radioactive material. The comments recommended that the prohibition against venting be limited to venting radioactive material only and that NRC continue current practices.

NRC believes these comments arise from concern over the reduction in the A_2 quantity for Mo–99 from 20 curies to 13.5 curies in the proposed rule. NRC recognizes that the shipment of Mo–99/Tc–99m generators is a special case, and is retaining the 20 curie A_2 value for Mo–99, to permit the continuation of current practices.

Section 71.47 External Radiation Standards for All Packages

NRC used the term ''accessible external surface'' in its proposed rule for determining radiation levels on package surfaces, whereas DOT used the term ''external surface'' in its proposed rule. Four comments argued that the NRC and DOT regulations for radiation level limits on package surfaces should be identical. Most believed that a limit on accessible surfaces was the more reasonable standard.

DOT has indicated that it is considering a petition for rulemaking to add the word ''accessible'' to its radiation level regulations and will consider that complex issue in a separate action. Pending completion of the DOT separate action, NRC has deleted the word ''accessible'' from this section of the final rule but does not intend to alter its practices regarding this provision.

One comment stated that this paragraph tends to be confusing in that it establishes a limit of 2 mSv/h (200 mrem/h) for package surface radiation levels, yet § 71.47(b)(2) seems to state that packages transported on a flatbed trailer can exceed 2 mSv/h (200 mrem/h), provided the radiation level at the planar edges of the trailer is less than or equal to 2 mSv/h (200 mrem/h).

Section 71.47 establishes a generally applicable 2 mSv/h (200 mrem/h) Package surface radiation-level limit. The section further establishes that, if a package is shipped as exclusive use, the radiation level may exceed 2 mSv/h (200 mrem/h), provided the applicable provisions of paragraphs (a) (with repect to Transport Index) through (d) are met. Paragraph (b)(2) restricts the radiation level at any point on the vertical planes projected by the outer edges of a flat-bed style vehicle to 2 mSv/h (200 mrem/h) (the same limit imposed in paragraph (a) for the outer surfaces of closed transport vehicles). Thus, provided packages are shipped as exclusive use, external radiation levels may exceed 2 mSv/h (200 mrem/h) at the surface of packages on flatbed trailers, but not at the outer-edge planes of the vehicle.

Section 71.51 Additional Requirements for Type B Packages

One comment suggested that the clarifying provision following paragraphs 548(a) and (b) of IAEA regulations be added to Part 71 for consistency. The clarifying provision pertains to allowable releases of radioactive material from a package containing a mixture of radionuclides. This is the case, for example, with spent nuclear fuel casks. That clarifying provision has been added.

Section 71.52 Exemption for LSA Packages

Twelve comments expressed concern that the proposed Part 71 affords only a 1-year delay in applying the new LSA rules. NRC established the 1-year delay to give the industry an opportunity to design and build the Type B waste casks that would be required under the new rules. The comments uniformly argued that 1 year was not a sufficient period of time to design a waste cask, to have it reviewed and approved by NRC, and to fabricate an adequate number of casks, to approved designs, that satisfy the needs of the new LSA rule. The commenters differed in how long they thought that process would take, varying over 2, 3, and 5 year periods. NRC agrees with the thrust of this comment and has established the exemption period at 3 years. Thus existing packagings may be used for 3 years and new packagings may be fabricated from existing designs for 3 years.

A consequence of establishing the IAEA LSA/SCO package limit as the delineator between NRC and DOT regulation of LSA and SCO packaging [see § 71.10(b)(2)] is that, after the 3 year exemption period, LSA will be shipped either in DOT authorized packagings, or in NRC certified Type B packagings. Accordingly, NRC is discontinuing the practice of certifying Type A LSA packages. NRC has therefore not adopted a proposed exemption (§ 71.52(a)) that only would have applied to NRC certification of new Type A LSA package designs.

One comment stated that the demand for waste casks would rise until 1993 and then fall again because few of the low-level radioactive waste disposal site compacts will permit disposal access. Vendors will hesitate to invest in casks that will not be used after 1993 and waste will need to be stored onsite.

NRC is unwilling to accept this proposition and believes that as long as NRC specifies the requirements for transportation of waste, given adequate time, industry will continue to develop disposal options.

One comment argues that the specific reference to § 71.43(f) should be deleted because it is included in the broader reference to §§ 71.41–71.47.

Section 71.52 exempts exclusive use LSA and SCO packages from the additional requirements for Type B packages for a period of 3 years from the effective date of the final rule. These LSA packages are still subject to other requirements that apply to all packages. The referral to these other package requirements includes §§ 71.41–71.47, plus a specific reference to. An argument could also be made for deleting the entire reference because those requirements apply regardless of the reference in this section. However, NRC chose to include the reference in § 71.52 as a reminder that the exemption is only from § 71.51, not from all packaging requirements. NRC believes the reference to § 71.43(f) (normal conditions of transport tests) is important and has decided that it will be retained.

One comment suggested that SCO be included within the scope of § 71.52, and that the $2A_1$ limit be included in the section for clarity. NRC agrees with the comment and has made the clarifications, substituting the IAEA LSA limit for $2A_1$.

Section 71.53 Fissile Material Exemptions

One comment suggested spelling out the word ''liter'' instead of using ''l'' as the abbreviation. Considering the typing errors caused by the use of that abbreviation, the final rule spells out the word ''liter'' wherever it appears.

Section 71.55 General Requirements for Fissile Material Packages

One comment suggested that by adding the word ''full'' to the water reflection criterion of § 71.55(b)(3), the NRC has added more cost with no apparent benefit ''* * * since transport limits already take this consideration into account.'' The latter part of this comment probably refers to the ''transport index'' controls that limit the number of packages which can be transported and stored together, but do not consider the safety of an individual package in isolation. Addition of the word ''full'' in § 71.55(b)(3) is a matter of clarification. NRC has always required ''full'' reflection wherever reflection is required. IAEA regulations required ''full'' reflection in the 1973 edition, and go a step further in the 1985 edition, to define ''full'' as ''water 20-cm thick (or its equivalent).'' NRC has retained the word ''full,'' in § 71.55(b)(3), and has added the word ''full,'' in § 71.55(e)(3), for consistency.

A commenter agrees that the proposed Part 71 begins to simplify the system of shipping fissile material but that most of the difficulties still exist. The commenter advocates development of ''a system of performance-oriented packaging,'' to reduce the current complexity of the ''design-oriented package choices.'' NRC agrees that there are a number of radiation control design requirements that apply to the fissile material packages as well as to packages of other radioactive material. However, NRC views the criticality control provisions as performance-oriented rather than design-oriented. NRC must specify the conditions against which the package must be designed. Without the environmental tests and package objectives, there would be no level of protection against which to design packages.

Section 71.61 Special Requirement for Irradiated Nuclear Fuel Shipments

One comment recommended that the rule clarify that the deep immersion test is to be applied to an otherwise undamaged package. This important detail is implied, but not specifically stated. The Commission agrees and has made that clarification.

In the final rule, this section has been modified to require that the external pressure test be applied directly to the containment system of a package. NRC does not believe the external structure should play a part in helping the containment system of a package withstand an external pressure test and has chosen to ignore its existence in specifying the requirement.

A comment recommended that the word ''rupture,'' as used in this requirement, be defined as a gross structural collapse and not just an inleakage of water. Although the word ''rupture'' in the proposed rule did mean gross structural collapse, NRC has since decided that the term ''rupture'' cannot be determined by engineering analysis. NRC has decided to change the acceptance criteria for the deep immersion test from ''rupture'' to ''collapse, buckling, or inleakage of water.''

A comment stated that this requirement should include the 1-hour time specification included in the IAEA requirement to avoid later misinterpretation of the test. The NRC agrees that adding the 1-hour test specification would help prevent confusion between IAEA and domestic regulations, and has included the time specification.

A comment noted that the term ''at least'' is used two times in the proposed requirement, thereby creating an opportunity for misinterpretation. Although the term is used in the IAEA text, the NRC agrees with the commenter that it serves no useful purpose and has deleted the term.

A comment stated that the deep-water immersion test should be clarified to ensure that an engineering evaluation is an acceptable alternative to a physical test because an actual 200-m test would be costly and difficult. NRC believes it is clear that an engineering evaluation is acceptable because the equivalent external gauge pressure is specified in the text of the requirement. The provisions of § 71.41(a) are intended to allow the use of engineering evaluations when they are reasonably applied.

The remaining three comments relating to this section all deal with transition periods and special provisions for casks for which there will be no further fabrication and that are not used internationally. The earlier portion of this preamble dealing with the provisions of § 71.13 presents the NRC view on these matters.

Section 71.63 Special Requirements for Plutonium Shipments

Four comments argued that the extension of this provision to radionuclides other than plutonium is unjustified and that the provision, even without the extension to other radionuclides, differs from IAEA rules and is inconsistent with the principles of IAEA rules. Two of the commenters argued further that the existing provisions, if examined in the light of current regulatory analyses, probably could not be justified.

NRC recognizes that some requirements have been added to the regulations over the years strictly on the basis of prudent judgment. Because the basis for current rules is not a part of this rulemaking action, NRC will simply refrain from extending the present rule to other radionuclides.

One commenter argued that the rule should be rewritten using multiples of the A_2 values, not only to define radionuclides subject to the rule, but also to define the level of activity at which the extra requirements come into effect. Because the extension to other radionuclides is being withdrawn, the inclusion of A values does not appear to improve the requirement.

Section 71.71 Normal Conditions of Transport

Three comments noted that the provision of IAEA's paragraph 528 requiring consideration of a temperature range from −40 °C to +70 °C for the components of the packaging is not reflected in Part 71. NRC omitted this provision because NRC does not want to limit the high end temperature consideration to 70 °C because that would imply that +70 °C is the highest temperature that has to be considered for package design. This does not take into account the considerably higher temperatures resulting from decay heat in certain Type B packages.

Three comments noted that 10 CFR 71.71(c)(4) prescribes an increased external pressure specification of 140 kPa absolute but IAEA regulations do not have that exact requirement. NRC believes there is a need for an external pressure test for normal conditions to ensure that a package filled at low pressure or high altitude will withstand an external pressure increase. The additional pressure test has been retained.

Three comments observed that § 71.71(c)(7) states that the free drop test be conducted between 1.5 and 2.5 hours after the conclusion of the water spray test but the same requirement is not included in the IAEA regulations. The IAEA rules, however, do include restrictions, in paragraph 620, on the timing of the mechanical tests after the water spray test. NRC has retained the water spray test as is and believes the NRC test meets the intent of the IAEA test.

One comment noted that with the deletion of the fissile classes, the corner drop test, which was required only for Fissile Class II packages, is proposed to be applied to all fissile packages. The commenter argued that for a large and heavy package, such as a spent fuel shipping cask, ''it is considered highly implausible for a package to undergo a one-foot corner drop as a normal condition of transport. Only a free drop with the package in its normal orientation should be specified as a normal condition of transport for large and heavy packages, therefore saving valuable analysis effort and time.''

NRC agrees with the comment and has deleted the corner drop test for fiberboard, wood, or fissile material rectangular packages weighing more than 50 kg (110 lb), and for fissile material cylindrical packages weighing more than 100 kg (220 lb). For these packages, NRC does not believe that the corner drop tests are significant in developing a safe fissile material package.

Section 71.73 Hypothetical Accident Conditions

One comment stated that reversing the order of the two immersion tests in §§ 71.73 (c)(5) and (c)(6) would restore the order of the tests, which must be run consecutively, and would therefore clarify the text. NRC agrees and has made the change.

One comment recommended that the temperature extremes specified for the initial test conditions in § 71.73(b) be given a reasonable tolerance because ambient air temperatures cannot be controlled. NRC agrees that temperatures, as with other required parameters of the test conditions, cannot be accurately controlled. NRC's position, however, is not to establish tolerances, but to require that the effects of test conditions different from those specified be analyzed as part of the overall evaluation. Every analysis would then be normalized to the same set of specifications.

One comment recommended that the word ''single,'' in the second line of the thermal test in § 71.73(c)(4), should be ''simple''. NRC agrees and has made that change.

Two comments asked that NRC include some information as to how the effects of solar radiation should be treated. One comment stated, ''The solar insolation can be a significant factor and should be consistently evaluated.'' Others have argued that the effects of solar insolation are insignificant compared with the thermal effects of the fire test and should be ignored.

NRC adopts the view of the thermal experts who participated in developing the IAEA regulations. Those experts thought the effects of solar radiation may be neglected before and during the thermal test but that such effects should be considered in the subsequent evaluation of the package response.

One comment recommended the development of guidance on how designers should interpret the revised thermal test requirement. Although there is guidance provided in the IAEA's companion documents to its transportation regulations (IAEA Safety Series No. 7, ''Explanatory Material for the IAEA Regulations for the Safe Transport of Radioactive Material—1985 Edition,'' and IAEA Safety Series No. 37, ''Advisory Material for the IAEA Regulations for the Safe Transport of Radioactive Material—1985 Edition''), further guidance may be necessary. If so, it is the industry that can best propose guidance, based on its capabilities. If coordinated under the auspices of the American National Standards Institute (ANSI), Committee N–14, with NRC representation, there is a good chance that a consensus standard could be developed that could be endorsed by NRC as a satisfactory means to satisfy regulatory requirements.

One comment stated that packages that are subjected to the crush test should not also be subjected to the 30-foot free drop test, as required in the proposed rule. Instead, consistent with IAEA, the crush test should be in lieu of the 30-foot free drop test.

NRC believes that the crush test and the free drop test impart different types of loadings onto the package. Having sufficient crush resistance for the crush test does not ensure the adequacy of the package under the inertial loadings that occur during the 30-foot drop tests. NRC believes that it is important for packages to have resistance to impact and that the crush test should not be a substitute for the impact test.

One comment stated that a crush scenario is not likely during ''dedicated'' shipments because heavy loads are not placed above the shipment at any time during transport. The comment questioned the applicability of the test for dedicated shipments, and requested that at least an engineering evaluation be allowed as an alternative to a physical test. NRC has made it clear (see § 71.41) that appropriate analyses may be used to demonstrate the ability of a package to meet crush test conditions.

Section 71.75 Qualifications of Special Form Radioactive Material

One comment indicates that changes in § 71.75(a) from the current rule have changed the concept of special form from being a provision for special properties of the radioactive material contents of the package to being a provision for special properties of the package—a change from qualifying a ''special form source'' to qualifying a ''special form package.''

NRC regrets the confusion, but intended no substantive change to the concept of special form. Special form criteria in this final rule have been brought closer to those of DOT, but still without any basic changes.

One comment noted that the reference in § 71.75(e) [§ 71.75(d), in the final rule], to a standard of the International Standard Organization (ISO) is vague and should be made more specific.

Although the ISO standard could be written in all its detail in Part 71, rather than simply referenced there, most comments over the years have encouraged NRC to have less repetition and more simple references to other requirements.

Section 71.83 Assumptions as to Unknown Properties

One comment pointed out an error in line 7 of § 71.83, where the proposed rule referred to ''known properties'', where it should have referred to ''unknown properties.'' That error has been corrected.

Section 71.85 Preliminary Determinations

One comment recommended that the term ''durable'' in the context of ''durably mark the packaging,'' as in § 71.85, be defined in terms of the conditions that the markings on the packaging must be able to withstand. When developing its regulations, NRC must decide at what level of detail they are to be written. Sometimes that level of detail is changed as a result of experience if a widespread misuse of a standard becomes known because of a lack of detail. NRC is not aware of any problem with the term ''durably,'' even though it has been used since 1968 in the preliminary determinations section. In the absence of a significant problem, NRC prefers to leave the term as is.

Section 71.87 Routine Determinations

One comment recommended that NRC's Table V ''Removable External Radioactive Contamination Wipe Limits,'' be used by DOT in place of its Table 11. NRC notes that the only significant difference between the two tables is that the term ''low toxicity alpha emitters'' is replaced by its definition in the NRC table. The NRC final rule simply refers to the DOT requirement (49 CFR 173.443) for maximum permissible contamination limits.

Section 71.88 Air Transport of Plutonium

One comment recommended that the forward tie-down specification of 9 g detailed in § 71.88(c)(2) be reduced to 1.5 g for plutonium packages transported on a Boeing 747 aircraft. The reason for this recommendation has to do with the 14 CFR 25.561 regulatory requirement of the Federal Aviation Administration (FAA), that the supporting structure of an airplane must be designed to restrain, up to specified inertial forces, including 9–g in the forward direction, ''* * * each item of mass that could injure an occupant if it came loose in a minor crash landing.'' NRC, in prescribing tie-down requirements for plutonium packages in aircraft, took note of the supporting structure requirements of the FAA and required a 9-g tie-down system for the package on the main deck of the aircraft. The Boeing 747 cargo aircraft, however, with no passengers and the cockpit located above the main deck, is not subject to the requirements of 14 CFR 25.561 because there are no occupants to injure if ''* * * the package came loose in a minor crash landing.'' Thus, the Boeing 747 ''Weight and Balance Manual,'' DG–13700, shows a load factor of 1.5 g in the forward direction.

The purpose of the NRC tie-down requirement was not to protect occupants of the aircraft from cargo that has come loose in a minor crash landing. Therefore, the comparison with the FAA supporting structure requirement is not germane. The purpose of the NRC requirement was to protect the plutonium package from the uncontrolled potential for damage inherent in having the package unrestrained in a crash landing.

Paragraph (c) of § 71.88 proposed a requirement that the licensee make special arrangements with the carrier on where to place the plutonium cargo in the aircraft, how to tie it down, and what restrictions are to be placed on other cargo. Recognizing that these restrictions would be more appropriately placed directly on the carrier rather than through the shipper, the DOT has placed these restrictions in its air carrier regulations (§ 175.704 of 49 CFR Part 175, ''Carriage By Aircraft.'') These regulations are now referenced in § 71.88.

Section 71.95 Reports

All three public comments on this section were directed at the newly proposed provisions of paragraph (c), which require a 30-day report of ''* * * instances in which the conditions of approval in the certificate of compliance were not observed in making a shipment.''

One comment requested clarification whether § 71.95(c) applies to shippers or receivers.

The scope of Part 71 (§ 71.0(c)) makes the regulation applicable only to shippers of radioactive material. Therefore, § 71.95(c) applies only to shippers of radioactive material. However, shipment deficiency may be detected by the receiver of the shipment. If the receiver reports that deficiency to the shipper, the shipper is obligated to report it to NRC. Further, note that 10 CFR Part 21, ''Reporting of Defects and Noncompliance'', is applicable to receiving facilities.

The other two comments dealt with the substance of the event that would prompt the report. One suggested the regulation be more specific on conditions that would require a report. The second comment suggested that the report include the consequences of the deficient shipment such as radioactive contamination, a loosened sealing cap, etc.

Although both of these suggestions have merit, neither has been

incorporated in the final rule. The purpose of the requirement is to provide feedback to NRC on quality assurance program effectiveness by an indication of the number and type of packaging and other mistakes and on the safety significance of those mistakes by an indication of the mistake consequences. NRC believes the reporting requirement should retain its broad scope. A large number of reports is not expected. NRC also believes that individual follow-up is the only reasonable way to uncover any procedural deficiency that might cause mistakes.

One comment questioned whether this type of report is important enough to be required within 30 days. NRC judges that the timing is about right, and expects the staff's review of submitted reports to be completed within a similar time frame.

Section 71.97 Advance Notification of Shipment of Irradiated Reactor Fuel and Nuclear Waste

Of the five comments submitted on this notification requirement, two suggested changing the value for the number of curies in § 71.97(b)(3)(iii), so it corresponds to the same limit in the regulations of DOT and IAEA. That change has been made.

The other three comments stated that this requirement was not clearly expressed. The requirement has been reorganized in the final rule, and consists of the following parts:

1. Paragraph (a) provides a broad general requirement that licensees pre-notify governors of States of any shipments of radioactive material going to, through, or across the boundary of the State;

2. Paragraph (b) limits the prenotification requirement to certain types of shipments. All the conditions of paragraph (b) must be satisfied for the prenotification requirement to apply. The licensed material must be required to be in a Type B package, limiting the requirement to shipments of relatively high potential hazard. The shipment must be destined to a disposal site or to a collection point for transport to a disposal site, further limiting the requirement to waste material. The quantity of radioactive waste in a single package must exceed the limits specified in the DOT regulations for highway-route controlled quantities. Lastly, for irradiated fuel, the quantity contained in a single package must be less than that subject to the similar advance notification requirement of 10 CFR 73.37(f).

3. Paragraphs (c), (d), (e) and (f) contain the details for timing, information in the notification, revisions, and cancellation.

One comment noted that from the wording in § 71.97(a), a reader would expect to find exceptions in § 71.97(b). The comment notes that the provision does not contain exceptions. NRC agrees with this comment and has revised § 71.97(a) for clarity.

One comment questioned the value of proposed § 71.97(b)(4) [§ 71.97(b) in the final rule] which required that ''* * * the quantity of irradiated fuel is less than that subject to advance notification requirements of § 73.37(f) of this chapter.'' Paragraph 73.37(f) refers to a separate part of the Commission's regulations, 10 CFR Part 73, ''Physical Protection of Plants and Materials,'' and imposes an advance notification requirement for irradiated fuel shipments similar to the one under discussion. The scope of Part 73 (see § 73.1(b)(5)) limits its applicability regarding shipments of irradiated reactor fuel to ''* * * quantities that in a single shipment both exceed 100 grams in net weight of irradiated fuel, exclusive of cladding or other structural or packaging material, and have a total radiation dose rate in excess of 100 rems per hour at a distance of 3 feet from any accessible surface without intervening shielding.'' If the quantity of irradiated fuel in a shipment exceeded the quantity specified in § 73.1(b)(5), the notification would be made under § 73.37(f). If not, the notification would be made under § 71.97. The proposed provision in § 71.97(b)(4) was intended to prevent duplicate notifications for some shipments.

The final comment on § 71.97 included a clear rewrite of § 71.97(b) that has been used in its entirety in the final rule.

Comments on Appendix A

Five comments supported the inclusion of new radionuclides in Table A–1 of Appendix A as useful and justified. Five other comments pointed out errors and inconsistencies between NRC and DOT for the A_1/A_2 values in Table A–1. These inconsistencies have been corrected in the NRC and DOT final rules.

Three comments recommended a grandfathering provision for the continued authority to transport molybdenum (Mo) 99/technetium (Tc) 99m generators, in Type A packages, with radioactivity between the current A_2 value of 20 Ci and the new A_2 value of 13.5 Ci for Mo-99. The lower A_2 value is the result of a new dosimetric model, for beta-emitting radionuclides, to address skin contamination. In the preamble to the NRC proposed rule, the NRC noted, with respect to the changes in the A_1 and A_2 values:

> Based on our most current knowledge of radioactive material shipments in the United States, the economic impacts of these changes are not likely to be large. However, any situations where a potential exists for significant economic impacts as a result of changes in the A_1 or A_2 values should be brought to the NRC's attention in public comments.

NRC agrees that this is a situation where health care in the United States could be significantly impacted as a result of forcing the larger quantity Mo-99/Tc-99m generators now transported in Type A packages into Type B packages. In view of the favorable experience over the years with these generators, NRC and DOT will allow the continued domestic transportation of generators that contain up to 20 Ci of radioactive material in Type A packages.

Two similar proposals to grandfather the transportation of carbon-14, phosphorus-32, sulfur-35, and iodine-125 at existing levels were not as persuasive and have not been adopted. The decrease in A_1 and A_2 values would apparently force many shipments out of the ''limited quantity'' category, where they are excepted from specification packaging, shipping papers and certification, and marking and labeling requirements, and into the ''Type A'' category.

Although there are clearly more packaging and communication requirements associated with the ''Type A'' category than with the ''limited quantity'' category, NRC does not view that change as creating the same economic impact as a change from the ''Type A'' to the ''Type B'' category.

One comment suggested that the radionuclides einsteinium-253 and einsteinium-254 be added to Table A–1 because shipment of those transuranics are increasing in number and the default values are not expected to be adequate. NRC has added those radionuclides and will also propose them for addition to the IAEA regulations. Until they are included in IAEA Safety Series No. 6, however, multilateral approval is required for international shipments. This limitation is identified by footnote in Table A–1.

One comment objected to having to obtain NRC approval of A_1/A_2 values that are not in Table A–1. In addition to NRC approval, international shipments require multilateral approval of A values that are not included in the IAEA regulations by each country through or into which the consignment is to be transported. The development of A values may not be a simple matter, requiring consideration of daughter

radionuclides and differing radioactive emissions. Although a competent health physicist or nuclear engineer should not have too much difficulty determining an A value, NRC must assure that a system exists to protect against faulty determinations. Use of the conservative A values from Table A–2 does not require regulatory approval.

One commenter questioned the unlimited values, for A_1 and A_2 in Table A–1, for uranium-235 enriched less than 5 percent. The comment argued that U–235 is a fissile material and the unlimited values may not be appropriate. The A_1/A_2 values are for radiological, not fissile, considerations. The A_1/A_2 values set the maximum quantity of radioactive material that can be shipped in a Type A package (except for LSA); other package characteristics, such as heat generation, weight, criticality, external radiation, etc., can further limit the quantity of radioactive material in that Type A package. Limitations with respect to fissile characteristics, for example, are addressed in §§ 71.53, 71.55, and 71.59. NRC has decided to add a clarifying note, currently in the IAEA regulations, to the A_1/A_2 Table in Appendix A of Part 71. The Appendix A note reads ''Where values of A_1 and A_2 are unlimited, it is for radiation control purposes only. For nuclear criticality safety, some materials are subject to controls placed on fissile material.''

Finally, one comment suggested that we eliminate the specific activity column from Table A–1. The comment argues that ''Specific activity information is not required or explained in the regulations, and it is difficult to keep the information accurate.''

Although the NRC is in basic agreement with the comment and would have no problem in eliminating the specific activity data from Part 71 if there were a good source of comparable data available for the times it is needed to implement the transportation regulations. NRC is not familiar with any good substitute source. Though IAEA Safety Series No. 37, ''Advisory Material for the IAEA Regulations for the Safe Transport of Radioactive Material (1985 Edition),'' third edition, published in June 1987, includes a table of half-lives and specific-activities, there is no indication yet of a system of periodic reviews that would keep that information up to date.

Comments on Draft Regulatory Analysis

Ten persons commented on the impacts associated with the proposed changes to limit the content of LSA/SCO packages to $2A_1$. The main thrust of these comments is that the impacts are much greater than presented. In part in response to these comments, NRC has adopted in the final rule the IAEA LSA/SCO package limit of 10 mSv/h (1 rem/h) at 3 m, in lieu of the proposed $2A_1$ limit.

Because the NRC data base for determining the additional shipments expected to be caused by the proposed rule dated back to 1980, and because a clear preference was developing in the public comments for the IAEA radiation level limit rather than the $2A_1$ limit, NRC repeated its analysis using more recent data. An NRC contractor gathered 1989 data from the 3 shallow land burial facilities for all waste shipments of resins, evaporator bottoms, and filter media. The contractor analyzed the characteristics of those 4600 Type A cask shipments and found that approximately 150 of those shipments would have exceeded the IAEA limit. NRC assumes that each shipment exceeding the limit is split into 2 shipments due to the smaller capacity of Type B packaging. Thus 150 additional shipments are caused by the LSA limit.

The impacts of preparing additional packages of LSA waste for shipment and receiving those additional shipments at the burial ground were absent from the draft regulatory analysis. One comment advised the NRC of the results of an exposure study which concluded that the extent of the collective exposure for preparation and receipt of waste casks was approximately 0.5 person-rem per shipment. The NRC noted that half of the 0.5 person-rem per shipment factor multiplied by the 4600 waste cask shipments per year from the new data base corresponds fairly well to a large portion of the 1726 person-rem collective exposure reported for all light water reactors for 1986 under the category ''waste processing'' by Barbara G. Brooks, NRC, and D. Hagemeyer, SAIC in NUREG–0713, Vol. 8, dated August 1989 (this version was current at the time the contractor prepared the regulatory analysis). On the basis of this data, NRC has accepted the 0.5 man-rem per shipment number as a reasonable estimate. Multiplying that 0.5 man-rem per shipment conversion factor by the 150 additional shipments which the limit of 1 rem per hour at 3 meters would cause, the effect of the limit would be 75 person-rem per year.

Because the IAEA LSA provisions permit a greater quantity of LSA/SCO material to be shipped in a package, fewer packages and shipments are needed to transport a given quantity of material. The estimated burden on industry from the final rule is therefore less than that for the proposed rule. The NRC draft regulatory analysis dated November, 1987 developed industry costs resulting from a $2A_1$ limit on LSA shipments of $1.7 million per year. These costs consist of package costs and shipment costs resulting from an estimated 311 additional cask shipments per year. Through the same simple modeling used in the older analysis, the new NRC regulatory analysis shows increased dollar costs associated with the 150 additional LSA/SCO shipments of $1.0 million per year. These estimates include differential package costs and differential shipping and handling costs, annualizing and summing each component. These estimates do not include cost components recognized but not quantified in the public comments as training, procedure revisions, computer program changes and upgrades, insurance premiums, and disposal costs.

There were no significant comments related to the projected number of non-radiological deaths and injuries associated with the increased shipments caused by the new standards.

Agreement State Compatibility

Section 274d.(2) of the Atomic Energy Act of 1954, as amended, requires that before entering into an agreement with any State, the Commission shall make a determination that the State's program is compatible with the Commission's program. Section 274g authorizes and directs the Commission to cooperate with the States in the formulation of standards to assure that State and Commission programs will be coordinated and compatible. The basic objective of NRC's State Agreements Program has been to achieve uniformity among the various programs to the maximum extent practicable recognizing that the States must be allowed some flexibility to accommodate local conditions. Under this Program, procedures have established criteria for better defining compatibility, and for determining the degree to which States regulations must show uniformity with Commission regulations. In practice, the Commission's regulations are categorized as Division 1–4 Rules according to the degree of State regulation uniformity required, as summarized in the following table:

Division	Agreement State regulation uniformity
1	Agreement States are expected to adopt, essentially verbatim, the regulation to provide consistency between Federal and State requirements.

Division	Agreement State regulation uniformity
2	Agreement States have the flexibility to adopt similar or more stringent requirements based on their radiation protection experience, professional judgements, and community values.
3	Agreement States should adopt the requirement, but there is no degree of uniformity between NRC and Agreement States required.
4	Agreement States should not adopt the requirement since these are regulatory functions reserved to NRC.

The final rule does not affect the current compatibility categorization of Part 71 regulations. The following table lists the Part 71 Sections and corresponding rule categorization (Division 1–4):

Division	Section	Title
1	71.4	Definitions.
1	71.5	Transportation of Licensed Material.
1	71.10	Exemption for Low-Level Materials.
1	Appendix A	Determination of A1 and A2.
2	71.12	General License: NRC-Approved Package.
2	71.13	Previously Approved Package.
2	71.14	General License: DOT Specification Container.
2	71.16	General License: Use of Foreign Approved Package.
2	71.81	Applicability of Operating Controls and Procedures.
2	71.85	Preliminary Determinations.
2	71.87	Routine Determinations.
2	71.88	Air Transport of Plutonium.
2	71.89	Opening Instructions.
2	71.97	Advance Notification of Shipment of Irradiated Reactor Fuel and Nuclear Waste.
3	71.0	Purpose and Scope.
3	71.1	Communications.
3	71.2	Interpretations.
3	71.3	Requirement for License.
3	71.7	Completeness and Accuracy of Information.
3	71.8	Specific Exemptions.
3	71.9	Exemption of Physicians.
3	71.91	Records.
3	71.93	Inspections and Tests.
3	71.95	Reports.
3	71.99	Violations.
3	71.101	Quality Assurance Requirements.
3	71.103	Quality Assurance Organization.
3	71.105	Quality Assurance Program.
3	71.107	Package Design Control.
3	71.109	Procurement Document Control.
3	71.111	Instructions, Procedures, and Drawings.
3	71.113	Document Control.
3	71.115	Control of Purchased Material, Equipment, and Services.
3	71.117	Identification and Control of Materials, Parts, and Components.
3	71.119	Control of Special Process.
3	71.121	Internal Inspection.
3	71.123	Test Control.
3	71.125	Control of Measuring and Test Equipment.
3	71.127	Handling, Storage, and Shipping Control.
3	71.129	Inspection, Test and Operating Status.
3	71.131	Nonconforming Materials, Parts, or Components.
3	71.133	Corrective Action.
3	71.135	Quality Assurance Records.
3	71.137	Audits.
4	71.6	Information Collection Requirements: OMB Approval.
4	71.18	General License: Fissile Material, Limited Quantity per Package.
4	71.20	General license: Fissile Material, Limited Moderator per Package.
4	71.22	General License: Fissile Material, Limited Quantity, Controlled Shipment.
4	71.24	General License: Fissile Material, Limited Moderator, Controlled Shipment.
4	71.31	Contents of Application.
4	71.33	Package Description.
4	71.35	Package Evaluation.
4	71.37	Quality Assurance.
4	71.38	Renewal of a Certificate of Compliance or Quality Assurance Program Approval.
4	71.39	Requirement for Additional Information.
4	71.41	Demonstration of Compliance.
4	71.43	General Standards for all Packages.
4	71.45	Lifting and Tie-down Standards for all Packages.
4	71.47	External Radiation Standards for all Packages.
4	71.51	Additional Requirements for Type B Packages.

Division	Section	Title
4	71.52	Exemption for Low-Specific-Activity (LSA) Packages.
4	71.53	Fissile Material Exemptions.
4	71.55	General Requirements for Fissile Material Packages.
4	71.59	Standards for Arrays of fissile Material Packages.
4	71.61	Special Requirement for Irradiated Nuclear Fuel Shipments.
4	71.63	Special Requirements for Plutonium Shipments.
4	71.64	Special Requirements for Plutonium Air Shipments.
4	71.65	Additional Requirements.
4	71.71	Normal Conditions of Transport.
4	71.73	Hypothetical Accident Conditions.
4	71.74	Accident Conditions for Air Transport of Plutonium.
4	71.75	Qualification of Special Form Radioactive Material.
4	71.77	Qualification of LSA–III Material.
4	71.83	Assumptions as to Unknown Properties.
4	71.100	Criminal Penalties.

Petitions for Rulemaking

Three petitions for rulemaking were filed with the NRC in connection with the rules for transporting LSA radioactive material. The substance of each of the three petitions was essentially the same, to request that NRC exempt LSA materials from its requirements in Part 71.

The petitioners were the Energy Research and Development Administration (now the U.S. Department of Energy) in its letter dated July 23, 1975 (PRM–71–1); ANSI Committee N14, in its letter dated March 10, 1976 (PRM–71–2); and Chem-Nuclear Systems, Inc., in its letter dated November 22, 1976 (PRM–71–4). At the time these petitions were filed, DOT regulated carriers and shippers of small quantities of all radioactive materials (including LSA materials) through provisions in its regulations in 49 CFR Parts 170–189, whereas NRC regulated shippers of fissile material and of larger quantities of other radioactive materials (including LSA materials) through its regulations in Part 71 and its licensing program. All three petitioners argued that the control NRC was exerting over transportation of LSA materials created an inconsistency between NRC regulations and those of the IAEA and should be discontinued. A proposed rule that would have provided the exemption for LSA materials requested in the petitions was published by NRC for public comment on August 17, 1979 (44 FR 48234). Before finalization of that rule, however, a deficiency in the new LSA requirements, as proposed, was recognized so that the entire LSA proposal, including the exemption, was withdrawn. In the interim, the corresponding deficiency in the LSA requirements in the IAEA regulations was recognized and corrected. That correction is discussed under the ''major modifications from proposed rule'' section of this preamble. This correction is implemented in both DOT regulations and NRC regulations.

The exemption requested in the three petitions has been superseded by the changes in LSA requirements. The LSA requirements imposed in NRC regulations are an integral part of the NRC/DOT regulatory scheme for LSA materials. This scheme is based on IAEA regulations. There is an exemption provided for LSA materials in § 71.10 that clearly defines the level where NRC regulations impose additional packaging requirements. For the above reasons, NRC has denied the petitions.

Administrative Correction

At about the same time the Notice of Proposed Rulemaking regarding compatibility with IAEA transportation regulations was published for public comment on June 8, 1988 (53 FR 21550), a separate notice of final rulemaking was issued, by NRC, affecting the retention periods for records (53 FR 19240, May 27, 1988). Included in that separate notice were changes to the transportation regulations in Part 71, specifically to §§ 71.105, ''Quality assurance program,'' and 71.135, ''Quality assurance records.'' Because the two rules were being processed at the same time by different organizations, NRC's internal controls failed to recognize that the new quality assurance provisions needed to be incorporated in the June 8, 1988, notice of proposed rulemaking. No written comments were filed with respect to the quality assurance sections proposed, although two phone calls were received advising NRC of its error. The quality assurance changes that were made effective by the final rule, published on May 27, 1988, are included in this final rule.

Finding of No Significant Environmental Impact: Availability

The Commission has determined, under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that this rule is not a major Federal action significantly affecting the quality of the human environment, and therefore an environmental impact statement (EIS) is not required.

The Commission's ''Final Environmental Statement on the Transportation of Radioactive Material by Air and Other Modes,'' NUREG–0170,[3] dated December 1977, is NRC's generic EIS, covering all types of radioactive material transportation by all modes (road, rail, air, and water). From the Commission's latest survey of radioactive material shipments and their characteristics, ''Transport of Radioactive Material in the United States,'' SAND 84–7174, April 1985, it can be concluded that current radioactive material shipments are not so different from those evaluated in NUREG–0170 as to invalidate the results or conclusions of that EIS. Environmental impacts associated with this rulemaking are evaluated in ''Regulatory Analysis of Changes to 10 CFR Part 71—NRC Regulations on Packaging and Transportation of Radioactive Material,'' dated April 1995.

NUREG–0170 established the non-accident related radiation exposures associated with transportation of radioactive material in the United States as 98 person-Sv (9800 person-rem) which, based on the conservative linear

[3] Copies of NUREG–0170 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is also available for inspection and copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

radiation dose hypothesis, resulted in a maximum of 1.7 genetic effects and 1.2 latent cancer effects per year. More than half this impact resulted from shipment of medical-use radioactive materials. Accident related impacts were established at a maximum of one genetic effect and one latent cancer fatality for 200 years of transporting radioactive materials. The principal nonradiological impacts were found to be two injuries per year, and less than one accidental death per 4 years. In contrast, non-accident related radiation exposures associated with this rulemaking would be increased by 0.75 person-Sv/y (75.0 person-rem/y), whereas accident related impacts would be decreased by approximately 0.006 person-Sv/y (0.6 person-rem/y). Nonradiological traffic injuries would be increased by 0.06 per year and nonradiological traffic deaths by 0.003 per year (less than 1 accidental death per 330 years). These impacts are judged to be insignificant compared with the baseline impacts established in NUREG–0170.

The environmental assessment and finding of no significant impact on which this determination is based are available, for inspection, at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the environmental assessment and finding of no significant impact are also available from the contact listed under the Addresses heading.

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). These requirements were approved by the Office of Management and Budget, Approval Number 3150–0008.

The public reporting burden for this collection of information is estimated to average 7 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch (T–6F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0008), Office of Management and Budget, Washington, D.C. 20503.

Regulatory Analysis

The NRC has prepared a regulatory analysis on this final regulation. The analysis examines the costs and benefits of the alternatives considered by NRC. Interested persons may examine a copy of the regulatory analysis at the NRC Public Document Room at 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the analysis may be obtained from the contact listed under the Addresses heading.

Regulatory Flexibility Act Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. This final rule affects NRC licensees, including operators of nuclear power plants, who transport or deliver to a carrier, for transport, relatively large quantities of radioactive material, in a single package. These companies do not generally fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the size standards adopted by the NRC (10 CFR 2.810).

Backfit Analysis

The Commission has determined that the backfit rule does not apply to the Part 71 final rule because the final rule is not a backfit under 10 CFR Part 50.109. However, NRC analyzed the accident-resistant packaging requirement for the specified LSA shipments and found that there is an increase in overall protection to be derived from the requirement and that direct and indirect costs of implementation are justified in view of this increased protection.

The factors normally considered in a backfit analysis are evaluated in the ''Regulatory Analysis of Changes to 10 CFR Part 71—NRC Regulations on Packaging and Transportation of Radioactive Material,'' dated April 1995. That evaluation shows very small changes in accident risks as a result of the adoption of the revision, but some reduction in maximum consequences given an accident. The evaluation shows broad improvement in NRC regulatory consistency with IAEA, at an initial cost of $1.375 million to industry, and continual annual costs to industry of $1.0 million (See Table S.1 of Regulatory Analysis). NRC costs are estimated at $0.463 million.

The continuing costs are associated with the addition of new limits on the quantity of LSA radioactive material allowed in a single transportation package. Internationally, a new limit is considered to be a necessary safety requirement to limit the consequences of a severe transportation accident involving LSA material.

The one-time costs are chiefly associated with industry upgrading of its package safety analyses to include the proposed new accident crush and immersion tests and with NRC review of those new analyses. The estimated costs are overstated because of the assumption that all licensees using packages approved under earlier regulatory standards would take immediate steps to upgrade the package analyses so the package approvals would reflect approval, under the latest revised standards. Although that is a prudent assumption, absent any reasonable basis for predicting actual licensee reaction, there is little reason licensees would take any immediate action to upgrade their package approvals. Both domestic and international regulations are based on the responsible agency's confidence that packages built to a design approved under earlier standards are adequately safe for continued use, although new package construction to that design would be limited, and international use requires approval by all countries through which the package is to be transported. In actual practice, some package approvals would never be upgraded. Those that would be upgraded would be done over a period of several years as guidance and experience in upgrading become available.

Although the regulatory analysis shows a small reduction in accident risks from the amendments to this rule and some reduction in maximum consequences given an accident, the primary benefit of this rulemaking is to achieve consistency in radioactive material transportation regulations between the United States and the rest of the world. This consistency would not only facilitate the free movement of radioactive materials between countries for medical, research, industrial, and nuclear fuel cycle purposes, but it would also contribute to safety by concentrating the efforts of the world's experts on a single set of safety standards and guidance (those of the IAEA) from which individual countries could develop their domestic regulations. In addition, the accident experience of every country that bases its domestic regulations on those of the IAEA could be applied to every other country with consistent regulations to improve its safety program.

In summary, the effort to make U.S. regulations compatible with those of the IAEA provides major benefits including

a substantial increase in the overall protection of the public health and safety, and it is associated with short-term and relatively minor costs that are justified in view of this increased protection. This effort is associated with ongoing costs, but the new limit is considered to be a justified safety requirement, to limit the consequences of a severe transportation accident involving LSA material.

List of Subjects in 10 CFR Part 71

Criminal penalties, Hazardous materials transportation, Nuclear materials, Packaging and containers, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, 10 CFR part 71 is revised to read as follows:

PART 71—PACKAGING AND TRANSPORTATION OF RADIOACTIVE MATERIAL

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Appendix A to Part 71—Determination of A_1 and A_2

Authority: Secs. 53, 57, 62, 63, 81, 161, 182, 183, 68 Stat. 930, 932, 933, 935, 948, 953, 954, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2073, 2077, 2092, 2093, 2111, 2201, 2232, 2233, 2297f); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 71.97 also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789–790.

Subpart A—General Provisions

§ 71.0 Purpose and scope.

(a) This part establishes—

(1) Requirements for packaging, preparation for shipment, and transportation of licensed material; and

(2) Procedures and standards for NRC approval of packaging and shipping procedures for fissile material and for a quantity of other licensed material in excess of a Type A quantity.

(b) The packaging and transport of licensed material are also subject to other parts of this chapter (e.g., 10 CFR parts 20, 21, 30, 40, 70, and 73) and to the regulations of other agencies (e.g., the U.S. Department of Transportation (DOT) and the U.S. Postal Service [1]) having jurisdiction over means of transport. The requirements of this part are in addition to, and not in substitution for, other requirements.

(c) The regulations in this part apply to any licensee authorized by specific or general license issued by the Commission to receive, possess, use, or transfer licensed material, if the licensee delivers that material to a carrier for transport, transports the material outside the site of usage as specified in the NRC license, or transports that material on public highways. No provision of this part authorizes possession of licensed material.

(d) Exemptions from the requirement for license in § 71.3 are specified in § 71.10. General licenses for which no NRC package approval is required are issued in §§ 71.14 through 71.24. The general license in § 71.12 requires that an NRC certificate of compliance or other package approval be issued for the package to be used under the general license. Application for package

[1] Postal Service Manual (Domestic Mail Manual), section 124.3, which is incorporated by reference at 39 CFR 111.1.

approval must be completed in accordance with subpart D of this part, demonstrating that the design of the package to be used satisfies the package approval standards contained in subpart E of this part, as related to the tests of subpart F of this part. The transport of licensed material or delivery of licensed material to a carrier for transport is subject to the operating controls and procedures requirements of subpart G of this part, to the quality assurance requirements of subpart H of this part, and to the general provisions of subpart A of this part, including DOT regulations referenced in § 71.5.

(e) The regulations in this part apply to any person required to obtain a certificate of compliance or an approved compliance plan pursuant to part 76 of this chapter if the person delivers radioactive material to a common or contract carrier for transport or transports the material outside the confines of the person's plant or other authorized place of use.

§ 71.1 Communications and records.

(a) All communications concerning the regulations in this part should be addressed to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or may be delivered in person, at the Commission offices, at 11545 Rockville Pike, Rockville, Maryland.

(b) Each record required by this part must be legible throughout the retention period specified by each Commission regulation. The record may be the original or a reproduced copy or a microform provided that the copy or microform is authenticated by authorized personnel and that the microform is capable of producing a clear copy throughout the required retention period. The record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records such as letters, drawings, specifications, must include all pertinent information such as stamps, initials, and signatures. The licensee shall maintain adequate safeguards against tampering with and loss of records.

§ 71.2 Interpretations.

Except as specifically authorized by the Commission in writing, no interpretation of the meaning of the regulations in this part by any officer or employee of the Commission, other than a written interpretation by the General Counsel, will be recognized to be binding upon the Commission.

§ 71.3 Requirement for license.

Except as authorized in a general license or a specific license issued by the Commission, or as exempted in this part, no licensee may—

(a) Deliver licensed material to a carrier for transport; or

(b) Transport licensed material.

§ 71.4 Definitions.

The following terms are as defined here for the purpose of this part. To ensure compatibility with international transportation standards, all limits in this part are given in terms of dual units: The International System of Units (SI) followed or preceded by U.S. standard or customary units. The U.S. customary units are not exact equivalents, but are rounded to a convenient value, providing a functionally equivalent unit. For the purpose of this part, either unit may be used.

A_1 means the maximum activity of special form radioactive material permitted in a Type A package. A_2 means the maximum activity of radioactive material, other than special form, LSA and SCO material, permitted in a Type A package. These values are either listed in Appendix A of this part, Table A–1, or may be derived in accordance with the procedure prescribed in Appendix A of this part.

Carrier means a person engaged in the transportation of passengers or property by land or water as a common, contract, or private carrier, or by civil aircraft.

Certificate holder means a person who has been issued a certificate of compliance or other package approval by the Commission.

Close reflection by water means immediate contact by water of sufficient thickness for maximum reflection of neutrons.

Containment system means the assembly of components of the packaging intended to retain the radioactive material during transport.

Conveyance means:

(1) *For transport by public highway or rail* any transport vehicle or large freight container;

(2) *For transport by water* any vessel, or any hold, compartment, or defined deck area of a vessel including any transport vehicle on board the vessel; and

(3) *For transport by aircraft* any aircraft.

Exclusive use means the sole use by a single consignor of a conveyance for which all initial, intermediate, and final loading and unloading are carried out in accordance with the direction of the consignor or consignee. The consignor and the carrier must ensure that any loading or unloading is performed by personnel having radiological training and resources appropriate for safe handling of the consignment. The consignor must issue specific instructions, in writing, for maintenance of exclusive use shipment controls, and include them with the shipping paper information provided to the carrier by the consignor.

Fissile material means plutonium-238, plutonium-239, plutonium-241, uranium-233, uranium-235, or any combination of these radionuclides. Unirradiated natural uranium and depleted uranium, and natural uranium or depleted uranium that has been irradiated in thermal reactors only are not included in this definition. Certain exclusions from fissile material controls are provided in § 71.53.

Licensed material means by-product, source, or special nuclear material received, possessed, used, or transferred under a general or specific license issued by the Commission pursuant to the regulations in this chapter.

Low Specific Activity (LSA) material means radioactive material with limited specific activity that satisfies the descriptions and limits set forth below. Shielding materials surrounding the LSA material may not be considered in determining the estimated average specific activity of the package contents. LSA material must be in one of three groups:

(1) *LSA–I.*

(i) Ores containing only naturally occurring radionuclides (e.g., uranium, thorium) and uranium or thorium concentrates of such ores; or

(ii) Solid unirradiated natural uranium or depleted uranium or natural thorium or their solid or liquid compounds or mixtures; or

(iii) Radioactive material, other than fissile material, for which the A_2 value is unlimited; or

(iv) Mill tailings, contaminated earth, concrete, rubble, other debris, and activated material in which the radioactive material is essentially uniformly distributed, and the average specific activity does not exceed 10^{-6} A_2/g.

(2) LSA–II.

(i) Water with tritium concentration up to 0.8 TBq/liter (20.0 Ci/liter); or

(ii) Material in which the radioactive material is essentially uniformly distributed, and the average specific activity does not exceed 10^{-4} A_2/g for solids and gases, and 10^{-5} A_2/g for liquids.

(3) *LSA–III.* Solids (e.g., consolidated wastes, activated materials) in which:

(i) The radioactive material is essentially uniformly distributed

throughout a solid or a collection of solid objects, or is essentially uniformly distributed in a solid compact binding agent (such as concrete, bitumen, ceramic, etc.);

(ii) The radioactive material is relatively insoluble, or it is intrinsically contained in a relatively insoluble material, so that, even under loss of packaging, the loss of radioactive material per package by leaching, when placed in water for 7 days, would not exceed 0.1 A_2; and

(iii) The average specific activity of the solid does not exceed 2×10^{-3} A_2/g.

Low toxicity alpha emitters means natural uranium, depleted uranium, natural thorium; uranium-235, uranium-238, thorium-232, thorium-228 or thorium-230 when contained in ores or physical or chemical concentrates or tailings; or alpha emitters with a half-life of less than 10 days.

Maximum normal operating pressure means the maximum gauge pressure that would develop in the containment system in a period of 1 year under the heat condition specified in § 71.71(c)(1), in the absence of venting, external cooling by an ancillary system, or operational controls during transport.

Natural thorium means thorium with the naturally occurring distribution of thorium isotopes (essentially 100 weight percent thorium-232).

Normal form radioactive material means radioactive material that has not been demonstrated to qualify as ''special form radioactive material.''

Optimum interspersed hydrogenous moderation means the presence of hydrogenous material between packages to such an extent that the maximum nuclear reactivity results.

Package means the packaging together with its radioactive contents as presented for transport.

(1) *Fissile material package* means a fissile material packaging together with its fissile material contents.

(2) *Type B package* means a Type B packaging together with its radioactive contents. On approval, a Type B package design is designated by NRC as B(U) unless the package has a maximum normal operating pressure of more than 700 kPa (100 lb/in^2) gauge or a pressure relief device that would allow the release of radioactive material to the environment under the tests specified in § 71.73 (hypothetical accident conditions), in which case it will receive a designation B(M). B(U) refers to the need for unilateral approval of international shipments; B(M) refers to the need for multilateral approval of international shipments. There is no distinction made in how packages with these designations may be used in domestic transportation. To determine their distinction for international transportation, see DOT regulations in 49 CFR Part 173. A Type B package approved before September 6, 1983, was designated only as Type B. Limitations on its use are specified in § 71.13.

Packaging means the assembly of components necessary to ensure compliance with the packaging requirements of this part. It may consist of one or more receptacles, absorbent materials, spacing structures, thermal insulation, radiation shielding, and devices for cooling or absorbing mechanical shocks. The vehicle, tie-down system, and auxiliary equipment may be designated as part of the packaging.

Special form radioactive material means radioactive material that satisfies the following conditions:

(1) It is either a single solid piece or is contained in a sealed capsule that can be opened only by destroying the capsule;

(2) The piece or capsule has at least one dimension not less than 5 mm (0.2 in); and

(3) It satisfies the requirements of § 71.75. A special form encapsulation designed in accordance with the requirements of § 71.4 in effect on June 30, 1983, (see 10 CFR part 71, revised as of January 1, 1983), and constructed before July 1, 1985, and a special form encapsulation designed in accordance with the requirements of § 71.4 in effect on March 31, 1996, (see 10 CFR part 71, revised as of January 1, 1983), and constructed before April 1, 1998, may continue to be used. Any other special form encapsulation must meet the specifications of this definition.

Specific activity of a radionuclide means the radioactivity of the radionuclide per unit mass of that nuclide. The specific activity of a material in which the radionuclide is essentially uniformly distributed is the radioactivity per unit mass of the material.

State means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

Surface Contaminated Object (SCO) means a solid object that is not itself classed as radioactive material, but which has radioactive material distributed on any of its surfaces. SCO must be in one of two groups with surface activity not exceeding the following limits:

(1) SCO–I: A solid object on which:

(i) The non-fixed contamination on the accessible surface averaged over 300 cm^2 (or the area of the surface if less than 300 cm^2) does not exceed 4 Bq/cm^2 (10^{-4} microcurie/cm^2) for beta and gamma and low toxicity alpha emitters, or 0.4 Bq/cm^2 (10^{-5} microcurie/cm^2) for all other alpha emitters;

(ii) The fixed contamination on the accessible surface averaged over 300 cm^2 (or the area of the surface if less than 300 cm^2) does not exceed 4×10^4 Bq/cm^2 (1.0 microcurie/cm^2) for beta and gamma and low toxicity alpha emitters, or 4×10^3 Bq/cm^2 (0.1 microcurie/cm^2) for all other alpha emitters; and

(iii) The non-fixed contamination plus the fixed contamination on the inaccessible surface averaged over 300 cm^2 (or the area of the surface if less than 300 cm^2) does not exceed 4×10^4 Bq/cm^2 (1 microcurie/cm^2) for beta and gamma and low toxicity alpha emitters, or 4×10^3 Bq/cm^2 (0.1 microcurie/cm^2) for all other alpha emitters.

(2) SCO–II: A solid object on which the limits for SCO–I are exceeded and on which:

(i) The non-fixed contamination on the accessible surface averaged over 300 cm^2 (or the area of the surface if less than 300 cm^2) does not exceed 400 Bq/cm^2 (10^{-2} microcurie/cm^2) for beta and gamma and low toxicity alpha emitters or 40 Bq/cm^2 (10^{-3} microcurie/cm^2) for all other alpha emitters;

(ii) The fixed contamination on the accessible surface averaged over 300 cm^2 (or the area of the surface if less than 300 cm^2) does not exceed 8×10^5 Bq/cm^2 (20 microcuries/cm^2) for beta and gamma and low toxicity alpha emitters, or 8×10^4 Bq/cm^2 (2 microcuries/cm^2) for all other alpha emitters; and

(iii) The non-fixed contamination plus the fixed contamination on the inaccessible surface averaged over 300 cm^2 (or the area of the surface if less than 300 cm^2) does not exceed 8×10^5 Bq/cm^2 (20 microcuries/cm^2) for beta and gamma and low toxicity alpha emitters, or 8×10^4 Bq/cm^2 (2 microcuries/cm^2) for all other alpha emitters.

Transport index means the dimensionless number (rounded up to the next tenth) placed on the label of a package, to designate the degree of control to be exercised by the carrier during transportation. The transport index is determined as follows:

(1) For non-fissile material packages, the number determined by multiplying the maximum radiation level in millisievert (mSv) per hour at one meter (3.3 ft) from the external surface of the package by 100 (equivalent to the

maximum radiation level in millirem per hour at one meter (3.3 ft)); or

(2) For fissile material packages, the number determined by multiplying the maximum radiation level in millisievert per hour at one meter (3.3 ft) from the external surface of the package by 100 (equivalent to the maximum radiation level in millirem per hour at one meter (3.3 ft)), or, for criticality control purposes, the number obtained as described in § 71.59, whichever is larger.

Type A quantity means a quantity of radioactive material, the aggregate radioactivity of which does not exceed A_1 for special form radioactive material, or A_2, for normal form radioactive material, where A_1 and A_2 are given in Table A–1 of this part, or may be determined by procedures described in Appendix A of this part.

Type B quantity means a quantity of radioactive material greater than a Type A quantity.

Uranium—natural, depleted, enriched

(1) *Natural uranium* means uranium with the naturally occurring distribution of uranium isotopes (approximately 0.711 weight percent uranium-235, and the remainder by weight essentially uranium-238).

(2) *Depleted uranium* means uranium containing less uranium-235 than the naturally occurring distribution of uranium isotopes.

(3) *Enriched uranium* means uranium containing more uranium-235 than the naturally occurring distribution of uranium isotopes.

§ 71.5 Transportation of licensed material.

(a) Each licensee who transports licensed material outside the site of usage, as specified in the NRC license, or where transport is on public highways, or who delivers licensed material to a carrier for transport, shall comply with the applicable requirements of the DOT regulations in 49 CFR parts 170 through 189 appropriate to the mode of transport.

(1) The licensee shall particularly note DOT regulations in the following areas:

(i) Packaging—49 CFR part 173: Subparts A and B and I.

(ii) Marking and labeling—49 CFR part 172: Subpart D, §§ 172.400 through 172.407, §§ 172.436 through 172.440, and subpart E.

(iii) Placarding—49 CFR part 172: Subpart F, especially §§ 172.500 through 172.519, 172.556, and appendices B and C.

(iv) Accident reporting—49 CFR part 171: §§ 171.15 and 171.16.

(v) Shipping papers and emergency information—49 CFR part 172: Subparts C and G.

(vi) Hazardous material employee training—49 CFR part 172: Subpart H.

(vii) Hazardous material shipper/carrier registration—49 CFR part 107: Subpart G.

(2) The licensee shall also note DOT regulations pertaining to the following modes of transportation:

(i) Rail—49 CFR part 174: Subparts A through D and K.

(ii) Air—49 CFR part 175.

(iii) Vessel—49 CFR part 176: Subparts A through F and M.

(iv) Public Highway—49 CFR part 177 and parts 390 through 397.

(b) If DOT regulations are not applicable to a shipment of licensed material, the licensee shall conform to the standards and requirements of the DOT specified in paragraph (a) of this section to the same extent as if the shipment or transportation were subject to DOT regulations. A request for modification, waiver, or exemption from those requirements, and any notification referred to in those requirements, must be filed with, or made to, the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Subpart B—Exemptions

§ 71.6 Information collection requirements: OMB approval.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval, as required by the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). OMB has approved the information collection requirements contained in this part, under control number 3150–0008.

(b) The approved information collection requirements contained in this part appear in §§ 71.5, 71.6a, 71.7, 71.12, 71.13, 71.31, 71.33, 71.35, 71.37, 71.38, 71.39, 71.47, 71.85, 71.87, 71.89, 71.91, 71.93, 71.95, 71.97, 71.101, 71.103, 71.105, 71.107, 71.109, 71.111, 71.113, 71.115, 71.117, 71.119, 71.121, 71.123, 71.125, 71.127, 71.129, 71.131, 71.133, 71.135, and 71.137.

§ 71.7 Completeness and accuracy of information.

(a) Information provided to the Commission by an applicant for a license, or by a licensee, or information required by statute or by the Commission's regulations, orders, or license conditions to be maintained by the applicant or the licensee must be complete and accurate in all material respects.

(b) Each applicant or licensee shall notify the Commission of information identified by the applicant or licensee as having, for the regulated activity, a significant implication for public health and safety or common defense and security. An applicant or licensee violates this requirement only if the applicant or licensee fails to notify the Commission of information that the applicant or licensee has identified as having a significant implication for public health and safety or common defense and security. Notification must be provided to the Administrator of the appropriate Regional Office within two working days of identifying the information. This requirement is not applicable to information that is already required to be provided to the Commission by other reporting or updating requirements.

§ 71.8 Specific exemptions.

On application of any interested person or on its own initiative, the Commission may grant any exemption from the requirements of the regulations in this part that it determines is authorized by law and will not endanger life or property nor the common defense and security.

§ 71.9 Exemption of physicians.

Any physician licensed by a State to dispense drugs in the practice of medicine is exempt from § 71.5 with respect to transport by the physician of licensed material for use in the practice of medicine. However, any physician operating under this exemption must be licensed under 10 CFR part 35 or the equivalent Agreement State regulations.

§ 71.10 Exemption for low-level materials.

(a) A licensee is exempt from all requirements of this part with respect to shipment or carriage of a package containing radioactive material having a specific activity not greater than 70 Bq/g (0.002 μCi/g).

(b) A licensee is exempt from all requirements of this part, other than § 71.5 and § 71.88, with respect to shipment or carriage of the following packages, provided the packages contain no fissile material, or the fissile material exemption standards of § 71.53 are satisfied:

(1) A package containing no more than a Type A quantity of radioactive material;

(2) A package in which the only radioactive material is low specific activity (LSA) material or surface contaminated objects (SCO), provided the external radiation level at 3 m from the unshielded material or objects does not exceed 10 mSv/h (1 rem/h); or

(3) A package transported within locations within the United States which contains only americium or plutonium in special form with an aggregate radioactivity not to exceed 20 curies.

(c) A licensee is exempt from all requirements of this part, other than §§ 71.5 and 71.88, with respect to shipment or carriage of low-specific-activity (LSA) material in group LSA–I, or surface contaminated objects (SCOs) in group SCO–I.

§ 71.11 [Reserved]

Subpart C—General Licenses

§ 71.12 General license: NRC-approved package.

(a) A general license is hereby issued to any licensee of the Commission to transport, or to deliver to a carrier for transport, licensed material in a package for which a license, certificate of compliance, or other approval has been issued by the NRC.

(b) This general license applies only to a licensee who has a quality assurance program approved by the Commission as satisfying the provisions of subpart H of this part.

(c) This general license applies only to a licensee who—

(1) Has a copy of the certificate of compliance, or other approval of the package, and has the drawings and other documents referenced in the approval relating to the use and maintenance of the packaging and to the actions to be taken before shipment;

(2) Complies with the terms and conditions of the license, certificate, or other approval, as applicable, and the applicable requirements of subparts A, G, and H of this part; and

(3) Submits in writing to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, before the licensee's first use of the package, the licensee's name and license number and the package identification number specified in the package approval.

(d) This general license applies only when the package approval authorizes use of the package under this general license.

(e) For a Type B or fissile material package, the design of which was approved by NRC before April 1, 1996, the general license is subject to the additional restrictions of § 71.13.

§ 71.13 Previously approved package.

(a) A Type B package previously approved by NRC but not designated as B(U) or B(M) in the identification number of the NRC Certificate of Compliance, may be used under the general license of § 71.12 with the following additional conditions:

(1) Fabrication of the packaging was satisfactorily completed by August 31, 1986, as demonstrated by application of its model number in accordance with § 71.85(c);

(2) A package used for a shipment to a location outside the United States is subject to multilateral approval, as defined in DOT regulations at 49 CFR 173.403; and

(3) A serial number that uniquely identifies each packaging which conforms to the approved design is assigned to, and legibly and durably marked on, the outside of each packaging.

(b) A Type B(U) package, a Type B(M) package, a low specific activity (LSA) material package or a fissile material package, previously approved by the NRC but without the designation ''-85'' in the identification number of the NRC Certificate of Compliance, may be used under the general license of § 71.12 with the following additional conditions:

(1) Fabrication of the package is satisfactorily completed by April 1, 1999 as demonstrated by application of its model number in accordance with § 71.85(c);

(2) A package used for a shipment to a location outside the United States is subject to multilateral approval as defined in DOT regulations at 49 CFR 173.403; and

(3) A serial number which uniquely identifies each packaging which conforms to the approved design is assigned to and legibly and durably marked on the outside of each packaging.

(c) NRC will approve modifications to the design and authorized contents of a Type B package, or a fissile material package, previously approved by NRC, provided—

(1) The modifications of a Type B package are not significant with respect to the design, operating characteristics, or safe performance of the containment system, when the package is subjected to the tests specified in §§ 71.71 and 71.73;

(2) The modifications of a fissile material package are not significant, with respect to the prevention of criticality, when the package is subjected to the tests specified in §§ 71.71 and 71.73; and

(3) The modifications to the package satisfy the requirements of this part.

(d) NRC will revise the package identification number to designate previously approved package designs as B(U), B(M), AF, BF, or A as appropriate, and with the identification number suffix ''-85'' after receipt of an application demonstrating that the design meets the requirements of this part.

§ 71.14 General license: DOT specification container.

(a) A general license is issued to any licensee of the Commission to transport, or to deliver to a carrier for transport, licensed material in a specification container for fissile material or for a Type B quantity of radioactive material as specified in DOT regulations at 49 CFR parts 173 and 178.

(b) This general license applies only to a licensee who has a quality assurance program approved by the Commission as satisfying the provisions of subpart H of this part.

(c) This general license applies only to a licensee who—

(1) Has a copy of the specification; and

(2) Complies with the terms and conditions of the specification and the applicable requirements of subparts A, G, and H of this part.

(d) This general license is subject to the limitation that the specification container may not be used for a shipment to a location outside the United States, except by multilateral approval, as defined in DOT regulations at 49 CFR 173.403.

§ 71.16 General License: Use of foreign approved package.

(a) A general license is issued to any licensee of the Commission to transport, or to deliver to a carrier for transport, licensed material in a package the design of which has been approved in a foreign national competent authority certificate that has been revalidated by DOT as meeting the applicable requirements of 49 CFR 171.12.

(b) Except as otherwise provided in this section, the general license applies only to a licensee who has a quality assurance program approved by the Commission as satisfying the applicable provisions of subpart H of this part.

(c) This general license applies only to shipments made to or from locations outside the United States.

(d) This general license applies only to a licensee who—

(1) Has a copy of the applicable certificate, the revalidation, and the drawings and other documents referenced in the certificate, relating to the use and maintenance of the packaging and to the actions to be taken before shipment; and

(2) Complies with the terms and conditions of the certificate and revalidation, and with the applicable requirements of subparts A, G, and H of

this part. With respect to the quality assurance provisions of subpart H of this part, the licensee is exempt from design, construction, and fabrication considerations.

§ 71.18 General license: Fissile material, limited quantity per package.

(a) A general license is issued to any licensee of the Commission to transport fissile material, or to deliver fissile material to a carrier for transport, without complying with the package standards of subparts E and F of this part, if the material is shipped in accordance with this section.

(b) The general license applies only to a licensee who has a quality assurance program approved by the Commission as satisfying the provisions of subpart H of this part.

(c) This general license applies only when a package contains no more than a Type A quantity of radioactive material, including only one of the following:

(1) Up to 40 g of uranium-235;

(2) Up to 30 g of uranium-233;

(3) Up to 25 g of the fissile radionuclides of plutonium, except that for encapsulated plutonium-beryllium neutron sources in special form, an A_1 quantity of plutonium may be present; or

(4) A combination of fissile radionuclides in which the sum of the ratios of the amount of each radionuclide to the corresponding maximum amounts in paragraphs (c)(1), (2), and (3) of this section does not exceed unity.

(d) (1) This general license applies only when, except as specified below for encapsulated plutonium-beryllium sources, a package containing more than 15 g of fissile radionuclides is labeled with a transport index not less than the number given by the following equation, where the package contains x grams of uranium-235, y grams of uranium-233, and z grams of the fissile radionuclides of plutonium:

$$\text{Minimum Transport Index} = (0.40x+0.67y+z)\ (1-15\ ).x+y+z$$

(2) For a package in which the only fissile material is in the form of encapsulated plutonium-beryllium neutron sources in special form, the transport index based on criticality considerations may be taken as 0.026 times the number of grams of the fissile radionuclides of plutonium in excess of 15 g. In all cases, the transport index must be rounded up to one decimal place and may not exceed 10.0.

§ 71.20 General license: Fissile material, limited moderator per package.

(a) A general license is issued to any licensee of the Commission to transport fissile material, or to deliver fissile material to a carrier for transport, without complying with the package standards of subparts E and F of this part if the material is shipped in accordance with this section.

(b) The general license applies only to a licensee who has a quality assurance program approved by the Commission as satisfying the provisions of subpart H of this part.

(c) This general license applies only when—

(1) The package contains no more than a Type A quantity of radioactive material;

(2) Neither beryllium nor hydrogenous material enriched in deuterium is present;

(3) The total mass of graphite present does not exceed 7.7 times the total mass of uranium-235 plus plutonium;

(4) Substances having a higher hydrogen density than water (e.g., certain hydrocarbon oils), are not present, except that polyethylene may be used for packing or wrapping;

(5) Uranium-233 is not present, and the amount of plutonium does not exceed 1 percent of the amount of uranium-235;

(6) The amount of uranium-235 is limited as follows:

(i) If the fissile radionuclides are not uniformly distributed, the maximum amount of uranium-235 per package may not exceed the value given in Table I of this part; or

(ii) If the fissile radionuclides are distributed uniformly (i.e., cannot form a lattice arrangement within the packaging), the maximum amount of uranium-235 per package may not exceed the value given in Table II of this part; and

(7) The transport index of each package, based on criticality considerations, is taken as 10 times the number of grams of uranium-235 in the package divided by the maximum allowable number of grams per package in accordance with Table I or Table II of this part, as applicable.

TABLE I.—PERMISSIBLE MASS OF URANIUM-235 PER FISSILE MATERIAL PACKAGE, APPLICABLE TO § 71.20(c)(6)(i)

[Nonuniform distribution]

Uranium enrichment in weight percent of uranium-235 not exceeding	Permissible maximum grams of uranium-235 per package
24	40
20	42
15	45
11	48
10	51
9.5	52
9	54
8.5	55
8	57
7.5	59
7	60
6.5	62
6	65
5.5	68
5	72
4.5	76
4	80
3.5	88
3	100
2.5	120
2	164
1.5	272
1.35	320
1	680
0.92	1,200

TABLE II.—PERMISSIBLE MASS OF URANIUM-235 PER FISSILE MATERIAL PACKAGE, APPLICABLE TO § 71.20(c)(6)(ii)

[Uniform Distribution]

Uranium enrichment in weight percent of uranium-235 not exceeding	Permissible maximum grams of uranium-235 per package
4	84
3.5	92
3	112
2.5	148
2	240
1.5	560
1.35	800

§ 71.22 General license: Fissile material, limited quantity, controlled shipment.

(a) A general license is issued to any licensee of the Commission to transport fissile material, or to deliver fissile material to a carrier for transport, without complying with the package standards of Subparts E and F of this part, if limited material is shipped in accordance with this section.

(b) The general license applies only to a licensee who has a quality assurance

program approved by the Commission as satisfying the provisions of Subpart H of this part.

(c) This general license applies only when a package contains no more than a Type A quantity of radioactive material and no more than 400 g total of the fissile radionuclides of plutonium encapsulated as plutonium-beryllium neutron sources in special form.

(d) This general license applies only when the fissile radionuclides in the shipment exceed none of the following:

(1) 500 g of uranium-235;

(2) 300 g total of uranium-233, and the fissile radionuclides of plutonium;

(3) A total quantity of uranium-233, uranium-235, and the fissile radionuclides of plutonium so that the sum of the ratios of the quantity of each radionuclide to the quantity specified in paragraphs (d)(1) and (d)(2) of this section does not exceed unity; or

(4) 2500 g total of the fissile radionuclides of plutonium encapsulated as plutonium-beryllium neutron sources in special form.

(e) This general license applies only when shipment of these packages is made under procedures specifically authorized by DOT, in accordance with 49 CFR part 173 of its regulations, to prevent loading, transport, or storage of these packages with other fissile material shipments.

§ 71.24 General license: Fissile material, limited moderator, controlled shipment.

(a) A general license is issued to any licensee of the Commission to transport fissile material, or to deliver fissile material to a carrier for transport, without complying with the package standards of subparts E and F of this part, if limited material is shipped in accordance with this section.

(b) The general license applies only to a licensee who has a quality assurance program approved by the Commission as satisfying the provisions of subpart H of this part.

(c) This general license applies only when—

(1) No package contains more than a Type A quantity of radioactive material;

(2) The packaging does not incorporate lead shielding exceeding 5 cm in thickness, tungsten shielding, or uranium shielding;

(3) Neither beryllium nor hydrogenous material enriched in deuterium is present;

(4) The total mass of graphite present does not exceed 7.7 times the total mass of uranium-235 and plutonium;

(5) Substances having a higher hydrogen density than water (e.g., certain hydrocarbon oils), are not present, except that polyethylene may be used for packing or wrapping;

(6) For fissile contents containing no uranium-233 and less than 1 percent by weight total plutonium, if the fissile radionuclides are—

(i) Not uniformly distributed, the maximum amount of uranium-235 per consignment does not exceed the value given in Table III of this part; or

(ii) Distributed uniformly and cannot form a lattice arrangement within the packaging, the maximum amount of uranium-235 per shipment does not exceed the value given in Table IV of this part;

(7) For fissile contents containing uranium-233 or more than 1 percent by weight plutonium, the total mass of fissile material per shipment is limited so that the sum of the number of grams of uranium-235 divided by 400, the number of grams of plutonium divided by 225, and the number of grams of uranium-233 divided by 250, does not exceed unity, as expressed in the formula:

$$\frac{\text{grams uranium} - 235}{400\,\text{g}} + \frac{\text{grams plutonium}}{225\,\text{g}} + \frac{\text{grams uranium} - 233}{250\,\text{g}} \leq 1;$$

(8) The transport must be direct to the consignee without any intermediate transit storage; and

(9) Shipment of these packages is made under procedures specifically authorized by DOT in accordance with 49 CFR part 173 of its regulations to prevent loading, transport, or storage of these packages with other fissile material shipments.

TABLE III.—PERMISSIBLE MASS OF URANIUM-235 PER FISSILE MATERIAL SHIPMENT APPLICABLE TO § 71.24(c)(6)(i)

[Nonuniform distribution]

Uranium enrichment in weight percent of uranium-235 not exceeding	Permissible maximum grams of uranium-235 per consignment
20	520
15	560
11	600
10	640
9.5	655
9	675

TABLE III.—PERMISSIBLE MASS OF URANIUM-235 PER FISSILE MATERIAL SHIPMENT APPLICABLE TO § 71.24(c)(6)(i)—Continued

[Nonuniform distribution]

Uranium enrichment in weight percent of uranium-235 not exceeding	Permissible maximum grams of uranium-235 per consignment
8.5	690
8	710
7.5	730
7	750
6.5	780
6	810
5.5	850
5	900
4.5	950
4	1,000
3.5	1,100
3	1,250
2.5	1,500
2	2,050
1.5	3,400
1.35	4,000
1	8,500
0.92	15,000

TABLE IV.—PERMISSIBLE MASS OF URANIUM-235 PER FISSILE MATERIAL SHIPMENT APPLICABLE TO § 71.24(c)(6)(ii)

[Uniform distribution]

Uranium enrichment in weight percent of uranium-235 not exceeding	Permissible maximum grams of uranium-235 per consignment
4	1,050
3.5	1,150
3	1,400
2.5	1,800
2	3,000
1.5	7,000
1.35	10,000

Subpart D—Application for Package Approval

§ 71.31 Contents of application.

(a) An application for an approval under this part must include, for each proposed packaging design, the following information:

(1) A package description as required by § 71.33;

(2) A package evaluation as required by § 71.35; and

(3) A quality assurance program description, as required by § 71.37, or a reference to a previously approved quality assurance program.

(b) Except as provided in § 71.13, an application for modification of a package design, whether for modification of the packaging or authorized contents, must include sufficient information to demonstrate that the proposed design satisfies the package standards in effect at the time the application is filed.

(c) The applicant shall identify any established codes and standards proposed for use in package design, fabrication, assembly, testing, maintenance, and use. In the absence of any codes and standards, the applicant shall describe and justify the basis and rationale used to formulate the package quality assurance program.

§ 71.33 Package description.

The application must include a description of the proposed package in sufficient detail to identify the package accurately and provide a sufficient basis for evaluation of the package. The description must include—

(a) With respect to the packaging—

(1) Classification as Type B(U), Type B(M), or fissile material packaging;

(2) Gross weight;

(3) Model number;

(4) Identification of the containment system;

(5) Specific materials of construction, weights, dimensions, and fabrication methods of—

(i) Receptacles;

(ii) Materials specifically used as nonfissile neutron absorbers or moderators;

(iii) Internal and external structures supporting or protecting receptacles;

(iv) Valves, sampling ports, lifting devices, and tie-down devices; and

(v) Structural and mechanical means for the transfer and dissipation of heat; and

(6) Identification and volumes of any receptacles containing coolant.

(b) With respect to the contents of the package—

(1) Identification and maximum radioactivity of radioactive constituents;

(2) Identification and maximum quantities of fissile constituents;

(3) Chemical and physical form;

(4) Extent of reflection, the amount and identity of nonfissile materials used as neutron absorbers or moderators, and the atomic ratio of moderator to fissile constituents;

(5) Maximum normal operating pressure;

(6) Maximum weight;

(7) Maximum amount of decay heat; and

(8) Identification and volumes of any coolants.

§ 71.35 Package evaluation.

The application must include the following:

(a) A demonstration that the package satisfies the standards specified in subparts E and F of this part;

(b) For a fissile material package, the allowable number of packages that may be transported in the same vehicle in accordance with § 71.59; and

(c) For a fissile material shipment, any proposed special controls and precautions for transport, loading, unloading, and handling and any proposed special controls in case of an accident or delay.

§ 71.37 Quality assurance.

(a) The applicant shall describe the quality assurance program (see Subpart H of this part) for the design, fabrication, assembly, testing, maintenance, repair, modification, and use of the proposed package.

(b) The applicant shall identify any specific provisions of the quality assurance program that are applicable to the particular package design under consideration, including a description of the leak testing procedures.

§ 71.38 Renewal of a certificate of compliance or quality assurance program approval.

(a) Except as provided in paragraph (b) of this section, each Certificate of Compliance or Quality Assurance Program Approval expires at the end of the day, in the month and year stated in the approval.

(b) In any case in which a person, not less than 30 days before the expiration of an existing Certificate of Compliance or Quality Assurance Program Approval issued pursuant to the part, has filed an application in proper form for renewal of either of those approvals, the existing Certificate of Compliance or Quality Assurance Program Approval for which the renewal application was filed shall not be deemed to have expired until final action on the application for renewal has been taken by the Commission.

(c) In applying for renewal of an existing Certificate of Compliance or Quality Assurance Program Approval, an applicant may be required to submit a consolidated application that incorporates all changes to its program that, are incorporated by reference in the existing approval or certificate, into as few referenceable documents as reasonably achievable.

§ 71.39 Requirement for additional information.

The Commission may at any time require additional information in order to enable it to determine whether a license, certificate of compliance, or other approval should be granted, renewed, denied, modified, suspended, or revoked.

Subpart E—Package Approval Standards

§ 71.41 Demonstration of compliance.

(a) The effects on a package of the tests specified in § 71.71 (''Normal conditions of transport''), and the tests specified in § 71.73 (''Hypothetical accident conditions''), and § 71.61 (Special requirement for irradiated nuclear fuel shipments''), must be evaluated by subjecting a specimen or scale model to a specific test, or by another method of demonstration acceptable to the Commission, as appropriate for the particular feature being considered.

(b) Taking into account the type of vehicle, the method of securing or attaching the package, and the controls to be exercised by the shipper, the Commission may permit the shipment to be evaluated together with the transporting vehicle.

(c) Environmental and test conditions different from those specified in §§ 71.71 and 71.73 may be approved by the Commission if the controls proposed to be exercised by the shipper are demonstrated to be adequate to provide equivalent safety of the shipment.

§ 71.43 General standards for all packages.

(a) The smallest overall dimension of a package may not be less than 10 cm (4 in).

(b) The outside of a package must incorporate a feature, such as a seal, that is not readily breakable and that, while intact, would be evidence that the package has not been opened by unauthorized persons.

(c) Each package must include a containment system securely closed by a positive fastening device that cannot be opened unintentionally or by a pressure that may arise within the package.

(d) A package must be made of materials and construction that assure that there will be no significant chemical, galvanic, or other reaction among the packaging components, among package contents, or between the packaging components and the package contents, including possible reaction resulting from inleakage of water, to the maximum credible extent. Account

must be taken of the behavior of materials under irradiation.

(e) A package valve or other device, the failure of which would allow radioactive contents to escape, must be protected against unauthorized operation and, except for a pressure relief device, must be provided with an enclosure to retain any leakage.

(f) A package must be designed, constructed, and prepared for shipment so that under the tests specified in § 71.71 (''Normal conditions of transport'') there would be no loss or dispersal of radioactive contents, no significant increase in external surface radiation levels, and no substantial reduction in the effectiveness of the packaging.

(g) A package must be designed, constructed, and prepared for transport so that in still air at 38°C (100°F) and in the shade, no accessible surface of a package would have a temperature exceeding 50°C (122°F) in a nonexclusive use shipment, or 85°C (185°F) in an exclusive use shipment.

(h) A package may not incorporate a feature intended to allow continuous venting during transport.

§ 71.45 Lifting and tie-down standards for all packages.

(a) Any lifting attachment that is a structural part of a package must be designed with a minimum safety factor of three against yielding when used to lift the package in the intended manner, and it must be designed so that failure of any lifting device under excessive load would not impair the ability of the package to meet other requirements of this subpart. Any other structural part of the package that could be used to lift the package must be capable of being rendered inoperable for lifting the package during transport, or must be designed with strength equivalent to that required for lifting attachments.

(b) Tie-down devices:

(1) If there is a system of tie-down devices that is a structural part of the package, the system must be capable of withstanding, without generating stress in any material of the package in excess of its yield strength, a static force applied to the center of gravity of the package having a vertical component of 2 times the weight of the package with its contents, a horizontal component along the direction in which the vehicle travels of 10 times the weight of the package with its contents, and a horizontal component in the transverse direction of 5 times the weight of the package with its contents.

(2) Any other structural part of the package that could be used to tie down the package must be capable of being rendered inoperable for tying down the package during transport, or must be designed with strength equivalent to that required for tie-down devices.

(3) Each tie-down device that is a structural part of a package must be designed so that failure of the device under excessive load would not impair the ability of the package to meet other requirements of this part.

§ 71.47 External radiation standards for all packages.

(a) Except as provided in paragraph (b) of this section, each package of radioactive materials offered for transportation must be designed and prepared for shipment so that under conditions normally incident to transportation the radiation level does not exceed 2 mSv/h (200 mrem/h) at any point on the external surface of the package, and the transport index does not exceed 10.

(b) A package that exceeds the radiation level limits specified in paragraph (a) of this section must be transported by exclusive use shipment only, and the radiation levels for such shipment must not exceed the following during transportation:

(1) 2 mSv/h (200 mrem/h) on the external surface of the package, unless the following conditions are met, in which case the limit is 10 mSv/h (1000 mrem/h):

(i) The shipment is made in a closed transport vehicle;

(ii) The package is secured within the vehicle so that its position remains fixed during transportation; and

(iii) There are no loading or unloading operations between the beginning and end of the transportation;

(2) 2 mSv/h (200 mrem/h) at any point on the outer surface of the vehicle, including the top and underside of the vehicle; or in the case of a flat-bed style vehicle, at any point on the vertical planes projected from the outer edges of the vehicle, on the upper surface of the load or enclosure, if used, and on the lower external surface of the vehicle; and

(3) 0.1 mSv/h (10 mrem/h) at any point 2 meters (80 in) from the outer lateral surfaces of the vehicle (excluding the top and underside of the vehicle); or in the case of a flat-bed style vehicle, at any point 2 meters (6.6 feet) from the vertical planes projected by the outer edges of the vehicle (excluding the top and underside of the vehicle); and

(4) 0.02 mSv/h (2 mrem/h) in any normally occupied space, except that this provision does not apply to private carriers, if exposed personnel under their control wear radiation dosimetry devices in conformance with 10 CFR 20.1502.

(c) For shipments made under the provisions of paragraph (b) of this section, the shipper shall provide specific written instructions to the carrier for maintenance of the exclusive use shipment controls. The instructions must be included with the shipping paper information.

(d) The written instructions required for exclusive use shipments must be sufficient so that, when followed, they will cause the carrier to avoid actions that will unnecessarily delay delivery or unnecessarily result in increased radiation levels or radiation exposures to transport workers or members of the general public.

§ 71.51 Additional requirements for Type B packages.

(a) Except as provided in § 71.52, a Type B package, in addition to satisfying the requirements of §§ 71.41 through 71.47, must be designed, constructed, and prepared for shipment so that under the tests specified in:

(1) Section 71.71 (''Normal conditions of transport''), there would be no loss or dispersal of radioactive contents—as demonstrated to a sensitivity of 10^{-6} A_2 per hour, no significant increase in external surface radiation levels, and no substantial reduction in the effectiveness of the packaging; and

(2) Section 71.73 (''Hypothetical accident conditions''), there would be no escape of krypton-85 exceeding 10 A_2 in 1 week, no escape of other radioactive material exceeding a total amount A_2 in 1 week, and no external radiation dose rate exceeding 10 mSv/h (1 rem/h) at 1 m (40 in) from the external surface of the package.

(b) Where mixtures of different radionuclides are present, the provisions of appendix A, paragraph IV of this part shall apply, except that for Krypton-85, an effective A_2 value equal to 10 A_2 may be used.

(c) Compliance with the permitted activity release limits of paragraph (a) of this section may not depend on filters or on a mechanical cooling system.

§ 71.52 Exemption for low-specific-activity (LSA) packages.

A package need not satisfy the requirements of § 71.51 if it contains only LSA or SCO material, and is transported as exclusive use, but is subject to §§ 71.41 through 71.47, including § 71.43(f). This section expires April 1, 1999.

§ 71.53 Fissile material exemptions.

The following packages are exempt from fissile material classification and

from the fissile material standards of § 71.55 and § 71.59, but are subject to all other requirements of this part:

(a) A package containing not more than 15 g of fissile material. If material is transported in bulk, the quantity limitation applies to the conveyance;

(b) A package containing homogeneous hydrogenous solutions or mixtures where:

(1) The minimum ratio of the number of hydrogen atoms to the number of atoms of fissile radionuclides (H/X) is 5200;

(2) The maximum concentration of fissile radionuclides is 5 g/liter; and

(3) The maximum mass of fissile radionuclides in the package is 800 g, with an exception for a mixture where the total mass of plutonium and uranium-233 exceeds 1 percent of the mass of uranium-235, the limit is 500 g. If the material is transported in bulk, other than by aircraft, the quantity limitations apply to the conveyance;

(c) A package containing uranium enriched in uranium-235 to a maximum of 1 percent by weight, and with a total plutonium and uranium-233 content of up to 1 percent of the mass of uranium-235, if the fissile radionuclides are distributed homogeneously throughout the package contents and do not form a lattice arrangement within the package;

(d) A package containing any fissile material if it does not contain more than 5 g of fissile radionuclides in any 10 liter volume, and if the material is packaged so as to maintain this limit of fissile radionuclide concentration during normal transport;

(e) A package containing not more than 1 kg of plutonium of which not more than 20 percent by mass may consist of plutonium-239, plutonium-241, or any combination of those radionuclides; or

(f) A package containing liquid solutions of uranyl nitrate enriched in uranium-235 to a maximum of 2 percent by weight, with total plutonium and uranium-233 not more than 0.1 percent of the mass of uranium-235 and with a minimum nitrogen-to-uranium atomic ratio (N/U) of 2.

§ 71.55 General requirements for fissile material packages.

(a) A package used for the shipment of fissile material must be designed and constructed in accordance with §§ 71.41 through 71.47. When required by the total amount of radioactive material, a package used for the shipment of fissile material must also be designed and constructed in accordance with § 71.51.

(b) Except as provided in paragraph (c) of this section, a package used for the shipment of fissile material must be so designed and constructed and its contents so limited that it would be subcritical if water were to leak into the containment system, or liquid contents were to leak out of the containment system so that, under the following conditions, maximum reactivity of the fissile material would be attained:

(1) The most reactive credible configuration consistent with the chemical and physical form of the material;

(2) Moderation by water to the most reactive credible extent; and

(3) Close full reflection of the containment system by water on all sides, or such greater reflection of the containment system as may additionally be provided by the surrounding material of the packaging.

(c) The Commission may approve exceptions to the requirements of paragraph (b) of this section if the package incorporates special design features that ensure that no single packaging error would permit leakage, and if appropriate measures are taken before each shipment to ensure that the containment system does not leak.

(d) A package used for the shipment of fissile material must be so designed and constructed and its contents so limited that under the tests specified in § 71.71 (''Normal conditions of transport'')—

(1) The contents would be subcritical;

(2) The geometric form of the package contents would not be substantially altered;

(3) There would be no leakage of water into the containment system unless, in the evaluation of undamaged packages under § 71.59(b)(1), it has been assumed that moderation is present to such an extent as to cause maximum reactivity consistent with the chemical and physical form of the material; and

(4) There will be no substantial reduction in the effectiveness of the packaging, including:

(i) No more than 5 percent reduction in the total effective volume of the packaging on which nuclear safety is assessed;

(ii) No more than 5 percent reduction in the effective spacing between the fissile contents and the outer surface of the packaging; and

(iii) No occurrence of an aperture in the outer surface of the packaging large enough to permit the entry of a 10 cm (4 in) cube.

(e) A package used for the shipment of fissile material must be so designed and constructed and its contents so limited that under the tests specified in § 71.73 (''Hypothetical accident conditions''), the package would be subcritical. For this determination, it must be assumed that:

(1) The fissile material is in the most reactive credible configuration consistent with the damaged condition of the package and the chemical and physical form of the contents;

(2) Water moderation occurs to the most reactive credible extent consistent with the damaged condition of the package and the chemical and physical form of the contents; and

(3) There is full reflection by water on all sides, as close as is consistent with the damaged condition of the package.

§ 71.57 [Reserved]

§ 71.59 Standards for arrays of fissile material packages.

(a) A fissile material package must be controlled by either the shipper or the carrier during transport to assure that an array of such packages remains subcritical. To enable this control, the designer of a fissile material package shall derive a number ''N'' based on all the following conditions being satisfied, assuming packages are stacked together in any arrangement and with close full reflection on all sides of the stack by water:

(1) Five times ''N'' undamaged packages with nothing between the packages would be subcritical;

(2) Two times ''N'' damaged packages, if each package were subjected to the tests specified in § 71.73 (''Hypothetical accident conditions'') would be subcritical with optimum interspersed hydrogenous moderation; and

(3) The value of ''N'' cannot be less than 0.5.

(b) The transport index based on nuclear criticality control must be obtained by dividing the number 50 by the value of ''N'' derived using the procedures specified in paragraph (a) of this section. The value of the transport index for nuclear criticality control may be zero provided that an unlimited number of packages is subcritical such that the value of ''N'' is effectively equal to infinity under the procedures specified in paragraph (a) of this section. Any transport index greater than zero must be rounded up to the first decimal place.

(c) Where a fissile material package is assigned a nuclear criticality control transport index—

(1) Not in excess of 10, that package may be shipped by any carrier, and that carrier provides adequate criticality control by limiting the sum of the transport indexes to 50 in a non-exclusive use vehicle, and to 100 in an exclusive use vehicle.

(2) In excess of 10, that package may only be shipped by exclusive use

vehicle or other shipper controlled system specified by DOT for fissile material packages. The shipper provides adequate criticality control by limiting the sum of the transport indexes to 100 in an exclusive use vehicle.

§ 71.61 Special requirement for irradiated nuclear fuel shipments.

A package for irradiated nuclear fuel with activity greater than 37 PBq (10^6 Ci) must be so designed that its undamaged containment system can withstand an external water pressure of 2 MPa (290 psi) for a period of not less than one hour without collapse, buckling, or inleakage of water.

§ 71.63 Special requirements for plutonium shipments.

(a) Plutonium in excess of 20 Ci (0.74 TBq) per package must be shipped as a solid.

(b) Plutonium in excess of 20 Ci (0.74 TBq) per package must be packaged in a separate inner container placed within outer packaging that meets the requirements of subparts E and F of this part for packaging of material in normal form. If the entire package is subjected to the tests specified in § 71.71 (''Normal conditions of transport''), the separate inner container must not release plutonium as demonstrated to a sensitivity of 10^{-6} A_2/h. If the entire package is subjected to the tests specified in § 71.73 (''Hypothetical accident conditions''), the separate inner container must restrict the loss of plutonium to not more than A_2 in 1 week. Solid plutonium in the following forms is exempt from the requirements of this paragraph:

(1) Reactor fuel elements;

(2) Metal or metal alloy; and

(3) Other plutonium bearing solids that the Commission determines should be exempt from the requirements of this section.

§ 71.64 Special requirements for plutonium air shipments.

(a) A package for the shipment of plutonium by air subject to § 71.88(a)(4), in addition to satisfying the requirements of §§ 71.41 through 71.63, as applicable, must be designed, constructed, and prepared for shipment so that under the tests specified in—

(1) Section 71.74 (''Accident conditions for air transport of plutonium'')—

(i) The containment vessel would not be ruptured in its post-tested condition, and the package must provide a sufficient degree of containment to restrict accumulated loss of plutonium contents to not more than an A_2 quantity in a period of 1 week;

(ii) The external radiation level would not exceed 10 mSv/h (1 rem/h) at a distance of 1 m (40 in) from the surface of the package in its post-tested condition in air; and

(iii) A single package and an array of packages are demonstrated to be subcritical in accordance with this part, except that the damaged condition of the package must be considered to be that which results from the plutonium accident tests in § 71.74, rather than the hypothetical accident tests in § 71.73; and

(2) Section 71.74(c), there would be no detectable leakage of water into the containment vessel of the package.

(b) With respect to the package requirements of paragraph (a), there must be a demonstration or analytical assessment showing that—

(1) The results of the physical testing for package qualification would not be adversely affected to a significant extent by—

(i) The presence, during the tests, of the actual contents that will be transported in the package; and

(ii) Ambient water temperatures ranging from 0.6°C (+33°F) to 38°C (+100°F) for those qualification tests involving water, and ambient atmospheric temperatures ranging from −40°C (−40°F) to +54°C (+130°F) for the other qualification tests.

(2) The ability of the package to meet the acceptance standards prescribed for the accident condition sequential tests would not be adversely affected if one or more tests in the sequence were deleted.

§ 71.65 Additional requirements.

The Commission may, by rule, regulation, or order, impose requirements on any licensee, in addition to those established in this part, as it deems necessary or appropriate to protect public health or to minimize danger to life or property.

Subpart F—Package, Special Form, and LSA–III Tests [2]

§ 71.71 Normal conditions of transport.

(a) *Evaluation.* Evaluation of each package design under normal conditions of transport must include a determination of the effect on that design of the conditions and tests specified in this section. Separate specimens may be used for the free drop test, the compression test, and the penetration test, if each specimen is subjected to the water spray test before being subjected to any of the other tests.

[2] The package standards related to the tests in this subpart are contained in subpart E of this part.

(b) *Initial conditions.* With respect to the initial conditions for the tests in this section, the demonstration of compliance with the requirements of this part must be based on the ambient temperature preceding and following the tests remaining constant at that value between −29°C (−20°F) and +38°C (+100°F) which is most unfavorable for the feature under consideration. The initial internal pressure within the containment system must be considered to be the maximum normal operating pressure, unless a lower internal pressure consistent with the ambient temperature considered to precede and follow the tests is more unfavorable.

(c) *Conditions and tests.*

(1) *Heat.* An ambient temperature of 38°C (100°F) in still air, and insolation according to the following table:

INSOLATION DATA

Form and location of surface	Total insolation for a 12-hour period (g cal/cm^2
Flat surfaces transported horizontally:	
Base	None
Other surfaces	800
Flat surfaces not transported horizontally.	200
Curved surfaces	400

(2) *Cold.* An ambient temperature of −40°C (−40°F) in still air and shade.

(3) *Reduced external pressure.* An external pressure of 25 kPa (3.5 lbf/in^2) absolute.

(4) *Increased external pressure.* An external pressure of 140 kPa (20 lbf/in^2) absolute.

(5) *Vibration.* Vibration normally incident to transport.

(6) *Water spray.* A water spray that simulates exposure to rainfall of approximately 5 cm/h (2 in/h) for at least 1 hour.

(7) *Free drop.* Between 1.5 and 2.5 hours after the conclusion of the water spray test, a free drop through the distance specified below onto a flat, essentially unyielding, horizontal surface, striking the surface in a position for which maximum damage is expected.

CRITERIA FOR FREE DROP TEST (WEIGHT/DISTANCE)

Package weight		Free drop distance	
Kilograms	(Pounds)	Meters	(Feet)
Less than 5,000.	(Less than 11,000).	1.2	(4)

CRITERIA FOR FREE DROP TEST (WEIGHT/DISTANCE)—Continued

Package weight		Free drop distance	
Kilograms	(Pounds)	Meters	(Feet)
5,000 to 10,000.	(11,000 to 22,000).	0.9	(3)
10,000 to 15,000.	(22,000 to 33,100).	0.6	(2)
More than 15,000.	(More than 33,100).	0.3	(1)

(8) *Corner drop.* A free drop onto each corner of the package in succession, or in the case of a cylindrical package onto each quarter of each rim, from a height of 0.3 m (1 ft) onto a flat, essentially unyielding, horizontal surface. This test applies only to fiberboard, wood, or fissile material rectangular packages not exceeding 50 kg (110 lbs) and fiberboard, wood, or fissile material cylindrical packages not exceeding 100 kg (220 lbs).

(9) *Compression.* For packages weighing up to 5000 kg (11,000 lbs), the package must be subjected, for a period of 24 hours, to a compressive load applied uniformly to the top and bottom of the package in the position in which the package would normally be transported. The compressive load must be the greater of the following:

(i) The equivalent of 5 times the weight of the package; or

(ii) The equivalent of 13 kPa (2 lbf/in^2) multiplied by the vertically projected area of the package.

(10) *Penetration.* Impact of the hemispherical end of a vertical steel cylinder of 3.2 cm (1.25 in) diameter and 6 kg (13 lbs) mass, dropped from a height of 1 m (40 in) onto the exposed surface of the package that is expected to be most vulnerable to puncture. The long axis of the cylinder must be perpendicular to the package surface.

§ 71.73 Hypothetical accident conditions.

(a) *Test procedures.* Evaluation for hypothetical accident conditions is to be based on sequential application of the tests specified in this section, in the order indicated, to determine their cumulative effect on a package or array of packages. An undamaged specimen may be used for the water immersion tests specified in paragraph (c)(6) of this section.

(b) *Test conditions.* With respect to the initial conditions for the tests, except for the water immersion tests, to demonstrate compliance with the requirements of this part during testing, the ambient air temperature before and after the tests must remain constant at that value between −29°C (−20°F) and +38°C (+100°F) which is most unfavorable for the feature under consideration. The initial internal pressure within the containment system must be the maximum normal operating pressure, unless a lower internal pressure, consistent with the ambient temperature assumed to precede and follow the tests, is more unfavorable.

(c) *Tests.* Tests for hypothetical accident conditions must be conducted as follows:

(1) *Free Drop.* A free drop of the specimen through a distance of 9 m (30 ft) onto a flat, essentially unyielding, horizontal surface, striking the surface in a position for which maximum damage is expected.

(2) *Crush.* Subjection of the specimen to a dynamic crush test by positioning the specimen on a flat, essentially unyielding, horizontal surface so as to suffer maximum damage by the drop of a 500 kg (1100 pound) mass from 9 m (30 ft) onto the specimen. The mass must consist of a solid mild steel plate 1 m (40 in) by 1 m and must fall in a horizontal attitude. The crush test is required only when the specimen has a mass not greater than 500 kg (1100 lbs), an overall density not greater than 1000 kg/m^3 (62.4 lbs/ft^3) based on external dimensions, and radioactive contents greater than 1000 A_2 not as special form radioactive material.

(3) *Puncture.* A free drop of the specimen through a distance of 1 m (40 in) in a position for which maximum damage is expected, onto the upper end of a solid, vertical, cylindrical, mild steel bar mounted on an essentially unyielding, horizontal surface. The bar must be 15 cm (6 in) in diameter, with the top horizontal and its edge rounded to a radius of not more than 6 mm (0.25 in), and of a length as to cause maximum damage to the package, but not less than 20 cm (8 in) long. The long axis of the bar must be vertical.

(4) *Thermal.* Exposure of the specimen fully engulfed, except for a simple support system, in a hydrocarbon fuel/air fire of sufficient extent, and in sufficiently quiescent ambient conditions, to provide an average emissivity coefficient of at least 0.9, with an average flame temperature of at least 800°C (1475°F) for a period of 30 minutes, or any other thermal test that provides the equivalent total heat input to the package and which provides a time averaged environmental temperature of 800°C. The fuel source must extend horizontally at least 1 m (40 in), but may not extend more than 3 m (10 ft), beyond any external surface of the specimen, and the specimen must be positioned 1 m (40 in) above the surface of the fuel source. For purposes of calculation, the surface absorptivity coefficient must be either that value which the package may be expected to possess if exposed to the fire specified or 0.8, whichever is greater; and the convective coefficient must be that value which may be demonstrated to exist if the package were exposed to the fire specified. Artificial cooling may not be applied after cessation of external heat input, and any combustion of materials of construction, must be allowed to proceed until it terminates naturally.

(5) *Immersion—fissile material.* For fissile material subject to § 71.55, in those cases where water inleakage has not been assumed for criticality analysis, immersion under a head of water of at least 0.9 m (3 ft) in the attitude for which maximum leakage is expected.

(6) *Immersion—all packages.* A separate, undamaged specimen must be subjected to water pressure equivalent to immersion under a head of water of at least 15 m (50 ft). For test purposes, an external pressure of water of 150 kPa (21.7 lbf/in^2) gauge is considered to meet these conditions.

§ 71.74 Accident conditions for air transport of plutonium.

(a) *Test conditions—Sequence of tests.* A package must be physically tested to the following conditions in the order indicated to determine their cumulative effect.

(1) Impact at a velocity of not less than 129 m/sec (422 ft/sec) at a right angle onto a flat, essentially unyielding, horizontal surface, in the orientation (e.g., side, end, corner) expected to result in maximum damage at the conclusion of the test sequence.

(2) A static compressive load of 31,800 kg (70,000 lbs) applied in the orientation expected to result in maximum damage at the conclusion of the test sequence. The force on the package must be developed between a flat steel surface and a 5 cm (2 in) wide, straight, solid, steel bar. The length of the bar must be at least as long as the diameter of the package, and the longitudinal axis of the bar must be parallel to the plane of the flat surface. The load must be applied to the bar in a manner that prevents any members or devices used to support the bar from contacting the package.

(3) Packages weighing less than 227 kg (500 lbs) must be placed on a flat, essentially unyielding, horizontal surface, and subjected to a weight of 227 kg (500 lbs) falling from a height of 3 m (10 ft) and striking in the position expected to result in maximum damage at the conclusion of the test sequence.

The end of the weight contacting the package must be a solid probe made of mild steel. The probe must be the shape of the frustum of a right circular cone, 30 cm (12 in) long, 20 cm (8 in) in diameter at the base, and 2.5 cm (1 in) in diameter at the end. The longitudinal axis of the probe must be perpendicular to the horizontal surface. For packages weighing 227 kg (500 lbs) or more, the base of the probe must be placed on a flat, essentially unyielding horizontal surface, and the package dropped from a height of 3 m (10 ft) onto the probe, striking in the position expected to result in maximum damage at the conclusion of the test sequence.

(4) The package must be firmly restrained and supported such that its longitudinal axis is inclined approximately 45° to the horizontal. The area of the package that made first contact with the impact surface in paragraph (a)(1) of this section must be in the lowermost position. The package must be struck at approximately the center of its vertical projection by the end of a structural steel angle section falling from a height of at least 46 m (150 ft). The angle section must be at least 1.8 m (6 ft) in length with equal legs at least 13 cm (5 in) long and 1.3 cm (0.5 in) thick. The angle section must be guided in such a way as to fall end-on, without tumbling. The package must be rotated approximately 90° about its longitudinal axis and struck by the steel angle section falling as before.

(5) The package must be exposed to luminous flames from a pool fire of JP–4 or JP–5 aviation fuel for a period of at least 60 minutes. The luminous flames must extend an average of at least 0.9 m (3 ft) and no more than 3 m (10 ft) beyond the package in all horizontal directions. The position and orientation of the package in relation to the fuel must be that which is expected to result in maximum damage at the conclusion of the test sequence. An alternate method of thermal testing may be substituted for this fire test, provided that the alternate test is not of shorter duration and would not result in a lower heating rate to the package. At the conclusion of the thermal test, the package must be allowed to cool naturally or must be cooled by water sprinkling, whichever is expected to result in maximum damage at the conclusion of the test sequence.

(6) Immersion under at least 0.9 m (3 ft) of water.

(b) *Individual free-fall impact test.*

(1) An undamaged package must be physically subjected to an impact at a velocity not less than the calculated terminal free-fall velocity, at mean sea level, at a right angle onto a flat, essentially unyielding, horizontal surface, in the orientation (e.g., side, end, corner) expected to result in maximum damage.

(2) This test is not required if the calculated terminal free-fall velocity of the package is less than 129 m/sec (422 ft/sec), or if a velocity not less than either 129 m/sec (422 ft/sec) or the calculated terminal free-fall velocity of the package is used in the sequential test of paragraph (a)(1) of this section.

(c) *Individual deep submersion test.* An undamaged package must be physically submerged and physically subjected to an external water pressure of at least 4 MPa (600 lbs/in ^{2}).

§ 71.75 Qualification of special form radioactive material.

(a) Special form radioactive materials must meet the test requirements of paragraph (b) of this section. Each solid radioactive material or capsule specimen to be tested must be manufactured or fabricated so that it is representative of the actual solid material or capsule that will be transported, with the proposed radioactive content duplicated as closely as practicable. Any differences between the material to be transported and the test material, such as the use of non-radioactive contents, must be taken into account in determining whether the test requirements have been met. In addition:

(1) A different specimen may be used for each of the tests;

(2) The specimen may not break or shatter when subjected to the impact, percussion, or bending tests;

(3) The specimen may not melt or disperse when subjected to the heat test;

(4) After each test, leaktightness or indispersibility of the specimen must be determined by a method no less sensitive than the leaching assessment procedure prescribed in paragraph (c) of this section. For a capsule resistant to corrosion by water, and which has an internal void volume greater than 0.1 milliliter, an alternative to the leaching assessment is a demonstration of leaktightness of $\times 10^{-4}$ torr-liter/s ($1.3 \times \times 10^{-4}$ atm-cm^3/s) based on air at 25°C (77°F) and one atmosphere differential pressure for solid radioactive content, or $\times 10^{-6}$ torr-liter/s ($1.3 \times \times 10^{-6}$ atm $-$ cm^3/s) for liquid or gaseous radioactive content; and

(5) A specimen that comprises or simulates radioactive material contained in a sealed capsule need not be subjected to the leaktightness procedure specified in this section, provided it is alternatively subjected to any of the tests prescribed in ISO/TR4826–1979(E), ''Sealed radioactive sources leak test methods'' which is available from the American National Standards Institute, 1430 Broadway, New York, N.Y. 10018.

(b) *Test methods.*

(1) *Impact Test.* The specimen must fall onto the target from a height of 9 m (30 ft) or greater in the orientation expected to result in maximum damage. The target must be a flat, horizontal surface of such mass and rigidity that any increase in its resistance to displacement or deformation, on impact by the specimen, would not significantly increase the damage to the specimen.

(2) *Percussion Test.*

(i) The specimen must be placed on a sheet of lead that is supported by a smooth solid surface, and struck by the flat face of a steel billet so as to produce an impact equivalent to that resulting from a free drop of 1.4 kg (3 lbs) through 1 m (40 in);

(ii) The flat face of the billet must be 25 millimeters (mm) (1 inch) in diameter with the edges rounded off to a radius of 3 mm $\pm$ 0.3 mm(.12 in $\pm$ 0.012 in);

(iii) The lead must be hardness number 3.5 to 4.5 on the Vickers scale and thickness 25 mm (1 in) or greater, and must cover an area greater than that covered by the specimen;

(iv) A fresh surface of lead must be used for each impact; and

(v) The billet must strike the specimen so as to cause maximum damage.

(3) *Bending test.*

(i) This test applies only to long, slender sources with a length of 10 cm (4 inches) or greater and a length to width ratio of 10 or greater;

(ii) The specimen must be rigidly clamped in a horizontal position so that one half of its length protrudes from the face of the clamp;

(iii) The orientation of the specimen must be such that the specimen will suffer maximum damage when its free end is struck by the flat face of a steel billet;

(iv) The billet must strike the specimen so as to produce an impact equivalent to that resulting from a free vertical drop of 1.4 kg (3 lbs) through 1 m (40 in); and

(v) The flat face of the billet must be 25 mm (1 inch) in diameter with the edges rounded off to a radius of 3 mm $\pm$ 0.3 mm (.12 in $\pm$ 0.012 in).

(4) *Heat test.* The specimen must be heated in air to a temperature of not less than 800°C (1475°F), held at that temperature for a period of 10 minutes, and then allowed to cool.

(c) *Leaching assessment methods.* (1) For indispersible solid material—

(i) The specimen must be immersed for 7 days in water at ambient

temperature. The water must have a pH of 6–8 and a maximum conductivity of 10 micromho per centimeter at 20° (68°F);

(ii) The water with specimen must then be heated to a temperature of 50°C±5°C (122°F±9°F) and maintained at this temperature for 4 hours.

(iii) The activity of the water must then be determined;

(iv) The specimen must then be stored for at least 7 days in still air of relative humidity not less than 90 percent at 30°C (86°F);

(v) The specimen must then be immersed in water under the same conditions as in paragraph (c)(1)(i) of this section, and the water with specimen must be heated to 50°C±5°C (122°F±9°F) and maintained at that temperature for 4 hours;

(vi) The activity of the water must then be determined. The sum of the activities determined here and in paragraph (c)(1)(iii) of this section must not exceed 2 kilobecquerels (kBq) (0.05 microcurie (μCi)).

(2) For encapsulated material—

(i) The specimen must be immersed in water at ambient temperature. The water must have a pH of 6–8 and a maximum conductivity of 10 micromho per centimeter;

(ii) The water and specimen must be heated to a temperature of 50°C±5°C (122°F±9°F) and maintained at this temperature for 4 hours;

(iii) The activity of the water must then be determined;

(iv) The specimen must then be stored for at least 7 days in still air at a temperature of 30°C (86°F) or greater;

(v) The process in paragraph (c)(2)(i), (ii), and (iii) of this section must be repeated; and

(vi) The activity of the water must then be determined. The sum of the activities determined here and in paragraph (c)(2)(iii) of this section must not exceed 2 kilobecquerels (kBq) (0.05 microcurie (μCi)).

(d) A specimen that comprises or simulates radioactive material contained in a sealed capsule need not be subjected to—

(1) The impact test and the percussion test of this section, provided that the specimen is alternatively subjected to the Class 4 impact test prescribed in ISO 2919–1980(e), ''Sealed Radioactive Sources Classification'' (see § 71.75(a)(5) for statement of availability); and

(2) The heat test of this section, provided the specimen is alternatively subjected to the Class 6 temperature test specified in the International Organization for Standardization document ISO 2919–1980(e), ''Sealed Radioactive Sources Classification.''

§ 71.77 Qualification of LSA–III Material

(a) LSA–III material must meet the test requirements of paragraph (b) of this section. Any differences between the specimen to be tested and the material to be transported must be taken into account in determining whether the test requirements have been met.

(b) *Leaching Test.* (1) The specimen, representing no less than the entire contents of the package, must be immersed for 7 days in water at ambient temperature;

(2) The volume of water to be used in the test must be sufficient to ensure that at the end of the test period the free volume of the unabsorbed and unreacted water remaining will be at least 10% of the volume of the specimen itself;

(3) The water must have an initial pH of 6–8 and a maximum conductivity 10 micromho/cm at 20°C (68°F); and

(4) The total activity of the free volume of water must be measured following the 7 day immersion test and must not exceed 0.1 A_2.

Subpart G—Operating Controls and Procedures

§ 71.81 Applicability of operating controls and procedures.

A licensee subject to this part, who, under a general or specific license, transports licensed material or delivers licensed material to a carrier for transport, shall comply with the requirements of this subpart G, with the quality assurance requirements of subpart H of this part, and with the general provisions of subpart A of this part.

§ 71.83 Assumptions as to unknown properties.

When the isotopic abundance, mass, concentration, degree of irradiation, degree of moderation, or other pertinent property of fissile material in any package is not known, the licensee shall package the fissile material as if the unknown properties have credible values that will cause the maximum neutron multiplication.

§ 71.85 Preliminary determinations.

Before the first use of any packaging for the shipment of licensed material—

(a) The licensee shall ascertain that there are no cracks, pinholes, uncontrolled voids, or other defects that could significantly reduce the effectiveness of the packaging;

(b) Where the maximum normal operating pressure will exceed 35 kPa (5 lbf/in^2) gauge, the licensee shall test the containment system at an internal pressure at least 50 percent higher than the maximum normal operating pressure, to verify the capability of that system to maintain its structural integrity at that pressure; and

(c) The licensee shall conspicuously and durably mark the packaging with its model number, serial number, gross weight, and a package identification number assigned by NRC. Before applying the model number, the licensee shall determine that the packaging has been fabricated in accordance with the design approved by the Commission.

§ 71.87 Routine determinations.

Before each shipment of licensed material, the licensee shall ensure that the package with its contents satisfies the applicable requirements of this part and of the license. The licensee shall determine that—

(a) The package is proper for the contents to be shipped;

(b) The package is in unimpaired physical condition except for superficial defects such as marks or dents;

(c) Each closure device of the packaging, including any required gasket, is properly installed and secured and free of defects;

(d) Any system for containing liquid is adequately sealed and has adequate space or other specified provision for expansion of the liquid;

(e) Any pressure relief device is operable and set in accordance with written procedures;

(f) The package has been loaded and closed in accordance with written procedures;

(g) For fissile material, any moderator or neutron absorber, if required, is present and in proper condition;

(h) Any structural part of the package that could be used to lift or tie down the package during transport is rendered inoperable for that purpose, unless it satisfies the design requirements of § 71.45;

(i) The level of non-fixed (removable) radioactive contamination on the external surfaces of each package offered for shipment is as low as reasonably achievable, and within the limits specified in DOT regulations in 49 CFR 173.443;

(j) External radiation levels around the package and around the vehicle, if applicable, will not exceed the limits specified in § 71.47 at any time during transportation; and

(k) Accessible package surface temperatures will not exceed the limits specified in § 71.43(g) at any time during transportation.

§ 71.88 Air transport of plutonium.

(a) Notwithstanding the provisions of any general licenses and

notwithstanding any exemptions stated directly in this part or included indirectly by citation of 49 CFR Chapter I, as may be applicable, the licensee shall assure that plutonium in any form, whether for import, export, or domestic shipment, is not transported by air or delivered to a carrier for air transport unless:

(1) The plutonium is contained in a medical device designed for individual human application; or

(2) The plutonium is contained in a material in which the specific activity is not greater than 0.002 μCi/g (70 Bq/g) of material and in which the radioactivity is essentially uniformly distributed; or

(3) The plutonium is shipped in a single package containing no more than an A_2 quantity of plutonium in any isotope or form, and is shipped in accordance with § 71.5; or

(4) The plutonium is shipped in a package specifically authorized for the shipment of plutonium by air in the Certificate of Compliance for that package issued by the Commission.

(b) Nothing in paragraph (a) of this section is to be interpreted as removing or diminishing the requirements of § 73.24 of this chapter.

(c) For a shipment of plutonium by air which is subject to paragraph (a)(4) of this section, the licensee shall, through special arrangement with the carrier, require compliance with 49 CFR 175.704, U.S. Department of Transportation regulations applicable to the air transport of plutonium.

§ 71.89 Opening instructions.

Before delivery of a package to a carrier for transport, the licensee shall ensure that any special instructions needed to safely open the package have been sent to, or otherwise made available to, the consignee for the consignee's use in accordance with 10 CFR 20.1906(e).

§ 71.91 Records.

(a) Each licensee shall maintain, for a period of 3 years after shipment, a record of each shipment of licensed material not exempt under § 71.10, showing where applicable—

(1) Identification of the packaging by model number and serial number;

(2) Verification that there are no significant defects in the packaging, as shipped;

(3) Volume and identification of coolant;

(4) Type and quantity of licensed material in each package, and the total quantity of each shipment;

(5) For each item of irradiated fissile material—

(i) Identification by model number and serial number;

(ii) Irradiation and decay history to the extent appropriate to demonstrate that its nuclear and thermal characteristics comply with license conditions; and

(iii) Any abnormal or unusual condition relevant to radiation safety;

(6) Date of the shipment;

(7) For fissile packages and for Type B packages, any special controls exercised;

(8) Name and address of the transferee;

(9) Address to which the shipment was made; and

(10) Results of the determinations required by § 71.87 and by the conditions of the package approval.

(b) The licensee shall make available to the Commission for inspection, upon reasonable notice, all records required by this part. Records are only valid if stamped, initialed, or signed and dated by authorized personnel or otherwise authenticated.

(c) The licensee shall maintain sufficient written records to furnish evidence of the quality of packaging. The records to be maintained include results of the determinations required by § 71.85; design, fabrication, and assembly records, results of reviews, inspections, tests, and audits; results of monitoring work performance and materials analyses; and results of maintenance, modification and repair activities. Inspection, test, and audit records must identify the inspector or data recorder, the type of observation, the results, the acceptability and the action taken in connection with any deficiencies noted. The records must be retained for three years after the life of the packaging to which they apply.

§ 71.93 Inspection and tests.

(a) The licensee or certificate holder shall permit the Commission, at all reasonable times, to inspect the licensed material, packaging, premises, and facilities in which the licensed material or packaging is used, provided, constructed, fabricated, tested, stored, or shipped.

(b) The licensee shall perform, and permit the Commission to perform, any tests the Commission deems necessary or appropriate for the administration of the regulations in this chapter.

(c) The licensee shall notify the Administrator of the appropriate NRC Regional Office listed in appendix A of part 73 of this chapter, at least 45 days before fabrication of a package to be used for the shipment of licensed material having a decay heat load in excess of 5 kW or with a maximum normal operating pressure in excess of 103 kPa (15 lbf/in^2) gauge.

§ 71.95 Reports.

The licensee shall report to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, within 30 days—

(a) Any instance in which there is significant reduction in the effectiveness of any approved Type B, or fissile, packaging during use;

(b) Details of any defects with safety significance in Type B, or fissile, packaging after first use, with the means employed to repair the defects and prevent their recurrence; or

(c) Instances in which the conditions of approval in the certificate of compliance were not observed in making a shipment.

§ 71.97 Advance notification of shipment of irradiated reactor fuel and nuclear waste.

(a) As specified in paragraphs (b), (c) and (d) of this section, each licensee shall provide advance notification to the governor of a State, or the governor's designee, of the shipment of licensed material, through, or across the boundary of the State, before the transport, or delivery to a carrier, for transport, of licensed material outside the confines of the licensee's plant or other place of use or storage.

(b) Advance notification is required under this section for shipments of irradiated reactor fuel in quantities less than that subject to advance notification requirements of § 73.37(f) of this chapter. Advance notification is also required under this section for shipment of licensed material, other than irradiated fuel, meeting the following three conditions:

(1) The licensed material is required by this part to be in Type B packaging for transportation;

(2) The licensed material is being transported to or across a State boundary en route to a disposal facility or to a collection point for transport to a disposal facility; and

(3) The quantity of licensed material in a single package exceeds the least of the following:

(i) 3000 times the A_1 value of the radionuclides as specified in appendix A, Table A–1 for special form radioactive material;

(ii) 3000 times the A_2 value of the radionuclides as specified in appendix A, Table A–1 for normal form radioactive material; or

(iii) 1000 TBq (27,000 Ci).

(c) *Procedures for submitting advance notification.*

(1) The notification must be made in writing to the office of each appropriate governor or governor's designee and to the Administrator of the appropriate

NRC Regional Office listed in appendix A to part 73 of this chapter.

(2) A notification delivered by mail must be postmarked at least 7 days before the beginning of the 7-day period during which departure of the shipment is estimated to occur.

(3) A notification delivered by messenger must reach the office of the governor or of the governor's designee at least 4 days before the beginning of the 7-day period during which departure of the shipment is estimated to occur.

(i) A list of the names and mailing addresses of the governors' designees receiving advance notification of transportation of nuclear waste was published in the Federal Register on June 30, 1995 (60 FR 34306).

(ii) The list will be published annually in the Federal Register on or about June 30 to reflect any changes in information.

(iii) A list of the names and mailing addresses of the governors' designees is available on request from the Director, Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

(4) The licensee shall retain a copy of the notification as a record for 3 years.

(d) *Information to be furnished in advance notification of shipment.* Each advance notification of shipment of irradiated reactor fuel or nuclear waste must contain the following information:

(1) The name, address, and telephone number of the shipper, carrier, and receiver of the irradiated reactor fuel or nuclear waste shipment;

(2) A description of the irradiated reactor fuel or nuclear waste contained in the shipment, as specified in the regulations of DOT in 49 CFR 172.202 and 172.203(d);

(3) The point of origin of the shipment and the 7-day period during which departure of the shipment is estimated to occur;

(4) The 7-day period during which arrival of the shipment at State boundaries is estimated to occur;

(5) The destination of the shipment, and the 7-day period during which arrival of the shipment is estimated to occur; and

(6) A point of contact, with a telephone number, for current shipment information.

(e) *Revision notice.* A licensee who finds that schedule information previously furnished to a governor or governor's designee, in accordance with this section, will not be met, shall telephone a responsible individual in the office of the governor of the State or of the governor's designee and inform that individual of the extent of the delay beyond the schedule originally reported. The licensee shall maintain a record of the name of the individual contacted for 3 years.

(f) *Cancellation notice.*

(1) Each licensee who cancels an irradiated reactor fuel or nuclear waste shipment for which advance notification has been sent shall send a cancellation notice to the governor of each State or to the governor's designee previously notified, and to the Administrator of the appropriate NRC Regional Office listed in appendix A of part 73 of this chapter.

(2) The licensee shall state in the notice that it is a cancellation and identify the advance notification that is being canceled. The licensee shall retain a copy of the notice as a record for 3 years.

§ 71.99 Violations.

(a) The Commission may obtain an injunction or other court order to prevent a violation of the provisions of—

(1) The Atomic Energy Act of 1954, as amended;

(2) Title II of the Energy Reorganization Act of 1974, as amended; or (3) A regulation or order issued pursuant to those Acts.

(b) The Commission may obtain a court order for the payment of a civil penalty imposed under section 234 of the Atomic Energy Act:

(1) For violations of—

(i) Sections 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 of the Atomic Energy Act of 1954, as amended;

(ii) Section 206 of the Energy Reorganization Act;

(iii) Any rule, regulation, or order issued pursuant to the sections specified in paragraph (b)(1)(i) of this section; or

(iv) Any term , condition, or limitation of any license issued under the sections specified in paragraph (b)(1)(i) of this section.

(2) For any violation for which a license may be revoked under section 186 of the Atomic Energy Act of 1954, as amended.

§ 71.100 Criminal penalties.

(a) Section 223 of the Atomic Energy Act of 1954, as amended, provides for criminal sanctions for willful violation of, attempted violation of, or conspiracy to violate, any regulation issued under sections 161b, 161i, or 161o of the Act. For purposes of section 223, all the regulations in part 71 are issued under one or more of sections 161b, 161i, or 161o, except for the sections listed in paragraph (b) of this section.

(b) The regulations in part 71 that are not issued under sections 161b, 161i, or 161o for the purposes of section 223 are as follows: §§ 71.0, 71.2, 71.4, 71.6, 71.7, 71.9, 71.10, 71.31, 71.33, 71.35, 71.37, 71.38, 71.39, 71.41, 71.43, 71.45, 71.47, 71.51, 71.52, 71.53, 71.55, 71.59, 71.65, 71.71, 71.73, 71.74, 71.75, 71.77, 71.99, and 71.100.

Subpart H—Quality Assurance

§ 71.101 Quality assurance requirements.

(a) *Purpose.* This subpart describes quality assurance requirements applying to design, purchase, fabrication, handling, shipping, storing, cleaning, assembly, inspection, testing, operation, maintenance, repair, and modification of components of packaging that are important to safety. As used in this subpart, ''quality assurance'' comprises all those planned and systematic actions necessary to provide adequate confidence that a system or component will perform satisfactorily in service. Quality assurance includes quality control, which comprises those quality assurance actions related to control of the physical characteristics and quality of the material or component to predetermined requirements.

(b) *Establishment of program.* Each licensee shall establish, maintain, and execute a quality assurance program satisfying each of the applicable criteria of §§ 71.101 through 71.137 and satisfying any specific provisions that are applicable to the licensee's activities including procurement of packaging. The licensee shall apply each of the applicable criteria in a graded approach, i.e., to an extent that is consistent with its importance to safety.

(c) *Approval of program.* Before the use of any package for the shipment of licensed material subject to this subpart, each licensee shall obtain Commission approval of its quality assurance program. Each licensee shall file a description of its quality assurance program, including a discussion of which requirements of this subpart are applicable and how they will be satisfied, with the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

(d) *Existing package designs.* The provisions of this paragraph deal with packages that have been approved for use in accordance with this part before January 1, 1979, and which have been designed in accordance with the provisions of this part in effect at the time of application for package approval. Those packages will be accepted as having been designed in accordance with a quality assurance program that satisfies the provisions of paragraph (b) of this section.

(e) *Existing packages.* The provisions of this paragraph deal with packages that have been approved for use in accordance with this part before January 1, 1979; have been at least partially fabricated prior to that date; and for which the fabrication is in accordance with the provisions of this part in effect at the time of application for approval of package design. These packages will be accepted as having been fabricated and assembled in accordance with a quality assurance program that satisfies the provisions of paragraph (b) of this section.

(f) *Previously approved programs.* A Commission-approved quality assurance program that satisfies the applicable criteria of Appendix B of Part 50 of this chapter, and that is established, maintained, and executed with regard to transport packages, will be accepted as satisfying the requirements of paragraph (b) of this section. Before first use, the licensee shall notify the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, of its intent to apply its previously approved Appendix B program to transportation activities. The licensee shall identify the program by date of submittal to the Commission, Docket Number, and date of Commission approval.

§ 71.103 Quality assurance organization.

(a) The licensee [3] shall be responsible for the establishment and execution of the quality assurance program. The licensee may delegate to others, such as contractors, agents, or consultants, the work of establishing and executing the quality assurance program, or any part of the quality assurance program, but shall retain responsibility for the program. The licensee shall clearly establish and delineate, in writing, the authority and duties of persons and organizations performing activities affecting the safety-related functions of structures, systems, and components. These activities include performing the functions associated with attaining quality objectives and the quality assurance functions.

(b) The quality assurance functions are—

(1) Assuring that an appropriate quality assurance program is established and effectively executed; and

(2) Verifying, by procedures such as checking, auditing, and inspection, that activities affecting the safety-related functions have been performed correctly.

(c) The persons and organizations performing quality assurance functions must have sufficient authority and organizational freedom to—

(1) Identify quality problems;

(2) Initiate, recommend, or provide solutions; and

(3) Verify implementation of solutions.

(d) The persons and organizations performing quality assurance functions shall report to a management level that assures that the required authority and organizational freedom, including sufficient independence from cost and schedule, when opposed to safety considerations, are provided.

(e) Because of the many variables involved, such as the number of personnel, the type of activity being performed, and the location or locations where activities are performed, the organizational structure for executing the quality assurance program may take various forms, provided that the persons and organizations assigned the quality assurance functions have the required authority and organizational freedom.

(f) Irrespective of the organizational structure, the individual(s) assigned the responsibility for assuring effective execution of any portion of the quality assurance program, at any location where activities subject to this section are being performed, must have direct access to the levels of management necessary to perform this function.

§ 71.105 Quality assurance program.

(a) The licensee shall establish, at the earliest practicable time consistent with the schedule for accomplishing the activities, a quality assurance program that complies with the requirements of §§ 71.101 through 71.137. The licensee shall document the quality assurance program by written procedures or instructions and shall carry out the program in accordance with those procedures throughout the period during which the packaging is used. The licensee shall identify the material and components to be covered by the quality assurance program, the major organizations participating in the program, and the designated functions of these organizations.

(b) The licensee, through its quality assurance program, shall provide control over activities affecting the quality of the identified materials and components to an extent consistent with their importance to safety, and as necessary to assure conformance to the approved design of each individual package used for the shipment of radioactive material. The licensee shall assure that activities affecting quality are accomplished under suitably controlled conditions. Controlled conditions include the use of appropriate equipment; suitable environmental conditions for accomplishing the activity, such as adequate cleanliness; and assurance that all prerequisites for the given activity have been satisfied. The licensee shall take into account the need for special controls, processes, test equipment, tools, and skills to attain the required quality, and the need for verification of quality by inspection and test.

(c) The licensee shall base the requirements and procedures of its quality assurance program on the following considerations concerning the complexity and proposed use of the package and its components:

(1) The impact of malfunction or failure of the item to safety;

(2) The design and fabrication complexity or uniqueness of the item;

(3) The need for special controls and surveillance over processes and equipment;

(4) The degree to which functional compliance can be demonstrated by inspection or test; and

(5) The quality history and degree of standardization of the item.

(d) The licensee shall provide for indoctrination and training of personnel performing activities affecting quality, as necessary to assure that suitable proficiency is achieved and maintained. The licensee shall review the status and adequacy of the quality assurance program at established intervals. Management of other organizations participating in the quality assurance program shall review regularly the status and adequacy of that part of the quality assurance program which they are executing.

§ 71.107 Package design control.

(a) The licensee shall establish measures to assure that applicable regulatory requirements and the package design, as specified in the license for those materials and components to which this section applies, are correctly translated into specifications, drawings, procedures, and instructions. These measures must include provisions to assure that appropriate quality standards are specified and included in design documents and that deviations from standards are controlled. Measures must be established for the selection and review for suitability of application of materials, parts, equipment, and processes that are essential to the safety-related functions of the materials, parts, and components of the packaging.

[3] While the term ''licensee'' is used in these criteria, the requirements are applicable to whatever design, fabrication, assembly, and testing of the package is accomplished with respect to a package prior to the time a package approval is issued.

(b) The licensee shall establish measures for the identification and control of design interfaces and for coordination among participating design organizations. These measures must include the establishment of written procedures, among participating design organizations, for the review, approval, release, distribution, and revision of documents involving design interfaces. The design control measures must provide for verifying or checking the adequacy of design, by methods such as design reviews, alternate or simplified calculational methods, or by a suitable testing program. For the verifying or checking process, the licensee shall designate individuals or groups other than those who were responsible for the original design, but who may be from the same organization. Where a test program is used to verify the adequacy of a specific design feature in lieu of other verifying or checking processes, the licensee shall include suitable qualification testing of a prototype or sample unit under the most adverse design conditions. The licensee shall apply design control measures to items such as the following:

(1) Criticality physics, radiation shielding, stress, thermal, hydraulic, and accident analyses;

(2) Compatibility of materials;

(3) Accessibility for inservice inspection, maintenance, and repair;

(4) Features to facilitate decontamination; and

(5) Delineation of acceptance criteria for inspections and tests.

(c) The licensee shall subject design changes, including field changes, to design control measures commensurate with those applied to the original design. Changes in the conditions specified in the package approval require NRC approval.

§ 71.109 Procurement document control.

The licensee shall establish measures to assure that adequate quality is required in the documents for procurement of material, equipment, and services, whether purchased by the licensee or by its contractors or subcontractors. To the extent necessary, the licensee shall require contractors or subcontractors to provide a quality assurance program consistent with the applicable provisions of this part.

§ 71.111 Instructions, procedures, and drawings.

The licensee shall prescribe activities affecting quality by documented instructions, procedures, or drawings of a type appropriate to the circumstances and shall require that these instructions, procedures, and drawings be followed. The instructions, procedures, and drawings must include appropriate quantitative or qualitative acceptance criteria for determining that important activities have been satisfactorily accomplished.

§ 71.113 Document control.

The licensee shall establish measures to control the issuance of documents such as instructions, procedures, and drawings, including changes, which prescribe all activities affecting quality. These measures must assure that documents, including changes, are reviewed for adequacy, approved for release by authorized personnel, and distributed and used at the location where the prescribed activity is performed. These measures must assure that changes to documents are reviewed and approved.

§ 71.115 Control of purchased material, equipment, and services.

(a) The licensee shall establish measures to assure that purchased material, equipment, and services, whether purchased directly or through contractors and subcontractors, conform to the procurement documents. These measures must include provisions, as appropriate, for source evaluation and selection, objective evidence of quality furnished by the contractor or subcontractor, inspection at the contractor or subcontractor source, and examination of products on delivery.

(b) The licensee shall have available documentary evidence that material and equipment conform to the procurement specifications before installation or use of the material and equipment. The licensee shall retain, or have available, this documentary evidence for the life of the package to which it applies. The licensee shall assure that the evidence is sufficient to identify the specific requirements met by the purchased material and equipment.

(c) The licensee shall assess the effectiveness of the control of quality by contractors and subcontractors at intervals consistent with the importance, complexity, and quantity of the product or services.

§ 71.117 Identification and control of materials, parts, and components.

The licensee shall establish measures for the identification and control of materials, parts, and components. These measures must assure that identification of the item is maintained by heat number, part number, or other appropriate means, either on the item or on records traceable to the item, as required throughout fabrication, installation, and use of the item. These identification and control measures must be designed to prevent the use of incorrect or defective materials, parts, and components.

§ 71.119 Control of special processes.

The licensee shall establish measures to assure that special processes, including welding, heat treating, and nondestructive testing, are controlled and accomplished by qualified personnel using qualified procedures in accordance with applicable codes, standards, specifications, criteria, and other special requirements.

§ 71.121 Internal inspection.

The licensee shall establish and execute a program for inspection of activities affecting quality by or for the organization performing the activity, to verify conformance with the documented instructions, procedures, and drawings for accomplishing the activity. The inspection must be performed by individuals other than those who performed the activity being inspected. Examination, measurements, or tests of material or products processed must be performed for each work operation where necessary to assure quality. If direct inspection of processed material or products is not carried out, indirect control by monitoring processing methods, equipment, and personnel must be provided. Both inspection and process monitoring must be provided when quality control is inadequate without both. If mandatory inspection hold points, which require witnessing or inspecting by the licensee's designated representative and beyond which work should not proceed without the consent of its designated representative, are required, the specific hold points must be indicated in appropriate documents.

§ 71.123 Test control.

The licensee shall establish a test program to assure that all testing required to demonstrate that the packaging components will perform satisfactorily in service is identified and performed in accordance with written test procedures that incorporate the requirements of this part and the requirements and acceptance limits contained in the package approval. The test procedures must include provisions for assuring that all prerequisites for the given test are met, that adequate test instrumentation is available and used, and that the test is performed under suitable environmental conditions. The licensee shall document and evaluate the test results to assure that test requirements have been satisfied.

§ 71.125 Control of measuring and test equipment.

The licensee shall establish measures to assure that tools, gauges, instruments, and other measuring and testing devices used in activities affecting quality are properly controlled, calibrated, and adjusted at specified times to maintain accuracy within necessary limits.

§ 71.127 Handling, storage, and shipping control.

The licensee shall establish measures to control, in accordance with instructions, the handling, storage, shipping, cleaning, and preservation of materials and equipment to be used in packaging to prevent damage or deterioration. When necessary for particular products, special protective environments, such as inert gas atmosphere, and specific moisture content and temperature levels must be specified and provided.

§ 71.129 Inspection, test, and operating status.

(a) The licensee shall establish measures to indicate, by the use of markings such as stamps, tags, labels, routing cards, or other suitable means, the status of inspections and tests performed upon individual items of the packaging. These measures must provide for the identification of items that have satisfactorily passed required inspections and tests, where necessary to preclude inadvertent bypassing of the inspections and tests.

(b) The licensee shall establish measures to identify the operating status of components of the packaging, such as tagging valves and switches, to prevent inadvertent operation.

§ 71.131 Nonconforming materials, parts, or components.

The licensee shall establish measures to control materials, parts, or components that do not conform to the licensee's requirements to prevent their inadvertent use or installation. These measures must include, as appropriate, procedures for identification, documentation, segregation, disposition, and notification to affected organizations. Nonconforming items must be reviewed and accepted, rejected, repaired, or reworked in accordance with documented procedures.

§ 71.133 Corrective action.

The licensee shall establish measures to assure that conditions adverse to quality, such as deficiencies, deviations, defective material and equipment, and nonconformances, are promptly identified and corrected. In the case of a significant condition adverse to quality, the measures must assure that the cause of the condition is determined and corrective action taken to preclude repetition. The identification of the significant condition adverse to quality, the cause of the condition, and the corrective action taken must be documented and reported to appropriate levels of management.

§ 71.135 Quality assurance records.

The licensee shall maintain sufficient written records to describe the activities affecting quality. The records must include the instructions, procedures, and drawings required by § 71.111 to prescribe quality assurance activities and must include closely related specifications such as required qualifications of personnel, procedures, and equipment. The records must include the instructions or procedures which establish a records retention program that is consistent with applicable regulations and designates factors such as duration, location, and assigned responsibility. The licensee shall retain these records for 3 years beyond the date when the licensee last engages in the activity for which the quality assurance program was developed. If any portion of the written procedures or instructions is superseded, the licensee shall retain the superseded material for 3 years after it is superseded.

§ 71.137 Audits.

The licensee shall carry out a comprehensive system of planned and periodic audits, to verify compliance with all aspects of the quality assurance program, and to determine the effectiveness of the program. The audits must be performed in accordance with written procedures or checklists by appropriately trained personnel not having direct responsibilities in the areas being audited. Audited results must be documented and reviewed by management having responsibility in the area audited. Follow-up action, including reaudit of deficient areas, must be taken where indicated.

Appendix A to Part 71—Determination of A_1 and A_2

I. Values of A_1 and A_2 for individual radionuclides, which are the bases for many activity limits elsewhere in these regulations are given in Table A–1. The curie (Ci) values specified are obtained by converting from the Terabecquerel (TBq) figure. The curie values are expressed to three significant figures to assure that the difference in the TBq and Ci quantities is one tenth of one percent or less. Where values of A_1 or A_2 are unlimited, it is for radiation control purposes only. For nuclear criticality safety, some materials are subject to controls placed on fissile material.

II. For individual radionuclides whose identities are known, but which are not listed in Table A–1, the determination of the values of A_1 and A_2 requires Commission approval, except that the values of A_1 and A_2 in Table A–2 may be used without obtaining Commission approval.

III. In the calculations of A_1 and A_2 for a radionuclide not in Table A–1, a single radioactive decay chain, in which radionuclides are present in their naturally occurring proportions, and in which no daughter nuclide has a half-life either longer than 10 days, or longer than that of the parent nuclide, shall be considered as a single radionuclide, and the activity to be taken into account, and the A_1 or A_2 value to be applied shall be those corresponding to the parent nuclide of that chain. In the case of radioactive decay chains in which any daughter nuclide has a half-life either longer than 10 days, or greater than that of the parent nuclide, the parent and those daughter nuclides shall be considered as mixtures of different nuclides.

IV. For mixtures of radionuclides whose identities and respective activities are known, the following conditions apply:

(a) For special form radioactive material, the maximum quantity transported in a Type A package:

$$\sum_{I} \frac{B(i)}{A_1(i)} \text{ less than or equal to } 1$$

(b) For normal form radioactive material, the maximum quantity transported in a Type A package:

$$\sum_{I} \frac{B(i)}{A_2(i)} \text{ less than or equal to } 1$$

Where B(i) is the activity of radionuclide I and $A_1(i)$ and $A_2(i)$ are the A_1 and A_2 values for radionuclide I, respectively.

Alternatively, an A_1 value for mixtures of special form material may be determined as follows:

$$A_1 \text{ for mixture} = \frac{1}{\sum_{I} \frac{f(i)}{A_1(i)}}$$

Where f(i) is the fraction of activity of nuclide I in the mixture and $A_1(i)$ is the appropriate A_1 value for nuclide I.

An A_2 value for mixtures of normal form material may be determined as follows:

$$A_2 \text{ for mixture} = \frac{1}{\sum_{I} \frac{f(i)}{A_2(i)}}$$

Where f(i) is the fraction of activity of nuclide I in the mixture and $A_2(i)$ is the appropriate A_2 value for nuclide I.

V. When the identity of each radionuclide is known, but the individual activities of some of the radionuclides are not known, the radionuclides may be grouped and the lowest A_1 or A_2 value, as appropriate, for the radionuclides in each group may be used in applying the formulas in paragraph IV. Groups may be based on the total alpha activity and the total beta/gamma activity when these are known, using the lowest A_1 or A_2 values for the alpha emitters and beta/gamma emitters.

TABLE A–1.—A_1 AND A_2 VALUES FOR RADIONUCLIDES

Symbol of radionuclide	Element and atomic number	A_1 (TBq)	A_1 (Ci)	A_2 (TBq)	A_2 (Ci)	Specific activity	
						(TBq/g)	(Ci/g)
Ac-225	Actinium(89)	0.6	16.2	1×10^{-2}	0.270	2.1×10^{3}	5.8×10^{4}
Ac-227		40	1080	2×10^{-5}	5.41×10^{-4}	2.7	7.2×10^{1}
Ac-228		0.6	16.2	0.4	10.8	8.4×10^{4}	2.2×10^{6}
Ag-105	Silver(47)	2	54.1	2	54.1	1.1×10^{3}	3.0×10^{4}
Ag-108m		0.6	16.2	0.6	16.2	9.7×10^{-1}	2.6×10^{1}
Ag-110m		0.4	10.8	0.4	10.8	1.8×10^{3}	4.7×10^{3}
Ag-111		0.6	16.2	0.5	13.5	5.8×10^{3}	1.6×10^{5}
Al-26	Aluminum(13)	0.4	10.8	0.4	10.8	7.0×10^{-4}	1.9×10^{-2}
Am-241	Americium(95)	2	54.1	2×10^{-4}	5.41×10^{-3}	1.3×10^{-1}	3.4
Am-242m		2	54.1	2×10^{-4}	5.41×10^{-3}	3.6×10^{-1}	9.7×10^{5}
Am-243		2	54.1	2×10^{-4}	5.41×10^{-3}	7.4×10^{-3}	2.0×10^{-1}
Ar-37	Argon(18)	40	1080	40	1080	3.7×10^{3}	9.9×10^{4}
Ar-39		20	541	20	541	1.3×10^{3}	3.4×10^{1}
Ar-41		0.6	16.2	0.6	16.2	1.5×10^{6}	4.2×10^{7}
Ar-42		0.2	5.41	0.2	5.41	9.6	2.6×10^{2}
As-72	Arsenic(33)	0.2	5.41	0.2	5.41	6.2×10^{4}	1.7×10^{6}
As-73		40	1080	40	1080	8.2×10^{2}	2.2×10^{4}
As-74		1	27.0	0.5	13.5	3.7×10^{3}	9.9×10^{4}
As-76		0.2	5.41	0.2	5.41	5.8×10^{4}	1.6×10^{6}
As-77		20	541	0.5	13.5	3.9×10^{4}	1.0×10^{6}
At-211	Astatine(85)	30	811	2	54.1	7.6×10^{4}	2.1×10^{6}
Au-193	Gold(79)	6	162	6	162	3.4×10^{4}	9.2×10^{5}
Au-194		1	27.0	1	27.0	1.5×10^{4}	4.1×10^{5}
Au-195		10	270	10	270	1.4×10^{2}	3.7×10^{3}
Au-196		2	54.1	2	54.1	4.0×10^{3}	1.1×10^{5}
Au-198		3	81.1	0.5	13.5	9.0×10^{3}	2.4×10^{5}
Au-199		10	270	0.9	24.3	7.7×10^{3}	2.1×10^{5}
Ba-131	Barium(56)	2	54.1	2	54.1	3.1×10^{3}	8.4×10^{4}
Ba-133m		10	270	0.9	24.3	2.2×10^{4}	6.1×10^{5}
Ba-133		3	81.1	3	81.1	9.4	2.6×10^{2}
Ba-140		0.4	10.8	0.4	10.8	2.7×10^{3}	7.3×10^{4}
Be-7	Beryllium(4)	20	541	20	541	1.3×10^{4}	3.5×10^{5}
Be-10		20	541	0.5	13.5	8.3×10^{-4}	2.2×10^{-2}
Bi-205	Bismuth(83)	0.6	16.2	0.6	16.2	1.5×10^{-3}	4.2×10^{4}
Bi-206		0.3	8.11	0.3	8.11	3.8×10^{3}	1.0×10^{5}

TABLE A–1.—A_1 AND A_2 VALUES FOR RADIONUCLIDES—Continued

Symbol of radionuclide	Element and atomic number	A_1 (TBq)	A_1 (Ci)	A_2 (TBq)	A_2 (Ci)	Specific activity	
						(TBq/g)	(Ci/g)
Bi-207		0.7	18.9	0.7	18.9	1.9	5.2×10^{1}
Bi-210m		0.3	8.11	3×10^{-2}	0.811	2.1×10^{-5}	5.7×10^{-4}
Bi-210		0.6	16.2	0.5	13.5	4.6×10^{3}	1.2×10^{5}
Bi-212		0.3	8.11	0.3	8.11	5.4×10^{5}	1.5×10^{7}
Bk-247	Berkelium(97)	2	54.1	2×10^{-4}	5.41×10^{-3}	3.8×10^{-2}	1.0
Bk-249		40	1080	8×10^{-2}	2.16	6.1×10^{1}	1.6×10^{3}
Br-76	Bromine(35)	0.3	8.11	0.3	8.11	9.4×10^{4}	2.5×10^{6}
Br-77		3	81.1	3	81.1	2.6×10^{4}	7.1×10^{5}
Br-82		0.4	108	0.4	10.8	4.0×10^{4}	1.1×10^{6}
C-11	Carbon(6)	1	270	0.5	13.5	3.1×10^{7}	8.4×10^{8}
C-14		40	1080	2	54.1	1.6×10^{-1}	4.5
Ca-41	Calcium(20)	40	1080	40	1080	3.1×10^{-3}	8.5×10^{-2}
Ca-45		40	1080	0.9	24.3	6.6×10^{2}	1.8×10^{4}
Ca-47		0.9	24.3	0.5	13.5	2.3×10^{4}	6.1×10^{5}
Cd-109	Cadmium(48)	40	1080	1	27.0	9.6×10^{1}	2.6×10^{3}
Cd-113m		20	541	9×10^{-2}	2.43	8.3×10^{4}	2.2×10^{2}
Cd-115m		0.3	8.11	0.3	8.11	9.4×10^{2}	2.5×10^{4}
Cd-115		4	108	0.5	13.5	1.9×10^{4}	5.1×10^{5}
Ce-139	Cerium(58)	6	162	6	162	2.5×10^{2}	6.8×10^{3}
Ce-141		10	270	0.5	13.5	1.1×10^{3}	2.8×10^{4}
Ce-143		0.6	16.2	0.5	13.5	2.5×10^{4}	6.6×10^{5}
Ce-144		0.2	5.41	0.2	5.41	1.2×10^{2}	3.2×10^{3}
Cf-248	Californium(98)	30	811	3×10^{-3}	8.11×10^{-2}	5.8×10^{1}	1.6×10^{3}
Cf-249		2	54.1	2×10^{-4}	5.41×10^{-3}	1.5×10^{-1}	4.1
Cf-250		5	135	5×10^{-4}	1.35×10^{-2}	4.0	1.1×10^{2}
Cf-251		2	54.1	2×10^{-4}	5.41×10^{-3}	5.9×10^{-2}	1.6
Cf-252		0.1	2.70	1×10^{-3}	2.70×10^{-2}	2.0×10^{1}	5.4×10^{2}
Cf-253		40	1080	6×10^{-2}	1.62	1.1×10^{3}	2.9×10^{4}
Cf-254		3×10^{-3}	8.11×10^{-2}	6×10^{-4}	1.62×10^{-2}	3.1×10^{2}	8.5×10^{3}
Cl-36	Chlorine(17)	20	541	0.5	13.5	1.2×10^{-3}	3.3×10^{-2}
Cl-38		0.2	5.41	0.2	5.41	4.9×10^{6}	1.3×10^{8}
Cm-240	Curium(96)	40	1080	2×10^{-2}	0.541	7.5×10^{2}	2.0×10^{4}
Cm-241		2	54.1	0.9	24.3	6.1×10^{2}	1.7×10^{4}
Cm-242		40	1080	1×10^{-2}	0.270	1.2×10^{2}	3.3×10^{3}
Cm-243		3	81.1	3×10^{-4}	8.11×10^{-3}	1.9	5.2×10^{1}
Cm-244		4	1080	4×10^{-4}	1.08×10^{-2}	3.0	8.1×10^{5}
Cm-245		2	54.1	2×10^{-4}	5.41×10^{-3}	6.4×10^{-3}	1.7×10^{-1}
Cm-246		2	54.1	2×10^{-4}	5.41×10^{-3}	1.1×10^{-2}	3.1×10^{-1}
Cm-247		2	54.1	2×10^{-4}	5.41×10^{-3}	3.4×10^{-6}	9.3×10^{-5}
Cm-248		4×10^{-2}	1.08	5×10^{-5}	1.35×10^{-3}	1.6×10^{-4}	4.2×10^{-3}
Co-55	Cobalt(27)	0.5	13.5	0.5	13.5	1.1×10^{5}	3.1×10^{6}
Co-56		0.3	8.11	0.3	8.11	1.1×10^{3}	3.0×10^{4}
Co-57		8	216	8	216	3.1×10^{2}	8.4×10^{3}
Co-58m		40	1080	40	1080	2.2×10^{5}	5.9×10^{6}
Co-58		1	27.0	1	27.0	1.2×10^{3}	3.2×10^{4}
Co-60		0.4	10.8	0.4	10.8	4.2×10^{1}	1.1×10^{3}
Cr-51	Chromium(24)	30	811	30	811	3.4×10^{3}	9.2×10^{4}
Cs-129	Cesium(55)	4	108	4	108	2.8×10^{4}	7.6×10^{5}
Cs-131		40	1080	40	1080	3.8×10^{3}	1.0×10^{5}
Cs-132		1	27.0	1	27.0	5.7×10^{3}	1.5×10^{5}
Cs-134m		40	1080	9	243	3.0×10^{5}	8.0×10^{6}
Cs-134		0.6	16.2	0.5	13.5	4.8×10^{1}	1.3×10^{3}
Cs-135		40	1080	0.9	24.3	4.3×10^{-5}	1.2×10^{-3}
Cs-136		0.5	13.5	0.5	13.5	2.7×10^{3}	7.3×10^{4}
Cs-137		2	54.1	0.5	13.5	3.2	8.7×10^{1}
Cu-64	Copper(29)	5	135	0.9	24.3	1.4×10^{5}	3.9×10^{6}
Cu-67		9	243	0.9	24.3	2.8×10^{4}	7.6×10^{5}
Dy-159	Dysprosium(66)	20	541	20	541	2.1×10^{2}	5.7×10^{3}
Dy-165		0.6	16.2	0.5	13.5	3.0×10^{5}	8.2×10^{6}
Dy-166		0.3	8.11	0.3	8.11	8.6×10^{3}	2.3×10^{5}
Er-169	Erbium(68)	40	1080	0.9	24.3	3.1×10^{3}	8.3×10^{4}
Er-171		0.6	16.2	0.5	13.5	9.0×10^{4}	2.4×10^{6}
Es-253	Einsteinium(99)[a]	40	1080	5×10^{-1}	1.35		
Es-254		30	811	3×10^{-3}	8.11×10^{-2}		
Es-254m		0.6	16.2	0.4	10.8		
Es-255							
Eu-147	Europium(63)	2	54.1	2	54.1	1.4×10^{3}	3.7×10^{4}
Eu-148		0.5	13.5	0.5	13.5	6.0×10^{2}	1.6×10^{4}
Eu-149		20	541	20	541	3.5×10^{2}	9.4×10^{3}
Eu-150		0.7	18.9	0.7	18.9	6.1×10^{4}	6.7×10^{6}

TABLE A–1.—A_1 AND A_2 VALUES FOR RADIONUCLIDES—Continued

Symbol of radionuclide	Element and atomic number	A_1 (TBq)	A_1 (Ci)	A_2 (TBq)	A_2 (Ci)	Specific activity	
						(TBq/g)	(Ci/g)
Eu-152m		0.6	16.2	0.5	13.5	8.2×10^{4}	2.2×10^{6}
Eu-152		0.9	24.3	0.9	24.3	6.5	1.8×10^{2}
Eu-154		0.8	21.6	0.5	13.5	9.8	2.6×10^{2}
Eu-155		20	541	2	54.1	1.8×10^{1}	4.9×10^{3}
Eu-156		0.6	16.2	0.5	13.5	2.0×10^{3}	5.5×10^{4}
F-18	Fluorine(9)	1	27.0	0.5	13.5	3.5×10^{5}	9.5×10^{7}
Fe-52	Iron(26)	0.2	5.41	0.2	5.41	2.7×10^{5}	7.3×10^{6}
Fe-55		40	1080	40	1080	8.8×10^{1}	2.4×10^{3}
Fe-59		0.8	21.6	0.8	21.6	1.8×10^{3}	3.0×10^{-4}
Fe-60		40	1080	0.2	5.41	7.4×10^{-4}	2.0×10^{-2}
Fm-255	Fermium(100)[b]	40	1080	0.8	21.6		
Fm-257		40	1080	7×10^{-3}	1.89×10^{-3}		
Ga-67	Gallium(31)	6	162	6	162	2.2×10^{4}	6.0×10^{5}
Ga-68		0.3	8.11	0.3	8.11	1.5×10^{6}	4.1×10^{7}
Ga-72		0.4	10.8	0.4	10.8	1.1×10^{5}	3.1×10^{6}
Gd-146	Gadolinium(64)	0.4	10.8	0.4	10.8	6.9×10^{2}	1.9×10^{4}
Gd-148		3	81.1	3×10^{-4}	8.11×10^{-3}	6.7	2.9×10^{1}
Gd-153		10	270	5	135	1.3×10^{2}	3.5×10^{3}
Gd-159		4	108	0.5	13.5	3.9×10^{4}	1.1×10^{6}
Ge-68	Germanium(32)	0.3	8.11	0.3	8.11	2.6×10^{2}	7.1×10^{3}
Ge-71		40	1080	40	1080	5.8×10^{3}	1.6×10^{5}
Ge-77		0.3	8.11	0.3	8.11	1.3×10^{5}	3.6×10^{6}
H-3	Hydrogen(1)	See T-Tritium					
Hf-172	Hafnium(72)	0.5	13.5	0.3	8.11	4.1×10^{1}	1.1×10^{3}
Hf-175		3	81.1	3	81.1	3.9×10^{2}	1.1×10^{4}
Hf-181		2	54.1	0.9	24.3	6.3×10^{2}	1.7×10^{4}
Hf-182		4	108	3×10^{-2}	0.811	8.1×10^{-6}	2.2×10^{-4}
Hg-194	Mercury(80)	1	27.0	1	27.0	1.3×10^{-1}	3.5
Hg-195m		5	135	5	135	1.5×10^{4}	4.0×10^{5}
Hg-197m		10	270	0.9	24.3	2.5×10^{4}	6.7×10^{5}
Hg-197		10	270	10	270	9.2×10^{3}	2.5×10^{5}
Hg-203		4	108	0.9	24.3	5.1×10^{2}	1.4×10^{4}
Ho-163	Holmium(67)	40	1080	40	1080	2.7	7.6×10^{1}
Ho-166m		0.6	16.2	0.3	8.11	6.6×10^{-2}	1.8
Ho-166		0.3	8.11	0.3	8.11	2.6×10^{4}	7.0×10^{5}
I-123	Iodine(53)	6	162	6	162	7.1×10^{4}	1.9×10^{6}
I-124		0.9	24.3	0.9	24.3	9.3×10^{3}	2.5×10^{5}
I-125		20	541	2	54.1	6.4×10^{2}	1.7×10^{4}
I-126		2	54.1	0.9	24.3	2.9×10^{3}	8.0×10^{4}
I-129		Unlimited	Unlimited	Unlimited	Unlimited	6.5×10^{-6}	1.8×10^{-4}
I-131		3	81.1	0.5	13.5	4.6×10^{3}	1.2×10^{5}
I-132		0.4	10.8	0.4	10.8	3.8×10^{5}	1.0×10^{7}
I-133		0.6	16.2	0.5	13.5	4.2×10^{4}	1.1×10^{6}
I-134		0.3	8.11	0.3	8.11	9.9×10^{5}	2.7×10^{7}
I-135		0.6	16.2	0.5	13.5	1.3×10^{5}	3.5×10^{6}
In-111	Indium(49)	2	54.1	2	54.1	1.5×10^{4}	4.2×10^{5}
In-113m		4	108	4	108	6.2×10^{5}	1.7×10^{7}
In-114m		0.3	8.11	0.3	8.11	8.6×10^{2}	2.3×10^{4}
In-115m		6	162	0.9	24.3	2.2×10^{5}	6.1×10^{6}
Ir-189	Iridium(77)	10	270	10	270	1.9×10^{3}	5.2×10^{4}
Ir-190		0.7	18.9	0.7	18.9	2.3×10^{3}	6.2×10^{4}
Ir-192		1	27.0	0.5	13.5	3.4×10^{2}	9.2×10^{3}
Ir-193m		10	270	10	270	2.4×10^{3}	6.4×10^{4}
Ir-194		0.2	5.41	0.2	5.41	3.1×10^{4}	8.4×10^{5}
K-40	Potassium(19)	0.6	16.2	0.6	16.2	2.4×10^{-7}	6.4×10^{-6}
K-42		0.2	5.41	0.2	5.41	2.2×10^{5}	6.0×10^{6}
K-43		1.0	27.0	0.5	13.5	1.2×10^{5}	3.3×10^{6}
Kr-81	Krypton(36)	40	1080	40	1080	7.8×10^{-4}	2.1×10^{-2}
Kr-85m		6	162	6	162	3.0×10^{5}	8.2×10^{6}
Kr-85		20	541	10	270	1.5×10^{1}	3.9×10^{2}
Kr-87		0.2	5.41	0.2	5.41	1.0×10^{6}	2.8×10^{7}
La-137	Lanthanum(57)	40	1080	2	54.1	1.6×10^{-3}	4.4×10^{-2}
La-140		0.4	10.8	0.4	10.8	2.1×10^{4}	5.6×10^{5}
Lu-172	Lutetium(71)	0.5	13.5	0.5	13.5	4.2×10^{3}	1.1×10^{5}
Lu-173		8	216	8	216	5.6×10^{1}	1.5×10^{3}
Lu-174m		20	541	8	216	2.0×10^{2}	5.3×10^{3}
Lu-174		8	216	4	108	2.3×10^{1}	6.2×10^{2}
Lu-177		30	811	0.9	24.3	4.1×10^{3}	1.1×10^{5}
MFP	For mied fission products, use formula for mitures or Table A-2						
Mg-28	Magnesium(12)	0.2	5.41	0.2	5.41	2.0×10^{5}	5.4×10^{6}

TABLE A–1.—A_1 AND A_2 VALUES FOR RADIONUCLIDES—Continued

Symbol of radionuclide	Element and atomic number	A_1 (TBq)	A_1 (Ci)	A_2 (TBq)	A_2 (Ci)	Specific activity	
						(TBq/g)	(Ci/g)
Mn-52	Manganese(25)	0.3	8.11	0.3	8.11	1.6×10^{4}	4.4×10^{5}
Mn-53		Unlimited	Unlimited	Unlimited	Unlimited	6.8×10^{-5}	1.8×10^{-3}
Mn-54		1	27.0	1	27.0	2.9×10^{2}	7.7×10^{3}
Mn-56		0.2	5.41	0.2	5.41	8.0×10^{5}	2.2×10^{7}
Mo-93	Molybdenum(42)	40	1080	7	189	4.1×10^{-2}	1.1
Mo-99		0.6	16.2	0.5	13.5[c]	1.8×10^{4}	4.8×10^{5}
N-13	Nitrogen(7)	0.6	16.2	0.5	13.5	5.4×10^{7}	1.5×10^{9}
Na-22	Sodium(11)	0.5	13.5	0.5	13.5	2.3×10^{2}	6.3×10^{3}
Na-24		0.2	5.41	0.2	5.41	3.2×10^{5}	8.7×10^{6}
Nb-92m	Niobium(41)	0.7	18.9	0.7	18.9	5.2×10^{3}	1.4×10^{5}
Nb-93m		40	1080	6	162	8.8	2.4×10^{2}
Nb-94		0.6	16.2	0.6	16.2	6.9×10^{-3}	1.9×10^{-1}
Nb-95		1	27.0	1	27.0	1.5×10^{3}	3.9×10^{4}
Nb-97		0.6	16.2	0.5	13.5	9.9×10^{5}	2.7×10^{7}
Nd-147	Neodymium(60)	4	108	0.5	13.5	3.0×10^{3}	8.1×10^{4}
Nd-149		0.6	16.2	0.5	13.5	4.5×10^{5}	1.2×10^{7}
Ni-59	Nickel(28)	40	1080	40	1080	3.0×10^{-3}	8.0×10^{-2}
Ni-63		40	1080	30	811	2.1	5.7×10^{1}
Ni-65		0.3	8.11	0.3	8.11	7.1×10^{5}	1.9×10^{7}
Np-235	Neptunium(93)	40	1080	40	1080	5.2×10^{1}	1.4×10^{3}
Np-236		7	189	1×10^{-3}	2.70×10^{-2}	4.710-4^{-4}	1.3×10^{-2}
Np-237		2	54.1	$2\times10_{-4}$	$5.41\times10_{-3}$	2.6×10^{-5}	7.1×10^{-4}
Np-239		6	162	0.5	13.5	8.6×10^{3}	2.3×10^{5}
Os-185	Osmium(76)	1	27.0	1	27.0	2.8×10^{2}	7.5×10^{3}
Os-191m		40	1080	40	1080	4.6×10^{4}	1.3×10^{6}
Os-191		10	270	0.9	24.3	1.6×10^{3}	4.4×10^{4}
Os-193		0.6	16.2	0.5	13.5	2.0×10^{4}	5.3×10^{5}
Os-194		0.2	5.41	0.2	5.41	1.1×10^{1}	3.1×10^{2}
P-32	Phosphorus(15)	0.3	8.11	0.3	8.11	1.1×10^{4}	2.9×10^{5}
P-33		40	1080	0.9	24.3	5.8×10^{3}	1.6×10^{5}
Pa-230	Protactinium(91)	2	54.1	0.1	2.70	1.2×10^{3}	3.3×10^{4}
Pa-231		0.6	16.2	6×10^{-5}	1.62×10^{-3}	1.7×10^{-3}	4.7×10^{-2}
Pa-233		5	135	0.9	24.3	7.7×10^{2}	2.1×10^{4}
Pb-201	Lead(82)	1	27.0	1	27.0	6.2×10^{4}	1.7×10^{6}
Pb-202		40	1080	2	54.1	1.2×10^{-4}	3.4×10^{-3}
Pb-203		3	81.1	3	81.1	1.1×10^{4}	3.0×10^{5}
Pb-205		Unlimited	Unlimited	Unlimited	Unlimited	4.5×10^{-6}	1.2×10^{-4}
Pb-210		0.6	16.2	9×10^{-3}	0.243	2.8	7.6×10^{1}
Pb-212		0.3	8.11	0.3	8.11	5.1×10^{4}	1.4×10^{6}
Pd-103	Palladium(46)	40	1080	40	1080	2.8×10^{3}	7.5×10^{4}
Pd-107		Unlimited	Unlimited	Unlimited	Unlimited	1.9×10^{-5}	5.1×10^{-4}
Pd-109		0.6	16.2	0.5	13.5	7.9×10^{4}	2.1×10^{6}
Pm-143	Promethium(61)	3	81.1	3	81.1	1.3×10^{2}	3.4×10^{3}
Pm-144		0.6	16.2	0.6	16.2	9.2×10^{1}	2.5×10^{3}
Pm-145		30	811	7	189	5.2	1.4×10^{2}
Pm-147		40	1080	0.9	24.3	3.4×10^{1}	9.3×10^{2}
Pm-148m		0.5	13.5	0.5	13.5	7.9×10^{2}	2.1×10^{4}
Pm-149		0.6	16.2	0.5	13.5	1.5×10^{4}	4.0×10^{5}
Pm-151		3	81.1	0.5	13.5	2.7×10^{4}	7.3×10^{5}
Po-208	Polonium(84)	40	1080	2×10^{-2}	0.541	2.2×10^{1}	5.9×10^{2}
Po-209		40	1080	2×10^{-2}	0.541	6.2×10^{-1}	1.7×10^{1}
Po-210		40	1080	2×10^{-2}	0.541	1.7×10^{2}	4.5×10^{3}
Pr-142	Praseodymium(59)	0.2	5.41	0.2	5.41	4.3×10^{4}	1.2×10^{6}
Pr-143		4	108	0.5	13.5	2.5×10^{3}	6.7×10^{4}
Pt-188	Platinum(78)	0.6	16.2	0.6	16.2	2.5×10^{3}	6.8×10^{4}
Pt-191		3	81.1	3	81.1	8.7×10^{3}	2.4×10^{5}
Pt-193m		40	1080	9	243	5.8×10^{3}	1.6×10^{5}
Pt-193		40	1080	40	1080	1.4	3.7×10^{1}
Pt-195m		10	270	2	54.1	6.2×10^{3}	1.7×10^{5}
Pt-197m		10	270	0.9	24.3	3.4×10^{5}	1.0×10^{7}
Pt-197		20	541	0.5	13.5	3.2×10^{4}	8.7×10^{5}
Pu-236	Plutonium(94)	7	189	7×10^{-4}	1.89×10^{-2}	2.0×10^{1}	5.3×10^{2}
Pu-237		20	541	20	541	4.5×10^{2}	1.2×10^{4}
Pu-238		2	54.1	2×10^{-4}	5.41×10^{-3}	6.3×10^{-1}	1.7×10^{1}
Pu-239		2	54.1	2×10^{-4}	5.41×10^{-3}	2.3×10^{-3}	6.2×10^{-2}
Pu-240		2	54.1	2×10^{-4}	5.41×10^{-3}	8.4×10^{-3}	2.3×10^{-1}
Pu-241		40	1080	1×10^{-2}	0.270	3.8	1.0×10^{2}
Pu-242		2	54.1	2×10^{-4}	5.41×10^{-3}	1.5×10^{-4}	3.9×10^{-3}
Pu-244		0.3	8.11	2×10^{-4}	5.41×10^{-3}	6.7×10^{-7}	1.8×10^{-5}
Ra-223	Radium(88)	0.6	16.2	3×10^{-2}	0.811	1.9×10^{3}	5.1×10^{4}

TABLE A–1.—A_1 AND A_2 VALUES FOR RADIONUCLIDES—Continued

Symbol of radionuclide	Element and atomic number	A_1 (TBq)	A_1 (Ci)	A_2 (TBq)	A_2 (Ci)	Specific activity	
						(TBq/g)	(Ci/g)
Ra-224		0.3	8.11	6×10^{-2}	1.62	5.9×10^{3}	1.6×10^{5}
Ra-225		0.6	16.2	2×10^{-2}	0.541	1.5×10^{3}	3.9×10^{4}
Ra-226		0.3	8.11	2×10^{-2}	0.541	3.7×10^{-2}	1.0
Ra-228		0.6	16.2	4×10^{-2}	1.08	1.0×10^{1}	2.7×10^{2}
Rb-81	Rubidium(37)	2	54.1	0.9	24.3	3.1×10^{5}	8.4×10^{6}
Rb-83		2	54.1	2	54.1	6.8×10^{2}	1.8×10^{4}
Rb-84		1	27.0	0.9	24.3	1.8×10^{3}	4.7×10^{4}
Rb-86		0.3	8.11	0.3	8.11	3.0×10^{3}	8.1×10^{4}
Rb-87		Unlimited	Unlimited	Unlimited	Unlimited	3.2×10^{-9}	8.6×10^{-8}
Rb (natural)		Unlimited	Unlimited	Unlimited	Unlimited	6.7×10^{6}	1.8×10^{8}
Re-183	Rhenium(75)	5	135	5	135	3.8×10^{2}	1.0×10^{4}
Re-184m		3	81.1	3	81.1	1.6×10^{2}	4.3×10^{3}
Re-184		1	27.0	1	27.0	6.9×10^{2}	1.9×10^{4}
Re-186		4	108	0.5	13.5	6.9×10^{3}	1.9×10^{5}
Re-187		Unlimited	Unlimited	Unlimited	Unlimited	1.4×10^{-9}	3.8×10^{-8}
Re-188		0.2	5.41	0.2	5.41	3.6×10^{4}	9.8×10^{5}
Re-189		4	108	0.5	13.5	2.5×10^{4}	6.8×10^{5}
Re (natural)		Unlimited	Unlimited	Unlimited	Unlimited		2.4×10^{-8}
Rh-99	Rhodium(45)	2	54.1	2	54.1	3.0×10^{3}	8.2×10^{4}
Rh-101		4	108	4	108	4.1×10^{1}	1.1×10^{3}
Rh-102m		2	54.1	0.9	24.3	2.3×10^{2}	6.2×10^{3}
Rh-102		0.5	13.5	0.5	13.5	4.5×10^{1}	1.2×10^{3}
Rh-103m		40	1080	40	1080	1.2×10^{6}	3.3×10^{7}
Rh-105		10	270	0.9	24.3	3.1×10^{4}	8.4×10^{5}
Rn-222	Radon(86)	0.2	5.41	4×10^{-3}	0.108	5.7×10^{3}	1.5×10^{5}
Ru-97	Ruthenium(44)	4	108	4	108	1.7×10^{4}	4.6×10^{5}
Ru-103		2	54.1	0.9	24.3	1.2×10^{3}	3.2×10^{4}
Ru-105		0.6	16.2	0.5	13.5	2.5×10^{5}	6.7×10^{6}
Ru-106		0.2	5.41	0.2	5.41	1.2×10^{2}	3.3×10^{3}
S-35	Sulfur(16)	40	1080	2	54.1	1.6×10^{3}	4.3×10^{4}
Sb-122	Antimony(51)	0.3	8.11	0.3	8.11	1.5×10^{4}	4.0×10^{5}
Sb-124		0.6	16.2	0.5	13.5	6.5×10^{2}	1.7×10^{4}
Sb-125		2	54.1	0.9	24.3	3.9×10^{1}	1.0×10^{3}
Sb-126		0.4	10.8	0.4	10.8	3.1×10^{3}	8.4×10^{4}
Sc-44	Scandium(21)	0.5	13.5	0.5	13.5	6.7×10^{5}	1.8×10^{7}
Sc-46		0.5	13.5	0.5	13.5	1.3×10^{3}	3.4×10^{4}
Sc-47		9	243	0.9	24.3	3.1×10^{4}	8.3×10^{5}
Sc-48		0.3	8.11	0.3	8.11	5.5×10^{4}	1.5×10^{6}
Se-75	Selenium(34)	3	81.1	3	81.1	5.4×10^{2}	1.5×10^{4}
Se-79		40	1080	2	54.1	2.6×10^{-3}	7.0×10^{-2}
Si-31	Silicon(14)	0.6	16.2	0.5	13.5	1.4×10^{6}	3.9×10^{7}
Si-32		40	1080	0.2	5.41	3.9	1.1×10^{2}
Sm-145	Samarium(62)	20	541	20	541	9.8×10^{1}	2.6×10^{3}
Sm-147		Unlimited	Unlimited	Unlimited	Unlimited	8.5×10^{-1}	2.3×10^{-8}
Sm-151		40	1080	4	108	9.7×10^{-1}	2.6×10^{1}
Sm-153		4	108	0.5	13.5	1.6×10^{4}	4.4×10^{5}
Sn-113	Tin(50)	4	108	4	108	3.7×10^{2}	1.0×10^{4}
Sn-117m		6	162	2	54.1	3.0×10^{3}	8.2×10^{4}
Sn-119m		40	1080	40	1080	1.4×10^{2}	3.7×10^{3}
Sn-121m		40	1080	0.9	24.3	2.0	5.4×10^{1}
Sn-123		0.6	16.2	0.5	13.5	3.0×10^{2}	8.2×10^{3}
Sn-125		0.2	5.41	0.2	5.41	4.0×10^{3}	1.1×10^{5}
Sn-126		0.3	8.11	0.3	8.11	1.0×10^{-3}	2.8×10^{-2}
Sr-82	Strontium(38)	0.2	5.41	0.2	5.41	2.3×10^{3}	6.2×10^{4}
Sr-85m		5	135	5	135	1.2×10^{6}	3.3×10^{7}
Sr-85		2	54.1	2	54.1	8.8×10^{2}	2.4×10^{4}
Sr-87m		3	81.1	3	81.1	4.8×10^{5}	1.3×10^{7}
Sr-89		0.6	16.2	0.5	13.5	1.1×10^{3}	2.9×10^{4}
Sr-90		0.2	5.41	0.1	2.70	5.1	1.4×10^{2}
Sr-91		0.3	8.11	0.3	8.11	1.3×10^{5}	3.6×10^{6}
Sr-92		0.8	21.6	0.5	13.5	4.7×10^{5}	1.3×10^{7}
T	Tritium(1)	40	1080	40	1080	3.6×10^{2}	9.7×10^{3}
Ta-178	Tantalum(73)	1	27.0	1	27.0	4.2×10^{6}	1.1×10^{8}
Ta-179		30	811	30	811	4.1×10^{1}	1.1×10^{3}
Ta-182		0.8	21.6	0.5	13.5	2.3×10^{2}	6.2×10^{3}
Tb-157	Terbium(65)	40	1080	10	270	5.6×10^{-1}	1.5×10^{1}
Tb-158		1	27.0	0.7	18.9	5.6×10^{-1}	1.5×10^{1}
Tb-160		0.9	24.3	0.5	13.5	4.2×10^{2}	1.1×10^{4}
Tc-95m	Technetium(43)	2	54.1	2	54.1	8.3×10^{2}	2.2×10^{4}
Tc-96m		0.4	10.8	0.4	10.8	1.4×10^{6}	3.8×10^{7}

TABLE A–1.—A_1 AND A_2 VALUES FOR RADIONUCLIDES—Continued

Symbol of radionuclide	Element and atomic number	A_1 (TBq)	A_1 (Ci)	A_2 (TBq)	A_2 (Ci)	Specific activity	
						(TBq/g)	(Ci/g)
Tc-96		0.4	10.8	0.4	10.8	1.2×10^{4}	3.2×10^{5}
Tc-97m		40	1080	40	1080	5.6×10^{2}	1.5×10^{4}
Tc-97		Unlimited	Unlimited	Unlimited	Unlimited	5.2×10^{-5}	1.4×10^{-3}
Tc-98		0.7	18.9	0.7	18.9	3.2×10^{-5}	8.7×10^{-4}
Tc-99m		8	216	8	216	1.9×10^{5}	5.3×10^{6}
Tc-99		40	1080	0.9	24.3	6.3×10^{-4}	1.7×10^{-2}
Te-118	Tellurium(52)	0.2	5.41	0.2	5.41	6.8×10^{3}	1.8×10^{5}
Te-121m		5	135	5	135	2.6×10^{2}	7.0×10^{3}
Te-121		2	54.1	2	54.1	2.4×10^{3}	6.4×10^{4}
Te-123m		7	189	7	189	3.3×10^{2}	8.9×10^{3}
Te-125m		30	811	9	243	6.7×10^{2}	1.8×10^{4}
Te-127m		20	541	0.5	13.5	3.5×10^{2}	9.4×10^{3}
Te-127		20	541	0.5	13.5	9.8×10^{4}	2.6×10^{6}
Te-129m		0.6	16.2	0.5	13.5	1.1×10^{3}	3.0×10^{4}
Te-129		0.6	16.2	0.5	13.5	7.7×10^{5}	2.1×10^{7}
Te-131m		0.7	18.9	0.5	13.5	3.0×10^{4}	8.0×10^{5}
Te-132		0.4	10.8	0.4	10.8	1.1×10^{4}	3.0×10^{5}
Th-227	Thorium(90)	9	243	1×10^{-2}	0.270	1.1×10^{3}	3.1×10^{4}
Th-228		0.3	8.11	4×10^{-4}	1.08×10^{-2}	3.0×10^{1}	8.2×10^{2}
Th-229		0.3	8.11	3×10^{-5}	8.11×10^{-4}	7.9×10^{-3}	2.1×10^{-1}
Th-230		2	54.1	2×10^{-4}	5.41×10^{-3}	7.6×10^{-4}	2.1×10^{-2}
Th-231		40	1080	0.9	24.3	2.0×10^{4}	5.3×10^{5}
Th-232		Unlimited	Unlimited	Unlimited	Unlimited	4.0×10^{-9}	$1.1\times10_{-7}$
Th-234		0.2	5.41	0.2	5.41	8.6×10^{2}	2.3×10^{4}
Th (natural)		Unlimited	Unlimited	Unlimited	Unlimited	8.1×10^{-9}	2.2×10^{-7}
Ti-44	Titanium(22)	0.5	13.5	0.2	5.41	6.4	1.7×10^{2}
Tl-200	Thallium(81.1)	0.8	21.6	0.8	21.6	2.2×10^{4}	6.0×10^{5}
Tl-201		10	270	10	270	7.9×10^{3}	2.1×10^{5}
Tl-202		2	54.1	2	54.1	2.0×10^{3}	5.3×10^{4}
Tl-204		4	108	0.5	13.5	1.7×10^{1}	4.6×10^{2}
Tm-167	Thulium(69)	7	189	7	189	3.1×10^{3}	8.5×10^{4}
Tm-168		0.8	21.6	0.8	21.6	3.1×10^{2}	8.3×10^{3}
Tm-170		4	108	0.5	13.5	2.2×10^{2}	6.0×10^{3}
Tm-171		40	1080	10	270	4.0×10^{1}	1.1×10^{3}
U-230	Uranium(92)	40	1080	1×10^{-2}	0.270	1.0×10^{3}	2.7×10^{4}
U-232		3	81.1	3×10^{-4}	8.11×10^{-3}	8.3×10^{-1}	2.2×10^{1}
U-233		10	270	1×10^{-3}	2.70×10^{-2}	3.6×10^{-4}	9.7×10^{-3}
U-234		10	270	1×10^{-3}	2.70×10^{-2}	2.3×10^{-4}	6.2×10^{-3}
U-235		Unlimited	Unlimited	Unlimited	Unlimited	8.0×10^{-8}	2.2×10^{-6}
U-236		10	270	1×10^{-3}	2.70×10^{-2}	2.4×10^{-6}	6.5×10^{-5}
U-238		Unlimited	Unlimited	Unlimited	Unlimited	1.2×10^{-8}	3.4×10^{-7}
U (natural)		Unlimited	Unlimited	Unlimited	Unlimited	2.6×10^{-8}	7.1×10^{-7}
U (enriched 5% or less).		Unlimited	Unlimited	Unlimited	Unlimited		(See Table A-3)
U (enriched more than 5%).		10	270	1×10^{-3}	2.70×10^{-2}		(See Table A-3)
U (depleted)		Unlimited	Unlimited	Unlimited	Unlimited		(See Table A-3)
V-48	Vanadium(23)	0.3	8.11	0.3	8.11	6.3×10^{3}	1.7×10^{5}
V-49		40	1080	40	1080	3.0×10^{2}	8.1×10^{3}
W-178	Tungsten(74)	1	27.0	1	27.0	1.3×10^{3}	3.4×10^{4}
W-181		30	811	30	811	2.2×10^{2}	6.0×10^{3}
W-185		40	1080	0.9	24.3	3.5×10^{2}	9.4×10^{3}
W-187		2	54.1	0.5	13.5	2.6×10^{4}	7.0×10^{5}
W-188		0.2	5.41	0.2	5.41	3.7×10^{2}	1.0×10^{4}
Xe-122	Xenon(54)	0.2	5.41	0.2	5.41	4.8×10^{4}	1.3×10^{6}
Xe-123		0.2	5.41	0.2	5.41	4.4×10^{5}	1.2×10^{7}
Xe-127		4	108	4	108	1.0×10^{3}	2.8×10^{4}
Xe-131m		40	1080	40	1080	3.1×10^{3}	8.4×10^{4}
Xe-133		20	541	20	541	6.9×10^{3}	1.9×10^{5}
Xe-135		4	108	4	108	9.5×10^{4}	2.6×10^{6}
Y-87	Yttrium(39)	2	54.1	2	54.1	1.7×10^{4}	4.5×10^{5}
Y-88		0.4	10.8	0.4	10.8	5.2×10^{2}	1.4×10^{4}
Y-90		0.2	5.41	0.2	5.41	2.0×10^{4}	5.4×10^{5}
Y-91m		2	54.1	2	54.1	1.5×10^{6}	4.2×10^{7}
Y-91		0.3	8.11	0.3	8.11	9.1×10^{2}	2.5×10^{4}
Y-92		0.2	5.41	0.2	5.41	3.6×10^{5}	9.6×10^{6}
Y-93		0.2	5.41	0.2	5.41	1.2×10^{5}	3.3×10^{6}
Yb-169	Ytterbium(70)	3	81.1	3	81.1	8.9×10^{2}	2.4×10^{4}

TABLE A–1.—A_1 AND A_2 VALUES FOR RADIONUCLIDES—Continued

Symbol of radionuclide	Element and atomic number	A_1 (TBq)	A_1 (Ci)	A_2 (TBq)	A_2 (Ci)	Specific activity	
						(TBq/g)	(Ci/g)
Yb-175		30	811	0.9	24.3	6.6×10^{3}	1.8×10^{5}
Zn-65	Zinc(30)	2	54.1	2	54.1	3.0×10^{2}	8.2×10^{3}
Zn-69m		2	54.1	0.5	13.5	1.2×10^{5}	3.3×10^{6}
Zn-69		4	108	0.5	13.5	1.8×10^{6}	4.9×10^{7}
Zr-88	Zirconium(40)	3	81.1	3	81.1	6.6×10^{2}	1.8×10^{4}
Zr-93		40	1080	0.2	5.41	9.3×10^{-5}	2.5×10^{-3}
Zr-95		1	27.0	0.9	24.3	7.9×10^{2}	2.1×10^{4}
Zr-97		0.3	8.11	0.3	8.11	7.1×10^{4}	1.9×10^{6}

[a] International shipments of Einsteinium require multilateral approval of A_1 and A_2 values.
[b] International shipments of Fermium require multilateral approval of A_1 and A_2 values.
[c] 20 Ci for Mo99 for domestic use.

TABLE A–2.—GENERAL VALUES FOR A_1 AND A_2

Contents	A_1		AA_2	
	(TBq)	(Ci)	(TBq)	(Ci)
Only beta- or gamma-emitting nuclides are known to be present	0.2	5	0.02	0.5
Alpha-emitting nuclides are known to be present, or no relevant data are available	0.10	2.70	$2\times\times10^{-5}$	$5.41\times\times10^{-4}$

TABLE A–3.—ACTIVITY-MASS RELATIONSHIPS FOR URANIUM

Uranium enrichment [1] wt % U–235 present	Specific activity	
	TBq/g	Ci/g
0.45	$1.8\times\times10^{-8}$	$5.0\times\times10^{-7}$
0.72	$2.6\times\times10^{-8}$	$7.1\times\times10^{-7}$
1.0	$2.8\times\times10^{-8}$	$7.6\times\times10^{-7}$
1.5	$3.7\times\times10^{-8}$	$1.0\times\times10^{-6}$
5.0	$1.0\times\times10^{-7}$	$2.7\times\times10^{-6}$
10.0	$1.8\times\times10^{-7}$	$4.8\times\times10^{-6}$
20.0	$3.7\times\times10^{-7}$	$1.0\times\times10^{-5}$
35.0	$7.4\times\times10^{-7}$	$2.0\times\times10^{-5}$
50.0	$9.3\times\times10^{-7}$	$2.5\times\times10^{-5}$
90.0	$2.2\times\times10^{-6}$	$5.8\times\times10^{-5}$
93.0	$2.6\times\times10^{-6}$	$7.0\times\times10^{-5}$
95.0	$3.4\times\times10^{-6}$	$9.1\times\times10^{-5}$

[1] The figures for uranium include representative values for the activity of the uranium-235 which is concentrated during the enrichment process.

Dated at Rockville, MD this 13th day of September 1995.

For the Nuclear Regulatory Commission.
James M. Taylor,
Executive Director for Operations.

[FR Doc. 95–23538 Filed 9–27–95; 8:45 am]
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federal register

Thursday
September 28, 1995

Part III

Department of Transportation

Research and Special Programs Administration

49 CFR Part 171, et al.

Hazardous Materials, Transportation Regulations; Compatibility with Regulations of the International Atomic Energy Agency; Final Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, 173, 174, 175, 176, 177, and 178

[Docket No. HM–169A; Amdt. Nos. 171–135, 172–143, 173–244, 174–80, 175–53, 176–37, 177–85, 178–109]

RIN 2137–AB60

Hazardous Materials Transportation Regulations; Compatibility with Regulations of the International Atomic Energy Agency

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends the Hazardous Materials Regulations pertaining to the transportation of radioactive materials to harmonize them with those of the International Atomic Energy Agency (IAEA) and, thus, most major nuclear nations of the world. Several substantive changes are made to provide a more uniform degree of safety for various types of shipments, such as requiring offerors and carriers to maintain written radiation protection programs, revisions to the definition and packaging for low specific activity radioactive materials, and requiring use of the International System of Units for the measurement of activity in a package of radioactive material. However, the basic standards for packaging radioactive materials remain unchanged. The intended effect of this rulemaking is to increase the level of safety and facilitate international commerce concerning the transportation of radioactive materials. Elsewhere in todays Federal Register, the Nuclear Regulatory Commission (NRC) has published a corresponding final rule to its transportation regulations found in 10 CFR Part 71.

DATES: Effective date. The effective date of these amendments is April 1, 1996.

Incorporation by reference date: The incorporation by reference of certain publications listed in this amendment is approved by the Director of the Federal Register as of April 1, 1996.

Compliance date. Voluntary compliance with these regulations, as amended herein, is authorized as of November 1, 1995.

FOR FURTHER INFORMATION CONTACT: A. Wendell Carriker, Office of Hazardous Materials Technology, (202) 366–4545, or John A. Gale, Office of Hazardous Materials Standards, (202) 366–8553, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

I. Background

On November 14, 1989, RSPA published a notice of proposed rulemaking (NPRM; Notice No. 89–8; 54 FR 47454) under Docket HM–169A proposing to amend the Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180) pertaining to the transportation of radioactive materials so that the HMR would be consistent with IAEA Safety Series No. 6, ''Regulations for the Safe Transport of Radioactive Material Revised 1985 and Supplemented 1988'' (IAEA SS6–85). An extension of time to file comments until May 11, 1990, was published in the Federal Register on February 8, 1990 (55 FR 4445).

II. Comments Received

A total of 56 comments were received, representing the views of Federal and State agencies, power utilities, and offerors and carriers of radioactive materials. All commenters were in general agreement with the NPRM, but expressed concerns on various topics. Several commenters requested that RSPA issue a second NPRM incorporating the knowledge gained from the comments received. RSPA does not agree that a second NPRM is needed or desirable. RSPA believes that the issues addressed in this Docket should not be delayed further and that the merits of comments have been addressed in this final rule, alleviating the need for another NPRM to be issued under Docket HM–169A.

RSPA received many comments that were editorial and general in nature and some comments that raised issues beyond the scope of this rulemaking. All of the comments that correctly pointed out editorial errors in the NPRM are adopted. Comments that are beyond the scope of this rulemaking are not adopted, and, generally, have not been discussed in this preamble. Other comments to Notice No. 89–8 are discussed in the applicable parts of Section III and IV of this preamble.

III. Discussion of Amendments

While this final rule amends extensive portions of the regulations dealing with the transportation of radioactive materials, the majority of the changes are not substantive. Many changes involve the revision of section and paragraph numbers and their references and the incorporation of the International System of Units (SI units) for radiological measurements, where appropriate. In addition, some sections are rewritten to provide clarity without changing their subject matter. Although not all of 49 CFR Part 173, Subpart I, entitled ''Radioactive Materials'', has been amended, it is reissued in its entirety for convenience of the reader. Substantive changes are discussed in the following paragraphs.

A. Radiation Protection

On January 27, 1987, the Environmental Protection Agency (EPA) published a document entitled, ''Radiation Protection Guidance to Federal Agencies for Occupational Exposure: Recommendations Approved by the President.'' Among its recommendations, EPA specified that no exposure should occur unless an overall benefit is derived from the activity causing the exposure; that radiation doses must be maintained as low as is reasonably achievable (ALARA); that the annual effective dose equivalent be limited to 50 millisieverts (mSv) (5 rem) to the whole body, 150 mSv (15 rem) to lens of the eye, and 500 mSv (50 rem) to any other organ, tissue or extremity of the body; that occupational exposure for individuals under the age of 18 not exceed 1/10 of the values recommended for radiation workers; and that the dose equivalent to an embryo-fetus as a result of the occupational exposure of a woman who has declared herself to be pregnant should not exceed 5 mSv (500 mrem) during the entire gestation period.

In establishing the requirements for radiation protection programs in this rule, RSPA believes they are consistent with the intent of the requirements issued by EPA. RSPA views the radiation exposures being received by workers and the general public as offset by beneficial uses of radioactive material. These benefits are not possible without transportation. The required radiation protection program must keep all radiation exposures as low as reasonably achievable (ALARA), which is also a basic requirement of the EPA guidance. The radiation dose limit specified for workers is 50 mSv (5 rem) per year, which is the whole body dose limit specified in the EPA guidance; and similarly workers are not subject to a radiation protection program if the expected annual radiation dose is less than 5 mSv (500 mrem). The radiation dose limit for an embryo-fetus carried by a female worker who has declared her pregnancy is consistent with the EPA requirements. The radiation protection program has elements that involve training workers, maintaining records, and providing certain kinds of information to workers and to RSPA.

The EPA guidance provides different limits for organs and parts of the body, which include concerns for radiation doses that may result from radioactive material being deposited in a person's body. RSPA recognizes the existence of these more detailed requirements that typically relate to fixed facilities. However, for purposes of transportation, RSPA believes the whole body radiation dose due to external radiation exposure is the primary concern and adequately represents the potential risk to workers and members of the general public. Therefore, these regulations impose requirements only on the whole body radiation doses received due to exposure to external sources of ionizing radiation.

In the NPRM, RSPA proposed to satisfy the 50 mSv (5 rem) per year EPA dose limitation for occupationally exposed workers by establishing a three-tiered radiation protection program based on provisions in the IAEA transportation regulations. In the proposed rule, no special work patterns or monitoring would have been required for workers receiving a dose less than 5 mSv (500 mrem) per year. For doses between 5 mSv (500 mrem) and 15 mSv (1.5 rem) per year, carriers and other persons would have to determine if special work patterns or monitoring were necessary. For expected doses above 15 mSv (1.5 rem) up to 50 mSv (5 rem), individuals would need to be provided radiation dosimetry devices for monitoring doses.

Most commenters agreed in principle that radiation protection requirements should be extended to transportation and transportation-related operations, but objected to some of the mandatory provisions. Several commenters were concerned about the ability of offerors and carriers to determine their applicable ''tier''. The Department of Energy (DOE) stated that carriers need criteria to evaluate the three levels. DuPont stated that transport index is the only quantitative information available to carriers in order to determine if a radiation protection program is necessary. The Hazardous Materials Advisory Council (HMAC) stated that, in making an initial assessment of exposure to determine the appropriate tier of control, a carrier has only a single piece of information to work from: the transport index (TI). HMAC went on to say that DOT should offer specific implementing guidelines on developing a radiation protection program. Other commenters stated that specific guidelines should be issued in order for offerors and carriers to develop a radiation protection program.

On the basis of the data submitted to the docket, RSPA concurs with those commenters who stated that the three-tiered approach for determining the scope of a radiation protection program is too difficult and costly for most offerors and carriers to implement. RSPA also concurs with those commenters that stated that TI is the best data available to offerors and carriers in order to determine if a radiation protection program is necessary. Therefore, RSPA is replacing the three-tier approach with a radiation protection program based on the total TI that is handled by an offeror or carrier during a period of one year. A radioactive materials transportation activity involving handling packages with TI's totaling 200 or more in a period of one year is established as a threshold condition which would require a hazardous materials (hazmat) employer to implement a radiation protection program. Persons are excepted from the requirements of establishing a radiation protection program if they handle less than 200 TI in any 12-month period. Therefore, persons who offer or accept only WHITE-I or limited quantity radioactive material packages are excepted from the radiation protection program requirements.

Another exception for not establishing a radiation protection program is established for offeror and carriers who handle more than 200 TI per year. This exception involves having a qualified radiation protection specialist to evaluate the doses that workers might receive during a period of one year while handling radioactive materials during transportation. If the evaluation shows that no worker would be expected to receive a dose of 5 mSv (500 mrem) in one year, then a radiation protection program is not required.

If an offeror or carrier of radioactive materials is excepted from establishing a radiation protection program, they must maintain certain records and make them available to RSPA or other authorized officials upon request. The records must show that either the total TI of packages transported in any 12-month period is less than 200, or that the current radioactive materials transport activities are the same as the activities that were reviewed by a competent radiation protection specialist whose evaluation demonstrated that no worker will receive a dose exceeding 5 mSv (500 mrem) in one year and that radiation doses to members of the general public are acceptably low.

The 200–TI threshold for relief from the radiation protection program requirements is based on findings in NUREG/CR–2200, ''Radiation Exposure of Transportation Workers Handling Large Quantities of Radioactive Packages.'' This study determined that the highest exposure from transporting radioactive materials was from handling of the packages, and found that the average exposure index (i.e., the collective dose to workers per total TI) for handling packages was about 0.45 person mrem/TI. This value is supported by findings presented in NUREG–0154, ''Exposure of Airport Workers to Radiation From Shipments of Radioactive Materials''. This value is also supported by data on file from holders of exemptions E–10045 and E–8308. Using the value of 0.45 (person mrem/TI) for those activities involving an annual TI of 200 or less, annual radiation doses should not exceed the recommended levels for members of the general public.

Offerors and carriers subject to the radiation protection program are required to develop and implement a written radiation protection program that prohibits a person from receiving an occupational exposure (dose) of 12.5 mSv (1.25 rem) in any 3-month period or 50 mSv (5 rem) in any 12-month period. To document that no person has received such a dose, all occupationally exposed hazmat employees are required to be monitored by radiation dosimetry devices such as film badges. In conjunction with hazardous materials safety training requirements of § 172.704, hazmat employers of occupationally exposed hazmat employees must implement procedures to reduce the exposures of hazmat employees to ionizing radiation to levels that are as low as reasonably achievable (ALARA). In addition, radiation protection programs must be developed and implemented in accordance with the EPA guidance. In order to provide offerors and carriers with the flexibility to tailor a radiation protection program to their specific operations, and because no set of guidelines could accommodate all of the possible activities that are involved in the transportation of radioactive materials, RSPA refrains from imposing a specific set of guidelines on developing a radiation protection program. RSPA understands the complexities involved in developing and instituting a radiation protection program and is delaying compliance with these requirements until October 1, 1997.

Several commenters claimed that a radiation protection program based on the ALARA principles would be ''too subjective'' and would be difficult both to apply and to enforce and, thus,

should not be adopted as a mandatory requirement in the HMR. RSPA acknowledges the difficulties of enforcing a radiation protection program that is based on the principles of ALARA. However, the EPA guidance, and the radiation programs requirements of the NRC and the Occupational Safety and Health Administration are based on ALARA principles. The principle of reduction of exposure to levels that are ALARA is typically implemented in two different ways. First, it is applied to the design of the facility so as to reduce, prospectively, the anticipated exposure of workers. Second, it is applied to actual operations; that is work practices are designed and carried out to reduce the exposure of workers. Effective implementation of the ALARA principles involves: education of workers concerning the health risks of exposure to radiation; training in regulatory requirements and procedures to control exposure levels and doses; and management and supervision of radiation protection activities, including the choice and implementation of radiation control measures. RSPA believes that adoption of the ALARA principles as a requirement in the HMR is an important facet of a radiation protection program, and, therefore, is not adopting these commenters request to adopt the ALARA principles as a non-mandatory requirement.

As noted above, radiation protection programs must be developed and implemented in accordance with the EPA guidance. In order to make it easier for the regulated community to comply with the radiation protection program requirements, RSPA has extracted from the EPA guidance and placed in the HMR some of the more important aspects of the EPA guidance. These include the limits on exposure to pregnant females and persons under the age of 18, and recordkeeping requirements.

Though RSPA is not imposing a specific set of guidelines to be followed in developing a radiation protection program, RSPA is referencing two reports from the National Council on Radiation Protection and Measurements (NCRP) which provide useful information in developing and implementing a radiation protection program. NCRP Report No. 116, titled ''Limitation of Exposure to Ionizing Radiation'', addresses limits for workers as well as for members of the general public. That report is essentially consistent with the most recent guidance from the International Commission on Radiological Protection (ICRP) which is also being incorporated into the basic radiation protection standards of the IAEA. In NCRP Report No. 116 the annual radiation dose limit for workers is essentially 20 mSv (2 rem) and the limit for members of the general public is 1 mSv (100 mrem) per year. The report contains many of the requirements in the 1987 EPA Guidance, and 10 CFR Part 20. The recommendations in NCRP Report No. 116 cover existing and probable future radiation dose limits and practices for regulating the radiation doses.

The other NCRP Report, No. 59 ''Operational Radiation Safety Program'' (1978) is recommended as guidance to be tailored to the needs of a hazmat employer when a radiation protection program needs to be established. The report contains information about organization, activities, emergency planning, equipment, reporting and documentation, facilities, training, personnel qualifications, etc. The information is useful for developing radiation protection programs for small and large corporations.

In this final rule, the radiation dose limit for members of the general public is the same as those proposed in the NPRM, (i.e., 5 mSv (500 mrem)) per year. This value is consistent with the Federal Radiation Council (FRC) guidance of 1960 and was consistent with the NRC's 10 CFR Part 20 in 1989. Subsequently, NRC revised 10 CFR Part 20 and their annual limit for exposures to members of the general public is now 1 mSv (100 mrem) per year. EPA is currently developing guidance for regulatory agencies for limiting radiation exposures for members of the general public, and the anticipated annual limit is expected to be 1 mSv (100 mrem) with no single practice or activity causing a person to receive more than a minor fraction of that limit. In a future rulemaking, RSPA will address the new guidance from EPA concerning exposures of the general public.

A number of commenters questioned the relationship between radiation exposure limits proposed in the NPRM and the minimum separation distances required in the HMR. The DOE noted that, if changes are not made, the occupational dose limits proposed in § 173.405 would be quickly exceeded as a result of the modal requirements in Parts 174–177. RSPA acknowledges the differences between the dose limits established in the radiation protection programs and the dose rate limits related to TI separation distances set forth in Parts 174, 175, 176, and 177. However, RSPA believes that requirements addressing both annual dose limits and TI/separation distances are essential in establishing effective radiation protection standards. Minimization of annual doses received by occupationally exposed workers and members of the general public is the primary objective in any adequate radiation protection program. Although TI/separation distance requirements do not, in themselves, assure that annual dose requirements will be met, they comprise minimal operational requirements that must also be satisfied. A carrier may have to impose more restrictive limits in its radiation protection program.

A number of commenters asked if radiation protection requirements apply only to workers preparing the material for shipment, to workers receiving packages, or to carriers during transport. This confusion arose because the radiation protection program requirements were proposed to be adopted in Part 173. Accordingly, RSPA is clarifying the applicability of the requirements for the radiation protection program by moving the requirements to subpart I in Part 172 in order to clarify that the requirements apply to both offerors and carriers of radioactive materials. In addition, applicable sections have been added to the modal parts in Parts 174, 175, 176 and 177, in order to ensure that carriers are aware of the radiation protection requirements in subpart I of part 172. RSPA agrees with a number of commenters that provisions established in this final rule should not replace or duplicate existing approved radiation protection program requirements. Accordingly, RSPA is adding an exception which states that any radiation protection program already in place and approved by an appropriate federal or state agency is deemed adequate to meet the radiation protection requirements of the HMR.

Many commenters were concerned about the definitions of several terms, particularly ''transport worker'' and ''general public''. The phrase ''transport worker'' is being replaced by the phrase ''hazmat employee'', which was defined in § 171.8 as a result of Docket HM–126F. In the context of radiation protection programs, this term is further refined to include only ''occupationally exposed hazmat employees.'' In this final rule, the term ''general public'' is defined in § 171.8 to include persons other than occupationally exposed hazmat employees.

Several comments compared the requirement to provide training as to the hazards of radioactive materials and the provisions in Part 172, Subpart H to provide safety training to all hazmat employees. As specified in Part 172,

subpart H, hazmat employees must receive safety training in all classes of hazardous materials with which they work; therefore, the requirement proposed in § 173.405(c) to train persons as to the hazards of radioactive materials is no longer necessary and is not adopted in this final rule.

B. Low Specific Activity Material and Surface Contaminated Objects

Based on the provisions contained in IAEA SS6–85, RSPA proposed to revise comprehensively the regulations for the shipment of low specific activity (LSA) radioactive material. A new designation for radioactive material called surface contaminated object (SCO) was also proposed. Unlike LSA, which requires a uniform distribution of radioactive material within the material; materials classified as SCO are not inherently radioactive, rather they are objects with radioactive contamination on their surfaces.

The proposals for LSA and SCO consisted of the following:

1. An expansion of the LSA definition to include new types of material;
2. A new definition of ''surface contaminated object'' (SCO) that is treated in a manner similar to LSA material; and
3. An increase of specific activity limits for nondispersible, nonrespirable forms of LSA material while at the same time limiting the quantity of LSA material that can be shipped in other than a Type B package to 2 times the A_1 value ($2A_1$) for the specific nuclide being transported.

A new type of package, called the ''industrial package'', was also proposed for the handling of LSA and surface contaminated objects (SCO). Three categories of industrial packages (IP), IP–1, IP–2 and IP–3, were proposed. RSPA proposed to require these packages for the shipment of LSA and SCO instead of currently required packages (i.e., either a modified Type A package or a strong, tight (nonspecification) package.

Commenters raised concerns over various aspects of the proposed regulation of LSA materials, including the proposed definitions, potential increases in packaging costs for LSA materials, and the proposed removal of an exclusive use shipment exception in § 173.425(b). Particularly, commenters objected to requiring Type B packages for the shipments of LSA exceeding 2 times the A_1 value of the radionuclide. Commenters claimed that the $2A_1$ limit was not a close approximation of the IAEA limit of 1 rem/h at 3 meters. Commenters claimed that a closer approximation of the IAEA limit is 4 times the A_1 value ($4A_1$). Commenters stated that the IAEA limit of 1 rem/h at 3 meters, a limit $4A_1$, or a combination of the two, should replace the proposed $2A_1$ limit. One commenter stated that the IAEA limit was impractical and unworkable and favored adoption of a multiple of a A_1 approach (i.e., $4A_1$). However, the Department of Energy stated that the IAEA approach is very practical and that it has been implemented internationally. Another commenter stated that industry can implement the IAEA limit of 1 rem/h at 3 meters and requested that RSPA replace the $2A_1$ limit with the IAEA limit.

The IAEA added the limit of 10 mSv/hour (1 rem/hour) at 3 meters for the radiation level from the unshielded contents of LSA and SCO packages not designed to withstand accidents. This radiation level limit controls the external radiation exposures to individuals if an LSA package is severely damaged in a transportation accident.

The IAEA limit considers the loss of package shielding during an accident, but it does not consider the possibility that a package's contents might be released and redistributed, causing a reduction in self-shielding of the contents. The reduction in self-shielding could result in potential accident radiation levels that significantly exceed IAEA's 10 mSv/hour (1 rem /hour) at 3 meters limit.

The IAEA dose rate limit provides a significant added degree of protection over the 1973 IAEA regulations (which specify no quantity limit for LSA packages). RSPA and NRC did not believe, however that the IAEA limit provided the same level of safety for all types of LSA material, particularly for relatively large quantities of radioactive materials contained in dispersible LSA materials (e.g., resins and other media used in liquid radioactive waste treatment).

In lieu of the radiation level limit, RSPA and NRC proposed a $2A_1$ quantity limit for all LSA packages. Although this proposal addressed the accident concern by directly limiting package quantity, it was not compatible with the IAEA provisions. Both agencies received many comments on the proposed $2A_1$ quantity limit that objected to the impacts on occupational dose and shipping costs. Further, the Advisory Committee on Reactor Safeguards (ACRS) issued a letter report, dated December 19, 1994, recommending, inter alia, that the requirements again be reevaluated with the objective of making them equivalent to the IAEA regulations.

After consideration of ACRS and industry comments, RSPA and NRC have agreed to adopt the IAEA LSA provisions. Accordingly, the final rule imposes a limit on the external radiation level at 3 meters from the unshielded contents of LSA–I, LSA–II, LSA–III, SCO–1, or SCO–II packages of 10 mSv/hour (1 rem/hour).

Numerous comments addressed the proposed removal of the present authorization for use of Type A packages and exclusive use shipments of strong, tight containers for LSA′materials. Commenters stated that LSA materials pose a minor risk to the public and that there is no justifiable safety reason to replace the currently authorized packagings with the industrial packagings. Commenters also cited an increase in the packaging costs for LSA materials without an equivalent increase in public safety if the Type A, and strong, tight packagings were not allowed for transportation of LSA material. Upon further review of the proposal to remove the Type A packaging and the strong, tight packaging as authorized packagings for LSA materials, RSPA has decided to retain these packagings for the transportation of LSA material because the benefits associated with the proposal are not commensurate with the increase in costs. However, industrial packagings are added as an authorized packaging for LSA material and SCO in order to provide the industry greater flexibility and to facilitate international commerce.

Several comments addressed the definition of LSA material and SCO. One commenter requested that dewatered material be defined as a solid for LSA–II. LSA–II is expected to include nuclear reactor process wastes, including filter sludge, absorbed liquids, and lower activity resins. RSPA and NRC believe the LSA–II specific activity limit for solids, rather than that for liquids, applies to dewatered resins. Therefore, RSPA and NRC see no need to define dewatered material as a solid for LSA–II.

Commenters were also concerned about their ability to measure the contamination on inaccessible surfaces of SCO's. Though it is impossible to directly measure the fixed contamination on an inaccessible surface of an object, it is possible to determine the contamination level on the inaccessible surface through physical measurements and mathematical analysis (involving geometric and attenuation factors) of the object.

One commenter compared the new limits for SCO with existing limits for

LSA material in § 173.403 and claimed there was a reduction in the specific activity limits in the proposed rule. RSPA notes that the proposed and final rules for shipping SCO–I contain the same limits for fixed radioactive surface contamination as were present in the previous definition of LSA material. The difference in the SCO–I definition is the addition of the normal package limits on removable external contamination. The change from existing regulations is the addition of the definition of SCO–II for solid objects which are more heavily contaminated on their surfaces then SCO–I objects.

Some commenters also requested that the definition of LSA–I be expanded to include material generated from the extraction of uranium or thorium. Another commenter recommended that the term ''contaminated soil'' in LSA–I be expanded to include ''soil, earth, concrete rubble and other bulk debris.'' Another commenter expressed concern that mill tailings exceeding 10E–6A_2/g could not be shipped in bulk under the proposed rule. The commenter recommended that either mill tailings be specifically included in the definition of LSA–I without an activity or concentration limit, or the specific activity limit for LSA–I be increased to 4x10E–6A_2/g.

RSPA agrees that ore-like materials (materials with highly uniform distribution of small quantities of radionuclides) should be transported as LSA–I material. Accordingly, the definition of LSA–I is expanded from ''contaminated soil'' to ''contaminated soil, mill tailings, concrete rubble and other debris * * *'' RSPA believes that mill tailings will meet the proposed 10E–6A_2/g specific activity limit, and therefore, has not increased the limit. For clarity, the proposals contained in §§ 173.411 and 173.414 have been combined into § 173.411. In § 173.427, reference to IP packagings is followed by a parenthetic reference to § 173.411 to show where the requirements for industrial packagings are found. One commenter requested that the record keeping requirements for IP packagings not apply to IP–1's. RSPA concurs and has revised the final rule accordingly. Some commenters requested that an IP packaging be required to be marked in order to identify that the packaging does meet the appropriate packaging standard. Though RSPA agrees with the commenter's point, RSPA did not propose a marking requirement and, therefore, considers this recommendation outside the scope of the rulemaking. However, RSPA may propose such a requirement in a future rulemaking.

C. International System of Units (SI)

In the NPRM, RSPA proposed that the activity of a package of radioactive materials be described in SI units (i.e., becquerels), consistent with IAEA SS6–85, in lieu of the customary units of curies. Several commenters requested that the use of SI units on shipping papers and labels be required for international shipments only, with domestic shipments using customary units as the standard. The basis of this request appears to be for ease of training of transport workers, emergency responders, and personnel in industry and local governments. It was also noted that most emergency response radiation detection instruments specify readings in customary units only.

U.S. policies and procedures for conversion to the metric system were formalized by the Metric Conversion Act of 1975 (Pub. L. 94–168, 15 U.S.C. 205a). The Act declared that U.S. policy shall be to coordinate and plan the increased use of the metric system. From a safety standpoint, the need for consistency in radioactive materials package identification is critical. All parties potentially having contact with the package must be able to understand the units used in order to establish proper controls. It is recognized that the U.S. conversion to metric units may create special problems since, in order to succeed without jeopardizing safety, the new units must be used, or at least understood, universally.

It is also recognized that the use of SI units for radioactive material has proceeded internationally. IAEA SS6–85 allows the use of both units with SI units controlling. The International Civil Aviation Organization's Technical Instructions and the International Maritime Dangerous Goods Code (IMDG Code) have required the use of the SI units for several years. The fact that international shipments use SI units could give rise to safety concerns if the U.S. fails to accommodate SI units to or from countries using the internationally accepted units.

RSPA recognizes the additional training required by this change; however, the safety benefits exceed the costs and it is necessary to proceed with the change to SI units. However, for domestic shipments, shipping papers and labels may be allowed to contain either SI units or the combination of SI and customary units. In addition, RSPA is delaying mandatory compliance with this requirement until April 1, 1997.

Several commenters were also concerned about the inconsistencies between RSPA and NRC proposed rules with regard to units of measurement. RSPA proposed regulatory requirements using SI units followed by customary units in parenthesis. NRC proposed the reverse order. NRC, in its final rule, agreed with RSPA that SI units must be stated first.

D. Expansion of Radionuclide List and Changes in Radionuclide Limits

The table in § 173.435, which provides A_1 and A_2 values, has been expanded by nearly 100 entries to include all radionuclides that have the potential to be transported. Because there now should be few instances where unlisted radionuclides would be transported, the rules for calculating values for unlisted radionuclides have been simplified. However, the determination of limits for unlisted radionuclides, except in a few cases, is subject to RSPA approval.

IAEA SS6–85 modified the system for determining A_2 and A_2 values. Although this system is based on achieving essentially the same limitations on potential radiological accident hazards as the previous system, the new system has the following advantages:

1. It states more clearly the radiation protection criteria employed;
2. It incorporates the data and conclusions on metabolic pathways provided during the years 1977–1981 by the International Commission on Radiological Protection (ICRP);
3. It includes dosimetric routes through human organs not previously considered; and
4. It harmonizes IAEA SS6–85 with ICRP recommendations on radiological safety in Publications ICRP–26 and ICRP–30.

The effect of the adoption in IAEA SS6–85 of this new system for calculating A_1 and A_2 values, and the subsequent incorporation of the new values in the HMR, is that most current A_1 and A_2 values have been amended. Of the 284 radionuclide entries in § 173.435, A_2 values have been raised in 129 cases and lowered in 95 cases. Of the A_1 values, 144 have been raised and 73 lowered. Several commenters objected to the proposal to lower the A_2 value for molybdenum-99 from 0.8 TBq (20 curies) to 0.5 TBq (13.5 curies).

Commenters stated that shipments of Mo-99\Tc-99m generators to hospitals would increase significantly in order to comply with this lower limit. Instead of being able to ship 0.6 TBq (16 curies) in one generator, manufacturers would have to ship two different generators which would increase their costs and the costs to the hospital. In addition, the commenters contended, these additional shipments would increase the level of radiation exposure for those workers

who handle the generators. The commenters also cited the excellent safety record in transportation of these generators, and requested that a domestic exception be provided to allow these generators, that are DOT Specification 7A Type A packagings, to contain as much as 0.8 TBq 20 curies of molybdenum-99. Upon further review of this proposal and of the data received from the commenters, RSPA has decided to allow a domestic exception for molybdenum-99. A footnote has been added to the § 173.435 Table of A_1 and A_2 values which authorizes, for domestic use only, the use of DOT Specification 7A Type A packagings for molybdenum-99 up to 0.8 TBq (20 curies).

One commenter objected to the lowering of the A_2 values for carbon-14, phosphorus-32, sulfur-35 and iodine-125. The commenter was concerned that these lower values would require Type A packagings for these materials, instead of the excepted packagings that are currently authorized. However, the commenter did not provide sufficient data to support these concerns and, therefore, this commenter's request has not been adopted.

The new IAEA system for calculating A_1 and A_2 values is further described in Appendix I, ''The Q System for the Calculation of A_1 and A_2 Values,'' of IAEA Safety Series No. 7, ''Explanatory Material for the IAEA Regulations for the Safe Transport of Radioactive Material (1985 Edition).'' A copy of this document is available in RSPA's Docket Unit for review by interested parties.

E. Classification of Fissile Material

As a result of the evolution of the fissile material criteria, IAEA recognized that the three fissile classes could be combined and simplified into a single system. The effects of the simplification of the IAEA system now being adopted into the HMR are the:

1. Elimination of the three fissile class designations;
2. Establishment of a single set of criteria for all packages of fissile materials; and
3. Use of the TI as the primary control of accumulations of packages in transportation under nearly all conditions.

F. General Design Requirements for All Packagings

All packagings of radioactive materials, including excepted packages, are required to meet general design requirements prescribed in § 173.410. These packagings must be designed for ease of handling and proper restraint during shipment. They must be free of protuberances, easily decontaminated, capable of withstanding the effects of vibration during transport, and also meet reduced pressure and temperature requirements. Minimum design requirements for excepted packagings will increase the overall integrity of the packages. Further discussion of § 173.410 can be found in the Review-by-Section portion of this preamble.

G. Docket No. HM–181

On December 21, 1990, RSPA published a final rule under Docket No. HM–181 entitled ''Performance-Oriented Packaging Standards: Changes to Classification, Hazard Communication, Packaging and Handling Requirements Based On UN Standards and Agency Initiative'' (55 FR 52402). That final rule comprehensively revised the HMR with respect to hazard communication and packaging standards. In addition, Docket No. HM–181 adopted some of the proposals in the NPRM under docket HM–169A. Those proposals adopted under Docket HM–181 include the reference to the 1985 edition of IAEA Safety Series No. 6, and its 1988 Supplement, and most of the proper shipping names. For additional discussion on the various supplements to IAEA SS6–85 see the discussion of § 171.7 in the Review-By-Section portion of this preamble.

H. Editorial Changes

This final rule makes several editorial changes to the HMR. References to the ''Director, OHMT'' are revised to read ''Associate Administrator, Office of Hazardous Materials Safety''. The term ''radioactive material'' is revised to read ''radioactive materials'' in conjunction with the amendments under Docket No. HM–181. Section 173.411, entitled ''General design requirements'', has been redesignated as § 173.410. Section 173.421–1 through 173.427 are redesignated as §§ 173.422 through 173.428. Corresponding changes have been made to the HMR to other sections which reference the redesignated sections. In the following discussion, section references are to the new section numbers, therefore, RSPA is providing the following redesignation table to assist the reader:

Old section No.	New section No.
§ 173.411	§ 173.410
§ 173.421–1	§ 173.422
§ 173.421–2	§ 173.423
§ 173.422	§ 173.424
§ 173.423	§ 173.425
§ 173.424	§ 173.426
§ 173.425	§ 173.427
§ 173.427	§ 173.428

IV. Review-by-Section

Section 171.7. As proposed, several references to documents have been added and revised in this final rule. It was brought to RSPA's attention that some foreign countries have adopted IAEA SS6–85 or one or more of its supplements (i.e., Supplement 1986, 1988 and the As Amended 1990 edition). Because the changes in these supplements were not substantive in nature, RSPA is allowing the export or importation of radioactive materials in accordance with any of the supplements to the 1985 Edition of IAEA Safety Series No. 6.

Section 171.8. This section is amended by adding definitions for ''General public'' and ''Occupationally exposed hazmat employee''. For additional discussion of these terms and how they relate to radiation protection plans, see section III of this preamble.

Section 171.10. This section is amended to incorporate SI units for radioactive materials. RSPA proposed to add § 173.402 which would have repeated the requirements of § 171.10. Because this would have been repetitive, RSPA is not adopting proposed § 173.402 but is amending § 171.10. Section 171.10 is amended to phase in the SI units for radiological measurements. The HMR uses SI units followed by the customary units in parentheses. In many cases the limits in customary units are extended to 3 significant figures so they represent a functional equivalent to the limits expressed in SI units. The objective of this approach is to achieve consistency with international regulations while allowing U.S. shippers to use the units with which they are most familiar.

Section 171.11. This section is amended to clarify that the provisions of §§ 172.204(c)(4), 173.448(e)(f) and (g)(3) do not apply to limited quantity shipments transported under the provisions of the International Civil Aviation Organization's Technical Instructions for the Transport of Dangerous Goods (ICAO TI).

Section 171.12. This section is editorially revised to reference the correct edition of IAEA Safety Series No. 6 and to clarify that shipments of radioactive materials transported in accordance with IAEA SS6–85 must comply with the emergency response requirements of subpart G of part 172.

Section 172.101. Most of the proposals in the NPRM to amend the

§ 172.101 Table were adopted under Docket No. HM–181. However, several editorial changes are being made to the table to address section number changes (e.g., § 173.421–1 redesignation as § 173.422).

Section 172.203. This section is revised to add references to SI units, replace references to Fissile Class III with ''Fissile material, controlled shipments'' and to require appropriate group notations for LSA and SCO material on shipping papers. In addition, mass information is allowed to replace activity information for uranium fissile radionuclides. For plutonium fissile radionuclides mass information may be included with the activity information on shipping papers. Also, § 172.203(d)(10) is added to require that the phrase ''Exclusive Use Shipment'' be added to shipping descriptions for shipments that are transported under provisions for exclusive use shipments. This statement may appear in any visible location on the shipping paper when the entire shipment is consigned as exclusive use. However, this statement does not relieve a offeror from providing exclusive use shipment controls to the carrier as required by §§ 173.403 and 173.427.

Several commenters to this section objected to requiring the statement ''Fissile Material'' to appear with shipping descriptions for fissile materials because their proper shipping name contains the words ''Radioactive material, fissile, * * *'' RSPA concurs with these commenters and has not adopted this proposal. Another commenter opposed the requirement in § 172.203(d)(1) to list all radionuclides on shipping papers. RSPA recognizes that it is sometimes impractical to identify all radionuclides contained in a package of some radioactive materials. Therefore, in this final rule, RSPA is amending § 172.203(d)(1) to require that the shipping paper identify the most hazardous radionuclides only. These nuclides are determined in accordance with the restriction of activity for A_1 and A_2 values described in § 173.433(f) that specifies, through use of a formula, that those radionuclides that represent 95% of the hazard shall be listed.

Section 172.310. This section is amended to require the trefoil symbol, as specified in new Appendix B to Part 172, be marked on Type B, Type B(U), and Type B(M) packages of radioactive material in a plain and durable fashion. One commenter objected to this requirement on the basis that the package would already display the trefoil on the radioactive material label. However, a label does not meet the requirement of being durable. Therefore, this amendment is adopted as proposed.

Section 172.403. This section is amended to add a reference to SI units. One commenter was concerned over the proposal to allow mass information in place of activity information on labels of fissile material packages. The commenter stated that RSPA should not adopt this proposal because such information would provide insufficient information to radiological emergency response forces in the event of an incident. RSPA agrees with the commenter as it pertains to plutonium radionuclides, but believes that mass information for uranium radionuclides provides sufficient information to emergency responders. Therefore, RSPA is modifying § 172.403 to authorize the substitution of mass information for uranium fissile radionuclides, and the addition of mass information to the activity information for plutonium fissile radionuclides.

Section 172.407. This section is revised by adding paragraph (g) to note where the radioactive trefoil specification is located in the HMR.

Section 172.504. This section is amended by revising the footnote in Table 1 to reference the new section for LSA material and to add reference to SCO.

Section 172.507. This section is editorially revised by correcting section references and terminology (i.e., Class 7 rather than radioactive material).

Sections 172.801–172.807. These sections are added to new subpart I of part 172, to implement a requirement for the establishment of radiation protection programs in accordance with EPA's ''Radiation Protection Guidance to Federal Agencies for Occupational Exposure'' and the IAEA SS6–85. For further discussion of these requirements, see the discussion in section III.A of this preamble.

Appendix B to part 172. Appendix B to Part 172 is added to note size requirements for the trefoil symbol on package markings, labels, and placards. Several commenters noted an error in the proposed size requirements that is corrected in this final rule.

Sections 173.2a and 173.4. These sections are revised to correct section references.

Section 173.403. This section is amended by adding new definitions for: ''Class 7 material,'' ''Surface contaminated object (SCO)'', ''IP packagings'', and, ''Low toxicity alpha emitters''. The definitions for ''Fissile material'' is revised to specify listed radionuclides, and the reference to § 173.455 is removed. The definition of Low specific activity (LSA) material is revised to conform to the IAEA definition. Many commenters requested an expansion of the definition of ''Package-excepted package'' to include § 173.426, articles containing natural uranium and thorium. RSPA agrees with the commenters and is adding that reference.

Several commenters requested that the definition of ''Type A package'' be revised to specify that these packages do not need Competent Authority approval. RSPA agrees, and the definition is so revised. One commenter requested that the definition of ''transport index'' include the commonly used term ''TI''. RSPA has also incorporated this request.

Proposed Section 173.404. This section was proposed to specify the U.S. Competent Authority for the transport of radioactive materials. Because this term is currently defined in § 171.8, thus making proposed § 173.404 repetitive, this proposal has not been adopted.

Section 173.410. This section, entitled ''General design requirements'', was previously found in § 173.411. It is amended as follows:

—A package has to be capable of withstanding the effects of acceleration, vibration or vibration resonance during transport;
—The materials of the packaging and any components must be chemically and physically compatible;
—All valves through which the package contents could escape must be protected; and
—A package intended for air transport has to be designed to withstand reduced temperature and pressure during transport.

Several commenters objected to the proposal to require that excepted packages have a minimum dimension of 10 cm. (4 inches). The commenters stated that IAEA regulations subject only Type A packagings only to the 10 cm. minimum dimension requirement. RSPA agrees with these commenters and has moved the 10 cm. minimum dimension requirement to § 173.412; therefore, excepted packages are not required to have a minimum dimension of 10 cm. (4 inches).

Section 173.411. See section III.B and the discussion of § 173.412 in this preamble for discussion of the changes to this section.

Section 173.412. This section, entitled ''Additional design requirements for Type A packages,'' is amended to permit all packages containing liquids to use a double containment system. This eliminates the previous small package prohibition of this practice as well as requiring that expansion of liquids during temperature changes be

considered during design. This section is amended to include a closure requirement on a containment system that is a separate unit of the packaging. One commenter requested that the phrase ''significant increase'' be revised to read ''20% increase'', which would be in conformance with IAEA. RSPA believes that the term ''significant'' is necessary to handle the different packaging parameters, and therefore, is not adopting this commenter's request.

Section 173.413. This section is editorially revised to correct section references and terminology.

Section 173.415. This section, ''Authorized Type A packages'', is amended to eliminate the reference to DOT Specification 55 packaging, which has not been authorized since July 1, 1985. This section is also amended to permit the use of Type A packagings that meet the NRC fissile material packaging requirements.

Section 173.416. This section, ''Authorized Type B packages,'' is amended to eliminate the reference to the DOT Specification 55 packaging, and eliminate the use of DOT Specification 55 packaging as an inner container for DOT Specification 20WC and 21WC overpacks.

Section 173.417. This section, ''Authorized packages—fissile materials,'' is amended to eliminate references to different fissile classes and to remove a direct reference to authorized packaging for 500 grams of Uranium-235 and 320 grams of plutonium. Section 173.417(a)(8) and (b)(5) specify the authorized packagings for Type A and Type B, respectively, quantities of uranium hexafluoride (UF_6). Section 173.417(b)(5)(iii) limits the amount of uranium hexafluoride in a package to the amount specified in ''Table 6—Authorized Quantities Of Uranium Hexafluoride (UF_6).'' In Table 6, however, only DOT specifications 20PF–1 and 20PF–2 are authorized to contain a Type B quantity of uranium hexafluoride. Therefore, § 173.417(b)(5) is revised to authorize only the DOT specifications 20PF–1 and 20PF–2 for the transportation of Type B quantities of uranium hexafluoride. In addition, because their use is no longer allowed, the Specification DOT 21PF–1 overpack has been removed from § 173.417(a)(8)(ii).

Sections 173.418–173.420. These sections are revised to correct section references and terminology. In addition, this section is revised, consistent with the changes in § 173.423, to note that limited quantities of radioactive material that meet the definition of a hazardous substance or hazardous waste must comply with the shipping paper requirements of the HMR.

Section 173.421. This section, ''Excepted packages for limited quantities of radioactive material,'' is amended to require compliance with the design requirements of § 173.410.

Section 173.422. The proposal in this section, ''Additional requirements for excepted packages,'' to incorporate new proper shipping names and new UN identification numbers for excepted packages, was adopted under Docket HM–181. Therefore, no changes are made in this final rule.

Section 173.423. This section is revised to correct section references and terminology. This section is also revised based on changes from Docket HM–181 and to correct terminology. Since a material that meets the definition of Class 7 it cannot, by definition, meet the definition of Class 9, reference to Class 9 are removed and appropriate changes have been made to § 173.421 (i.e., shipping papers are required). In addition, RSPA believes that specific references to Combustible liquids are no longer needed with the changes to § 173.421, therefore, the provisions previously found in paragraph (b) have been removed.

Section 173.424. The NPRM proposed amending this section, ''Excepted packages for instruments and articles,'' to require that instruments and articles be marked with the word ''radioactive.'' Several commenters objected to this proposal. The commenters indicated that devices containing radioactive materials in small quantities require approval by the NRC, who does not require the ''Radioactive'' marking. They expressed concern that the marking may cause a disproportionate public alarm for a very small quantity of radioactive material. Commenters from the lighting industry also were concerned that the ''Radioactive'' marking may discourage the use of energy efficient lighting products. Upon review of the proposed requirement, and contrasting the cost to the manufacturer and the possible effect on NRC exempt-distribution licensees versus the increase in safety that the marking may provide, RSPA is not to adopting this proposal. RSPA notes, however, that such instruments and articles must be so marked if transported in accordance with the ICAO Technical Instructions, IAEA Safety Series No. 6, or the IMDG Code.

Section 173.425. As proposed, this section, ''Table of activity limits—excepted quantities and articles,'' would have removed the direct reference to tritiated water. Several commenters requested that these limits be retained for domestic use only. Because of the relatively low hazards associated with tritiated water, RSPA concurs with these commenters and has not removed these limits.

Sections 173.426–173.431. See the ''Background'' section of the preamble for discussion of the changes to these sections.

Section 173.433. This section, ''Requirements for determination of A_1 and A_2 values for radionuclides,'' is completely amended to incorporate a less complex method for calculating the A_1 and A_2 values.

Section 173.434. This section is revised to add references to SI units.

Section 173.435. This section, ''Table for A_1 and A_2 values for radionuclides,'' is amended to incorporate new A_1 and A_2 values as specified in the IAEA regulations.

Section 173.441. Several commenters to this section, ''Radiation level limitations,'' requested that the limits specified be applied only to the ''accessible'' surface of the package. RSPA believes that this issue warrants further public discussion and, therefore, it is beyond the scope of this rulemaking. RSPA will consider proposing a change consistent with this request in future rulemaking.

Section 173.442–173.446. These sections are revised to correct section references and terminology.

Section 173.447. This section, ''Storage incident to transportation—general requirements,'' is amended to delete references to fissile classes. Additionally, two commenters requested that this section be eliminated, based on the idea that if a larger number of packages were permitted to be stored together, rather than segregated by the sum of the transport indices, the packages would shield each other and thus reduce the total potential exposure. RSPA believes that this issue is beyond the scope of this rulemaking.

Section 173.448. This section, ''General transportation requirements,'' is amended to delete references to fissile classes.

Section 173.451. See the ''Background'' section of the preamble for a discussion of the changes to this section.

Section 173.453. This section, ''Fissile materials—exceptions,'' is amended by deleting the exception for thermal reactor irradiated uranium and thorium or uranium with not more than 0.72% fissile material. One commenter pointed out that the higher limit of 800 grams of fissile mass should apply to uranium-235 only. RSPA concurs and has modified this section accordingly.

Section 173.455. This section, ''Classification of fissile materials packages,'' is deleted entirely because of the elimination of fissile classes.

Section 173.457. This section, ''Transportation of fissile material-controlled shipment—requirements,'' redefines fissile class III shipments in terms of a ''fissile material, controlled shipment.''

Section 173.459. This section, ''Mixing of fissile materials packages,'' is amended to delete references to fissile classes and to express shipment controls in terms of fissile material, controlled shipments.

Section 173.461. This section, ''Demonstration of compliance with tests,'' is amended to clarify that surrogate materials may be used in packagings to demonstrate compliance with the performance requirements for the package.

Sections 173.462–173.467. These sections are revised to correct section references and terminology.

Section 173.468. This section, ''Test for LSA-III material'', is added to specify a leaching test to examine the solid nature of the material for qualification of the material as LSA-III.

One commenter asked that the section be clarified to state whether immersion tests must be conducted on full-scale or on represented small scale samples. RSPA never intended to disallow the provisions of § 173.461, which allows scale model testing, for the tests required in § 173.468. The second sentence of proposed § 173.468(a), which stated that ''[e]ach solid specimen to be tested must be representative of the actual solid LSA-III material that will be transported'', might have been misinterpreted. To clarify that a representative scale model sample may be used as the test specimen, RSPA is not adopting that sentence.

Section 173.469. This section, ''Tests for special form Class 7 (radioactive) material,'' is amended to add an alternative method to qualify special form radioactive material under the specific impact and temperature tests prescribed in the specified standard of the International Organization for Standardization (ISO). One commenter stated that the ISO standard allowed leakage and leaching tests that are not as sensitive as the tests prescribed in § 173.469(a)(4) and (b) and, therefore, should not be adopted. RSPA agrees that some of the ISO test methods are not as sensitive for some source designs as those prescribed in the regulations. However, ISO's test method has a lower acceptance criteria which compensates for the less sensitive test methods. Therefore, RSPA is not adopting this commenters request.

Sections 173.471–173.473. These sections are amended to require that applicants for Competent Authority Approvals of Type B packaging designs, including those requesting to become registered users, submit a description to RSPA of the quality assurance program in effect during the design, manufacture, testing, documentation, use, maintenance, and inspection of the package as required by IAEA. These sections are also amended to require that submissions be made in triplicate and 90 days in advance of the shipment. It should be noted that IAEA regulations require that the serial number be marked on Type B packagings. Though not required by RSPA in this final rule, packages shipped in accordance with the IAEA regulations will be required to be marked with the serial number of the packaging.

Sections 173.474–173.475. These section are not amended but are reprinted for ease of understanding.

Section 173.476. This section, ''Approval of special form Class 7 (radioactive) materials,'' is amended to require that the original applicant provide evidence of the quality assurance program in effect during the design, manufacture, testing, documentation, use, maintenance, and inspection of the material as required by IAEA. In addition, this section is amended to require that submissions be made in triplicate and 90 days in advance of the shipment.

Section 173.477. This section, ''Approval for export shipments,'' is amended to delete references to fissile classes. Additionally, a new subparagraph addresses the contents of an application for shipment approval under special arrangement.

Section 173.478. This section, ''Notification to competent authorities for export shipments,'' is amended to delete references to fissile classes and requires additional information to be submitted to other national competent authorities for special arrangement shipments. Specifically, notification of a special arrangement shipment is required to include the name of the radionuclide, a description of the physical and chemical form, and the activity of the material.

Section 174.705. This section, entitled ''Radiation Protection Program,'' is added to prohibit the transport of radioactive material by a rail carrier that does not maintain a radiation protection program for each of its occupationally exposed hazmat employees as required by subpart I of part 172. For further discussion of these requirements, see section III.A of this preamble.

Section 175.704. This section has been added, which incorporates proposed 10 CFR 71.88(c), as proposed by NRC. This new section imposes loading and storage restrictions on packages of plutonium. Because these requirements are more appropriate to 49 CFR part 175 than in 10 CFR part 71, RSPA is adopting them in this section.

Section 175.706. This section, entitled ''Radiation Protection Program,'' is added to prohibit the transport of radioactive material by an air carrier that does not maintain a radiation protection program for each of its occupationally exposed hazmat employees as required by subpart I of part 172. For further discussion of these requirements, see section III.A of this preamble.

Section 176.703. This section, entitled ''Radiation Protection Program,'' is added to prohibit the transport of radioactive material by a vessel operator that does not maintain a radiation protection program for each of its occupationally exposed hazmat employees as required by subpart I of part 172. For further discussion of these requirements, see section III.A of this preamble.

Section 177.827. This section, entitled ''Radiation Protection Program,'' is added to prohibit the transport of radioactive material by a motor carrier that does not maintain a radiation protection program for each of its occupationally exposed hazmat employees as required by subpart I of part 172. For further discussion of these requirements, see section III.A of this preamble.

In addition to the foregoing section changes, other sections contained in parts 174 through part 178, involving radioactive material transportation, have been updated to for consistency with changes in parts 171 through part 173. Some of these changes include the addition of metric and SI units and changes in regulatory references. The following is list of those sections:

Part 174	Part 175	Part 176	Part 177	Part 178
174.700	175.700	176.700	177.842	178.350

Part 174	Part 175	Part 176	Part 177	Part 178
174.715	175.702	176.704	177.843	.....
174.750	175.703	176.708	177.861	.....
	.....	176.715	.....	.....

V. Regulatory Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and was not reviewed by the Office of Management and Budget. The rule is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034). A regulatory evaluation is available for review in the docket.

Executive Order 12612

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 (''Federalism''). The Federal hazardous materials transportation law (49 USC 5101–5127) contains an express preemption provision that preempts State, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

(i) The designation, description, and classification of hazardous materials;

(ii) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(iii) The preparation, execution, and use of shipping documents pertaining to hazardous materials and requirements respecting the number, content, and placement of such documents;

(iv) The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials; or

(v) The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials.

This final rule concerns the packaging and classification of radioactive materials. This final rule preempts State, local, or Indian tribe requirements in accordance with the standards set forth above. The Federal statute provides that if DOT issues a regulation concerning any of the covered subjects after November 16, 1990, DOT must determine and publish in the Federal Register the effective date of Federal preemption (49 USC 5125(b)(2)). That effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. RSPA has determined that the effective date of Federal preemption for these requirements is April 1, 1996. Thus RSPA lacks discretion in this area, and preparation of a federalism assessment is not warranted.

Executive Order 12778

Any interested person may petition RSPA's Administrator for reconsideration of this final rule within 30 days of publication of this rule in the Federal Register, in accordance with the procedures set forth at 49 CFR 106.35. Neither the filing of a petition for reconsideration nor any other administrative proceeding is required before the filing of a suit in court for review of this rule.

Regulatory Flexibility Act

I certify that this final rule will not have a significant economic impact on a substantial number of small entities. This rule applies to shippers and carriers of radioactive materials, some of whom are small entities.

Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) and assigned control number 2137–0510.

Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Incorporation by reference, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 174

Hazardous materials transportation, Radioactive materials, Railroad safety.

49 CFR Part 175

Air carriers, Hazardous materials transportation, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 176

Hazardous materials transportation, Maritime carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 177

Hazardous materials transportation, Motor carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 178

Hazardous materials transportation, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR parts 171, 172, 173, 174, 175, 176, 177 and 178 are amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5127;

49 CFR part 1.53.

§ 171.7 [Amended]

2. In § 171.7, the Table of material incorporated by reference, in paragraph (a)(3), is amended by removing the entry for ''USAEC, ORO–651,'' under the Department of Energy (USDOE), revising the entry for ''IAEA, Regulations for the Safe Transport of Radioactive Materials, Safety Series No. 6,'' under the *International Atomic Energy Agency (IAEA)* and by adding an entry for ''ORO–651'' under the Department of Energy and three new entries following

the exiting entries, under the *International Organization for Standardization,* to read as follows:

Source and name of material	49 CFR reference
Department of Energy (USDOE)	
* * * * * * *	
ORO–651 - Uranium Hexafluoride; A Manual of Good Practices, Revision 6, 1991 edition.	173.417
* * * * * * *	
International Atomic Energy Agency (IAEA),	
* * * * * * *	
IAEA, Regulations for the Safe Transport of Radioactive Materials, Safety Series No. 6, 1985 Edition (As Amended 1990); Including 1985 Edition (Supplemented 1986 and 1988)	171.12
* * * * * * *	
International Organization for Standardization (ISO)	
* * * * * * *	
ISO/TR 4826–1979(E) - Sealed radioactive sources—Leak test methods	173.469
ISO 2919–1980(E) - Sealed radioactive sources—Classification	173.469
ISO 1496–3–1995(E) - Series 1 Freight Containers—Specification and Testing—Part 3: Tank Containers for Liquids, Gases and Pressurized Dry Bulk	173.411
* * * * * * *	

* * * * *

3. In § 171.8, the following definitions are added in appropriate alphabetical order to read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

General public means, for purposes of subpart I of part 172, and subpart I of part 173 of this subchapter, any person other than an occupationally exposed hazmat employee.

* * * * *

Occupationally exposed hazmat employee means a hazmat employee whose duties involve exposure to ionizing radiation.

* * * * *

4. In § 171.10(c)(2), the ''Table of Conversion Factors For SI Units'' is amended by adding the following entries in appropriate alphabetical order and the note following the table is revised to read as follows:

§ 171.10 Units of measure.

* * * * *

(c) * * *

(2) * * *

TABLE OF CONVERSION FACTORS FOR SI UNITS

Measurement	SI to US standard	US standard to SI
Activity	1 TBq=27 Ci	1 Ci=0.037 TBq.
* * * * * * *		
Radiation level	1 Sv/hr=100 rem/hr	1 rem/hr=0.01 Sv/hr

Abbreviation for units of measure are as follows:

Unit of measure and abbreviation:

(SI): millimeter, mm; centimeter, cm; meter, m; gram, g; kilogram, kg; kiloPascal, kPa; liter, L; milliliter, ml; cubic meter, m^3; Terabecquerel, TBq; Gigabecquerel, GBq; millisievert, mSv;

(U.S.): Inch, in; foot, ft; ounce, oz; pound, lb; pounds per square inch, psi; gallon, gal; cubic feet, ft^3; Curie, Ci; millicurie, mCi; millirem, mrem.

5. Section 171.11(d)(6)(iii) is revised to read as follows:

§ 171.11 Use of ICAO Technical Instructions.

* * * * *

(d) * * *

(6) * * *

(iii) Except for limited quantities of Class 7 (radioactive) material, the provisions of §§ 172.204(c)(4), 173.448(e), (f) and (g)(3) of this subchapter apply.

* * * * *

§ 171.11 [Amended]

6. In addition, in § 171.11(d)(6)(iv), remove the words ''§ 173.422 or § 173.424'' and add, in their place, the words ''§ 173.424 or § 173.426''.

7. In § 171.12, the heading and introductory text of paragraph (d) and paragraph (d)(4) are revised, paragraph (d)(5) is amended by removing the period and adding ''; and'' in its place, and paragraph (d)(6) is added to read as follows:

§ 171.12 Import and export shipments.

* * * * *

(d) *Use of IAEA regulations for Class 7 (radioactive) materials.* Class 7 (radioactive) materials being imported into, or exported from, the United States, or passing through the United States in the course of being shipped between places outside the United States, may be offered and accepted for transportation when packaged, marked, labeled, and otherwise prepared for shipment in accordance with IAEA ''Regulations for the Safe Transport of Radioactive Materials, Safety Series No. 6,'' if:

* * * * *

(4) The country of origin for the shipment has adopted the IAEA ''Regulations for the Safe Transport of Radioactive Materials, Safety Series No. 6'';

* * * * *

(6) Shipments comply with the requirements for emergency response information prescribed in Subpart G of Part 172 of this subchapter.

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

8. The authority citation for Part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR part 1.53.

9. The following entries in the § 172.101 Hazardous Materials Table are removed, added in alphabetical order or revised to read as follows:

§ 172.101 Purpose and use of hazardous materials table.

* * * * *

§ 172.101 HAZARDOUS MATERIALS TABLE

Symbols	(1)Hazardous materials descriptions and proper shipping names	(2)Hazard class or Division	(3)Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Nonbulk packaging	Bulk packaging	Passenger aircraft or railcar	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	.....												
	[Remove]												
	Radioactive material, excepted package-empty packaging.	7	UN2910	.....	EMPTY	.....	427 ...	427 ...	427 ...	.....	.....	A	
	*	*	*		*		*		*			*	
	Radioactive material, low specific activity, n.o.s. *or* Radioactive material, LSA, n.o.s..												
	[Add]												
	*	*	*		*		*		*			*	
	Radioactive material, excepted package-empty package *or* empty packaging.	7	UN2910	.....	EMPTY	.....	421, 428.	421, 428.	421, 428.	.....	.....	A	
	*	*	*		*		*		*			*	
	Radioactive material, low specific activity *or* Radioactive material, LSA, n.o.s.	7	UN2912	.....	RADIOACTIVE.	.....	421, 428.	427 ...	427 ...	.....	.....	A	.....
	*	*	*		*		*		*			*	
	Radioactive material, surface contaminated object *or* Radioactive material, SCO.	7	UN2913	.....	RADIOACTIVE.	421, 424, 426	427 ...	427 ...	.....	.....	A		
	*	*	*		*		*		*			*	
	[Revise]												
	*	*	*		*		*		*			*	
	Radioactive material, excepted package-articles manufactured from natural *or* depleted uranium or natural thorium.	7	UN2910	.....	None	.....	422, 426.	422, 426.	422, 426.	.....	.....	A	
	*	*	*		*		*		*			*	
	Radioactive material, excepted package-instruments *or* articles.	7	UN2910	.....	None	.....	422, 424.	422, 424.	422, 424.	.....	.....	A	

§ 172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	(1)Hazardous materials descriptions and proper shipping names	(2)Hazard class or Division	(3)Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Nonbulk packaging	Bulk packaging	Passenger aircraft or rail-car	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Radioactive material, excepted package-limited quantity of material.	7	UN2910		None		421, 422.	421, 422.	421, 422.			A	
	*	*	*		*		*		*			*	
	Radioactive material, n.o.s..	7	UN2982		RADIOACTIVE.		421, 428.	415, 416.	415, 416.			A	40, 95
	Radioactive material, special form, n.o.s..	7	UN2974		RADIOACTIVE.		421, 424.	415, 416.	415, 416.			A	
	*	*	*		*		*		*			*	

§ 172.101 [Amended]

10. In addition, in § 172.101, in the Hazardous Materials Table, for the entry ''Uranium hexafluoride, *fissile excepted or non-fissile''* the column (8A) section reference ''421–2'' is revised to read ''423''.

11. In § 172.203, paragraphs (d)(1), (d)(4), and (d)(7) are revised and paragraphs (d)(10) and (d)(11) are added to read as follows:

§ 172.203 Additional description requirements.

* * * * *

(d) * * *

(1) The name of each radionuclide in the Class 7 (radioactive) material that is listed in § 173.435 of this subchapter. For mixtures of radionuclides, the radionuclides that must be shown must be determined in accordance with § 173.433(f) of this subchapter.

* * * * *

(4) The activity contained in each package of the shipment in terms of the appropriate SI units (e.g. Becquerel, Terabecquerel, etc.) or in terms of the appropriate SI units followed by the customary units (e.g. Curies, millicuries, etc.). Alternatively, for domestic transportation, the activity in a package of Class 7 (radioactive) materials may be described solely in terms of curies until April 1, 1997. Abbreviations are authorized. Except for plutonium-238, plutonium-239, and plutonium-241, the weight in grams or kilograms of fissile radionuclides may be inserted instead of activity units. For plutonium-238, plutonium-239, and plutonium-241 the weight in grams or kilograms of fissile radionuclides may be inserted in addition to the activity units. For the shipment of a package containing a highway route controlled quantity of Class 7 (radioactive) materials (see § 173.403 of this subchapter) the words ''Highway route controlled quantity'' must be entered in association with the basic description.

* * * * *

(7) For a shipment of fissile Class 7 (radioactive) materials:

(i) The words ''Fissile Excepted'' if the package is excepted pursuant to § 173.453 of this subchapter;

(ii) For a fissile material, controlled shipment, the additional notation: ''Warning—Fissile material, controlled shipment. Do not load more than * * * packages per vehicle.'' (Asterisks to be replaced by appropriate number.) ''In loading and storage areas, keep at least 6 meters (20 feet) from other packages bearing radioactive labels''; and

(iii) If a fissile material, controlled shipment is to be transported by water, the supplementary notation must also include the following statement: ''For shipment by water, only one fissile material, controlled shipment is permitted in each hold.''

* * * * *

(10) For a shipment required by this subchapter to be consigned as exclusive use:

(i) An indication that the shipment is consigned as exclusive use; or

(ii) If all the descriptions on the shipping paper are consigned as exclusive use, then the statement ''Exclusive Use Shipment'' may be entered only once on the shipping paper in a clearly visible location.

(11) For a shipment of low specific activity material or surface contaminated objects, the appropriate group notation of LSA–I, LSA–II, LSA–III, SCO–I, or SCO–II.

* * * * *

12. Section 172.310 is revised to read as follows:

§ 172.310 Class 7 (radioactive) materials.

In addition to any other markings required by this subpart, each package containing Class 7 (radioactive) materials must be marked as follows:

(a) Each package with a gross mass greater than 50 kilograms (110 pounds) must have the its gross mass marked on the outside of the package.

(b) packaging must be marked on the outside of the package, in letters at least 13 mm (0.5 inch) high, with the words ''TYPE A'' or ''TYPE B'' as appropriate. A packaging which does not conform to Type A or Type B requirements may not be so marked.

(c) Each Type B, Type B(U) or Type B(M) packaging must be marked on the outside of the package with a radiation symbol that conforms to the requirements of Appendix B to Part 172.

(d) Each package destined for export shipment must also be marked ''USA'' in conjunction with the specification marking, or other package certificate identification. (See §§ 173.471, 173.472, and 173.473 of this subchapter).

13. In § 172.403, the section heading, and paragraphs (b), (c), (d), (g)(1) and (g)(2) are revised to read as follows:

§ 172.403 Class 7 (radioactive) material.

* * * * *

(b) The proper label to affix to a package of Class 7 (radioactive) material is based on the radiation level at the surface of the package and the transport index. The proper category of label must be determined in accordance with paragraph (c) of this section. The label to be applied must be the highest category required for any of the two determining conditions for the package. RADIOACTIVE WHITE–I is the lowest category and RADIOACTIVE YELLOW–III is the highest. For example, a package with a transport index of 0.8 and a maximum surface radiation level of 0.6 millisievert (60 millirems) per hour must bear a RADIOACTIVE YELLOW–III label.

(c) Category of label to be applied to Class 7 (radioactive) materials packages:

Transport index	Maximum radiation level at any point on the external surface	Label category[1]
0[2]	Less than or equal to 0.005 mSv/h (0.5 mrem/h).	WHITE–I.
More than 0 but not more than 1	Greater than 0.005 mSv/h (0.5 mrem/h) but less than or equal to 0.5 mSv/h (50 mrem).	YELLOW–II.
More than 1 but not more than 10	Greater than 0.05 mSv/h (50 mrem) but less than or equal to 2 mSv/h (200 mrem/h).	YELLOW–III.
More than 10	Greater than 2 mSv/h (200 mrem/h) but less than or equal to 10 mSv/h (1,000 mrem/h).	YELLOW–III (Must be shipped under exclusive use provisions; see 173.441(b) of this subchapter).

[1] Any package containing a ''highway route controlled quantity'' (§ 173.403 of this subchapter) must be labelled as RADIOACTIVE YELLOW–III.
[2] If the measured TI is not greater than 0.05, the value may be considered to be zero.

(d) *EMPTY* label. See § 173.428(d) of this subchapter for EMPTY labeling requirements.

* * * * *

(g) * * *

(1) *Contents.* The name of the radionuclides as taken from the listing of radionuclides in § 173.435 of this subchapter (symbols which conform to established radiation protection terminology are authorized, i.e., ^{99}Mo, ^{60}Co, etc.). For mixtures of radionuclides, with consideration of space available on the label, the radionuclides that must be shown must be determined in accordance with § 173.433(f) of this subchapter.

(2) *Activity.* Activity units must be expressed in appropriate SI units (e.g., Becquerels (Bq), Terabecquerels (TBq), etc.) or in both appropriate SI units and appropriate customary units (Curies (Ci), milliCuries (mCi), microcuries (uCi), etc.). Alternatively, the activity may be expressed solely in terms of curies until April 1, 1997. Abbreviations are authorized. Except for plutonium-238, plutonium-239, and plutonium-241, the weight in grams or kilograms of fissile radionuclides may be inserted instead of activity units. For plutonium-238, plutonium-239, and plutonium-241, the weight in grams or kilograms of fissile radionuclides may be inserted in addition to the activity units.

* * * * *

14. In § 172.407, paragraph (g) is added to read as follows:

§ 172.407 Label specifications.

* * * * *

(g) *Trefoil symbol.* The trefoil symbol on the RADIOACTIVE WHITE–I, RADIOACTIVE YELLOW–II, and RADIOACTIVE YELLOW–III labels must meet the appropriate specifications in Appendix B of this part.

§ 172.504 [Amended]

15. In § 172.504, in Table 1 of paragraph (e), footnote one is revised to read as follows:

[1] RADIOACTIVE placard also required for exclusive use shipments of low specific activity material and surface contaminated objects transported in accordance with § 173.427(b)(3) or (c) of this subchapter.

16. In § 172.507, paragraph (a) is revised to read as follows:

§ 172.507 Special placarding provisions: Highway.

(a) Each motor vehicle used to transport a package of highway route controlled quantity Class 7 (radioactive) materials (see § 173.403 of this subchapter) must have the required RADIOACTIVE warning placard placed on a square background as described in § 172.527.

* * * * *

17. In § 172.519, paragraph (g) is added to read as follows:

§ 172.519 General specifications for placards.

* * * * *

(g) *Trefoil symbol.* The trefoil symbol on the RADIOACTIVE placard must meet the appropriate specification in Appendix B of this part.

18. A new subpart I is added to part 172 to read as follows:

Subpart I—Radiation Protection Program

Sec.
172.801 Applicability of the radiation protection program.
172.803 Radiation protection program.
172.805 Recordkeeping and notifications.
172.807 Transitional provisions.

Subpart I—Radiation Protection Program

§ 172.801 Applicability of the radiation protection program.

(a) *Scope.* This subpart prescribes requirements for developing and maintaining a radiation protection program.

(b) *Applicability.* This subpart applies to persons who offer for transportation, accept for transportation, or transports Class 7 (radioactive) materials.

§ 172.803 Radiation protection program.

Each person who offers for transportation, accepts for transportation, or transports Class 7 (radioactive) materials must develop, implement and maintain a written radiation protection program in accordance with the following:

(a) Radiation exposures must be kept as low as reasonably achievable (ALARA), with economic and social factors being taken into account.

(b) Radiation exposures must be control such that:

(1) An occupationally exposed hazmat employee's annual effective dose equivalent for occupational radiation exposure will not exceed 12.5 mSv (1.25 rem) in any 3 month period or 50 mSv (5 rem) in any 12 month period. For workers under the age of eighteen, the radiation dose will not exceed 1.250

mSv (0.125 rem) in any 3 month period or 5.0 mSv (0.5 rem) in any 12 month period;

(2) Radiation exposures to members of the general public must be less than 0.02 mSv (2 mrem) per hour. This level will be measured as if an individual were present for an hour in any area where the general public could be exposed to radiation during the course of transportation, except that, if there is an occurrence where the dose to a member of the general public equals or exceeds 0.02 mSv (2 mrem) in one hour, the program must provide limits that will prevent an individual from receiving cumulative doses totaling 1.0 mSv (100 mrem) in any week or 5.0 mSv (500 mrem) in any twelve-month period;

(3) The radiation dose to an embryo-fetus in a pregnant female occupationally exposed hazmat employee, who has declared her pregnancy to her employer, must not exceed 5.0 mSv (500 mrem) during the pregnancy. This limit is to be achieved by limiting the radiation dose of the declared pregnant worker to not more than 5.0 mSv (500 mrem) during the nine months and not greater than 0.5 mSv (50 mrem) in any one month; and

(4) The radiation doses received by occupationally exposed hazmat employees must be monitored by radiation dosimetry devices.

(c) The Environmental Protection Agency report entitled ''Radiation Protection Guidance to Federal Agencies for Occupational Exposure (January 1987)''. This document is available from the U.S. Environmental Protection Agency, Washington, DC 20460.

(d) *Exceptions.* (1) The requirements of this subpart do not apply to:

(i) Persons who offer for transportation or transport less than 200 TI of packages in a 12-month period; or

(ii) Those persons whose operations will not result in a hazmat employee receiving an exposure of 5 mSv (500 mrem) or more per year. This evaluation must consider the hazmat employers Class 7 (radioactive) materials transportation activities for a period of at least 12 months. An evaluation must be conducted by a person experienced with radiation protection programs and transportation regulations and programs. The evaluator's competency may be evidenced by being certified by the American Board of Health Physics, or by a letter of recommendation from any Regional Administrator of the Nuclear Regulatory Commission or from a State Radiation Official listed in the most current issue of the ''Directory of Personnel Responsible For Radiological Health Programs'' published annually by the Conference of Radiation Control Program Directors, Frankfort, KY.

(2) The requirements of this subpart may be satisfied by any radiation protection program that has been approved by an appropriate federal or state agency.

(e) *Guidance.* Each hazmat employer should review and follow the guidance provided in the following documents when establishing and maintaining their radiation protection program:

(i) National Council on Radiation Protection and Measurements (NCRP) Report No. 59, ''Operational Radiation Safety Program (1978)''. The guidance in this report should be tailored to the practical needs and operations of the hazmat employer and their occupationally exposed hazmat employees.

(ii) NCRP Report No. 116, ''Limitation of Exposure to Ionizing Radiation (1993)''.

(2) The reports referenced in paragraph (e)(1) of this section are available from NCRP Publications, 7910 Woodmont Avenue, Bethesda, MD 20814.

§ 172.805 Recordkeeping and notifications.

(a) A hazmat employer must document their radiation protection program and maintain written records of the radiation protection program activities, including dosimetry records, described in this subpart. These records must be made available to the Associate Administrator for Hazardous Materials Safety or other authorized officials in written form within seven days of a written request.

(b) A hazmat employer must keep a record of the radiation dose that each hazmat employee has received and provide it to the employee in reasonable time following a request during employment and no more than three months after end of employment.

(c) Each hazmat employer must notify the Associate Administrator for Hazardous Materials Safety, in writing, if a hazmat employee receives a dose exceeding 12.5 mSv (1250 mrem) in any calendar quarter or 50 mSv (5,000 mrem) in one year, or if a member of the general public is likely to receive a dose exceeding 5 mSv (500 mrem) in one year as a result of the hazmat employer's transportation activities. Such a notification must be made as soon as practicable following awareness of the occurrence.

(d) If an offeror or carrier of Class 7 (radioactive) materials is not required to establish a radiation protection program, they must develop and keep records which demonstrate why a program is not required (i.e., either the total TI of packages transported in any 12 month period is less than 200, or that the current Class 7 (radioactive) materials transport activities are the same as the activities that were reviewed by a competent radiation protection specialist whose evaluation demonstrated that no worker will receive a dose exceeding 5 mSv (500 mrem) in one year).

§ 172.807 Transitional provisions.

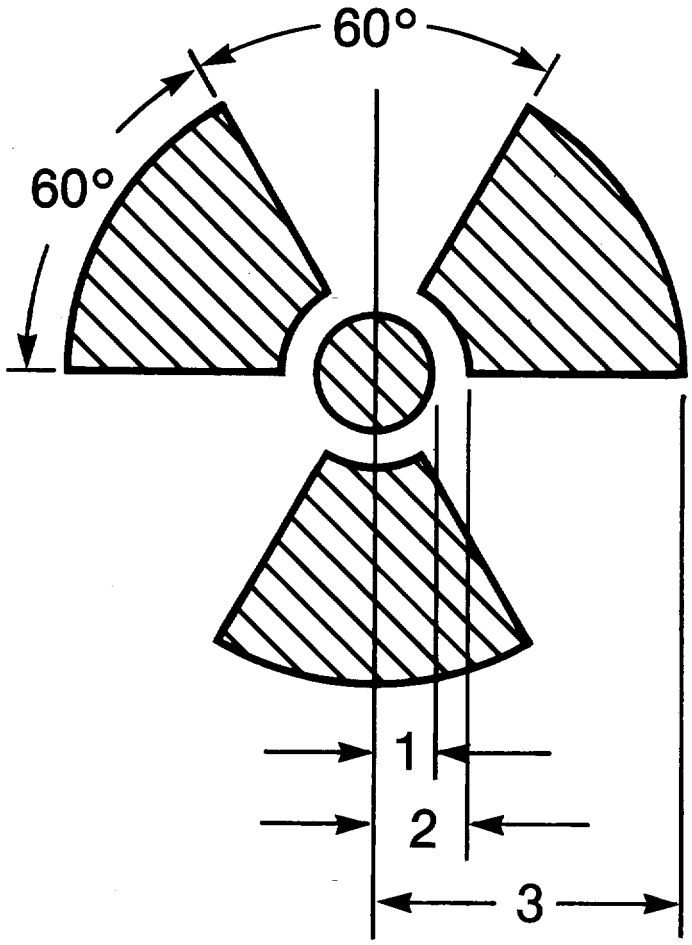
Compliance with the requirements of this subpart is required after October 1, 1997.

19. APPENDIX B is added to Part 172 to read as follows:

Appendix B to Part 172—Trefoil Symbol

The trefoil symbol required for RADIOACTIVE labels and placards, and required to be marked on certain packages of Class 7 (radioactive) material, must conform to the following design and size:

BILLING CODE 4910–60–P



BILLING CODE 4910–60–C

1= Radius of Circle—
Minimum Dimensions
4 mm (0.16 inch) for markings
5 mm (0.2 inch) for labels
12.5 mm (0.5 inch) for placards
2= 1 1/2 Radii
3= 5 Radii

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

20. The authority citation for Part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR part 1.53.

§ 173.2a [Amended]

21. In § 173.2a(c)(5), the phrase ''§ 173.421–2'' is removed and replaced with the phrase ''§ 173.423''.

22. In § 173.4, paragraphs (a)(1)(iv) and (b) are revised to read as follows:

§ 173.4 Exceptions for small quantities.

(a) * * *

(1) * * *

(iv) An activity level not exceeding that specified in §§ 173.421, 173.424, 173.425 or 173.426, as appropriate, for a package containing a Class 7 (radioactive) material.

* * * * *

(b) A package containing a Class 7 (radioactive) material also must conform to the requirements of § 173.421(a)(1) through (a)(5) or § 173.424(a) through (g), as appropriate.

23. Subpart I of Part 173 is revised to read as follows:

Subpart I–Class 7 (Radioactive) Materials

173.401 Scope.
173.403 Definitions.
173.410 General design requirements.
173.411 Industrial packagings.
173.412 Additional design requirements for Type A packages.
173.413 Requirements for Type B packages.
173.415 Authorized Type A packages.
173.416 Authorized Type B packages.
173.417 Authorized fissile materials packages.
173.418 Authorized packages—pyrophoric Class 7 (radioactive) materials.
173.419 Authorized packages—oxidizing Class 7 (radioactive) materials.
173.420 Uranium hexafluoride (fissile, fissile excepted and non-fissile).
173.421 Excepted packages for limited quantities of Class 7 (radioactive) materials.
173.422 Additional requirements for excepted packages containing Class 7 (radioactive) materials.
173.423 Requirements for multiple hazard limited quantity Class 7 (radioactive) materials.
173.424 Excepted packages for radioactive instruments and articles.
173.425 Table of activity limits—excepted quantities and articles.

173.426 Excepted packages for articles containing natural uranium or thorium.
173.427 Transport requirements for low specific activity (LSA) Class 7 (radioactive) materials and surface contaminated objects (SCO).
173.428 Empty Class 7 (radioactive) materials packaging.
173.431 Activity limits for Type A and Type B packages.
173.433 Requirements for determining A_1 and A_2 values for radionuclides and for the listing of radionuclides on shipping papers and labels.
173.434 Activity-mass relationships for uranium and natural thorium.
173.435 Table of A_1 and A_2 values for radionuclides.
173.441 Radiation level limitations.
173.442 Thermal limitations.
173.443 Contamination control.
173.444 Labeling requirements.
173.446 Placarding requirements.
173.447 Storage incident to transportation—general requirements.
173.448 General transportation requirements.
173.451 Fissile materials—general requirements.
173.453 Fissile materials—exceptions.
173.457 Transportation of fissile material, controlled shipments—specific requirements.
173.459 Mixing of fissile material packages.
173.461 Demonstration of compliance with tests.
173.462 Preparation of specimens for testing.
173.463 Packaging and shielding—testing for integrity.
173.465 Type A packaging tests.
173.466 Additional tests for Type A packagings designed for liquids and gases.
173.467 Tests for demonstrating the ability of Type B and fissile materials packagings to withstand accident conditions in transportation.
173.468 Test for LSA-III material.
173.469 Tests for special form Class 7 (radioactive) materials.
173.471 Requirements for U.S. Nuclear Regulatory Commission approved packages.
173.472 Requirements for exporting DOT Specification Type B and fissile packages.
173.473 Requirements for foreign-made packages.
173.474 Quality control for construction of packaging.
173.475 Quality control requirements prior to each shipment of Class 7 (radioactive) materials.
173.476 Approval of special form Class 7 (radioactive) materials.
173.477 Approval for export shipments.
173.478 Notification to competent authorities for export shipments.

Subpart I—Class 7 (Radioactive) Materials

§ 173.401 Scope.

(a) This subpart sets forth requirements for the packaging and transportation of Class 7 (radioactive) materials by offerors and carriers subject to this subchapter. The requirements prescribed in this subpart are in addition to, not in place of, other requirements set forth in this subchapter for Class 7 (radioactive) materials and those of the Nuclear Regulatory Commission in 10 CFR Part 71.

(b) This subpart does not apply to:

(1) Class 7 (radioactive) materials produced, used, transported, or stored within an establishment other than during the course of transportation, including storage in transportation.

(2) Class 7 (radioactive) materials contained in a medical device, such as a heart pacemaker, which is implanted in a human being or live animal.

(3) Class 7 (radioactive) materials that have been injected into, ingested by, or are otherwise placed into, and are still in, human beings or live animals.

§ 173.403 Definitions.

For purposes of this subpart—

A_1 means the maximum activity of special form Class 7 (radioactive) material permitted in a Type A package.

A_2 means the maximum activity of Class 7 (radioactive) material, other than special form, LSA or SCO, permitted in a Type A package. These values are either listed in § 173.435 or derived in accordance with the procedure prescribed in § 173.433.

Class 7 (radioactive) material. See the definition of *Radioactive material* in this section.

Closed transport vehicle means a transport vehicle or conveyance equipped with a securely attached exterior enclosure that during normal transportation restricts the access of unauthorized persons to the cargo space containing the Class 7 (radioactive) materials. The enclosure may be either temporary or permanent, and in the case of packaged materials may be of the ''see-through'' type, and must limit access from top, sides, and bottom.

Containment system means the assembly of components of the packaging intended to retain the radioactive contents during transportation.

Conveyance means:

(1) For transport by public highway or rail: any transport vehicle or large freight container;

(2) For transport by water: any vessel, or any hold, compartment, or defined deck area of a vessel including any transport vehicle on board the vessel; and

(3) For transport by aircraft, any aircraft.

Design means the description of a special form Class 7 (radioactive) material, a package, packaging, or LSA–III, that enables those items to be fully identified. The description may include specifications, engineering drawings, reports showing compliance with regulatory requirements, and other relevant documentation.

Exclusive use (also referred to in other regulations as ''sole use'' or ''full load'') means sole use by a single consignor of a conveyance for which all initial, intermediate, and final loading and unloading are carried out in accordance with the direction of the consignor or consignee. The consignor and the carrier must ensure that any loading or unloading is performed by personnel having radiological training and resources appropriate for safe handling of the consignment. The consignor must issue specific instructions in writing, for maintenance of exclusive use shipment controls, and include them with the shipping paper information provided to the carrier by the consignor.

Fissile material means plutonium-238, plutonium-239, plutonium-241, uranium-233, uranium-235, or any combination of these radionuclides. The definition does not apply to unirradiated natural uranium and depleted uranium, and natural uranium or depleted uranium that has been irradiated in a thermal reactor. Certain additional exceptions are provided in § 173.453.

Fissile material, controlled shipment means any shipment that contains one or more packages that have been assigned, in accordance with § 173.457, nuclear criticality control transport indices greater than 10.

Freight container means a reusable container having a volume of 1.81 cubic meters (64 cubic feet) or more, designed and constructed to permit its being lifted with its contents intact and intended primarily for containment of packages in unit form during transportation. A ''small freight container'' is one which has either one outer dimension less than 1.5 meters (4.9 feet) or an internal volume of not more than 3.0 cubic meters (106 cubic feet). All other freight containers are designated as ''large freight containers.''

Highway route controlled quantity means a quantity within a single package which exceeds:

(1) 3,000 times the A_1 value of the radionuclides as specified in § 173.435 for special form Class 7 (radioactive) material;

(2) 3,000 times the A_2 value of the radionuclides as specified in § 173.435 for normal form Class 7 (radioactive) material; or

(3) 1,000 TBq (27,000 Ci), whichever is least.

Limited quantity of Class 7 (radioactive) material means a quantity of Class 7 (radioactive) material not exceeding the materials package limits specified in § 173.425 and conforming with requirements specified in § 173.421.

Low Specific Activity (LSA) material means Class 7 (radioactive) material with limited specific activity which satisfies the descriptions and limits set forth below. Shielding materials surrounding the LSA material may not be considered in determining the estimated average specific activity of the package contents. LSA material must be in one of three groups:

(1) *LSA–I.*

(i) Ores containing only naturally occurring radionuclides (e.g., uranium, thorium) and uranium or thorium concentrates of such ores; or

(ii) Solid unirradiated natural uranium or depleted uranium or natural thorium or their solid or liquid compounds or mixtures; or

(iii) Class 7 (radioactive) material, other than fissile material, for which the A_2 value is unlimited; or

(iv) Mill tailings, contaminated earth, concrete, rubble, other debris, and activated material in which the Class 7 (radioactive) material is essentially uniformly distributed and the average specific activity does not exceed $10^{-6}A_2$/g.

(2) *LSA–II.*

(i) Water with tritium concentration up to 0.8 TBq/liter (20.0 Ci/liter); or

(ii) Material in which the Class 7 (radioactive) material is essentially uniformly distributed and the average specific activity does not exceed $10^{-4}A_2$/g for solids and gases, and $10^{-5}A_2$/g for liquids.

(3) *LSA–III.* Solids (e.g., consolidated wastes, activated materials) that meet the requirements of § 173.468 and which:

(i) The Class 7 (radioactive) material is essentially uniformly distributed throughout a solid or a collection of solid objects, or is essentially uniformly distributed in a solid compact binding agent (such as concrete, bitumen, ceramic, etc.); and

(ii) The Class 7 (radioactive) material is relatively insoluble, or it is intrinsically contained in a relatively insoluble material, so that, even under loss of packaging, the loss of Class 7 (radioactive) material per package by leaching when placed in water for seven days would not exceed 0.1 A_2; and

(iii) The average specific activity of the solid does not exceed $2 \times 10^{-3}A_2$/g.

Low toxicity alpha emitters are:

(1) Natural uranium, depleted uranium, and natural thorium;

(2) Ores, concentrates or tailings containing uranium-235, uranium-238, thorium-232, thorium-228 and thorium-230; or

(3) Alpha emitters with a half-life of less than 10 days.

Maximum normal operating pressure means the maximum gauge pressure that would develop in a receptacle in a period of one year, in the absence of venting or cooling, under the heat conditions specified in 10 CFR 71.71(c)(1)

Multilateral approval means approval of a package or shipment by the relevant competent authority of the country of origin and of each country through or into which the package or shipment is to be transported. This definition does not include approval from a country over which Class 7 (radioactive) materials are carried in aircraft, if there is no scheduled stop in that country.

Natural thorium means thorium with the naturally occurring distribution of thorium isotopes (essentially 100 percent by weight of thorium-232).

Non-fixed radioactive contamination means radioactive contamination that can be readily removed from a surface by wiping with an absorbent material. Non-fixed (removable) radioactive contamination is not significant if it does not exceed the limits specified in § 173.443.

Normal form Class 7 (radioactive) material means Class 7 (radioactive) material which has not been demonstrated to qualify as ''special form Class 7 (radioactive) material.''

Package means, for Class 7 (radioactive) materials, the packaging together with its radioactive contents as presented for transport.

(1) ''Excepted package'' means a packaging together with its excepted Class 7 (radioactive) materials as specified in §§ 173.421–173.426 and 173.428.

(2) ''Type A package'' means a packaging that, together with its radioactive contents limited to A_1 or A_2 as appropriate, meets the requirements of §§ 173.410 and 173.412 and is designed to retain the integrity of containment and shielding required by this part under normal conditions of transport as demonstrated by the tests set forth in § 173.465 or § 173.466, as appropriate. A Type A package does not require Competent Authority Approval.

(3) ''Type B package'' means a Type B packaging that, together with its radioactive contents, is designed to retain the integrity of containment and shielding required by this part when subjected to the normal conditions of transport and hypothetical accident test conditions set forth in 10 CFR Part 71.

(i) ''Type B(U) package'' means a Type B packaging that, together with its radioactive contents, for international shipments requires unilateral approval only of the package design and of any stowage provisions that may be necessary for heat dissipation.

(ii) ''Type B(M) package'' means a Type B packaging, together with its radioactive contents, that for international shipments requires multilateral approval of the package design, and may require approval of the conditions of shipment. Type B(M) packages are those Type B package designs which have a maximum normal operating pressure of more than 700 kilopascals per square centimeter (100 pounds per square inch) gauge or a relief device which would allow the release of Class 7 (radioactive) material to the environment under the hypothetical accident conditions specified in 10 CFR Part 71.

(4) ''Industrial package'' means a packaging that, together with its low specific activity (LSA) material or surface contaminated object (SCO) contents, meets the requirements of §§ 173.410 and 173.411. Industrial packages are categorized in § 173.411 as either:

(i) ''Industrial package Type 1 (IP–1)'';

(ii) ''Industrial package Type 2 (IP–2)''; or

(iii) ''Industrial package Type 3 (IP–3)''.

Packaging means, for Class 7 (radioactive) materials, the assembly of components necessary to ensure compliance with the packaging requirements of this subpart. It may consist of one or more receptacles, absorbent materials, spacing structures, thermal insulation, radiation shielding, service equipment for filling, emptying, venting and pressure relief, and devices for cooling or absorbing mechanical shocks. The conveyance, tie-down system, and auxiliary equipment may sometimes be designated as part of the packaging.

Radiation level means the radiation dose-equivalent rate expressed in millisievert(s) per hour or mSv/h (millirem(s) per hour or mrem/h). Neutron flux densities may be converted into radiation levels according to Table 1:

TABLE 1.—NEUTRON FLUENCE RATES TO BE REGARDED AS EQUIVALENT TO A RADIATION LEVEL OF 0.01 MSV/H (1 MREM/H) [1]

Energy of neutron	Flux density equivalent to 0.01 mSv/h (1 mrem/h) neutrons per square centimeter per second (n/cm²/s)
Thermal (2.510E–8)MeV	272.0
1 keV	272.0
10 keV	281.0
100 keV	47.0
500 keV	11.0
1 MeV	7.5
5 MeV	6.4
10 MeV	6.7

[1] Flux densities equivalent for energies between those listed in this table may be obtained by linear interpolation.

Radioactive contents means a Class 7 (radioactive) material, together with any contaminated liquids or gases within the package.

Radioactive instrument and article means any manufactured instrument and article such as an instrument, clock, electronic tube or apparatus, or similar instrument and article having Class 7 (radioactive) material in gaseous or non-dispersible solid form as a component part.

Radioactive material means any material having a specific activity greater than 70 Bq per gram (0.002 microcurie per gram) (see definition of ''specific activity'').

Special form Class 7 (radioactive) material means Class 7 (radioactive) material which satisfies the following conditions:

(1) It is either a single solid piece or is contained in a sealed capsule that can be opened only by destroying the capsule;

(2) The piece or capsule has at least one dimension not less than 5 millimeters (0.2 inch); and

(3) It satisfies the test requirements of § 173.469. Special form encapsulations designed in accordance with the requirements of § 173.389(g) in effect on June 30, 1983 (see 49 CFR Part 173, revised as of October 1, 1982), and constructed prior to July 1, 1985 and special form encapsulations designed in accordance with the requirements of § 173.403 in effect on March 31, 1996 (see 49 CFR Part 173, revised as of October 1, 1995), and constructed prior to April 1, 1997, may continue to be used. Any other special form encapsulation must meet the requirements of this paragraph.

Specific activity of a radionuclide means the activity of the radionuclide per unit mass of that nuclide. The specific activity of a material in which the radionuclide is essentially uniformly distributed is the activity per unit mass of the material.

Surface Contaminated Object (SCO) means a solid object which is not itself radioactive but which has Class 7 (radioactive) material distributed on any of its surfaces. SCO must be in one of two groups with surface activity not exceeding the following limits:

(1) SCO–I: A solid object on which:

(i) The non-fixed contamination on the accessible surface averaged over 300 cm² (or the area of the surface if less than 300 cm²) does not exceed 4 Bq/cm² (10^{-4} microcurie/cm²) for beta and gamma and low toxicity alpha emitters, or 0.4 Bq/cm² (10^{-5} microcurie/cm²) for alpha emitters;

(ii) The fixed contamination on the accessible surface averaged over 300 cm² (or the area of the surface if less than 300 cm²) does not exceed 4×10^4 Bq/cm² (1.0 microcurie/cm²) for beta and gamma and low toxicity alpha emitters, or 4×10^3 Bq/cm² (0.1 microcurie/cm²) for all other alpha emitters; and

(iii) The non-fixed contamination plus the fixed contamination on the inaccessible surface averaged over 300 cm² (or the area of the surface if less than 300 cm²) does not exceed 4×10^4 Bq/cm² (1 microcurie/cm²) for beta and gamma and low toxicity alpha emitters, or 4×10^3 Bq/cm² (0.1 microcurie/cm²) for all other alpha emitters.

(2) SCO–II: A solid object on which the limits for SCO–I are exceeded and on which:

(i) The non-fixed contamination on the accessible surface averaged over 300 cm² (or the area of the surface if less than 300 cm²) does not exceed 400 Bq/cm² (10^{-2} microcurie/cm²) for beta and gamma and low toxicity alpha emitters or 40 Bq/cm² (10^{-3} microcurie/cm²) for all other alpha emitters;

(ii) The fixed contamination on the accessible surface averaged over 300 cm² (or the area of the surface if less than 300 cm²) does not exceed 8×10^5 Bq/cm² (20 microcurie/cm²) for beta and gamma and low toxicity alpha emitters, or 8×10^4 Bq/cm² (2 microcuries/cm²) for all other alpha emitters; and

(iii) The non-fixed contamination plus the fixed contamination on the inaccessible surface averaged over 300 cm² (or the area of the surface if less than 300 cm²) does not exceed 8×10^5 Bq/cm² (20 microcuries/cm²) for beta and gamma and low toxicity alpha emitters, or 8×10^4 Bq/cm² (2 microcuries/cm²) for all other alpha emitters.

Transport index (TI) means the dimensionless number (rounded up to the next tenth) placed on the label of a package to designate the degree of control to be exercised by the carrier during transportation. The transport index is determined as follows:

(1) For nonfissile material packages, the number determined by multiplying the maximum radiation level in milliSievert(s) per hour at one meter (3.3 feet) from the external surface of the package by 100 (equivalent to the maximum radiation level in millirem per hour at one meter (3.3 feet)); or

(2) For fissile material packages, the number determined by multiplying the maximum radiation level in milliSievert per hour at one meter (3.3 feet) from any external surface of the package by 100 (equivalent to the maximum radiation level in millirem per hour at one meter (3.3 feet)) or, for criticality control purposes, the number obtained by dividing 50 by the allowable number of packages which may be transported together, whichever number is larger.

Type A quantity means a quantity of Class 7 (radioactive) material, the aggregate radioactivity which does not exceed A_1 for special form Class 7 (radioactive) material or A_2 for normal form Class 7 (radioactive) material, where A_1 and A_2 values are given in § 173.435 or are determined in accordance with § 173.433.

Type B quantity means a quantity of material greater than a Type A quantity.

Unilateral approval means approval of a package solely by the competent authority of the country of origin.

Unirradiated thorium means thorium containing not more than 10^{-7} grams uranium-233 per gram of thorium-232.

Unirradiated uranium means uranium containing not more than 10^{-6} grams plutonium per gram of uranium-235 and a fission product activity of not more than 9 MBq (0.24 millicuries) of fission products per gram of uranium-235.

Uranium—natural, depleted or enriched means the following:

(1) ''Natural uranium'' means uranium with the naturally occurring distribution of uranium isotopes (approximately 0.711 weight percent uranium-235, and the remainder essentially uranium-238).

(2) ''Depleted uranium'' means uranium containing less uranium-235 than the naturally occurring distribution of uranium isotopes.

(3) ''Enriched uranium'' means uranium containing more uranium-235 than the naturally occurring distribution of uranium isotopes.

§ 173.410 General design requirements.

In addition to the requirements of subparts A and B of this part, each package used for the shipment of Class 7 (radioactive) materials must be designed so that—

(a) The package can be easily handled and properly secured in or on a conveyance during transport.

(b) Each lifting attachment that is a structural part of the package must be designed with a minimum safety factor of three against yielding when used to lift the package in the intended manner, and it must be designed so that failure of any lifting attachment under excessive load would not impair the ability of the package to meet other requirements of this subpart. Any other structural part of the package which could be used to lift the package must be capable of being rendered inoperable for lifting the package during transport or must be designed with strength equivalent to that required for lifting attachments.

(c) The external surface, as far as practicable, will be free from protruding features and will be easily decontaminated.

(d) The outer layer of packaging will avoid, as far as practicable, pockets or crevices where water might collect.

(e) Each feature that is added to the package will not reduce the safety of the package.

(f) The package will be capable of withstanding the effects of any acceleration, vibration or vibration resonance (see § 178.608 of this subchapter) that may arise under normal conditions of transport without any deterioration in the effectiveness of the closing devices on the various receptacles or in the integrity of the package as a whole and without loosening or unintentionally releasing the nuts, bolts, or other securing devices even after repeated use (see §§ 173.24 and 173.24a).

(g) The materials of construction of the packaging and any components or structure will be physically and chemically compatible with each other and with the package contents. The behavior of the packaging and the package contents under irradiation will be taken into account.

(h) All valves through which the package contents could escape will be protected against unauthorized operation;

(i) For transport by air—

(1) The temperature of the accessible surfaces of the package will not exceed 50°C (122°F) at an ambient temperature of 38°C (100°F) with no account taken for insulation;

(2) The integrity of containment will not be impaired if the package is exposed to ambient temperatures ranging from −40°C (−40°F) to +55°C (131°F); and

(3) Packages containing liquid contents will be capable of withstanding, without leakage, an internal pressure that produces a pressure differential of not less than 95 kPa (13.8 lb/in^2).

§ 173.411 Industrial packagings.

(a) *General.* Each industrial packaging must comply with the requirements of this section which specifies packaging tests, and record retention applicable to Industrial Packaging Type 1 (IP–1), Industrial Packaging Type 2 (IP–2), and Industrial Packaging Type 3 (IP–3).

(b) *Industrial packaging certification and tests.* (1) Each IP–1 must meet the general design requirements prescribed in § 173.410.

(2) Each IP–2 must meet the general design requirements prescribed in § 173.410 and when subjected to the tests specified in § 173.465 (c) and (d) or evaluated against these tests by any of the methods authorized by § 173.461(a), must prevent:

(i) Loss or dispersal of the radioactive contents; and

(ii) A greater than 20% increase in the radiation levels recorded or calculated at the external surfaces for the condition before the test.

(3) Each IP–3 packaging must meet the requirements for an IP–1 and an IP–2, and must meet the requirements specified in § 173.412(a) through § 173.412(j).

(4) Each specification IM 101 or IM 102 portable tank (§§ 178.270, 178.271, 178.272 of this subchapter) that is certified as meeting the requirements for an IP–2 or IP–3 must:

(i) Satisfy the requirements for IP–2 or IP–3, respectively;

(ii) Be capable of withstanding a test pressure of 265 kPa (37.1 pounds per square inch) gauge;

(iii) Be designed so that any added shielding is capable of withstanding the static and dynamic stresses resulting from normal handling and normal conditions of transport; and

(iv) Be designed so that loss of shielding will not result in a significant increase in the radiation levels recorded at the external surfaces.

(5) Each freight container that is certified as meeting the requirements of IP–2 or IP–3, must—

(i) Satisfy the requirements for IP–2 or IP–3, respectively;

(ii) Be designed to conform to the requirements of ISO 1496–3–1995(E), ''Series 1 Freight Containers—Specifications and Testing—Part 3: Tank Containers for Liquids, Gases and Pressurized Dry Bulk'';

(iii) Be designed so that loss of shielding will not result in a significant increase in the radiation levels recorded at the external surfaces if they are subjected to the tests specified in ISO 1496/1–1995(E); and

(iv) For international transportation, have a safety approval plate in conformance with 49 CFR 451.21 through 451.25.

(c) Except for IP–1 packagings, each offeror of an industrial package must maintain on file for at least one year after the latest shipment, and shall provide to the Associate Administrator for Hazardous Materials Safety on request, complete documentation of tests and an engineering evaluation or comparative data showing that the construction methods, packaging design, and materials of construction comply with that specification.

§ 173.412 Additional design requirements for Type A packages.

In addition to meeting the general design requirements prescribed in § 173.410, each Type A packaging must be designed so that—

(a) The outside of the packaging incorporates a feature, such as a seal, that is not readily breakable, and that, while intact, is evidence that the package has not been opened. In the case of packages shipped in closed transport vehicles in exclusive use, the cargo compartment, instead of the individual packages, may be sealed.

(b) The smallest external dimension of the package is not less than 10 centimeters (4 inches).

(c) Containment and shielding is maintained during transportation and storage in a temperature range of −40°C (−40°F) to 70°C (158°F). Special attention shall be given to liquid contents and to the potential degradation of the packaging materials within the temperature range.

(d) The packaging must include a containment system securely closed by a positive fastening device that cannot be opened unintentionally or by pressure that may arise within the package during normal transport. Special form Class 7 (radioactive) material, as demonstrated in accordance with § 173.469, may be considered as a component of the containment system. If the containment system forms a separate unit of the package, it must be securely closed by a positive fastening device that is independent of any other part of the package.

(e) For each component of the containment system account is taken,

where applicable, of radiolytic decomposition of materials and the generation of gas by chemical reaction and radiolysis.

(f) The containment system will retain its radioactive contents under the reduction of ambient pressure to 25 kPa (3.6 pounds per square inch).

(g) Each valve, other than a pressure relief device, is provided with an enclosure to retain any leakage.

(h) Any radiation shield that encloses a component of the packaging specified as part of the containment system will prevent the unintentional escape of that component from the shield.

(i) Failure of any tie-down attachment that is a structural part of the packaging, under both normal and accident conditions, must not impair the ability of the package to meet other requirements of this subpart.

(j) When evaluated against the performance requirements of this section and the tests specified in § 173.465 or using any of the methods authorized by § 173.461(a), the packaging will prevent—

(1) Loss or dispersal of the radioactive contents; and

(2) A significant increase in the radiation levels recorded or calculated at the external surfaces for the condition before the test.

(k) Each packaging designed for liquids will—

(1) Be designed to provide for ullage to accommodate variations in temperature of the contents, dynamic effects and filling dynamics;

(2) Meet the conditions prescribed in paragraph (j) of this section when subjected to the tests specified in § 173.466 or evaluated against these tests by any of the methods authorized by § 173.461(a); and

(3) Either—

(i) Have sufficient suitable absorbent material to absorb twice the volume of the liquid contents. The absorbent material must be compatible with the package contents and suitably positioned to contact the liquid in the event of leakage; or

(ii) Have a containment system composed of primary inner and secondary outer containment components designed to assure retention of the liquid contents within the secondary outer component in the event that the primary inner component leaks.

(l) Each package designed for gases, other than tritium not exceeding 40 TBq (1000Ci) or noble gases not exceeding the A_2 value appropriate for the noble gas, will be able to prevent loss or dispersal of contents when the package is subjected to the tests prescribed in § 173.466 or evaluated against these tests by any of the methods authorized by § 173.461(a).

§ 173.413 Requirements for Type B packages.

Except as provided in § 173.416, each Type B(U) or Type B(M) package must be designed and constructed to meet the applicable requirements specified in 10 CFR Part 71.

§ 173.415 Authorized Type A packages.

The following packages are authorized for shipment if they do not contain quantities exceeding A_1 or A_2 as appropriate:

(a) DOT Specification 7A (§ 178.350 of this subchapter) Type A general packaging. Each offeror of a Specification 7A package must maintain on file for at least one year after the latest shipment, and shall provide to DOT on request, complete documentation of tests and an engineering evaluation or comparative data showing that the construction methods, packaging design, and materials of construction comply with that specification. Use of Specification 7A packagings designed in accordance with the requirements of § 178.350 of this subchapter in effect on June 30, 1983 (see 49 CFR Part 178 revised as of October 1, 1982), is not authorized after April 1, 1997.

(b) Any other Type A packaging that also meets the applicable standards for fissile materials in 10 CFR Part 71 and is used in accordance with § 173.471.

(c) Any Type B, B(U) or B(M) packaging authorized pursuant to § 173.416.

(d) Any foreign-made packaging that meets the standards in IAEA ''Safety Series No. 6'' and bears the marking ''Type A'' and was used for the import of Class 7 (radioactive) materials. Such packagings may be subsequently used for domestic and export shipments of Class 7 (radioactive) materials provided the offeror obtains the applicable documentation of tests and engineering evaluations and maintains the documentation on file in accordance with paragraph (a) of this section. These packagings must conform with requirements of the country of origin (as indicated by the packaging marking) and the IAEA regulations applicable to Type A packagings.

§ 173.416 Authorized Type B packages.

Each of the following packages is authorized for shipment of quantities exceeding A_1 or A_2, as appropriate:

(a) Any Type B, Type B(U) or Type B(M) packaging that meets the applicable requirements of 10 CFR Part 71 and that has been approved by the U.S. Nuclear Regulatory Commission may be shipped pursuant to § 173.471.

(b) Any Type B, B(U) or B(M) packaging that meets the applicable requirements of the regulations of the International Atomic Energy Agency (IAEA) in its ''Regulations for the Safe Transport of Radioactive Materials, Safety Series No. 6'' and for which the foreign competent authority certificate has been revalidated by DOT pursuant to § 173.473. These packagings are authorized only for export and import shipments.

(c) DOT Specification 6M (§ 178.354 of this subchapter) metal packaging, only for solid or gaseous Class 7 (radioactive) materials that will not undergo pressure-generating decomposition at temperatures up to 121°C (250°F) and that do not generate more than 10 watts of radioactive decay heat.

(d) For contents in other than special form; DOT Specification 20WC (§ 178.362 of this subchapter), wooden protective jacket, when used with a single, snug-fitting inner DOT Specification 2R (§ 178.360 of this subchapter). For liquid contents, the inner packaging must conform to § 173.412(j) and (k).

(e) For contents in special form only; DOT Specification 20WC (§ 178.362 of this subchapter), wooden protective jacket, with a single snug-fitting inner Type A packaging that has a metal outer wall and conforms to § 178.350 of this subchapter. Radioactive decay heat may not exceed 100 watts.

(f) For contents in special form only; DOT Specification 21WC (§ 178.364 of this subchapter), wooden protective overpack, with a single inner DOT Specification 2R (§ 178.360 of this subchapter). Contents must be loaded within the inner packaging in such a manner as to prevent loose movement during transportation. The inner packaging must be securely positioned and centered within the overpack so that there will be no significant displacement of the inner packaging if subjected to the 9 meter (30 feet) drop test described in 10 CFR part 71.

§ 173.417 Authorized fissile materials packages.

(a) Except as provided in § 173.453, fissile materials containing not more than A_1 or A_2 as appropriate, must be packaged in one of the following packagings:

(1) DOT Specification 6L (§ 178.352 of this subchapter), metal packaging, for materials prescribed in paragraph (b)(1) of this section.

(2) DOT Specification 6M (§ 178.354 of this subchapter), metal packaging, for materials prescribed in paragraph (b)(2) of this section.

(3) Any packaging listed in § 173.415, limited to the Class 7 (radioactive) materials specified in 10 CFR part 71, subpart C.

(4) Any other Type A or Type B, Type B(U), or Type B(M) packaging for fissile Class 7 (radioactive) materials that also meets the applicable standards for fissile materials in 10 CFR part 71.

(5) Any other Type A or Type B, Type B(U), or Type B(M) packaging that also meets the applicable requirements for fissile material packaging in Section V of the International Atomic Energy Agency ''Regulations for the Safe Transport of Radioactive Materials, Safety Series No. 6,'' and for which the foreign competent authority certificate has been revalidated by the U.S. Competent Authority, in accordance with § 173.473. These packages are authorized only for export and import shipments.

(6) A 55-gallon 1A2 steel drum, meeting the applicable packaging testing requirements of subpart M of Part 178 of this subchapter at the packing group I performance level, subject to the following conditions:

(i) The quantity may not exceed 350 grams of uranium-235 in any non-pyrophoric form, enriched to any degree in the uranium-235 isotope;

(ii) Each drum must have a minimum 18 gauge body and bottom head and 16 gauge removable top head with one or more corrugations in the cover near the periphery;

(iii) Closure must conform to § 178.352 of this subchapter;

(iv) At least four equally spaced 12 millimeter (0.5 inch) diameter vent holes must be provided on the sides of the drum near the top, each covered with weatherproof tape; or equivalent device;

(v) Appropriate primary, inner containment of the contents and sufficient packaging material, such as plastic or metal jars or cans, must be provided such that Specification 7A (§ 178.350 of this subchapter) provisions are satisfied by the inner packaging;

(vi) Each inner container must be capable of venting if subjected to the thermal test described in 10 CFR part 71;

(vii) Liquid contents must be packaged in accordance with § 173.412 (j) and (k); and

(viii) The maximum weight of contents, including internal packaging, may not exceed 91 kilograms (200 pounds) with fissile material content limited as shown in Table 2:

TABLE 2.—FISSILE MATERIAL CONTENT AND TRANSPORT INDEX FOR UN1A2 PACKAGE

Maximum quantity and minimum transport index		Maximum No. of packages transported as a fissile material controlled shipment
U–235 per package (grams)	Minimum transport index per package	
350	1.8	72
300	1.0	129
250	0.5	256
200	0.3	500
150	0.1	500
100	0.1	500
50	(1)	(2)

1 Transport index is limited by the external radiation levels.
2 Maximum number is limited by the total transport index.

(7) Any metal cylinder that meets the requirements of § 173.415 and § 178.350 of this subchapter for Specification 7A Type A packaging may be used for the transport of residual ''heels'' of enriched solid uranium hexafluoride without a protective overpack in accordance with Table 3, as follows:

TABLE 3.—ALLOWABLE CONTENT OF URANIUM HEXAFLUORIDE (UF^6) ''HEELS'' IN A SPECIFICATION 7A CYLINDER

	Maximum cylinder diameter		Cylinder volume		Maximum Uranium-235 enrichment (weight percent)	Maximum ''Heel'' weight per cylinder		
	Centimeters	Inches	Liters	Cubic Feet		UF6	Uranium-235	
							kg	(lb)
12.7	5	8.8	0.311	100.0	0.045	0.1	0.031	0.07
20.3	8	39.0	1.359	12.5	0.227	0.5	0.019	0.04
30.5	12	68.0	2.410	5.0	0.454	1.0	0.015	0.03
76.0	30	725.0	25.64	5.0	11.3	25.0	0.383	0.84
122.0	48	3,084.0	1 108.9	4.5	22.7	50.0	0.690	1.52
122.0	48	4,041.0	2 142.7	4.5	22.7	50.0	0.690	1.52

1 10 ton.
2 14 ton.

(8) DOT Specification 20PF–1, 20PF–2, or 20PF–3 (§ 178.356 of this subchapter), or Specification 21PF–1A, 21PF–1B, or 21PF–2 (§ 178.358 of this subchapter) phenolic-foam insulated overpack with snug fitting inner metal cylinders, meeting all requirements of §§ 173.24, 173.410, 173.412, and 173.420 and the following:

(i) Handling procedures and packaging criteria must be in accordance with DOE Report ORO–651 or ANSI N14.1.

(ii) Quantities of uranium hexafluoride are authorized as shown in Table 6 of this section, with each package assigned a minimum transport index as also shown.

(b) Fissile Class 7 (radioactive) materials with radioactive content exceeding A_1 or A_2 must be packaged in one of the following packagings:

(1) DOT Specification 6L (§ 178.352 of this subchapter), metal packaging. These packages may contain only uranium-235, plutonium-239, or plutonium-241, as metal, oxide, or compounds that do not decompose at temperatures up to 149°C (300°F). Radioactive decay heat output may not exceed 5 watts. Class 7 (radioactive) materials in normal form must be packaged in one or more tightly sealed metal or polyethylene bottles within a DOT Specification 2R (§ 178.360 of this subchapter) containment vessel. Authorized contents are limited in accordance with Table 4, as follows:

TABLE 4.—AUTHORIZED CONTENTS IN KILOGRAMS (KG) AND CONDITIONS FOR SPECIFICATION 6L PACKAGES

Uranium-235		Plutonium (Plutonium solutions are not authorized)		Minimum fissile transport index	Maximum No. of packages transported as a fissile material control shipment
H/X<=3[1]	3 H/X<= 10	H/X<= 10	10 <= H/X <= 20		
14	[2] 3.6	.....	.....	1.3	80
	.....	2.5	2.4	1.8	50

[1] H/X is the ratio of hydrogen to fissile atoms in their inner containment with all sources of hydrogen in the containment considered.
[2] Volume not to exceed 3.6 liters.

(2) DOT Specification 6M (§ 178.354 of this subchapter), metal packaging. These packages must contain only solid Class 7 (radioactive) materials that will not decompose at temperatures up to 121°C (250°F). Radioactive decay heat output may not exceed 10 watts. Class 7 (radioactive) materials in other than special form must be packaged in one or more tightly sealed metal cans or polyethylene bottles within a DOT Specification 2R (§ 178.360 of this subchapter) containment vessel.

(i) Packages are limited to the following amounts of fissile Class 7 (radioactive) materials: 1.6 kilograms of uranium-235; 0.9 kilograms of plutonium (except that due to the 10-watt thermal decay heat limitation, the limit for plutonium-238 is 0.02 kilograms); and 0.5 kilograms of uranium-233. The maximum ratio of hydrogen to fissile material may not exceed three, including all of the sources of hydrogen within the DOT Specification 2R containment vessel.

(ii) Maximum quantities of fissile material and other restrictions are given in Table 5. The minimum transport index to be assigned per package and for fissile material, controlled shipments and the allowable number of similar packages per conveyance and per transport vehicle are shown in Table 5. Where a maximum ratio of hydrogen to fissile material is specified in Table 5, only the hydrogen interspersed with the fissile material need be considered. For a uranium-233 shipment, the maximum inside diameter of the inner containment vessel may not exceed 12.1 centimeters (4.75 inches). Where necessary, a tight fitting steel insert must be used to reduce a larger diameter inner containment vessel specified in § 178.354 of this subchapter to the 12.1 centimeter (4.75 inch) limit. Table 5 is as follows:

TABLE 5.—AUTHORIZED CONTENTS FOR SPECIFICATION 6M PACKAGES [1]

Uranium-233 [5]			Uranium-235 [4 7]			Plutonium [2 3 4]			Minimum transport index	Maximum No. pkgs. transported as a fissile material control shipment
Metal or alloy	Compounds		Metal or alloy	Compounds		Metal or alloy	Compounds			
H/X=0 [8]	H/X=0	H/X<=3	H/X=0	H/X=0	H/X<=3	H/X=0	H/X=0	H/X<=3		
0.5	0.5	0.5	1.6	1.6	1.6	[9] 0.9	[9] 0.9	[9] 0.9	0	NA
3.6	4.4	2.9	7.2	7.6	5.3	3.1	4.1	3.4	0.1	1,250
4.2 [6]	5.2	3.5	8.7	9.6	6.4	3.4	4.5	4.1	0.2	625
5.2 [6]	6.8	4.5	11.2	13.9	8.3	4.2	.....	4.5	0.5	250
	.....	.....	13.5	16.0	10.1	4.5	.....	.....	1.0	125
	.....	.....	.....	26.0	16.1	.....	.....	.....	5.0	25
	.....	.....	.....	32.0	19.5	.....	.....	.....	10.0	12

[1] Quantity in kilograms.
[2] Minimum percentage of plutonium-240 is 5 weight percent.
[3] 4.5 kilogram limitation of plutonium due to watt decay heat limitation.
[4] For a mixture of uranium-235 and plutonium an equal amount of uranium-235 may be substituted for any portion of the plutonium authorized.
[5] Maximum inside diameter of specification 2R containment vessel not to exceed 12.1 centimeters (4.75 inches) (see paragraph (b)(2)(ii) of this section).
[6] Granulated or powdered metal with any particle less than 6.4 millimeters (0.25 inch) in the smallest dimension is not authorized.
[7] Maximum permitted uranium-235 enrichment is 93.5 percent.
[8] H/X is the ratio of hydrogen to fissile atoms in the inner containment.
[9] For P–238, the limit is 0.02 kg because of the 10 watt thermal decay heat limitation.

(3) Type B, or Type B(U), or B(M) packaging that meets the standards for packaging of fissile materials in 10 CFR part 71, and is approved by the U.S. Nuclear Regulatory Commission and used in accordance with § 173.471.

(4) Type B, B(U), or B(M) packaging that meets the applicable requirements for fissile Class 7 (radioactive) materials in Section V of the IAEA ''Regulations for the Safe Transport of Radioactive Materials, Safety Series No. 6'' and for which the foreign competent authority certificate has been revalidated by the U.S. Competent Authority in accordance with § 173.473. These packagings are authorized only for import and export shipments.

(5) DOT Specifications 20PF–1, 20PF–2, or 20PF–3 (§ 178.356 of this subchapter), or DOT Specifications 21PF–1A or 21PF–1B (§ 178.358 of this subchapter) phenolic-foam insulated overpack with snug fitting inner metal cylinders, meeting all requirements of §§ 173.24, 173.410, and 173.412, and the following:

(i) Handling procedures and packaging criteria must be in accordance with DOE Report ORO–651 or ANSI N14.1; and

(ii) Quantities of uranium hexafluoride are authorized as shown in Table 6, with each package assigned a minimum transport index as also shown:

TABLE 6.—AUTHORIZED QUANTITIES OF URANIUM HEXAFLUORIDE

Protective overpack specification number	Maximum inner cylinder diameter		Maximum weight of UF6 contents		Maximum U–235 enrichment (weight/percent)	Minimum transport index
	Centimeters	Inches	Kilograms	Pounds		
20PF–1	12.7	5	25	55	100.0	0.1
20PF–2	20.3	8	116	255	12.5	0.4
20PF–3	30.5	12	209	460	5.0	1.1
21PF–1A [1] or 21PF–1B [1]	[2] 76.0	[2] 30	2,250	4,950	5.0	5.0
21PF–1A [1] or 21PF–1B [1]	[3] 76.0	[3] 30	2,282	5,020	5.0	5.0
21PF–2 [1]	[2] 76.0	[2] 30	2,250	4,950	5.0	5.0
21PF–2 [1]	[3] 76.0	[3] 30	2,282	5,020	5.0	5.0

[1] For 76 cm (30 in) cylinders, the maximum H/U atomic ratio is 0.088.
[2] Model 30A inner cylinder (reference ORO–651).
[3] Model 30B inner cylinder (reference ORO–651).

§ 173.418 Authorized packages—pyrophoric Class 7 (radioactive) materials.

Pyrophoric Class 7 (radioactive) materials, as referenced in the § 172.101 Table of this subchapter, in quantities not exceeding A_2 per package must be transported in DOT Specification 7A packagings constructed of materials that will not react with, nor be decomposed by, the contents. Contents of the package must be—

(a) In solid form and must not be fissile unless excepted by § 173.453;

(b) Contained in sealed and corrosion resistant receptacles with positive closures (friction or slip-fit covers or stoppers are not authorized);

(c) Free of water and contaminants that would increase the reactivity of the material; and

(d) Inerted to prevent self-ignition during transport by either—

(1) Mixing with large volumes of inerting materials, such as graphite, dry sand, or other suitable inerting material, or blended into a matrix of hardened concrete; or

(2) Filling the innermost receptacle with an appropriate inert gas or liquid.

§ 173.419 Authorized packages—oxidizing Class 7 (radioactive) materials.

(a) An oxidizing Class 7 (radioactive) material, as referenced in the § 172.101 Table of this subchapter, is authorized in quantities not exceeding an A_2 per package, in a DOT Specification 7A package provided that—

(1) The contents are:

(i) Not fissile;

(ii) Packed in inside packagings of glass, metal or compatible plastic; and

(iii) Cushioned with a material that will not react with the contents; and

(2) The outside packaging is made of wood, metal, or plastic.

(b) The package must be capable of meeting the applicable test requirements of § 173.465 without leakage of contents.

(c) For shipment by air, the maximum quantity in any package may not exceed 11.3 kilograms (25 pounds).

§ 173.420 Uranium hexafluoride (fissile, fissile excepted and non-fissile).

(a) In addition to any other applicable requirements of this subchapter, uranium hexafluoride, fissile, fissile excepted or non-fissile, must be offered for transportation as follows:

(1) Before initial filling and during periodic inspection and test, packagings must be cleaned in accordance with American National Standard N14.1.

(2) Packagings must be designed, fabricated, inspected, tested and marked in accordance with—

(i) American National Standard N14.1 (1990, 1987, 1982, 1971) in effect at the time the packaging was manufactured;

(ii) Specifications for Class DOT–106A multi-unit tank car tanks (§§ 179.300 and 179.301 of this subchapter); or

(iii) Section VIII, Division I of the ASME Code, provided the packaging—

(A) Was manufactured on or before June 30, 1987;

(B) Conforms to the edition of the ASME Code in effect at the time the packaging was manufactured;

(C) Is used within its original design limitations; and

(D) Has shell and head thicknesses that have not decreased below the minimum value specified in the following table:

Packaging model	Minimum thickness; millimeters (inches)
1S, 2S	1.58 (0.062)
5A, 5B, 8A	3.17 (0.125)
12A, 12B	4.76 (0.187)
30B	7.93 (0.312)
48A, F, X, and Y	12.70 (0.500)
48T, O, OM, OM Allied, HX, H, AND G.	6.35 (0.250)

(3) Uranium hexafluoride must be in solid form.

(4) The volume of solid uranium hexafluoride, except solid depleted uranium hexafluoride, at 20°C (68° F) may not exceed 61% of the certified volumetric capacity of the packaging. The volume of solid depleted uranium hexafluoride at 20° C (68° F) may not exceed 62% of the certified volumetric capacity of the packaging.

(5) The pressure in the package at 20° C (68° F) must be less than 101.3 kPa (14.8 psia).

(b) Packagings for uranium hexafluoride must be periodically inspected, tested, marked and otherwise conform with the American National Standard N14.1–1990.

(c) Each repair to a packaging for uranium hexafluoride must be performed in accordance with American National Standard N14.1–1990.

§ 173.421 Excepted packages for limited quantities of Class 7 (radioactive) materials.

(a) A Class 7 (radioactive) material whose activity per package does not exceed the limits specified in § 173.425 and its packaging are excepted from the specification packaging, marking, labeling and, if not a hazardous substance or hazardous waste, the shipping paper and certification requirements of this subchapter and requirements of this subpart if:

(1) Each package meets the general design requirements of § 173.410;

(2) The radiation level at any point on the external surface of the package does not exceed 0.005 mSv/hour (0.5 mrem/hour);

(3) The nonfixed (removable) radioactive surface contamination on the external surface of the package does not exceed the limits specified in § 173.443(a);

(4) The outside of the inner packaging or, if there is no inner packaging, the outside of the packaging itself bears the marking ''Radioactive'';

(5) Except as provided in § 173.426, the package does not contain more than 15 grams of uranium-235; and

(6) The material is otherwise prepared for shipment as specified in accordance with § 173.422.

(b) A limited quantity of Class 7 (radioactive) material that is a hazardous substance or a hazardous waste, is not subject to the provisions in § 172.203(d) or § 172.204(c)(4) of this subchapter.

§ 173.422 Additional requirements for excepted packages containing Class 7 (radioactive) materials.

(a) Excepted packages prepared for shipment under the provisions of § 173.421, § 173.424, § 173.426, or § 173.428 must be certified as being acceptable for transportation by having a notice enclosed in or on the package, included with the packing list, or otherwise forwarded with the package. This notice must include the name of the consignor or consignee and one of the following statements, as appropriate:

(1) ''This package conforms to the conditions and limitations specified in 49 CFR 173.421 for radioactive material, excepted package-limited quantity of material, UN2910'';

(2) ''This package conforms to the conditions and limitations specified in 49 CFR 173.424 for radioactive material, excepted package-instruments or articles, UN2910'';

(3) ''This package conforms to the conditions and limitations specified in 49 CFR 173.426 for radioactive material, excepted package-articles manufactured from natural or depleted uranium, or natural thorium, UN2910''; or

(4) ''This package conforms to the conditions and limitations specified in 49 CFR 173.428 for radioactive material, excepted package-empty packaging, UN2910.''

(b) An excepted package of Class 7 (radioactive) material that is classed as Class 7 and is prepared for shipment under the provisions of § 173.421, § 173.423, § 173.424, § 173.426, or § 173.428 is not subject to the requirements of this subchapter, except for—

(1) Sections 171.15, 171.16, 174.750, 176.710, and 177.861 of this subchapter, pertaining to the reporting of incidents and decontamination, when transported by a mode other than air; and

(2) Sections 171.15, 171.16, 175.45, and 175.700(b) of this subchapter pertaining to the reporting of incidents and decontamination when transported by aircraft.

§ 173.423 Requirements for multiple hazard limited quantity Class 7 (radioactive) materials.

(a) Except as provided in § 173.4, when a limited quantity radioactive material meets the definition of another hazard class or division, it must be—

(1) Classed for the additional hazard;

(2) Packaged to conform with the requirements specified in § 173.421(a)(1) through (a)(5) or § 173.424(a) through (g), as appropriate; and

(3) Offered for transportation in accordance with the requirements applicable to the hazard for which it is classed.

(b) A limited quantity Class 7 (radioactive) material which is classed other than Class 7 in accordance with this subchapter is excepted from the requirements of §§ 173.422(a), 172.203(d), and 172.204(c)(4) of this subchapter if the entry ''Limited quantity radioactive material'' appears on the shipping paper in association with the basic description.

§ 173.424 Excepted packages for radioactive instruments and articles.

A radioactive instrument or article and its packaging is excepted from the specification packaging, shipping paper and certification, marking and labeling requirements of this subchapter and requirements of this subpart, if:

(a) Each package meets the general design requirements of § 173.410;

(b) The activity of the instrument or article does not exceed the relevant limit listed in Table 7 in § 173.425;

(c) The total activity per package does not exceed the relevant limit listed in Table 7 in § 173.425;

(d) The radiation level at 10 cm (4 in) from any point on the external surface of any unpackaged instrument or article does not exceed 0.1 mSv/hour (10 mrem/hour);

(e) The radiation level at any point on the external surface of a package bearing the article or instrument does not exceed 0.005 mSv/hour (0.5 mrem/hour), or, for exclusive use domestic shipments, 0.02 mSv (2 mrem/hour);

(f) The nonfixed (removable) radioactive surface contamination on the external surface of the package does not exceed the limits specified in § 173.443(a);

(g) Except as provided in § 173.426, the package does not contain more than 15 grams of uranium-235; and

(h) The package is otherwise prepared for shipment as specified in § 173.422.

§ 173.425 Table of activity limits—excepted quantities and articles.

The limits applicable to instruments, articles, and limited quantities subject to exceptions under §§ 173.421 and 173.424 are set forth in Table 7 as follows:

TABLE 7.—ACTIVITY LIMITS FOR LIMITED QUANTITIES, INSTRUMENTS, AND ARTICLES

Nature of contents	Instruments and articles		Materials package limits [1]
	Limits for each instrument or article [1]	Package limits [1]	
Solids:			
Special form	$10^{-2}A_1$	A_1	$10^{-3}A_14$
Other form	$10^{-2}A_2$	A_2	$10^{-3}A_2$
Liquids—Tritiated water:			
<0.0037 TBq/liter (0.1 Ci/L)			37 TBq (1,000 Ci)
0.0037 TBq to 0.037 TBq/L (0.1 Ci to 1.0 Ci/L)			3.7 TBq (100 Ci)
>0.037 TBq/L (1.0 Ci/L)			0.037 TBq (1.0 Ci)
Other Liquids	$10^{-3}A_2$	$10A^1A_2$	$10^{-4}A_2$
Gases:			
Tritium	$2 \times 10^{-2}A_2$	$2 \times 10^{-1}A_2$	$2 \times 10^{-2}A_2$
Special form	$10^{-3}A_1$	$10^{-2}A_1$	$10^{-3}A_1$
Other form	$10^{-3}A_2$	$10^{-2}A_2$	$10^{-3}A_2$

[1] For mixtures of radionuclides see § 173.433(b).

§ 173.426 Excepted packages for articles containing natural uranium or thorium.

A manufactured article in which the sole Class 7 (radioactive) material content is natural or unirradiated depleted uranium or natural thorium and its packaging is excepted from the specification packaging, shipping paper and certification, marking, and labeling requirements of this subchapter and requirements of this subpart if:

(a) Each package meets the general design requirements of § 173.410;

(b) The outer surface of the uranium or thorium is enclosed in an inactive sheath made of metal or other durable protective material;

(c) The conditions specified in § 173.421 (b), (c), and (d) are met; and

(d) The article is otherwise prepared for shipment as specified in § 173.422.

§ 173.427 Transport requirements for low specific activity (LSA) Class 7 (radioactive) materials and surface contaminated objects (SCO).

(a) In addition to other applicable requirements specified in this subchapter, low specific activity (LSA) materials and surface contaminated objects (SCO), unless excepted by paragraph (d) of this section, must be packaged in accordance with paragraph (b) or (c) of this section and must be transported in accordance with the following conditions:

(1) The external dose rate must not exceed an external radiation level of 10 mSv/h (1 rem/h) at 3 meters from the unshielded material;

(2) The quantity of LSA and SCO material in any single conveyance must not exceed the limits specified in Table 9;

(3) LSA material and SCO that are or contain fissile material must meet the applicable requirements of § 173.451;

(4) Packages must meet the contamination control limits specified in § 173.443;

(5) External radiation levels must comply with § 173.441; and

(6) For LSA material and SCO required by this section to be consigned as exclusive use:

(i) Shipments must be loaded by the consignor and unloaded by the consignee from the conveyance or freight container in which originally loaded;

(ii) There must be no loose Class 7 (radioactive) material in the conveyance, however, when the conveyance is the packaging there must be no leakage of Class 7 (radioactive) material from the conveyance;

(iii) Packages must be braced so as to prevent shifting of lading under conditions normally incident to transportation;

(iv) Specific instructions for maintenance of exclusive use shipment controls must be provided by the offeror to the carrier. Such instructions must be included with the shipping paper information;

(v) Except for shipments of unconcentrated uranium or thorium ores, the transport vehicle must be placarded in accordance with subpart F of Part 172 of this subchapter;

(vi) For domestic transportation only, packages are excepted from the marking and labeling requirements of this subchapter. However, the exterior of each nonbulk package must be stenciled or otherwise marked ''Radioactive—LSA'' or ''Radioactive—SCO'', as appropriate, and nonbulk packages that contain a hazardous substance must also be stenciled or otherwise marked with the letters ''RQ'' in association with the above description; and

(vii) Except when transported in an industrial package in accordance with Table 8, transportation by aircraft is prohibited.

(b) Except as provided in paragraph (c) of this section, LSA material and SCO must be packaged as follows:

(1) In an industrial package (IP–1, IP–2 or IP–3; § 173.411), subject to the limitations of Table 8;

(2) For domestic transportation only, in a DOT Specification 7A (§ 178.350 of this subchapter) Type A package. The requirements of § 173.412 (a), (b), (c) and (k) do not apply; or

(3) For domestic transportation only, in a strong, tight package that prevents leakage of the radioactive content under normal conditions of transport. In addition to the requirements of paragraph (a) of this section, the following requirements must be met:

(i) The shipment must be exclusive use;

(ii) The quantity of Class 7 (radioactive) material in each packaging may not exceed an A_2 quantity.

(c) LSA–I and SCO–I (see § 173.403), unless packaged in accordance with paragraph (b) of this section, must be packaged in bulk packagings in accordance with this paragraph. The shipment must be, in addition to complying with the applicable requirements of paragraph (a) of this section, exclusive use:

(1) *Solids.* Packages must be strong tight packagings, meeting the requirements of subpart B of this Part, transported in a closed transport vehicle. The requirements of § 173.410 do not apply.

(2) *Liquids.* Liquids must be transported in the following packagings:

(i) Specification 103CW, 111A60W7 (§§ 179.200, 179.201, 179.202 of this

subchapter) tank cars. Bottom openings in tanks are prohibited; or

(ii) Specification MC 310, MC 311, MC 312, MC 331 or DOT 412 (§ 178.348 or § 178.337 of this subchapter) cargo tank motor vehicles. Bottom outlets are not authorized. Trailer-on-flat-car service is not authorized.

(d) Except for transportation by aircraft, LSA material and SCO that conform to the provisions specified in 10 CFR 20.2005 are excepted from all requirements of this subchapter pertaining to Class 7 (radioactive) materials when offered for transportation for disposal or recovery. A material which meets the definition of another hazard class is subject to the provisions of this subchapter relating to that hazard class.

(e) LSA and SCO that exceed the packaging limits in this section must be packaged in accordance with 10 CFR part 71.

(f) Tables 8 and 9 are as follows:

TABLE 8.—INDUSTRIAL PACKAGE INTEGRITY REQUIREMENTS FOR LSA MATERIAL AND SCO

Contents	Industrial packaging type	
	Exclusive use shipment	Nonexclusive use shipment
LSA–I:		
Solid	IP–1	IP–1
Liquid	IP–1	IP–2
LSA–II:		
Solid	IP–2	IP–2
Liquid and gas	IP–2	IP–3
LSA–IIII	IP–2	IP–3
SCO–I	IP–1	IP–1
SCO–II	IP–2	IP–2

TABLE 9—CONVEYANCE ACTIVITY LIMITS FOR LSA MATERIAL AND SCO

Nature of material	Activity limit for conveyances
LSA–I	No limit.
LSA–II and LSA–III; noncombustible solids.	No limit.
LSA–II and LSA–III; Combustible solids and all liquids and gases.	100 A_2
SCO	100 A_2

§ 173.428 Empty Class 7 (radioactive) materials packaging.

A packaging which previously contained Class 7 (radioactive) materials and has been emptied of contents as far as practical, is expected from the shipping paper and certification, marking and labeling requirements of this subchapter, and from requirements of this chapter, provided that—

(a) The packaging meets the requirements of § 173.421(b), (c), and (e) of this subpart;

(b) The packaging is in unimpaired condition and is securely closed so that there will be no leakage of Class 7 (radioactive) material under conditions normally incident to transportation;

(c) Internal contamination does not exceed 100 times the limits in § 173.443(a);

(d) Any labels previously applied in conformance with Subpart E of Part 172 of this subchapter are removed, obliterated, or covered and the ''Empty'' label prescribed in § 172.450 of this subchapter is affixed to the packaging; and

(e) The packaging is prepared for shipment as specified in § 173.422.

§ 173.431 Activity limits for Type A and Type B packages.

(a) Except for LSA material and SCO, a Type A package may not contain a quantity of Class 7 (radioactive) materials greater than A_1 for special form Class 7 (radioactive) material or A_2 for normal form Class 7 (radioactive) material as listed in § 173.435, or, for Class 7 (radioactive) materials not listed in § 173.435, as determined in accordance with § 173.433.

(b) The limits on activity contained in a Type B, Type B(U), or Type B(M) package are those prescribed in §§ 173.416 and 173.417, or in the applicable approval certificate under §§ 173.471, 173.472 or 173.473.

§ 173.433 Requirements for determining A_1 and A_2 values for radionuclides and for the listing of radionuclides on shipping papers and labels.

(a) Values of A_1 and A_2 for individual radionuclides that are the basis for many activity limits elsewhere in this subchapter are given in the table in § 173.435.

(b) For individual radionuclides whose identities are known, but which are not listed in the table in § 173.435, the determination of the values of A^1 and A_2 requires approval from the Associate Administrator for Hazardous Materials Safety except that the values of A_1 and A_2 in Table 10 may be used without obtaining approval from Associate Administrator for Hazardous Materials Safety.

(c) In calculating A_1 and A_2 values for a radionuclide not listed in the table in § 173.435, a single radioactive decay chain in which the radionuclides are present in their naturally-occurring proportions, and in which no daughter nuclide has a half life either longer than 10 days or longer than that of the parent nuclide, will be considered as a single radionuclide, and the activity to be taken into account and the A_1 or A_2 value to be applied will be those corresponding to the parent nuclide of that chain. Otherwise, the parent and daughter nuclides will be considered as a mixture of different nuclides.

(d) Mixtures of radionuclides whose identities and respective activities are known, must conform to the following conditions:

(1) For special form Class 7 (radioactive) material:

$$\sum_i \frac{B(i)}{A_1(i)} \quad \text{less than or equal to 1}$$

Where B(i) is the activity of radionuclide i and A_1(i) is the A_1 value for radionuclide i; or

(2) For other forms of Class 7 (radioactive) material, either—

$$\sum_i \frac{B(i)}{A_2(i)} \quad \text{less than or equal to 1}$$

Where B(i) is the activity of radionuclide i and A_2 (i) is the A_2 value for radionuclide i; or

$$A_2 \text{ for mixture} = \frac{1}{\sum_i \frac{f(i)}{A_2(i)}}$$

where f(i) is the fraction of activity of nuclide i in the mixture and A_2 (i) is the appropriate A_2 value for nuclide i.

(e) When the identity of each nuclide is known but the individual activities of some of the radionuclides are not known, the radionuclides may be grouped and the lowest A_1 or A_2 value, as appropriate, for the radionuclides in each group may be used in applying the formulas in paragraph (d) of this section. Groups may be based on the total alpha activity and the total beta/gamma activity when these are known, using the lowest A_1 or A_2 values for the alpha emitters or beta/gamma emitters, respectively.

(f) *Shipping papers and labeling. (1)* For mixtures of radionuclides, the radionuclides (n) that must be shown on shipping papers and labels in accordance with §§ 172.203 and 172.403 of this subchapter, respectively, must be determined on the basis of the following formula:

$$\sum_{i=1}^{n} \frac{a_{(i)}}{A_{(i)}} \geq 0.95 \sum_{i=1}^{n+m} \frac{a_{(i)}}{A_{(i)}}$$

Where n + m represents all the radionuclides in the mixture, m are the radionuclides that do not need to be considered, a_i is the activity of radionuclide i in the mixture, and A_i is the A_1 or A_2 value, as appropriate for radionuclide i.

(g) Table 10 is as follows:

TABLE 10.—GENERAL VALUES FOR A_1 and A_2

Contents	A_1		A_2	
	(TBq)	(Ci)	(TBq)	(Ci)
Only beta or gamma emitting nuclides are known to be present	0.2	5	0.02	0.5
Alpha emitting nuclides are known to be present or relevant data are available	0.10	2.70	2×10^{-5}	5.41×10^{-4}

§ 173.434 Activity-mass relationships for uranium and natural thorium.

The table of activity-mass relationships for uranium and natural thorium are as follows:

Thorium and uranium enrichment[1](Wt% ^{235}U present)	Specific activity			
	TBq/gram	Grams/Tbq	Ci/gram	Grams/Ci
0.45 (depleted)	1.9×10^{-8}	5.4×10^{7}	5.0×10^{-7}	2.0×10^{6}
0.72 (natural)	2.6×10^{-8}	3.8×10^{7}	7.1×10^{-7}	1.4×10^{6}
1.0	2.8×10^{-8}	3.6×10^{7}	7.6×10^{-7}	1.3×10^{6}
1.5	3.7×10^{-8}	2.7×10^{7}	1.0×10^{-6}	1.0×10^{6}
5.0	1.0×10^{-7}	1.0×10^{7}	2.7×10^{-6}	3.7×10^{5}
10.0	1.8×10^{-7}	5.6×10^{6}	4.8×10^{-6}	2.1×10^{5}
20.0	3.7×10^{-7}	2.7×10^{6}	1.0×10^{-5}	1.0×10^{5}
35.0	7.4×10^{-7}	1.4×10^{6}	2.0×10^{-5}	5.0×10^{4}
50.0	9.3×10^{-7}	1.1×10^{6}	2.5×10^{-5}	4.0×10^{4}
90.0	2.1×10^{-6}	4.7×10^{5}	5.8×10^{-5}	1.7×10^{4}
93.0	2.6×10^{-6}	3.9×10^{5}	7.0×10^{-5}	1.4×10^{4}
95.0	3.4×10^{-6}	3.0×10^{5}	9.1×10^{-5}	1.1×10^{4}
Natural thorium	8.1×10^{-9}	1.2×10^{8}	2.2×10^{-7}	4.6×10^{6}

[1] The figures for uranium include representative values for the activity of uranium-234 which is concentrated during the enrichment process. The activity for thorium includes the equilibrium concentration of thorium-228.

§ 173.435 Table of A_1 and A_2 values for radionuclides.

The table of A_1 and A_2 values for radionuclides is as follows:

Symbol of radionuclide	Element and atomic number	A_1 (TBq)	A_1 (Ci)	A_2 (TBq)	A_2 (Ci)	Specific activity	
						(TBq/g)	(Ci/g)
Ac-225	Actinium(89)	0.6	16.2	1×10^{-2}	0.270	2.1×10^{3}	5.8×10^{4}
Ac-227		40	1080	2×10^{-5}	5.41×10^{-4}	2.7	7.2×10^{1}
Ac-228		0.6	16.2	0.4	10.8	8.4×10^{4}	2.2×10^{6}
Ag-105	Silver(47)	2	54.1	2	54.1	1.1×10^{3}	3.0×10^{4}
Ag-108m		0.6	16.2	0.6	16.2	9.7×10^{-1}	2.6×10^{1}
Ag-110m		0.4	10.8	0.4	10.8	1.8×10^{3}	4.7×10^{3}
Ag-111		0.6	16.2	0.5	13.5	5.8×10^{3}	1.6×10^{5}
Al-26	Aluminum(13)	0.4	10.8	0.4	10.8	7.0×10^{-4}	1.9×10^{-2}
Am-241	Americium(95)	2	54.1	2×10^{-4}	5.41×10^{-3}	1.3×10^{1}	3.4
Am-242m		2	54.1	2×10^{-4}	5.41×10^{-3}	3.6×10^{-1}	9.7×10^{5}
Am-243		2	54.1	2×10^{-4}	5.41×10^{-3}	7.4×10^{-3}	2.0×10^{-1}
Ar-37	Argon(18)	40	1080	40	1080	3.7×10^{3}	9.9×10^{4}
Ar-39		20	541	20	541	1.3×10^{3}	3.4×10^{1}
Ar-41		0.6	16.2	0.6	16.2	1.5×10^{6}	4.2×10^{7}
Ar-42		0.2	5.41	0.2	5.41	9.6	2.6×10^{2}
As-72	Arsenic(33)	0.2	5.41	0.2	5.41	6.2×10^{4}	1.7×10^{6}
As-73		40	1080	40	1080	8.2×10^{2}	2.2×10^{4}
As-74		1	27.0	0.5	13.5	3.7×10^{3}	9.9×10^{4}
As-76		0.2	5.41	0.2	5.41	5.8×10^{4}	1.6×10^{6}
As-77		20	541	0.5	13.5	3.9×10^{4}	1.0×10^{6}
At-211	Astatine(85)	30	811	2	54.1	7.6×10^{4}	2.1×10^{6}
Au-193	Gold(79)	6	162	6	162	3.4×10^{4}	9.2×10^{5}
Au-194		1	27.0	1	27.0	1.5×10^{4}	4.1×10^{5}
Au-195		10	270	10	270	1.4×10^{2}	3.7×10^{3}
Au-196		2	54.1	2	54.1	4.0×10^{3}	1.1×10^{5}
Au-198		3	81.1	0.5	13.5	9.0×10^{3}	2.4×10^{5}
Au-199		10	270	0.9	24.3	7.7×10^{3}	2.1×10^{5}
Ba-131	Barium(56)	2	54.1	2	54.1	3.1×10^{3}	8.4×10^{4}
Ba-133m		10	270	0.9	24.3	2.2×10^{4}	6.1×10^{5}
Ba-133		3	81.1	3	81.1	9.4	2.6×10^{2}
Ba-140		0.4	10.8	0.4	10.8	2.7×10^{3}	7.3×10^{4}
Be-7	Beryllium(4)	20	541	20	541	1.3×10^{4}	3.5×10^{5}

Symbol of radionuclide	Element and atomic number	A_1 (TBq)	A_1 (Ci)	A_2 (TBq)	A_2 (Ci)	Specific activity	
						(TBq/g)	(Ci/g)
Be-10		20	541	0.5	13.5	8.3×10^{-4}	2.2×10^{-2}
Bi-205	Bismuth(83)	0.6	16.2	0.6	16.2	1.5×10^{3}	4.2×10^{4}
Bi-206		0.3	8.11	0.3	8.11	3.8×10^{3}	1.0×10^{5}
Bi-207		0.7	18.9	0.7	18.9	1.9	5.2×10^{1}
Bi-210m		0.3	8.11	3×10^{-2}	0.811	2.1×10^{-5}	5.7×10^{-4}
Bi-210		0.6	16.2	0.5	13.5	4.6×10^{3}	1.2×10^{5}
Bi-212		0.3	8.11	0.3	8.11	5.4×10^{5}	1.5×10^{7}
Bk-247	Berkelium(97)	2	54.1	2×10^{-4}	5.41×10^{-3}	3.8×10^{-2}	1.0
Bk-249		40	1080	8×10^{-2}	2.16	6.1×10^{1}	1.6×10^{3}
Br-76	Bromine(35)	0.3	8.11	0.3	8.11	9.4×10^{4}	2.5×10^{6}
Br-77		3	81.1	3	81.1	2.6×10^{4}	7.1×10^{5}
Br-82		0.4	108	0.4	10.8	4.0×10^{4}	1.1×10^{6}
C-11	Carbon(6)	1	270	0.5	13.5	3.1×10^{7}	8.4×10^{8}
C-14		40	1080	2	54.1	1.6×10^{-1}	4.5
Ca-41	Calcium(20)	40	1080	40	1080	3.1×10^{-3}	8.5×10^{-2}
Ca-45		40	1080	0.9	24.3	6.6×10^{2}	1.8×10^{4}
Ca-47		0.9	24.3	0.5	13.5	2.3×10^{4}	6.1×10^{5}
Cd-109	Cadmium(48)	40	1080	1	27.0	9.6×10^{1}	2.6×10^{3}
Cd-113m		20	541	9×10^{-2}	2.43	8.3×10^{4}	2.2×10^{2}
Cd-115m		0.3	8.11	0.3	8.11	9.4×10^{2}	2.5×10^{4}
Cd-115		4	108	0.5	13.5	1.9×10^{4}	5.1×10^{5}
Ce-139	Cerium(58)	6	162	6	162	2.5×10^{26}	$.8\times10^{3}$
Ce-141		10	270	0.5	13.5	1.1×10^{3}	2.8×10^{4}
Ce-143		0.6	16.2	0.5	13.5	2.5×10^{4}	6.6×10^{5}
Ce-144		0.2	5.41	0.2	5.41	1.2×10^{2}	3.2×10^{3}
Cf-248	Californium (98)	30	811	3×10^{-3}	8.11×10^{-2}	5.8×10^{1}	1.6×10^{3}
Cf-249		2	54.1	2×10^{-4}	5.41×10^{-3}	1.5×10^{-1}	4.1
Cf-250		5	135	5×10^{-4}	1.35×10^{-2}	4.0	1.1×10^{2}
Cf-251		2	54.1	2×10^{-4}	5.41×10^{-3}	5.9×10^{-2}	1.6
Cf-252		0.1	2.70	1×10^{-3}	2.70×10^{-2}	2.0×10^{1}	5.4×10^{2}
Cf-253		40	1080	6×10^{-2}	1.62	1.1×10^{3}	2.9×10^{4}
Cf-254		3×10^{-3}	8.11×10^{-2}	6×10^{-4}	1.62×10^{-2}	3.1×10^{2}	8.5×10^{3}
Cl-36	Chlorine (17)	20	541	0.5	13.5	1.2×10^{-3}	3.3×10^{-2}
Cl-38		0.2	5.41	0.2	5.41	4.9×10^{6}	1.3×10^{8}
Cm-240	Curium(96)	40	1080	2×10^{-2}	0.541	7.5×10^{2}	2.0×10^{4}
Cm-241		2	54.1	0.9	24.3	6.1×10^{2}	1.7×10^{4}
Cm-242		40	1080	1×10^{-2}	0.270	1.2×10^{2}	3.3×10^{3}
Cm-243		3	81.1	3×10^{-4}	8.11×10^{-3}	1.9	5.2×10^{1}
Cm-244		4	1080	4×10^{-4}	1.08×10^{-2}	3.0	8.1×10^{5}
Cm-245		2	54.1	2×10^{-4}	5.41×10^{-3}	6.4×10^{-3}	1.7×10^{-1}
Cm-246		2	54.1	2×10^{-4}	5.41×10^{-3}	1.1×10^{-2}	3.1×10^{-1}
Cm-247		2	54.1	2×10^{-4}	5.41×10^{-3}	3.4×10^{-6}	9.3×10^{-5}
Cm-248		4×10^{-2}	1.08	5×10^{-5}	1.35×10^{-3}	1.6×10^{-4}	4.2×10^{-3}
Co-55	Cobalt(27)	0.5	13.5	0.5	13.5	1.1×10^{5}	3.1×10^{6}
Co-56		0.3	8.11	0.3	8.11	1.1×10^{3}	3.0×10^{4}
Co-57		8	216	8	216	3.1×10^{2}	8.4×10^{3}
Co-58m		40	1080	40	1080	2.2×10^{5}	5.9×10^{6}
Co-58		1	27.0	1	27.0	1.2×10^{3}	3.2×10^{4}
Co-60		0.4	10.8	0.4	10.8	4.2×10^{1}	1.1×10^{3}
Cr-51	Chromium(24)	30	811	30	811	3.4×10^{3}	9.2×10^{4}
Cs-129	Cesium(55)	4	108	4	108	2.8×10^{4}	7.6×10^{5}
Cs-131		40	1080	40	1080	3.8×10^{3}	1.0×10^{5}
Cs-132		1	27.0	1	27.0	5.7×10^{3}	1.5×10^{5}
Cs-134m		40	1080	9	243	3.0×10^{5}	8.0×10^{6}
Cs-134		0.6	16.2	0.5	13.5	4.8×10^{1}	1.3×10^{3}
Cs-135		40	1080	0.9	24.3	4.3×10^{-5}	1.2×10^{-3}
Cs-136		0.5	13.5	0.5	13.5	2.7×10^{3}	7.3×10^{4}
Cs-137		2	54.1	0.5	13.5	3.2	8.7×10^{1}
Cu-64	Copper(29)	5	135	0.9	24.3	1.4×10^{5}	3.9×10^{6}
Cu-67		9	243	0.9	24.3	2.8×10^{4}	7.6×10^{5}
Dy-159	Dysprosium(66)	20	541	20	541	2.1×10^{2}	5.7×10^{3}
Dy-165		0.6	16.2	0.5	13.5	3.0×10^{5}	8.2×10^{6}
Dy-166		0.3	8.11	0.3	8.11	8.6×10^{3}	2.3×10^{5}
Er-169	Erbium(68)	40	1080	0.9	24.3	3.1×10^{3}	8.3×10^{4}
Er-171		0.6	16.2	0.5	13.5	9.0×10^{4}	2.4×10^{6}
Es-253	Einsteinium(99)[a]	40	1080	5×10^{-1}	1.35		
Es-254		30	811	3×10^{-3}	8.11×10^{-2}		
Es-254m		0.6	16.2	0.4	10.8		
Es-255							
Eu-147	Europium(63)	2	54.1	2	54.1	1.4×10^{3}	3.7×10^{4}
Eu-148		0.5	13.5	0.5	13.5	6.0×10^{2}	1.6×10^{4}
Eu-149		20	541	20	541	3.5×10^{2}	9.4×10^{3}

Symbol of radionuclide	Element and atomic number	A_1 (TBq)	A_1 (Ci)	A_2 (TBq)	A_2 (Ci)	Specific activity	
						(TBq/g)	(Ci/g)
Eu-150		0.7	18.9	0.7	18.9	6.1×10^{4}	6.7×10^{6}
Eu-152m		0.6	16.2	0.5	13.5	8.2×10^{4}	2.2×10^{6}
Eu-152		0.9	24.3	0.9	24.3	6.5	1.8×10^{2}
Eu-154		0.8	21.6	0.5	13.5	9.8	2.6×10^{2}
Eu-155		20	541	2	54.1	1.8×10^{1}	4.9×10^{3}
Eu-156		0.6	16.2	0.5	13.5	2.0×10^{3}	5.5×10^{4}
F-18	Fluorine(9)	1	27.0	0.5	13.5	3.5×10^{5}	9.5×10^{7}
Fe-52	Iron(26)	0.2	5.41	0.2	5.41	2.7×10^{5}	7.3×10^{6}
Fe-55		40	1080	40	1080	8.8×10^{1}	2.4×10^{3}
Fe-59		0.8	21.6	0.8	21.6	1.8×10^{3}	3.0×10^{4}
Fe-60		40	1080	0.2	5.41	7.4×10^{-4}	2.0×10^{-2}
Fm-255	Fermium(100)[b]	40	1080	0.8	21.6		
Fm-257		40	1080	7×10^{-3}	1.89×10^{-3}		
Ga-67	Gallium(31)	6	162	6	162	2.2×10^{4}	6.0×10^{5}
Ga-68		0.3	8.11	0.3	8.11	1.5×10^{6}	4.1×10^{7}
Ga-72		0.4	10.8	0.4	10.8	1.1×10^{5}	3.1×10^{6}
Gd-146	Gadolinium(64)	0.4	10.8	0.4	10.8	6.9×10^{2}	1.9×10^{4}
Gd-148		3	81.1	3×10^{-4}	8.11×10^{-3}	6.7	2.9×10^{1}
Gd-153		10	270	5	135	1.3×10^{2}	3.5×10^{3}
Gd-159		4	108	0.5	13.5	3.9×10^{4}	1.1×10^{6}
Ge-68	Germanium(32)	0.3	8.11	0.3	8.11	2.6×10^{2}	7.1×10^{3}
Ge-71		40	1080	40	1080	5.8×10^{3}	1.6×10^{5}
Ge-77		0.3	8.11	0.3	8.11	1.3×10^{5}	3.6×10^{6}
H-3	Hydrogen(1)SeeT-Tritium.						
Hf-172	Hafnium(72)	0.5	13.5	0.3	8.11	4.1×10^{1}	1.1×10^{3}
Hf-175		3	81.1	3	81.1	3.9×10^{2}	1.1×10^{4}
Hf-181		2	54.1	0.9	24.3	6.3×10^{2}	1.7×10^{4}
Hf-182		4	108	3×10^{-2}	0.811	8.1×10^{-6}	2.2×10^{-4}
Hg-194	Mercury(80)	1	27.0	1	27.0	1.3×10^{-1}	3.5
Hg-195m		5	135	5	135	1.5×10^{4}	4.0×10^{5}
Hg-197m		10	270	0.9	24.3	2.5×10^{4}	6.7×10^{5}
Hg-197		10	270	10	270	9.2×10^{3}	2.5×10^{5}
Hg-203		4	108	0.9	24.3	5.1×10^{2}	1.4×10^{4}
Ho-163	Holmium(67)	40	1080	40	1080	2.7	7.6×10^{1}
Ho-166m		0.6	16.2	0.3	8.11	6.6×10^{-2}	1.8
Ho-166		0.3	8.11	0.3	8.11	2.6×10^{4}	7.0×10^{5}
I-123	Iodine(53)	6	162	6	162	7.1×10^{4}	1.9×10^{6}
I-124		0.9	24.3	0.9	24.3	9.3×10^{3}	2.5×10^{5}
I-125		20	541	2	54.1	6.4×10^{2}	1.7×10^{4}
I-126		2	54.1	0.9	24.3	2.9×10^{3}	8.0×10^{4}
I-129		Unlimited	Unlimited	Unlimited	Unlimited	6.5×10^{-6}	1.8×10^{-4}
I-131		3	81.1	0.5	13.5	4.6×10^{3}	1.2×10^{5}
I-132		0.4	10.8	0.4	10.8	3.8×10^{5}	1.0×10^{7}
I-133		0.6	16.2	0.5	13.5	4.2×10^{4}	1.1×10^{6}
I-134		0.3	8.11	0.3	8.11	9.9×10^{5}	2.7×10^{7}
I-135		0.6	16.2	0.5	13.5	1.3×10^{5}	3.5×10^{6}
In-111	Indium(49)	2	54.1	2	54.1	1.5×10^{4}	4.2×10^{5}
In-113m		4	108	4	108	6.2×10^{5}	1.7×10^{7}
In-114m		0.3	8.11	0.3	8.11	8.6×10^{2}	2.3×10^{4}
In-115m		6	162	0.9	24.3	2.2×10^{5}	6.1×10^{6}
Ir-189	Iridium(77)	10	270	10	270	1.9×10^{3}	5.2×10^{4}
Ir-190		0.7	18.9	0.7	18.9	2.3×10^{3}	6.2×10^{4}
Ir-192		1	27.0	0.5	13.5	3.4×10^{2}	9.2×10^{3}
Ir-193m		10	270	10	270	2.4×10^{3}	6.4×10^{4}
Ir-194		0.2	5.41	0.2	5.41	3.1×10^{4}	8.4×10^{5}
K-40	Potassium(19)	0.6	16.2	0.6	16.2	2.4×10^{-7}	6.4×10^{-6}
K-42		0.2	5.41	0.2	5.41	2.2×10^{5}	6.0×10^{6}
K-43		1.0	27.0	0.5	13.5	1.2×10^{5}	3.3×10^{6}
Kr-81	Krypton(36)	40	1080	40	1080	7.8×10^{-4}	2.1×10^{-2}
Kr-85m		6	162	6	162	3.0×10^{5}	8.2×10^{6}
Kr-85		20	541	10	270	1.5×10^{1}	3.9×10^{2}
Kr-87		0.2	5.41	0.2	5.41	1.0×10^{6}	2.8×10^{7}
La-137	Lanthanum(57)	40	1080	2	54.1	1.6×10^{-3}	4.4×10^{-2}
La-140		0.4	10.8	0.4	10.8	2.1×10^{4}	5.6×10^{5}
Lu-172	Lutetium(71)	0.5	13.5	0.5	13.5	4.2×10^{3}	1.1×10^{5}
Lu-173		8	216	8	216	5.6×10^{1}	1.5×10^{3}
Lu-174m		20	541	8	216	2.0×10^{2}	5.3×10^{3}
Lu-74		8	216	4	108	2.3×10^{1}	6.2×10^{2}
Lu-177		30	811	0.9	24.3	4.1×10^{3}	1.1×10^{5}
Mg-28	Magnesium(12)	0.2	5.41	0.2	5.41	2.0×10^{5}	5.4×10^{6}
Mn-52	Manganese(25)	0.3	8.11	0.3	8.11	1.6×10^{4}	4.4×10^{5}

Symbol of radionuclide	Element and atomic number	A_1 (TBq)	A_1 (Ci)	A_2 (TBq)	A_2 (Ci)	Specific activity	
						(TBq/g)	(Ci/g)
Mn-53		Unlimited	Unlimited	Unlimited	Unlimited	6.8×10^{-5}	1.8×10^{-3}
Mn-54		1	27.0	1	27.0	2.9×10^{2}	7.7×10^{3}
Mn-56		0.2	5.41	0.2	5.41	8.0×10^{5}	2.2×10^{7}
Mo-93	Molybdenum(42)	40	1080	7	189	4.1×10^{-2}	1.1
Mo-99		0.6	16.2	0.5	13.5[c]	1.8×10^{4}	4.8×10^{5}
N-13	Nitrogen(7)	0.6	16.2	0.5	13.5	5.4×10^{7}	1.5×10^{9}
Na-22	Sodium(11)	0.5	13.5	0.5	13.5	2.3×10^{2}	6.3×10^{3}
Na-24		0.2	5.41	0.2	5.41	3.2×10^{5}	8.7×10^{6}
Nb-92m	Niobium(41)	0.7	18.9	0.7	18.9	5.2×10^{3}	1.4×10^{5}
Nb-93m		40	1080	6	162	8.8	2.4×10^{2}
Nb-94		0.6	16.2	0.6	16.2	6.9×10^{-3}	1.9×10^{-1}
Nb-95		1	27.0	1	27.0	1.5×10^{3}	3.9×10^{4}
Nb-97		0.6	16.2	0.5	13.5	9.9×10^{5}	2.7×10^{7}
Nd-147	Neodymium(60)	4	108	0.5	13.5	3.0×10^{3}	8.1×10^{4}
Nd-149		0.6	16.2	0.5	13.5	4.5×10^{5}	1.2×10^{7}
Ni-59	Nickel(28)	40	1080	40	1080	3.0×10^{-3}	8.0×10^{-2}
Ni-63		40	1080	30	811	2.1	5.7×10^{1}
Ni-65		0.3	8.11	0.3	8.11	7.1×10^{5}	1.9×10^{7}
Np-235	Neptunium(93)	40	1080	40	1080	5.2×10^{1}	1.4×10^{3}
Np-236		7	189	1×10^{-3}	2.70×10^{-2}	4.7×10^{-4}	1.3×10^{-2}
Np-237		2	54.1	2×10^{-4}	5.41×10^{-3}	2.6×10^{-5}	7.1×10^{-4}
Np-239		6	162	0.5	13.5	8.6×10^{3}	2.3×10^{5}
Os-185	Osmium(76)	1	27.0	1	27.0	2.8×10^{2}	7.5×10^{3}
Os-191m		40	1080	40	1080	4.6×10^{4}	1.3×10^{6}
Os-191		10	270	0.9	24.3	1.6×10^{3}	4.4×10^{4}
Os-193		0.6	16.2	0.5	13.5	2.0×10^{4}	5.3×10^{5}
Os-194		0.2	5.41	0.2	5.41	1.1×10^{1}	3.1×10^{2}
P-32	Phosphorus(15)	0.3	8.11	0.3	8.11	1.1×10^{4}	2.9×10^{5}
P-33		40	1080	0.9	24.3	5.8×10^{3}	1.6×10^{5}
Pa-230	Protactinium(91)	2	54.1	0.1	2.70	1.2×10^{3}	3.3×10^{4}
Pa-231		0.6	16.2	$6\times10-5$	1.62×10^{-3}	1.7×10^{-3}	4.7×10^{-2}
Pa-233		5	135	0.9	24.3	7.7×10^{2}	2.1×10^{4}
Pb-201	Lead(82)	1	27.0	1	27.0	6.2×10^{4}	1.7×10^{6}
Pb-202		40	1080	2	54.1	1.2×10^{-4}	3.4×10^{-3}
Pb-203		3	81.1	3	81.1	1.1×10^{4}	3.0×10^{5}
Pb-205		Unlimited	Unlimited	Unlimited	Unlimited	4.5×10^{-6}	1.2×10^{-4}
Pb-210		0.6	16.2	9×10^{-3}	0.243	2.8	7.6×10^{1}
Pb-212		0.3	8.11	0.3	8.11	5.1×10^{4}	1.4×10^{6}
Pd-103	Palladium(46)	40	1080	40	1080	2.8×10^{3}	7.5×10^{4}
Pd-107	Unlimited	Unlimited	Unlimited	Unlimited	1.9×10^{-5}	5.1×10^{-4}	
Pd-109		0.6	16.2	0.5	13.5	7.9×10^{4}	2.1×10^{6}
Pm-143	Promethium(61)	3	81.1	3	81.1	1.3×10^{2}	3.4×10^{3}
Pm-144		0.6	16.2	0.6	16.2	9.2×10^{1}	2.5×10^{3}
Pm-145		30	811	7	189	5.2	1.4×10^{2}
Pm-147		40	1080	0.9	24.3	3.4×10^{1}	9.3×10^{2}
Pm-148m		0.5	13.5	0.5	13.5	7.9×10^{2}	2.1×10^{4}
Pm-149		0.6	16.2	0.5	13.5	1.5×10^{4}	4.0×10^{5}
Pm-151		3	81.1	0.5	13.5	2.7×10^{4}	7.3×10^{5}
Po-208	Polonium(84)	40	1080	2×10^{-2}	0.541	2.2×10^{1}	5.9×10^{2}
Po-209		40	1080	2×10^{-2}	0.541	6.2×10^{-1}	1.7×10^{1}
Po-210		40	1080	2×10^{-2}	0.541	1.7×10^{2}	4.5×10^{3}
Pr-142	Praseodymium (59).	0.2	5.41	0.2	5.41	4.3×10^{4}	1.2×10^{6}
Pr-143		4	108	0.5	13.5	2.5×10^{3}	6.7×10^{4}
Pt-188	Platinum(78)	0.6	16.2	0.6	16.2	2.5×10^{3}	6.8×10^{4}
Pt-191		3	81.1	3	81.1	8.7×10^{3}	2.4×10^{5}
Pt-193m		40	1080	9	243	5.8×10^{3}	1.6×10^{5}
Pt-193		40	1080	40	1080	1.4	3.7×10^{1}
Pt-195m		10	270	2	54.1	6.2×10^{3}	1.7×10^{5}
Pt-197m		10	270	0.9	24.3	3.4×10^{5}	1.0×10^{7}
Pt-197		20	541	0.5	13.5	3.2×10^{4}	8.7×10^{5}
Pu-236	Plutonium(94)	7	189	7×10^{-4}	1.89×10^{-2}	2.0×10^{1}	5.3×10^{2}
Pu-237		20	541	20	541	4.5×10^{2}	1.2×10^{4}
Pu-238		2	54.1	2×10^{-4}	5.41×10^{-3}	6.3×10^{-1}	1.7×10^{1}
Pu-239		2	54.1	2×10^{-4}	5.41×10^{-3}	2.3×10^{-3}	6.2×10^{-2}
Pu-240		2	54.1	2×10^{-4}	5.41×10^{-3}	8.4×10^{-3}	2.3×10^{-1}
Pu-241		40	1080	1×10^{-2}	0.270	3.8	1.0×10^{2}
Pu-242		2	54.1	2×10^{-4}	5.41×10^{-3}	1.5×10^{-4}	3.9×10^{-3}
Pu-244		0.3	8.11	2×10^{-4}	5.41×10^{-3}	6.7×10^{-7}	1.8×10^{-5}
Ra-223	Radium(88)	0.6	16.2	3×10^{-2}	0.811	1.9×10^{3}	5.1×10^{4}
Ra-224		0.3	8.11	6×10^{-2}	1.62	5.9×10^{3}	1.6×10^{5}
Ra-225		0.6	16.2	2×10^{-2}	0.541	1.5×10^{3}	3.9×10^{4}

Symbol of radionuclide	Element and atomic number	A_1 (TBq)	A_1 (Ci)	A_2 (TBq)	A_2 (Ci)	Specific activity	
						(TBq/g)	(Ci/g)
Ra-226		0.3	8.11	2×10^{-2}	0.541	3.7×10^{-2}	1.0
Ra-228		0.6	16.2	4×10^{-2}	1.08	1.0×10^{1}	2.7×10^{2}
Rb-81	Rubidium(37)	2	54.1	0.9	24.3	3.1×10^{5}	8.4×10^{6}
Rb-83		2	54.1	2	54.1	6.8×10^{2}	1.8×10^{4}
Rb-84		1	27.0	0.9	24.3	1.8×10^{3}	4.7×10^{4}
Rb-86		0.3	8.11	0.3	8.11	3.0×10^{3}	8.1×10^{4}
Rb-87		Unlimited	Unlimited	Unlimited	Unlimited	3.2×10^{-9}	8.6×10^{-8}
Rb (natural)		Unlimited	Unlimited	Unlimited	Unlimited	6.7×10^{6}	1.8×10^{8}
Re-183	Rhenium(75)	5	135	5	135	3.8×10^{2}	1.0×10^{4}
Re-184m		3	81.1	3	81.1	1.6×10^{2}	4.3×10^{3}
Re-184		1	27.0	1	27.0	6.9×10^{2}	1.9×10^{4}
Re-186		4	108	0.5	13.5	6.9×10^{3}	1.9×10^{5}
Re-187		Unlimited	Unlimited	Unlimited	Unlimited	1.4×10^{-9}	3.8×10^{-8}
Re-188		0.2	5.41	0.2	5.41	3.6×10^{4}	9.8×10^{5}
Re-189		4	108	0.5	13.5	2.5×10^{4}	6.8×10^{5}
Re (natural)		Unlimited	Unlimited	Unlimited	Unlimited	———	2.4×10^{8}
Rh-99	Rhodium(45)	2	54.1	2	54.1	3.0×10^{3}	8.2×10^{4}
Rh-101		4	108	4	108	4.1×10^{1}	1.1×10^{3}
Rh-102m		2	54.1	0.9	24.3	2.3×10^{2}	6.2×10^{3}
Rh-102		0.5	13.5	0.5	13.5	4.5×10^{1}	1.2×10^{3}
Rh-103m		40	1080	40	1080	1.2×10^{6}	3.3×10^{7}
Rh-105		10	270	0.9	24.3	3.1×10^{4}	8.4×10^{5}
Rn-222	Radon(86)	0.2	5.41	4×10^{3}	0.108	5.7×10^{3}	1.5×10^{5}
Ru-97	Ruthenium(44)	4	108	4	108	1.7×10^{4}	4.6×10^{5}
Ru-103		2	54.1	0.9	24.3	1.2×10^{3}	3.2×10^{4}
Ru-105		0.6	16.2	0.5	13.5	2.5×10^{5}	6.7×10^{6}
Ru-106		0.2	5.41	0.2	5.41	1.2×10^{2}	3.3×10^{3}
S-35	Sulfur(16)	40	1080	2	54.1	1.6×10^{3}	4.3×10^{4}
Sb-122	Antimony(51)	0.3	8.11	0.3	8.11	1.5×10^{4}	4.0×10^{5}
Sb-124		0.6	16.2	0.5	13.5	6.5×10^{2}	1.7×10^{4}
Sb-125		2	54.1	0.9	24.3	3.9×10^{1}	1.0×10^{3}
Sb-126		0.4	10.8	0.4	10.8	3.1×10^{3}	8.4×10^{4}
Sc-44	Scandium(21)	0.5	13.5	0.5	13.5	6.7×10^{5}	1.8×10^{7}
Sc-46		0.5	13.5	0.5	13.5	1.3×10^{3}	3.4×10^{4}
Sc-47		9	243	0.9	24.3	3.1×10^{4}	8.3×10^{5}
Sc-48		0.3	8.11	0.3	8.11	5.5×10^{4}	1.5×10^{6}
Se-75	Selenium(34)	3	81.1	3	81.1	5.4×10^{2}	1.5×10^{4}
Se-79		40	1080	2	54.1	2.6×10^{-3}	7.0×10^{-2}
Si-31	Silicon(14)	0.6	16.2	0.5	13.5	1.4×10^{6}	3.9×10^{7}
Si-32		40	10800	0.2	5.41	3.9	1.1×10^{2}
Sm-145	Samarium(62)	20	541	20	541	9.8×10^{1}	2.610^{3}
Sm-147		Unlimited	Unlimited	Unlimited	Unlimited	8.510^{-10}	2.310^{-8}
Sm-151		40	1080	4	108	9.710^{-1}	2.6×10^{1}
Sm-153		4	108	0.5	13.5	1.6×10^{4}	4.4×10^{5}
Sn-113	Tin(50)	4	108	4	108	3.7×10^{2}	1.0×10^{4}
Sn-117m		6	162	2	54.1	3.0×10^{3}	8.2×10^{4}
Sn-119m		40	1080	40	1080	1.4×10^{2}	3.7×10^{3}
Sn-121m		40	1080	0.9	24.3	2.0	5.4×10^{1}
Sn-123		0.6	16.2	0.5	13.5	3.0×10^{2}	8.2×10^{3}
Sn-125		0.2	5.41	0.2	5.41	4.0×10^{3}	1.1×10^{5}
Sn-126		0.3	8.11	0.3	8.11	1.010^{-3}	2.810^{-2}
Sr-82	Strontium(38)	0.2	5.41	0.2	5.41	2.3×10^{3}	6.2×10^{4}
Sr-85m		5	135	5	135	1.2×10^{6}	3.3×10^{7}
Sr-85		2	54.1	2	54.1	8.8×10^{2}	2.4×10^{4}
Sr-87m		3	81.1	3	81.1	4.8×10^{5}	1.3×10^{7}
Sr-89		0.6	16.2	0.5	13.5	1.1×10^{3}	2.9×10^{4}
Sr-90		0.2	5.41	0.1	2.70	5.1	1.4×10^{2}
Sr-91		0.3	8.11	0.3	8.11	1.3×10^{5}	3.6×10^{6}
Sr-92		0.8	21.6	0.5	13.5	4.7×10^{5}	1.3×10^{7}
T	Tritium(1)	40	1080	40	1080	3.6×10^{2}	9.7×10^{3}
Ta-178	Tantalum(73)	1	27.0	1	27.0	4.2×10^{6}	1.1×10^{8}
Ta-179		30	811	30	811	4.1×10^{1}	1.1×10^{3}
Ta-182		0.8	21.6	0.5	13.5	2.3×10^{2}	6.2×10^{3}
Tb-157	Terbium(65)	40	1080	10	270	5.610^{-1}	1.5×10^{1}
Tb-158		1	27.0	0.7	18.9	5.610^{-1}	1.5×10^{1}
Tb-160		0.9	24.3	0.5	13.5	4.2×10^{2}	1.1×10^{4}
Tc-95m	Technetium(43)	2	54.1	2	54.1	8.3×10^{2}	2.2×10^{4}
Tc-96m		0.4	10.8	0.4	10.8	1.4×10^{6}	3.8×10^{7}
Tc-96		0.4	10.8	0.4	10.8	1.2×10^{4}	3.2×10^{5}
Tc-97m		40	1080	40	1080	5.6×10^{2}	1.5×10^{4}
Tc-97		Unlimited	Unlimited	Unlimited	Unlimited	5.2×10^{-5}	1.4×10^{-3}
Tc-98		0.7	18.9	0.7	18.9	3.2×10^{-5}	8.7×10^{-4}

Symbol of radionuclide	Element and atomic number	A_1 (TBq)	A_1 (Ci)	A_2 (TBq)	A_2 (Ci)	Specific activity	
						(TBq/g)	(Ci/g)
Tc-99m		8	216	8	216	1.9×10^{5}	5.3×10^{6}
Tc-99		40	1080	0.9	24.3	6.3×10^{-4}	1.7×10^{-2}
Te-118	Tellurium(52)	0.2	5.41	0.2	5.41	6.8×10^{3}	1.8×10^{5}
Te-121m		5	135	5	135	2.6×10^{2}	7.0×10^{3}
Te-121		2	54.1	2	54.1	2.4×10^{3}	6.4×10^{4}
Te-123m		7	189	7	189	3.3×10^{2}	8.9×10^{3}
Te-125m		30	811	9	243	6.7×10^{2}	1.8×10^{4}
Te-127m		20	541	0.5	13.5	3.5×10^{2}	9.4×10^{3}
Te-127		20	541	0.5	13.5	9.8×10^{4}	2.6×10^{6}
Te-129m		0.6	16.2	0.5	13.5	1.1×10^{3}	3.0×10^{4}
Te-129		0.6	16.2	0.5	13.5	7.7×10^{5}	2.1×10^{7}
Te-131m		0.7	18.9	0.5	13.5	3.0×10^{4}	8.0×10^{5}
Te-132		0.4	10.8	0.4	10.8	1.1×10^{4}	3.0×10^{5}
Th-227	Thorium(90)	9	243	1×10^{-2}	0.270	1.1×10^{3}	3.1×10^{4}
Th-228		0.3	8.11	4×10^{-4}	1.08×10^{-2}	3.0×10^{1}	8.2×10^{2}
Th-229		0.3	8.11	3×10^{-5}	8.11×10^{-4}	7.9×10^{-3}	2.1×10^{-1}
Th-230		2	54.1	2×10^{-4}	5.41×10^{-3}	7.6×10^{-4}	2.1×10^{-2}
Th-231		40	1080	0.9	24.3	2.0×10^{4}	5.3×10^{5}
Th-232		Unlimited	Unlimited	Unlimited	Unlimited	4.0×10^{-9}	1.1×10^{-7}
Th-234		0.2	5.41	0.2	5.41	8.6×10^{2}	2.3×10^{4}
Th (natural)		Unlimited	Unlimited	Unlimited	Unlimited	8.1×10^{-9}	2.2×10^{-7}
Ti-44	Titanium(22)	0.5	13.5	0.2	5.41	6.4	1.7×10^{2}
Tl-200	Thallium(81.1)	0.8	21.6	0.8	21.6	2.2×10^{4}	6.0×10^{5}
Tl-201		10	270	10	270	7.9×10^{3}	2.1×10^{5}
Tl-202		2	54.1	2	54.1	2.0×10^{3}	5.3×10^{4}
Tl-204		4	108	0.5	13.5	1.7×10^{1}	4.6×10^{2}
Tm-167	Thulium(69)	7	189	7	189	3.1×10^{3}	8.5×10^{4}
Tm-168		0.8	21.6	0.8	21.6	3.1×10^{2}	8.3×10^{3}
Tm-170		4	108	0.5	13.5	2.2×10^{2}	6.0×10^{3}
Tm-171		40	1080	10	270	4.0×10^{1}	1.1×10^{3}
U-230	Uranium(92)	40	1080	1×10^{-2}	0.270	1.0×10^{3}	2.7×10^{4}
U-232		3	81.1	3×10^{-4}	8.11×10^{-3}	8.3×10^{-1}	2.2×10^{1}
U-233		10	270	1×10^{-3}	2.70×10^{-2}	3.6×10^{-4}	9.7×10^{-3}
U-234		10	270	1×10^{-3}	2.70×10^{-2}	2.3×10^{-4}	6.2×10^{-3}
U-235		Unlimited	Unlimited	Unlimited	Unlimited	8.0×10^{-8}	2.2×10^{-6}
U-236		10	270	1×10^{-3}	2.70×10^{-2}	2.4×10^{-6}	6.5×10^{-5}
U-238		Unlimited	Unlimited	Unlimited	Unlimited	1.2×10^{-8}	3.4×10^{-7}
U (natural)		Unlimited	Unlimited	Unlimited	Unlimited	2.6×10^{-8}	7.1×10^{-7}
U (enriched 5% or less).		Unlimited	Unlimited	Unlimited	Unlimited	———	(see § 173.434)
U (enriched more than 5%).		10	270	1×10^{-3}	2.70×10^{-2}	———	(see § 173.434)
U (depleted)		Unlimited	Unlimited	Unlimited	Unlimited	———	(see § 173.434)
V-48	Vanadium(23)	0.3	8.11	0.3	8.11	6.3×10^{3}	1.7×10^{5}
V-49		40	1080	40	1080	3.0×10^{2}	8.1×10^{3}
W-178	Tungsten(74)	1	27.0	1	27.0	1.3×10^{-3}	3.4×10^{4}
W-181		30	811	30	811	2.2×10^{2}	6.0×10^{3}
W-185		40	1080	0.9	24.3	3.5×10^{2}	9.4×10^{3}
W-187		2	54.1	0.5	13.5	2.6×10^{4}	7.0×10^{5}
W-188		0.2	5.41	0.2	5.41	3.7×10^{2}	1.0×10^{4}
Xe-122	Xenon(54)	0.2	5.41	0.2	5.41	4.8×10^{4}	1.3×10^{6}
Xe-123		0.2	5.41	0.2	5.41	4.4×10^{5}	1.2×10^{7}
Xe-127		4	108	4	108	1.0×10^{3}	2.8×10^{4}
Xe-131m		40	1080	40	1080	3.1×10^{3}	8.4×10^{4}
Xe-133		20	541	20	541	6.9×10^{3}	1.9×10^{5}
Xe-135		4	108	4	108	9.5×10^{4}	2.6×10^{6}
Y-87	Yttrium(39)	2	54.1	2	54.1	1.7×10^{4}	4.5×10^{5}
Y-88		0.4	10.8	0.4	10.8	5.2×10^{2}	1.4×10^{4}
Y-90		0.2	5.41	0.2	5.41	2.0×10^{4}	5.4×10^{5}
Y-91m		2	54.1	2	54.1	1.5×10^{6}	4.2×10^{7}
Y-91		0.3	8.11	0.3	8.11	9.1×10^{2}	2.5×10^{4}
Y-92		0.2	5.41	0.2	5.41	3.6×10^{5}	9.6×10^{6}
Y-93		0.2	5.41	0.2	5.41	1.2×10^{5}	3.3×10^{6}
Yb-169	Ytterbium(70)	3	81.1	3	81.1	8.9×10^{2}	2.4×10^{4}
Yb-175		30	811	0.9	24.3	6.6×10^{3}	1.8×10^{5}
Zn-65	Zinc(30)	2	54.1	2	54.1	3.0×10^{2}	8.2×10^{3}
Zn-69m		2	54.1	0.5	13.5	1.2×10^{5}	3.3×10^{6}
Zn-69		4	108	0.5	13.5	1.8×10^{6}	4.9×10^{7}
Zr-88	Zirconium(40)	3	81.1	3	81.1	6.6×10^{2}	1.8×10^{4}
Zr-93		40	1080	0.2	5.41	9.3×10^{-5}	2.5×10^{-3}
Zr-95		1	27.0	0.9	24.3	7.9×10^{2}	2.1×10^{4}

Symbol of radionuclide	Element and atomic number	A_1 (TBq)	A_1 (Ci)	A_2 (TBq)	A_2 (Ci)	Specific activity	
						(TBq/g)	(Ci/g)
Zr-97		0.3	8.11	0.3	8.11	7.1×10^4	1.9×10^6

[a] International shipments of Einsteinium require multilateral approval of A_1 and A_2 values.
[b] International shipments of Fermium require multilateral approval of A_1 and A_2 values.
[c] 20 Ci for Mo^{99} for domestic use.
MFP: For mixed fission products, use formula for mixtures or Table 10 in § 173.433.
Note: The activity per gram of radionuclide quantities are technical information that might not provide a direct relationship between the activity and total mass of material contained in a package.

§ 173.441 Radiation level limitations.

(a) Except as provided in paragraph (b) of this section, each package of Class 7 (radioactive) materials offered for transportation must be designed and prepared for shipment, so that under conditions normally incident to transportation, the radiation level does not exceed 2 mSv/hour (200 mrem/hour) at any point on the external surface of the package, and the transport index does not exceed 10.

(b) A package which exceeds the radiation level limits specified in paragraph (a) of this section must be transported by exclusive use shipment, and the radiation levels for such shipment may not exceed the following during transportation:

(1) 2 mSv/h (200 mrem/h) on the external surface of the package unless the following conditions are met, in which case the limit is 10 mSv/h (1000 mrem/h):

(i) The shipment is made in a closed transport vehicle;

(ii) The package is secured within the vehicle so that its position remains fixed during transportation; and

(iii) There are no loading or unloading operations between the beginning and end of the transportation;

(2) 2 mSv/h (200 mrem/h) at any point on the outer surfaces of the vehicle, including the top and underside of the vehicle; or in the case of a flat-bed style vehicle, at any point on the vertical planes projected from the outer edges of the vehicle, on the upper surface of the load or enclosure if used, and on the lower external surface of the vehicle;

(3) 0.1 mSv/h (10 mrem/h) at any point 2 meters (6.6 feet) from the outer lateral surfaces of the vehicle (excluding the top and underside of the vehicle); or in the case of a flat-bed style vehicle, at any point 2 meters (6.6 feet) from the vertical planes projected by the outer edges of the vehicle (excluding the top and underside of the vehicle); and

(4) 0.02 mSv/h (2 mrem/h) in any normally occupied space, except that this provision does not apply to private carriers if exposed personnel under their control wear radiation dosimetry devices as part of a radiation protection program that satisfies the requirements of subpart I of part 172 of this subchapter.

(c) For shipments made under the provisions of paragraph (b) of this section, the offeror shall provide specific written instructions for maintenance of the exclusive use shipment controls to the carrier. The instructions must be included with the shipping paper information. The instructions must be sufficient so that, when followed, they will cause the carrier to avoid actions that will unnecessarily delay delivery or unnecessarily result in increased radiation levels or radiation exposures to transport workers or members of the general public.

(d) Packages exceeding the radiation level or transport index prescribed in paragraph (a) of this section may not be transported by aircraft.

§ 173.442 Thermal limitations.

A package of Class 7 (radioactive) material must be designed, constructed, and loaded so that—

(a) The heat generated within the package by the radioactive contents will not, during conditions normally incident to transport, affect the integrity of the package; and

(b) The temperature of the accessible external surfaces of the loaded package will not, assuming still air in the shade at an ambient temperature of 38°C (100°F), exceed either—

(1) 50°C (122°F) in other than an exclusive use shipment; or

(2) 85°C (185°F) in an exclusive use shipment.

§ 173.443 Contamination control.

(a) The level of non-fixed (removable) radioactive contamination on the external surfaces of each package offered for transport must be kept as low as reasonably achievable. The level of non-fixed radioactive contamination may not exceed the limits set forth in Table 11 and must be determined by either:

(1) Wiping an area of 300 square centimeters of the surface concerned with an absorbent material, using moderate pressure, and measuring the activity on the wiping material. Sufficient measurements must be taken in the most appropriate locations to yield a representative assessment of the non-fixed contamination levels. The amount of radioactivity measured on any single wiping material, when averaged over the surface wiped, may not exceed the limits set forth in Table 11 at any time during transport; or

(2) Using other methods of assessment of equal or greater efficiency, in which case the efficiency of the method used must be taken into account and the non-fixed contamination on the external surfaces of the package may not exceed ten times the limits set forth in Table 11, as follows:

TABLE 11.—NON-FIXED EXTERNAL RADIOACTIVE CONTAMINATION-WIPE LIMITS

Contaminant	Maximum permissible limits		
	Bq/cm²	uCi/cm²	dpm/cm²
Beta and gamma emitters and low toxicity alpha emitters	0.41	0^{-5}	22
All other alpha emitting radionuclides	0.04	10^{-6}	2.2

(b) Except as provided in paragraph (d) of this section, in the case of packages transported as exclusive use shipments by rail or public highway only, the removable (non-fixed) radioactive contamination on any package at any time during transport may not exceed ten times the levels prescribed in paragraph (a) of this section. The levels at the beginning of transport may not exceed the levels prescribed in paragraph (a) of this section.

(c) Except as provided in paragraph (d) of this section, each transport vehicle used for transporting Class 7 (radioactive) materials as an exclusive use shipment that utilizes the

provisions of paragraph (b) of this section must be surveyed with appropriate radiation detection instruments after each use. A vehicle may not be returned to service until the radiation dose rate at each accessible surface is 0.005 mSv per hour (0.5 mrem per hour) or less, and there is no significant removable (non-fixed) radioactive surface contamination as specified in paragraph (a) of this section.

(d) Paragraphs (b) and (c) of this section do not apply to any closed transport vehicle used solely for the transportation by highway or rail of Class 7 (radioactive) material packages with contamination levels that do not exceed 10 times the levels prescribed in paragraph (a) of this section if—

(1) A survey of the interior surfaces of the empty vehicle shows that the radiation dose rate at any point does not exceed 0.1 mSv per hour (10 mrem per hour) at the surface or 0.02 mSv per hour (2 mrem per hour) at 1 meter (3.3 feet) from the surface;

(2) Each vehicle is stenciled with the words ''For Radioactive Materials Use Only'' in letters at least 76 millimeters (3 inches) high in a conspicuous place on both sides of the exterior of the vehicle; and

(3) Each vehicle is kept closed except for loading or unloading.

§ 173.444 Labeling requirements.

Each package of Class 7 (radioactive) materials, unless excepted by § 173.421, § 173.424, § 173.426, 173.427 or § 173.428, must be labeled as prescribed in Subpart E of Part 172 of this subchapter.

§ 173.446 Placarding requirements.

Placarding requirements are prescribed in Subpart F of Part 172 of this subchapter.

§ 173.447 Storage incident to transportation—general requirements.

The following requirements apply to temporary storage during the course of transportation but not to Nuclear Regulatory Commission or Agreement State-licensed facilities or U.S. Government-owned or contracted facilities.

(a) The number of packages bearing RADIOACTIVE YELLOW-II or RADIOACTIVE YELLOW-III labels stored in any one storage area, such as a transit area, terminal building, storeroom, waterfront pier, or assembly yard, must be limited so that the sum of the transport indexes in any individual group of packages does not exceed 50. Groups of these packages must be stored so as to maintain a spacing of at least 6 meters (20 feet) from other groups of packages containing Class 7 (radioactive) materials.

(b) Mixing of different kinds of Class 7 (radioactive) materials packages that include fissile materials packages is authorized only in accordance with § 173.459.

§ 173.448 General transportation requirements.

(a) Each shipment of Class 7 (radioactive) materials must be secured to prevent shifting during normal transportation conditions.

(b) Except as provided in §§ 174.81, 176.83, and 177.848 of this subchapter, or as otherwise required by the competent authority in the applicable certificate, a package of Class 7 (radioactive) materials may be carried among packaged general cargo without special stowage provisions, if—

(1) The heat output in watts does not exceed 0.1 times the minimum package dimension in centimeters; or

(2) The average surface heat flux of the package does not exceed 15 watts per square meter and the immediately surrounding cargo is not in sacks or bags or otherwise in a form that would seriously impede air circulation for heat removal.

(c) Packages bearing labels prescribed in § 172.403 of this subchapter may not be carried in compartments occupied by passengers, except in those compartments exclusively reserved for couriers accompanying those packages.

(d) Mixing of different kinds of packages that include fissile packages is authorized only in accordance with § 173.459.

(e) No person shall offer for transportation or transport aboard a passenger-carrying aircraft any single package with a transport index greater than 3.0 or an overpack with a transport index greater than 3.0.

(f) No person shall offer for transportation or transport aboard a passenger-carrying aircraft any Class 7 (radioactive) material unless that material is intended for use in, or incident to, research, medical diagnosis or treatment.

(g) If an overpack is used to consolidate individual packages of Class 7 (radioactive) materials, the packages must comply with the packaging, marking, and labeling requirements of this subchapter, and the following:

(1) The overpack must be labeled as prescribed in § 172.403 of this subchapter, except as follows:

(i) The ''contents'' entry on the label may state ''mixed'' unless each inside package contains the same radionuclide(s);

(ii) The ''activity'' entry on the label must be determined by adding together the number of Becquerels (curies) of the Class 7 (radioactive) materials packages contained therein;

(iii) For a non-rigid overpack, the required label together with required package markings must be affixed to the overpack by means of a securely attached, durable tag. The transport index must be determined by adding together the transport indexes of the Class 7 (radioactive) materials packages contained therein; and

(iv) For a rigid overpack, the transport index must be determined by:

(A) Adding together the transport indexes of the Class 7 (radioactive) materials packages contained in the overpack; or

(B) Except for fissile Class 7 (radioactive) materials, direct measurements as prescribed in § 173.403 for transport index, taken by the person initially offering the packages contained within the overpack for shipment.

(2) The overpack must be marked as prescribed in Subpart D of Part 172 of this subchapter and § 173.25(a).

(3) The transport index of the overpack may not exceed 3.0 for passenger-carrying aircraft shipments, or 10.0 for cargo-aircraft only shipments.

§ 173.451 Fissile materials—general requirements.

Except as provided in § 173.453, each package containing fissile Class 7 (radioactive) materials must comply with §§ 173.457 and 173.459.

§ 173.453 Fissile materials—exceptions.

The requirements of §§ 173.451 through 173.459 do not apply to:

(a) A package containing 15 grams or less of fissile radionuclides. If the material is transported in bulk, the quantity limitation applies to the conveyance.

(b) A package containing homogeneous solutions or mixtures where:

(1) The minimum ratio of the number of hydrogen atoms to the number of atoms of fissile radionuclides (H/X) is 5200;

(2) The maximum concentration of fissile radionuclides is 5 grams per liter; and

(3) The maximum mass of fissile radionuclides in the package is 500 grams, except that for a mixture in which the total mass of plutonium and uranium-233 does not exceed 1% of the mass of uranium-235, the limit is 800 grams of uranium-235. If the material is transported in bulk, the quantity limitations apply to the conveyance.

(c) A package containing uranium enriched in uranium-235 to a maximum of 1% by mass, and mixed with a total plutonium and uranium-233 content of up to 1% of the mass of uranium-235, if the fissile radionuclides are distributed homogeneously throughout the package contents, and do not form a lattice arrangement within the package.

(d) A package containing not more than 5 grams of fissile radionuclides in any 10 liter volume, provided that the material is contained in packages that will maintain the limitation on fissile radionuclide distribution during normal conditions of transport.

(e) A package containing one kilogram or less of plutonium of which 20% or less by mass may consist of plutonium-239, plutonium-241, or any combination of those radionuclides.

(f) A package containing liquid solutions of uranyl nitrate enriched in uranium-235 to a maximum of 2% by mass, with total plutonium and uranium-233 content not exceeding 0.1% of the mass of uranium-235 with a nitrogen-to-uranium atomic ratio (N/U) of 2.

§ 173.457 Transportation of fissile material, controlled shipments—specific requirements.

Shipments of fissile material packages that have been assigned a transport index of greater than 10 for criticality control purposes in accordance with 10 CFR 71.59 must meet the requirements of this section and § 173.441(a) or (b).

(a) For fissile material, controlled shipments, the offeror or carrier, as appropriate, must incorporate transportation controls which:

(1) Provide nuclear criticality safety;

(2) Protect against loading, storing, or transporting that shipment with any other fissile material; and

(3) Include in the shipping papers the description required by § 172.203(d) of this subchapter.

(b) Fissile material, controlled shipments must be transported:

(1) In an exclusive use conveyance;

(2) Except for shipments by aircraft, in a conveyance with an escort having the capability, equipment, authority, and instructions to provide administrative controls necessary to assure compliance with this section;

(3) In a conveyance containing no other packages of any Class 7 (radioactive) material required to bear one of the labels prescribed in § 172.403 of this subchapter. Specific arrangements must be made between the offeror and the carrier, with instructions to that effect issued with the shipping papers; or

(4) Under any other procedure approved by the Associate Administrator for Hazardous Materials Safety in accordance with Part 107 of this subchapter.

§ 173.459 Mixing of fissile material packages.

(a) Mixing of fissile material packages with other types of Class 7 (radioactive) materials is authorized only if the transport index of any single package does not exceed 10 and the total transport index in any conveyance or storage location does not exceed 50.

(b) Fissile packages may be shipped with an external radiation level greater than 0.1 mSv/hr (10 mrem per hour) at 1 meter (3.3 feet), and combined with other packages of the same or different designs in a fissile material, controlled shipment, under the conditions prescribed in § 173.457, if:

(1) Each package in the shipment has been assigned a transport index for criticality control purposes in accordance with the 10 CFR 71.59;

(2) The nuclear criticality control transport index does not exceed 10 for any single package;

(3) The total nuclear criticality control transport index does not exceed 100 for all packages in the shipment; and

(4) Except as provided in § 176.704(e) of this subchapter, the shipment is not transported by vessel.

(c) A fissile material, controlled shipment of packages may be combined with other packages of the same or different design when each package has been assigned a nuclear criticality control transport index in accordance with 10 CFR 71.59, and may be combined with other fissile packages into a fissile material, controlled shipment under the conditions prescribed in § 173.457, if:

(1) The nuclear criticality control transport index which has been assigned in the package approval does not exceed 50 for any single package;

(2) The total nuclear criticality control transport index for all packages in the shipment does not exceed 100; and

(3) Except as provided in § 176.704(e) of this subchapter, the shipment is not transported by vessel.

§ 173.461 Demonstration of compliance with tests.

(a) Compliance with the test requirements in §§ 173.463 through 173.469 must be shown by any of the methods prescribed in this paragraph, or by a combination of these methods appropriate for the particular feature being evaluated:

(1) Performance of tests with prototypes or samples of the specimens representing LSA-III, special form Class 7 (radioactive) material, or packaging, in which case the contents of the packaging for the test must simulate as closely as practicable the expected range of physical properties of the radioactive contents or packaging to be tested, must be prepared as normally presented for transport. The use of non-radioactive substitute contents is encouraged provided that the results of the testing take into account the radioactive characteristics of the contents for which the package is being tested;

(2) Reference to a previous, satisfactory demonstration of compliance of a sufficiently similar nature;

(3) Performance of tests with models of appropriate scale incorporating those features that are significant with respect to the item under investigation, when engineering experience has shown results of those tests to be suitable for design purposes. When a scale model is used, the need for adjusting certain test parameters, such as the penetrator diameter or the compressive load, must be taken into account; or

(4) Calculations or reasoned evaluation, using reliable and conservative procedures and parameters.

(b) With respect to the initial conditions for the tests under §§ 173.463 through 173.469, except for the water immersion tests, compliance must be based upon the assumption that the package is in equilibrium at an ambient temperature of 38°C (100°F).

§ 173.462 Preparation of specimens for testing.

(a) Each specimen (i.e., sample, prototype or scale model) must be examined before testing to identify and record faults or damage, including:

(1) Divergence from the specifications or drawings;

(2) Defects in construction;

(3) Corrosion or other deterioration; and

(4) Distortion of features.

(b) Any deviation found under paragraph (a) of this section from the specified design must be corrected or appropriately taken into account in the subsequent evaluation.

(c) The containment system of the packaging must be clearly specified.

(d) The external features of the specimen must be clearly identified so that reference may be made to any part of it.

§ 173.463 Packaging and shielding—testing for integrity.

After each of the applicable tests specified in §§ 173.465 and 173.466, the

integrity of the packaging, or of the packaging and its shielding, whichever is applicable, must be retained to the extent required by § 173.412(j) for the packaging being tested.

§ 173.465 Type A packaging tests.

(a) The packaging, with contents, must be capable of withstanding the water spray, free drop, compression and penetration tests prescribed in this section. One prototype may be used for all tests if the requirements of paragraph (b) of this section are met.

(b) *Water spray test.* The water spray test must precede each test or test sequence prescribed in this section. The water spray test must simulate exposure to rainfall of approximately 5 centimeters (2 inches) per hour for at least one hour. The time interval between the end of the water spray test and the beginning of the next test must be such that the water has soaked in to the maximum extent without appreciable drying of the exterior of the specimen. In the absence of evidence to the contrary, this interval may be assumed to be two hours if the water spray is applied from four different directions simultaneously. However, no time interval may elapse if the water spray is applied from each of the four directions consecutively.

(c) *Free drop test.* The specimen must drop onto the target so as to suffer maximum damage to the safety features being tested, and:

(1) The height of the drop measured from the lowest point of the specimen to the upper surface of the target may not be less than the distance specified in Table 12, for the applicable package mass. The target must be as specified in § 173.465(c)(5). Table 12 is as follows:

TABLE 12.—FREE DROP DISTANCE FOR TESTING PACKAGES TO NORMAL CONDITIONS OF TRANSPORT

Packaging mass	Free drop distance	
Kilograms (pounds)	Meters	(Feet)
< Mass 5000 (11,000) ..	1.2	(4)
5,000 (11,000) Mass to 10,000 (22,000)	0.9	(3)
10,000 (22,000) Mass to 15,000 (33,000)	0.6	(2)
> 15,000 (33,000) Mass	0.3	(1)

(2) For packages containing fissile material, the free drop test specified in paragraph (c)(1) of this section must be preceded by a free drop from a height of 0.3 meter (1 foot) on each corner, or in the case of cylindrical packages, onto each of the quarters of each rim.

(3) For fiberboard or wood rectangular packages with a mass of 50 kilograms (110 pounds) or less, a separate specimen must be subjected to a free drop onto each corner from a height of 0.3 meter (1 foot).

(4) For cylindrical fiberboard packages with a mass of 100 kilograms (220 pounds) or less, a separate specimen must be subjected to a free drop onto each of the quarters of each rim from a height of 0.3 meter (1 foot).

(5) The target for the free drop test must be a flat, horizontal surface of such mass and rigidity that any increase in its resistance to displacement or deformation upon impact by the specimen would not significantly increase the damage to the specimen.

(d) *Stacking test.* (1) The specimen must be subjected for a period of at least 24 hours to a compressive load equivalent to the greater of the following:

(i) Five times the mass of the actual package; or

(ii) The equivalent of 13 kilopascals (1.9 pounds per square inch) multiplied by the vertically projected area of the package.

(2) The compressive load must be applied uniformly to two opposite sides of the specimen, one of which must be the base on which the package would normally rest.

(e) *Penetration test.* For the penetration test, the specimen must be placed on a rigid, flat, horizontal surface that will not move significantly while the test is being performed.

(1) A bar of 3.2 centimeters (1.3 inches) in diameter with a hemispherical end and a mass of 6 kilograms (13.2 pounds) must be dropped and directed to fall with its longitudinal axis vertical, onto the center of the weakest part of the specimen, so that, if it penetrates far enough, it will hit the containment system. The bar may not be significantly deformed by the test; and

(2) The height of the drop of the bar measured from its lower end to the intended point of impact on the upper surface of the specimen must be 1 meter (3.3 feet) or greater.

§ 173.466 Additional tests for Type A packagings designed for liquids and gases.

(a) In addition to the tests prescribed in § 173.465, Type A packagings designed for liquids and gases must be capable of withstanding the following tests:

(1) *Free drop test.* The packaging specimen must drop onto the target so as to suffer the maximum damage to its containment. The height of the drop measured from the lowest part of the packaging specimen to the upper surface of the target must be 9 meters (30 feet) or greater. The target must be as specified in § 173.465(c)(5).

(2) *Penetration test.* The specimen must be subjected to the test specified in § 173.465(e) except that the height of the drop must be 1.7 meters (5.5 feet).

§ 173.467 Tests for demonstrating the ability of Type B and fissile materials packagings to withstand accident conditions in transportation.

Each Type B packaging or packaging for fissile material must meet the test requirements prescribed in 10 CFR Part 71 for ability to withstand accident conditions in transportation.

§ 173.468 Test for LSA–III material.

(a) LSA–III Class 7 (radioactive) material must meet the test requirement of paragraph (b) of this section. Any differences between the material to be transported and the test material must be taken into account in determining whether the test requirements have been met.

(b) *Test method.* (1) The specimen representing no less than the entire contents of the package must be immersed for 7 days in water at ambient temperature.

(2) The volume of water to be used in the test must be sufficient to ensure that at the end of the test period the free volume of the unabsorbed and unreacted water remaining will be at least 10% of the volume of the specimen itself.

(3) The water must have an initial pH of 6–8 and a maximum conductivity of 10 micromho/cm at 20°C (68°F).

(4) The total activity of the free volume of water must be measured following the 7 day immersion test and must not exceed 0.1 A_2.

§ 173.469 Tests for special form Class 7 (radioactive) materials.

(a) Special form Class 7 (radioactive) materials must meet the test requirements of paragraph (b) of this section. Each solid Class 7 (radioactive) material or capsule specimen to be tested must be manufactured or fabricated so that it is representative of the actual solid material or capsule that will be transported with the proposed radioactive content duplicated as closely as practicable. Any differences between the material to be transported and the test material, such as the use of non-radioactive contents, must be taken into account in determining whether the test requirements have been met. The following additional conditions apply:

(1) A different specimen may be used for each of the tests;

(2) The specimen may not break or shatter when subjected to the impact, percussion, or bending tests;

(3) The specimen may not melt or disperse when subjected to the heat test; and

(4) After each test, leaktightness or indispersibility of the specimen must be determined by—

(i) A method no less sensitive than the leaching assessment prescribed in paragraph (c) of this section. For a capsule resistant to corrosion by water, and which has an internal void volume greater than 0.1 milliliter, an alternative to the leaching assessment is a demonstration of leaktightness of 10^{-4} torr-1/s (1.3×10^{-24} atm-cm^3/s) based on air at 25°C (77°F) and one atmosphere differential pressure for solid radioactive content, or 10^{-6} torr-1/s (1.3×10^{-6} atm-cm^3/s) for liquid or gaseous radioactive content; or

(ii) A specimen that comprises or simulates Class 7 (radioactive) material contained in a sealed capsule need not be subjected to the leaktightness procedure specified in this section provided it is alternatively subjected to any of the tests prescribed in ISO/TR4826–1979(E), ''Sealed Radioactive Sources Leak Test Methods.''

(b) *Test methods.*—(1) *Impact Test.* The specimen must fall onto the target from a height of 9 meters (30 feet) or greater. The target must be as specified in § 173.465(c)(5).

(2) *Percussion Test.* (i) The specimen must be placed on a sheet of lead that is supported by a smooth solid surface, and struck by the flat face of a steel billet so as to produce an impact equivalent to that resulting from a free drop of 1.4 kilograms (3 pounds) through 1 meter (3.3 feet).

(ii) The flat face of the billet must be 2.5 centimeters (1 inch) in diameter with the edges rounded off to a radius of 3 millimeters ±0.3 millimeters (0.12 inch ±0.012 inch).

(iii) The lead must be of hardness number 3.5 to 4.5 on the Vickers scale and thickness 2.5 centimeters (1 inch) or greater, and must cover an area greater than that covered by the specimen.

(iv) A fresh surface of lead must be used for each impact.

(v) The billet must strike the specimen so as to cause maximum damage.

(3) *Bending test.* (i) This test applies only to long, slender sources with a length of 10 centimeters (4 inches) or greater and a length to width ratio of 10 or greater.

(ii) The specimen must be rigidly clamped in a horizontal position so that one half of its length protrudes from the face of the clamp.

(iii) The orientation of the specimen must be such that the specimen will suffer maximum damage when its free end is struck by the flat face of a steel billet.

(iv) The billet must strike the specimen so as to produce an impact equivalent to that resulting from a free vertical drop of 1.4 kilograms (3 pounds) through 1 meter (3.3 feet).

(v) The flat face of the billet must be 2.5 centimeters (1 inch) in diameter with the edges rounded off to a radius of 3 millimeters ±0.3 millimeters (.12 inch ±0.012 inch).

(4) *Heat test.* The specimen must be heated in air to a temperature of not less than 800°C (1475°F), held at that temperature for a period of 10 minutes, and then allowed to cool.

(c) *Leaching assessment methods.* (1) For indispersible solid material—

(i) The specimen must be immersed for seven days in water at ambient temperature. The water must have a pH range of 6 to 8 and a maximum conductivity of 10 micromho per centimeter at 20°C (68°F).

(ii) The water with specimen must then be heated to a temperature of 50°C ±5° (122°F ±9°) and maintained at this temperature for four hours.

(iii) The activity of the water must then be determined.

(iv) The specimen must then be stored for at least seven days in still air of relative humidity not less than 90 percent at 30°C (86°F).

(v) The specimen must then be immersed in water under the same conditions as in paragraph (c)(1)(i) of this section, and the water with specimen must be heated to 50°C ±5 (122°F ±9°) and maintained at that temperature for four hours.

(vi) The activity of the water must then be determined. The activities determined in paragraph (c)(1)(iii) of this section and this paragraph, (c)(1)(vi), may not exceed 2 kilobecquerels (0.05 microcurie).

(2) For encapsulated material—

(i) The specimen must be immersed in water at ambient temperature. The water must have a pH of 6–8 and a maximum conductivity of 10 micromho per centimeter.

(ii) The water and specimen must be heated to a temperature of 50°C ±5° (122°F ±9°) and maintained at this temperature for four hours.

(iii) The activity of the water must then be determined.

(iv) The specimen must then be stored for at least seven days in still air at a temperature of 30°C (86°F) or greater.

(v) The process in paragraphs (c)(2)(i), (c)(2)(ii), and (c)(2)(iii) of this section must be repeated.

(vi) The activity determined in paragraph (c)(2)(iii) of this section may not exceed 2 kilobecquerels (0.05 microcurie).

(d) A specimen that comprises or simulates Class 7 (radioactive) material contained in a sealed capsule need not be subjected to—

(1) The impact test and the percussion test of this section provided that the specimen is alternatively subjected to the Class 4 impact test prescribed in ISO 2919–1980(e), ''Sealed Radioactive Sources Classification''; and

(2) The heat test of this section, provided the specimen is alternatively subjected to the Class 6 temperature test specified in the International Organization for Standardization document ISO 2919–1980(e), ''Sealed Radioactive Sources Classification.''

§ 173.471 Requirements for U.S. Nuclear Regulatory Commission approved packages.

In addition to the applicable requirements of the U.S. Nuclear Regulatory Commission (USNRC) and other requirements of this subchapter, any offeror of a Type B, Type B(U), Type B(M), or fissile material package that has been approved by the USNRC in accordance with 10 CFR part 71 must also comply with the following requirements:

(a) The offeror shall be registered with the USNRC as a party to the packaging approval, and make the shipment in compliance with the terms of the packaging approval;

(b) The outside of each package must be durably and legibly marked with the package identification marking indicated in the USNRC packaging approval;

(c) Each shipping paper related to the shipment of the package must bear the package identification marking indicated in the USNRC packaging approval;

(d) Before export shipment of the package, the offeror shall obtain a U.S. Competent Authority Certificate for that package design or if one has already been issued, the offeror shall register, in writing (including a description of the quality assurance program required by 10 CFR part 71) with the U.S. Competent Authority as a user of the certificate. (Note: The person who originally applies for a U.S. Competent Authority Certificate will be registered automatically.) Upon registration, the offeror will be furnished with a copy of the certificate. The offeror shall then submit a copy of the U.S. Competent Authority Certificate applying to that package design to the national competent authority of each country into or through which the package will be transported, unless the offeror has documentary evidence that a copy has already been furnished; and

(e) Each request for a U.S. Competent Authority Certificate as required by the IAEA regulations must be submitted in writing to the Associate Administrator for Hazardous Materials Safety. The request must be in triplicate and include copies of the applicable USNRC packaging approval, USNRC Quality Assurance Program approval number, and a reproducible 22 cm x 30 cm (8.5'' x 11'') drawing showing the make-up of the package. Each request is considered in the order in which it is received. To allow sufficient time for consideration, requests must be received at least 90 days before the requested effective date.

§ 173.472 Requirements for exporting DOT Specification Type B and fissile packages.

(a) Any offeror who exports a DOT Specification Type B or fissile material package authorized by § 173.416 or § 173.417 shall comply with paragraphs (b) through (f) of this section.

(b) The shipment must be made in accordance with the conditions of the U.S. Certificate of Competent Authority.

(c) The outside of each package must be durably and legibly marked with the package identification marking indicated in the U.S. Competent Authority Certificate.

(d) Each shipping paper related to the shipment of the package must bear the package identification marking indicated in the U.S. Competent Authority Certificate.

(e) Before export of the package, the offeror shall obtain a U.S. Competent Authority Certificate for that package design, or if one has already been issued, the offeror shall register in writing (including a description of the quality assurance program required by 10 CFR Part 71, subpart H, or 49 CFR 173.474 and 173.475) with the U.S. Competent Authority as a user of the certificate. Upon registration, the offeror will be furnished with a copy of the certificate. The offeror shall then submit a copy of the U.S. Competent Authority Certificate applying to that package design to the national competent authority of each country into or through which the package will be transported, unless the offeror has documentary evidence that a copy has already been furnished.

(f) Each request for a U.S. Competent Authority Certificate as required by IAEA regulations must be submitted in writing to the Associate Administrator for Hazardous Materials Safety. The request must be submitted in triplicate and must include a description of the quality assurance program required by 10 CFR Part 71, subpart H, or 49 CFR 173.474 and 173.475, and a reproducible 22 cm x 30 cm (8.5'' x 11'') drawing showing the make-up of the package. A copy of the USNRC quality assurance program approval will satisfy the requirement for describing the quality assurance program. Each request is considered in the order in which it is received. To allow sufficient time for consideration, requests must be received at least 90 days before the requested effective date.

§ 173.473 Requirements for foreign-made packages.

In addition to other applicable requirements of this subchapter, each offeror of a foreign-made Type B, Type B(U), Type B(M), or fissile material package for which a Competent Authority Certificate is required by IAEA's ''Regulations for the Safe Transport of Radioactive Materials, Safety Series No. 6,'' shall also comply with the following requirements:

(a) Prior to the shipment of such a package of Class 7 (radioactive) materials into or from the U.S., the offeror shall—

(1) Have the foreign competent authority certificate revalidated by the U.S. Competent Authority, unless this has been done previously. Each request for revalidation must be submitted in writing to the Associate Administrator for Hazardous Materials Safety. The request must be in triplicate, contain all the information required by Section VII of the IAEA regulations in Safety Series No. 6, and include a copy in English of the foreign competent authority certificate. Each request is considered in the order in which it is received. To allow sufficient time for consideration, requests must be received at least 90 days before the requested effective date;

(2) Register in writing with the U.S. Competent Authority as a user of the package covered by the foreign competent authority certificate and its U.S. revalidation. If the offeror is requesting the revalidation, registration is automatic; and

(3) Supply to the carrier, upon request, the applicable competent authority certificates. However, the competent authority certificates are not required to accompany the packages to which they apply.

(b) The outside of each package must be durably and legibly marked with the competent authority identification marking indicated on the Competent Authority Certificate and revalidation.

(c) Each shipping paper for a shipment of Class 7 (radioactive) materials must bear a notation of the package identification marking indicated on the competent authority certificate or revalidation.

(d) All requirements of the foreign competent authority certificate and the U.S. Competent Authority revalidation must be fulfilled.

§ 173.474 Quality control for construction of packaging.

Prior to the first use of any packaging for the shipment of Class 7 (radioactive) material, the offeror shall determine that—

(a) The packaging meets the quality of design and construction requirements as specified in this subchapter; and

(b) The effectiveness of the shielding, containment and, when required, the heat transfer characteristics of the package, are within the limits specified for the package design.

§ 173.475 Quality control requirements prior to each shipment of Class 7 (radioactive) materials.

Before each shipment of any Class 7 (radioactive) materials package, the offeror must ensure, by examination or appropriate tests, that—

(a) The packaging is proper for the contents to be shipped;

(b) The packaging is in unimpaired physical condition, except for superficial marks;

(c) Each closure device of the packaging, including any required gasket, is properly installed, secured, and free of defects;

(d) For fissile material, each moderator and neutron absorber, if required, is present and in proper condition;

(e) Each special instruction for filling, closing, and preparation of the packaging for shipment has been followed;

(f) Each closure, valve, or other opening of the containment system through which the radioactive content might escape is properly closed and sealed;

(g) Each packaging containing liquid in excess of an A_2 quantity and intended for air shipment has been tested to show that it will not leak under an ambient atmospheric pressure of not more than 25 kPa, absolute (3.6 psia). The test must be conducted on the entire containment system, or on any receptacle or vessel within the containment system, to determine compliance with this requirement;

(h) The internal pressure of the containment system will not exceed the design pressure during transportation; and

(i) External radiation and contamination levels are within the allowable limits specified in this subchapter.

§ 173.476 Approval of special form Class 7 (radioactive) materials.

(a) Each offeror of special form Class 7 (radioactive) materials must maintain on file for at least one year after the latest shipment, and provide to the Associate Administrator for Hazardous Materials Safety on request, a complete safety analysis, including documentation of any tests, demonstrating that the special form material meets the requirements of § 173.469. An IAEA Certificate of Competent Authority issued for the special form material may be used to satisfy this requirement.

(b) Prior to the first export shipment of a special form Class 7 (radioactive) material from the United States, each offeror shall obtain a U.S. Competent Authority Certificate for the specific material. For special form material manufactured outside the United States, an IAEA Certificate of Competent Authority from the country of origin may be used to meet this requirement.

(c) Each request for a U.S. Competent Authority Certificate as required by the IAEA regulations must be submitted in writing, in triplicate, to the Associate Administrator for Hazardous Materials Safety. Each request is considered in the order in which it is received. To allow sufficient time for consideration, requests must be received at least 90 days before the requested effective date. Each petition for a U.S. Competent Authority Certificate must include the following information:

(1) A detailed description of the material, or if a capsule, a detailed description of the contents. Particular reference must be made to both physical and chemical states;

(2) A detailed statement of the capsule design and dimensions, including complete engineering drawings [22cm × 30cm (8½ inches × 11 inches)] and schedules of material, and methods of construction;

(3) A statement of the tests that have been made and their results; or evidence based on calculative methods to show that the material is able to pass the tests; or other evidence that the special form Class 7 (radioactive) material complies with § 173.469; and

(4) For the original request for a Competent Authority Certificate, evidence of a quality assurance program.

(d) Paragraphs (a) and (b) of this section do not apply in those cases where A_1 equals A_2 and the material is not required to be described on the shipping papers as ''Radioactive Material, Special Form, n.o.s.''

§ 173.477 Approval for export shipments.

(a) Each export shipment of a package for which an IAEA certificate of competent authority has been issued or revalidated in accordance with § 173.471, § 173.472, or § 173.473 must have multilateral approval if the shipment includes:

(1) A vented Type B(M) package;

(2) A Type B(M) packaging containing Class 7 (radioactive) materials with an activity greater than 3×10^3 A_1, or 3×10^3 A_2, as appropriate, or 1000 TBq (27,000 curies), whichever is less;

(3) A shipment of packages containing fissile materials if the sum of the transport indices of the individual packages exceeds 50; or

(4) Transportation by special arrangement.

(b) Each application for shipment approval not under special arrangement must contain:

(1) The period of time for which the approval is sought;

(2) A description of the contents, the expected modes of transportation, the type of conveyance to be used, and the proposed route; and

(3) An explanation of how the special precautions and special administrative and operational controls referred to in the package design certificates are to be put into effect.

(c) Each application for shipment approval under special arrangement must contain:

(1) A statement of the reasons why the shipment cannot be made in accordance with the applicable requirements; and

(2) A statement of any special precautions or special administrative or operational controls that will be used during transport to ensure that the overall safety is at least equivalent to that provided by the applicable requirements.

(d) The packaging and shipment approvals may be combined into a single approval issued in accordance with §§ 173.471, 173.472 or 173.473.

(e) Approval by competent authorities is not required for packagings designed for materials covered by §§ 173.421 through 173.428 or for Type A packagings designed for non-fissile Class 7 (radioactive) materials.

§ 173.478 Notification to competent authorities for export shipments.

(a) Before the first export shipment of any packaging containing fissile materials packages exceeding 15 grams, or Class 7 (radioactive) materials exceeding A_1 or A_2, the offeror shall ensure that copies of each applicable competent authority certificate issued in accordance with § 173.471, § 173.472, or § 173.473 have been submitted to the competent authority of each country through which or into which it is to be transported. Except as specified in § 173.477, the offeror is not required to await an acknowledgment from the competent authority prior to shipping the Class 7 (radioactive) material, nor is the competent authority required to acknowledge receipt of the certificate.

(b) For each of the shipments described in this paragraph, the offeror shall notify the competent authority of each country through which or into which the shipment is to be transported. This notification must be received by each competent authority at least 7 days before the shipment starts for the following:

(1) Type B(U) packagings containing Class 7 (radioactive) materials with an activity greater than 3×10^3 A_1, 3×10^3 A_2, as appropriate, or 1000 TBq (27,000 Curies), whichever is the least;

(2) Type B(M) packages; or

(3) Transportation by special arrangements.

(c) The offeror notification must include:

(1) Sufficient information to enable the packaging to be identified, including all applicable certificate numbers and identification marks;

(2) Information as to the date of shipment, the expected date of arrival, and the proposed routing;

(3) The name of the Class 7 (radioactive) material or nuclide;

(4) A description of the physical and chemical form of the Class 7 (radioactive) material; and

(5) The maximum activity of the Class 7 (radioactive) material, except that for fissile material, the mass of fissile material may be used instead of activity.

(d) The offeror is not required to send a separate notification if the required information has been included in the application for shipment approval.

PART 174—CARRIAGE BY RAIL

24. The authority citation for Part 174 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

25. Sections 174.700 and 174.715 are revised and § 174.705 is added to read as follows:

§ 174.700 Special handling requirements for Class 7 (radioactive) materials.

(a) Each rail shipment of low specific activity materials or surface contaminated objects as defined in § 173.403 of this subchapter must be loaded so as to avoid spillage and scattering of loose material. Loading restrictions are prescribed in § 173.427 of this subchapter.

(b) The number of packages of Class 7 (radioactive) materials that may be transported by rail or stored at any single location is limited to a total transport index number (as defined in § 173.403 of this subchapter) of not more than 50. This provision does not apply to exclusive use shipments as described in §§ 173.403, 173.427, 173.441, and 173.457 of this subchapter.

(c) Each package of Class 7 (radioactive) material bearing RADIOACTIVE YELLOW–II or RADIOACTIVE YELLOW–III labels may not be placed closer than 0.9 meter (3 feet) to an area (or dividing partition between areas) which may be continuously occupied by any passenger, rail employee, or shipment of one or more animals, nor closer than 4.5 meters (15 feet) to any package containing undeveloped film (if so marked). If more than one package of Class 7 (radioactive) materials is present, the distance must be computed from the table below on the basis of the total transport index number (determined by adding together the transport index numbers on the labels of the individual packages) of packages in the rail car or storage area:

Total transport index	Minimum separation distance to nearest undeveloped film		Minimum distance to area of persons or minimum distance from dividing partition of a combination car	
	Meters	Feet	Meters	Feet
None	0	0	0	0
0.1 to 10.0	4.5	15	0.9	3
10.1 to 20.0	6.7	22	1.2	4
20.1 to 30.0	7.7	29	1.5	5
30.1 to 40.0	10	33	1.8	6
40.1 to 50.0	10.9	36	2.1	7

Note: The distance in this table must be measured from the nearest point on the nearest packages of Class 7 (radioactive) materials.

(d) Each fissile material, controlled shipment must be transported in accordance with one of the methods prescribed in § 173.457 of this subchapter. The transport controls must be adequate to assure that no fissile material, controlled shipment is transported in the same transport vehicle with any other fissile Class 7 (radioactive) material shipment. In loading and storage areas, each fissile material, controlled shipment must be segregated by a distance of at least 6 meters (20 feet) from other packages required to bear one of the ''radioactive'' labels described in Part 172 of this subchapter.

(e) A person shall not remain unnecessarily in, on or near a transport vehicle containing Class 7 (radioactive) materials.

(f) In the case of packages shipped under the exclusive use provisions of § 173.441(b) of this subchapter for packages with external radiation levels in excess of 2 mSv per hour (200 mrem per hour) at the package surface—

(1) The transport vehicle must meet the requirements for a closed transport vehicle (§ 173.403 of this subchapter);

(2) Each package must be secured so that its position within the transport vehicle remains fixed under conditions normally incident to transportation; and

(3) The radiation level may not exceed 0.02 mSv per hour (2 mrem per hour) in any normally occupied position in the transport vehicle or adjacent rail car.

§ 174.705 Radiation protection program.

Unless otherwise excepted, a carrier shall not transport a Class 7 (radioactive) material by rail unless each of its occupationally exposed hazmat employees is under a radiation protection program that complies with the requirements of subpart I of part 172 of this subchapter.

§ 174.715 Cleanliness of transport vehicles after use.

(a) Each transport vehicle used for transporting Class 7 (radioactive) materials as exclusive use, as defined in § 173.403 of this subchapter, must be surveyed with appropriate radiation detection instruments after each use. A transport vehicle may not be returned to service until the radiation dose rate at any accessible surface is 0.005 mSv per hour (0.5 mrem per hour) or less, and there is no significant removable radioactive surface contamination, as defined in § 173.443 of this subchapter.

(b) This section does not apply to any transport vehicle used solely for transporting Class 7 (radioactive) materials if a survey of the interior surface shows that the radiation does rate does not exceed 0.1 mSv per hour (10 mrem per hour) at the interior surface or 0.02 mSv per hour (2 mrem per hour) at 1 meter (3.3 feet) from any interior surface. The transport vehicle must be stenciled with the words ''FOR RADIOACTIVE MATERIALS USE ONLY'' in lettering at least 7.6 centimeters (3 inches) high in a conspicuous place on both sides of the exterior of the transport vehicle, and it must be kept closed at all times other than during loading and unloading.

26. In § 174.750, paragraph (a) is revised to read as follows:

§ 174.750 Incidents involving leakage.

(a) In addition to the incident reporting requirements of §§ 171.15 and 171.16 of this subchapter, the carrier shall also notify the offeror at the earliest practicable moment following any incident in which there has been breakage, spillage, or suspected radioactive contamination involving Class 7 (radioactive) materials shipments. Transport vehicles, buildings, areas, or equipment in which Class 7 (radioactive) materials have been spilled may not be again placed in service or routinely occupied until the radiation dose rate at every accessible surface is less than 0.005 mSv per hour (0.5 mrem per hour) and there is no significant removable radioactive surface contamination (see § 173.443 of this subchapter).

* * * * *

PART 175—CARRIAGE BY AIRCRAFT

27. The authority citation for Part 175 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

28. In § 175.700, paragraphs (b) and (c) are revised to read as follows:

§ 175.700 Special limitations and requirements for Class 7 (radioactive) materials.

* * * * *

(b) In addition to the reporting requirements of § 175.45, the carrier shall also notify the offeror at the earliest practicable moment following any incident in which there has been breakage, spillage, or suspected radioactive contamination involving Class 7 (radioactive) materials shipments. Aircraft in which Class 7 (radioactive) materials have been spilled may not again be placed in service or routinely occupied until the radiation dose rate at every accessible surface is less than 0.005 mSv per hour (0.5 mrem per hour) and there is no significant removable radioactive surface contamination as determined in accordance with § 173.443 of this subchapter. When contamination is present or suspected, the package and/or materials it has touched must be segregated as far as practicable from personnel contact until appropriate radiological advice or assistance is obtained. The Regional Office of the U.S. Department of Energy or appropriate State or local radiological authorities can provide advice or assistance, and should be notified in cases of obvious leakage, or if it appears likely that the inside container may have been damaged. For personnel safety, the carrier shall take care to avoid possible inhalation, ingestion, or contact by any person with Class 7 (radioactive) materials that may have leaked or spilled from its package. Any loose Class 7 (radioactive) materials and associated packaging materials must be left in a segregated area pending disposal instructions from responsible radiological authorities.

(c) Except as provided in §§ 173.4, 173.422 and 173.423 of this subchapter, no person shall carry any Class 7 (radioactive) materials aboard a passenger carrying aircraft unless that material is intended for use in, or incident to research, medical diagnosis or treatment.

* * * * *

29. In § 175.703, the introductory text of paragraph (c) and paragraph (d) are revised to read as follows:

§ 175.703 Other special requirements for the acceptance and carriage of packages containing Class 7 (radioactive) materials.

* * * * *

(c) No person shall carry in an aircraft a fissile material controlled shipment (as defined in § 173.403 of this subchapter), except—

* * * * *

(d) No person shall offer or accept for transportation, or transport, byair—

(1) Vented Type B(M) packages, packages which require external cooling by an ancillary cooling system or packages subject to operational controls during transport; or

(2) Liquid pyrophoric Class 7 (radioactive) materials.

* * * * *

30. Sections 175.704 and 175.706 are added to read as follows:

§ 175.704 Plutonium shipments.

Shipments of plutonium by air which are subject to 10 CFR 71.88(a)(4) must comply with the following:

(a) A plutonium package weighing less than 40 kg (88 lbs) and having its height and diameter both less than 50 cm (19.7 in), must be stowed aboard the aircraft on the main deck or the lower cargo compartment in the aft-most location that is possible for cargo of its size and weight. No other type of cargo may be stowed aft of a plutonium package.

(b) A plutonium package must be secured and restrained to prevent shifting under normal transport. A plutonium package weighing 40 kg (88 lbs) or more must be securely cradled and tied down to the main deck of the aircraft such that the tied down system is capable of providing package restraint against the following inertial forces acting separately relative to the deck of the aircraft: Upward, 2g; Forward, 9g; Sideward, 1.5g; Downward, 4.5g.

(c) A plutonium package weighing less than 40 kg (88 lbs), and having its height and diameter both less than 50 cm (19.7 in), may not be transported aboard an aircraft carrying other cargo required to bear an ''Explosive A'' or an ''Explosive 1.1'' label. Any other plutonium package may not be transported aboard an aircraft carrying other cargo bearing any of the following hazardous material labels: Explosive A; Explosive B; Explosive C; Explosive 1.1, 1.2, 1.3, 1.4, 1.5 or 1.6; Spontaneously Combustible; Dangerous When Wet; Organic Peroxide; Non-Flammable Gas; Flammable Liquid; Flammable Solid; Flammable Gas; Oxidizer; or Corrosive.

§ 175.706 Radiation protection program.

Unless otherwise excepted, a carrier shall not transport a Class 7 (radioactive) material by aircraft unless each of its occupationally exposed hazmat employees is under a radiation protection program that complies with the requirements of subpart I of part 172 of this subchapter.

PART 176—CARRIAGE BY VESSEL

31. The authority citation for Part 176 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

32. In § 176.700, paragraph (a) is removed and reserved and paragraph (c) is revised to read as follows:

§ 176.700 General stowage requirements.

(a) [Reserved]

* * * * *

(c) Each fissile material, controlled shipment must be stowed in a separate hold, compartment, or defined deck area and be separated by a distance of at least six meters (20 feet) from all other RADIOACTIVE YELLOW–II or YELLOW–III labeled packages.

* * * * *

33. Section 176.703 is added to read as follows:

§ 176.703 Radiation protection program.

Unless otherwise excepted, a carrier shall not transport a Class 7 (radioactive) material by vessel unless each of its occupationally exposed hazmat employees is under a radiation protection program that complies with the requirements of subpart I of part 172 of this subchapter.

33a. Section 176.704 is revised to read as follows:

§ 176.704 Requirements relating to transport indexes.

(a) The sum of the transport indexes for all packages of Class 7 (radioactive) materials on board a vessel may not exceed the limits specified in Table III.

(b) For packages in freight containers, the radiation level may not exceed 2 mSv per hour (200 mrem per hour) at any point on the surface and 0.1 mSv per hour (10 mrem per hour) at two meters (6.6 feet) from the outside surface of the freight container.

(c) The limitations specified in Table III do not apply to consignments of LSA–I materials if the packages are marked ''RADIOACTIVE LSA–I'' and no fissile Class 7 (radioactive) materials are included in the shipment.

(d) Each group of fissile packages must be separated from other Class 7 (radioactive) material by a distance of at least six meters (20 feet) at all times.

(e) The limitations specified in paragraphs (a) through (c) of this section do not apply when the entire vessel is reserved or chartered for use by a single offeror under exclusive use conditions if—

(1) The number of fissile packages of Class 7 (radioactive) materials aboard the vessel does not exceed the amount

authorized in § 173.451 through § 173.459 of this subchapter; and

(2) The entire shipment operation is approved by the Associate Administrator for Hazardous Materials Safety in advance.

(f) Table III is as follows:

TABLE III.—TI LIMITS FOR FREIGHT CONTAINERS AND CONVEYANCES

Type of freight container or conveyance	Limit on total sum of transport indexes in a single freight container or aboard a conveyance			
	Not under exclusive use		Under exclusive use	
	Non-fissile material	Fissile material	Non-fissile material	Fissile material[a]
Freight container—Small	50	50	N/A	N/A.
Freight container—Large	50	50	No limit	100[b].
Vessel[c]:				
1. Hold, compartment or defined deck area:				
Packages, overpacks, small freight containers	50	50	No limit	100[b].
Large freight containers	200[d]	50	No limit	100[b].
2. Total vessel:				
Packages, etc.	200[d]	200[d]	No limit[e].	200[e].
Large freight containers	No limit[d]	No limit[d]	No limit	No limit[d].

[a] Provided that transport is direct from the consignor to the consignee without any intermediate in-transit storage, where the total TI exceed 50.
[b] In cases in which the total TI is greater than 50, the consignment must be so handled and stowed so that it is always separated from any package, overpack, portable tank or freight container carrying Class 7 (radioactive) materials by at least 6 meters (20 feet).
[c] For vessels the requirements given in 1 and 2 must be fulfilled.
[d] Provided that the packages, overpacks, portable tanks or freight containers, as applicable, are stowed so that the total sum of the TI's in any group does not exceed 50, and that each group is handled and stowed so that the groups are separate from each other by at least 6 meters (20 feet).
[e] Packages or overpacks carried in or on a transport vehicle which are offered for transport under the provisions of § 173.441(b) of this subchapter may be transported by vessel provided that they are not removed from the vehicle at anytime while on board the vessel.

34. In § 176.708, TABLE III is redesignated as TABLE IV, paragraph (a) is revised and paragraphs (b) through (f) are added to read as follows:

§ 176.708 Segregation distance table.

(a) Table IV applies to the stowage of packages of Class 7 (radioactive) materials on board a vessel with regard to transport index numbers which are shown on the labels of individual packages.

(b) RADIOACTIVE YELLOW–II or YELLOW–III labeled packages may not be stowed any closer to living accommodations, regularly occupied working spaces, spaces that may be continually occupied by any person (except those spaces exclusively reserved for couriers specifically authorized to accompany such packages), or undeveloped film than the distances specified in TABLE IV.

(c) Where only one consignment of a Class 7 (radioactive) material is to be loaded on board a vessel under exclusive use conditions, the appropriate segregation distance may be established by demonstrating that the direct measurement of the radiation level at regularly occupied working spaces and living quarters is less than 7.5 microsieverts per hour (0.75 mrem per hour).

(d) More than one consignment may be loaded on board a vessel with the appropriate segregation distance established by demonstrating that direct measurement of the radiation level at regularly occupied working spaces and living quarters is less than 7.5 microSieverts per hour (0.75 mrem per hour), provided that:

(1) The vessel has been chartered for the exclusive use of a competent person specialized in the carriage of Class 7 (radioactive) material; and

(2) Stowage arrangements have been predetermined for the entire voyage, including any Class 7 (radioactive) material to be loaded at ports of call enroute.

(e) The radiation level must be measured by a responsible person skilled in the use of monitoring instruments.

(f) Table IV is as follows:

* * * * *

35. Section 176.715 is revised to read as follows:

§ 176.715 Contamination control.

Each hold, compartment, or deck area used for the transportation of low specific activity or surface contaminated object Class 7 (radioactive) materials under exclusive use conditions must be surveyed with appropriate radiation detection instruments after each use. Such holds, compartments, and deck areas may not be used again until the radiation dose rate at every accessible surface is less than 5 microSieverts per hour (0.5 mrem per hour), and the removable (non-fixed) radioactive surface contamination is not greater than the limits prescribed in § 173.443 of this subchapter.

PART 177—CARRIAGE BY PUBLIC HIGHWAY

36. The authority citation for Part 177 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

37. Section 177.827 is added to subpart A to read as follows:

§ 177.827 Radiation protection program.

Unless otherwise excepted, a carrier shall not transport a Class 7 (radioactive) material by motor vehicle unless each of its occupationally exposed hazmat employees is under a radiation protection program that complies with the requirements of subpart I of part 172 of this subchapter.

38. Section 177.842 is revised to read as follows:

§ 177.842 Class 7 (radioactive) material.

(a) The number of packages of Class 7 (radioactive) materials in any transport vehicle or storage location must be limited so that the total transport index number does not exceed 50. The total transport index of a group of packages and overpacks is determined by adding together the transport index number on the labels on the individual packages and overpacks in the group. This provision does not apply to exclusive use shipments

described in §§ 173.441(b), 173.457, and 173.427 of this subchapter.

(b) Packages of Class 7 (radioactive) material bearing ''RADIOACTIVE YELLOW–II'' or ''RADIOACTIVE YELLOW–III'' labels may not be placed in a transport vehicle, storage location or in any other place closer than the distances shown in the following table to any area which may be continuously occupied by any passenger, employee, or animal, nor closer than the distances shown in the table to any package containing undeveloped film (if so marked), and must conform to the following conditions:

(1) If more than one of these packages is present, the distance must be computed from the following table on the basis of the total transport index number determined by adding together the transport index number on the labels on the individual packages and overpacks in the vehicle or storeroom.

(2) Where more than one group of packages is present in any single storage location, a single group may not have a total transport index greater than 50. Each group of packages must be handled and stowed not closer than 6 meters (20 feet) (measured edge to edge) to any other group. The following table is to be used in accordance with the provisions of paragraph (b) of this section:

Total transport index	Minimum separation distance in meters (feet) to nearest undeveloped film in various times of transit					Minimum distance in meters (feet) to area of persons, or minimum distance in meters (feet) from dividing partition of cargo compartments
	Up to 2 hours	2–4 hours	4–8 hours	8–12 hours	Over 12 hours	
None	0.0 (0)	0.0 (0)	0.0 (0)	0.0 (0)	0.0 (0)	0.0 (0)
0.1 to 1.0	0.3 (1)	0.6 (2)	0.9 (3)	1.2 (4)	1.5 (5)	0.3 (1)
1.1 to 5.0	0.9 (3)	1.2 (4)	1.8 (6)	2.4 (8)	3.4 (11)	0.6 (2)
5.1 to 10.0	1.2 (4)	1.8 (6)	2.7 (9)	3.4 (11)	4.6 (15)	0.9 (3)
10.1 to 20.0	1.5 (5)	2.4 (8)	3.7 (12)	4.9 (16)	6.7 (22)	1.2 (4)
20.1 to 30.0	2.1 (7)	3.0 (10)	4.6 (15)	6.1 (20)	8.8 (29)	1.5 (5)
30.1 to 40.0	2.4 (8)	3.4 (11)	5.2 (17)	6.7 (22)	10.1 (33)	1.8 (6)
40.1 to 50.0	2.7 (9)	3.7 (12)	5.8 (19)	7.3 (24)	11.0 (36)	2.1 (7)

Note: The distance in this table must be measured from the nearest point on the nearest packages of Class 7 (radioactive) material.

(c) Shipments of low specific activity materials and surface contaminated objects, as defined in § 173.403 of this subchapter, must be loaded so as to avoid spillage and scattering of loose materials. Loading restrictions are set forth in § 173.427 of this subchapter.

(d) Packages must be so blocked and braced that they cannot change position during conditions normally incident to transportation.

(e) Persons should not remain unnecessarily in a vehicle containing Class 7 (radioactive) materials.

(f) Each fissile material, controlled shipment (as defined in § 173.403 of this subchapter) must be transported in accordance with one of the methods prescribed in § 173.457 of this subchapter. The transport controls must be adequate to assure that no fissile material, controlled shipment is transported in the same transport vehicle with any other fissile Class 7 (radioactive) material shipment. In loading and storage areas each fissile material, controlled shipment must be segregated by a distance of at least 6 meters (20 feet) from any other package required to bear one of the ''Radioactive'' labels described in § 172.403 of this subchapter.

(g) For shipments transported under exclusive use conditions the radiation dose rate may not exceed 0.02 mSv per hour (2 mrem per hour) in any position normally occupied in the motor vehicle. For shipments transported as exclusive use under the provisions of § 173.441(b) of this subchapter for packages with external radiation levels in excess of 2 mSv (200 mrem per hour) at the package surface, the motor vehicle must meet the requirements of a closed transport vehicle (§ 173.403 of this subchapter). The total transport index for packages containing fissile material may not exceed 100.

39. In § 177.843, paragraphs (a) and (b) are revised to read as follows:

§ 177.843 Contamination of vehicles.

(a) Each motor vehicle used for transporting Class 7 (radioactive) materials under exclusive use conditions in accordance with § 173.427(b)(3) or (c) or § 173.443(c) of this subchapter must be surveyed with radiation detection instruments after each use. A vehicle may not be returned to service until the radiation dose rate at every accessible surface is 0.005 mSv per hour (0.5 mrem per hour) or less and the removable (non-fixed) radioactive surface contamination is not greater than the level prescribed in § 173.443(a) of this subchapter.

(b) This section does not apply to any vehicle used solely for transporting Class 7 (radioactive) material if a survey of the interior surface shows that the radiation dose rate does not exceed 0.1 mSv per hour (10 mrem per hour) at the interior surface or 0.02 mSv per hour (2 mrem per hour) at 1 meter (3.3 feet) from any interior surface. These vehicles must be stenciled with the words ''For Radioactive Materials Use Only'' in lettering at least 7.6 centimeters (3 inches) high in a conspicuous place, on both sides of the exterior of the vehicle. These vehicles must be kept closed at all times other than loading and unloading.

* * * * *

40. In § 177.861, paragraph (a) is revised and Notes 1 and 2 are removed as follows:

§ 177.861 Accidents; Class 7 (radioactive) materials.

(a) In addition to the incident reporting requirements of §§ 171.15 and 171.16 of this subchapter, the carrier shall also notify the offeror at the earliest practicable moment following any incident in which there has been breakage, spillage, or suspected

radioactive contamination involving Class 7 (radioactive) materials shipments. Vehicles, buildings, areas, or equipment in which Class 7 (radioactive) materials have been spilled may not be again placed in service or routinely occupied until the radiation dose rate at every accessible surface is less than 0.005 mSv per hour (0.5 mrem per hour) and there is no significant removable radioactive surface contamination (see § 173.443 of this subchapter).

* * * * *

PART 178—SPECIFICATIONS FOR PACKAGINGS

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

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

42. Section 178.350 is revised to read as follows:

§ 178.350–1 Specification 7A; general packaging, Type A.

(a) Each packaging must meet all applicable requirements of subpart B of Part 173 of this subchapter and be designed and constructed so that it meets the requirements of §§ 173.403, 173.410, 173.412, 173.415 and 173.465 of this subchapter for Type A packaging.

(b) Each Specification 7A packaging must be marked on the outside ''USA DOT 7A Type A'' and ''Radioactive Material.''

§§ 178.350–1 through 178.350–3 [Removed]

43. Sections 178.350–1, 178.350–2, and 178.350–3 are removed.

Issued in Washington, DC on August 30, 1995, under authority delegated in 49 CFR Part 1.

Ana Sol Gutiérrez,

Deputy Administrator, Research and Special Programs Administration.

[FR Doc. 95–22773 Filed 9–27–95; 8:45 am]

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Thursday
September 28, 1995

Part IV

Environmental Protection Agency

Dichlorvos; Notice of Preliminary Determination to Cancel Certain Registrations and Draft Notice of Intent to Cancel; Notice

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30000/56; FRL–4954–7]

Dichlorvos; Notice of Preliminary Determination to Cancel Certain Registrations and Draft Notice of Intent to Cancel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of preliminary determination.

SUMMARY: This Notice sets forth EPA's preliminary determination regarding the continued registration of pesticide products containing dichlorvos and sets forth the Agency's assessment of the risks and benefits associated with dichlorvos products. This Notice announces the Agency's preliminary determination to propose cancellation of certain registrations of dichlorvos products and to propose modification to other registrations which would not be canceled. In addition, this Notice serves as a Draft Notice of Intent to Cancel.

DATES: Written comments must be received on or before December 27, 1995.

ADDRESSES: Submit three copies of written comments bearing the docket control number ''OPP–30000–56'' by mail to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number ''OPP–30000/56.'' No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this document may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in Unit VII. of this document.

Information submitted as a comment concerning this document 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. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Dennis Utterback, Special Review and Reregistration Division (7508W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Special Review Branch, 3rd floor, Crystal Station #1, 2800 Crystal Drive, Arlington, VA, Telephone: 703–308–8026: e-mail: utterback.dennis@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: This Notice is organized into the following units: Unit I. is the introduction which includes background information related to dichlorvos, a description of the Agency's Special Review process, and the regulatory history of dichlorvos (2,2-dichlorovinyl dimethyl phosphate), also known as DDVP, including the initiation of Special Review. Unit II. summarizes the risk assessment. Unit III. summarizes the benefits of dichlorvos uses. Unit IV. explains the Agency's risk/benefit analysis and proposed regulatory decisions. Unit V. describes the Agency's existing stocks policy. Unit VI. describes the procedures related to the referral of this document to the U.S. Department of Agriculture and FIFRA Scientific Advisory Panel. Unit VII. describes the opportunity for public comment, and Unit VIII. describes the availability of information in the Public Docket. Finally, Unit IX. lists references to this document.

I. Introduction

A. Summary

EPA has concluded that the risks outweigh the benefits for most uses of dichlorvos, and therefore, recommends a variety of measures to reduce those risks. Dichlorvos poses carcinogenic risks of concern to the general population from dietary exposure and risks of cholinesterase inhibition (including cholinergic signs) to individuals mixing, loading, and applying this pesticide, as well as to those reentering treated areas. The Agency believes that the economic benefits associated with the continued use of dichlorvos are not significant for most uses. After careful consideration of the risks and benefits, EPA is proposing the following actions: Cancellation of all uses in or on residences, tobacco warehouses, ornamental lawns, turf and plants, commercial, institutional and industrial areas, airplanes, trucks, shipholds, and rail cars, warehouses, and use on bulk, packaged or bagged nonperishable processed and raw food (except for impregnated resin strips in silos). In addition, EPA is proposing to cancel other registrations unless certain modifications are made to the label, including: prohibit hand-held application in mushroom houses, greenhouses, on food and nonfood animals (other than poultry), and in passenger buses; allow other application methods in mushroom houses, greenhouses or passenger buses, as long as the applicator and others are prohibited from remaining in these facilties during treatment; restrict all remaining registered products to use by certified applicators only, except for impregnated resin strips used in museums (closed spaces) and in insect traps, and require personal protective equipment (PPE) during handling; and require reentry intervals for mushroom houses, greenhouses and passenger buses. EPA is proposing to retain the following uses: mushroom houses and greenhouses (only automatic foggers or fogging through a port, and restricted reentry), kennels, feedlots, insect traps, garbage dumps, direct application to poultry, automated application to livestock, animal premises, manure, and buses (fogger use).

In addition to the Special Review, there are three activities which may affect dichlorvos registrations. First, EPA published the Final Revocation Notice for the food additive regulation (FAR) of dichlorvos residues on packaged or bagged nonperishable processed food in the Federal Register of November 10, 1993 (58 FR 59667). The effective date of this Notice was stayed indefinitely. Second, if that revocation becomes effective, under current policy, EPA would issue a notice of its intent to cancel the related uses under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Third, EPA received a request from Amvac Chemical Corporation, the sole technical registrant of dichlorvos, to voluntarily delete several uses from its technical label. EPA intends to accept Amvac's request unless the Company withdraws or modifies its request.

B. The Statute

A pesticide may be sold or distributed in the United States only if it is registered or exempt from registration under FIFRA as amended (7 U.S.C. 136 et. seq.). Before a product can be registered unconditionally, 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, at all times, on the proponent of initial or continued registration. If, at any time, the Agency determines that a pesticide no longer meets this standard for registration, then the Administrator may cancel the registration under section 6 of FIFRA.

C. Regulatory Background

Dichlorvos is an organophosphate insecticide registered for use in controlling flies, mosquitos, gnats, cockroaches, fleas, and other insect pests. Amvac Chemical Corporation is the sole producer of technical grade dichlorvos in the U.S. There are currently 182 product registrations for formulations containing dichlorvos. In addition, there are three section 24(c) Special Local Need Registrations. Formulations include: Pressurized liquids, granulars, dusts, wettable powders, emulsifiable concentrates, total release aerosols, and impregnated materials. Applications are made with aerosols and fogging equipment, with ground spray equipment, and through slow release from impregnated materials, such as resin strips and pet collars.

Dichlorvos has been registered in the U.S. since 1948. The Shell Chemical Company marketed the product under the trademark Vapona, and, in 1963, Shell began marketing the No-Pest Strip. In 1985, approximately 2 million pounds of dichlorvos active ingredient were used annually in the U.S. on a variety of sites. At that time, agricultural applications constituted 60 percent of the total dichlorvos usage, including use on beef and dairy cattle, poultry, sheep, livestock living quarters and other farm buildings, greenhouses, mushroom houses, stored agricultural products, stored food facilities, and tobacco warehouses. In addition, approximately 25 percent was used on commercial, institutional, and industrial sites, including food processing areas, food handling establishments, sewage and dump sites, lawns, and turf. The remaining 15 percent was applied in and around homes and on pets. These estimates are based on 1985 data and it is believed that dichlorvos usage has declined significantly in recent years (currently 250,000 to 500,000), but not necessarily proportionally across all sites.

Amvac has also notified EPA that it is not supporting uses on the following sites and requests their voluntary cancellation: Rangeland grasses, greenhouse food crops (cucumber, tomato, lettuce, radish), greenhouse non-food crops, tobacco, tobacco warehouses, tomato (post harvest), domestic dwellings (except for impregnated resin strips, total release foggers, and crack and crevice treatment; impregnated resin strips will not be permitted in kitchens); aircraft and buses; food service establishments, including eating establishments (except for non-food service areas); food manufacturing establishments, including bottling plants and frozen food plants (except for non-food manufacturing areas); food processing establishments, including meat, poultry and seafood slaughtering and/or packing plants, and dairy product plants (except for non-food processing areas); and all aerial applications. EPA has published a notice of receipt of voluntary cancellation request for these uses in the Federal Register pursuant to section 6(f) of FIFRA on April 19, 1995 (60 FR 19580).

In 1980, the Agency referred dichlorvos to the Rebuttable Presumption Against Registration or RPAR process under FIFRA, now called the Special Review process. The RPAR referral was based on scientific studies which indicated that dichlorvos was mutagenic and might cause cancer, nerve damage, and birth defects in laboratory animals.

In 1982, the Agency issued a document reporting the results of its evaluation of dichlorvos (47 FR 45075). Initial concern had been based on the results of animal studies that were later found to be equivocal or to show no positive evidence of the suspected effects of exposure to dichlorvos. The Agency concluded that the existing information did not support the initiation of the RPAR process at that time. However, a determination was made to review results of carcinogenicity studies being conducted for the National Cancer Institute/National Toxicology Program when completed, and to issue a Data Call-In (DCI) for four mutagenicity studies in March 1983.

The Natural Resources Defense Council (NRDC), et al., brought suit against the Agency in 1983, in part, to require a reassessment of several RPAR decisions. A settlement agreement was reached in September 1984, in which the Agency agreed to reassess the pre-RPAR decision on dichlorvos. The parties also agreed that reassessment of dichlorvos would begin once the mutagenicity and carcinogenicity studies were received and evaluated.

The dichlorvos Registration Standard, issued in September 1987, stated that the Agency was considering further regulatory action for all registered uses of dichlorvos. The Registration Standard classified all dichlorvos products as restricted use, except for resin pest strips, pet uses, and all remaining products allowing household use only. The Agency also determined that all products must contain a hazard warning for cancer, liver effects, and cholinesterase inhibition. An interim 48–hour reentry interval was imposed for the agricultural and commercial uses of dichlorvos. The Registration Standard also identified and required additional data necessary to evaluate fully the human and environmental risks associated with the use of dichlorvos as an insecticide.

Amvac Chemical Corporation formally requested that EPA reconsider the requirements for a cancer warning statement and 48–hour reentry interval in February 1988. In September 1988, EPA formally deferred imposition of all Registration Standard label modifications and data requirements pending evaluation of comments and additional data regarding the label requirements, due to uncertainty concerning the cancer classification of dichlorvos. (These data requirements were later reinstated in August 1991 and January 1994.) Registrants were also informed that the Agency would amend the dichlorvos Registration Standard after completion of the reassessment.

On February 24, 1988, EPA initiated a Special Review for pesticide products containing dichlorvos. EPA determined that exposure to dichlorvos from the registered uses may pose an unreasonable carcinogenic risk and inadequate margins of exposure for cholinesterase inhibition and liver effects to exposed individuals. The risks of concern detailed in the Notice were for the general population from consumption of foods containing residues of dichlorvos, for those involved in the application of dichlorvos, for workers reentering treated areas, for residents/occupants of treated areas, for people exposed to pets

treated with dichlorvos, and for pets treated with dichlorvos.

On May 25, 1989, the State of California, NRDC, Public Citizen, the AFL-CIO, and several individuals filed a petition which asked the Agency to revoke FARs for seven potentially carcinogenic substances, including FARs for residues of dichlorvos in or on dried figs, and on packaged or bagged nonperishable processed food. The petitioners argued that these FARs should be revoked because the seven pesticides to which the regulations applied were animal carcinogens and thus the regulations violated the Delaney clause of section 409 of the Federal Food, Drug and Cosmetic Act (FFDCA). The Delaney clause provides that a FAR may not be approved for a food additive if it ''is found to induce cancer when ingested by man or animal. . . .'' 21 U.S.C. 348(c). In responding to the petition, EPA reiterated its 1988 interpretation that the Delaney clause is subject to an exception for pesticide uses which posed no greater than a *de minimis* cancer risk (56 FR 7750, February 25, 1991). Although EPA concluded that several of the challenged regulations met this *de minimis* standard, EPA found that the dichlorvos FAR for packaged or bagged nonperishable processed food did not meet this standard.

Therefore, in the Federal Register of October 3, 1991 (56 FR 50190), EPA proposed to revoke the FAR for residues of the pesticide dichlorvos on packaged or bagged nonperishable processed food, under section 409 of the FFDCA. Subsequent to that Notice, on July 8, 1992, in, *Les v. Reilly*, 968 F.2d 985 (9th Cir.), the Ninth Circuit Court ruled that the Delaney clause was not subject to an exception rule for those pesticides that pose a *de minimis* cancer risk. Following the Ninth Circuit Court decision, EPA revoked the section 409 FAR of dichlorvos on packaged or bagged nonperishable processed food (58 FR 59663, November 10, 1993) on the basis that it was in violation of the Delaney clause. EPA later stayed the 120–day effective date indefinitely, pending Agency consideration of a request for a hearing from Amvac. Legal pesticide residues on food are permitted by FFDCA; however, the use of a pesticide is permitted separately under FIFRA. Because the revocation was stayed, residues in food are currently allowed. When the stay is lifted, pesticide residues will be illegal; however, the use of dichlorvos will still be permitted under FIFRA. Therefore, under current policy, EPA intends to cancel the related uses as soon as possible after the FAR revocation becomes final. That cancellation will prevent the potential situation in which foods legally treated with dichlorvos under FIFRA would be considered adulterated and subject to seizure under FFDCA.

In August 1991, EPA reimposed indoor use data requirements that were required in the 1987 Registration Standard, and were deferred in 1988. These data have since been submitted by Amvac and reviewed by the Agency, and are used in the risk assessment presented here. In addition, the 1987 residential outdoor and terrestrial non-food use data requirements were reimposed on January 3, 1994. Another DCI was issued on February 22, 1994, for additional studies to support terrestrial non-food and residential outdoor uses. EPA has received some studies as a result of this DCI and the last study is due in March 1996. A further DCI was issued on November 10, 1994, for residue data relating to crack and crevice treatment around packaged and bagged food.

Based on information received in public comments and on additional analyses performed since the Special Review process began, EPA is now issuing this Notice of Preliminary Determination. Issuance of this Notice means that the Agency has assessed the potential adverse effects and the benefits associated with the use of pesticide products containing dichlorvos and that the Agency has preliminarily determined that, unless the terms and conditions of registration are modified as proposed in this Notice, the risks from the use of dichlorvos outweigh the benefits of their continued use.

EPA's position and a summary of the rationale underlying that position are set forth in this Notice. The basis for EPA's action is explained more fully in documents contained in the dichlorvos docket. The docket also contains references and background information pertinent to the registration of pesticide products containing dichlorvos.

This Notice serves both as a preliminary determination of the Special Review process and as a draft Notice of Intent to Cancel dichlorvos registrations. FIFRA requires that a draft Notice of Intent to Cancel be prepared and forwarded to the Scientific Advisory Panel (SAP) and the Secretary of the United States Department of Agriculture (USDA) to permit their review of the Agency's proposed action. The draft Notice of Intent to Cancel is not now legally effective but is intended only to provide a basis for comment by the SAP, USDA, registrants, and the public. EPA's compliance with this review requirement is discussed in Unit VII. of this Notice. Comments on this preliminary determination and Draft Notice of Intent to Cancel must be filed within 90 days of the issuance of this Notice.

II. Risk Assessment

A. Summary of Risk Assessment

Risk assessment is the process used to estimate the likelihood and magnitude of health effects that result from environmental exposures. This process consists of the following four components: Hazard identification, dose-response assessment, exposure assessment, and risk characterization. The first component, hazard identification, is a determination whether a particular chemical is or is not causally linked to particular adverse health effects. Dose-response assessment estimates the amount of a chemical that could potentially cause an adverse health effect. The amount of a chemical that did not result in an observable or measurable effect in an animal study is the no-observed-effect level (NOEL). All substances can cause a toxic effect at some level. The extent to which a chemical is toxic depends on the amount of the chemical needed to produce the adverse effect. Low toxicity chemicals require a large amount of the chemical to produce the adverse health effect, while highly toxic chemicals require only a small dose to produce the toxic effect. Exposure assessment describes the level or magnitude of exposure to the chemical, the route of exposure (inhalation, dermal, or oral), and the frequency of the exposure. Finally, risk characterization involves describing the nature and magnitude of human risk. The dose-response and exposure assessments are combined to estimate some measure of human risk. The potential for possible non-cancer health effects in humans is generally expressed as the margin of exposure (MOE) which is the ratio of the NOEL (dosage producing no effects) to the estimated exposure. For cancer, the risk is expressed as a probability of developing cancer over a lifetime, which is based on exposure and the chemical's cancer potency. The risk characterization component also summarizes the major strengths and weaknesses of the risk assessment.

In the case of dichlorvos, the Agency has determined that the adverse effects of primary concern for dichlorvos are those related to cancer and inhibition of cholinesterase activity including cholinergic signs (clinical signs indicative of cholinesterase inhibition in test animals). Based on data from

several carcinogenicity studies, the Agency has concluded that dichlorvos meets the criteria for a Group C (possible human) carcinogen. Dichlorvos has been shown to induce forestomach tumors in mice and leukemia in rats. Results from acute/short-term, subchronic and chronic toxicity studies have shown dichlorvos to be a potent inhibitor of plasma, red blood cell and brain cholinesterase in several mammalian species, and to produce cholinergic signs.

In the Notice initiating the Special Review, EPA estimated cancer risks for those individuals potentially exposed to dichlorvos through dietary and non-dietary (i.e. inhalation and dermal contact) routes. Since that time, EPA has determined that it is not appropriate to extrapolate from oral carcinogenicity data for estimation of excess individual cancer risks for exposure by the dermal and inhalation routes. Therefore, cancer risk estimates for workers and residents exposed to dichlorvos by the dermal and inhalation routes are not included in this revised risk assessment. EPA only estimated excess individual lifetime cancer risks for dietary exposure to the general population.

Dietary exposure to dichlorvos residues may occur as a result of use on a variety of sites, including greenhouse food crops, mushroom houses, bulk-stored and packaged or bagged nonperishable processed and raw food, commercial food processing plants, groceries, eating establishments, and direct animal treatment. Some of these exposures and resulting risks may be eliminated due to voluntary cancellations or cancellation of uses related to the revocation of the FAR for packaged or bagged nonperishable processed food; however, since these actions are not final yet, for purposes of this document, EPA will assume that these uses will continue. EPA estimates dietary cancer risks from registered uses of dichlorvos to be 4.4×10^{-6}. The major source of this estimated risk is from consumption of bulk, packaged or bagged nonperishable raw and processed food treated with dichlorvos (3.4×10^{-6}).

In addition to registered uses of dichlorvos, naled provides an additional source of dietary risk from dichlorvos. Naled, an insecticide, is metabolized to dichlorvos by plants. As a result, the Agency felt it appropriate to characterize the total risk from dichlorvos even though naled itself is not under Special Review. The combined dietary cancer risk from dichlorvos is 5.1×10^{-6} which includes risk directly from dichlorvos (4.4×10^{-6}) and from naled-derived dichlorvos (7.2×10^{-7}).

EPA completed a series of exposure assessments in 1987 for the Registration Standard and PD 1 that estimated the exposure to individuals mixing, loading and applying dichlorvos, as well as to those reentering areas treated with dichlorvos. These estimates were based on the best available data, which in most cases were exposure data derived from other pesticides applied in a similar manner as dichlorvos. Additional exposure data have been submitted since that time and the Agency has determined that revisions to the original assessments are appropriate based on these new data. EPA has revised its original exposure estimates for several uses of dichlorvos, including: Crack and crevice application, greenhouses, mushroom houses, dairy barns and milk rooms, household aerosol and total release fogger products.

Red blood cell, plasma and brain cholinesterase inhibition and/or cholinergic signs are the basis for the short-term, intermediate, and long-term MOE estimates. For pesticides, EPA classifies occupational/residential exposure patterns as short-term (1 to 7 days), intermediate (1 week to several months per year), or long-term (a substantial portion of the lifetime). These scenarios could vary by region or from year-to-year depending on the severity of the pest problem. Separate NOELs were selected from acute (0.5 mg/kg/day), subchronic (0.1 mg/kg/day), and chronic (0.05 mg/kg/day) toxicity studies to estimate MOEs for varying durations of exposure. Margins of exposure are outlined in Table 1 in Unit II. of this document for individuals reentering treated facilities and for individuals exposed during the application of dichlorvos. Most of the MOEs are below the level which the Agency believes is protective of public health (100).

B. Effects of Concern

1. *Carcinogenicity*. EPA has determined that the risk criteria for carcinogenicity as set forth in 40 CFR 154.7 (a)(2) has been exceeded for dietary exposure. Based on the studies described below, EPA has classified dichlorvos as a Group C (possible human) carcinogen (Ref. 1) .

i. Hazard identification. In July 1987, the Office of Pesticide Program's Carcinogenicity Peer Review Committee (CPRC) classified dichlorvos as a Group B2 (probable human) carcinogen, based primarily on the results of National Toxicology Program (NTP) studies in mice and rats. Since that time, EPA has reevaluated the carcinogenic potential of dichlorvos and concluded that dichlorvos is a Group C (possible human) carcinogen. The basis for that determination is summarized below.

(a) Mouse study. Dichlorvos was administered by gavage to B6C3F1 mice (60/sex/group) for 103 weeks (5 days/week) using corn oil as the vehicle (Ref. 2). Doses were 0, 10, or 20 mg/kg/day for male mice and 0, 20, or 40 mg/kg/day for females. Administration of dichlorvos to female mice was associated with a statistically significant dose-related trend and statistically significant increase in squamous cell forestomach papillomas and combined squamous cell forestomach papillomas and carcinomas at the high-dose. The forestomach tumors were outside the historical control range. In male mice, an increase in squamous cell forestomach papillomas was associated with a significant dose-related trend, but was not statistically significant by pairwise comparison at either dose level. No other tumor types were identified in this study. No malignant squamous cell tumors were found in the historical controls.

(b) Rat study. Dichlorvos was administered, with corn oil as the vehicle, by gavage to F344 rats (60/sex/group) for 103 weeks (five days/week) (Ref. 3). The dosages were 0, 4, or 8 mg/kg/day. The study resulted in a statistically-significant increase in mononuclear cell leukemia in males by pairwise comparison at both dosage levels. The increase in leukemia also exhibited a statistically significant positive dose-related trend. There was an increased incidence of lung adenomas in high-dose male rats which was significant only for a dose-related trend. In addition, dichlorvos administration was associated with a statistically significant increased incidence of mammary gland adenomas and all mammary gland tumors at the low-dose only (by pairwise comparison) in rats. However, the incidence of lung adenomas and mammary gland tumors were within the historical control range.

(c) Reexamination of cancer classification. The FIFRA Scientific Advisory Panel (SAP) reviewed the CPRC's Group B2 cancer classification and concluded that dichlorvos should be classified as a Group C (possible human) carcinogen since: (1) only benign tumors were induced by dichlorvos; (2) they were not dose-related; and (3) dichlorvos was not mutagenic in *in vivo* assays (although it was mutagenic in several *in vitro* test systems with and without metabolic activation) (Ref. 4).

The CPRC met for a second time on September 29, 1987, to examine the issues raised by the SAP with respect to the classification of the carcinogenicity of dichlorvos (Ref. 5). Upon reconsideration, the Committee concluded that the results of the NTP studies indicate that dichlorvos demonstrates sufficient evidence of carcinogenicity in the male rat and female mouse to confirm the initial classification of dichlorvos as a Group B2 carcinogen.

The committee concluded that ''the results of the NTP bioassays indicate that DDVP demonstrates sufficient evidence of carcinogenicity in the male rat and in the female mouse since: (1) A dose-response relationship of statistical significance was seen for pancreatic adenomas (which have the potential to progress towards malignancy) and mononuclear cell leukemia in male rats, (2) a dose-response relationship of statistical significance was seen in the female mouse for forestomach squamous cell papillomas which have the potential to progress to carcinomas, (3) the presence of some forestomach carcinomas (which are rare) was seen in the female mouse, (4) a significant positive trend was seen for forestomach papillomas in male mice at a dose that did not achieve an MTD, (5) supporting evidence provided by a statistically significant increase in mammary tumors at the low dose in the female rat which was associated with a significant trend, and (6) mutagenicity data was available indicating that DDVP is positive for mutagenicity *in vitro* in bacterial and mammalian cells both with and without metabolic activation. The Committee, thereby, confirmed their initial classification of DDVP as a B2 oncogen.''

The CPRC had a third meeting on June 2, 1988, to review the conclusions of an April 1988 meeting of NTP Panel of Experts on the carcinogenic classification of dichlorvos (Ref. 6). Scientists at NTP had resectioned the pancreas of all test groups in the rat bioassay. The additional sectioning of pancreata resulted in an increased number of tumors in the control animals, thus diminishing the statistical significance of this lesion. Based on this finding, the NTP scientists concluded that the evidence for carcinogenicity in male rats should be downgraded from *clear evidence* to *some evidence*. The CPRC considered the NTP's information and concluded that dichlorvos should remain classified as a Group B2 carcinogen, because: (1) The incidence of mononuclear cell leukemia in dichlorvos treated F344 rats was treatment-related; (2) although the results of longitudinal sectioning of the pancreas diminished the significance of the pancreatic acinar adenomas in male rats, the incidence of animals with multiple adenomas was still increased with dichlorvos treatment; and (3) dichlorvos is a direct acting mutagen. The Committee considered this as an interim classification until the following additional data had been reviewed: (1) the results of a Japanese study in which dichlorvos was administered in drinking water to Fischer 344 rats and B6C3F1 mice; (2) additional data on a chronic rat inhalation study; (3) additional *in vivo* mutagenicity data, and (4) additional historical control information on pancreatic acinar adenomas.

The CPRC met for a fourth time on July 19, 1989, the conclusions of which serve as the basis for the cancer hazard assessment in this proposed determination (Ref. 7). The purpose of this meeting was to reconsider the NTP rat study in light of the recent NTP Panel of Experts report, evaluate new oncogenicity studies with DDVP administered by inhalation or in drinking water and consider other ancillary information.

As mentioned earlier, the NTP reexamined the pancreata of male and female rats using longitudinal sections which diminished the statistical significance of this lesion. The NTP analysis of the combined data indicated a statistically significant difference between the treated and control groups with a positive dose-related trend using the logistic regression analysis. However, EPA scientists concluded that the increase in pancreatic acinar tumors was neither significant in the Fischer Exact test for pairwise comparison, nor positive in the Cochran-Armitage test for dose-related trend, which are typically used for testing dose groups having no survival disparities. The incidence of animals with multiple pancreatic adenomas was still increased with dichlorvos treatment and outside of the historical control range.

The Committee also reevaluated an inhalation oncogenicity study in which 50 CFE rats/sex/dose were exposed to concentrations of 0.05, 0.5 or 5.0 mg/m^3 of technical dichlorvos 23 hours per day for 2 years. This study was reviewed for the dichlorvos Registration Standard and the Agency considered the study inadequate for evaluating the carcinogenicity of the chemical. The study was upgraded after the individual animal data were submitted to the Agency. Agency scientists have concluded that administration of dichlorvos did not alter the tumor incidence in this study.

In addition to the Japanese drinking water study in Fischer 344 rats, Amvac Chemical Corporation submitted a study to the Agency in March 1989, using B6C3F1 mice which was also conducted in Japan. In both studies, dichlorvos was administered in drinking water for 2 years. The CPRC considered both studies to be deficient in conduct and reporting, including incomplete histopathologic evaluation, absence of water consumption data, and failure to include individual animal data in the final report. As a result of these deficiencies, the studies are not amenable to statistical analyses. However, the studies are useful in identifying a qualitative trend in that dichlorvos treatment induced some tumors similar to those induced in the oral gavage studies. In the rat study, there appeared to be an increased incidence of mononuclear cell and lymphocytic leukemia in treated males, as well as mammary gland fibroadenomas in females. In the mouse study, there appeared to be an increased incidence of fibrous histiocytomas and thymomas in males.

The Committee agreed, based upon the available information to reclassify dichlorvos as a Group C carcinogen, in accordance with the Agency's Guidelines for Carcinogenic Risk Assessment. This downgrading from the previous classification as Group B2 was due to: (1) Erosion of the evidence on the pancreatic acinar adenomas in male rats; (2) upgrading and consideration of the negative inhalation study in CFE rats; and (3) questions regarding the biological significance of the primary tumors in the NTP studies, i.e., leukemia in rats (variable tumors in historical controls) and forestomach tumors in mice and its relevance to man.

ii. Weight-of-the-evidence for carcinogenicity. In its most recent evaluation, the fourth cancer peer review, the CPRC considered the weight-of-the-evidence and concluded that dichlorvos should be classified as a Group C (possible human) carcinogen based on inadequate human data and limited data from animal bioassays. The Group C classification is supported by the following points:

(a) In B6C3F1 mice, dichlorvos induced a statistically significant increase in forestomach squamous cell papillomas and combined forestomach squamous cell carcinomas and papillomas in high-dose females. This tumor-type (squamous cell papillomas) was also increased in high-dose males but was significant only for a positive dose-related trend.

(b) In Fischer 344 rats, dichlorvos was associated with a statistically significant increase, with a positive dose-related trend, in leukemia (of all sites and types) in males at both dosage levels. This evidence is supported by the results of the transplantable rat mononuclear cell leukemia model. The treatment was also associated with a numerical (not statistically significant) increase in pancreatic acinar adenomas in males. The incidence of animals with multiple pancreatic acinar adenomas was also increased.

(c) The Group C classification is further supported by studies indicating that dichlorvos is a direct acting gene mutagen in bacteria, fungi and mammalian cells *in vitro*, and suggesting *in vivo* mutagenic activity. (Refs. 8-17). Dichloroacetaldehye, a product of hydrolytic or oxidative cleavage of dichlorvos, has also been reported to be mutagenic in the scientific literature (Ref. 18). Additionally, dichlorvos is structurally similar to known chemical mutagens/carcinogens (i.e., tetrachlorvinphos and phosphamidon).

iii. Dose-response assessment. The CPRC concluded that a quantitative estimate of the carcinogenic potency should be performed for dichlorvos. Cancer potency (or Q_1*) is a quantitative estimate of the relationship between exposure to increasing doses of a chemical and the chemical's ability to induce tumors (i.e., increased number of tumors per unit dose). Because most animal studies do not include a sample size large enough to detect carcinogenic responses at low doses comparable to environmental exposures, the Agency normally estimates the cancer potency of a chemical by extrapolating from responses in high-dose animal experiments.

Several mathematical models have been developed to estimate the cancer potency. In the absence of information demonstrating a more appropriate model, the Agency generally uses the linearized multi-stage model to extrapolate from effects seen at high-doses in laboratory studies to predict tumor response at low-doses. This model is based on the biological theory that a single exposure to a carcinogen can initiate an irreversible series of transformations in a single cell that will eventually lead to a tumor. In addition, the linearized multi-stage model assumes that the probability of each transformation is linearly related to the degree of exposure (i.e., a threshold does not exist for carcinogenicity).

Using this model, the Agency estimated the cancer potency (Q_1*) for dichlorvos based on the tumor incidence data in female mice and male rats in the NTP studies. The cancer potency in human equivalents is 1.22 x 10^{-1} $(mg/kg/day)^{-1}$, which is the geometric mean of the Q_1* for female mouse forestomach tumors and the Q_1* for leukemia in male rats (Ref. 19). The Q_1* represents the 95 percent upper confidence limit of tumor induction likely to occur from a unit-dose.

The CPRC (fourth cancer peer review) also recommended not to quantify the cancer risk by a low-dose extrapolation model for the inhalation route of exposure. The primary basis for this recommendation was the upgrading of a 2-year inhalation study in rats which did not result in an increased tumor incidence. The recommendation was based on the following considerations: The quality of the oral cancer data, the route specificity of the target organs, the reliability and accuracy in estimating the target-dose and the unlikelihood that exposure via the inhalation route would lead to the formation of a reactive metabolite.

In addition, the OPP Reference Dose Committee concluded that extrapolating the results from the oral gavage studies to the dermal route of exposure is not appropriate for dichlorvos (Ref. 20). This decision was based on the following considerations: (1) There was no dose-response relationship in the leukemia observed in male Fisher 344 rats; (2) the tumors observed in female B6C3F1 mice were contact site tumors, the relevance of which to humans is unknown, and the incidence of which, at all dose levels, including the concurrent controls, was outside the National Toxicology Program's control range; (3) the dynamics of absorption, distribution, metabolism and excretion do not favor retention of the chemical in animal tissues and makes it difficult to determine accurately the concentration at the target site; and (4) it is not expected that topically applied doses would reach the target organ(s) in sufficient quantity to produce a carcinogenic response or would be sufficient to alkylate macromolecules in the target tissues to produce contact site tumors. Therefore, extrapolation from oral data to dermal or inhalation routes is not appropriate, for estimation of excess individual cancer risk, for exposure to dichlorvos.

2. *Cholinesterase inhibition*. Cholinesterase (ChE) refers to a family of enzymes that are essential to the normal functioning of the nervous system. These enzymes are necessary for the transmission of nerve impulses. Inhibition of ChE activity can result in a number of cholinergic signs and symptoms in humans, depending on the rate and magnitude of exposure, including: Headaches, dizziness, nausea, vomiting, diarrhea and increased urination, blurred vision, pinpoint pupils, increased salivation, labored breathing, muscle paralysis, slow heart rate, respiratory depression, convulsions, coma and even death. These enzymes have been identified in nearly every tissue of the body; however, ChE activity is usually measured in blood plasma and red blood cells in humans, while ChE levels in laboratory animals are measured in plasma, red blood cells as well as brain tissue.

Organophosphate pesticides, such as dichlorvos, are known to inhibit ChE activity and some cause delayed neurotoxic effects. EPA has evaluated the available information and concluded that dichlorvos is a potent ChE inhibitor. This determination is based on toxicological data using laboratory animals, human poisoning incidents, and limited human toxicity information, which are discussed below.

i. Laboratory data. Acute, subchronic and chronic laboratory studies using experimental animals have shown dichlorvos to be a potent ChE inhibitor, significantly reducing blood plasma, red blood cell and brain ChE. ChE inhibition has been demonstrated in several mammalian species following oral, inhalation, and dermal administration of dichlorvos. Only the primary studies selected for use in assessing risk from short-term, intermediate, and long-term exposures are discussed below.

(a) Acute toxicity data. Acute neurotoxicity data are limited in comparison to available subchronic and chronic data, but are more relevant for assessing risk from single and short-term repeated exposure scenarios. Acute neurotoxicity studies have been conducted in both hens and rats. An acute neurotoxicity study in rats evaluated the neurobehavioral signs and the neuropathological effects following single exposures, but did not measure ChE inhibition (Ref. 21). Groups of 12 male and female Sprague-Dawley rats were administered single oral doses of 0, 0.5, 35 or 70 mg/kg/day by gavage. At the mid- and high-doses, administration of dichlorvos resulted in a variety of neurological and physiological changes (e.g., alterations in posture, mobility and gait, reduced or absent forelimb/hindlimb grasp, tremors). Most of these changes were observed about 15 minutes after compound administration, while no toxicity was apparent for the survivors (there were several deaths at the high-dose) 7 days following administration of dichlorvos at all dose

levels. Based on the study results, the NOEL for signs associated with ChE inhibition was established at 0.5 mg/kg/day.

An acute delayed neurotoxicity study in hens resulted in cholinergic signs of ChE inhibition and neuropathic effects (Ref. 22). Ten birds were administered a single dose of 16.5 mg/kg/day by oral intubation. The test birds were given another oral dose at 21 days and observed for an additional 21 days. Dichlorvos-treated birds demonstrated signs of ChE inhibition shortly after dosing, including: lethargy and depression, incoordination, limb weakness, wing drop, and reduced reaction to external stimulation. The birds were asymptomatic by day 3 after dosing. Administration of dichlorvos did not produce overt signs of acute delayed neurotoxicity, but neuropathic effects (peripheral nerve lesions which are associated with paralysis) did occur in one hen. A NOEL was not shown for this effect in this one dose study.

Additional information about short-term exposure is provided by a range-finding study in which dogs (one male and one female for each dose) were administered dichlorvos by capsule for 2 weeks at the following doses: 0, 0.1, 1.0, 5.0, 10, 15, 30, or 60 mg/kg/day (Ref. 23). Plasma and red blood cell ChE levels were decreased in the 1.0 mg/kg/day group and above as early as 6 days after dosing. The degree of ChE inhibition increased with dose. During the first week following dosing, severe cholinergic signs were observed in animals at 30 and 60 mg/kg/day and death occurred at these doses during the second week of dosing. However, this study is not appropriate for short-term risk assessment because only a limited number of animals were treated at each dose and dichlorvos was administered repeatedly. This study indicates that short-term exposure to dichlorvos at low levels produces ChE inhibition in plasma, red blood cells and brain tissue, and contributes to the overall weight-of-the-evidence.

(b) Subchronic toxicity data. A study was performed in rats providing ChE inhibition data following subchronic exposure to dichlorvos (Ref. 24). Groups of 10 male and 10 female rats were administered doses of 0, 0.1, 1.5 or 15 mg/kg/day by oral gavage for 13 weeks (5 days/week). Observations recorded approximately 30 to 60 minutes post-dose included salivation in 7 males and 4 females treated with 15 mg/kg/day. Urine stains were also seen in 7 males and 5 females at this dose. These observations were seen on certain days during weeks 6 through 12 for males and 8 through 12 for females. At week 7, plasma ChE activity was significantly reduced in mid- and high-dose male and high-dose female rats when compared to the controls. Mid- and high-dose male and female rats also demonstrated significantly reduced red blood cell (RBC) ChE activity when compared to the controls at 7 weeks. At the 14–week interval, plasma ChE activity was significantly reduced in high-dose males and females, while RBC activity was significantly lower than controls in mid- and high-dose animals. Red blood cell ChE activity was also reduced in low-dose (0.1 mg/kg/day) females at 14 weeks; however, the RBC ChE inhibition was not considered biologically significant since it was less than 10 percent below ChE activity in control animals. Brain ChE activity in high-dose female rats was 49 percent lower than in control females and was statistically significant, while brain ChE activity in high-dose males was reduced 28 percent below control males but inhibition was not statistically significant. The data presented support a NOEL of 0.1 mg/kg/day based on plasma and red blood cell ChE inhibition at doses of 1.5 mg/kg/day and above.

An additional subchronic study in rats evaluated neurobehavioral signs, neuropathological effects, and also measured ChE activity (Ref. 25). Dichlorvos was administered by oral gavage to male and female rats at doses of 0, 0.1, 7.5, or 15 mg/kg/day (15 animals/sex/dose) for 90 days. There were no significant differences between the control and treated animals with respect to the functional observational battery or locomotor activity evaluations, nor were any neuropathological lesions attributable to dichlorvos. However, administration of dichlorvos was accompanied by cholinergic signs (tremors, salivation, exophthalmos, lacrimation) approximately 15 minutes after dosing in the high-dose animals and, to a lesser extent, in the mid-dose animals. In general, cholinergic signs occurred during the first dosing week in high-dose animals and during the third dosing week in mid-dose animals and persisted to study termination in both groups. Plasma ChE inhibition was statistically significant at all time periods measured; however, RBC ChE inhibition was only statistically significant for high-dose males at week 3. ChE levels in RBC were reduced 23, 12, and 18 percent in the mid-dose males and 35, 8, and 11 percent in the high-dose males compared to controls during weeks 3, 7, and 13, respectively. In females, RBC ChE inhibition of 13, 38, and 33 percent at the mid-dose, and of 4, 42, and 35 percent at the high-dose were noted during weeks 3, 7, and 13, respectively. Brain stem and brain cortex ChE activity were also reduced from 11 to 12 percent in low-dose animals and from 10 to 16 percent in high-dose rats as compared to controls. Inhibition of brain stem ChE activity was statistically significant in high-dose males only, while in the cerebral cortex ChE was significantly reduced for animals in the mid- and high-dose groups. The NOEL from this study was 0.1 mg/kg/day based on ChE inhibition (plasma, RBC, brain) and cholinergic signs occurring at 7.5 mg/kg/day.

A developmental toxicity study in New Zealand white rabbits produced signs of ChE inhibition at similar dose levels as the subchronic rat studies (Ref. 26). Groups of 16 pregnant females were administered doses of 0, 0.1, 2.5, or 7.0 mg/kg/day by oral gavage on gestation days 7 through 19, inclusive. The doses were selected based on the results of a range-finding study conducted in the same strain of pregnant rabbits at dose levels of 0, 0.1, 1.0, 2.5, 5.0 or 10 mg/kg/day (8 per group, except for 7 in the 2.5 mg/kg/day group) in which there were statistically significant reductions in maternal plasma and RBC ChE activity in a dose-related manner at all doses except 0.1 mg/kg/day. Profound treatment-related maternal mortality (5/8 died) and cholinergic signs occurred at 10 mg/kg/day. In the definitive developmental toxicity study, mortality was observed at 2.5 mg/kg/day (13 percent) and 7.0 mg/kg/day (25 percent). ChE inhibition was not measured; however, apparent anticholinesterase-related signs and symptoms were observed at the high-dose, including ataxia, prone positioning, tremors, excitation, salivation, diarrhea and difficulty in breathing. Based on the range-finding and definitive study results, the maternal toxicity NOEL and Lowest Effect Level (LEL) were demonstrated at 0.1 and 2.5 mg/kg/day, respectively.

An inhalation developmental toxicity study in rabbits produced findings similar to those of the oral developmental toxicity study (Ref. 27). Groups of 20 female Dutch rabbits were exposed to 0, 0.25, 1.25, or 6.25 μg/L of dichlorvos for 23 hours per day, from day 1 of mating to gestation day 28. No cholinergic signs were noted at 0, 0.25, or 1.25 μg/L, but severe toxicity and mortality occurred after the 6th day of exposure to 6.25 μg/L. Cholinergic signs observed included anorexia, lethargy, muscular tremors, mucous nasal discharge and diarrhea. Sixteen of the 20 does at the high-dose died or were killed because of intoxication. There

were statistically significant reductions in plasma, RBC and brain ChE activity at 1.25 and 6.25 μg/L, while at 0.25 μg/L ChE activity was depressed less than 15 percent. The NOEL for this study is 0.25 μg/L based on ChE inhibition in plasma, RBC and brain tissue. The NOEL of 0.25 μg/L corresponds to approximately 0.14 mg/kg/day. In converting from μg/L to mg/kg/day, EPA assumed that 100 percent of the dichlorvos vapor is absorbed by inhalation and also that the rabbit breathing rate is constant over time.

Additional information on neuropathological effects can be drawn from a 28-day delayed neurotoxicity study in hens, from which preliminary results were submitted to the Agency (Ref. 28). This study was required based on the results of the acute study in hens discussed above. Groups of 21 hens were administered dichlorvos orally at doses of 0, 0.3, 1.0, or 3.0 mg/kg/day for 28 days. These data suggest that significant axonal degeneration in the spinal cord occurred following oral administration of 1 and 3 mg/kg/day, while at 0.3 mg/kg/day only minor effects were noted. While such findings must be regarded as preliminary, they should be regarded as potentially serious, since such lesions represent an irreversible and relatively serious effect. In addition, this report notes that significant (34 to 63 percent) brain ChE inhibition was seen at 1 and 3 mg/kg/day. The final report was submitted to the Agency and is currently under review.

(c) Chronic toxicity data. Both oral and inhalation toxicity data demonstrate that long-term exposure to dichlorvos results in plasma, RBC, and brain ChE inhibition. In a chronic rat inhalation study, groups of 50 male and 50 female CFE rats per dose level were exposed to 0, 0.05, 0.48, or 4.7 mg/m^3 of dichlorvos for 2 years (Ref. 29). There was a statistically significant decrease in ChE activity in plasma, red blood cells, and brain in the mid- and high-dose groups (76, 72, 90 percent and 83, 68, 90 percent of control activity in mid-dose males and females; and 38, 4, 21 and 22, 5, 16 percent of control activity in high-dose males and females, respectively). Red blood cell ChE was reduced to 88 percent of control activity in females dosed at 0.05 mg/m^3, but this decrease was not statistically significant. The NOEL was established at 0.05 mg/m^3 based on ChE inhibition in plasma, red blood cells and brain tissue. The concentration of 0.05 mg/m^3 corresponds to approximately 0.055 mg/kg/day, assuming a constant breathing rate in rats and 100 percent absorption of dichlorvos vapor.

Groups of 4 male and 4 female dogs were administered dichlorvos by capsule 7 days per week at doses of 0, 0.05 (0.1 for the first 3 weeks of study), 1.0 or 3.0 mg/kg/day for 1 year (Ref. 30). Plasma ChE was inhibited (21.1 to 66.6 percent) in males and females in the 0.1, 1.0, and 3.0 mg/kg/day groups during week 2. The low-dose was consequently reduced to 0.05 mg/kg/day on day 22 due to the plasma ChE inhibition (26 percent in females) noted after 12 days of dichlorvos administration. Red blood cell ChE was only slightly decreased (less than 2 percent) in the 0.1 mg/kg/day group at week 2, while animals in the 1.0 and 3.0 mg/kg/day groups exhibited RBC ChE inhibition of 33 to 75 percent. Statistical analyses were not conducted prior to week 13. Statistically significant depression in plasma and RBC ChE occurred at week 13 in males and females in the 1.0 and 3.0 mg/kg/day groups. In addition, brain ChE was significantly reduced in males and females in the high-dose group and in the males of the mid-dose group at termination. Brain ChE activity was inhibited approximately 22 percent in males in the 1.0 mg/kg/day group and 47 percent and 29 percent, respectively, in males and females in the 3.0 mg/kg/day group compared to controls. Study results correspond to a NOEL of 0.05 mg/kg/day, based on plasma, RBC, and brain ChE inhibition.

A two-generation reproductive study was conducted in which Sprague-Dawley rats were exposed via the drinking water to dichlorvos at concentrations of 0, 5, 20, or 80 ppm (males - 0.5, 1.9 or 7.2 mg/kg/day; females - 0.6, 2.3, or 8.3 mg/kg/day) (Ref. 31). ChE assays (plasma, RBC and brain) were performed on males and females of both the F_0 and F_1 generations at terminal sacrifice. The data indicate that RBC ChE was inhibited in both males and females at all doses and in a dose-related manner. At the low-dose, RBC ChE activity was decreased 7 to 14 percent in males and 17 to 23 percent in females. RBC ChE inhibition was statistically significant for both males and females at all dose levels, except for the F_0 males at 0.5 mg/kg/day (7 percent inhibition). Plasma ChE inhibition was statistically significant for both males and females at the mid- and high-dose levels. The plasma ChE inhibition for F_1 males at the low-dose (0.5 mg/kg/day) was also statistically significant (15 percent). In addition, brain ChE activity was inhibited in males and females of both generations at all dose levels. Statistically significant reductions occurred only at the mid- and high-doses. The study results establish a NOEL of less than 5 ppm for RBC and plasma ChE inhibition (males - 0.5 mg/kg/day; females - 0.6 mg/kg/day).

ii. Human data—(a) Toxicity data. EPA reviewed several studies in the scientific literature that measured ChE inhibition in humans following exposure to dichlorvos (Ref. 32). The studies only covered a few exposure scenarios, including occupant exposure to resin pest strips and workers reentering treated warehouses. There were few, if any, adverse effects following most resin pest strip exposures. Only one headache was reported which may have been associated with dichlorvos exposure. Usually only plasma ChE inhibition was statistically significant with statistically significant RBC ChE inhibition occurring only rarely. However, interpretation of the study results is difficult because of methodological problems and utilization of outdated methods for measuring ChE activity. In addition, the studies only examined small numbers (less than 20) in any one test group.

(b) Poisoning incidents. Exposure to dichlorvos has resulted in poisoning incidents. Although the number of incidents is not large, it is sufficient to be of concern and can be viewed as confirmatory of the inadequate MOEs. Several sources are available indicating that exposure to dichlorvos has resulted in poisoning incidents. As part of the assessment for the dichlorvos Registration Standard, the Agency reviewed the Pesticide Incident Monitoring System (PIMS) data base covering a period from 1964 to 1980 (Ref. 33). Only 182 of the 598 dichlorvos incidents could be identified as involving products that contained dichlorvos as the sole active ingredient. A majority (147) of these 182 reports involve humans and domestic animals in the home environment, with 114 incidents resulting from ingestion and application of dichlorvos. One death was reported. Ingestion incidents usually involved children chewing flea collars and resin pest strips. Most of the application incidents involved situations where the existing label precautions were not followed. Of the remaining 416 incidents in which dichlorvos was cited in combination with other chemicals, there were 9 human fatalities reported. EPA's Incident Data System, in operation since June 1992, does not contain any human poisoning incidents attributed to dichlorvos exposure.

Case reports from the California Pesticide Illness Surveillance Program are available for dichlorvos from 1982 to

1990 (Ref. 34). A total of 78 poisoning incidents were attributed to dichlorvos exposure. Sixty were classified as systemic poisonings, 12 caused eye problems and the remaining 6 resulted in skin irritation. The majority of these incidents involved active ingredients in addition to dichlorvos. In addition, poisonings were attributed to both occupational and residential exposures.

Finally, the American Association of Poison Control Centers (AAPCC) reported that for the years 1985 - 1992 there were 21,006 exposures of all kinds for dichlorvos alone and 21,844 exposures for dichlorvos alone and in combination with other active ingredients (Refs. 35 and 36). Of the 21,006 exposures, 2,671 individuals were treated and released and 350 were hospitalized. There were 259 occupational cases involving dichlorvos alone and an additional 57 occupational cases involving dichlorvos in a mixture with another pesticide. Of the 259 cases, 99 workers were treated and released and 13 were hospitalized. Only one of the occupational cases was considered life-threatening, while 10 of the non-occupational cases were so categorized.

iii. Animal health and safety data. EPA reviewed 3 animal heath and safety data studies which examined the effect on dogs and cats of wearing registered cat and dog flea collar products. These studies provide strong evidence that dichlorvos, used in combination with other active ingredients, has a significant effect on reducing ChE activity in dogs. Although the ChE inhibition could result in part from another pesticide active ingredient, the Agency has no data to disprove that ChE depression is a result of dichlorvos exposure (Refs. 37-39).

In the first study, groups of 3 male and 3 female dogs per group served either as controls, or wore 1, 3, or 5 collars containing 9.3 percent dichlorvos and 4.2 percent chlorpyrifos. In the 1-collar group, 5 out of 6 dogs averaged RBC ChE inhibition (statistically significant) of 20 to 30 percent during the period day 3 through week 2. Plasma ChE inhibition was even greater, averaging 65.6 percent as compared to pre-test values during the perod day 3 through week 4 in 5 animals.

Another study was conducted in which 3 male and 3 female dogs were each assigned to a control group, a group wearing a collar containing 7.8 percent dichlorvos and 4.34 percent chlorpyrifos, a group wearing a collar containing 8.87 percent dichlorvos and 4.44 percent chlorpyrifos, and a group wearing an 8 percent chlorpyrifos collar. The mean percentage plasma ChE activity was significantly different from that of the control group among dogs wearing collars containing dichlorvos from day 7 through week 6. Differences in RBC ChE activity were not statistically significant. More specifically, in animals wearing the product containing 7.8 percent dichlorvos, plasma and RBC ChE activity were inhibited 49 percent and 19 percent as compared to pre-test values. This study demonstrates that plasma and RBC ChE inhibition also can occur from use of these products.

In the last study, ChE activity was measured in dogs over a 98–day period, during which time the dogs wore a placebo collar or 1, 3, or 5 collars containing a mixture of 7 percent dichlorvos and 9 percent propoxur. There was a considerable drop in plasma ChE activity in the first 7 days of exposure (in 1-collar dogs by 30 percent, in 3-collar dogs by 57 percent, and in 5-collar dogs by about 63 percent). In the 1-collar exposure group there was essentially complete plasma ChE recovery by day 56; however, in the 3 and 5-collar females there was still significant plasma ChE inhibition (35 and 43 percent, respectively) on day 98. There was no evidence of any RBC ChE inhibition in any group at any time during this study.

iv. Dose-response assessment. Results from acute, subchronic, and chronic toxicity studies have shown dichlorvos to be a potent inhibitor of plasma, RBC, and brain ChE. In most instances, inhibition of brain ChE occurred at similar doses as plasma and RBC ChE inhibition. Moreover, cholinergic signs were usually associated with actual measurements of ChE inhibition. Neurotoxicity data indicate a correlation between ChE inhibition and neuropathological effects. Overall, the various indicators of ChE inhibition (i.e., altered ChE activity in plasma, RBC, brain, neuropathological effects or cholinergic signs) are observed within a relatively narrow dose range. In addition, the effects indicative of ChE inhibition observed in laboratory studies are further validated by actual human poisonings accompanied by cholinergic signs.

Dose-response data for ChE inhibition and/or cholinergic signs are available for acute, subchronic, and chronic toxicity studies using rats, rabbits, dogs and hens as the test species. EPA selected the lowest NOELs from acute, subchronic, and chronic toxicity studies to calculate MOEs of exposure for individuals exposed to dichlorvos for varying durations of time. The NOELs are based on either brain ChE inhibition and/or cholinergic signs following administration of dichlorvos by the oral and inhalation routes of exposure. Neurotoxicity data following dermal administration of dichlorvos are not available.

(a) Acute/short-term exposure. EPA scientists believe that a NOEL of 0.5 mg/kg/day is most suitable for calculating MOEs of exposure for acute dietary and short-term occupational or residential (1 to 7 days) exposure scenarios. This NOEL is based on the acute neurotoxicity study in rats resulting in neurological and physiological changes observed shortly after dosing, including alterations in posture, mobility, and gait, reduced or absent forelimb/hindlimb grasp, increased time to first step, pupillary constriction, tremors, clonic convulsions, increased response time, catalepsy, and reduction in body temperature at 35 mg/kg/day. ChE activity was not measured in this study. There is some uncertainty with this acute NOEL because of the wide gap between dose levels (0, 0.5, 35, or 70 mg/kg/day). Since there are no intermediate doses between the no effect level of 0.5 mg/kg/day and the next level, 35 mg/kg/day, at which a variety of behavior changes were seen, it is possible that additional data might result in a slightly higher NOEL. However, Agency scientists do not believe that such a new acute NOEL would differ greatly from 0.5 mg/kg/day because short-term exposure data from other studies yielded similar results.

(b) Intermediate exposure. EPA selected a NOEL of 0.1 mg/kg/day for assessing intermediate occupational and residential exposure (1 week to several months) to dichlorvos. This NOEL was derived from examining several oral and inhalation toxicity studies. In the subchronic rat neurotoxicity study, administration of dichlorvos at 7.5 mg/kg/day inhibited plasma, RBC, and brain ChE activity, as well as producing cholinergic signs during the third week of dosing. Based on these findings, a NOEL was established at 0.1 mg/kg/day. The inhalation developmental toxicity study in rabbits demonstrated a NOEL of 0.14 mg/kg/day (converted from 0.25 μg/L) based on statistically significant plasma, RBC and brain ChE inhibition occurring at 0.71 mg/kg/day. A maternal toxicity NOEL of 0.1 mg/kg/day was demonstrated in the oral developmental toxicity study in rabbits, based on the results of the range-finding and definitive studies. In the range-finding study, statistically significant plasma and RBC ChE inhibition occurred at all doses except 0.1 mg/kg/day, while cholinergic signs occurred at 2.5 mg/kg/day and above. ChE inhibition was not measured in the definitive study, but 2

deaths (13 percent) occurred at 2.5 mg/kg/day. The developmental toxicity study results are supported by the 1 year dog study in which significant plasma and RBC ChE inhibition occurred as early as 2 weeks following administration of 1.0 and 3.0 mg/kg/day. In addition, plasma ChE inhibition ranged from 21 to 26 percent in the 0.1 mg/kg/day group at 2 weeks. These studies indicate that effects associated with ChE inhibition occur at levels slightly higher than 0.1 mg/kg/day. Therefore, EPA has determined that the study results support a NOEL of 0.1 mg/kg/day for calculating margins of exposure for intermediate exposure.

(c) Chronic/long-term exposure. The oral and inhalation toxicity studies that EPA has evaluated resulted in comparable NOELs for assessing chronic dietary and long-term occupational and/or residential exposure (substantial portion of a lifetime). The inhalation study in rats demonstrated a NOEL of 0.055 mg/kg/day (converted from 0.05 mg/m^3) based on statistically significant ChE inhibition in plasma, RBC, and brain at 0.48 mg/m^3. The oral study in dogs resulted in a NOEL of 0.05 mg/kg/day, based on statistically significant plasma, RBC, and brain ChE inhibition at 1.0 mg/kg/day. EPA rounded the inhalation NOEL to 0.05 mg/kg/day for ease in calculating MOEs. In addition, there is uncertainty associated with converting from mg/m^3 to mg/kg/day in the chronic inhalation study.

3. *Adverse liver effects*. The PD 1 also cited a concern for adverse liver effects resulting from exposure to dichlorvos. A 2–year dog feeding study indicated increased liver weight and enlargement of liver cells with a NOEL of 0.08 mg/kg/day. EPA recently reevaluated this study and downgraded its acceptability from minimum to invalid. The study was reclassified because the actual dose ingested by the animals cannot be confirmed, due to impurities and decomposition products in the test material.

In addition, the 1 year oral dog study cited above was reviewed for the purpose of evaluating the validity of the liver effect concern. No liver effects were reported after 1 year of treatment at higher doses than the doses in the invalidated 2–year study. Therefore, this endpoint is no longer of regulatory concern.

C. Exposure Analysis

1. *Dietary exposure*—i. Background. Dietary exposure to a pesticide depends on two components: the amount of pesticide residue on a commodity and how much of that commodity is consumed. In estimating dichlorvos residues on food, EPA relied on a variety of data for dichlorvos, including tolerance levels (the legal maximum residue) and field trial data (measured residues resulting from actual application of dichlorvos). In addition, these estimated residues can be further refined by taking into account the effects of processing and cooking on treated foods, and by estimating the percent of the crop that is treated.

The Agency currently uses food consumption values derived from a USDA survey to estimate dietary exposure to pesticides. The USDA conducted a nationwide survey (1977-1978) of the food consumption patterns of 30,770 individuals for 3 days. Based on this survey, EPA can estimate the dietary exposure and risk for the U.S. population and 22 subgroups of the total population using a computer-based tool called the Dietary Risk Evaluation System (DRES). DRES multiplies the average daily consumption values by residue information for each commodity to obtain the total dietary exposure. In the absence of data for residues of dichlorvos on crops and an estimate of the percent of the crop treated with a pesticide, EPA estimates exposure based on the Theoretical Maximum Residue Contribution (TMRC). The TMRC assumes residues on crops are present at tolerance levels (the maximum residue limit allowed by law) and 100 percent of the crop is treated. When EPA has additional data to refine the TMRC, based on residue data and estimates of percent of crop treated, the Agency uses this new information to calculate the Anticipated Residue Contribution (ARC). When available, the ARC is used instead of the TMRC in estimating residues.

Dietary exposure to dichlorvos residues may occur as a result of use on a variety of sites. These sites include greenhouse food crops, food or feed containers, bulk-stored, bagged or packaged nonperishable raw agricultural commodities (RACs) food, and bulk stored, bagged or packaged nonperishable processed commodities, commercial food processing plants, groceries, eating establishments, livestock (direct animal treatment), swine feed (as a dewormer), and food in homes where resin pest strips are located.

Tolerances and FARs exist for residues of dichlorvos in or on raw agricultural and processed products and on meat, milk, poultry and eggs. As noted in the Registration Standard, even though dichlorvos is registered for use in food handling establishments (including food processing, food manufacturing and eating establishments), there are no FARs for the related uses.

In estimating dietary exposure for the initiation of Special Review in 1988, the Agency did not have sufficient data on actual residue levels. Therefore, EPA's dietary exposure estimate at that time was based on the assumption that residues were present at tolerance levels (40 CFR 180.235). Residues were adjusted based on cooking data on small grains and on an estimate of percent of crop treated. At the time of the initiation of Special Review, EPA estimated that the average consumer in the U.S. population was exposed to 4.2×10^{-2} mg/kg/day of dichlorvos. This may have been an overestimate of chronic exposure because tolerance level residues were assumed. However, limited data available at that time suggested that some residues were at or above tolerance levels (nonperishable stored foods). In addition, exposure could have been underestimated because, in the absence of a FAR for food handling uses, the exposure estimate did not consider residues from food handling uses, or any degradation resulting from two related pesticides, naled and trichlorfon.

Amvac recently notified the Agency (Ref. 40) that it is not supporting the reregistration of greenhouse food and nonfood uses and that it requests voluntary deletion of those uses. Therefore, some exposure may be eliminated as a result of these voluntary deletions, or due to cancellation of uses related to the revocation of the FAR for packaged or bagged nonperishable processed food. However, since these actions have not occurred, EPA will continue to consider these residues for this proposed determination.

ii. Naled and trichlorfon. Naled and trichlorfon degrade to dichlorvos through plant metabolism. Three factors will significantly affect dietary exposure to dichlorvos from registered uses of naled and trichlorfon; these include, the preharvest interval (PHI), the condition and length of storage, and cooking and processing. Naled is metabolized to dichlorvos by plants. Plant metabolism studies show that dichlorvos residues are formed 1 to 3 days after treatment with naled and trichlorfon; however, dichlorvos residues are less than the limit of detection (0.01 to 0.05 ppm) 7 days after treatment. In general, registered uses of naled have PHIs of less than 7 days, while trichlorfon registrations have PHIs greater than 7 days. Because of the short PHIs for naled products, measurable residues of dichlorvos may be present in the U.S. diet from naled treated food. EPA does not expect measurable residues from

trichlorfon because of the longer PHIs. As a result, the dietary exposure assessment for dichlorvos includes residues of dichlorvos resulting from the application of naled but not from trichlorfon. Neither naled or trichlorfon, themselves, have carcinogenic potential in humans as concluded by EPA (Refs. 41 and 42)

iii. Data available for determining the ARC. Possible sources of data to estimate the levels of residues to which the public is exposed, when consuming treated commodities include: Tolerance levels, controlled field trials, Food and Drug Administration (FDA) surveillance and compliance monitoring data, FDA Total Diet Study data (market basket survey based on a random sampling of residues on food in grocery stores), USDA pesticide data program, and USDA/FSIS (Food Safety Inspection Service) livestock monitoring data. The estimated levels of residues can then be adjusted for the effects of processing using processing studies, including commercial processing studies, washing studies, cooking studies, and residue degradation studies. Of these sources, the Agency relied on tolerance levels and field trial data (adjusted for the effects of processing and cooking) to estimate dietary exposure to dichlorvos. For a variety of reasons, the other sources did not provide useful data (Ref. 43).

(a) Tolerance levels. Tolerance levels are used for an initial dietary exposure analysis. Use of tolerance levels typically overestimate chronic exposure because tolerance levels are set at a level that is not likely to be exceeded when the pesticide is used according to the label. Tolerance levels are also used in dietary exposure assessments when no other appropriate data are available. In the case of dichlorvos, no other data are available which reflect currently registered uses on cucumber, lettuce, tomato, and radish, and, therefore, tolerance levels are used here to estimate residues on these crops.

(b) Field trials. Data from controlled field trials which reflect currently registered uses are not available for most agricultural uses of dichlorvos, since these uses are not being supported for reregistration. Field trial data are available for mushrooms and figs, and data from direct dermal treatments to cattle and poultry are discussed in the dichlorvos Registration Standard. Field trial data are also available for use on packaged or bagged food, use in food manufacturing and processing facilities, and for secondary residues in livestock commodities. EPA is including residue estimates for figs (raw and dried), even though these tolerances were revoked, because figs may be located in warehouses or areas where similar packaged, bagged, or bulk commodities are treated.

(c) Processing and cooking studies. Residues for raw commodities can be modified by processing factors to account for changes during commercial or other processing and cooking. Processing, cooking and decline (half-life) studies were available for cocoa beans, dry pinto beans, tomato juice, ground roasted coffee beans, raw hamburger meat, raw eggs, and raw whole milk. The resulting cooking factors were used to reduce the Agency's estimate of residues for these commodities and were translated to other commodities based on similarity of cooking time and temperature. Additional cooking studies were available and discussed in the Residue Chemistry Chapter of the Registration Standard. Half-lives of dichlorvos in various commodities ranged from 0 to over 1,000 hours. The reduction of dichlorvos in cooking appeared to be related to the length of time and temperature used in cooking. Residues were adjusted based on these cooking factors to obtain the ARC.

(d) Anticipated residues for dichlorvos—(*1*) Raw commodities. The following registered uses are not being supported for reregistration and the Agency does not have residue data reflecting current uses: tomatoes, cucumbers, lettuce, and radishes. Therefore, current tolerance levels are assumed in the exposure assessment. Amvac has requested voluntary deletion of these uses from their labels; however, because the deletion of these uses is not final, EPA is including these commodities in the exposure assessment. Anticipated residues for raw commodities as bulk, packaged, or bagged food are discussed below.

(*2*) Meat, milk, poultry and eggs. Residues in livestock tissues, including milk and eggs, may result from consumption of dichlorvos treated livestock feeds, direct dermal treatments, or from use as a drug in swine. Livestock metabolism studies done at exaggerated rates in ruminants and poultry have demonstrated that oral ingestion of dichlorvos by cattle and poultry will not result in detectable residues. This conclusion can be extended to the drug use of dichlorvos in swine. Secondary residues in livestock from consumption of treated feed are expected to be so low that EPA is estimating these residues as zero. Data reflecting direct livestock treatments are discussed in the Residue Chemistry Chapter of the Dichlorvos Registration Standard. Data from direct dermal studies indicate that detectable residues are not expected, except in skin. Residues are non-detectable (<0.01 ppm) in cattle tissue and milk, and non-detectable (<0.05 ppm) in poultry tissues and eggs. The exposure assessment uses one-half the limit of detection in both cases. In the absence of direct dermal studies for swine, the Agency estimated the residue on swine to be 0.08 ppm. This estimate was based on a study in poultry that approximated the rate for direct dermal swine treatment.

(*3*) Bulk stored, packaged or bagged commodities, food and feed handling uses. The ARCs used in the exposure assessment for packaged, bagged or bulk stored food are based on studies submitted by Amvac (Ref. 44). Residue data were submitted for many commodities. For those commodities where data were not submitted, EPA translated residue data from similar commodities. For example, data on dry beans are translated to other legumes; data on wheat flour are translated to all flours and meals, etc. In addition, residue data were provided for corn and oats at various points during processing, and for flour, sugar, dried milk, dried eggs, shortening, and baking mix from a treated manufacturing facility. Bulk stored commodities are assumed to be uncovered when treated. Although pesticide labels state that bulk or unpackaged foods should be covered or removed before spraying, it is not possible to assess the effect of covering food since the type of material used in the cover is not specified and the manner in which food is covered would vary considerable. Therefore, food is assumed to be uncovered. Since the proportion of commodities stored in bulk vs. packaged/bagged is unknown, the ARCs are based on an average of the residues found in bulk and packaged/bagged food for any particular commodity.

The FAR in 40 CFR 185.1900 for packaged or bagged nonperishable processed foods and the tolerance in 40 CFR 180.235 for nonperishable packaged, bagged or bulk raw food do not refer to specific commodities. Therefore, EPA has developed a list of commodities likely to be treated with dichlorvos that are covered by tolerances and/or FARs. Because these tolerances and FARs were established to cover residues resulting from use at different sites (for example, wheat could be treated in its raw form in a silo, later as flour, during processing into cake mixes, and finally as a stored packaged commodity), cancellation of any one of the site-specific uses does not necessarily eliminate the risk of a

commodity from dichlorvos treatment. EPA did not combine the residues from different sites in creating the ARCs, although the cumulative residues from treating a commodity at different sites are considered in the estimation of percent of crop treated (see paragraph (e) below).

Dichlorvos is registered for use in a variety of food handling establishments, including: food service establishments (such as restaurants and other locations where food is served and grocery stores); manufacturing establishments (such as candy plants, spaghetti and macaroni plants, bottling plants, and pizza plants); and processing establishments (such as meat, poultry and seafood packing plants, dairies and dairy product plants, frozen fresh food plants and grain mills). EPA has data for estimating residues in manufacturing establishments and processing establishments; however, there are no data for estimating residues in eating and serving areas of food service establishments. EPA did not include residues from this use in its exposure assessment. Therefore, to the extent that dichlorvos is used in food service establishments, the Agency's exposure assessment is an underestimate of potential dichlorvos dietary exposure.

(*4*) Use of naled. All naled tolerances in 40 CFR 180.215 were evaluated as a potential source of dichlorvos residues. Anticipated residues are based on either tolerance levels or field trials. Naled and dichlorvos residue estimates were reduced when data were available for the effects of washing, cooking, and processing. In addition, wide area application of naled in mosquito and fly control use could result in residues potentially on all crops in the Agency's Dietary Risk Evaluation System. Therefore, EPA included all these crops in its estimate of anticipated dichlorvos residues. Although it is possible that dichlorvos residues could occur on any raw agricultural commodity from this use of naled, it is unlikely that residues would be found on all commodities. As a result, this inclusion of residues from all raw crops presents a possible source of overestimation of dietary exposure. As discussed earlier, EPA does not expect measurable residues from the use of trichlorfon because of the longer PHI for trichlorfon than for naled.

(*5*). Percent of crop treated information. In conducting a chronic risk assessment, EPA refines its estimate of dietary exposure based on percent of crop treated when such information is available. In the absence of this information, EPA assumes that 100 percent of the crop is treated. Where a range of percent crop treated values are supplied for this analysis, the upper end of that range is assumed (Refs. 45-47).

(*i*) Dichlorvos. Although no quantitative estimates of percent of crop treated were given for the agricultural sites of dichlorvos (radishes, mushrooms, cucumbers, lettuce, and tomatoes), the Agency assumed that less than one percent of these crops has dichlorvos residues, because EPA's proprietary data indicates little or no use. EPA earlier assumed, in the proposed revocation of the FAR for residues of dichlorvos on packaged or bagged nonperishable processed food, that the percent of crop treated estimate of 7.5 percent for food processing plants should be applied to all sites, and therefore, to all raw and processed non-perishable packaged or packaged food. The present analysis assumes that the percent of sites treated at various points in the processing and distribution channels should be added rather than averaged, because, as discussed earlier, cancellation of any one of the site-specific uses does not necessarily eliminate the risk of a commodity from dichlorvos treatment. EPA now estimates that 20 percent of the crop is treated based on the sum of percent of crop treated estimates for bulk storage, processing plants, and warehouses.

(*ii*) Naled. Naled is used for mosquito and fly abatement in municipalities, residential areas, swamps, tidal marshes, and woodlands. Naled is also registered for controlling pests on several specific agricultural sites. Application of wide area mosquito control by air can result in drift or direct treatment to small crop areas or margins of large fields. Because the mosquito and fly abatement use is applied in agricultural settings without regard to a specific crop, EPA has no way of eliminating any crops from its anticipated residue estimate. Therefore, EPA is assuming that one percent of all agricultural crops may potentially have dichlorvos residues resulting from mosquito and fly abatement use. For certain crops which are grown in water-filled areas (such as sugarcane) this may be an underestimate. However, this one percent is considered an overestimate of percent of crop treated across all commodities. For registered uses of naled on specific crops, EPA used that specific percent of crop treated data instead.

2. *Occupational and residential exposure*. Dichlorvos is used in a wide variety of situations, involving different application methods and equipment; at home, at work and in public areas. Individuals are exposed to dichlorvos as professional applicators, and as reentry workers. Residents are exposed from applying dichlorvos themselves at home and from post application exposure. Individuals can also receive post-application exposure at work or in public places. Pet flea collars may pose a risk for both the pet and people who come in contact with the dog or cat. Depending on the method of application or use, exposure to dichlorvos can occur by either the dermal or inhalation route or both. Because of the wide variety of uses for dichlorvos it is difficult to estimate exposure for every possible situation. Therefore, the purpose of this assessment is to estimate exposure in those situations thought to have the greatest exposure and potential for the greatest risks. The Agency would particularly like comments regarding any uses with a significant exposure scenario not described in this Notice.

EPA completed a series of exposure assessments in August 1987 for the Registration Standard and PD 1. Many of the exposure assessments were based on limited data. Since that time, additional exposure data have been submitted to the Agency. These data have been evaluated and EPA has determined that revisions to the original assessments are appropriate. Based on this analysis, the Agency has revised exposure estimates for the following uses: Crack and crevice application; application to greenhouses, mushroom houses, dairy barns and milk rooms. In addition, new data are available which allow the Agency to estimate exposure from use of household aerosol and total release fogger products. New exposure estimates have been developed for warehouse treatment, and use on dairy cattle, buses, and commercial vehicles. EPA used a variety of data for estimating occupational and residential exposures. These data included studies which measured dichlorvos following the use of a registered pesticide, surrogate studies involving other chemicals which used the same or similar application methods that would be used for dichlorvos uses, and in the absence of these two data sources, the Agency used its best professional judgment in estimating exposure. EPA's exposure estimates, including assumptions, are presented in Table 1 in Unit II.C.2. of this document (Refs. 48- 51).

The revised exposure estimate for crack and crevice treatment by pest control operators (PCOs) considered data that were not available at the time of the original assessment. Under most conditions, the Agency assumed that professional applicators would wear a long sleeve shirt, long pants, and gloves.

Data are also available to revise exposure estimates for application to greenhouses, mushroom houses, and

dairy barns (milk rooms). Because a variety of application equipment could be used to treat these sites, depending on product formulation, the specific pest problem and personal preference of the applicator, EPA evaluated several studies, each using a variety of application equipment. Since these studies varied in design, it was not possible to pool the data into one large data set. Therefore, EPA calculated exposures separately for each study design, using correction factors for protective clothing where necessary. Normal work clothing (i.e., long sleeve shirt and long pants) was assumed to offer 50 percent protection, while gloves, coveralls and shoes were assumed to decrease exposure 90 percent. This approach resulted in a range of estimated exposures for each of the three sites. Table 1 in Unit II.C.2. of this document summarizes these data.

The potential exposure of applicators using household aerosol products was not directly addressed in earlier Agency assessments. Since that time, EPA has received a study monitoring the exposure of individuals during application of a one percent propoxur aerosol product. This study can be used as a surrogate study for aerosol products containing dichlorvos. EPA believes that application of one entire can of pressurized aerosol represents a reasonable exposure estimate for acute exposure scenarios. This may be a conservative estimate in that not every resident will use an entire can at one time; however, it is reasonable to assume that some individuals may choose to apply an entire can. Exposure estimates were calculated for four different clothing scenarios: (1) Long sleeve shirt, long pants, and shoes; (2) short sleeve shirt, long pants, and shoes; (3) short sleeve shirt, shorts, and shoes; and (4) and minimal clothing consisting of shorts and shoes only. EPA is using a conservative clothing assumption of only shorts and shoes because insects may present the greatest nuisance in the summer when residents are likely to wear the least amount of clothing.

EPA has also estimated exposures for individuals occupying or reentering residences following treatment of rooms with a total release fogger. These exposure estimates are also applicable to individuals reentering homes following crack and crevice treatment and aerosol spray application. The exposure estimates are based on a study that measured potential exposure by monitoring urinary amounts of dimethyl phosphate (DMP), a metabolite of dichlorvos, and by using whole body dosimeters consisting of cotton shirts, tights, gloves, socks and underpants. Because it appears that dichlorvos passed through the dosimeters, use of the dosimeter data alone would underestimate exposure. Therefore, EPA calculated total exposure by adding the biomonitoring component and the amount trapped by the whole body dosimeters. This is a conservative approach because it assumes that the entire amount of dichlorvos trapped in the clothing could serve as a pool for subsequent absorption. It is likely that some loss of dichlorvos from the clothing would occur and, therefore, would not be available for absorption. When biological monitoring alone is performed, it is not possible to separate the dermal and respiratory components of exposure. For this reason and because the study addresses a homeowner/resident scenario where protective clothing and respiratory protection do not apply, EPA has not separated these components but rather addressed the total exposure of the volunteers without regard to route. In addition, EPA is unable to estimate daily exposure values because biomonitoring data were collected over a 2–day period in this study. Rather, EPA estimated total exposure to individuals performing activities at various intervals following treatment on 2 consecutive days.

TABLE 1.—SUMMARY OF DICHLORVOS NON-DIETARY RISKS

Uses	Notes	Exposure (mg/kg/day)		Exposure Pattern[1]	Margin of Exposure (Cholinesterase Inhibition)
		Dermal	Inhalation		
Domestic Dwellings (application)	2				
Pressurized aerosol	3	0.097	3.3×10^{-7}	Short-term	47
Crack and crevice treatment	4	0.018	2.3×10^{-4}	Long-term	23
Domestic Dwellings (post-application)		No data			
Total release fogger	5		0.03	Short-term	17
Pressurized aerosol	6		0.03	Short-term	17
Crack and crevice treatment	7		0.03	Long-term	2
Resin pest strips	8		2.5×10^{-3}	Long-term	20
Pet flea collars	9		2.1×10^{-4}	Long-term	240
Occupational Exposure	10				
Crack & crevice treatment in homes	11	0.078	negligible	Long-term	6
Mushroom House	12				

TABLE 1.—SUMMARY OF DICHLORVOS NON-DIETARY RISKS—Continued

Uses	Notes	Exposure (mg/kg/day)		Exposure Pattern[1]	Margin of Exposure (Cholinesterase Inhibition)
		Dermal	Inhalation		
Applicator		4.0×10^{-5} to 0.74	1.8×10^{-5} to 6.7×10^{-4}	Intermediate	Majority of scenarios have MOEs less than 50, and some are less than 10
Reentry		ND	1.5×10^{-2}	Short-term	21
Greenhouse	13				
Applicator		2.6×10^{-5} to 0.48	4.4×10^{-4} to ND	Short-term	Majority of scenarios have MOEs less than 100, and 30% of scenarios have MOEs less than 50
Reentry		2.7×10^{-4}	0.18	Short-term	2.8
Domestic food/nonfood animals (non-poultry)	14	0.15	No data	Intermediate	6.1
Domestic food/nonfood animals (poultry)	15	< non-poultry	No data	Intermediate	> 100
Domestic animal premises (food and non-food) (Dairy barns)	16				
Applicator		1.2×10^{-5} to 0.03	ND - 2.0×10^{-4}	Short-term	> 100
Reentry		No data	No data	Short-term	> 100
Feedlots	17	< greenhouse	< greenhouse	Short-term	> 100
Manure	18	< greenhouse	< greenhouse	Short-term	> 100
Tobacco warehouse	19				
Applicator - sprinkling with water can		0.2	ND	Long-term	2
Mixer-loader		1.4×10^{-5}	ND	Long-term	32,500
Warehouse worker (reentry)		No data	0.20	Long-term	0.3
Ornamental lawns, turf and plants	20				
Applicator		2.6×10^{-5} to 0.48	4.4×10^{-4} — ND	Short-term	32
					Similar to power sprayer in green house
Warehouse treatment (affects nonperishable bulk, packaged and bagged raw and processed commodities)	21				
Application		0.1	0.002	Short-term	38

TABLE 1.—SUMMARY OF DICHLORVOS NON-DIETARY RISKS—Continued

Uses	Notes	Exposure (mg/kg/day)		Exposure Pattern[1]	Margin of Exposure (Cholinesterase Inhibition)
		Dermal	Inhalation		
Reentry		2.7×10^{-4}	0.18	Short-term	2.8
Kennels Applicator	22	similar to dairy barn	similar to dairy barn	Short-term	> 100
Insect traps	23	negligible	negligible	Short-term	negligible risk
Garbage dumps	24	< greenhouse	< greenhouse	Short-term	> 81
Commercial, institutional and industrial areas Application Reentry	25	 0.1 2.7×10^{-4}	 0.002 0.18	 Short-term Short-term	 38 2.8
Commercial transportation vehicles Airplanes (disinsection of aircraft) Passenger - post-application Applicator	26	 No data No data	 3.7×10^{-3} 3.7×10^{-3}	 Short-term Long-term	 135 14
Buses - passenger Truck, shipholds, rail cars Applicator Reentry	27 28	 < warehouse negligible	9.2×10^{-3} < warehouse 2.45×10^{-2}	Short-term Short-term Short-term	55 > warehouse 20

ND--Not Detectable

Notes: The following notes define the assumptions used in calculating the margins of exposure.

1. Short-term MOEs based on NOEL of 0.5 mg/kg/day; Intermediate MOEs based on NOEL of 0.1 mg/kg/day; Long-term MOEs based on NOEL of 0.05 mg/kg/day.

2. An average resident weighs 70 kg and has a respiratory volume of 1.7 m^3 per hour. No protective clothing is assumed.

3. Resident use of pressurized aerosol product is based on application of an entire one percent 16 ounce can of pressurized aerosol. EPA estimated the risk to residents for different clothing scenarios. The MOE of 47 assumes the resident is wearing only shorts and shoes. Pressurized aerosol products containing dichlorvos do not have any clothing requirements, therefore EPA is assuming that dichlorvos is applied during hot weather when an individual will be wearing the least amount of clothing.

4. Dichlorvos is applied once per week for 44 weeks while wearing no protective clothing.

5. Assumes less than 24 days of exposure per year and less than 2 days/month. The value 0.03 reported in the table includes both dermal and inhalation, since it is based on biomonitoring data (blood samples) and represents the dose to the individual rather than exposure. All other dermal exposure values in the table must be adjusted by the dermal absorption factor of 0.11 to arive at the dose.

6. Same as for fogger.

7. Same as for fogger.

8. Assumes 365 days of exposure per year, 24 hours per day.

9. Assumes 365 days of exposure per year, 24 hours per day.

10. An average worker weighs 70 kg and has a respiratory volume of 1.7 m^3 per hour. For mushroom houses, dairy barns, and greenhouses it is difficult to provide a single exposure estimate because of the variety of possible application equipment and differences in how studies were conducted. Therefore, a variety of scenarios are presented for these three uses. At a minimum, the following protective clothing was used in the exposure scenarios: gloves, long-sleeve shirt, long pants.

11. A 0.5% solution of dichlorvos is applied using a hand held low pressure sprayer. It is assumed that dichlorvos is applied by PCO 10 times per day 1 day a week for 44 weeks. An average commercial applicator wears coveralls, chemical resistant gloves, and shoes. A respirator is not worn.

12. An average mushroom house has a volume of 30,000 ft^3. Dichlorvos is applied at a rate of 3.0 grams of active ingredient per 1000 ft^3 or 30 grams per treatment; 16 days per year, 10 houses per day; 4 minutes per house or 40 minutes per day. Protective clothing was slightly different for each application method. For reentry exposure, EPA assumed that a worker reenters a ventilated mushroom house 24 hours after treatment and is exposed for 8 hours. Dermal exposure is assumed to be negligible compared to respiratory exposure.

13. A typical greenhouse operation consists of seven greenhouses, each with a volume of 85,000 ft^3. All seven greenhouses are treated in one day. There are a maximum of three applications per crop and three crops are produced per year. Dichlorvos is applied at the rate of 1.4 grams of active ingredient per 1000 ft^3. The total time spent applying the insecticide is 26.25 minutes per day or 3.94 hours per year. The exposure value assumes that, at a minimum, a worker wears a long sleeve shirt, impervious gloves. In the absence of reentry data for a greenhouse, EPA is assuming that reentry exposure is similar to that of a warehouse.

14. Worker exposure from direct application to animals is based on dairy cattle treatment. EPA does not believe that direct application with a handheld sprayer is used primary method of application. However, since several registered products provide guidance on use with a handheld sprayer, the exposure and risk are estimated here for that application method. A one percent solution of dichlorvos is applied with a handheld sprayer. An average herd of dairy cattle consists of 65 head, each requiring 24 seconds to spray, two times per day during treatment. Fly control is required from May to October with application

occurring weekly during this time (26 times per year). Personal protective equipment consisting of impervious gloves (90 percent protection), long sleeve shirt and long pants (50 percent) protection are worn.

15. Data for cattle cannot be extrapolated to poultry, because of the different application method and less frequent applications for poultry. As a result, exposure from applying dichlorvos to poultry is expected to be much lower than for cattle.

16. An average dairy barn has the dimensions 30 ft x 100 ft x 9 ft (total area covered is 4340 ft^2). Dichlorvos is applied at two week intervals for 22 weeks, one barn per day. A 1.0 percent solution of dichlorvos is applied using a low pressure hand sprayer at a rate of 3.4 gallons per hour. Daily exposure time is 0.20 hours. A worker wears a long sleeve shirt, long trousers, shoes and impervious gloves at a minimum. Gloves offer 90 percent protection to the hands and the other garments 50 percent protection. Coveralls are assumed to offer 90 percent protection.

17. Feedlots include stockyards, corrals, holding pens and other areas where groups of animals are contained. This application method would probably be used for controlling insects on cattle. EPA assumes that some type of power sprayer capable of treating a large number of animals in a short time is probably used. A short application time period in an outdoor or partially enclosed area would minimize exposure to less than that of a greenhouse.

18. MOE is expected to be greater than 100 for manure use. Application equipment may be similar to those used in a greenhouse; however, the application time would probably be less and the treated area would be well ventilated - either outdoors or in a partially enclosed area.

19. Tobacco warehouse mixer/loader/applicator exposure is expected occur twice a week for 27 weeks, totaling 54 days of exposure. Warehouse reentry workers are expected to be exposed six days a week for 27 weeks per year.

20. Use on ornamental lawns, turf and plants are expected to have an exposure pattern similar to a greenhouse sprayer.

21. Dichlorvos can be applied to warehouses manually using foggers or with wall-mounted automatic foggers. Exposure to mixer/loaders through automatic application is expected to be negligible; however, there would still be reentry exposure. In estimating reentry exposure, EPA assumed six hours elapsed before reentry is allowed, as required on labels; and that workers spend eight hours per day in the treated area for the next three days. In estimating exposure from manual application, EPA assumed that an average warehouse has a volume of two million ft^3; dichlorvos is applied at the rate of 2.0 grams active ingredient per 1000 ft^3 over a period of 125 minutes per application. On average, dichlorvos is applied 12 times per year. Protective clothing consisted of impervious gloves, an apron, coveralls, boots, hood, goggles and a respirator during application.

22. Exposure in a kennel is believed to be similar to a dairy barn.

23. Exposure is believed to be negligible since the pesticide is in the form of an impregnated strip and the traps are placed in outdoor areas (such as forests) where there is no human exposure.

24. Exposure at a garbage dump is believed to be less than greenhouse exposure.

25. Exposure is believed to be similar to warehouse exposure.

26. Aircraft personnel are exposed to dichlorvos 30 minutes once per week, 52 times per year. No protective clothing is worn, representing a chronic exposure scenario. Passenger exposure is an acute scenario.

27. Passengers are exposed to airborne dichlorvos for four hours in buses following two hours aeration. Passenger respiratory volume is assumed to be 0.44 m^3/hour which is less than for workers because passengers are at rest.

28. EPA is assuming that exposure from application should be less than that for warehouses because of the smaller area to treat - therefore less exposure time. However, because a short term exposure scenario is involved, EPA is concerned about the potential risks from any type of hand application, assuming no respiratory protection. For reentry, the MOE of 20 is based on 8 hours of exposure after a 12–hour reentry period. Even a 24 hour reentry peroiod results in an MOE of 60.

D. Risk Characterization

1. *Chronic dietary*. This section summarizes chronic risk estimates from dietary exposure to dichlorvos, including risks due to direct application of dichlorvos and dichlorvos which occurs as a metabolite from the use of naled. In initiating the Special Review in 1988, EPA estimated the upper bound dietary cancer risk from dichlorvos application alone to be 8.4 x 10^{-5} or in the range of 10^{-4}, for the general U.S. population. EPA believed this to be an overestimate because it was based on a number of conservative assumptions. The Agency is now able to provide a more realistic dietary risk estimate based on field trial data, processing and cooking data, and refinements in percent of crop treated data (Refs. 52 and 53).

i. Noncancer. The Agency estimates chronic dietary risks for noncancer endpoints by comparing dietary exposure to the Reference Dose (RfD). The RfD is an estimate of the daily oral exposure to humans over a lifetime that is not expected to result in adverse health effects. The RfD is based on the determination of a critical effect from a review of all toxicity data and a judgment of uncertainty. In the case of dichlorvos, the RfD is 0.0005 mg/kg body weight/day, based on a NOEL of 0.05 mg/kg body weight/day and an uncertainty factor of 100 to account for extrapolation from animal data to humans and variability in the human population. The NOEL, was taken from a 1 year feeding study in dogs in which plasma and red blood cell ChE inhibition (ChE) were the effects observed in males and females; in addition, brain ChE inhibition was observed in males (Ref. 54).

Using anticipated residues and percent of crop treated data, EPA estimated the exposure from registered uses of dichlorvos to be 0.000054 mg/kg body weight/day, which represents 11 percent of the RfD for the general U.S. population. EPA estimates that the ARC to the most highly exposed population subgroup, non-nursing infants under 1 year, is 0.000143 mg/kg body weight/day, or 29 percent of the RfD. The ARC for the U.S. population from dichlorvos derived from registered uses of naled is 0.000016 mg/kg body weight/day or 3 percent of the RfD. EPA estimates that the ARC to the most highly exposed population subgroup, ''non-nursing infants under 1 year,'' is 0.000057 mg/kg body weight/day, or 11 percent of the RfD. EPA concludes that the risk from ChE inhibition due to chronic dietary exposure is minimal and not of concern.

The Agency does not have a concern for cholinesterase inhibition from DDVP use on foods at this time. This conclusion is based on the dietary risk assessment for DDVP alone. If exposure from other cholinesterase inhibitors, either on the same or different foods in addition to DDVP were considered, a cumulative exposure may trigger a risk concern. The Agency currently has no methodology for assessing cumulative exposure from cholinesterase inhibitors via ingestion of treated foods. However, the Agency plans to pursue options towards this end in the coming years and at that time will solicit public input on possible methodologies.

ii. Cancer. In estimating the upper bound cancer risk, chronic dietary exposure is multiplied by the cancer potency of the chemical. This analysis uses the upper bound cancer potency factor (or Q_1*) for dichlorvos of 1.22 x 10^{-1} $(mg/kg/day)^{-1}$ and assumes that an individual is exposed over a 70–year lifetime. Based on these assumptions, the estimated upper-bound excess individual lifetime cancer risk from direct application of dichlorvos is 4.4 x 10^{-6} and from naled-derived dichlorvos it is 7.2 x 10^{-7} for a total of 5.1 x 10^{-6} (see Table 2 of this paragraph). At a future date, EPA will issue a Reregistration Eligibility Document for naled which provides further analysis of naled-derived dichlorvos. The major source of estimated risk is dichlorvos residues from use on packaged, bagged or bulk nonperishable processed or raw food (3.4 x 10^{-6}). The estimated risk from the three individual tolerances and FAR (bulk raw, packaged or bagged raw,

and packaged or bagged processed) cannot be separated because, as discussed earlier, a single commodity may be treated more than once at different stages of production. EPA has published a final revocation notice for the FAR for residues of dichlorvos on packaged or bagged nonperishable processed food. If this revocation becomes effective and the related uses are canceled under FIFRA, this source of dietary risk will be eliminated.

TABLE 2.—UPPER BOUND CANCER RISK ESTIMATES FROM USE OF DICHLORVOS

Tolerance Expression	Upper Bound Cancer Risk
Use of Dichlorvos	
Packaged or bagged, non-perishable processed food and RACs (including bulk stored, regardless of fat content)	3.4×10^{-6}
Milk	6.2×10^{-7}
Eggs	7.1×10^{-8}
Red Meat	1.1×10^{-7}
Poultry	3.7×10^{-8}
Agricultural uses	2.1×10^{-7}
Lettuce	1.6×10^{-7}
Cucumbers	2.6×10^{-8}
Tomatoes	1.4×10^{-8}
Mushrooms	2.6×10^{-9}
Radishes	9.8×10^{-10}
Naled derived dichlorvos	7.2×10^{-7}
Total	5.1×10^{-6}

2. *Occupational and residential risks—i. Carcinogenicity*. The PD 1 in 1988 estimated risks from cancer to pesticide workers and residents based on dermal and inhalation exposure. Since that time, as discussed earlier in this unit, EPA has decided that it is no longer appropriate to quantify cancer risk for the inhalation and dermal routes, as discussed above in Unit II. Therefore, cancer risks for workers and residents by the inhalation and dermal routes are no longer a concern for this preliminary determination.

ii. ChE inhibition. The duration and frequency of exposure vary considerably for the numerous uses of dichlorvos. MOEs are based upon comparison of exposure estimates against NOELs of 0.5 mg/kg/day for short-term, 0.1 mg/kg/day for intermediate, and 0.05 mg/kg/day for long-term exposure scenarios. The NOELs are based on brain ChE and/or cholinergic signs, and were derived from toxicological studies by the oral route; however, dermal exposure is an important route of occupational/residential exposure. Therefore, the Agency's oral exposure estimates are adjusted for the dermal absorption of dichlorvos (factor of 0.11), to account for the route-to-route extrapolation.

For most uses in Table 1 of Unit II.C.2. of this document, a single exposure estimate and corresponding MOE are given. However, this was not possible for mushroom houses, greenhouses, and dairy barns because of the number of potential application methods and the inability to combine the various studies into one data set. The Agency does not believe there are any naled-derived dichlorvos risks resulting from occupational/residential exposure because a tank mix study showed that naled did not readily degrade to dichlorvos under actual use conditions. This is consistent with the finding that dichlorvos results from plants metabolizing naled, as discussed above.

MOEs are used by EPA as an indication of the level of risk from ChE inhibition. EPA is generally concerned about exposures to humans where the MOEs are less than 100, since they may not provide an adequate MOE after accounting for uncertainty (i.e, extrapolation from animals to humans and variability in the human population). MOEs are less than the uncertainty factor of 100 for the majority of sites examined in this assessment, and some are less than 10. MOEs fall below 100 for both the applicator of dichlorvos and for individuals living or working in treated areas (Ref. 55).

The occupational and residential risk assessment contains the following uncertainties that could result in an underestimate or overestimate of the true risk: (1) In the absence of actual dermal toxicity studies, toxicity by the dermal and oral routes were assumed to be comparable after adjusting for differences in absorption, (2) subchronic and chronic inhalation data are available, and EPA assumed that toxicity by the oral and inhalation routes are comparable, (3) the NOEL used to calculate short-term MOEs is based on cholinergic signs, (4) the exposure parameters are dated and may have changed for some scenarios, (5) in many cases surrogate exposure data were used for estimating occupational and residential exposure, and in the absence of such data, the Agency made assumptions that a particular exposure should not exceed that of a scenario where surrogate or actual data existed, and (6) MOE estimates may vary significantly depending on the method of application and protective clothing assumptions.

There are additional uncertainties regarding potential risks to children exposed to dichlorvos from residential uses, including variability in activity patterns, the extent of non-dietary oral ingestion, due to hand object-to-mouth activity, respiratory rate and tidal volume, surface area to volume ratio, dermal absorption, and toxicological susceptibility. Consideration of children's risk could possibly have resulted in lower MOEs. However, the Agency believes that the proposed actions will nonetheless serve to adequately protect children from residential exposure. The Agency is currently conducting research to provide refinements to assess children's exposure, and is working to update our guidelines for household and work related exposures.

3. *Analysis of comments on the PD 1*. The Agency received comments relating to risks discussed in the PD 1. Rebuttal comments and complete Agency responses are on file in the dichlorvos Public Docket. The following is a summary of the major comments, and the Agency's responses.

Comment. Amvac Chemical Corporation argued that the ''weight-of-the evidence'' from animal studies is limited or inadequate to assess human cancer risk, and that the Group B2 classification is not appropriate.

Agency Response. This comment is moot since dichlorvos was reclassified from a B2 to a C carcinogen, as explained above.

Comment. With regard to the pancreatic tumors seen in F344 rats, ''Since there are no pharmacokinetic or physiological reasons to expect females to be unique in their responsiveness to dichlorvos, the absence of an effect in females weakens the significance of the effect increase in males.''

Agency Response. The pancreatic acinar adenomas were eliminated from consideration in the fourth cancer peer review.

Comment. With regard to the dichlorvos swine feeding study, the registrant states that the ''histopathological results are of value for the assessment of the carcinogenicity of dichlorvos in a third species.''

Agency Response. The Agency does not believe that this study would be

adequate as an oncogenicity study in a third species because of the limited duration of the study and the limited histopathology apparently conducted.

Comment. With regard to the dichlorvos dog feeding study (2–year), the registrant stated that ''[t]he study showed no suggestion of carcinogenic effects of DDVP in dogs.''

Agency Response. The Agency does not believe that a 2–year feeding study in the dog is of long enough duration to conclude that there are no carcinogenic effects of dichlorvos.

Comment. With regard to the mutagenicity of dichlorvos, the registrant states that ''dichlorvos has not been shown to present a significant risk of mutagenic effects to animals or humans.''

Agency Response. The comment did not include a discussion of results of mutagenicity studies conducted by the NTP in conjunction with conducting the bioassays on dichlorvos. Dichlorvos was found to be positive in two mammalian systems, for point mutations in the mouse L5178 lymphoma cell assay without metabolic activation (assay with activation was not done) and for sister chromatid exchanges in Chinese hamster ovary cells both with and without metabolic activation.

Comment. Amvac has supplied the Agency with additional information on the chronic rat inhalation study indicating that the test animals may have been exposed to substantially more dichlorvos than was measured in the inhalation chambers. The registrant estimated that the high-dose animals may have been exposed to 10 mg/rat/day, equivalent to 25 mg/kg/day in males and 34 mg/kg/day in females.

Agency Response. The Agency believes that the additional information provided by Amvac does not provide sufficient evidence to support adjusting the doses administered to the test animals.

Comment. Amvac stated that the dog study, which formed EPA's initial concern about liver toxicity, did not satisfy Subdivision F guidelines.

Agency Response. EPA has invalidated this study and liver effects are no longer of concern.

Comment. Pest Control Services, Inc. commented that the Agency overestimated the exposure for the No-Pest strip for use in museums.

Agency Response. First, EPA's exposure estimate was based on residential use where individuals are constantly exposed to dichlorvos. Because there are so many uses of dichlorvos, it is difficult to anticipate every possible exposure scenario. To protect the public health, the Agency focused on the high exposure scenario in the home. Use in museums (i.e., enclosed spaces such as display cabinets, display drawers, etc.) would be similar to that of grain silos, in that individuals would not be constantly exposed to the No-Pest Strip. Therefore, this preliminary determination does not propose any risk mitigation for use of No-Pest Strips in enclosed spaces in museums. In addition, an error in the Agency's 1987 exposure estimate has been corrected, reducing the residential exposure estimate from 9.6 mg/kg/yr to 0.93 mg/kg/yr. Even with this reduction in estimated exposure, the short-term and long-term MOEs for residential use are still far below 100.

III. Benefits Assessment

A. Summary of Benefits Assessment

EPA conducted a benefits assessment which concludes that the overall annual economic impact of a dichlorvos cancellation to users and consumers is not expected to be significant for most sites (Ref. 56). EPA knows of no major benefits from retaining most uses of dichlorvos with the probable exception of packaged or bagged nonperishable raw and processed food; poultry and livestock premises; feedlots; and possibly mushroom houses. Furthermore, for most of the individual dichlorvos use sites, a number of alternatives are registered and available. Any economic impacts are expected to diminish over time as users adjust to the alternative control measures. The major benefits of dichlorvos relate to its chemical properties: knockdown action and vapor activity. Its quick knockdown ability makes dichlorvos desirable for fly control, although it has little residual activity. In addition, dichlorvos is said to have vapor action which gives it penetration characteristics similar to a fumigant. Because of this characteristic, some users claim that there are no equivalent alternatives for certain uses.

B. Background

Dichlorvos, an organophosphate insecticide, kills insects on contact. Products containing dichlorvos are registered for use in controlling various invertebrate pests (insects, mites, spiders, scorpions, and sowbugs) in diverse situations. Dichlorvos is formulated alone and in combination with other active ingredients as emulsifiable concentrates, soluble concentrate liquids, granulars, pressurized liquids and dusts, smoke generators, impregnated materials, pellets/tablets, liquids (ready to use), total release aerosols, and wettable powders. Although dichlorvos has little residual activity, the knockdown action and vapor activity of the chemical are said to make it a versatile and effective chemical for pest control. Applications are made with aerosol and fogging equipment, smoke generators, hand-held sprayers, other ground spray equipment, and through slow release from impregnated materials, such as resin strips and pet collars. Amvac Chemical Corporation is the sole producer of technical grade dichlorvos in the United States. Dichlorvos is registered for use on a number of diverse indoor and outdoor sites.

C. Usage Information

Total annual usage of dichlorvos is estimated to range from about 250,000 to 500,000 pounds of active ingredient. The Agency believes that most of the dichlorvos is used for animal, livestock and premise treatments, and on bulk, packaged or bagged raw or processed food. EPA estimates that these sites account for between 45 and 83 percent of the dichlorvos used in the United States annually. Most of the remaining dichlorvos is used in greenhouses, homes, and mushroom houses.

D. Method

The approach of the benefits analysis was to evaluate, on the basis of available information, the potential economic impacts associated with the switch to alternative pest control technologies caused by the possible cancellation of certain dichlorvos uses. Future Agency action could change the availability and use of the alternatives. However, this analysis does not anticipate or speculate on the possible effects due to specific regulatory actions on the other chemical alternatives identified.

The following analysis is qualitative in scope. The information presented in the specific site assessments identifies the major pests controlled by dichlorvos for these sites, identifies the major registered alternatives and their availability, estimates the change in pest control costs associated with the use of the alternatives, and, where possible, evaluates impacts to users.

Usage estimates for the major dichlorvos use sites were based on various proprietary and non-proprietary usage data. Prices for dichlorvos and alternative products were based on pesticide product catalogues, quotes from pesticide distributors, and market surveys of consumer products. Determination of primary pests and major alternatives was based upon previous site-specific assessments prepared by a USDA/National Agricultural Pesticide Impact Assessment Program (NAPIAP)

Assessment Team, a DPRA Inc. Benefits Assessment (a private source of benefits information), and Preliminary Benefits Assessments (PBAs) by EPA. If specific site assessments were not available, then state recommendations, specimen label guides, the 1992 Insect Control Guide, and the EPA Index to Pesticide Chemicals provided information about the primary pests and alternative chemical controls for each site.

USDA completed a benefits assessment for dichlorvos in early 1990, based on survey data and expert opinion, that estimates the average annual benefit to be at least $120 million. This estimate was based on data from the mid-80's when usage was much higher than it is now. EPA estimates that dichlorvos usage has declined from approximately 2 million pounds annually at the time of the PD 1 (1985 data) to about 250,000 to 500,000 pounds per year at present. In addition, Amvac has requested voluntary deletion of several uses, which account for some of the current usage. Therefore, the use deletions will reduce usage even further.

In conducting the benefits assessment, each site was analyzed to determine the impacts that would result if dichlorvos were canceled for that site, (See Table 3 in this Unit). Comparative performance data were not available; therefore, the analyses were based on comparative cost assessments under the assumption that sufficient products were available which would provide adequate control of the pests.

The alternatives to dichlorvos include carbamates, organophosphates, natural pyrethrins and synthetic pyrethroid compounds. EPA has identified the following insecticides as likely alternatives to dichlorvos: bendiocarb, carbaryl, chlorpyrifos, diazinon, malathion, naled, phosmet, propoxur, permethrin, pyrethrins, resmethrin, and tetrachlorvinphos. In addition, non-chemical alternatives were also identified where information was available. In most cases these non-chemical alternatives help control insect populations which may result in a decrease in the frequency of chemical treatments. It is unlikely that these non-chemical alternatives would replace dichlorvos to the extent that a chemical alternative would.

E. Individual Sites

Table 3 in Unit III.F. of this document lists detailed information on the benefits for each site.

1. *In and around domestic buildings.* Dichlorvos is used in and around domestic buildings primarily as an aerosol treatment to control a variety of insects. It is also used in foggers and impregnated resin pest strips. A variety of chemical alternatives are available. In the absence of efficacy data, EPA is assuming that the alternatives would provide similar levels of control. Non-chemical alternatives are also available. EPA estimates that less than 1 percent of total dichlorvos is used in the home; however, it is unknown how much of this is applied by commercial applicators.

2. *Pets.* Dichlorvos is used to control fleas and ticks on dogs and cats through the use of impregnated plastic flea and tick pet collars. There are a variety of alternative chemicals available to dichlorvos, some of which have had reports of tick and flea resistance. Due to the lack of comparative efficacy and resistance data, EPA assumes that collars with and without dichlorvos have equal efficacy. There are also non-chemical alternatives available which can reduce the frequency of pesticide treatment, including: sanitation, vacuuming pet living and sleeping quarters, and washing or replacing bedding. EPA estimates that pet collars represent 3 percent of total dichlorvos usage. EPA does not expect the economic impact from cancellation of dichlorvos to be significant, because dichlorvos is not one of the major insecticides used in cat and dog collars.

3. *Mushroom houses.* Dichlorvos is used only as a space spray to control the adult mushroom fly complex after surface sprays and larvacides no longer provide adequate control; therefore, only permethrin is considered an actual alternative (Ref. 57). Non-chemical controls include black light traps to monitor fly emergence and quantify fly influx. There may be some pest resistance to both dichlorvos and permethrin; however, due to the lack of comparative efficacy or resistance data, EPA assumes that acceptable levels of control would be provided by both chemicals. EPA estimates that 2 percent of total dichlorvos is used on mushrooms. The Agency has information that suggests dichlorvos is primarily used as an emergency treatment if larval treatments fail. Economic impacts to the mushroom industry cannot be accurately assessed due to the limited usage data available regarding the use of the alternative chemicals. Based on limited information, some impacts are possible; however, economic impacts are not expected to be significant if dichlorvos is not available.

4. *Greenhouses.* Dichlorvos is used primarily as a space spray for control of a variety of insects on both food and nonfood greenhouse plants. The major direct alternatives, used as space sprays, aerosols, bombs, or pressure fumigators (smoke generators) include nicotine, pyrethrins, and resmethrin. There are also a variety of other alternatives used as greenhouse surface treatments and direct application to plants. There are reports that some whitefly species may be resistant to resmethrin; however, in the absence of comparative efficacy or resistance data EPA assumes that similar levels of control would be provided by the alternatives. Non-chemical mitigation measures to reduce pesticide applications include: sticky board traps, good sanitation practices and the use of insect free transplants. Total usage in greenhouses is less than 2 percent of total dichlorvos usage; however, available usage data do not separate food and non-food use of dichlorvos in greenhouses. If the number of applications is assumed to be equal for dichlorvos and the alternatives, then economic impacts resulting from the loss of dichlorvos are not expected to be significant.

5. *Direct application to animals and animal premises.* Dichlorvos is applied directly to domestic food and non-food animals primarily to control flies. Other insects are also controlled with dichlorvos (See Table 3 in Unit III.F. of this document). There are various alternatives available, which vary somewhat for each type of livestock and poultry. There are reports that flies are resistant to permethrin; however, in the absence of comparative efficacy or resistance data, EPA assumes that all products would perform similarly. Non-chemical control measures include the use of parasitic and predatory wasps that have not gained much commercial acceptance; upgraded/improved sanitary conditions involving manure management, trapping insects, and the introduction of bacteria and viruses that are pathogenic to the pests. Most uses on animals make use of some type of automatic method rather than hand-held application, therefore the loss of hand-held application should not result in a significant impact on users.

Dichlorvos is used as a space spray, animal spray, residual treatment, or bait in controlling flies in animal premises. There are a variety of chemical alternatives available. There are reports that flies are resistant to permethrin; however, in the absence of comparative efficacy or resistance data, EPA assumes that all products would perform similarly. Non-chemical controls include improved manure management, use of parasites, traps, sanitation, and electrocutors. EPA estimates the total usage for direct animal treatment and premise treatment for all domestic

animals is 100,000 to 200,000 pounds of active ingredient or between 27 percent and 54 percent of all dichlorvos usage. The actual cost of alternatives depends on the number of treatments needed to replace dichlorvos. Based on limited information, it is probable that some localized impacts would occur if dichlorvos were not available; however, EPA does not expect economic impacts to be significant overall (Refs. 58 and 59).

6. *Feedlots*. Dichlorvos is used in feedlots (including areas around feedlots, stockyards, corrals, holding pens, fences etc.) primarily as a space spray (fog) and as an indoor residual premise treatment to control flies. There are chemcial alternatives for space sprays and indoor residual premise sprays. Non-chemical alternatives include parasites, predators, and sanitation practices (removal of manure and organic matter). Based on information from USDA NAPIAP (Ref. 60) there are probable benefits from use of dichlorvos in feedlots. Depending on the alternative, loss of dichlorvos could result in cost increases or decreases. Overall, the economic impact due to loss of dichlorvos is not expected to be significant.

7. *Manure*. Dichlorvos is applied directly to manure (including dairy and beef cattle, and poultry) on farms to control flies. There are chemical alternatives for use as a direct manure treatment and as bait treatments. Non-chemical alternatives include the use of predators, parasites, insect traps, electrocutors, repellors, and removal of manure and organic matter. The cost per application is expected to be less for the alternatives. Therefore, the economic impact due to loss of dichlorvos is not expected to be significant.

8. *Garbage dumps*. Dichlorvos is used as a surface spray or bait treatment in garbage dumps to control flies. Chemical alternatives exist for each application method, all of which are believed to provide similar levels of fly control. The nonchemical alternative is sanitation - i.e. frequent removal or burial of garbage. Use of alternatives is expected to result in cost increases; however, actual costs would vary according to application rate and frequency. Because of the existance of chemical and non-chemical control measures, the economic impact due to loss of dichlorvos is not expected to be significant for this site.

9. *Ornamental lawns and turf*. Dichlorvos is used to control a variety of insects and related pests on these sites through the use of multi-active ingredient products. The major alternatives are considered to be equal to or superior to the efficacy of dichlorvos. Depending on the turf site and pest species, a wide variety of non-chemical control measures are available, including nematodes, flushing with water, improved management of turf, and use of resistant varieties of grass. EPA has no information suggesting that there is any significant usage of products containing dichlorvos on turf. The Agency believes that any such usage is likely to be by commercial applicators with multi-active ingredients containing both dichlorvos and chlorpyrifos. Because usage of products containing dichlorvos on turf appears to be negligible and the cost and efficacy of many of the alternatives are comparable to dichlorvos products, the impact of canceling dichlorvos on turf is expected to be negligible.

10. *Ornamental plants*. Dichlorvos is used on a variety of ornamental plants, including shade trees, hardwoods, flowering trees, conifers, evergreens, woody shrubs, vines, flowering plants and grasses (excluding turf). A variety of alternatives are used which depend on the pest and host plant. No comparative efficacy data are available; therefore, the Agency assumes that similar levels of control would be provided by all the chemicals listed in Table 3 in Unit III.F. of this document. Depending on the host plant and pest species, a wide variety of non-chemical control measures are available, including hand picking, sanitation, mulching, and improved cultural management. Dichlorvos usage information is not available. However, economic impacts are not expected to be significant due to the availability of several alternatives.

11. *Bulk, packaged or bagged nonperishable processed and raw food*. Dichlorvos is registered for use on bulk, packaged or bagged nonperishable processed and raw food to control a number of stored product insect pests. EPA believes that dichlorvos is used primarily as a space treatment with aerosols, foggers or as a fine stream applied to the cracks, crevices, and general storage areas of warehouses and similar facilities.

EPA believes that the major alternative to dichlorvos when used as a space treatment would be the pyrethrins. No comparative efficacy data for dichlorvos and pyrethrins are available to EPA at this time; therefore, EPA assumes that all the registered pesticides would provide adequate control of the pests. However, dichlorvos, unlike pyrethrins, is said to possess fumigant-like properties (high vapor pressure) and to rapidly penetrate throughout areas containing stacked commodities. Due to the different properties of dichlorvos and pyrethrins, EPA believes dichlorvos has the potential to be a more effective insecticide than pyrethrins by requiring fewer treatments to provide the same level of control in these situations. The Agency does not have data available to be able to estimate the number of applications needed for dichlorvos compared to pyrethrins. Without these data, the Agency can only estimate the cost difference on a per application basis.

The cost of treating 1,000 cubic feet would be $0.18 for pyrethrins and $0.04 for dichlorvos. Thus pyrethrins would cost $0.14 more than dichlorvos. EPA estimated that 50,000 to 75,000 lbs of the active ingredient of dichlorvos are applied to approximately 2 to 3 billion cubic feet of warehouse space for packaged or bagged nonperishable processed and raw food.

The characteristics of pyrethrins suggest that fumigations with methyl bromide or aluminum phosphide may be needed to supplement pyrethrins. Without the use of additional fumigants to supplement the pyrethrins, there could be some loss in overall control; however, EPA has no basis to confirm or estimate the resulting loss. EPA estimates the additional cost of using pyrethrins instead of dichlorvos to be $12 million per year. The additional cost of supplemental fumigations would be about $33 million with methyl bromide and $44 million per year with aluminum phosphide.

12. *Kennels*. Dichlorvos is used primarily as a residual surface spray for treating outside runways, window sills and ledges in kennels, to control fleas, ticks, flies, and mosquitoes. There are a variety of chemical alternatives available. There are reports of flea resistance to chlorpyrifos, propoxur, and carbaryl; however, due to the lack of comparative efficacy or resistance data, the Agency assumes similar levels of control would be provided by the various alternatives. Non-chemical alternatives include sanitation practices such as cleaning of kennels, laundering of bedding, and frequent changing of litter when used in combination with chemical treatment. There are no data on usage in kennels. No adverse economic impacts are expected to result from the cancellation of dichlorvos, since several alternatives are available and may cost less than dichlorvos per application.

13. *Insect traps*. Dichlorvos is used in pheromone traps to monitor heavy populations of gypsy moths and other insects in remote forested areas. In other situations adhesive coatings are used. Non-chemical adhesive coatings can be

as effective or more effective except when large numbers of insects entirely coat the strips. Economic impacts from cancellation would be negligible, since monitoring would only be less effective for heavy populations of insects.

14. *Commercial, institutional, and industrial areas.* Dichlorvos is used primarily as a residual surface spray or space treatment in restaurants, food processing and storage areas, transportation facilities, lodging, schools, and hospitals, to control a variety of insects. There are a variety of alternative chemicals; however, due to the lack of comparative efficacy data or resistance data, EPA assumes these alternatives will provide equal efficacy. Economic impacts are not expected to be significant if dichlorvos is canceled, although there could be a slight increase in costs from use of alternatives.

15. *Commercial transportation vehicles*—i. *Airplanes and buses.* Dichlorvos is used primarily as a space treatment in airplanes and buses for the control of a variety of pests including ants, cockroaches, fleas, flies, and quarantine pests. The major alternatives are phenothrin, pyrethrins, and resmethrin all of which are assumed to offer comparable efficacy to dichlorvos. No economic impacts are expected since current dichlorvos use is believed to be minimal.

ii. Trucks, shipholds, and railroad cars. Dichlorvos is used primarily as a space treatment in these vehicles primarily to control a variety of stored product pests. Major alternatives are pyrethrins and resmethrin, and equal efficacy to dichlorvos is assumed. A variety of non-chemical alternatives are available, including sanitation, modified atmospheres, irradiation, and controlled temperatures (hot and cold). Economic impacts are not expected to be significant, based on the availability of alternatives and the similarity in costs.

F. Strengths and Uncertainties of Benefits Assessment

The strengths of the benefits assessment include the identification of pests on which dichlorvos is used, alternative pesticides, methods of application, and application rates. There are also weaknesses in this benefits assessment: specific use and usage information is dated; many dichlorvos labels include a wide range of generalized use sites, making it difficult to describe specific uses (e.g. warehouses); comparative efficacy and product performance data do not exist for dichlorvos and its alternatives; there are no data regarding the number of treatments needed with an alternative to replace dichlorvos treatments; and there are no data regarding pest resistance to alternatives. Because of limited use and usage information, the benefits may be understated for fly control in feedlots, on livestock and livestock premises, and pest control in storage areas.

Little usage information for dichlorvos is available. Products containing dichlorvos come in several formulations, may be applied by several different methods, and can be used in many situations (for example, different types of warehouses); therefore, determining the usage for a particular site is difficult. The lack of comparative efficacy and product performance data also presented problems when trying to compare dichlorvos to the alternatives. This lack of data led the Agency to assume that all products listed would provide adequate control of the pests identified for each site unless otherwise noted. EPA is aware that some of the pests may be resistant to some of the chemicals listed; however, without supporting data the Agency cannot be more specific or come to a more definitive conclusion regarding the effectiveness of the chemicals. Other areas of difficulty involved determining the amount of product applied per application, the number of treatments needed, and the effect these factors had on the cost per application. For example, dichlorvos products are applied on the basis of cubic feet of space (as a space treatment), per square feet (as a surface treatment), some for a certain length of time, others as crack and crevice or spot treatments, some as baits, and still others directly to animals. This diversity of area treated and the number of applications needed or recommended (for example, based on the season, geographical area, and pests) created difficulties for making comparisons between products. Until more information is made available, the Agency assumes, for most sites, that single treatments are equivalent.

The Agency has no information regarding the use of dichlorvos on the following outdoor sites: Outdoor areas under the general category of farm buildings, outside surfaces of buildings, enclosed outdoor utility equipment, or urban and rural outdoor areas. Due to the complete lack of information, these sites have not been addressed in this assessment document. Table 3 below summarizes the benefits assessment for dichlorvos uses. In aggregate, the overall annual economic impact of a dichlorvos cancellation to users and consumers is expected to be negligible. Furthermore, for most of the individual dichlorvos use sites a number of alternatives are registered and available. Any economic impacts would be expected to diminish over time as uses adjusted to the use of these alternative control materials. EPA's benefits assessment is based on information currently available to the Agency. EPA would consider new information from interested parties that might modify this benefits assessment.

TABLE 3.—SUMMARY OF DICHLORVOS BENEFITS BY SITE

Site	Extent of Usage		Pests	Major Alternatives	Economic Impact Extent and Significance
	Lbs Active Ingredient/Year (Percent of Total Dichlorvos Use)**	Percent of Site Treated			
In and around domestic dwellings	3,000-4,000 (1%)	unknown	ants bees bedbugs cockroaches firebrats flies hornets mosquitoes silverfish spiders wasps yellow jackets	Aerosols (for homeowner use): bendiocarb chlorpyrifos diazinon malathion permethrin propoxur pyrethrins resmethrin	Not expected to be significant
Domestic animals (cats and dogs)	9,000-10,000 (3%)	unknown	American dog tick brown dog tick cat flea	Impregnated collars: carbaryl chlorpyrifos naled phosmet propoxur pyrethrins tetrachlorvinphos	Not expected to be significant
Mushroom House	6,000 - 7,000 (2%)	12.5% of site treated	phorid flies scairid files	Space spray: Permethrin	Possible impacts
Greenhouse uses: Ornamentals and Food crops (primarily cucumbers, lettuce, tomatoes)	Total Greenhouse usage for both ornamentals and food crops: 6,000-6,500 (2%)	unknown	aphids leafminers leafrollers mealybugs mites thrips whiteflies scale insects spider mites	malathion nicotine pyrethrins resmethrin	Not expected to be significant
Direct application to domestic food/non-food animals:	Total animal usage for direct application and their premises: 100,000-200,000 (27-54%)				
Livestock (beef and dairy cattle)		unknown	face fly stable fly house fly horn fly	coumaphos fenvalerate lindane malathion methoxychlor permethrin phosmet pyrethrins tetrachlorvinphos	Probable regional impacts
Poultry		unknown	northern fowl mite	carbaryl permethrin	Possible regional impacts

TABLE 3.—SUMMARY OF DICHLORVOS BENEFITS BY SITE—Continued

Site	Extent of Usage		Pests	Major Alternatives	Economic Impact Extent and Significance
	Lbs Active Ingredient/Year (Percent of Total Dichlorvos Use)**	Percent of Site Treated			
Horses (including ponies)		unknown	house fly stable fly face fly horn fly mosquitoes	permethrin pyrethrins tetrachlorvinphos	Possible regional impacts
Swine/hogs		unknown	house fly stable fly horse fly little house fly dump flies mosquitoes biting gnats psychodid flies screwworms	malathion permethrin tetrachlorvinphos	Possible regional impacts
Sheep/goats		unknown	horn fly house fly stable fly lice ticks sheep ked wool maggots	coumaphos diazinon fenvalerate lindane malathion methoxychlor permethrin	Possible regional impacts
In and around premises housing food and non-food animals:	Total animal usage for direct application and their premises: 100,000-200,000 (27-54%)				
Dairy rooms and milk houses		unknown	house fly	Space sprays: permethrin Surface sprays: fenvalerate malathion permethrin pyrethrins tetrachlorvinphos	Possible regional impacts
Furbearing animal units Such as mink farms		unknown	flies	methomyl (bait) permethrin pyrethrins tetrachlorvinphos	Possible regional impacts

TABLE 3.—SUMMARY OF DICHLORVOS BENEFITS BY SITE—Continued

Site	Extent of Usage		Pests	Major Alternatives	Economic Impact Extent and Significance
	Lbs Active Ingredient/Year (Percent of Total Dichlorvos Use)**	Percent of Site Treated			
Poultry houses		unknown	house fly (adult)	Space sprays: permethrin Surface sprays: dimethoate pyrethrins permethrin tetrachlorvinphos Bait applications: methomyl trichlorfon	Possible regional impacts
Feedlots, including around feedlots, stockyards, corrals, holding pens, fences, etc.	unknown	unknown	house fly stable fly horn fly face fly	Outdoor Space Sprays/Fog: malathion naled Residual Sprays: fenvalerate permethrin	Probable regional impacts
Manure (poultry and livestock manure) treatments on farm premises	unknown	unknown	house fly horn fly face fly	dimethoate malathion tetrachlorvinphos	Negligible
Ornamental lawns and turf	Little or no use expected	Little or no use expected	ants armyworm complex billbugs chiggers chinch bugs clover mite crickets cutworms earwigs fleas grasshoppers hyperodes weevils sod webworms ticks white grubs	For commercial applicator use only: acephate bendiocarb carbaryl chlorpyrifos diazinon isofenphos isazofos malathion	Negligible
Ornamental plants (excluding lawns and turf)	unknown	unknown	aphids bagworms borers cutworms eastern tent caterpillar gypsy moth leafhoppers mealybugs webworms mites spittlebugs whiteflies	acephate carbaryl chlorpyrifos diazinon malathion	Not expected to be significant

TABLE 3.—SUMMARY OF DICHLORVOS BENEFITS BY SITE—Continued

Site	Extent of Usage		Pests	Major Alternatives	Economic Impact Extent and Significance
	Lbs Active Ingredient/Year (Percent of Total Dichlorvos Use)**	Percent of Site Treated			
Nonperishable bulk-stored agricultural commodities (raw and processed)	20,000-35,000 (5-9%)	5%	almond moth angoumois grain moth cigarette beetle confused flour beetle flat grain beetle granary weevil Indianmeal moth lesser grain borer red flour beetle rice weevil sawtoothed grain beetle	Space sprays: pyrethrins	Not expected to be significant
Packaged or bagged nonperishable processed and raw food	50,000-75,000 (13-20%) for both raw and processed nonperishable packaged or bagged agricultural commodities	5-10% for both raw and processed nonperishable packaged or bagged agricultural commodities	almond moth angoumois grain moth cadelle cigarette beetle cockroaches confused flour beetle dermestid beetles drugstore beetle flat grain weevil granary weevil Indianmeal moth lesser grain borer Mediterranean flour moth merchant grain beetle red flour weevil rice weevil sawtoothed grain beetle tobacco moth	Space sprays: pyrethrins	$12 million for both raw and processed non-perishable packaged or bagged agricultural commodities plus the cost of additional fumigations if needed.
Kennels	unknown	unknown	fleas ticks house fly mosquitoes	carbaryl chlorpyrifos diazinon	Not expected to be significant
Insect traps (Monitoring purposes only)	50-100 (0.01-0.03%)	unknown	Adults of: gypsy moth spruce budworm forest tent caterpillar fruit flies codling moth corn borers weevils	None	Not expected to be significant

TABLE 3.—SUMMARY OF DICHLORVOS BENEFITS BY SITE—Continued

Site	Extent of Usage		Pests	Major Alternatives	Economic Impact Extent and Significance
	Lbs Active Ingredient/Year (Percent of Total Dichlorvos Use)**	Percent of Site Treated			
Garbage dumps	unknown	unknown	Flies (adults and maggots)	Surface sprays: chlorpyrifos diazinon propoxur Baits: methomyl trichlorfon	Not expected to be significant
Commercial, Institutional, and Industrial areas	unknown	unknown	ants cockroaches fleas flies moths silverfish sowbugs spiders stored product pests wasps	Surface sprays: chlorpyrifos cypermethrin diazinon propetamphos propoxur Aerosols: pyrethrins resmethrin	Not expected to be significant
Commercial transportation vehicles: Airplanes, buses	unknown	unknown	ants cockroaches fleas flies moths scorpions silverfish spiders ticks wasps quarantine pests	phenothrin pyrethrins resmethrin	Not expected to be significant

TABLE 3.—SUMMARY OF DICHLORVOS BENEFITS BY SITE—Continued

Site	Extent of Usage		Pests	Major Alternatives	Economic Impact Extent and Significance
	Lbs Active Ingredient/Year (Percent of Total Dichlorvos Use)**	Percent of Site Treated			
Other transportation vehicles including trucks, shipholds, and railroad cars			angoumois grain moth ants cadelle cheese mite cigarette beetle confused flour beetle dermestids drugstore beetle flat grain beetle granary weevil Indian meal moth lesser grain borer mealworms Mediterranean flour moth red flour beetle rice weevil sawtoothed grain beetle	pyrethrins	Not expected to be significant
Total usage accounted for above	250,000-500,000 (52-90%)				

**Note: The total used in calculating percentage of dichlorvos use for a given site is based on the mid point (375,000) of the total range 250,000 - 500,000.

G. Analysis of Comments

Comment. The Southeastern Peanut Association (SPA) commented that the substitutes to dichlorvos are substantially less effective on peanuts and not fully available for commercial use.

Agency response. The Agency cannot fully respond to this comment as the substitutes for dichlorvos were not identified in the letter from the SPA. The Agency has identified the pyrethrins as a possible alternative to dichlorvos. Because the pyrethrins are registered for use in much the same way as dichlorvos and due to the lack of comparative efficacy or resistance data, EPA assumes that they would provide acceptable levels of insect control. Regarding the availability of the pyrethrins, because the growing conditions that affect chrysanthemums (the source from which pyrethrins are derived) can vary from year-to-year, the Agency recognizes that the availability and price of pyrethrins will fluctuate as well.

Comment. The California Department of Food and Agriculture (CDFA) commented that dried fruit and tree nuts can be kept insect free if fumigated before entering storage and once in storage, receive regular treatments of dichlorvos. CDFA states that alternate methods of insect control, irradiation and controlled atmospheres are not feasible.

Agency response. The Agency believes that the pyrethrins would serve to control insects in the above situation if used in the same manner as dichlorvos. EPA does not have data that indicate the number of treatments needed for the pyrethrins to replace dichlorvos and still provide the same level of control. The Agency also believes that as the fumigant methyl bromide is phased out under the Clean Air Act, alternative measures such as irradiation, heat, cold, and controlled atmospheres will become more important.

Comment. The American Corn Millers Federation (ACMF) commented that the use of pyrethrins or resmethrin as alternatives to dichlorvos are not as efficacious in storage areas, warehouses, or processing areas of plants.

Agency response. The Agency has identified the pyrethrins and resmethrin (aerosol treatments) as potential alternatives to fogging with dichlorvos in commercial, industrial, and institutional areas. The ACMF did not submit data to support their contentions of inadequate efficacy of the alternatives. In the absence of comparative efficacy and/or resistance data, EPA assumes that these registered alternatives would provide adequate levels of insect control.

Comment. Two representatives from the popcorn industry commented that there are no replacements for the use of dichlorvos pest strips in popcorn storage facilities.

Agency response. The Agency has no specific information regarding insect control in stored popcorn; however, EPA does have information regarding

the treatment of other stored grain products. EPA believes the pyrethrins could be used as a head space treatment; however, EPA does not know how many treatments of pyrethrins it would take to provide the same level of control as obtained with the dichlorvos pest strips, which can last for several months.

Comment. The Department of Defense (DOD), Armed Forces Pest Management Board, commented on the use of dichlorvos as a fogging material in warehouses containing food products and textiles. The DOD lists pyrethroids, pyrethrins, aluminum phosphide, and the use of residual sprays as either not as effective or not as available as dichlorvos.

Agency response. In the most current benefits assessment, the Agency identified the pyrethrins and resmethrin as the most likely substitutes for dichlorvos when used as an aerosol or fog application. The Agency also listed products containing chlorpyrifos, cypermethrin, diazinon, propetamphos, or propoxur as surface residual treatments that could replace dichlorvos. In the absence of comparative efficacy or resistance data (DOD included no data with their comments), EPA has assumed that all registered alternative active ingredients would provide adequate control of the insect pests involved with these sites.

Comment. The Grocery Manufacturers of America (GMA) commented that the alternatives to dichlorvos were unsuitable because they are more expensive, less effective, require more frequent applications, and some may result in off-flavors to the stored foods.

Agency response. The GMA did not identify the alternatives and did not include any data to substantiate the contentions made. The Agency believes that dichlorvos is used primarily as an aerosol in commercial, industrial, and institutional areas. In the current benefits assessment, the Agency has identified resmethrin and pyrethrins as possible aerosol alternatives for dichlorvos and chlorpyrifos, cypermethrin, diazinon, propetamphos, or propoxur as residual surface treatments that could replace the use of dichlorvos. In the absence of comparative efficacy or resistance data, EPA assumes that all registered active ingredients listed would provide adequate pest control. EPA has no data regarding the off-flavoring of stored foods for any of the alternative products.

Comment. The National Food Processors Association (NFPA) commented that many of its members depend on dichlorvos for insect control in food processing plants, warehouses, and mushroom houses. NFPA stated that smaller amounts of dichlorvos are needed than the alternatives to control the pests, and that some pests have become resistant to the alternatives.

Agency response. NFPA did not include comparative efficacy and/or resistance data to support their contentions. In the current EPA benefits assessment of dichlorvos, EPA concludes that the use of surface sprays (diazinon, propoxur, or pyrethrins) and larvicides (diflubenzuron or methoprene) are the primary methods of insect control currently used in mushroom houses. In the absence of comparative efficacy or resistance data, EPA assumes that the alternative methods would provide adequate levels of control.

The Agency believes that dichlorvos is used primarily as an aerosol treatment in commercial, industrial, and institutional areas (including food processing plants and warehouses). In the current benefits assessment, the Agency identifies resmethrin and pyrethrins as possible alternatives for aerosol dichlorvos and chlorpyrifos, cypermethrin, diazinon, propetamphos, or propoxur as residual surface treatments that could replace the use of dichlorvos. In the absence of comparative efficacy and/or resistance data, EPA assumes that all registered active ingredients listed would provide adequate pest control.

Comment. A representative from the fumigation industry commented that the grain, seed, popcorn, and food processing industries do not need dichlorvos. Alternatives to dichlorvos were listed as pyrethrins, resmethrin, sanitation, monitoring with pheromone traps, and the use of grain protectants.

Agency response. In the current benefits assessment, EPA has identified several alternative active ingredients that could replace the use of dichlorvos in the above-mentioned areas. EPA also listed several non-chemical methods of insect control including sanitation, use of pheromone traps, predators, parasites, the use of heat or cold, exclusion, and irradiation. The Agency realizes that some of these methods may require more research before acceptance by industry and that many facilities would require additional construction before implementation could occur. In the absence of comparative efficacy or resistance data (none were included with the above comments), EPA assumes that the chemical alternatives to dichlorvos would provide adequate control of the insect pests. The Agency believes that the non-chemical methods cited could aid in insect control when used alone, in combination with each other, or in combination with insecticides.

Comments. Comments from the Pesticide Impact Assessment Program at the University of Idaho presented dichlorvos application and usage information for 1988 in the state of Idaho.

Agency response. While EPA appreciates and needs this type of information in order to conduct a benefits assessment, EPA believes the data gathered in 1988 may not be accurate at this time. The Agency believes that the volume of dichlorvos produced and sold in the United States has decreased over the last 5 to 6 years and assumes that this trend has occurred in Idaho as well.

Comment. Reliable Services commented that the loss of dichlorvos would be detrimental to the food related industries and that no effective alternatives exist for the use of dichlorvos strips in sewer catch basins for mosquito control. The alternatives identified for use in warehouses and food processing areas were identified as pyrethrins and resmethrin. Reliable Services estimates that for the alternatives, the number of applications are greater and the cost of materials are significantly higher than dichlorvos.

Agency response. Several pest strips containing dichlorvos are registered for use in catch basins to control adult mosquitoes. Although there are no direct alternatives for these pest strips, different formulations of other active ingredients are available that provide control of the larval and pupal stages of mosquitoes occurring in catch basins. EPA could find no state pest control guides recommending the use of pest strips for mosquito control at this particular site. EPA lacks sufficient use, usage, and efficacy data on dichlorvos to conduct a benefits assessment for this site/pest combination.

In the absence of comparative efficacy or resistance data, EPA assumes that all active ingredients listed would provide adequate pest control. The Agency also recognizes the importance of sanitation, exclusion, and trapping (pheromone traps) to control insect populations in storage facilities; however, EPA has no data indicating what percentage of insect control is accomplished by these methods.

Comment. The National Pest Control Association (NPCA) commented that dichlorvos is important to the structural pest control and food industries (transportation, storage, and processing facilities).

Agency response. EPA recognizes the important role dichlorvos has played in keeping insect populations under

control in the above areas. In the current benefits assessment, the Agency has identified alternative active ingredients (pyrethrins or resmethrin as aerosol sprays; chlorpyrifos, cypermethrin, diazinon, propetamphos, or propoxur as residual surface sprays) as well as non-chemical practices (sanitation, exclusion, heat, cold, modified atmospheres, pheromones, parasites, etc,) that, alone or in combination, may replace the use of dichlorvos. In the absence of comparative efficacy or resistance data, EPA assumes that the registered alternative active ingredients identified would provide adequate levels of insect control. EPA is not certain what percentage of insect control can be attributed to the non-chemical control methods discussed.

Comment. WHB Specialty Products Co. (WHB) commented that because of declining usage after 1983, any regulatory action taken by the U.S. EPA would have no economic impact on sales of their end-use products, which are used for control of insects on beef and dairy cattle and in livestock buildings.

Agency response. This comment is consistent with the Agency's information that usage is declining.

Comment. Consumers Union commented that the benefits of dichlorvos use in ''bug sprays,'' flea collars, and resin strips are negligible.

Agency response. EPA's current benefits assessment for dichlorvos has identified from one to several alternatives for the use of dichlorvos in ''bug sprays'' (In and Around Domestic Dwellings), resin strips (numerous sites), and pet flea collars (Domestic Animals). Based on the information available at this time, it is the Agency's opinion that the benefits for dichlorvos use in the areas mentioned above are negligible. In the absence of comparative efficacy or resistance data, EPA assumes that available registered alternatives would provide adequate control of the insect pests.

Comment. Amvac Chemical Corporation commented on the use of dichlorvos in warehouses and food processing areas. Amvac states that the alternatives are not as effective and are more expensive than dichlorvos.

Agency response. The current EPA benefits assessment (commercial, industrial, and institutional areas) and the comments from Amvac are in agreement as to pests controlled, primary methods in which dichlorvos is applied, and the potential alternatives to dichlorvos. Amvac states that the alternatives are not as effective as dichlorvos and refers to a survey and personal communications as the source for their conclusions. In the absence of comparative efficacy or resistance data, the Agency assumes that the registered alternatives would provide adequate control of the insect pests in warehouses and food processing plants. In addition, the Agency identified several non-chemical methods of insect control in warehouses and food processing facilities that Amvac did not include in their comments. EPA believes that in recent years alternative methods such as sanitation, exclusion, heat, cold, modified atmospheres, parasites, and the use of pheromone traps have become more common but the Agency has no data that identifies the percentage of insect control that can be attributed to these methods.

Comment. Amvac Chemical Corporation commented on the benefits and use of dichlorvos to control insects on dairy and beef cattle and in the premises housing these animals. Amvac states that resistance to some of the alternatives is a problem.

Agency response. The current EPA benefits assessment for dichlorvos includes the following sites that relate to food or nonfood animals and their premises: direct application to food and nonfood animals, in and around premises housing food and nonfood animals, manure treatments, and feedlots. The pests and their potential damage to animals, the primary methods of using dichlorvos, and the potential alternatives identified are similar in both the EPA assessment and Amvac's comments. EPA is aware that resistance to some of the alternatives may have occurred; however, EPA does not have any data identifying specific compounds, insect species, or the extent of any resistance problem. Amvac relied on personal communications and surveys to support their statements but did not submit data to substantiate their claims regarding efficacy or resistance. In the absence of comparative efficacy or resistance data, EPA assumes that all registered products would provide adequate insect control.

Comment. Amvac Chemical Corporation commented on the benefits and use of dichlorvos in domestic dwellings and in pet flea collars. Amvac states that the alternatives are not as efficacious as dichlorvos (based on personal communications) but includes no comparative efficacy and/or resistance data with their comments.

Agency response. In the current benefits assessment, EPA addressed these sites under the headings in and around domestic dwellings and domestic animals (Cats and Dogs). The EPA list of pests, primary methods of dichlorvos applications, and potential alternatives for these two sites was similar to the information provided by Amvac. In the absence of efficacy and/or resistance data, the Agency assumes that the identified registered alternatives would provide adequate control of the pests.

Comment. Amvac Chemical Corporation commented on the benefits and use of dichlorvos in food markets and eating establishments. Amvac stated that the alternatives are less effective and more costly.

Agency response. The section titled ''Commercial, Industrial, and Institutional Areas'' in the current EPA benefits assessment for dichlorvos includes information on eating establishments. Because of the lack of information, EPA did not include food markets in the benefits assessment. The EPA assessment for eating establishments included many of the same pests, the same primary methods of dichlorvos application, and the same potential alternatives as identified in the Amvac comments. Although Amvac states that the alternatives are less effective and more costly, they did not include supporting data with the comments. In the absence of data, the Agency assumes that the identified alternatives would provide adequate control of the pests.

Comment. Amvac Chemical Corporation commented on the benefits and use of dichlorvos resin strips in popcorn storage bins. Amvac identified the pyrethrins as a fogging treatment in bin head spaces or actellic (pirimiphos-methyl) as a protectant applied to the popcorn. Amvac states that neither the pyrethrins nor pirimiphos-methyl is as cost effective or efficacious as dichlorvos.

Agency response. The Agency has no specific information regarding insect control in stored popcorn and did not include this specific site in the current assessment; however, EPA does have information for the treatment of other stored grain products. The Agency believes that the pyrethrins can be used as a head space treatment; however, EPA has no information concerning the number of treatments of pyrethrins it would take to provide the same level of control as obtained with the dichlorvos pest strips. The dichlorvos impregnated resin pest strips can provide insect control for several months.

IV. Risk/Benefit Analysis and Proposed Regulatory Decisions

A. Summary of Risk/Benefit Analysis

EPA has concluded that the risks outweigh the benefits for most uses of dichlorvos, and therefore, proposes a

variety of measures to reduce risks to the acceptable level, including: Cancellation of some uses, requiring protective clothing, specifying reentry intervals, and restricting use to certified applicators. Tables 4 and 5, in this unit, summarize EPA's risk/benefit analyses and proposals for risk mitigation. The benefits are not expected to be significant for most sites, with the possible exceptions of packaged or bagged nonperishable raw and processed food, livestock, poultry, and mushroom houses. The lack of known significant benefits for most sites is outweighed by the potential total dietary cancer risk of 4.4 x 10^{-6} from use of dichlorvos and 5.1 x 10^{-6} from dichlorvos residues due to dichlorvos plus naled, and the occupational and residential risks involving several MOEs less than 100 (some less than 10) for ChE inhibition.

EPA considered measures short of cancellation to reduce occupational and residential risks, such as restricted reentry intervals, personal protective equipment, and restricting use to certified applicators. Where appropriate, these measures are proposed; however, cancellation is proposed for several uses because risk mitigation measures are not expected to reduce risk sufficiently.

There are a variety of alternatives available for dichlorvos, varying from use to use. EPA compared the toxicity of several alternatives for some major sites to understand the effect of canceling dichlorvos. This discussion of alternatives relates to the hazards posed by each pesticide in its technical form and does not take into account differing exposures resulting from application equipment used, or frequency or rate of application. The risk from a pesticide is a function of both the hazard or toxicity of the pesticide and the extent to which an individual is exposed. Alternatives fall into three chemical types, organophosphates, carbamates, and others. Organophosphates and carbamates inhibit ChE activity and result in neurotoxic effects. Several of the other alternatives are pyrethroids, including cypermethrin, permethrin, d-phenothrin and resmethrin. The pyrethrins and pyrethroid compounds present less of an acute hazard than the ChE-inhibiting alternatives. Exposure to the pyrethroids and pyrethrins can result in neurotoxicity, but the effects are rapidly reversible and only occur at much higher doses than for organophosphates. Pesticide poisoning incidents involving workers have been reported for several registered alternatives including, chlorpyrifos, diazinon, and malathion. Dichlorvos is a Group C (possible human) carcinogen, while for some alternatives there is no evidence of carcinogenicity or there are data gaps. Propoxur is a Group B2 (probable human) carcinogen and permethrin is a Group C. Dichlorvos has a higher cancer potency than either of these two chemicals. Also, the pyrethroids and pyrethrins are less toxic than dichlorvos following chronic exposure. Of all registered alternatives, only diazinon had an RfD lower than dichlorvos. Finally, no significant developmental or reproductive effects were reported for dichlorvos or any of the alternatives.

B. Proposed Regulatory Actions

1. *Dietary risk*. EPA is proposing cancellation of dichlorvos for use on bulk, packaged, and bagged nonperishable raw and processed food, because of the unacceptable risk posed by this use. Table 4, in this unit, compares the dietary cancer risk before and after the actions proposed in this notice. The estimated upperbound excess individual lifetime dietary cancer risk (before EPA's proposed action) from application of dichlorvos is 4.4 x 10^{-6} and from naled-derived dichlorvos is 7.2 x 10^{-7}, for a total of 5.1 x 10^{-6}. The major source of estimated dietary risk is packaged, bagged or bulk nonperishable processed or raw food (3.4 x 10^{-6}). The estimated risk from the three individual tolerances and FAR (bulk raw, packaged or bagged raw, and packaged or bagged processed) cannot be separated because, as discussed earlier, a single commodity may be treated more than once at different stages of production. Following EPA's proposed actions, discussed below, the remaining total dietary risk would be 1.7 x 10^{-6}, including dichlorvos derived from naled. This estimated dietary risk is believed to overestimate the actual risk because: (1) The estimated risk from naled residues is probably high because EPA assumed that the mosquito/fly control use (without regard to specific crops) would result in one percent of all commodities having residues; (2) EPA is assuming that 100 percent of the naled residues will metabolize into dichlorvos, which is probably not the case; and (3) the risk from milk (6.2 x 10^{-7} or about one-third of the risk after the proposed action) is believed to be an overestimate because the anticipated residues used in the risk assessment are based on one-half the limit of detection, which was used because no residues were found in milk following exaggerated application of dichlorvos. This dietary risk assessment could underestimate dietary risks from treated food in food handling establishments, since this risk in not included in the risk assessment; however, if the proposal to cancel use in commercial establishments, due to applicator and reentry risks, is finalized, this potential dietary risk will no longer exist.

2. *Use on bulk, packaged or bagged nonperishable raw and processed food*. EPA is proposing cancellation of these uses because of unacceptable dietary risks, and because of the unacceptable risk to workers from applying dichlorvos to stored food and reentering treated areas. (See paragraph 3--*Warehouses* in this unit.)

i. The estimated dietary risk from dichlorvos, 3.4 x 10^{-6}, is of concern because it exceeds the Agency's 10^{-6} negligible risk level. This group of uses is treated as one use here for purposes of risk estimation because consumption data do not permit a more detailed breakdown. This is an unusual site in that it is not specific to a location such as greenhouses or tobacco warehouses. Bulk, packaged, or bagged food can be found in a variety of locations including food handling establishments (food service, food manufacturing, and food processing establishments), in warehouses, shipholds, trucks and any other location where food is stored. Since the proportion of commodities stored in bulk compared to packaged/bagged food is unknown, it is not possible to clearly separate these risks or limit the scope of this proposal. Also, EPA does not believe that it is possible to reduce the frequency or amount of dichlorvos applications to decrease dietary risk to an acceptable level.

ii. There are potentially significant benefits for this use. The major alternatives are pyrethrins, and the absence of dichlorvos may require fumigant treatments. Cancellation of this use would result in increased costs estimated to be $12 million to replace dichlorvos with pyrethrins, plus, if needed, the additional cost of supplemental fumigations would be about $33 million with methyl bromide or $44 million per year with aluminum phosphide. Without the use of fumigants in supplementing pyrethrins there could be some loss in efficacy; however, EPA has no basis to confirm or estimate this loss. Although there are potential significant economic impacts, EPA believes that the dietary cancer risks to the general public outweigh the benefits. Therefore, EPA is proposing cancellation of use on bulk, packaged or bagged nonperishable raw and processed food. EPA is interested in comments on the effect of this proposal. The dietary risk discussed may also be affected by the pending revocation of the section 409 FAR for residues of dichlorvos on packaged or bagged

nonperishable processed food and the possible cancellation of the related uses. However, because those actions have not occurred, the Agency is proposing action at this time based on unacceptable dietary and worker risks (see warehouse discussion below).

3. *Warehouses.* MOEs from applying dichlorvos in warehouses and reentering treated areas are unacceptable, with the exception of impregnated resin pest strips in closed areas such as silos. EPA is, therefore, proposing cancellation of this use. Even if applicator exposure were minimized through the use of automatic application equipment, the MOEs from reentry would still be unacceptable. EPA assumes that a variety of tasks are performed in a warehouse including inventory, stocking and retrieving stored commodities, all of which would require entry into the warehouse soon after application to perform these tasks, and would result in prolonged exposure to a worker. Therefore, EPA does not believe it is feasible to mitigate the risk to workers reentering treated areas.

If dichlorvos can no longer be used in warehouses, areas where food is stored, due to worker risk, then the dietary risk from bulk stored, packaged or bagged raw and processed food would be eliminated. Therefore, the benefits for warehouses and for bulk stored, packaged or bagged food would be similar. As discussed in paragraph 2 above, there are potentially significant benefits for the use on bulk stored packaged and bagged food in warehouses. There are alternatives to dichlorvos for this use; however, cancellation of this use would result in increased costs as described in paragraph 2 above. These benefits do not justify MOEs of 38 for applicators and 2.8 for reentry workers. Based on unacceptable MOEs for applicators and reentry workers, EPA believes the risks outweigh the benefits, and therefore, products registered for the warehouse use should be canceled.

4. *Commercial, institutional, and industrial areas.* The risks posed by these uses, which include food handling establishments, are estimated to be similar to risks from warehouse uses, involving MOEs of 38 for applicators and 2.8 for persons reentering treated areas. There are a variety of registered alternatives in the absence of dichlorvos, and the benefits are not expected to be significant. EPA is, therefore, proposing to cancel these uses because the risks outweigh the benefits. Any dietary risk resulting from food handling use, although not estimated here, would be eliminated.

5. *Greenhouses.* The estimated dietary risk from dichlorvos use in greenhouses is 2.0×10^{-7}, which is negligible. However, the MOEs for workers performing most methods of application in greenhouses are less than 100, and about one-third are less than 50, since they involve the applicator remaining in the greenhouse during application. In addition, the MOE for reentry workers 24 hours after application is 21. There are a variety of registered alternatives available as a space treatment, surface treatment or direct treatment to plants. Assuming an equal number of applications to replace dichlorvos, the cancellation of dichlorvos should not result in significant economic impacts. These applicator and reentry risks are unacceptable, and thus, EPA is proposing to cancel registrations of products labeled for use in greenhouses unless the following changes are made to the label which will reduce risks to an acceptable level: Eliminate hand-held application methods and require use of automatic foggers inside the greenhouse or fogging through a port on the side of a greenhouse. In either case, no one (including the applicator) would be allowed in the greenhouse during the application. In addition, because of low MOEs for workers reentering greenhouses, the Agency is proposing to limit exposure by prohibiting entry by anyone, including handlers (except in an emergency) within the first 4 hours following application. For the remainder of the first 48 hours following application, the Agency is proposing to allow one hour per day entry into dichlorvos-treated greenhouses by trained pesticide handlers who are equipped with handler personal protective equipment (including an organic-vapor-cartridge respirator) and who are performing a handling task. Handling tasks are defined by the Worker Protection Standard (40 CFR part 170) and include operating ventilation equipment and checking air concentration levels. Entry by workers to perform non-handler tasks, such as harvesting, cultivation, and irrigation-related tasks would be prohibited for the entire 48–hour period. It is unclear what effect, if any, the reentry restrictions proposed in this action will have on the greenhouse industry, since the Agency has no information regarding the need for reentry tasks during the first 48 hours following application of dichlorvos.

If the application and reentry restrictions proposed here are not feasible to implement, EPA does not believe that the loss of dichlorvos in greenhouses would have a significant impact on the greenhouse industry; benefits from the use of dichlorvos in greenhouses are expected to be minimal due to the availability of alternatives. Therefore, EPA is proposing these restrictions because, without them, the applicator and reentry risks outweigh the benefits. Note that the entry restrictions being proposed by the Agency are based on the assumption that the treated area would not be ventilated for the entire 48–hour period following application. The Agency would consider data, if submitted, that indicate that a specified number of air exchanges or a specified number of hours of mechanical ventilation would reduce the dichlorvos air concentration level to an acceptable level for safe entry for workers (without respirators) in less than the proposed 48–hour entry-restricted period. This 48–hour reentry period exceeds the 24–hour period required in the Worker Protection Standard; however, based on the exposure data for dichlorvos, EPA believes that this longer reentry period is necessary to reduce worker risk to an acceptable level.

6. *Mushroom houses.* The estimated dietary risk from use of dichlorvos in mushroom houses is 2.6×10^{-9}, which is negligible. However, the MOEs for most methods of applying dichlorvos in mushroom houses are less than 100, and some are less than 10, since they involve the applicator remaining in the house during application. In addition, the MOE for reentry workers following 24 hours after application is 21. These applicator and reentry risks are unacceptable, and thus, EPA is proposing to cancel registrations of products labeled for use in mushroom houses unless the following changes are made to the label which will reduce risks to an acceptable level: Eliminate hand-held application methods, and require use of automatic foggers inside the mushroom house or fogging through a port on the side of a mushroom house. In either case, no one (including the applicator) would be allowed in the mushroom house during the application. In addition, because of low MOEs from reentering mushroom houses, the Agency is proposing to limit exposure by prohibiting entry by anyone, including handlers (except in an emergency) within the first 4 hours following application. For the remainder of the first 48 hours following application, the Agency is proposing to allow one hour per day entry into dichlorvos-treated mushroom houses by trained pesticide handlers who are equipped with handler personal protective equipment (including an

organic-vapor-cartridge respirator) and who are performing a handling task. Handling tasks are defined by the Worker Protection Standard (40 CFR part 170) and include operating ventilation equipment and checking air concentration levels. Entry by workers to perform non-handler tasks, such as harvesting, cultivation, and irrigation-related tasks would be prohibited for the entire 48–hour period. The economic impact resulting from these restrictions is not expected to be significant since dichlorvos is only used for insect control after surface sprays and larvacides have been used, and permethrin is available as a direct alternative to dichlorvos. It is unclear what effect, if any, the reentry restrictions proposed in this action will have on the mushroom industry, since the Agency has no information showing whether reentry to perform crop cultivation tasks is necessary during the first 48 hours following application. EPA acknowledges that there may be impacts due to these restrictions; however in the absence of data, EPA is assuming no impact. Therefore, EPA is proposing these restrictions because, without them, the applicator and reentry risks outweigh the benefits. Note that the entry restrictions being proposed by the Agency are based on the assumption that the treated area would not be ventilated at all during the entire 48–hour period following application. The Agency would consider data, if submitted, that indicate that a specified number of air exchanges or a specified number of hours of mechanical ventilation would reduce the dichlorvos air concentration level to an acceptable level for safe entry for workers (without respirators) in less than the proposed 48–hour entry-restricted period. This 48–hour reentry period exceeds the 24–hour period required in the Worker Protection Standard; however, based on exposure data for dichlorvos, EPA believes that this longer reentry period is necessary to reduce worker risk to an acceptable level.

7. *Direct treatment to domestic food and non-food animals (non-poultry).* EPA is proposing cancellation of all products registered for hand-held application methods to domestic animals. The MOE for hand application is approximately 6. Other direct application methods that do not involve hand-held application are not expected to exceed the Agency's level of concern and would still be allowed. These include: face and back rubbers, and devices which automatically apply dichlorvos to the animals. The loss of dichlorvos for hand-held treatment of animals should not have a major economic impact since there are easily available alternatives similar in cost to dichlorvos, and dichlorvos can still be used by other methods. Therefore, EPA believes that the risks outweigh the benefits for hand-held methods of application to food and non-food animals, excluding poultry.

8. *Direct treatment to domestic food and non-food animals (poultry).* EPA is proposing to retain the use of dichlorvos on poultry because the risks from application are not unreasonable. Dichlorvos is mainly used as a space spray to treat poultry premises, but it is also used for direct animal treatment. EPA does not have data to estimate risk from treating poultry; however, the Agency believes that both the application method and fewer number of applications will result in much lower exposure and risk than for cattle treatment. The benefits for poultry treatment cannot be separated out from the use on domestic animals and their premises. However, EPA believes there is a benefit for controlling mites on laying hens. As a result EPA is believes the benefits of dichlorvos use exceeds the risks and is proposing retention of this use.

9. *Treatment of domestic animal (food and non-food) premises.* EPA is proposing to retain the use of dichlorvos for treatment of domestic animal premises. The Agency estimates that MOEs for applying dichlorvos are greater than 100. Because there may be some benefits for the combined direct animal and premise treatment, and the estimated risk is very low, EPA believes that the benefits of this use outweigh the risks. Therefore, EPA is proposing retention of this use.

10. *Feedlots (including around feedlots, stockyards, corrals, and holding pens).* EPA proposes to retain the use of dichlorvos in feedlots. The Agency estimates that the MOEs for applying dichlorvos are greater than 100. Also application of dichlorvos in feedlots generally involves application over a short period of time in a well ventilated area, which together, further reduces the risk of exposure. There are various alternatives to dichlorvos for controlling flies in feedlots. Because there are probable regional impacts resulting from cancellation of this use, and the MOEs are greater than 100, EPA is proposing to retain this use. Therefore, the benefits outweigh the risks in this case.

11. *Manure.* EPA proposes retaining the use of dichlorvos on manure. The Agency estimates that the MOEs for applying dichlorvos on manure are greater than 100. In addition, manure is generally located outdoors or in well-ventilated areas, thereby reducing exposure to dichlorvos. There are various alternatives to dichlorvos for controlling flies on manure. There may be some benefits from the use of dichlorvos on manure, although not significant, and because this use is not a risk of concern, EPA is proposing to retain the use on manure.

12. *Tobacco warehouse.* EPA is proposing cancellation of products registered for this use because both applicator and reentry MOEs are low: 2 for application and 0.3 for reentry. Although EPA did not conduct a benefits analysis for this use site, EPA believes that little or no dichlorvos is used for tobacco warehouses, and Amvac has requested voluntary cancellation for this use site. The Agency does not anticipate a significant economic impact from cancellation; therefore, the risks of this use outweigh its benefits.

13. *Residential uses.* The Agency is proposing cancellation of all products registered for residential uses, including use by residents and by professional applicators, and for use on pets. EPA has determined that the MOEs are significantly less than 100 for all methods of application in the home and for post-application exposure to residents. The animal health and safety data discussed earlier also indicate an unacceptable risk for pets. Overall, the effect of cancellation of all residential uses is not expected to be significant, since there are several alternatives available. Therefore, EPA believes that the risks to residents and pets outweigh the benefits of this use.

14. *Ornamental lawns, turf and plants.* EPA is proposing to cancel dichlorvos products registered for these uses. The estimated risks from application of dichlorvos to ornamental lawns, turf, and plants are low (32 - similar to a greenhouse power sprayer). The economic impact resulting from the cancellation of this use is not expected to be significant since there are alternatives available which, in some cases, cost less than dichlorvos. Therefore, the risks outweigh the benefits.

15. *Kennels.* EPA is proposing to retain use in kennels. The Agency estimates that the MOE for applying dichlorvos in kennels is similar to that of a dairy barn or at least 225. There may be some benefits from the use of dichlorvos in kennels, although not significant, and because this use is not a risk of concern, EPA is proposing to retain this use.

16. *Insect traps*. EPA is proposing to retain the use of dichlorvos in insect traps. The risk to applicators is expected to be negligible because of the short amount of time that the applicator is in contact with the trap, and because the traps are located outside away from people. The only alternative, adhesive strips, may not be as effective as dichlorvos in cases where there are heavy insect populations. Although the overall benefits are not expected to be significant, the benefits for heavy insect problems outweigh the negligible risks.

17. *Garbage dumps*. EPA proposes retaining the use of dichlorvos on garbage dumps. The Agency estimates that the MOE for applying dichlorvos on a garbage dump are greater than 100. In addition, garbage is generally located outdoors or in a separate room, thereby reducing exposure. There are various alternatives to dichlorvos for controlling flies on garbage. There may be some benefits from the use of dichlorvos on garbage dumps, although not significant, and because this use is not a risk of concern, EPA is proposing to retain the use on garbage dumps.

18. *Commercial transportation vehicles*. There are unacceptable applicator and reentry risks for all commercial transportation uses. Due to a very low MOE of 14 for applicators on airplanes, EPA is proposing to cancel dichlorvos products registered for this use. EPA does not believe it is possible to reduce this risk. The benefits are not expected to be significant, since EPA estimates the use to be minimal and Amvac has requested voluntary cancellation of this use. Therefore, EPA believes the risks outweigh the benefits of continued use in airplanes.

The Agency believes that risk mitigation measures are possible for use of dichlorvos in buses. For passenger buses, EPA is proposing to eliminate applicator exposure by limiting application to only foggers, and requiring a 6–hour ventilation period following treatment. With these measures required, the benefits of use of dichlorvos in buses would outweigh its risk.

EPA is proposing to cancel products registered for use in other vehicles (trucks/shipholds/railroad cars). EPA does not believe it is feasible to mitigate the risk from reentry. A 36–hour reentry period would be required to achieve an MOE above 100, which is not practical for commercial vehicles. The economic impact resulting from the cancellation of this use is not expected to be significant since there are alternatives available which would result in similar treatment costs. Therefore, the risks outweigh the benefits.

19. *Restricted use*. With the exception of certain uses listed below, EPA is proposing that all registered products be restricted to use by certified applicators only. This proposal is based on the acute toxicity of dichlorvos (Toxicity Category I, the most toxic classification) and the existence of poisoning incidents. This is not expected to be a major burden since most commercial use products already have a label statement limiting sale and use to pest control operators. In addition, the Registration Standard recommended classification of all products, except those labeled for household use only, as restricted use. EPA is therefore proposing to restrict the use of all products except those registered for only the following uses: impregnated strips in enclosed spaces within a museum and insect traps.

20. *PPE requirements*. EPA proposes to cancel the registration of all remaining dichlorvos products unless the labels are amended to require users to wear: a long sleeved shirt, long pants, gloves, socks and shoes. EPA estimates of acceptable MOEs for some uses are based on wearing these protective clothing. The PPE proposed in this Notice are the minimum needed to eliminate unreasonable risks from use of dichlorvos. If the presence of additional active ingredients in specific end-use products result in more restrictive PPE requirements then the more restrictive requirements must be placed on the end-use label.

If the acute inhalation toxicity of the end-use product is in category I or II, and therefore, a respirator is required for pesticide handlers, the following type of respirator is appropriate to mitigate dichlorvos inhalation concerns: a respirator with either an organic-vapor-removing cartridge with a prefilter approved for pesticides (MSHA/NIOSH approval number prefix TC-23C), or a canister approved for pesticides (MSHA/NIOSH approval number prefix TC-14G).

21. *Retained uses*. EPA is proposing to retain the following uses; however, the related registrations will be canceled unless the labels conform to the above cancellations, restricted use, reentry and protective clothing requirements: mushroom houses and greenhouses (only automatic foggers or fogging through a port), kennels, feedlots, insect traps, garbage dumps, direct application to poultry, automated application to livestock, animal premises, manure, and buses.

TABLE 4.—UPPER BOUND CANCER RISK ESTIMATES FROM USE OF DICHLORVOS AND NALED

Use	Risk Before Agency Proposed Action	Risk After Agency Proposed Action
Packaged or bagged, non-perishable processed food and RACs (including bulk stored, regardless of fat content)	3.4×10^{-6}	0
Milk	6.2×10^{-7}	6.2×10^{-7}
Eggs	7.1×10^{-8}	7.1×10^{-8}
Red Meat	1.1×10^{-7}	1.1×10^{-7}
Poultry	3.7×10^{-8}	3.7×10^{-8}
Agricultural uses	2.1×10^{-7}	2.1×10^{-7}
Lettuce	1.6×10^{-7}	1.6×10^{-7}
Cucumbers	2.6×10^{-8}	2.6×10^{-8}
Tomatoes	1.4×10^{-8}	1.4×10^{-8}

TABLE 4.—UPPER BOUND CANCER RISK ESTIMATES FROM USE OF DICHLORVOS AND NALED—Continued

Use	Risk Before Agency Proposed Action	Risk After Agency Proposed Action
Mushrooms	2.6×10^{-9}	2.6×10^{-9}
Radishes	9.8×10^{-10}	9.8×10^{-10}
Dichlorvos from application of:		
Dichlorvos	4.4×10^{-6}	1×10^{-6}
Naled	7.2×10^{-7}	7.2×10^{-7}
Total	5.1×10^{-6}	1.7×10^{-6}

TABLE 5.—SUMMARY OF DICHLORVOS RISKS AND BENEFITS

Uses	Non-Dietary Margin of Exposure: Cholinesterase Inhibition	Dietary Upper Bound Cancer Risk	Benefits	Proposed Action
Domestic Dwellings (Application)				
Pressurized Aerosol	47	N/A	Benefits in and around domestic dwellings are not expected to be significant	Cancel
Crack and crevice treatment	23	N/A		Cancel
Domestic Dwellings (Post-Application)				
Total release fogger	17	N/A	Benefits in and around domestic dwellings are not expected to be significant	Cancel
Pressurized Aerosol	17	N/A		Cancel
Crack and crevice treatment	2	N/A		Cancel
Resin Pest strips	20	N/A		Cancel
Pet Flea collars	240	N/A		Cancel
Occupational Exposure				
Mushroom House Applicator	Majority of MOEs less than 50 and some less than 10	2.6×10^{-9}	Benefits are not expected to be significant	**Allowable Application Methods** -Automatic foggers -Thermal foggers through a port **Application Methods Not Allowed (Cancel)** -Hand application or any method in which the applicator remains inside the mushroom house during application.

TABLE 5.—SUMMARY OF DICHLORVOS RISKS AND BENEFITS—Continued

Uses	Non-Dietary Margin of Exposure: Cholinesterase Inhibition	Dietary Upper Bound Cancer Risk	Benefits	Proposed Action
Reentry				
After 24 hours	21 (no respirator)			Reentry Restrictions
After 48 hours	289 (no respirator)			Limited reentry during first 48 hours following treatment. No entry within first 4 hours; limited reentry (one hour per 24 hours) for handling activities only.
Greenhouse				
Applicator	Majority of MOEs less than 100 and 30% less than 50	1.6×10^{-7} (lettuce) 2.6×10^{-8} (cucumbers) 1.4×10^{-8} (tomatoes) 8.8×10^{-10} (radishes)	Not expected to be significant	**Allowable Application Methods** -Automatic foggers -Thermal foggers through a port **Application Methods Not Allowed (Cancel)** -Hand application or any method in which the applicator remains inside the greenhouse during application.
Reentry				
After 24 hours	21 (no respirator)			Reentry Restrictions
After 48 hours	289 (no respirator)			Limited reentry during first 48 hours following treatment. No entry within first 4 hours; limited reentry (one hour per 24 hours) for handling activities only.
Domestic food/nonfood animals (non-poultry)				
Applicator	6.1	6.2×10^{-7} (milk)	Probable regional impacts	Cancel all hand application methods to both food and nonfood animals

TABLE 5.—SUMMARY OF DICHLORVOS RISKS AND BENEFITS—Continued

Uses	Non-Dietary Margin of Exposure: Cholinesterase Inhibition	Dietary Upper Bound Cancer Risk	Benefits	Proposed Action
		1.1×10^{-7} (red meat)		Other uses are permitted such as back and face rubbers, and automatic application systems.
Domestic food/nonfood animals (poultry)	> 100	7.1×10^{-8} (eggs) 3.7×10^{-8} (poultry)	Possible regional impacts	Retain Use
Domestic animal premises (food and non-food) (includes dairy barns, mink farms, barns, stables, poultry houses)				
Applicator	> 100	N/A	Probable regional impacts	Retain uses
Reentry	> 100	N/A		
Feedlots	>100	N/A	Probable regional impacts	Retain use
Manure	>100	N/A	Benefits not expected to be significant	Retain use
Tobacco warehouse		N/A	Benefits not expected to be significant	Cancel
Applicator-sprinkling	2			
Mixer-loader	32,500			
Warehouse worker (reentry)	0.3			
Ornamental lawns, turf and plants	32 (similar to greenhouse power sprayer)	N/A	Not expected to be significant	Cancel
Warehouse treatment (affects nonperishable bulk, packaged and bagged raw and processed commodities)				
Application	38	3.4×10^{-6}	$12 million for both raw and processed nonperishable bulk, packaged, or bagged agricultural commodities plus the cost of additional fumigations if needed.	Cancel all application methods except for impregnated resin strips which are limited to closed areas such as silos.
Reentry	2.8			
Kennels	> 100 (similar to dairy barn)	N/A	Not expected to be significant	Retain use

TABLE 5.—SUMMARY OF DICHLORVOS RISKS AND BENEFITS—Continued

Uses	Non-Dietary Margin of Exposure: Cholinesterase Inhibition	Dietary Upper Bound Cancer Risk	Benefits	Proposed Action
Insect traps Applicator	negligible risk	N/A	Not expected to be significant	Retain use
Garbage dumps	> 81 (less than greenhouse risk)	N/A	Not expected to be significant	Retain use
Commercial, institutional and industrial areas (includes food service, food processing, end food manufacturing possibilities) Applicator Reentry	 38 2.8	Potential dietary risks	Not expected to be significant	Cancel all uses
Commercial transportation vehicles				
Airplanes (disinsection of aircraft) Passenger - post-application Applicator	 135 14	N/A	Not expected to be significant	Cancel use on airplanes
Buses-passenger	55	N/A	Not expected to be significant	Retain only fogger use on buses and require a 6–hour ventilation period before reentry.
Truck, shipholds, rail cars Application Reentry	 > warehouse 20	Potential dietary risk	Not expected to be significant	Cancel use

NOTE: Amvac has requested voluntary deletion of the following uses from their technical and end-use labels. In response to the Federal Register Notice announcing Amvac's request, no one expressed interest in retaining these uses, with the exception of greenhouses and outdoor household use. Therefore, the Agency intends to follow through with Amvac's request to delete these uses, excluding the two exceptions. Any risks associated with these uses will be eliminated.

- Domestic dwellings (except for impregnated resin pest strips, total release foggers, and crack and crevice treatment). There is interest in supporting outdoor household use and this use will not be immediately deleted. However, based on risk/benefit considerations, the Agency is proposing to cancel this use.
- Greenhouses. Because there is interest in supporting use in greenhouses, this use will not be immediately deleted. However, based on risk/benefit considerations, the Agency is proposing to cancel this use, unless certain use restrictions are put into place.
- Tobacco and tobacco warehouses
- Food service establishments, food manufacturing establishments and food processing establishments, with the exception of nonfood-processing areas. - Aircraft and buses

The following uses which Amvac is requesting to delete are not included in the above risk/benefit table: tomatoes, rangeland grasses, and aerial application.

V. Existing Stocks

Under the authority of FIFRA section 6(a)(1), EPA will establish certain limitations on the distribution and use of existing stocks of dichlorvos products subject to any final cancellation notice. EPA defines the term ''existing stock'' to mean any quantity of dichlorvos products in the United States on the effective date of the Final Notice of Intent To Cancel certain registrations, or on the effective date an application for amendment of registration is granted by the Agency. Such existing stocks include dichlorvos products that have been formulated, packaged, and labeled and are being held for shipment or release or have been shipped or released into commerce.

EPA is proposing not to permit the continued sale, distribution, or use of dichlorvos products affected by this Notice after the effective date of the Final Cancellation Notice. EPA reserves the right to amend this existing stocks provision, should conditions warrant

such amendment. The final cancellation notice may amend the existing stocks provisions in the Use Deletion Notice published on April 19, 1995 (60 FR 19580).

VI. Procedural Matters

As required by FIFRA sections 6(b) and 25(d), and 40 CFR 154.31(b), EPA has transmitted copies of a draft Notice of Intent to Cancel based on this Notice, together with the support documents, to the Secretary of Agriculture and the Scientific Advisory Panel for comment. EPA will publish any comments received from the Secretary or the Panel, and EPA's responses, in the Notice of Final Determination.

VII. Public Record and Opportunity for Comment

The Agency is providing a 90–day period for the public to comment on this Notice and on the dichlorvos Special Review Docket. Comments must be submitted by December 27, 1995. All comments and information should be submitted in triplicate to the address given in the Notice under ''ADDRESSES.'' All comments should be identified with the public docket number (OPP–30000/56). All comments, information, and analyses which come to the attention of EPA may serve as a basis for final determination of regulatory action during the Special Review.

A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this Notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

VIII. Public Docket

Pursuant to 40 CFR 154.15, the Agency has established a public docket [OPP-30000/56] for the dichlorvos Special Review. This public docket will include: (1) This Notice; (2) any other notices pertinent to the dichlorvos Special Review; (3) non-CBI documents and copies of written comments submitted to the Agency in response to the pre-Special Review registrant notification, the Federal Register Notice initiating Special Review, this Notice, any other Notice regarding dichlorvos submitted at any time during the Pre-Special Review process by persons outside government; (4) a transcript of any public meetings held by EPA for the purpose of gathering information on dichlorvos; (5) memoranda describing each meeting held during the Special Review process between Agency personnel and persons outside government pertaining to dichlorvos; and (6) a current index of materials in the public docket.

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List of Subjects

Environmental protection.

Dated: September 22, 1995.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

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