

23156

# Federal Register

OK  
Monday  
May 23, 1983

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## Selected Subjects

- Air Pollution Control**  
Environmental Protection Agency
- Animal Biologics**  
Animal and Plant Health Inspection Service
- Aviation Safety**  
Federal Aviation Administration
- Banks, Banking**  
Federal Reserve System
- Bridges**  
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- Child Welfare**  
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- Credit Unions**  
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- Flood Insurance**  
Federal Emergency Management Agency
- Government Contracts**  
Federal Highway Administration

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### Inventions and Patents

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### Labeling

Federal Trade Commission

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### Motor Carriers

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### Student Aid

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### Trademarks

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# Rules and Regulations

Federal Register

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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 month.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 9 CFR Part 82

[Docket 83-067]

#### Exotic Newcastle Disease; Area Released From Quarantine

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This document releases a portion of Santa Clara County in California from the list of areas quarantined because of the existence of exotic Newcastle disease. Surveys indicate that exotic Newcastle disease no longer exists in such portion of Santa Clara County. Therefore, in order to relieve unnecessary restrictions, it is necessary to take this action.

**EFFECTIVE DATE:** May 17, 1983.

**FOR FURTHER INFORMATION CONTACT:** W. W. Buisch, Chief, National Emergency Field Operations, Emergency Programs, Veterinary Services, USDA, Federal Building, Room 748, Hyattsville, MD 20782, 301-436-8073.

**SUPPLEMENTARY INFORMATION:** This document on an emergency basis amends 9 CFR Part 82 by releasing a portion of Santa Clara County in California from the areas quarantined because of exotic Newcastle disease, a communicable viral disease affecting all species of poultry and birds. Surveys indicate that exotic Newcastle disease no longer exists in this portion of Santa Clara County. It is therefore necessary, in order to relieve unnecessary restrictions, to release this area from quarantine. The restrictions pertaining to the interstate movement of poultry, mynah, and psittacine birds, and birds of all other species under any form of

confinement, and their carcasses, and parts thereof, and certain other articles, from quarantined areas, as contained in 9 CFR Part 82, as amended, will no longer apply to the released area.

#### Executive Order 12291 and Emergency Action

This final action has been reviewed in conformance with Executive Order 12291, and has been determined to be not a "major rule." The Department has determined that this rule will have an annual effect on the economy of less than \$100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have any significant adverse effects on competition, employment, investment, productivity, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

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

Dr. E. C. Sharman, Assistant Deputy Administrator, Animal Health Programs, APHIS, VS, USDA, has determined that the emergency nature of this final rule warrants publication without opportunity for public comment. This amendment relieves certain restrictions no longer deemed necessary to prevent the spread of exotic Newcastle disease, and must be made effective immediately to be of maximum benefit to affected persons.

Therefore, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this final rule are impracticable and contrary to the public interest and good cause is found for making this final rule effective less than 30 days after publication of this document in the **Federal Register**.

#### Certification Under the Regulatory Flexibility Act

Bert W. Hawkins, Administrator of the Animal and Plant Health Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities because it removes the quarantine imposed due to exotic

Newcastle disease concerning only one premises and this premises in not owned by a small entity.

#### List of Subjects in 9 CFR Part 82

Animal diseases, Exotic Newcastle disease, Poultry and poultry products, Quarantine, Transportation.

#### PART 82—[AMENDED]

Accordingly, 9 CFR Part 82 is amended as follows:

##### § 82.3 [Amended]

1. In § 82.3(c)(2), relating to the State of California, the following premises is removed: 229 East St. Johns Street, San Jose, Santa Clara County.

(Secs. 4-7, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791-792, as amended; secs. 1-4, 33 Stat. 1264, 1265, as amended; Secs. 3 and 11, 76 Stat. 130, 132; (21 U.S.C. 111-113, 115, 117, 120, 123-126, 134b, 134f); 7 CFR 2.17, 2.51, 371.2(d))

Done at Washington, D.C., this 17th day of May 1983.

**Dale F. Schwindaman,**

*Acting Deputy Administrator, Veterinary Services.*

[FR Doc. 83-13667 Filed 5-20-83; 8:45 am]

BILLING CODE 3410-34-M

## Food Safety and Inspection Service

### 9 CFR Part 381

[Docket No. 81-051F]

#### Disposition of Condemned Poultry Carcasses and Parts

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends § 381.78 of the Federal poultry products inspection regulations by eliminating the requirement that poultry carcasses and any parts of carcasses condemned for disease, in an official establishment, be kept separate from poultry carcasses and parts of carcasses that are condemned for other causes. Official establishments will be permitted to keep all condemned poultry carcasses and parts of carcasses in the same container except those lots of poultry suspected of containing biological residues. This final rule removes the burdensome requirement that official establishments keep separate containers for condemned

diseased poultry and other condemned poultry and allows more efficient operations by these official establishments.

**EFFECTIVE DATE:** June 22, 1983.

**FOR FURTHER INFORMATION CONTACT:** Dr. John C. Prucha, Director, Slaughter Inspection Standards and Procedures Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-3219.

**SUPPLEMENTARY INFORMATION:**

**Executive Order 12291**

The Agency has made an initial determination that this final rule is not a major rule under Executive Order 12291. It will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The final rule eliminates an unnecessary, burdensome requirement previously imposed on poultry slaughter establishments under Federal inspection.

**Effect on Small Entities**

The Administrator, Food Safety and Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601). The final rule removes certain restrictions imposed on the regulated industries. Establishments are no longer required to maintain separate containers for carcasses condemned because of disease and carcasses condemned for other reasons. This final rule eliminates the separate container requirement and thus eliminates the possibility of any production delays due to an unnecessary requirement.

**Background**

Section 6 of the Poultry Products Inspection Act (PPIA) (21 U.S.C. 455) requires that all poultry carcasses and parts of carcasses found to be adulterated must be condemned and destroyed for human food purposes under the supervision of an inspector. Section 11 of the PPIA (21 U.S.C. 460)

prohibits the sale, purchase, transportation, offer for sale or transportation, or receipt for transportation in commerce or import of any poultry carcasses, parts or products not intended for use as human food unless such articles are denatured or otherwise identified as required by regulations or are naturally inedible by humans.

Under these and other provisions of the PPIA, the Food Safety and Inspection Service (FSIS) promulgated regulations specifying the handling and disposal of condemned poultry in official establishments. Section 381.95 of the poultry products inspection regulations (9 CFR 381.95) lists the methods by which condemned poultry carcasses, parts or products must be disposed. Poultry which has been condemned for any reason, other than because it contains biological residues, must be steam treated (rendered), incinerated, chemically denatured, or treated with any other substance or method approved by the Administrator in specific cases. Poultry carcasses and parts which have been condemned for biological residues must be either incinerated or buried under USDA supervision.

However, for the purposes of handling condemned products prior to being made inedible, FSIS established a requirement in § 381.78 of the poultry products inspection regulations (9 CFR 381.78) that poultry carcasses and parts condemned because of disease be kept separate from poultry carcasses and parts condemned for other purposes. This required that the official establishment provide at least two containers for condemned poultry on the inspection line, with the diseased condemned poultry going into one and the nondiseased condemned poultry in the other.

This provision requiring separation of condemned diseased poultry and nondiseased poultry was promulgated on May 18, 1972 (37 FR 9706), along with many other regulations, in an effort to comply with the extensive revision of the PPIA by the Wholesome Poultry Products Act in 1968. The original purpose for separating diseased from nondiseased condemned carcasses and parts is not set forth in the rulemaking. However, FSIS was concerned at that time that handling procedures in some establishment might allow diseased poultry carcasses and parts to spread infectious agents to health flocks if commingled with other condemned poultry which would be used for animal feed. Avian influenza, pullorum-typhoid,

and other such diseases are highly infectious, and, given the frequent practice of using condemned carcasses, parts and products for animal feed purposes, separating the condemned carcasses and parts was deemed appropriate to permit special handling as may have been required by State animal disease officials.

**The Proposal**

The National Broiler Council recommended that FSIS eliminate the requirement for two condemnation cans because such a requirement is too restrictive.

The requirement for two containers is irrelevant in most establishments for two reasons. First, most of the larger establishments find it uneconomical to make distinctions between diseased carcasses and parts and those which were condemned for other reasons, such as contamination, death by other than slaughter, decomposition, or overscald. They dispose of both diseased and nondiseased condemned product in the same way, by rendering it as provided in § 381.95(a), which destroys any disease organisms and, therefore, eliminates the threat of the spread of the diseases to live poultry through the use of the condemned poultry in animal feed. Second, most establishments are not located in States with restrictive rules on the transportation of condemned, diseased poultry.

FSIS determined that the requirement that all establishments separate condemned poultry carcasses and parts into two containers, one for diseased and one for nondiseased product, was overbroad in its application and unnecessary for the implementation of the PPIA. Therefore, on August 9, 1982, FSIS published in the Federal Register (47 FR 34428) a proposal to eliminate the requirement that establishments keep separate those carcasses and parts of carcasses condemned because of disease from carcasses and parts of carcasses condemned for other causes. FSIS is retaining the requirement that carcasses and parts of carcasses condemned for biological residues must be kept separate from all other condemned carcasses or parts.

FSIS received two comments on the proposal—one from the National Broiler Council and one from the Poultry and Egg Institute of America. Both commenters favored the proposal and commended FSIS for proposing to eliminate such a burdensome, unnecessary requirement. Therefore,

FSIS has determined to adopt the proposal as published.

#### The Final Rule

This final rule does not prevent an establishment from placing condemned material into as many different containers as it wishes to serve its special needs. For example, if an establishment wishes to set aside a specific kind of poultry condemned because of "plant error" for a specific purpose, such as animal food for a mink farm, it may have a separate container for such purpose. If an establishment wishes to appeal an inspector's disposition in accordance with § 381.35 of the Federal poultry products inspection regulations (9 CFR 381.35), it may provide a separate container to fulfill such purpose.

#### List of Subjects in 9 CFR Part 381

Condemned products, Poultry products inspection.

#### PART 381—[AMENDED]

Section 381.78 of the Federal poultry products inspection regulations (9 CFR 381.78) is revised as follows:

1. The authority citation for Part 381 reads as follows:

**Authority:** Section 14 of the Poultry Products Inspection Act, as amended by the Wholesome Poultry Products Act (21 U.S.C. 451 *et seq.*); the Talmadge-Aiken Act of September 28, 1962 (7 U.S.C. 450); and subsection 21(b) of the Federal Water Pollution Control Act, as amended by Pub. L. 91-224 and by other laws (33 U.S.C. 1254).

2. Section 381.78 (9 CFR 381.78) is amended by revising the title, by removing paragraph (b) and redesignating paragraph (c) as paragraph (b), and by revising the redesignated paragraph (b) to read as follows:

§ 381.78 **Condemnation of carcasses and parts: separation of poultry suspected of containing biological residues.**

(b) When a lot of poultry suspected to containing biological residues is inspected in an official establishment, all carcasses and any parts of carcasses in such lot which are condemned shall be kept separate from all other condemned carcasses or parts.

Done at Washington, D.C., on: May 11, 1983.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 83-13804 Filed 5-20-83; 8:45 am]

BILLING CODE 3410-0M-M

#### NATIONAL CREDIT UNION ADMINISTRATION

#### 12 CFR Ch. VII

[Amdt. to NCUA IRPS 82-3]

#### Amendment to Interpretive Ruling and Policy Statement; Membership in Federal Credit Unions

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Amendment to Interpretive Ruling and Policy Statement (IRPS 82-3).

**SUMMARY:** In IRPS 82-3, effective April 21, 1982, the NCUA Board delegated to NCUA Regional Directors the authority to approve Federal credit union fields of membership including more than one distinct group. Where the multiple groups involve common bonds of occupation or association, they must be within a "well-defined area," as that phrase is defined by the Regional Director. This amendment would clarify that the Regional Director may include, in a definition of "well-defined areas," in IRPS 82-3, groups meeting all specified criteria but that are not only within a well-defined area of the home office but also are situated around an existing branch office of the Federal credit union.

**EFFECTIVE DATE:** May 23, 1983.

**ADDRESS:** National Credit Union Administration, 1776 G Street, N.W., Washington, D.C. 20456.

**FOR FURTHER INFORMATION CONTACT:** Robert Fenner, Deputy General Counsel or Todd Okun, Assistant General Counsel, at the above address, or telephone (202) 357-1030.

**SUPPLEMENTARY INFORMATION:** In IRPS 82-3, effective April 21, 1982, the NCUA Board delegated to NCUA Regional Directors the authority to approve Federal credit union fields of membership including more than one distinct group. Where the multiple groups involve common bonds of occupation or association, they must be within a "well-defined area," as that phrase is defined by the Regional Director. Other standards must also be met, including a request for service from affected groups, proof that service can be provided and proof of economic feasibility and general advisability. A Federal credit union requesting such an expansion must be well-run and have a satisfactory performance record or its request will be denied.

At issue in a request for comments preceding this action was the requirement that the groups must be within a "well-defined area." Even though not specifically addressed in

IRPS 82-3, each Regional Director has consistently applied a policy that restricted consideration of the "well defined area" when granting a multiple-group charter expansion, i.e., an existing credit union request to expand its field of membership to include another group is limited to groups within a "well-defined area" of the home office of the applicant. This Regional policy limited charter amendment requests and further resulted in automatic disapproval of requests to include groups that were beyond the "well-defined area" of the home office but within a "well-defined area" of an existing branch office. This amendment provides greater flexibility to credit unions within the statutory common bond constraint to expand their fields of membership and, obviously, provides credit union services to a greater number of people.

This policy that expansions within a "well-defined area" of existing branch offices be permitted will only occur if the branch office serves the existing field of membership. The latter distinction is significant because its purpose is not to encourage credit unions to establish branch offices for the purpose of adding groups. Rather, it is geared to provide credit unions with the flexibility to add groups that are within a "well defined area," as determined by the Regional Director, of a branch office that exists for the primary purpose of serving its existing field of membership.

#### Analysis of Comments

Of the 62 comment letters received, 58 supported the change in policy because it fosters the goal of providing credit union service to the greatest number of persons. These comments also raised one other issue for clarification, as discussed below.

All of the 4 commenters opposing the proposed amendment felt that the proposal was (1) not consistent with the principles of the common bond and (2) harmful to smaller Federal credit unions not having the capability to compete in a given locale where a branch office of a larger Federal credit union exists.

First, the NCUA Board is satisfied that this policy, as adopted, is in compliance with the principles of common bond found in Section 109 of the Federal Credit Union Act (12 U.S.C. 1759). Second, while the NCUA Board agrees that the adoption of this policy will increase competition among Federal credit unions, to add groups not now being served, this impact will be felt by large and small Federal credit unions alike. Better services, greater efficiency and, generally, a greater servicing of a greater number of members could be the

result of competition. The NCUA Board does not feel that this necessarily puts smaller Federal credit unions at a disadvantage. Rather, it gives an advantage to the efficient and imaginative Federal credit union, regardless of size.

The issue raised by several commenters was exactly what constitutes a "branch office." More specifically, is an automated teller machine (ATM), for instance, a "branch office" for purposes of IRPS 82-3? It is the NCUA Board's view that the performance of any credit union function at a different locale does not cause that locale to become a branch office. It is the intent of the NCUA Board to consider a "branch office" to be any office associated with the home office of the Federal credit union where an employee accepts payment on shares and disburses loans i.e., where the basic business of a Federal credit union occurs. Therefore, ATM's would not constitute "branch offices" for purposes of IRPS 82-3. In addition, overdraft protection, would not, by itself, be considered the granting of a loan for purposes of IRPS 82-3.

Therefore, IRPS 82-3 is amended as follows. Under heading II, Multiple Group Charters, the third paragraph deals with the "first multiple group field of membership category," the subject of this amendment. The following sentences should be added to the end of that paragraph:

For purposes of this IRPS, a "well-defined area as determined by the Regional Director" may mean a well-defined area of both the home office and an existing branch office of a Federal credit union. In addition, the term "branch office" shall mean any office associated with the home office of a Federal credit union where an employee accepts payment on shares and disburses loans, including lines of credit but not including overdraft protection of ATM machines.

Of course, all other portions of IRPS 82-3 remain operative. The NCUA Board continues to find that IRPS 82-3, with the amendment herein adopted will result in fields of membership that meet the membership requirements of Section 109 of the Federal Credit Union Act (12 U.S.C. 1759).

#### List of Subjects in 12 CFR Part 701

Credit unions.

Dated: May 12, 1983.

Rosemary Brady,

Secretary of the NCUA Board.

[FR Doc. 83-13784 Filed 5-20-83; 8:45 am]

BILLING CODE 7535-01-M

#### 12 CFR Part 700

##### Definitions; Limited Income Credit Unions

**AGENCY:** National Credit Union Administration.

**ACTION:** Final regulation.

**SUMMARY:** On March 16, 1983, 48 FR 11130, the National Credit Union Administration (NCUA) published for public comment a proposal to amend its definition of low income credit unions to include those predominantly serving student members. The NCUA has adopted this change. The change will enable credit unions predominantly serving student members to accept insured share accounts from non-members, including local businesses, philanthropic organizations and others. These funds may in turn be used for loans to members, including students, and for other purposes.

**EFFECTIVE DATE:** May 12, 1983.

**ADDRESS:** National Credit Union Administration, 1776 G Street, N.W., Washington, D.C. 20456.

**FOR FURTHER INFORMATION CONTACT:** Harry Blaisdell, Director, Department of Administration, or Robert M. Fenner, Director, Department of Legal Services at the above address or telephone (202) 357-1055 (Mr. Blaisdell) or 357-1030 (Mr. Fenner).

**SUPPLEMENTARY INFORMATION:** Eight comment letters were received. Seven of the eight commenters supported the proposed addition to the regulation. Several commenters suggested that some limit be placed on the rule by defining "student". To clarify the Board's intent, student has been defined in the regulation as any member enrolled as a full-time or part-time student in a college, university, high school or vocational school. Two commenters suggested that the NCUA encourage or perhaps even mandate the involvement of school officials in the operation of student credit unions. The NCUA Board believes that school officials will take an interest in working with their student run credit unions without further regulation. Due to NCUA's policy of deregulation and belief that credit unions should manage their own affairs, no further regulations are promulgated at this time. The one commenter opposed to the proposed change reasoned that the poor track record in the collection of student loans indicates that student credit unions could incur losses that would result in liquidation, creating a drain on the Share Insurance Fund. The Board is convinced that with proper loan granting

procedures, this change will support public policy goals without presenting undue risk to the insurance fund. Also, to eliminate any confusion, it should be noted shares attracted to a student credit union pursuant to this change may be loaned or invested in any manner that is lawful, and are not limited solely to making loans to students. After reviewing all of the comments, the NCUA Board has determined that the proposed change should be invoked defining students as members who are enrolled full-time or part-time in a college, university, high school, or vocational school.

Federal credit unions "serving predominantly low income members," as that phrase is defined by the NCUA Board are authorized pursuant to Section 107(6) of the Federal Credit Union Act (12 U.S.C. 1757(6)) to receive insured share, share draft and share certificate accounts from non-members. Section 700.1(i) of NCUA's regulations (12 CFR 700.1(i)) defines "predominantly" to mean a simple majority. The amended § 700.1(h) now defines "low income members" to include members below certain income levels published by the U.S. Department of Labor, certain members residing in public housing projects, members who qualify as recipients in community action programs and members who are students as defined above. In both §§ 700.1(h) and 700.1(i) there was an incorrect reference to Section 101(4) of the Federal Credit Union Act. The amended sections have been corrected and now refer correctly to Section 101(5) of the Act.

The expanded definition of low income members allows credit unions serving predominantly student members, e.g. credit unions sponsored by colleges, high schools, vocational schools or universities or student groups thereof, to receive insured accounts from individuals, corporations and philanthropic organizations. These funds may in turn be used for student loans to members, including student members for books, tuition and housing, and for other permissible purposes. The expanded regulation will foster self-help among student credit unions.

#### Regulatory Flexibility Analysis

This rule will not have a significant impact on a substantive number of small credit unions (less than \$1 million assets). Therefore, a Regulatory Flexibility Analysis is not required, 5 U.S.C. 605(b).

*Effective date:* This final rule is being made effective in less than 30 days

because it relieves restrictions, 5 U.S.C. 553(d)(1).

#### List of Subjects in 12 CFR Part 700

Credit unions.

By the National Credit Union Administration Board on the 12th day of May, 1983.

(12 U.S.C. 1752(5), 1757(6), 1766(a))

Rosemary Brady,

Secretary of the Board.

#### PART 700—[AMENDED]

Accordingly, 12 CFR Part 700.1 (h) and (i) is revised as set forth below:

##### § 700.1 [Amended]

(h) Pursuant to Section 101(5) of the Federal Credit Union Act, the term "low income members" shall include (1) those members whose annual income falls at or below the lower standard of living classification as established by the Bureau of Labor Statistics, U.S. Department of Labor, (2) those members who are residents of a public housing project who qualify for such residency because of low income, (3) those members who qualify as recipients in a community action program, and (4) those members who are enrolled as full-time or part-time students in a college, university, high school, or vocational school.

(i) As used in Section 101(5) of the Federal Credit Union Act, the term "predominantly" is defined as a simple majority.

FR Doc. 83-10793 Filed 5-20-83; 8:45 am

BILLING CODE 4410-01-M

#### 12 CFR Part 701

##### Loan Interest Rates

**AGENCY:** National Credit Union Administration.

**ACTION:** Final rule.

**SUMMARY:** This rule continues the 21% Federal credit union loan interest rate ceiling through November 12, 1984. The 21 percent ceiling was scheduled to expire on September 4, 1983. This rule is necessary because of interest rate fluctuations and continued high costs of funds for Federal credit unions.

**DATES:** Effective date: May 12, 1983. Expiration date: November 12, 1984 or as otherwise determined by the NCUA Board.

**ADDRESS:** National Credit Union Administration, 1776 G Street, N.W., Washington, D.C. 20456.

**FOR FURTHER INFORMATION CONTACT:** Robert M. Fenner, Director, Department

of Legal Services or Vince Olive, Director, Department of Statistics, at the above address. Telephone numbers: (202) 357-1030 (Mr. Fenner); (202) 357-1065 (Mr. Olive).

#### SUPPLEMENTARY INFORMATION:

##### Background

Public Law 96-221 raised the interest rate ceiling for Federal credit unions from 1 percent per month (12 percent per year) to 15 percent per year. It also authorized the NCUA Board to set a higher limit, after consultation with Congress and other Federal financial agencies, for a period not to exceed 18 months, if the Board should determine that (i) money market interest rates have risen over the preceding six months and (ii) prevailing interest rate levels threaten the safety and soundness of individual credit unions as evidenced by adverse trends in liquidity, capital, earnings and growth.

On December 3, 1980, the NCUA Board, having consulted with the appropriate Congressional committees, the Department of the Treasury, and other Federal financial regulatory agencies, determined that these conditions had been met. The Board therefore raised the interest rate ceiling to 21 percent for a nine month period. In subsequent actions, the Board extended the period governed by the 21 percent ceiling. The current 21 percent ceiling is scheduled to expire on September 4, 1983.

##### Economic Conditions

There are a number of possible definitions of "money market interest rates" as that term is relevant to Federal credit unions and any decision by the NCUA Board concerning the Federal credit union loan interest rate ceiling. The Board believes, however, that the best indicator of money market rates for this purpose is the actual cost of funds experienced by Federal credit unions.

The cost of funds to Federal credit unions during the previous six months has increased, presumably due to various factors including increased competition, deregulation of share account and deposit rate ceilings, and a reevaluation of the proper balancing of the interests of borrowers and savers. During 1981, the cost of credit union funds—total dividends plus interest on borrowed money—as a percent of average total savings and borrowed funds was 7.7%. During 1982, the cost of funds ratio rose to 8.36%, with most of the increase occurring in the last six months of the year. The increase in costs was the direct result of credit unions paying significantly higher dividend rates in 1982 than in 1981 and the increasing

proportion of credit union savings held in interest sensitive type accounts. The average cost of regular shares to Federal credit unions in 1981 was 6.76% compared to 7.63% in 1982. In addition, credit unions had nearly \$2.2 billion in IRA/Keogh and money market accounts as of December 31, 1982. The average rates paid on these accounts at year-end 1982 were 11.77% and 9.95% respectively.

Federal credit union assets and savings, on the average, grew at a relatively rapid pace during 1982 and the first three months of 1983. Liquidity also improved during 1982 due to rapid savings growth in relation to modest loan growth. However, loan demand is expected to increase as the economy continues to recover. This could lead to a significant drop in liquidity as has been the case during previous periods of economic recovery. In addition, if interest rates should increase above their current levels, Federal credit unions whose poor earnings will not permit them to pay competitive dividends could experience outflows of savings and a resulting decline in liquidity.

Below normal earnings during 1979 and 1980 prevented Federal credit unions from building their capital. The ratio of capital—regular reserves plus other reserves, the allowance for loan losses and retained earnings—to total assets declined from 6.2 percent to 6.0 percent from year-end 1979 to year-end 1980. Improved earnings during 1981 resulting from additional flexibility provided to Federal credit unions on loan rates and a modest increase in loans outstanding caused the capital ratio to increase. However, during 1982, the capital ratio declined slightly because earnings did not increase as rapidly as assets during the year. If the economy does not recover as expected, potential losses on credit union loans could erode capital.

Although credit union earnings were moderately higher than the previous year's earnings, they grew nearly 17 percent slower in the last six months of the year than they did during the January-July 1982 period. This resulted from the drop in market rates and an increase in cost of credit union funds that occurred over the last half of the year.

The trends in liquidity, capital earnings and growth are thus mixed and in a state of uncertainty when viewed on a system wide basis. Viewing individual cases, and supervisory problem cases in particular, a number of credit unions continue to suffer clearly adverse trends in all or many of these areas. Prevailing interest rate levels at

most of these credit unions are in the 15-21 percent range for one or more categories of new loans. Thus, a lowering of the ceiling would necessarily reduce the earnings of these credit unions, stifle their recovery prospects and create or exacerbate adverse trends in capital and growth.

Accordingly, the NCUA Board has found that conditions exist warranting the continuation of a Federal credit union loan interest rate ceiling above 15 percent.

#### Extension of Interest Rate Ceiling

The NCUA Board is therefore extending the 21 percent interest rate ceiling for a period of 18 months from the date of this decision. Federal credit unions will continue to be able to charge interest rates of up to 21 percent per year on the unpaid balance inclusive of all finance charges. The ceiling will expire on November 12, 1984, unless otherwise ordered by the NCUA Board. The ceiling is being extended at this time in order to facilitate planning by credit union officials. Due to the time lag encountered in making changes to data processing systems and the time necessary to revise forms, without the change credit unions would now have to begin planning for the expiration of the interest rate ceiling. A delay in extending the ceiling could therefore result in additional costs being incurred by Federal credit unions.

The NCUA Board does not expect that this extension of the present ceiling will result in any increase in loan rates charged by Federal credit unions. Rather, the ceiling is being extended so that the board of directors of each credit union will continue to have the flexibility to react to economic conditions in the manner that is in the best interests of their members.

#### Regulatory Procedures

The NCUA Board has determined that notice and public comment on this rule are impractical and not in the public interest, 5 U.S.C. 553(b)(B). Due to the need for a planning period and the threat to the safety and soundness of individual credit unions with insufficient flexibility to determine loan rates, an immediate extension of the 21 percent interest rate ceiling is necessary. For these reasons and because the rule relieves a restriction, the Board has determined not to provide a delayed effective date, 5 U.S.C. 553d.

For the same reasons and because the change will increase the management flexibility and competitive positions of small credit unions, a regulatory flexibility analysis is not required, 5 U.S.C. 603(a), 604(a). Since the rule will

relieve burdens and delays will cause unnecessary harm, the NCUA Board also finds that full and separate consideration of all the requirements of the Regulatory Simplification Act is impracticable. However, the NCUA Board has considered a number of these policies, as set forth in the preamble above.

Authority: 12 U.S.C. 1757(5)(A)(vi)(I), 1757(5)(A)(ix), 1766.

#### List of Subjects in 12 CFR Part 701

Credit unions.

Accordingly, NCUA amends § 701.21-1A of its rules and regulations as set forth below.

Dated: May 12, 1983.

Rosemary Brady,  
Secretary of the Board.

#### PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

##### § 701.21-1A [Amended]

Section 701.21-1A paragraph (c) is amended by replacing the date "September 4, 1983" with the date "November 12, 1984" each time it appears and by replacing the date "September 5, 1983" with the date "November 13, 1984" each time it appears.

[FR Doc. 83-13765 Filed 5-20-83; 8:45 am]

BILLING CODE 4410-01-M

#### DEPARTMENT OF TRANSPORTATION

##### Federal Aviation Administration

##### 14 CFR Part 71

[Airspace Docket No. 83-AWP-1]

##### Alteration of Transition Area, Elko, Nev.

**AGENCY:** Federal Aviation Administration (FAA) DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment alters the description of the Elko, Nevada, 700 foot transition area by adding a circular extension. This amendment is necessary to provide additional controlled airspace for a new instrument approach procedure using the newly installed localizer (LOC) and distance measuring equipment (DME).

**DATES:** Effective 0900 G.m.t., September 2, 1983. Comments on the rule must be received by June 29, 1983.

**ADDRESSES:** Send comments on the proposal in triplicate to Director, Federal Aviation Administration, Attn:

Chief, Airspace and Procedures Branch, AWP-530, 15000 Aviation Boulevard, Lawndale, California 90261. A public docket will be available for examination in the Office of the Regional Counsel, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone: (213) 536-6270.

**FOR FURTHER INFORMATION CONTACT:** Mateo M. Palenzuela, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, Telephone (213) 536-6182.

#### SUPPLEMENTARY INFORMATION:

##### History

The purpose of this amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to designate a 700 foot transition area extension to provide controlled airspace for IFR operations. This amendment represents a change in the technical description of the transition area and imposes no greater constraints on the public than presently exists.

##### Request for Comments on the Rule

Although this action is in the form of a final rule and was not preceded by notice and public procedure, comments are invited on the rule. When the comment period ends, the FAA will use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking procedures to amend the regulation. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, aeronautical, economic, and energy aspects of the rule that might suggest the need to modify the rule.

##### The Rule

The purpose of this amendment to Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to alter the description of the Elko, Nevada, transition area by adding a circular extension which is predicated on the installation of the LOC and DME. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Advisory Circular AC 70-3A dated January 3, 1983.

Under the circumstances presented, the FAA concludes that there is an immediate need for a regulation to

redesignate airspace based on the new approach navigational aids. Therefore, I find that notice or public procedure under 5 U.S.C. 353(b) is contrary to the public interest.

#### List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

#### Adoption of the Amendment

#### PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) (as amended) is further amended, effective 0901 G.m.t., September 2, 1982, as follows:

#### § 71.181 Elko, Nevada. [Amended]

Following \* \* \* "above the surface within" add "a 9.5 mile radius of Elko Municipal Airport (latitude 40°49'35"N., longitude 115°47'20"W.) and within \* \* \*"

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a), 1354(a), and 1510, Executive Order 10854 (24 FR 9565); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1955(c)); and 14 CFR 11.69)

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

Issued in Los Angeles, California, on May 4, 1983.

Alex Hammond,

Acting Director, Western-Pacific Region.

[FR Doc. 83-13621 Filed 5-20-83; 8:45 am]

BILLING CODE 4910-13-M

#### 14 CFR Part 71

(Airspace Docket No. 83-AWA-6)

#### Alteration of VOR Federal Airways; Albuquerque, NM, Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revokes certain alternate VOR Federal Airways and renumbers other alternate airway segments in the Albuquerque, NM, area.

This action eliminates the assignment of alternate airway segments for the affected airways and supports the FAA's commitment to the International Civil Aviation Organization (ICAO) to phase out alternate airway descriptions from the National Airspace System.

EFFECTIVE DATE: August 4, 1983.

#### FOR FURTHER INFORMATION CONTACT:

Bill Hill, Airspace Regulations and Obstructions Branch (AAT-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8783.

#### SUPPLEMENTARY INFORMATION:

#### History

On March 24, 1983, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to: (1) Revoke V-12S between Zuni, NM, and Albuquerque, NM; (2) revoke V-421W between Gallup, NM, and Farmington, NM; (3) redesignate V-190S between St. Johns, AZ, and Albuquerque, NM, as V-234; (4) redesignate V-12S between Albuquerque, NM, and Anton Chico, NM, as V-234; (5) revoke V-83E between Otto, NM, and Santa Fe, NM; (6) revoke V-19W between Socorro, NM, and Albuquerque, NM; and (7) redesignate V-19E between Socorro, NM, and Albuquerque, NM, as V-187. This action will reduce chart clutter by eliminating airway segments that are no longer needed for flight planning or air traffic control and also support our commitment to ICAO to phase out alternate airway descriptions in the North American Airway System. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received. This amendment is the same as that proposed in the notice. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Advisory Circular AC 70-3A dated January 3, 1983.

#### The Rule

This amendment to Part 71 of the Federal Aviation Regulations revokes and/or renumbers certain alternate airway segments in the Albuquerque, NM, area.

#### List of Subjects in 14 CFR Part 71

VOR Federal airways.

#### Adoption of the Amendment

#### PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, effective 0901 G.m.t., August 4, 1983, as follows:

#### V-12 [Amended]

By deleting the words ", including a south alternate via INT Zuni 104° and Albuquerque 253° radials" and ", including a S alternate from Albuquerque to Anton Chico via INT Albuquerque 103° and Anton Chico 249° radials".

#### V-190 [Amended]

By deleting the words ", including a south alternate via INT St. Johns 085° and Albuquerque 229° radials".

#### V-421 [Amended]

By deleting the words ", including a west alternate via INT Gallup 068° and Farmington 233° radials".

#### V-83 [Amended]

By deleting the words ", including an east alternate via INT Otto 019° and Santa Fe 117° radials".

#### V-234 [Amended]

By deleting the words "From Anton Chico, NM;" and substituting for them the words "From St. Johns, AZ, via INT St. Johns 085° and Albuquerque, NM, 229° radials; Albuquerque; INT Albuquerque 103° and Anton Chico, NM, 249° radials; Anton Chico;".

#### V-19 [Amended]

By deleting the words ", including a W alternate via INT Socorro 343° and Albuquerque 199° radials, and also an E alternate via INT Socorro 015° and Albuquerque 160° radials".

#### V-187 [Amended]

By deleting the words "From Albuquerque, NM, via" and substituting for them the words "From Socorro, NM, via INT Socorro 015° and Albuquerque, NM, 160° radials; Albuquerque;".

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69)

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

number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Washington, D.C., on May 17, 1983.

B. Keith Potts,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 83-13796 Filed 5-20-83; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF THE TREASURY

### Customs Service

#### 19 CFR Part 177

(T.D. 83-116)

#### Tariff Classification of Footwear

AGENCY: U.S. Customs Service, Treasury.

ACTION: Final position and guidelines.

**SUMMARY:** This document sets forth: (1) Customs position regarding the proper interpretation of provisions in the Tariff Schedules of the United States pertaining to imported footwear having foxing or a foxing-like band applied or molded at the sole and overlapping the upper, and (2) guidelines relating to the characteristics of foxing and a foxing-like band.

**EFFECTIVE DATE:** June 22, 1983.

**FOR FURTHER INFORMATION CONTACT:** Donald F. Cahill, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-8181).

#### SUPPLEMENTARY INFORMATION:

##### Background

By notice published in the *Federal Register* on January 25, 1982 (47 FR 3375), Customs solicited public comments regarding: (a) The interpretation of the exclusionary parenthetical clause in the superior heading to item 700.56, Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202), pertaining to imported footwear having "foxing or a foxing-like band" applied or molded at the sole and overlapping the upper; and (b) whether Customs should change its uniform and established practice of classifying shells for "moon boots", a type of footwear, imported with an equal number of removable liners as separate tariff entities, dutiable individually, or whether the shells and liners should be classified as tariff entities pursuant to the doctrine of entireties. Interested parties were given until March 26, 1982, to submit comments on the proposal. Pursuant to a request to extend the period of time for the submission of

comments, Customs published a notice in the *Federal Register* on March 22, 1982 (47 FR 12194), extending the period of time to April 26, 1982.

Because of the numerous substantive and conflicting comments received in response to the more significant issue to question (a) relating to foxing, question (b) relating to the issue of entireties was treated separately. Question (b) was the subject of a document prepared for publication in the *Federal Register*, in which Customs held that moon boots with separable liners are entireties for tariff purposes.

The issue raised in question (a) of what constitutes "foxing or a foxing-like band," which is the subject of this document, has become more critical with the advent of the new TSUS classifications that replaced item 700.60, TSUS. Shoes which were dutiable at 20 percent ad valorem now demand a rate from 37.5 percent to 67.4 percent (equivalent rate) depending on whether Customs finds them to (1) have "foxing or a foxing-like band" of (2) in the case of slip-on type shoes, have "a foxing or a foxing-like band wholly or almost wholly of rubber plastics."

In view of the many divergent opinions held by the importing community, the domestic shoe industry, and Customs officers regarding the meaning of the terms "foxing" and "foxing-like band", Customs decided to solicit comments on the understanding of these terms within the footwear industry and the effect of such understanding on the tariff classification of footwear. Twenty-five comments were received in response to the notice of January 25, 1982. There follows a summary of these comments and Customs analysis and position, including Customs guidelines on the characteristics of foxing and a foxing-like band.

#### Position of Domestic Shoe Industry

The basic thrust of the arguments set forth on behalf of the domestic shoe industry is that the "foxing" language of the tariff schedules should be broadly construed.

##### (1) Position of Domestic Shoe Industry: "Foxing" Concepts

It is asserted that the language of the TSUS "foxing" provisions is broad enough to cover two basic concepts of foxing, namely "heel cap" foxing and "sole/upper reinforcement" foxing.

The basic purpose of both types of foxing is to reinforce the shoe at a point of particular wear or stress (*i.e.*, the back of the heel or the sole/upper juncture) and thus assure the shoe's structural integrity. The "heel cap" type

of foxing has its classic application in traditional leather shoemaking while the "sole/upper reinforcement" type developed with the advent of the use of non-leather materials in footwear manufacture.

##### (2) Position of Domestic Shoe Industry: Foxing-Like Band

There is no standard trade definition for the term "foxing-like band." However, it is necessarily broader in scope than "foxing." Webster's New International Dictionary 2d. ed. (1943), p. 1431, defines "like" as an adjective:

Having the same, or nearly the same, appearance, qualities or characteristics, similar;

Webster's New Twentieth Century Dictionary 2d. ed. (1961), p. 1048, defines "like" as:

Similar, having the same or nearly the same qualities, characteristics, etc.

Therefore, a "foxing-like band" has the same, or nearly the same appearance, qualities or characteristics of "foxing." It follows that something which is molded to look like "foxing" is "a foxing-like band" even if it performs no function whatsoever. Undoubtedly, Congress understood this, and used "foxing-like band" to broaden the historical protection afforded the domestic shoe industry through the foxing parenthetical exception. A non-functional design or structural feature which simulates the appearance of "foxing" is "a foxing-like band."

##### (3) Position of Domestic Shoe Industry: Unit Molded Construction

The use of unit molded bottoming materials (*i.e.*, plastic or rubber bottoms in which the heel and sole are molded as a single unit) has grown in importance in recent years in connection with the production of both leather and non-leather footwear, especially so-called "casuals."

Unit molding encompasses two distinct manufacturing processes. In pre-molded construction, a pre-formed molded unit sole is separately attached to the upper after lasting. In direct molding, the molded sole is, at the time of its formation, molded directly to the assembled and lasted upper in a single step. When the soling compound is introduced into the mold in liquid form, the process is often called "direct injection molding." In both, there is by design a "foxing or a foxing-like band" \* \* \* molded at the sole and overlapping the upper."

In order to make the shoe conform to the shape of the wearer's foot as well as to disperse the tension exerted on the



sides of the upper by the sole during wearing, lasts [i.e., the foot-shaped forms around which shoes are constructed] are uniformly engineered with varying degrees of convex curvature along the bottom (sole side) of the last. Unit molded soles are unique in that they are always specifically engineered to contain a "cupping radius," that is, a concave curvature along the top surface of the mold corresponding to the numerous points of radius of the bottom of a specific last. Because a cupping radius is present, the unit sole appears roughly U-shaped in cross section. The "U-shape" permits the sole to ensconce the lasted upper, thus assuring total superposition and complementary adhesion of sole and upper. It should therefore be obvious that the cupping radius in unit molded footwear is indicative of "foxing or a foxing-like band." Clearly, the cupping radius is integral to the formation of foxing. Without the cupping radius, the shoe would be structurally unstable at the juncture of sole and upper.

The Customs Service has held that particular unit molded shoes had "foxing or a foxing-like band . . . molded at the sole and overlapping the upper" for the reason that the shoes involved have a unit sole with a lip or flange which extended well above the feather line.

According to the domestic shoe industry, this line of reasoning, to wit, presenting the issue of "overlap" as a question of degree and of external appearance, is erroneous for several reasons. First, the TSUS language does not specify that a certain amount of overlap must be present, nor does it require "foxing or a foxing-like band" to resemble foxing on the outside of a sneaker. The TSUS requires only that foxing or a foxing-like band be present, and that there be "overlap of the upper."

Second, the presence of a lip or flange is sufficient, but not a necessary condition of having a foxing. If there is a lip or flange, there will be foxing, but a lip or flange need not be present for there to be a foxing. A lip or flange is an extension of the foxing in a unit molded sole. The foxing itself is present in the sole because the unit molded bottom is U-shaped in cross section.

A foxing or foxing-like band in a unit molded sole may "overlap the upper" in either or both of two ways. First, the foxing could, by virtue of an extended lip or flange, extend above the feather line.

There can be no doubt that, in such a case, the foxing of the unit sole would "overlap the upper." But in addition to this type of overlap, a unit sole will always "overlap the upper" by virtue of

its cupping radius, even if no lip or flange is present. In the shoe industry, "upper" is more than the shoe material above the feather line which is exposed to view in the finished product. Upper also includes a "lasting allowance" of material which is turned under at the feather line and secured to the bottom of the insole and the top of the molded unit sole. Because a unit sole is, by virtue of its cupping radius, U-shaped in cross section, there will always be an overlap of the upper below the feather line.

Customs has always taken the position that a foxing-like band "overlaps the upper" only when it overlaps the exterior surface area of the upper (i.e., extends above the feather line). There is no basis in reason or law for restricting the foxing exclusion in this manner. While the feather line test is implicit in the expressed statutory requirement that Customs classify footwear on the basis of the proportional composition of the "exterior surface area" of the upper, the foxing exclusion contains no such language. Thus, Congress must have recognized that a foxing need not extend over the feather line to accomplish its function of reinforcing and supplementing the attachment of sole and upper. While indeed the vast majority of unit molded footwear does have a lip or flange extending above the feather line, all unit molded footwear has a cupping radius or "U-shape" which creates, in the plain sense of the term, an "overlapping of the upper."

#### (4) Position of Domestic Shoe Industry: Slip-lasted (California) Construction

The slip-lasted (California) construction is utilized mainly for casual shoes and sandals; a classic example is a fabric, leather or plastic casual shoe, either closed upper or open toe/open back, with an insole or unit blended insole, an outsole, wedge or heel.

The slip-lasted method is similar to autoclave construction in that it incorporates a foxing or functional foxing-like band as an intrinsic design feature. As with autoclaved footwear, the purpose of this foxing or foxing-like band is to provide structural integrity to the shoe by reinforcing the attachment of the sole and upper.

It is argued that the incorporated foxing strip constitutes a "foxing or a foxing-like band applied . . . at the sole and overlapping the upper." The material resembles a traditional sneaker foxing and serves the function of a foxing, namely, the securing and reinforcement of the attachment of the sole to the upper. Thus, the foxing furnishes the major connection between upper and sole. Moreover, it is clear that

a slip-lasted foxing or foxing-like band is a distinct component "applied at the sole and overlapping the upper." Although the production process requires that the foxing strip first be stitched to the upper material and then cemented or otherwise attached to the bottom of the unit blended insole assembly, it is certainly "applied . . . at the sole" inasmuch as it is secured between insole and outsole, as in the traditional autoclaved sneaker. Furthermore, because the foxing strip is stitched at a point above the insole and then turned down, there will necessarily be an "overlapping of the upper."

#### (5) Position of Domestic Shoe Industry: Legislative Intent

An analysis of the legislative history of the 1963 TSUS foxing provision demonstrates that:

(1) Congress intended the provision to have an application coextensive with its broad commercial meaning;

(2) Congress must be presumed to have known that in 1963, the term "foxing" was not confined in meaning to the vulcanized band characteristic of sneakers;

(3) The 1960 Tariff Commission Study's specific mention of a sneaker-like vinyl shoe in describing the intent of the foxing exclusion does not imply that the exclusion of such shoes exhausted the intent of the exception; and

(4) To the contrary, the broad language chosen and Congress' manifest desire to maximize the protection afforded the domestic rubber footwear industry by making all shoes competitive with U.S. made footwear subject to the American Selling Price (ASP), convincingly shows that Congress intended the TSUS language to apply to all footwear containing any type of foxing or foxing-like bands.

#### (6) Position of Domestic Shoe Industry: Trade Agreements Act of 1979

An expansive meaning of the foxing provision is also supported by Congress' use of language in recent statutory amendments which is similar to the foxing language found in item 700.55, TSUS.

Specifically, item 700.60, TSUS, was replaced with items 700.57 through 700.71, TSUS. These new item numbers became effective on July 1, 1981. One of the new TSUS items (700.59) and the superior heading to three others (700.61-700.63) contain foxing language similar to that in the superior heading to items 700.54 and 700.56, TSUS. In the case of the headings to items 700.61-700.63, TSUS, the language is nearly identical. However, item 700.59 contains a similar

foxing exclusion with a significant modification which specifies that the foxing or foxing-like band be wholly or almost wholly of rubber.

The March 1981 Summary of Trade and Tariff Information on Rubber Footwear (USITC Publication 841) explains that items 700.61-700.63, TSUS, were "primarily intended to cover joggers." A true "jogger" (a shoe designed for running) has a sole containing a wedge heel which is attached to the upper with cement only and overlaps the upper only at the heel and toe (unlike a traditional sneaker). These shoes are not unit molded and the soles are not molded to a specific last.

The popularity of the true "joggers" has spawned an injection molded variety. Injection molding requires the use of a specific last with numerous points of radius and necessarily incorporates a cupping radius and a foxing or foxing-like band within the mold. The manifest purpose of the exclusionary language of the headings to items 700.61-700.63, TSUS, is to assure that these cheaper molded shoes are dutied at the generally higher rates applicable to items 700.64-700.71, TSUS, the general "other" category, which includes sneakers and tennis shoes and all others having "foxing or a foxing-like band."

The International Trade Commission report (USITC Publication 841) also explained that one of the various shoe types covered by item 700.59, TSUS, is the so-called "espadrille." Imported varieties of these slip-on casuals are made using a variety of construction techniques, including the slip-lasted (California) construction method and are distinguished by the fabric (usually jute) band securing the attachment of the sole to the upper. It is important to note that the language of item 700.59, TSUS, impliedly recognizes that regardless of how the espadrille is constructed this jute band is, in fact, a foxing or foxing-like band, for it specifically excludes from coverage under item 700.59, TSUS, only those shoes having a "foxing-like band wholly or almost wholly of rubber or plastics applied or molded at the sole and overlapping the upper;" by negative implication, a shoe with foxing of fabric (e.g. jute) remains classifiable under item 700.59, TSUS.

Clearly, a slip-lasted shoe containing a plastic rather than jute foxing strip contains a type of foxing which disqualifies it from classification under item 700.59, TSUS. Because a shoe containing foxing of any composition may not be classified under items 700.61-700.63, TSUS, the only alternative is to classify such a shoe under items

700.64-700.71, TSUS, the general "other" category which includes sneakers. Similarly, if the upper of the slip-lasted shoe is over 90 percent by surface area of rubber or plastics, it may not be classified under item 700.56, TSUS, because of the general foxing exclusion contained in the superior heading to that item. The only alternative is to classify such a shoe under items 700.64-700.71, TSUS.

In the Trade Agreements Act of 1979 (Pub. L. 96-39, section 223(b), 93 Stat. 144, 204), Congress used foxing language substantially similar to that employed in 1963, but in particular contexts which convincingly negate the suggestion that the phrase "foxing or foxing-like band" was or is confined to the type of vulcanized rubber sole/upper reinforcement characteristic of sneakers. Rather, these recent TSUS amendments conclusively demonstrate that the foxing language has consistently been intended to have broad application to all types of foxing or foxing-like bands.

#### (7) Position of Domestic Shoe Industry: Moon Boots

One of the commenters representing the domestic shoe industry noted that a moon boot involved in the foxing issue is a unit sole construction having a pre-molded unit sole stitched to a non-molded upper. The sidewalls of the unit sole extend upward from the sole bottom for several inches before being stitched, at the top of the sidewall, to a non-molded upper. Customs, in Ruling Nos. 051928 and 062391, dated December 1, 1977, and September 14, 1979, respectively, found that the sidewalls of the moon boot did not overlap the upper and consequently classified it under item 700.56, TSUS.

However, according to the commenter, in Ruling No. 056047, dated June 21, 1978, Customs found that a practically identical moon boot, except that the stitched-in lining extended down below the insole, had a foxing which overlapped the upper and therefore classified it under item 700.60, TSUS. In so doing, Customs apparently concluded that a pre-molded unit sidewall overlaps the upper only if the sidewall extends above the point on a shoe at which Customs considers the exterior surface area of the upper to begin, to wit, at the bottom of the insole. Nothing in the statute, its legislative history, or any judicial decision gives the slightest suggestion that the overlapping of the upper by the foxing must only occur at the insole.

Plainly, the test should not depend on where the overlapping occurs, but rather if there is any overlapping of the upper

by the foxing, for that is what the tariff provision requires.

There is only one reasonable and logical way of construing the foxing exclusionary clause in a fashion which is consistent with its legislative history and does not expand upon the words of the provision itself. The overlapping of the upper can occur at any point where the upper material is overlapped by the foxing, whether that be at, below, or above, the insole.

One commenter states that a moon boot having a band with the appearance of a foxing molded into the unit bottom at the point where the sole/upper joint would ordinarily be, possesses a "foxing-like" band. The same would be true if the boot possesses simulated "heel cap" foxing.

Another commenter would exclude from classification under item 700.56, TSUS, a moon boot having a raised cast in the mold design which is molded at the sole, overlaps the upper (the remainder of the sidewall over which the raised design is superimposed), and presents a foxing-like appearance.

#### Position of Importers

The major premise underlying the arguments presented on behalf of the importers is that the foxing provisions of the TSUS should be interpreted narrowly.

#### (1) Position of Importers: Legislative Intent

Some importers take the position that the limited legislative history confirms the fact that the only footwear to be affected by the exclusionary language was confined to the traditional sneaker or tennis shoe.

Other importers take a more liberal view asserting that the exclusionary language which precedes item 700.56, TSUS, was intended by Congress to preclude classification in that provision and its predecessors of imported footwear with plastic uppers "having the general outward appearance of the traditional sneaker or tennis shoe."

One commenter expressed the view that the legislative intent was accurately expressed in the following excerpt from the March 1981 Summary of Trade and Tariff Information on Rubber Footwear (USITC Publication 841):

Item 700.59 provides for slip-on footwear and footwear with open toes or open heels. Items 700.61-700.63 provide for footwear that is held to the foot with the use of laces, buckles, or other fasteners and that is of cement construction and is primarily intended to cover joggers. Items 700.64, 700.67, 700.69, and 700.71 provide for similar footwear of other than cement construction, and primarily covers sneakers or tennis

shoes. Item 700.57 in the new nomenclature provides for certain protective footwear.

Another commenter pointed out that the limited scope of the phrase "foxing or foxing-like band" is confirmed in the August 1979 analysis of the Multilateral Trade Negotiations (MTN) Customs Valuation Agreement, which confirms that the intent was to separate sneaker type shoes (TSUS items 700.64-700.71) from joggers (TSUS items 700.61-700.63) through the utilization of foxing terminology. (Committee on Finance, U.S. Senate MTN Studies 6, Part 2, p. 78).

In order to reinforce their position that an exclusionary clause in the tariff schedules should be narrowly interpreted, several commenters noted that it is of special significance that the Customs Court [now the Court of International Trade] found that an exception clause in a statute must be strictly construed in accordance with the legislative purpose underlying the statute. *International Seaway Trading Corp. v. United States*, 69 Cust. Ct. 144, C.D. 4385 (1972); *Canadian Pac. Ry. Co. v. United States*, 73 F.2d. 831, 834 (CCA 9, 1934).

#### (2) Position of Importers: Common and Commercial Meaning

It is a fundamental principle of customs law that tariff terms are to be construed in accord with their common meaning except that a different commercial meaning shall prevail in the absence of a clearly expressed legislative intent to the contrary.

The common meaning of the term "foxing" connotes trim added to the upper of a shoe. However, the common meaning is limited to leather footwear.

It is claimed that the common meaning was not intended by Congress because only rubber soled footwear is involved and the exclusionary language covers only those forms of foxing applied or molded at the sole and overlapping the upper.

The term "foxing" has a different more precise meaning, a commercial designation, which applies to rubber soled footwear with fabric uppers. A commercial designation which differs from the common meaning prevails over the common meaning. *American Express Co. v. United States*, 10 Ct. Cust. Appls. 295, T.D. 38680 (1920).

Commercial designation is established through sworn testimony of those experienced in buying and selling the merchandise at wholesale. *Daniel Green Shoe Co. v. United States*, 58 Cust. Ct. 7, C.D. 2868 (1967) Appeal dismissed, 54 CCPA 143 (1977). It is also established through reference to published materials such as the American Footwear

Industries Association pamphlet entitled "The Art and Science of Footwear Manufacturing" (New York 1974), which defines the foxing in issue. See *Dolliff & Company Inc. v. United States*, 59 CCPA 101, C.A.D. 1047 (1972).

Based on such sworn testimony and reference to published materials defining foxing, it has been established that the commercial meaning or the trade understanding of the term "foxing" is that it is a strip wrapped around a shoe at the point where the upper and sole are joined. It is a component separate from either the sole or the upper and secures the sole or bottom and upper.

One commenter noted that a different definition for foxing exists. That definition is found in a B. F. Goodrich Company pamphlet entitled "Canvas Rubber and Koroseal Footwear Definitions" (1959). Foxing in that publication is described as:

A thin narrow strip of material wrapped around the shoe upper, where it is joined with the outsole, which is folded under before attaching the outsole to the upper.

It is claimed that this type of foxing does not fall within the exclusion because it does not overlap the upper, which connotes an extension from one location to another. In this "foxing under" method the strip does not extend to the upper, but merely covers the upper, therefore, there is no overlap.

#### (3) Position of Importers: Characteristics of Foxing

A foxing is a strip of material which has the following characteristics:

- (1) Is separate from the sole or upper;
- (2) Covers and secures the joint between the sole and upper;
- (3) Overlaps the upper and covers the juncture between the sole and upper. [One commenter suggests that the overlap should be significant and readily discernible to the eye, and should be more than *de minimus*. Anything less than 1/8 inch "overlap" should be considered *de minimus*];
- (4) Is a band, i.e., "a strip serving to join, hold together or integrate two or more things \* \* \* a thin, flat encircling strip, strap, or flat belted material serving chiefly to bind or contain something";
- (5) Encircles the entire shoe;
- (6) Is attached by vulcanizing.

[Another commenter states that foxing may be attached by any means including cement, stitching, vulcanizing or molding];

(7) Excludes components known by another name clearly recognized in the trade, such as mock welts, toe bumpers,

mud guards, wedge wraps, California construction, and platform wraps; and

(8) Excludes unit molded bottoms. In doubtful cases it is appropriate to look at the general class of footwear intended to be covered by the tariff provisions involved in order to avoid a result which is obviously not in harmony with legislative intent.

#### (4) Position of Importers: Characteristics of a Foxing-Like Band

(1) There is no trade understanding or commercial designation for the term "foxing-like band."

(2) Some of the briefs submitted on behalf of shoe importers indicate that a foxing-like band must be a separate component. Other submissions maintain that there need not be a separate band. For example, foxing-like bands may be found on many sneakers with rubber or plastic uppers including shell molded and injected molded varieties.

(3) A foxing-like band does not secure the joint between sole and upper.

However, there is disagreement among the importers on this point. One commenter asserts that a foxing-like band must itself reinforce or supplement the juncture between the sole and upper of the footwear or must so closely simulate that function as to cause a person to reasonably believe that the foxing-like band is there solely for the purpose of reinforcement or to supplement.

(4) A foxing-like band must be applied or molded at the sole and must overlap the upper.

(5) A foxing-like band may be attached by methods other than vulcanization.

(6) The term "foxing-like" does not mean a "simulated" foxing, but instead applies to that which has the same, or nearly the same appearance, qualities, or characteristics as a true foxing appearing on a traditional tennis or sneaker-type shoe.

(7) The common meaning of the term "foxing-like band" is that it differs from "foxing" per se only with respect to functionality.

(8) A foxing-like band is usually cemented rather than molded.

#### (5) Position of Importers: Interpretation of Phrase "Molded At"

The phrase "molded at" does not cover injection molded processes. Rather, it describes processes in which a foxing, created separate from the sole, is vulcanized to the sole and upper rather than merely cemented. As used in the parenthetical exception, molded is a synonym for vulcanized.

The phrase "molded at" does not require that the commercial meaning of the term "foxing", as a component separate from the sole or upper, be abandoned. Properly understood, it compliments the commercial meaning. Reading "molded at" as a synonym of vulcanized is consistent with the legislative history which clearly explains the parenthetical exception as a description of the traditional sneaker or tennis shoe, a form of footwear constructed with a foxing.

*(6) Position of Importers: Footwear With Unit Molded Soles*

Footwear with unit molded soles do not have a foxing or a foxing-like band for the following reasons:

(1) There is no band which is applied to or molded at the sole.

(2) There is no strip separate from the sole or upper.

(3) To the extent that the molded sole overlaps the upper and covers the juncture between the sole and the upper, such overlap is *de minimus*.

(4) The overlap is not functional, but rather a result of stylistic considerations.

(5) The appearance of casual footwear made by this construction is foreign to sneakers and other athletic footwear.

In Customs ruling No. 068764 dated August 14, 1981, footwear with a unit molded bottom was said to have a foxing because the sole extended higher than the point at which the upper turned under the insole.

The importers assert that footwear with unit molded soles has neither a foxing nor a foxing-like band. The so-called foxing is in reality a part of the sole. It is not a separate component. It is not a band. It is not applied or molded at the sole. It is a part of the sole. The lip or edge of the sole cannot cover the seam between the sole and the upper because it creates that seam.

With respect to the lip, another commenter maintains that the lip does not perform the function of a foxing in that it does not overlap the upper as foxing does nor does it strengthen the joint between the upper and sole. Such strengthening is unnecessary because of the cement process.

Another commenter claims that evidence that a lip is not foxing is found in the headnote to item 700.61, TSUS, et seq. There are two exception clauses designed to separate "joggers" from sneaker type shoes, "footwear having a foxing or foxing-like band applied to or molded at the sole and overlapping the upper" and "footwear with soles which overlap the upper other than at the toe or heel." If, in fact, a lip or ridge which is in effect part of the molded shell

bottom of an injected molded piece of footwear is foxing or a foxing-like band, there would be no need for the second exception of soles overlapping the upper. In fact, this second exception correctly describes a product in which the sole extends upward so that it may overlap the upper and clearly indicates such construction is not properly defined as "foxing or a foxing-like band."

*(7) Position of Importers: Footwear of the Slip-lasted (California) Construction*

Footwear of the slip-lasted (California) construction does not contain a foxing or a foxing-like band within the established definition for the following reasons:

(1) The strip of material, or wrap does not secure the joint between the sole or upper. In fact, the strip does not overlap the sole at all.

(2) The strip or wrap cannot be said to be a "foxing-like band" since without covering the juncture between the sole and the upper it cannot be said to simulate functional "foxing", and

(3) The appearance of casual footwear made by this construction is foreign to "sneakers" and other athletic-type footwear.

*(8) Position of Importers: Mud Guards, Wedge Wraps, Platform Wraps, Etc.*

Mud guards, wedge wraps, platform wraps, etc., are entirely stylistic and do not function as foxing or simulate foxing. They do not come within the purview of the exclusionary language for the following reasons:

(1) These features are known in the trade as "mud guards," "wedge wraps," "platform wraps," etc., rather than as "foxing or foxing-like bands";

(2) These features do not cover or secure the joint between the sole and the upper; and

(3) Perhaps most important, these constructions are foreign to "sneakers" and other athletic-type footwear and, therefore, fall outside the tariff understanding of the term "foxing or foxing-like band".

*(9) Position of Importers: Moon Boots*

Moon boots do not contain a foxing or a foxing-like band for the following reasons:

(1) They are not within the class of footwear which Congress intended to protect;

(2) There is no separate piece of material used to join the bottom of the boot to the upper or which is used to strengthen the joint between the sole and the upper as those terms are understood by Customs and the moon boot industry;

(3) If one considers the joint between the sole and the upper to be the point where the insole ends, the sides of the molded shell bottom simply constitute the joint itself and are not applied separately as a foxing; and

(4) If one considers the juncture between the sole and upper to be the point where the pre-molded shell bottom ends and the stitched portion of the boot begins, there is, again, no piece of material reinforcing this joint.

A plastic non-functional lip or ridge molded parallel to the sole of the one piece bottom should not be considered foxing for the following reasons:

(1) There is no structural difference between the one piece molded shell bottoms which have the ridge and those that do not. Where a ridge exists, it is there for purely stylistic purposes and has no useful function;

(2) Not only does the lip not serve to cover the joint between the sole and upper, it does not overlap the sole, rather it is part of the bottom. Where a lip exists in the molded shell bottom, it is usually a decorative strip half-inch to an inch above the sole. This has no structural or functional resemblance to a foxing or foxing-like band; and

(3) The lip or ridge bears no resemblance to the foxing or foxing-like band found on sneakers or tennis shoes.

It has also been pointed out that in some instances because the bottom of the ornamented strip is above the insole platform it is a part of the upper and therefore cannot overlap itself.

The classification of a vinyl upper plastic shell bottom moon boot should not depend on the existence or position of a ridge which has no practical function, nor on basic design characteristics which have no component recognizable as foxing.

**Customs Position**

The relevant TSUS provisions provide as follows—

Footwear (whether or not described elsewhere in this subpart) which is over 50 percent by weight of rubber or plastics or over 50 percent by weight of fibers and rubber or plastics with at least 10 percent by weight being rubber or plastics:

Other footwear (except footwear having uppers of which over 50 percent of the exterior surface area is leather):

Having uppers of which over 90 percent of the exterior surface area is rubber or plastics (except footwear having foxing or a foxing-like band applied or molded at the sole and overlapping the upper) (emphasis added):

700.54—Zoris (thonged sandals).

700.56—Other.

700.59—Footwear with open toes or open heels; footwear of the slip-on type, that is held to the foot without the use of laces or buckles or other fasteners, the foregoing except footwear provided for in item 700.57 and except footwear having a foxing or foxing-like band wholly or almost wholly of rubber or plastics applied or molded at the sole and overlapping the upper (emphasis added).

Other:

700.61–71 Footwear having soles (or midsoles, if any) of rubber or plastics which are affixed to the upper exclusively with an adhesive (any midsoles also being affixed exclusively to one another and to the outsole with an adhesive); the foregoing except footwear having a foxing or foxing-like band applied to or molded at the sole and overlapping the upper and except footwear with soles which overlap the upper other than at the toe or heel: (emphasis added)

The first issue to be resolved relates to a determination of the meaning of the terms "foxing" or "foxing-like band" as they pertain to rubber soled footwear with fabric uppers.

It is a cardinal principle of customs law that tariff terms are to be construed in accordance with their common meaning unless there is a different commercial meaning. In such cases, the latter shall prevail in the absence of a clearly expressed legislative intent to the contrary. *Jas. Akeroyd & Co. et al v. United States*, 15 Ct. Cust. Appl. 440, T.D. 42641 (1928); *United States v. Fung Chong Co.*, 34 CCPA 40, C.A.D. 342 (1964).

The common meanings of the term "foxing" as the term is traditionally used, have been defined as follows:

A piece of leather put on the upper leather of the shoe along the edge next to the sole. Funk and Wagnalls' New Practical Standard Dictionary (1958).

A piece of material applied to the upper or extending around the outsole of a boot or shoe. Webster's Third International Dictionary (1961).

These common or traditional definitions of foxing relate to leather footwear. Inasmuch as the provision covers foxing applied or molded at the sole and overlapping the upper, it is clear that Congress did not intend that the term "foxing" be construed in accord with its common meaning. In view of this inconsistency, it is equally clear that Congress went beyond the common or traditional meaning of the term "foxing" and adopted a more precise meaning found in the commercial designation of the term as it applied to rubber soled footwear with fabric uppers. A commercial designation which differs from the common meaning prevails over the common meaning. *American Express Co. v. United States*, supra.

Commercial designation may be shown through reference to trade publications. See *Dolliff & Company Inc. v. United States*, supra. For example, relevant definitions from trade publications are as follows:

With rubber soled canvas upper shoes, foxing is usually a strip of rubber covering the joint between the sole and upper. The Art and Science of Footwear Manufacturing (American Footwear Industries Association 1974).

A thin narrow strip of material wrapped around the shoe upper, where it is joined with the outsole, which is folded under before attaching the outsole to the upper. B. F. Goodrich Company pamphlet entitled "Canvas Rubber and Koroseal Footwear Definitions" (1959).

The above-cited definitions encompass the commercial or trade understanding of foxing. However, it is contended that the B. F. Goodrich definition does not fall within the exclusionary language because the strip does not overlap the upper, which connotes an extension from one location to another. It is Customs view that the B. F. Goodrich definition satisfies the exclusionary language because the strip can be considered as being applied at the sole, noting that it is folded under at the juncture of the sole and upper and it does extend upward thus overlapping the upper. It also acts to reinforce or supplement the juncture of the sole and upper.

The term "foxing-like band" has no commercial meaning. The meaning of "like" in customs usage connotes articles having the same, or nearly the same appearance, qualities, or characteristics. *Japan Import Co. v. United States*, 24 CCPA 167, T.D. 48642 (1936).

Thus, a foxing-like band has the same, or nearly the same appearance, qualities, or characteristics of foxing. It follows that something which is molded to look like "foxing" is "a foxing-like band" even if it performs no function. Undoubtedly, Congress used the term "foxing-like" to broaden the historical protection afforded the domestic industry through the foxing parenthetical exception.

Specifically, in using the term "foxing-like band", it is apparent that Congress intended to include rubber and plastic footwear that is not constructed with a traditional separate functional foxing. For example, certain injection molded sneakers have foxing-like bands. Upon completion, there exists a strip which covers what appears to be (but is not in fact) the joint between the upper and the sole. Unlike foxing, the foxing-like band is not a separate component but appears

in all respects to be one. Thus, the foxing-like band envisioned by Congress applied to footwear constructed in a manner so that the end result was a shoe appearing to have the traditional foxing.

A sneaker with a shell bottom construction also has a foxing-like band. In that construction the sole is made or molded in one process and, rather than being merely the bottom or outsole portion, the molding process results in a cup-like unit (the sole) into which the upper is glued and sometimes sewn. The molded shell when affixed to the upper resembles in appearance and position a separately applied functional foxing.

The second issue relates to a determination of the types and characteristics of footwear which Congress intended to exclude from item 700.55, TSUS, the original predecessor provision to item 700.56, TSUS.

The Tariff Classification Study, Schedule 7, Explanatory and Background Materials (November 15, 1960), at page 214, contains the only direct reference to the parenthetical exception and reads as follows:

The parenthetical exception "except footwear having foxing or a foxing-like band applied or molded at the sole and overlapping the upper" in item 700.55 is designed to ensure the classification in item 700.60 of a style of imported shoe with plastic coated uppers but having the general outward appearance of the traditional "sneaker" or tennis shoe.

In C.I.E. 187/64, dated January 31, 1964, Customs categorically stated that the parenthetical exception in item 700.55, TSUS, refers specifically to the traditional sneaker or tennis shoe.

The foregoing interpretation of the parenthetical exception was modified by Customs in C.I.E. 187/64 supp. #1, dated April 19, 1966, which was abstracted as T.D. 66-47(8). In that ruling, Customs took the position that footwear of the type normally classifiable under item 700.55, TSUS, but which have a functional or non-functional foxing or foxing-like band applied or molded at the sole and overlapping the upper, are precluded from classification under item 700.55 whether or not of the traditional "sneaker" or tennis type.

It remains Customs opinion that C.I.E. 187/64 reflects the correct interpretation of the exclusionary language. This view is further buttressed by the language found in item 700.59, TSUS, one of the replacement item numbers for item 700.60, TSUS, added by the Trade Agreements Act of 1979, which reads as follows:

Footwear with open toes or open heels; footwear of the slip-on type, that is held to the foot without the use of laces or buckles or other fasteners, the foregoing except footwear provided for in item 700.57 and except footwear having a foxing or foxing-like band wholly or almost wholly or rubber or plastics applied or molded at the sole and overlapping the upper. (Emphasis added).

A reading of item 700.59, TSUS, which includes casual footwear of the slip-on type, indicates that such footwear may contain "a foxing or foxing-like band wholly or almost wholly of rubber or plastics applied or molded at the sole and overlapping the upper." Consequently, it follows that the exclusionary language is not directed solely to sneakers or tennis type shoes.

Although the parenthetical exception in item 700.55, TSUS, was not limited by the legislative history to the traditional sneaker or tennis shoe, a limitation was contained therein. Specifically, shoes subject to the exclusionary language must have "the general outward appearance of the traditional 'sneaker' or tennis shoe." It is apparent that the distinguishing feature or the essence of this general outward appearance was the presence of a *visible outside foxing*. (Emphasis added).

It is contended by the domestic interests that Congress must be presumed to have known in the early 1960's that foxing was used in and was a characteristic of a variety of shoes including slip-lasted and unit molded construction and intended that such constructions would fall within the parenthetical exception. In fact, the claim is also made that the language applies to all footwear containing any type of foxing or foxing-like bands. Further, the fact that this legislative history specifically mentioned a sneaker-like vinyl shoe in describing the intent of the foxing exclusion does not imply that the exclusion of such shoes exhausted the intent of the exception.

A fair reading of the legislative history of the parenthetical exception in item 700.55, TSUS, quoted previously, gives no indication that all foxing constructions were to be encompassed by the exception. It is obvious that if Congress had intended to include all types of foxing, such an intention would have been clearly expressed in the legislative history.

Further, it appears that an expansive interpretation of the parenthetical exception runs contrary to judicial precedent. See *International Seaway Trading Corp. v. United States*, 69 Cust. Ct. 144, C.D. 4385 (1972) and *Canadian Pac. Ry. Co. v. United States*, *supra*,

which, as noted earlier, expressed the principle that an exception clause in a statute must be strictly construed in accordance with the legislative purpose underlying the statute.

Inasmuch as the foxing on the traditional sneaker or tennis shoe visibly overlapped the upper, Customs must necessarily conclude that unit molded footwear with plastic uppers do not, *per se*, have the type of visible outside foxing contemplated by the statute and consequently do not fall within the parenthetical exception.

It is also Customs view that footwear of the slip-lasted (California) construction does not contain foxing or a foxing-like band. This is so because this type construction does not exhibit a visible foxing which resembles that found in the traditional sneaker or tennis shoe. Consequently, such footwear does not contain foxing or a foxing-like band for tariff purposes.

The third issue relates to a determination of whether moon boots of a particular construction possess foxing or a foxing-like band.

The moon boot involved is a type of footwear designed to protect the feet from snow and cold. It is often worn as an "apres-ski" boot. It has a pre-molded rubber/plastic shell bottom, the sides of which extend up to 4 inches from the sole. This shell bottom is ultimately stitched to a polyurethane upper. An inserted polyfoam liner is permanently stitched at the top of the polyurethane upper. There are no design features such as a lip or ridge molded in the shell bottom which could be considered a foxing-like band.

This type of moon boot was the subject of an American manufacturer's petition asking that it be reclassified under item 700.60, TSUS, or item 700.53, TSUS. That request for reclassification was rejected by Customs in T.D. 81-79, published in the *Federal Register* on April 13, 1981 (46 FR 21741).

One commenter has renewed the argument that this type of moon boot possesses foxing or a foxing-like band and consequently should be excluded from classification under item 700.56, TSUS. Customs will not now address the argument because its position in this matter is clearly established in T.D. 81-79.

A claim has been advanced that the above-described moon boot with the addition of a design feature such as a lip or ridge in the form of a band molded on the shell bottom at the point where the sole/upper juncture would ordinarily be, possesses a foxing-like band which would exclude it from classification

under item 700.56, TSUS.

An analysis of the parenthetical exception indicates that for the design feature in the form of a band to be considered a foxing-like band, it must be molded at the sole and must also overlap the upper. It is noted that for definitional purposes, the sole and upper can be separately conceived. However, in actuality, that portion of the shell bottom where the design feature is placed is an integral part of the combined sole and upper. The design feature molded in the shell bottom can be considered as being molded at the sole because part of the feature lies below the point where the sole/upper juncture would ordinarily be. However, this design feature cannot be said to overlap the upper because it is an integral part of the combined sole and upper. Consequently, the design feature described cannot be considered a foxing-like band for tariff purposes.

#### Summary of Customs Position

(1) Footwear of unit-molded construction does not, *per se*, contain foxing or a foxing-like band for tariff purposes.

(2) Footwear of slip-lasted (California) construction does not possess foxing or a foxing-like band for tariff purposes.

(3) Moon boots of the type described in T.D. 81-79 and those with a lip or ridge molded in the shell bottom, do not have foxing or a foxing-like band for tariff purposes.

#### Customs Guidelines Relating To Characteristics of Foxing and a Foxing-Like Band

The following guidelines relating to the characteristics of a foxing or a foxing-like band are set forth as an aid to Customs officers in classifying specific footwear constructed with foxing.

#### Characteristics of a Foxing

1. A foxing is a strip of material which is separate from the sole and upper.
2. A foxing secures the joint between the sole and upper. It covers the joint but there may be other footwear with a "foxing under" which does not cover the joint as in the B. F. Goodrich definition of foxing previously cited.
3. A foxing must overlap the upper and the overlap must be readily discernible.
4. A foxing is a band, *i.e.*, a strip serving to join, hold together or integrate two or more things \* \* \* a thin, flat encircling strip, strap, or flat belted material serving chiefly to bind or contain something.

5. A foxing must encircle or substantially encircle the entire shoe.
6. A foxing may be attached by cementing, stitching, or vulcanizing.
7. A foxing does not include components known by another name clearly recognized in the trade such as mock welts, toe bumpers, wedge wraps, and platform wraps.
8. However, a mud guard may meet the definition of a foxing. It is usually applied at the sole and folded under at the juncture of the sole and upper and it does extend upward overlapping the upper. It also acts to reinforce or supplement the juncture of the sole and upper.

#### Characteristics of a Foxing-like Band

There is no trade understanding or commercial designation for the term "foxing-like band."

1. The term "foxing-like" applies to that which has the same, or nearly the same appearance, qualities, or characteristics as the foxing appearing on the traditional sneaker or tennis shoe.
2. A foxing-like band need not be a separate component.
3. A foxing-like band may or may not secure the joint between the sole and upper.
4. A foxing-like band upper must be applied or molded at the sole and must overlap the upper.
5. A foxing-like band must encircle or substantially encircle the entire shoe.
6. A foxing-like band may be attached by any means.
7. Unit molded footwear is considered to have a foxing-like band if a vertical overlap of  $\frac{1}{4}$  inch or more exists from where the upper and the outsole initially meet, measured on a vertical plane. If this vertical overlap is less than  $\frac{1}{4}$  inch, such footwear is presumed not to have a foxing-like band.

#### Drafting Information

The principal author of the document was Jesse V. Vitello, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Approved: May 6, 1983.

William von Raab,

Commissioner of Customs.

John M. Walker, Jr.,

Assistant Secretary of the Treasury

[FR Doc. 83-13803 Filed 5-20-83; 8:45 am]

BILLING CODE 4820-02-M

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### 23 CFR Part 635

#### Construction and Maintenance; Contract Procedures

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The Federal Highway Administration (FHWA) is amending its regulations which prescribe requirements for the letting of contracts in order to implement provisions mandated by section 112 of the Surface Transportation Assistance Act of 1982 (STAA of 1982). Section 112 of the STAA of 1982 amends 23 U.S.C. 112 to require the construction of each project by contract awarded by competitive bidding unless the State highway agency (SHA) demonstrates that some other method is shown to be more cost effective. Section 112 also limits the applicability of the waiver provisions contained in 23 U.S.C. 112(e) by excluding projects where employees of a political subdivision of a State are working on the project outside of such political subdivision. The regulations contained in 23 CFR Part 635 which implement 23 U.S.C. 112 are revised to reflect the statutory amendments.

**EFFECTIVE DATE:** This final rule is effective January 6, 1983.

**FOR FURTHER INFORMATION CONTACT:** Mr. P. E. Cunningham, Chief, Construction and Maintenance Division, (202) 426-0392, or Mr. Michael J. Laska, Office of the Chief Counsel, (202) 426-0761, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** On January 6, 1983, the President signed into law the Surface Transportation Assistance Act of 1982 (Pub. L. 97-424, 96 Stat. 2097). Section 112 of the STAA of 1982 amended 23 U.S.C. 112 which prescribes requirements for the letting of Federal-aid highway contracts. Prior to enactment of the STAA of 1982, 23 U.S.C. 112 required a contract be awarded by competitive bidding unless the Secretary of Transportation found that some other method would be in the public interest. Section 112 of the STAA of 1982 now requires that a contract be awarded by competitive bidding unless the SHA demonstrates, to the satisfaction of the Secretary, that some other method is cost effective.

Also prior to enactment of the STAA of 1982, contracts for projects on the Federal-aid secondary system in those States where the Secretary has discharged his responsibility pursuant to 23 U.S.C. 117 were excluded from the contract requirements of 23 U.S.C. 112. Section 112 of the STAA of 1982 limits this exception as provided in 23 U.S.C. 112(e). For those Federal-aid secondary system projects where employees of a political subdivision of a State are working on a project outside of such political subdivision, the contract requirements will now apply.

The Contract procedures for Federal-aid contracts as required by 23 U.S.C. 112 are implemented by 23 CFR Part 635. Those regulations which must be revised due to the enactment of section 112 of the STAA of 1982 are contained in §§ 635.104, 635.105, 635.202 through 205, and 635.309(e). A summary of the revisions to the existing provisions are as follows:

#### Discussion of Amendments

##### Subpart A—Contract Procedures

###### (1) Section 635.104, *Method of construction.*

This section is revised to reflect the statutory requirements for a finding of cost effectiveness as it relates to determining the method of construction.

###### (2) Section 635.105(b)(2), *Supervising agency.*

This section requires that the SHA certify that the work of project supervision and construction that is performed by a local public agency is cost effective as required by section 112 of the STAA of 1982.

##### Subpart B—Force Account Construction

###### (1) Section 635.202, *Application.*

This section incorporates the exception to the applicability of the waiver provisions provided in 23 U.S.C. 112(e) as mandated by section 112 of the STAA of 1982. This subpart will not apply to projects constructed under a Certification Acceptance Plan in those States where the Secretary has discharged his responsibility pursuant to 23 U.S.C. 117 except where employees of a political subdivision of a State are working on a project outside such political subdivision.

###### (2) Section 635.203, *Definitions.*

This section adds the definition of the term "cost effective."

###### (3) Section 635.204, *Determination of more cost effective method.*

This section replaces the provisions for determining the public interest with provisions for determining cost effectiveness as they relate to

justification for the selection of a method of construction other than by competitive bidding.

(4) Section 635.205, *Finding of cost effectiveness*.

This section is revised to reflect the statutory requirements for a finding of cost effectiveness as it relates to the performance by force account (method other than competitive bidding) of the adjustment of railroad or utility facilities and similar type facilities owned or operated by a public agency, railroad, or a utility company. This section also simplifies the definitions of the adjustments of railroad facilities and utilities. The title "division engineer" is replaced by the title "Division Administrator" whenever it appears in this section so as to reflect a previous change in title. The process for requesting construction by force account is revised to reflect the justification of cost effectiveness.

#### Subpart C—Physical Construction Authorization

##### Section 635.309, *Authorization*.

This section is revised to require that an affirmative finding of cost effectiveness be made when construction by some method other than contract based on competitive bidding is contemplated.

The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or significant regulation under the regulatory policies and procedures of the Department of Transportation. Since the amendments in this document are being issued for the purpose of literally complying with Section 112 of the STAA of 1982 and do not reflect interpretation of statutory language, public comment is impracticable and unnecessary. Therefore, the FHWA finds good cause to make the amendments final without notice and opportunity for comment and without a 30-day delay in effective date under the Administrative Procedure Act. Notice and opportunity for comment are not required under the regulatory policies and procedures of the Department of Transportation because it is not anticipated that such action would result in the receipt of useful information. The statutory language incorporated in the regulation requires no interpretation and provides for no administrative discretion. In addition, the economic impact, if any, of this rulemaking action will be minimal. However, any impact would be positive as reflected by the requirement of cost effectiveness. Accordingly, a full regulatory evaluation is not required.

In consideration of the foregoing, and under the authority of 23 U.S.C. 315;

Section 112, Surface Transportation Assistance Act of 1982, Pub. L. 97-424, 96 Stat. 2106; and 49 CFR 1.48(b), the FHWA is amending Part 635, Subparts A, B, and C of Title 23, Code of Federal Regulations, as set forth below.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of OMB Circular A-85 regarding State and local clearinghouse review of Federal and federally assisted programs apply to this program)

#### List of Subjects in 23 CFR Part 635

Government contracts, Grant programs—transportation, Highways and roads.

Issued on: May 17, 1983.

L. P. Lamm,

Deputy Federal Highway Administrator,  
Federal Highway Administration.

The Federal Highway Administration hereby amends Title 23, Code of Federal Regulations, Chapter I, Part 635, as set forth below.

#### PART 635—CONSTRUCTION AND MAINTENANCE

1. In § 635.104, paragraphs (a) and (b) are amended by changing the title "division engineer" to read as "Division Administrator" each time it appears in the text, and by revising the first sentence of each paragraph to read as follows:

##### § 635.104 Method of construction.

(a) Except as provided in paragraph (b) of this section, or unless the State highway agency demonstrates to the satisfaction of the Division Administrator that some other method is more cost effective, actual construction work shall be performed by contract awarded to the lowest responsible bidder. \* \* \*

(b) When the Division Administrator finds that it is cost effective, construction work may be performed by some method other than by contract awarded by competitive bidding pursuant to requirements and procedures prescribed by him or her. \* \* \*

2. In § 635.105, paragraph (b)(2) is revised to read as follows:

##### § 635.105 Supervising agency.

\* \* \*

(b) \* \* \*

(2) The State highway agency certifies that the work performed by the local public agency is cost effective.

\* \* \*

3. Section 635.201 is revised to read as follows:

##### § 635.201 Purpose.

The purpose of this subpart is to prescribe procedures in accordance with 23 U.S.C. 112(b) for a State highway agency to request approval that highway construction work be performed by some method other than contract awarded by competitive bidding.

4. Section 635.202 is revised to read as follows:

##### § 635.202 Application.

This subpart applies to all Federal-aid and other highway construction projects financed in whole or in part with Federal funds and to be constructed by a State highway agency or a subdivision thereof in pursuant of agreements between any other State highway agency and the Federal Highway Administration (FHWA). This subpart does not apply to projects constructed under a Certification Acceptance Plan in those States where the Secretary has discharged his/her responsibility pursuant to 23 U.S.C. § 117, except where employees of a political subdivision of a State are working on a project outside such political subdivision.

5. Section 635.203 is amended by adding a new paragraph (e) to read as follows:

##### § 635.203 Definitions.

\* \* \*

(e) The term "cost effective" shall mean the efficient use of labor, equipment, materials and supplies to assure the lowest overall cost.

6. Section 635.204 is amended by changing the heading to read "Determination of more cost effective method" and by revising paragraphs (a) and (b) to read as follows:

##### § 635.204 Determination of more cost effective method.

(a) Congress has expressly provided in the cited legislation that the contract method based on competitive bidding shall be used by a State highway agency or county for performance of highway work financed with the aid of Federal funds unless the State highway agency demonstrates, to the satisfaction of the Secretary, that some other method is more cost effective.

(b) It may be found cost effective for a State highway agency or county to undertake a federally financed highway construction project by force account when a situation exists in which the rights of responsibilities of the community at large are so affected as to require some special course of action, including situations where there is a



lack of bids or the bids received are unreasonable.

7. Section 635.205 is amended by changing the heading to read "Finding of cost effectiveness" and by revising paragraph (a)(1) to read as follows:

**§ 635.205 Finding of cost effectiveness.**

(a) \* \* \*

(1) By reason of inherent nature of the operations involved, it is cost effective to perform by force account the adjustment of railroad or utility facilities and similar type facilities owned or operated by a public agency, a railroad or a utility company, provided that the organization is qualified to perform the work in a satisfactory manner. The installation of new facilities shall be undertaken by competitive bidding except as provided in § 635.205 (b) and (c). Adjustment of railroad facilities shall include minor work on the railroad's operating facilities routinely performed by the railroad with its own forces such as the installation of grade crossing warning devices, crossing surfaces, and minor track and signal work. Adjustment of utility facilities shall include minor work on the utility's existing facilities routinely performed by the utility with its own forces and includes minor installations of new facilities to provide power, minor lighting, telephone, water and similar utility services to a rest area, weigh station, movable bridge, or other highway appurtenance, provided such installation cannot feasibly be done as incidental to major installation project such as an extensive highway lighting system.

8. Section 635.205(a)(2) is amended by changing the title "division engineer" to read as "Division Administrator."

9. Section 635.205 is amended by revising paragraphs (b) and (c) to read as follows:

**§ 635.205 Finding of cost effectiveness.**

(b) When a State highway agency desires that highway construction work financed with the aid of Federal funds, other than the kinds of work designated under § 635.205(a) or projects constructed under an approved Certification Acceptance Plan, be undertaken by force account, it shall submit a request to the Division Administrator identifying and describing the project and the kinds of work to be performed, the estimated costs therefor, the estimated Federal funds to be provided, and setting forth the reason or reasons that force account for such

project is considered to be cost effective.

(c) The Division Administrator shall notify the State highway agency in writing of his/her determination that under the circumstances relating to the project, force account is or is not found to be cost effective.

10. Section 635.309 is amended by revising paragraph (e) to read as follows:

**§ 635.309 Authorization.**

(e) An affirmative finding of cost effectiveness has been made as required by 23 U.S.C. § 112, in case construction by some method other than contract based on competitive bidding is contemplated.

(Sec. 112, Pub. L. 97-424, 96 Stat. 2097; 23 U.S.C. 112, 315; 49 CFR 1.48(b)).

[FR Doc. 83-15807 Filed 5-20-83; 8:45 am]

BILLING CODE 4910-22-M

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**Office of the Assistant Secretary for Housing—Federal Housing Commissioner**

**24 CFR Part 450**

[Docket No. R-83-1076]

**Evictions From Certain Subsidized and HUD-Owned Projects**

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

**ACTION:** Interim rule.

**SUMMARY:** This interim rule clarifies the Department's intent that evictions of tenants from certain subsidized and HUD-owned projects be effected solely by judicial action. This rule requires the landlord to advise the tenant, in a termination notice, that the tenant is entitled to a court proceeding pursuant to State or local law at which he or she may present a defense to the eviction. The landlord is prohibited from resorting to "self-help" evictions or any non-judicial process, even where these actions are authorized by State or local law. This rule is procedural only, and does not alter in any way the grounds for which the landlord may terminate a tenancy.

**DATES:** Effective date: Upon expiration of the first period of 30 calendar days of continuous session of Congress after publication, subject to waiver, but not before further notice of the effective date is published in the *Federal Register*.

Comments must be received by July 22, 1983.

**ADDRESS:** Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, Room 10278, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410. Comments should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection and copying during regular business hours at the above address.

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

**SUPPLEMENTARY INFORMATION:** 24 CFR Part 450 sets forth procedures for the termination of occupancy of tenants residing in multifamily housing projects subsidized under section 221(d)(3) (BMIR) or section 236 of the National Housing Act, the Rent Supplement Program under section 101 of the Housing and Urban Development Act of 1965, the Program of Housing for the Elderly or Handicapped under Section 202 of the Housing Act of 1959, or the Additional Assistance Program for Projects with HUD-Insured and HUD-Held Mortgages under Subpart A of 24 CFR Part 886. These procedures also apply to all HUD-owned multifamily projects, regardless of whether they were subsidized before HUD acquisition. The procedures do not apply where the termination of occupancy is a result of a proposed substantial rehabilitation or demolition of the project.

There exists some question concerning whether these regulations allow landlords to evict tenants from subsidized multifamily projects by self-help or non-judicial process, if so authorized by State or local law. 24 CFR 450(a)(3) currently requires that a landlord's termination notice advise the tenant "that if a judicial proceeding for eviction is instituted the tenant may present a defense" (emphasis added). However, the regulations are intended to require landlords to effect evictions only through court proceedings, notwithstanding State or local law to the contrary.

The question of whether HUD regulations permitted eviction by self-help or non-judicial process became an issue, indirectly, in a recent Federal District Court class action entitled *Love*

v. HUD, Civ. No. 80-1041 B (W.D. Pa.). The evictions which gave rise to that litigation were by judicial process. However, the leases contained provisions waiving all rights to pre-emption notices. The District Court entered an order on November 4, 1981, directing the Secretary to promulgate interim or final regulations assuring that unconscionable lease provisions are not contained in leases with tenants included in the class represented by plaintiffs. An interim rule pursuant to this order was published on July 23, 1982 (47 FR 31868). The District Court entered a further order on December 22, 1981, directing the Secretary to amend 24 CFR 450.4(a)(3) to require that the landlord's notice of termination advise the tenant that the landlord may seek to enforce the termination and evict the tenant only through a judicial proceeding at which the tenant may present a defense. (Other portions of the District Court's order not pertinent to this rulemaking proceeding were appealed by the Department and reversed. *Love v. HUD*, No. 82-506 (3d Cir. March 31, 1983).

In order to remove uncertainty about the Department's prohibition of self-help evictions and evictions through non-judicial processes and in compliance with a District court's order, the interim rule amends paragraph (a) of § 450.4 to require that the termination notice advise the tenant that the landlord may seek to enforce the termination of tenancy only by bringing a judicial action, at which time the tenant may present a defense. It also amends § 450.6 to prohibit expressly the landlord from evicting any tenant except by judicial action pursuant to State or local law.

The interim rule also makes a number of technical changes to Part 450. Section 450.1 is amended to delete outdated and superfluous language and to cross reference (for the reader's convenience) 24 CFR 882.215—the termination of tenancy procedures for tenants assisted under the Section 8 Existing Housing Program. Existing § 450.4 requires the landlord to send a tenant notice of termination by first class mail and to serve a copy of the notice on any adult answering the door of the leased unit. Section 450.4(b)(2) permits the landlord to place the termination notice under or through the door if service cannot be made on an adult at the tenant's unit. However, building codes in some localities require that doors be effectively sealed, making service as prescribed by § 450.4(b)(2) impossible. Therefore, § 450.4(b) is amended to permit affixing the notice to the door of the leased unit in the event the notice

cannot be placed under or through the door.

The rule also makes technical, clarifying changes to present § 450.4(g) (dealing with the grounds for termination of occupancy a landlord may assert in a judicial action) and § 450.6 (dealing with the relationship between State and local law and the provisions of Part 450). Existing § 450.4(g) is incorporated in § 450.6(b) and is reworded in the positive, to make clear that the landlord must rely on grounds which were set forth in the termination notice and may not rely on any other grounds, unless he or she had no knowledge of them when the notice was sent. The language which constituted § 450.6 in its entirety is now contained in § 450.6(c), and has been rewritten to clarify that the tenant may rely on State or local law where that State or local law provides procedural rights which are in addition to those provided by the regulations.

Because this revision primarily clarifies that a landlord must institute a judicial action in order to proceed on an eviction and because the principal revision is directed by an outstanding court order, the Department has determined that a delay of effectiveness of the rule until receipt and consideration of public comments is unnecessary and notice and prior public procedure are contrary to the public interest. However, the Department is providing 60 days for submission of public comment on all aspects of this interim rule. Relevant comments and suggestions will be considered in the adoption of a final rule. This rule is procedural only and does not alter in any way the grounds for which the landlord may terminate a tenancy. Other changes are necessary technical and editorial changes.

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

This rule does not constitute a "major rule" as that term is defined in Section 1(b) of Executive Order 12291 on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of \$100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries,

Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule was not listed in the Department's Semiannual Agenda of Regulations published on October 28, 1982 (46 FR 48422) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

Pursuant to 5 U.S.C. 805(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. It is intended only as clarification of existing departmental policy regarding tenant evictions, and thus should have no significant economic impact.

The Catalogue of Federal Domestic Assistance Programs numbers and titles are: 14.137, Mortgage Insurance-Rental and Cooperative Housing for Low and Moderate Income Families, Market Interest Rate; 14.103, Interest Reduction Payments-Rental and Cooperative Housing for Lower Income Families; 14.149, Rent Supplements-Rental Housing for Lower Income Families; 14.157, Housing for the Elderly or Handicapped; and 14.146, Low Income Housing-Assistance Program.

#### List of Subjects in 24 CFR Part 450

Low and moderate income housing.  
Tenant eviction.

#### PART 450—EVICTIONS FROM CERTAIN SUBSIDIZED AND HUD-OWNED PROJECTS

Accordingly, 24 CFR Part 450 is amended as follows:

1. By revising "§ 450.6 State and local law" in the table of contents to read as follows:

Sec.  
\* \* \* \* \*  
450.6 Eviction.

2. By revising § 450.1 to read as follows:

##### § 450.1 Applicability.

Except as provided in §§ 450.5 and 450.6(c), the provisions of this subpart shall apply to all decisions by a landlord to terminate the occupancy of a tenant in a subsidized project as defined in § 450.2(e). (For a tenant assisted under the Section 8 Existing Housing Program, see 24 CFR 882.215).

3. By revising paragraphs (a) and (b) of § 450.4 to read as follows:

**§ 450.4 Termination notice.**

(a) *Requisites of Termination Notice.* The landlord's determination to terminate the tenancy shall be in writing and shall: (1) State that the tenancy is terminated on a date specified therein; (2) state the reasons for the landlord's action with enough specificity so as to enable the tenant to prepare a defense; (3) advise the tenant that if he or she remains in the leased unit on the date specified for termination, the landlord may seek to enforce the termination only by bringing a judicial action, at which time the tenant may present a defense; and (4) be served on the tenant in the manner prescribed by paragraph (b) of this section.

(b) *Manner of Service.* The notice provided for in paragraph (a) of this section shall be accomplished by: (1) Sending a letter by first class mail, properly stamped and addressed, to the tenant at his or her address at the project, with a proper return address, and (2) serving a copy of the notice on any adult person answering the door at the leased dwelling unit, or if no adult responds, by placing the notice under or through the door, if possible, or else by affixing the notice to the door. Service shall not be deemed effective until both notices provided for herein have been accomplished. The date on which the notice shall be deemed to be received by the tenant shall be the date on which the first class letter provided for in this paragraph is mailed, or the date on which the notice provided for in this paragraph is properly given, whichever is later.

4. By removing paragraph (g) of § 450.4.

5. By revising § 450.6 to read as follows:

**§ 450.6 Eviction.**

(a) *General.* The landlord shall not evict any tenant except by judicial action pursuant to State or local law and in accordance with the requirements of this subpart.

(b) *Limitations on allegations of new grounds.* In any judicial action instituted to evict the tenant, the landlord must rely on grounds which were set forth in the termination notice served on the tenant under this subpart. The landlord shall not, however, be precluded from relying on grounds about which he or she had no knowledge at the time the termination notice was sent.

(c) *State and local law.* A tenant may rely on State or local law governing eviction procedures where such law provides the tenant procedural rights which are in addition to those provided by this subpart, except where such State

or local law has been preempted under 24 CFR Part 403 or by other action of the United States.

Authority: Sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

Dated: April 28, 1983.

Philip Abrams,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 83-13805 Filed 5-20-83; 8:45 am]

BILLING CODE 4210-27-M

### Office of Assistant Secretary for Community Planning and Development

#### 24 CFR Part 570

[Docket No. R-83-1086]

#### Community Development Block Grants; State of Hawaii Small Cities Program

**AGENCY:** Office of Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Interim rule.

**SUMMARY:** This interim rule amends 24 CFR Part 570, Subpart F, which governs the HUD-administered Small Cities Program for community development block grants, to add special procedures applicable only to the state of Hawaii. The new rule eliminates the current competitive procedure for allocating funds for the Small Cities Program in the State of Hawaii, and establishes a new distribution formula for that State. Factors unique to Hawaii, such as the small number of eligible applicants and the small amount of money distributed, make the current competitive system unnecessary, and it is expected that this new rule will facilitate a more efficient and predictable distribution of Small Cities Program funds.

**DATES:** Effective date: After expiration of the first period of 30 calendar days of continuous session of Congress after publication, subject to waiver, but not until the effective date that HUD will publish in a future issue of the *Federal Register*. Comment due date: July 22, 1983.

**ADDRESS:** Interested persons are invited to submit comments regarding this rule to the Office of the General Counsel, Rules Docket Clerk, Room 10278, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410. Letters should refer to the above docket number and title. A copy of each comment received will be available for public inspection and copying during regular business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Helen Duncan, Small Cities Division, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410, (202) 755-8322.

**SUPPLEMENTARY INFORMATION:** 24 CFR Part 570, Subpart F, establishes a competitive application process and a National Selection System for the HUD-administered Small Cities Program which is intended to ensure that the best projects are funded. However, factors unique to the State of Hawaii, such as the relatively small amount of funds provided and the fact that the only applicants eligible for funding under the Small Cities program are three counties, make a competitive system unnecessary in that State. Therefore, HUD has determined that the formula used for allocating funds to the State of Hawaii contained in Section 106(d)(1)(A) of the Housing and Community Development Act of 1974, as amended, is also a logical and equitable basis for distributing those funds to eligible applicants under the Small Cities Program in Hawaii. A major advantage will be the predictable level of community development funding, subject to possible adjustments based on the applicant's performance. HUD is adding a new § 570.435 to Subpart F to implement this special procedure.

Except as otherwise provided in the new § 570.435, the policies and procedures contained in 24 CFR Part 570, Subpart F, will continue to apply to applicants in Hawaii. Generally, an applicant must ensure that all of the activities in its program address at least one of the broad national objectives described in § 570.420(k). Further, no grant will be made to an applicant that fails to meet the threshold requirements of § 570.423(c). Any funds that become available for reallocation would be distributed to the remaining eligible applicants on a pro rata basis and would be subject to the performance factors in § 570.435(c)(1)(ii). Each applicant must also comply with the citizen participation requirements of § 570.431.

During the drafting of this rule, comments were solicited from the three eligible counties in the State of Hawaii which would be affected by the rule.

One commenter suggested listing in § 570.435(b) the specific sections in Subpart F that are not applicable to the State of Hawaii. That process was considered in developing this rule; however, the Department feels that Section 570.435 is sufficiently clear in stating the applicable requirements and

that to incorporate in § 570.435(b) the specific exclusions from Subpart F would be overly cumbersome.

The commenter further recommended that applicants comply with the Subpart F requirements for single purpose grantees. The Department believes that this would unnecessarily limit the flexibility of applicants in developing their program and prefers to continue to make available to applicants the option of developing their programs in the manner that best addresses their needs.

The commenter also recommended that grantees be given the flexibility to amend their programs under an imminent threat situation, with notification to the Area Office within a specified time. A grantee may amend its program under the amendment process in § 570.434, with prior approval by HUD. Therefore a specific amendment process for imminent threat is not considered necessary. Another commenter questioned the applicability of § 570.434(a)(1) to this section, since grants would not be awarded on a competitive basis, and would not have to be rerated. In response to this concern, a new paragraph § 570.435(d)(4) has been added to specify that § 570.434(a)(1) does not apply.

The Honolulu Area Office will notify applicants by certified mail of the dates for submission of applications and amounts for which they may apply. Applications must be submitted in a form prescribed by HUD.

As noted above, the three eligible counties in the State of Hawaii have already reviewed and commented on a draft of this amendment, and their comments have been considered in the development of this interim rule. Accordingly, the Secretary has found that prior notice and public procedure are unnecessary and that good cause exists for publishing this amendment as an interim rule, to become effective without a prior public comment period.

However, the Department is soliciting post-publication comments from the public on this amendment. All comments received within the 60-day comment period following publication of the interim rule will be considered by the Department in preparation of the final rule implementing this amendment.

The Secretary has also determined that, for the reasons stated above, good cause exists for exempting the interim rule from the 30-day delay in effectiveness required by 5 U.S.C. 553(d). However, the Section 7(o) of the Department of HUD Act (42 U.S.C. 3535(o)(3)) provides for a delay in effectiveness for a period of 30 calendar days of continuous session of Congress

after publication, unless waived by the Chairman and Ranking Minority Members of the Senate Committee on Banking, Housing and Urban Affairs, and the House Committee on Banking, Finance and Urban Affairs.

The Secretary has requested the appropriate waivers by the Chairmen and Ranking Minority Members but, at the time of publication of this interim rule, it is not known whether or when such waivers will be granted. Therefore, notice of the effective date of this interim rule will be published in a future issue of the *Federal Register*.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implements Section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the General Counsel, Rules Docket Clerk, Room 10278, 451 Seventh Street, SW., Washington, D.C. 20410.

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

Pursuant to the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned certifies that this rule does not have a significant economic impact on a substantial number of small entities because the changes are procedural in nature, and the amount of funds available to the applicants remains the same, with minimal adjustments in the amounts for which each applicant may apply.

This rule was not listed in the Department's most recent Semi-Annual Agenda of Regulations published on October 28, 1982 (47 FR 48422) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The Small Cities Program is listed in the Catalog of Federal Domestic Assistance as program number 14.219, Community Development Block Grants/Small Cities Program.

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96-511), the reporting or recordkeeping provisions that are included in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 2506-0060.

#### List of Subjects in 24 CFR Part 570

Community development block grants, Grant programs: housing and community development, Loan programs: housing and community development, Low and moderate income housing, New communities, Pockets of poverty, Small cities.

Accordingly, 24 CFR Part 570, Subpart F, is amended by adding a new § 570.435, to read as follows:

#### PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

##### Subpart F—Small Cities Program

§ 570.435 Special procedures applicable to the State of Hawaii.

(a) *General*. This section shall apply to the HUD-administered Small Cities Program in the State of Hawaii.

(b) *Scope and applicability*. Except as otherwise provided in this section, the policies and procedures contained in this Subpart shall apply to the HUD-administered Small Cities Program in the State of Hawaii.

(c) *Grant amounts*. (1)(i) *Grant amount*. For each eligible unit of general local government, a formula grant amount shall be determined which bears the same ratio to the total amount available for the nonentitlement area of the State as the weighted average of the ratios between:

(A) The population of that eligible unit of general local government and the population of all eligible units of general local government in the nonentitlement areas of the State;

(B) The extent of poverty in that eligible unit of general local government and the extent of poverty in all the eligible units of general local government in the nonentitlement areas of the State; and

(C) The extent of housing overcrowding in that eligible unit of general local government and the extent of housing overcrowding in all the eligible units of general local government in the nonentitlement areas of the State.

In determining the average of the ratios under this paragraph, the ratio involving the extent of poverty shall be counted twice and each of the other ratios shall be counted once.

(0.25 + 0.50 + 0.25 = 1.00.)

(ii) Grant amounts under this section may be adjusted where an applicant's performance is judged inadequate, considering:

(A) Capacity to utilize the grant amount effectively and efficiently;

(B) Substantial compliance with the applicant's schedule or schedules submitted in each previously funded application;

(C) Compliance with other program requirements based on monitoring visits and audits.

(iii) Applicants shall be advised by certified mail of the date for submission of applications and of amounts of grants to be provided.

(2) *Reallocation.* (i) Any amounts which become available as a result of adjustments under paragraph (c)(1)(ii) of this section or reductions under Subpart O shall be reallocated in the same fiscal year to any remaining eligible applicants on a pro rata basis.

(ii) Any formula grant amounts reserved for an applicant that chooses not to submit an application shall be reallocated to any remaining eligible applicants on a pro rata basis.

(iii) No amounts shall be reallocated under paragraph (c)(2) in any fiscal year to any applicant whose grant amount was adjusted under paragraph (c)(1)(ii) or reduced under Subpart O.

(d) *Applications.* (1) *Submission.* HUD shall require all applicants to submit an application for the amount established under paragraph (c)(1) of this section or for reallocated funds, in a form prescribed by HUD. Each activity proposed by an applicant must meet at least one of the broad national objectives as described in § 570.420(k). (Approved by the Office of Management and Budget under OMB control number 2506-0060.)

(2) *Review and notification.* HUD shall review each application for compliance with the requirements of § 570.420(k) and with 24 CFR Part 570, Subpart C. Following review of the applications, each applicant that has met the requirements of § 570.423(c)(2) and of this subparagraph, will be notified that its application has been approved and will be offered a grant agreement.

(3) *Conditional approval.* HUD may make a conditional approval of a grant in accordance with the criteria established in § 570.433(b)(3).

(4) *Amendments.* Section 570.434 shall apply to program amendments, except that § 570.434(a)(1) shall not apply.

(Title I, Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 et seq.); sec. 7(d), Department of

Housing and Urban Development Act (42 U.S.C. 3535(d)))

Dated: April 28, 1983.

Stephen J. Bollinger,

Assistant Secretary for Community Planning and Development.

[FR Doc. 83-13806 Filed 5-20-83; 8:45 am]

BILLING CODE 4210-29-M

## DEPARTMENT OF JUSTICE

### Parole Commission

#### 28 CFR Part 2

#### Paroling, Recommitting, and Supervising Federal Prisoners

**AGENCY:** Parole Commission, Justice.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Parole Commission is adding a new provision to its rules at 28 CFR 2.40 to make clear that a parolee who absconds from supervision is bound by the conditions on his certificate of release notwithstanding the passage of the full-term date, and accordingly may be charged for violations occurring any time prior to execution of the Commission's warrant. This clarification reflects an interpretation of law, and is designed to protect the public by ensuring a penalty for all misdeeds committed by parole absconders.

**EFFECTIVE DATE:** This rule applies to all revocation hearings conducted on or after July 4, 1983.

**FOR FURTHER INFORMATION CONTACT:** Michael Stover, Office of the General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, MD 20815, Tel. (301) 492-5959.

**SUPPLEMENTARY INFORMATION:** The Parole Commission is adding a provision to its rules at 28 CFR 2.40 Conditions of Release, to reflect a legal interpretation that the act of absconding from supervision by a parolee prevents his sentence from expiring on the original full term date. The Commission thus retains jurisdiction over the parolee under 18 U.S.C. 4210 for as long as the parolee is in absconder status. Therefore, any violations of the conditions of release (e.g., new crimes) committed prior to the execution of the warrant, whether committed before or after the original full term date, may be charged as a basis for revocation of parole.

This provision is added to make clear that a parolee cannot evade the conditions of his release by absconding until the sentence has technically expired, and cannot avoid the consequences of a parole violation by

concealing it until after the full term date has passed.

#### List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and parole.

#### PART 2—[AMENDED]

Accordingly pursuant to 18 U.S.C. 4203(a)(1) and 4204(a)(6), 28 CFR 2.40(i) is added as follows:

#### § 2.40 Conditions of release.

(i) Any parolee who absconds from supervision has effectively prevented his sentence from expiring. Therefore, the parolee remains bound by the conditions of his release and violations committed at any time prior to execution of the warrant, whether before or after the original expiration date, may be charged as a basis for revocation, and a warrant may be supplemented at any time.

I certify that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Dated: May 6, 1983.

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

[FR Doc. 83-13772 Filed 5-20-83; 8:45 am]

BILLING CODE 4410-01-M

#### 28 CFR Part 2

#### Paroling, Recommitting, and Supervising Federal Prisoners

**AGENCY:** Parole Commission, Justice.

**ACTION:** Final rule.

**SUMMARY:** The United States Parole Commission, to simplify its procedures, is deleting the requirement that the Surgeon General recertify prisoners sentenced under the Narcotic Addict Rehabilitation Act (NARA) prior to reparole when the revocation of parole was based on a drug related violation.

**EFFECTIVE DATE:** June 6, 1983.

**FOR FURTHER INFORMATION CONTACT:** Toby Slawsky, Office of the General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, MD 20815, (301) 492-5959.

**SUPPLEMENTARY INFORMATION:** The Commission is deleting the requirement in its rules at 28 CFR 2.3 that the Surgeon General recertify prisoners serving NARA sentences prior to reparole when the revocation of parole was based on a drug related violation.

This procedure is being dropped because it added unnecessary complexity to the Commission's rules for the relatively few NARA cases in the system. Recertification is not required by law nor does it appear to make an essential contribution to the release process. Moreover, a strict reading of the present rule would appear to limit certain repaole actions at local revocation hearings.

#### List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and parole.

#### PART 2—[AMENDED]

Accordingly pursuant to 18 U.S.C. 4203(a)(1) and 4204(a)(6), 28 CFR 2.3 is revised as follows:

##### § 2.3 Same; Narcotic Addict Rehabilitation Act.

A Federal prisoner committed under the Narcotic Addict Rehabilitation Act may be released on parole in the discretion of the Commission after completion of at least six months in treatment, not including any period of time for "study" prior to final judgment of the court. Before parole is ordered by the Commission, the Surgeon General or his designated representative must certify that the prisoner has made sufficient progress to warrant his release and the Attorney General or his designated representative must also report to the Commission whether the prisoner should be released. Recertification by the Surgeon General prior to repaole consideration is not required (18 U.S.C. 4254).

I certify that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Dated: May 5, 1983.

Benjamin F. Baer,  
Chairman, U.S. Parole Commission.

[FR Doc. 83-13768 Filed 5-20-83; 8:45 am]  
BILLING CODE 4410-01-M

#### 28 CFR Part 2

##### Paroling, Recommitting, and Supervising Federal Prisoners

**AGENCY:** Parole Commission, Justice.

**ACTION:** Interim rule with request for public comment.

**SUMMARY:** The U.S. Parole Commission is amending its rules at 28 CFR 2.36 to remove an ambiguity from its sanctions for escape. Presently this rule provides a lower guideline range for escape from

custody when the prisoner is absent from a non-secure facility for less than seven days. This amendment clarifies this section by providing that the lower guideline range applies to voluntary return to custody in six days or less. Additionally, the guideline range for escape from a non-secure facility and voluntary return in six days or less is reduced from 3-6 months to less than or equal to 6 months ( $\leq 6$  months).

**DATES:** Effective June 6, 1983. Public comment must be received July 22, 1983.

**ADDRESS:** Send comments to James L. Beck, Deputy Research Director, 5550 Friendship Blvd., Chevy Chase, MD 20815.

**FOR FURTHER INFORMATION CONTACT:** James L. Beck, Deputy Research Director, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, MD, 20815, Tel. (301) 492-5980.

**SUPPLEMENTARY INFORMATION:** Presently the Commission's rescission guidelines, 28 CFR 2.36, provides a range of 3-6 months for escape from a non-secure facility without force if the prisoner is absent less than 7 days, and 6-12 months if the prisoner is absent 7 days or more. The present rule seems to suggest that the sanction for escape may be determined by how swiftly the escapee is apprehended rather than by any efforts of the escapee to surrender. To remove this ambiguity, the present wording of "absent less than 7 days" is amended to read "voluntary return in 6 days or less."

Additionally, the present range of 3-6 months (with voluntary return in 6 days) is changed to less than or equal to 6 months ( $\leq 6$  months). A three month minimum for a walk away from a non-secure facility with a voluntary return before 7 days appears excessive, particularly when there is no minimum in the repaole guidelines for the violation of absconding from supervision.

#### List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and parole.

#### PART 2—[AMENDED]

Accordingly, pursuant to the provisions of 18 U.S.C. 4203(a)(1) and 4204(a)(6), 28 CFR 2.36(a)(2)(i) is revised as follows:

##### § 2.36 Rescission guidelines.

- (a) \* \* \*
- (2) \* \* \*
- (i) *Escape or Attempted Escape*
- (A) Escape or attempted escape, except as listed below—6-12 months.

(B) If from non-secure custody with voluntary return in 6 days or less— $\leq 6$  months.

(C) If by fear or force applied to person(s), grade under (ii) but not less than Category Five.

**Notes.**—(1) If other criminal conduct is committed during the escape or during time spent in escape status, then time to be served for the escape/attempted escape shall be added to that assessed for the other new criminal conduct.

(2) Time in escape status shall not be credited.

(3) Voluntary return is defined as returning voluntarily to the facility or voluntarily turning one's self in to a law enforcement authority as an escapee (not in connection with an arrest on other charges).

(4) Non-secure custody refers to custody with no significant physical restraint [e.g., walkaway from a work detail outside the security perimeter of an institution; failure to return to any institution from a pass or unescorted furlough; or escape by stealth from an institution with no physical perimeter barrier (usually a camp or community treatment center)].

I certify that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Dated: May 6, 1983.

Benjamin F. Baer,  
Chairman, U.S. Parole Commission.

[FR Doc. 83-13769 Filed 5-20-83; 8:45 am]  
BILLING CODE 4410-01-M

#### 28 CFR Part 2

##### Paroling, Recommitting, and Supervising Federal Prisoners

**AGENCY:** Parole Commission, Justice.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Parole Commission is deleting as obsolete that portion of its rules that discusses release of prisoners sentenced before June 29, 1932.

**EFFECTIVE DATE:** June 6, 1983.

**FOR FURTHER INFORMATION CONTACT:** Toby Slawsky, Office of the General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, MD 20815, Tel. (301) 492-5959.

**SUPPLEMENTARY INFORMATION:** As there are presently no prisoners in the Federal system sentenced prior to June 29, 1932, the Parole Commission is deleting 28 CFR 2.39(c) which discusses release of such prisoners.

**List of Subjects in 28 CFR Part 2**

Administrative practice and procedure, Prisoners, Probation and parole.

**PART 2—[AMENDED]****§ 2.39 [Amended]**

Accordingly, pursuant to the provisions of 18 U.S.C. 4203(a)(1) and 4204(a)(6), 28 CFR 2.39(c) is removed and 28 CFR 2.39(d) is renumbered as 28 CFR 2.39(c).

I certify that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Dated: May 5, 1983.

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

(FR Doc. 83-13770 Filed 5-20-83; 8:45 am)

BILLING CODE 4410-01-M.

**28 CFR Part 2****Paroling, Recommitting, and Supervising Federal Prisoners**

AGENCY: Parole Commission, Justice.

ACTION: Final rule.

**SUMMARY:** The Parole Commission is amending its rules at 28 CFR 2.12 to provide that an initial hearing be conducted at least 90 days prior to completion of minimum term in the case of a prisoner with a minimum term of parole ineligibility of ten years or more.

**EFFECTIVE DATE:** June 6, 1983.

**FOR FURTHER INFORMATION CONTACT:** Toby Slawsky, Office of the General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Md. 20815, Tel. (301) 492-5959.

**SUPPLEMENTARY INFORMATION:** As part of an effort to relieve federal prison overcrowding the Commission is amending its rules to provide initial hearings earlier, 90 days prior to completion of minimum term rather than 30 days prior to completion of minimum term, for prisoners with a minimum term of parole ineligibility of ten years or more. The Commission has decided to conduct these hearings earlier so that, if the decision is to parole the prisoner at eligibility, a release plan can be developed prior to the eligibility date and the prisoner can be released at eligibility without delay.

**List of Subjects in 28 CFR Part 2**

Administrative practice and procedure, Prisoners, Probation and parole.

**PART 2—[AMENDED]**

Accordingly, pursuant to the provisions of 18 U.S.C. 4203(a)(1) and 4204(a)(6), 28 CFR 2.12(a) is revised to read as follows:

**§ 2.12 Initial hearings: Setting presumptive release dates.**

(a) An initial hearing shall be conducted within 120 days of a prisoner's arrival at a Federal institution or as soon thereafter as practicable; except that in the case of a prisoner with a minimum term of parole ineligibility of ten years or more, the initial hearing shall be conducted at least 90 days prior to the completion of such minimum term, or as soon thereafter as practicable.

I certify that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Dated: May 13, 1983.

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

(FR Doc. 83-13768 Filed 5-20-83; 8:45 am)

BILLING CODE 7035-01-M

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 60**

[A-4-FRL 2329-1]

**Standards of Performance for New Stationary Sources; Alternative Test Requirements for Alumax of South Carolina's Mt. Holly Plant, Mt. Holly, South Carolina**

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

**SUMMARY:** EPA today establishes an alternative performance testing frequency requirement for Alumax of South Carolina's primary aluminum reduction plant in Mt. Holly, South Carolina, as provided in 40 CFR 60.195(b). Rather than conduct monthly performance tests on the potline groups, this source will be allowed to test them once a year. The company has supplied data supporting this action in accordance with 40 CFR 60.195(b). This action was proposed in the *Federal Register* of December 14, 1982 (47 FR 55696); no comments were received.

**DATE:** This action is effective June 22, 1983.

**ADDRESS:** Background information is available for public inspection at the

following address: Environmental Protection Agency, Region IV, Air Management Branch, 345 Courtland Street, N.E., Atlanta, Georgia 30365.

**FOR FURTHER INFORMATION CONTACT:**

Joe Riley of the EPA Region IV Air Management Branch at the Atlanta address given above, telephone 404/881-4901 (FTS: 257-4901).

**SUPPLEMENTARY INFORMATION:** On January 26, 1976 (41 FR 3628), EPA promulgated Standards of Performance for New Primary Aluminum Reduction Plants as Subpart S of 40 CFR Part 60, pursuant to the provisions of Section 111 of the Clean Air Act. Under the original standards, the affected source was required to conduct a performance test on startup and on any other occasion the Agency might require a test under Section 114 of the Clean Air Act. On June 30, 1980 (45 FR 44202), EPA revised 40 CFR 60.195 to require performance testing at least once per month for the life of a new primary aluminum plant. At the same time, however, the Agency provided that alternative test requirements could be established for the primary control system or an anode bake plant if the source could demonstrate that emissions have low variability during day-to-day operations.

On October 19, 1976, the Environmental Protection Agency (EPA) delegated to the South Carolina Department of Health and Environmental Control (SCDHEC) authority to administer Subpart S of 40 CFR Part 60. Under the terms of the delegation, performance tests were to be scheduled and performed in accordance with the procedures set forth in 40 CFR Part 60 unless alternate methods or procedures are approved by the EPA Administrator. Accordingly SCDHEC transmitted to EPA for its approval a petition for alternative test requirements submitted by Alumax of South Carolina, Mt. Holly Plant.

Alumax requested that it be allowed to (1) use the historic mean for primary emissions to calculate total monthly pot-room group emissions instead of emissions from the most recent test; (2) change the frequency of testing the anode bake plant from once a month to once a year; and (3) change the frequency of testing the primary control systems from once a month to once a year.

On the basis of the supporting information submitted, EPA is granting the third item on the South Carolina Department of Health and Environmental Control's request since it meets the requirements of 40 CFR 60.195(b). Actual emissions from the

primary potline control systems are far below the allowable emissions. Variations in primary potline emissions are not great enough to likely result in emissions in excess of the standard for fluorides.

The Agency does not find that the first two items on the SCDHEC's request can be justified under 40 CFR 60.8(b), however, To use the average of all past performance tests of the primary potline control systems to calculate emissions would defeat the purpose of periodic testing, which is to detect any deterioration in the control systems. The request for allowing annual testing of the anode bake plant cannot be allowed until sufficient data are submitted by the company.

The alternative test requirement established today will, therefore, apply only to the potline control systems of Alumax of South Carolina, in Mt. Holly, South Carolina. This alternative requirement will not preclude the Agency or SCDHEC from requiring performance testing at any time. Finally, it can be withdrawn at any time that the Administrator finds it is not adequate to assure compliance with emission standards applicable to this source.

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 22, 1983. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2)).

Under Executive Order 12291, today's action is not "Major." It has been submitted to the Office of Management and Budget for review.

The information requirements for the primary aluminum reduction industry under the NSPS program have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 and have been assigned OMB control number 2000-0207. This rule will reduce the total burden hours on the industry.

#### List of Subjects in 40 CFR Part 60

Air pollution control, Aluminum, Ammonium sulfate plants, Cement industry, Coal, Copper, Electric power plants, Glass and glass products, Grains, Intergovernmental relations, Iron, Lead, Metals, Motor vehicles, Nitric acid plants, Paper and paper products industry, Petroleum, Phosphate, Sewage disposal, Steel, Sulfuric acid plants, Waste treatment and disposal, Zinc.

(Sec. 111 and 301(a) of the Clean Air Act (42 U.S.C. 7411 and 7601(a)))

Dated: May 5, 1983.

Lee L. Verstandig,  
Acting Administrator.

#### PART 60—[AMENDED]

Part 60 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

#### Subpart S—Standards of Performance for Primary Aluminum Reduction Plants

In § 60.195 paragraph (b)(2) is added as follows:

#### § 60.195 Test methods and procedures.

\* \* \* \* \*

(b) \* \* \*  
(2) An alternative testing requirement is established for Alumax of South Carolina's Mt. Holly Plant in Mt. Holly, South Carolina: the primary control system is to be tested once a year rather than once a month.

[FR Doc. 83-13784 Filed 5-20-83; 8:45 am]

BILLING CODE 8560-50-M

#### DEPARTMENT OF HEALTH AND HUMAN SERVICES

#### Health Care Financing Administration

#### 42 CFR Ch. IV

#### Medicare Program; Provider Reimbursement Review Board; Expedited Administrative Review

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

**ACTION:** Final rule.

**SUMMARY:** These regulations amend procedures for providers to follow in order to obtain an expedited administrative review where the amount of Medicare reimbursement is in dispute. The changes are in response to comments we received on our final rule with comment period, published July 22, 1982. They are intended to clarify policy not included specifically in previous regulations text.

**EFFECTIVE DATE:** June 22, 1983.

**FOR FURTHER INFORMATION CONTACT:** Stanley Katz, (301) 594-9595.

#### SUPPLEMENTARY INFORMATION:

#### Background

Under the Medicare program, the amount paid to a provider of services is the reasonable cost of items and services furnished to beneficiaries. To be reimbursed for services covered by the program, providers must file cost reports with their fiscal intermediaries. These cost reports are used by the

intermediaries to determine the amount of reimbursement to providers. If a provider is dissatisfied with the amount of reimbursement (or if the intermediary does not make its determination within 12 months after receiving a cost report) and the amount in controversy is \$10,000 or more, the provider has the right to request a hearing before the Provider Reimbursement Review Board.

The statute authorizes the Secretary to reverse, affirm, or modify a decision of the Board. (See Section 1878(f) of the Act, 42 U.S.C. 1395oo(f).) This authority has been delegated to the Administrator of the Health Care Financing Administration (HCFA), who in turn redelegated it to the Deputy Administrator. If a provider is dissatisfied with the decision of the Administrator or the Deputy Administrator (where there is a review) or the Board, the provider may request judicial review of the final agency decision by a United States district court.

The Board may grant a hearing under section 1878 of the Act only with respect to those matters for which providers have a right to review by the Board. In general, these are cases in which the amount in controversy is \$10,000 or more, the provider is dissatisfied with the intermediary's determination or has not received a timely determination, and the provider has met specified time limits for filing an appeal.

In the exercise of its review authority, the Board decides all questions relating to its jurisdiction to grant a hearing. It may decide factual disputes and determine the applicability of Medicare law, regulations, and HCFA Rulings to the matter at issue. In doing so, the Board may accept any evidence presented by the parties and may enter findings of fact on any criterion relevant to the intermediary's decision that is provided in the controlling authority (statutes, regulations, or HCFA Rulings). The Board, however, may not reverse or overrule the applicable authority, since these authorities are binding on the Board.

#### Changes in the Statute

Section 955 of Pub. L. 96-499, the Omnibus Reconciliation Act of 1980, amended section 1878(f)(1) of the Social Security Act. Under this provision a provider that requests, and has the right to obtain, a hearing by the Board under section 1878(a) of the Act may bypass the Board hearing and obtain judicial review. However, this procedure is limited to those actions of the fiscal intermediary that involve a question of law, regulations, or HCFA Rulings



relevant to the matters in controversy, when the Board determines that although it has jurisdiction over the dispute, it is without authority to decide the question (that is, to change the outcome) because it is bound by statutes, regulations or HCFA Rulings. The Board may determine that it does not have the authority to decide a question either on its own motion or upon the request of a provider.

This provision did not in any way change the scope of the Board's jurisdiction; the Board has jurisdiction over no more and no fewer types of issues now than before the law was amended. However, if a provider requests and may obtain a Board hearing under section 1878(a) of the Act (that is, the Board accepts jurisdiction of the case), the provider may now request an expedited review; i.e., a determination by the Board of the Board's authority to decide the question of law or regulation relevant only to the matters that the Board has accepted for a hearing. (We refer to this determination as an "expedited review determination" in this preamble.)

Once the provider has requested an expedited review determination, the Board has 30 days in which to issue the determination in writing. The 30 days begins after the Board has accepted jurisdiction and has received the request, accompanied by whatever documents and other materials the Board requires to make the determination.

A provider may bring a civil action with respect to the matters for which the Board grants expedited review. If the Board does not make a determination either granting or denying expedited review within 30 days after receipt of a provider's request with accompanying documents, the provider may bring suit with respect to the matter in controversy contained in the request.

The provider must bring the civil action within 60 days of the date of the Board's determination, or, if the Board fails to make the determination within 30 days after receipt of a provider's appropriately documented request, within 60 days following the end of the 30-day period. (There is no provision for bringing civil suit within 60 days of the Board's determination not to grant expedited review.)

The law provides that an expedited review determination by the Board will be considered final and not subject to the Secretary's review.

The law applies equally to all providers, regardless of whether HCFA or another organization serves as fiscal intermediary.

### Provisions of the Regulations

On July 22, 1982, we published a final rule with comment period (47 FR 31686) to implement the statutory amendment. The preamble to that final rule also addressed the 30 comments we received concerning very similar provisions included as part of regulations we proposed on February 14, 1980 (45 FR 9953). The final rule paralleled the statutory changes, with clarifying or implementing policy included.

#### The regulations:

- (a) Provided that a provider may obtain an expedited review when the validity of a law, regulation, or HCFA Ruling is in question;
- (b) Specified what information a provider must include in its request to receive an expedited review;
- (c) Indicated the intermediary's role in the process;
- (d) Specified how the beginning and ending of the 30 days in which the Board is to respond to a request for an expedited review is determined;
- (e) Indicated the effects of various Board determinations; and
- (f) Limited their application to matters subject to the Board's review under section 1878 of the Act.

### Analysis and Response To Comment

We received 27 comments from six commentators concerning the final rule. The commentators consisted of an association of Medicare fiscal intermediaries, a law firm, a management association and three hospital associations.

The comments are discussed below according to the order in which the provisions appear in the regulations.

1. *HCFA Rulings.* One commentator stated that 42 CFR 405.1842(a), "Basis and purpose," which refers to questions "of law, regulation or HCFA ruling relevant to the case", should include the specific title of the publication in which the rulings appear. That is, either we should name the source as "The Health Care Financing Administration Rulings", or otherwise include a specific definition of the HCFA Rulings that are binding on the Board. Use of a less specific reference to "HCFA Rulings" implies that other documents may also be included.

We agree, and are revising all references in title 42 of the Code of Federal Regulations from "ruling" and "rulings" to "HCFA Ruling" and "HCFA Rulings", respectively. We are also revising § 405.1867 to show that the rulings binding on the Board are those specified by 42 CFR 401.108, rather than those specified by 20 CFR 422.408, which discusses Social Security rulings. 42 CFR

401.108, which recodified 20 CFR 422.408 as of November 12, 1981 (46 55695), indicates that precedent final opinions and orders and statements of policy and interpretations adopted by HCFA but not published in the Federal Register will be made available in the publication *HCFA Rulings*.

We are making some technical revisions to 42 CFR 401.108 as well:

(a) We are revising the current section matter into paragraphs (a) and (b), and we are adding a paragraph (c).

(b) Paragraphs (a) and (b) will reflect our present method of publicizing HCFA Rulings: we may publish HCFA Rulings (labeled as such) in the Federal Register as well as in the publication *HCFA Rulings*. The paragraphs will indicate that precedent final opinions and orders and statements of policy and interpretations adopted by HCFA as HCFA Rulings (1) are published in *HCFA Rulings*; and (2) after September, 1981, may be published in the Federal Register as well as in *HCFA Rulings*. The statement in the current § 401.108 that all HCFA components are bound by HCFA Rulings will be in paragraph (c).

(c) We are adding a paragraph (c) to state that Social Security components are bound by HCFA Rulings to the extent that the Social Security components adjudicate matters under the jurisdiction of HCFA. Binding Social Security components by HCFA Rulings is not a new policy but has been implicit in the administration of HCFA since HCFA's inception in 1977.

We are also making a technical revision at this time to 42 CFR 401.106(a), which discusses methods of publication of various types of information. Section 401.106(a)(4) indicates that the indexes that the Freedom of Information Act (5 U.S.C. 552(a)(2)) requires will be published in *HCFA Rulings*. (These are indexes of precedential orders and opinions issued in the adjudication of claims, statements of policy and interpretations adopted by HCFA but not published in the Federal Register, and of administrative manuals and instructions to staff that affect a member of the public.) We are no longer publishing these indexes in *HCFA Rulings* but in a separate publication for which HCFA's office of Public Affairs will be responsible. Therefore, we are removing the references in § 401.106(a)(4) to HCFA Rulings.

2. *Time limit and Board acceptance of jurisdiction.* Four commentators disagreed with our reading of the statute, which we believe gives the Board 30 days after it accepts jurisdiction of a case to determine whether there can be expedited review. The commentators

believed the Board should have 30 days to determine both its jurisdiction and appropriateness of an expedited review simultaneously.

We do not agree and the commentors furnished no additional information to change our position. The law reads, "If a provider may obtain a hearing under subsection (a) [of section 1878 of the Act] and has filed a request for such hearing, such provider may file a request for a determination by the Board of its authority. \* \* \*." In order to determine whether a provider "may obtain a hearing", the Board has to decide whether it has jurisdiction under section 1878 of the Act. We interpret "may obtain a hearing" as meaning the Board has accepted the request and established the provider's right to "obtain a hearing under section 1878(a) of the Act". There is no requirement in the law that the Board determine its jurisdiction within a specified period of time.

As a practical matter, the regulations anticipate a number of possible combinations of time frames and do, for example, permit the Board to accept jurisdiction and make the expedited review determination simultaneously. Generally, the opportunity for the Board to determine its jurisdiction quickly is controlled, in a large measure, by the documentation the provider files with its request for a hearing and the need for the Board to request more information.

**3. Lack of factual issues in dispute.** Five commentors stated their belief that our requirement at § 405.1842(c)(2), that there be no factual issues in dispute before the Board can grant an expedited review, goes beyond the law. One comment suggested that the regulations be revised to provide that there be no factual issues in dispute that could constitute the basis for a Board decision favorable to the provider. Another was that the regulations should be revised and limited to factual issues that influence the Board's determination concerning the granting of the requested expedited review. Three comments indicated that the cases should proceed to judicial review if the Board finds it does not have the authority to decide the legal question.

We do not agree. In our view, the law authorizes the bypassing of the required Board hearing only with respect to those matters in dispute for which the *sole* issue to be resolved is the validity of the law, regulations, or HCFA Rulings which the Board cannot decide. Clearly, the law does not provide for a Board hearing and an expedited administrative review determination on separate facets of the same matter in dispute, nor does it provide for the Board hearing to be

bypassed on disputed matters that are within the authority of the Board to decide. For such cases, there is the need to establish an administrative record before the Board when factual or legal matters are in dispute before the case is appropriate for judicial review. Thus, when there are factual matters in dispute with respect to the particular matter for which a provider requests an expedited review, we believe the law intends that these matters be resolved by the Board (subject, of course, to Administrator's review). A provider may, of course, still seek judicial review of any finding in the final administrative decision with which it is dissatisfied.

**4. Requests for additional information.** One commentor stated that the regulations at § 405.1842(c)(3) and (h)(1) give the Board unlimited discretion to request additional information and suspend the running of the 30-day period. The commentor believed that the language of § 405.1842(c)(2)(iv) regarding what the provider must submit is too vague and should provide specific descriptions of the information and documentation required from providers.

We do not agree. In our view, the combined provisions of § 405.1842(c)(2) (§ 405.1842(c) is being redesignated as § 405.1842(d)) do spell out the requirements of a provider's request for expedited review. The particular provision in the redesignated paragraph (d)(2)(iv) requires that the provider's request include "all other" supporting information or details. The provision serves a dual purpose: (1) it further supports the obligation of the provider to furnish the information necessary for the Board to make its determination, and (2) it allows the provider to submit whatever additional information or details it believes will support its request. We believe the provision is consistent with the requirements of the law and that it would be inappropriate to limit the discretion of the provider or the Board in the manner suggested.

**5. Intermediary participation.** One commentor stated the provision in § 405.1842(d) that an intermediary may comment on a provider's request for expedited Board review should be accompanied by a provision for provider rebuttal.

We agree, and are revising the current § 405.1842(d) (which is being redesignated as § 405.1842(e)) to provide that if the Board receives intermediary comments that raise questions about the provider's request for expedited Board review, the Board may request additional information from the provider in the manner prescribed in

§ 405.1842(c)(3) (which is being redesignated as § 405.1842(d)(3)).

**6. HCFA Review.** Three commentors stated that section 1878(f)(1) of the Act and final regulations at § 405.1842(f)(3) make it clear that the Board's determination concerning its authority to decide an issue is not subject to the Secretary's review under § 405.1875. However, in a preamble statement, HCFA indicated that if there is to be judicial review, it will review the case and may request the court to remand it to the Board when unresolved factual issues are found. The commentors believed that HCFA has no authority to perform this review.

The HCFA review under § 405.1842 is not an exercise of the Secretary's "own motion" review authority under section 1878 of the Act and § 405.1875. The purpose of our statement is to advise that HCFA will analyze the case for the purposes of determining whether there are any unresolved factual issues in dispute that are within the authority of the Board to decide, and whether the case should therefore be remanded to the Board for further action. It must be emphasized that this review will be conducted within the context of an adversary judicial proceeding and will not, indeed cannot, be used to support a unilateral administrative action on behalf of HCFA or the Secretary. In any event, there should be few instances when a request for remand will be necessary or desirable. The Board's review should have assured that there were no unresolved factual issues in dispute that are within its authority to decide. Additionally, we will be guided by the actions taken by the provider and will not request remand when the sole issue for judicial review is the provider's question as to the validity of a governing law, regulation, or HCFA Ruling relevant to the matters in controversy.

The remaining comments address concerns omitted from the regulations but which the commentors thought should be in regulations.

**7. Certification of Board record.** One commentor stated that the process for transmitting case records to the courts should be clarified. It is necessary to specify what documentation (including depositions) should be submitted, and the Board should have the authority to certify a record to the courts. The commentor understood that, presently, records can only be certified by the Office of the Attorney Advisor, even when a decision is rendered by the Board and there is no review by the Administrator.

As indicated in section 1878(f)(1) of the Act, judicial action brought by a

provider is tried pursuant to the applicable provisions of Chapter 7 of Title 5 of the United States Code. The Secretary, as the defendant in the action, files a certified copy of the record established at the Board hearing or the record upon which the Board granted expedited review. The record must include all documentation (including depositions) upon which the findings and decision of the Board are based.

We believe the current arrangement within the Office of the Attorney Advisor for the certification of a Board record is appropriate. It permits us to identify a single component as the source of all case records and, when a judicial action is filed, provides the opportunity for necessary internal controls.

8. *Group appeals.* One commentator stated that the law and regulations fail to address group appeals specifically. The commentator urged a technical amendment in section 1878(f)(1) of the Act to include group appeals as eligible for expedited Board review.

It is our position that the expedited Board review procedures are available to group appeals, and that the current statutory provisions in section 1878 (a) and (b) of the Act cover the situation. The provisions of section 1878(a) set forth the requirements and conditions for establishing a provider's entitlement to a hearing by the Board. The provisions of paragraph (b) authorize group appeals, and make the provisions of paragraph (a) applicable to each provider in the group subject to certain specified modifications. Thus, the entitlement of each provider in the group to a hearing by the Board must be established under paragraph (a), as is required in section 1879(f)(1), to be eligible for expedited Board review. Regulations implementing the provisions of section 1878 (a) and (b) are at §§ 405.1835 and 405.1837, respectively.

However, because of this comment, the term "provider" in the first sentence of § 405.1842(b)(2) will be clarified to include each provider in a group appeal.

9. *"Own motion" review.* Four commentators indicated that the regulations are deficient because they do not provide a procedure for situation in which the Board, on its own motion, determines that expedited review is appropriate. They should provide for prior notice to the provider of the action contemplated by the Board, and give both the provider and the intermediary an opportunity to comment, as there may be a number of reasons why a provider does not want the Board hearing to be bypassed. In addition, regardless of who initiates expedited

review, there should be an opportunity to compile a factual record at the Board.

We agree with the first part of this comment and are adding a new § 405.1842(c) to provide that the Board will give notice to the provider and the intermediary of the proposed expedited review determination and allow them a reasonable period of time in which to file additional evidence or argument in support of any objections they may have to that proposed determination. Former paragraphs (c) through (i) are redesignated as (d) through (j), respectively.

As for the opportunity to compile a factual record at the Board, the law does not provide for a Board hearing and an expedited administrative review on the same matter in dispute. If a case is appropriate for expedited review, there should not be any factual or legal matters within the authority of the board to decide. However, because of this and a related comment, we are adding, in addition to the new § 405.1842(c), a new paragraph (2) to the current 42 CFR 405.1842(f) (redesignated as § 405.1842(g) with current § 405.1842(f) (2) and (3) redesignated as § 405.1842(g) (3) and (4), respectively) to clarify the authority of the Board and to make it clear that when there are factual or legal issues in dispute within the authority of the Board to decide on the particular issue, the Board will not issue an expedited review determination and will proceed with a hearing. We believe these changes will give providers ample opportunity to establish a record at the Board hearing, while at the same time providing for the orderly conduct of the determination process and the fulfillment of the intent of the statute.

10. *The Department's authority to regulate Board proceedings.* One commentator stated that decisions about issues to be handled through expedited review should be made exclusively by the Board. The Department should not be authorized to design rules and regulations that constrict or direct the Board's judgment in these matters.

We do not agree with the comment and believe it misperceives the proper role of the Board. The Secretary is clearly authorized under sections 1871 and 1878(e) of the Social Security Act to design regulations that bear on the operations of the Board. In our view, the Board was created as an administrative body to make sure that reimbursement decisions were made accurately and fairly within the Secretary's overall responsibility for administering the Medicare program. While it is authorized under section 1878(e) of the Act to make rules and establish procedures necessary to carry out its

prescribed function, the statute makes it clear that it must do this in a way consistent with the regulations of the Secretary as well as with title XVIII of the Social Security Act.

11. *Waiver of proposed rulemaking.* Three commentators disagreed with our decision to publish a final with comment period rather than a notice of proposed rulemaking. They all believed the public should have had a chance to comment and that our arguments for publishing the rule in final to be without merit. Our arguments were that (1) the regulations had to be published as close as possible to the effective date of the law (the commentators thought that the 19 month gap between the effective date of the law and that of the regulations did not support our statement); and (2) a notice of proposed rulemaking containing what we consider to have been substantively similar provisions obviated the need for proposed rules.

We do not agree that these regulations should have been published as a notice of proposed rulemaking. As we stated in the preamble, it was necessary to publish final regulations as close as possible to the effective date of the statute; although it took 19 months to publish the final rule, even more time would have elapsed before there were regulations in place had we published a notice of proposed rulemaking before the final rule.

We disagree that the proposed rule concerning expedited review published on February 14, 1980 (45 FR 9953) was so substantively different that it did not serve as a notice to the final rule. The majority of objections to the proposed rule were resolved by the legislation, indicating that Congress favored the providers' position. The final rule merely restated the statute with some clarification added.

12. *Deferral of expedited review.* One commentator stated that providers should be permitted to notify the Board of their intention to bypass a Board hearing for certain issues and to request that the Board proceed in the interim with its regular review of the remaining issues. This would allow a provider to delay its rights to an expedited review determination in order to consider and consolidate all litigation with respect to the issues for which expedited review is granted and those for which the Board proceeded normally.

We do not agree. In our view, this procedure would totally defeat the very purpose for which the statutory provisions were amended, which was to give providers the right to seek expedited review. The effect of the prior process was to delay the resolution of

the same "certain issues" and to require providers to pursue a time-consuming review before having the right to seek judicial review. Clearly, the current law is intended to eliminate that delay previously experienced by providers and requires the Board without exception to make its determination within 30 days after the date of receipt of a provider's completed request for expedited review of issues for which the Board has accepted jurisdiction. A provider is, of course, not obligated to request an expedited review and is free, subject to the Board's "own motion" review, to make its decision as to whether it wishes to proceed with the expedited review or the regular Board review.

However, because of this comment and a related comment indicating that there should be an opportunity to establish a record at the Board hearing, we are adding a new § 405.1842 (c) and (g)(2). Please see our response in item number 9 above.

13. *Judicial review of Board determinations.* One commentator disagreed with our contention that there can be no judicial review of a Board determination not to grant an expedited review.

The purpose of our statement was to advise that there is no provision in the statute for seeking judicial review of the Board's determination not to grant an expedited review within 60 days after the Board's determination. We did not mean to imply, however, that the previously existing right of providers to seek judicial review under the provisions of section 1878 of the Act was also affected. If the Board determines it will not grant expedited review, it will follow its normal hearing procedures. We have revised the section entitled "Changes in the Statute" discussed earlier in this preamble to clarify that there is no provision in the statute for bringing civil suit within 60 days of the Board's determination not to grant expedited review. A provider may, of course, seek judicial review at the proper time after a hearing of any finding in the final administrative decision with which it is dissatisfied.

14. *Precedential value of Board decisions.* One commentator stated that consideration should be given to the precedential value of Board decisions granting expedited review.

The overall matter of establishing binding precedents in the Medicare reimbursement review process is currently being considered within HCFA. However, current regulations do not preclude the use of prior review decisions where similar facts and circumstances exist and, as a practical

matter, a provider is free to cite any such decision in its request to the Board for a determination concerning the Board's authority to decide an issue.

#### Waiver of Proposed Rulemaking

We have made some technical and clarifying revisions to 42 CFR 401.106 and 401.108 because of our response to a comment concerning HCFA Rulings in § 405.1842. We are publishing these revisions in final rather than in a notice of proposed rulemaking because of their technical nature. Since they do clarify and are so technical, we find good cause to waive notice of proposed rulemaking; it is unnecessary and contrary to the public interest to delay their publication in final.

#### Executive Order 12291

We have determined that these final regulations are not likely to result in an annual economic effect of \$100 million or meet other threshold criteria of section 1(b) of the Order.

As noted above, these final regulations amend procedures for providers to follow in order to obtain an expedited administrative review where the amount of Medicare reimbursement is an issue. We have made these policy amendments as a result of the public comments to the final rule published July 22, 1982. The changes are clarifications in nature; thus we believe that the economic effect of these changes is negligible. As this effect is significantly below the \$100 million threshold, a regulatory impact analysis is not required.

#### Regulatory Flexibility Act

The Secretary certifies under 5 U.S.C. 605(b), enacted by the Regulatory Flexibility Act (Pub. L. 96-354), that these final regulations will not result in a significant impact on a substantial number of small entities.

The clarifications made as a result of the public comments may impact on some providers. For instance, under the newly designated § 405.1842(e), the Board may request additional information from a provider when an intermediary's comments raise questions about the provider's request for expedited review. However, we do not believe that this, or the other clarifications, will result in a significant impact on a substantial number of providers. Therefore, a regulatory flexibility analysis is not required.

#### List of Subjects in 42 CFR Part 405

Administrative practice and procedure, Certification of compliance, Clinics, Contracts (agreements), End-stage renal disease (ESRD), Health care,

Health facilities, Health maintenance organizations (HMO), Health professions, Health suppliers, Home health agencies, Hospitals, Inpatients, Kidney diseases, Laboratories, Medicare, Nursing homes, Onsite surveys, Outpatient providers, Reporting requirements, Rural areas, X-rays.

#### Ch. IV (Parts 400-499) [Nomenclature Change]

A. Title 42 CFR Parts 400-499 are amended as follows: Wherever the word "ruling" or "rulings" appears, it is to be revised to read "HCFA Ruling" or "HCFA Rulings", respectively.

B. 42 CFR Part 401, Subpart B, is amended as set forth below:

#### PART 401—[AMENDED]

##### Subpart B—Confidentiality and Disclosure

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

Authority: Secs. 205, 1102, 1106, and 1871 of the Social Security Act (42 U.S.C. 405, 1302, 1306, and 1395hh); the Freedom of Information Act (5 U.S.C. 552); and the Privacy Act (5 U.S.C. 552a).

2. In § 401.106, paragraph (a)(4) is revised as follows:

##### § 401.106 Publication.

(a) Methods of Publication. \* \* \*

(4) By publication of indexes of precedential orders and opinions issued in the adjudication of claims, statements of policy and interpretations which have been adopted but have not been published in the *Federal Register*, and of administrative staff manuals and instructions to staff that affect a member of the public.

3. Section 401.108 is revised as follows:

##### § 401.108 HCFA Rulings.

(a) After September 1981, a precedent final opinion or order or a statement of policy or interpretation that has not been published in the *Federal Register* as a part of a regulation or of a notice implementing regulations, but which has been adopted by HCFA as having precedent, may be published in the *Federal Register* as a HCFA Ruling and will be made available in the publication entitled *HCFA Rulings*.

(b) Precedent final opinions and orders and statements of policy and interpretation that were adopted by HCFA before October, 1981, and that have not been published in the *Federal Register* are available in *HCFA Rulings*.

(c) HCFA Rulings are published under the authority of the Administrator, HCFA. They are binding on all HCFA Components, and on the Social Security Administration to the extent that components of the Social Security Administration adjudicate matters under the jurisdiction of HCFA.

C. 42 CFR Part 405, Subpart R, is amended as set forth below:

#### Subpart R—Provider Reimbursement Determination and Appeals

1. The authority citation for Subpart R is revised as follows:

Authority: Secs. 1102, 1814(b), 1815(a) 1861(v), 1871, and 1878 (42 U.S.C. 1302, 1395f(b), 1395g(a), 1395x(v), 1395hh, 1395oo).

2. Section 405.1842 is amended by redesignating paragraphs (c) through (i) as (d) through (j) respectively, by revising paragraphs (a), (b) (1) and (2), newly redesignated (d)(3), (e), (g), (h)(1), (3), and (5), and (i)(1), and by adding a new paragraph (c) as follows:

#### § 405.1842 Expediting Board proceedings.

(a) *Basis and purpose.* This section implements section 1878(f)(1) of the Social Security Act, as amended by section 955 of Pub. L. 96-499 (42 U.S.C. 1395oo(f)(1)). The amendment provides an opportunity for providers to obtain expedited administrative review when the Board determines that it does not have the authority to decide a question of law, regulation, or HCFA Ruling relevant to the case. Case (see § 405.1867).

(b) *Basic rule.* (1) Except as provided in paragraph (b)(4) of this section, a provider may submit a written request to the Board, with supporting documentation, to determine whether the Board has the authority to decide a question of law, regulations, or HCFA Rulings relevant to and controlling upon an issue to be reviewed by the Board. The Board is required to make an expedited review determination in writing, either denying or granting the request, within 30 days after the date of receipt of the request, as defined in paragraph (1) of this section. The Board may also issue a determination on its own motion that it lacks authority to decide a question of law, regulations or HCFA Rulings.

(2) The Board must determine that the provider (including each provider in a group appeal) is entitled to a hearing under section 1878(a) of the Act before making the determination described in paragraph (a)(1) of this section. Thus, the provider must file (or have already filed) a written request for a Board hearing that meets the requirements in § 405.1841. The information and

documentation required with respect to the filing of a request for a hearing is used by the Board to determine jurisdiction under section 1878(a) of the Act.

(c) *"Own motion" review.* If the Board is considering issuing a determination on its own motion that it lacks the authority to decide a question of law, regulations, or HCFA Rulings, it will notify the provider and intermediary of its proposed determination and allow them a reasonable period of time to file evidence or arguments either to support or oppose the proposed determination.

(d) . . . . .  
(3) If the information in the provider request is insufficient for the Board to determine whether it has the authority to decide an issue, the Board will request more information from the provider. Such a request will affect the 30-day time limit as provided in paragraph (i) of this section. If the provider does not send more information or sends inadequate information, the Board will determine that it has the authority to decide the issue and will begin the regular procedure for a hearing.

(e) *Intermediary participation* (1). After receiving a copy of the provider's request for an expedited review determination, the intermediary may send comments to the Board on the provider's request and supporting documentation. The intermediary will send a copy of its comments to the provider simultaneously.

(2) If the intermediary's comments raise questions about the provider's request for expedited review, the Board may request additional information from the provider as provided in paragraph (d)(3) of this section.

(g) *Board determination.* (1) Within 30 days after the date of receipt (as defined in paragraph (i) of this section) of a provider's request and all necessary documentation the Board will issue a determination concerning its authority to decide the question of law, regulations, or HCFA Rulings relevant to the issues identified by the provider in its request.

(2) If there are factual or legal issues in dispute on an issue within the authority of the Board to decide, the Board will not make an expedited review determination on the particular issue but will proceed with a hearing. The Board has the authority to decide when two or more issues are sufficiently related to preclude separation for purposes of an expedited review

determination on one or more of them and a hearing on the other or others.

(3) The Board will promptly notify the provider in writing of its determination and will send a copy of the determination to the intermediary.

(4) The Board's determination concerning its authority or its lack of a determination is not subject to the Secretary's review under § 405.1875.

(h) *Effect of a Board decision.* (1) The Board's determination, issued on its own motion or at the request of a provider, that it lacks authority to decide a question of law, regulations or HCFA Rulings is a final decision permitting a provider to seek judicial review with respect to the matter or matters in controversy contained in the determination, within 60 days of the date of the Board's determination.

(3) If the Board fails to issue an expedited review determination within 30 days of the date of receipt of a complete request (as determined under paragraph (i) of this section), the provider may, within 60 days from the end of that period, seek judicial review of the matters for which it requested the Board's determination.

(5) If the provider seeks judicial review because the Board fails to make a determination as provided in paragraph (g)(1) of this section, it should notify the Board at the time it files for judicial review. The Board will not hold a hearing, even if one has been scheduled, on the matter or matters for which the provider is seeking judicial review.

(i) *Date of receipt.* . . . . .

(1) The actual date of receipt by the Board of the information required under paragraph (d)(2) of this section, or of additional information requested by the Board under paragraph (d)(3) of this section, whichever the Board receives later; or

3. Section 405.1867 is revised as follows:

#### § 405.1867 Sources of Board's authority.

In exercising its authority to conduct the hearings described herein, the Board must comply with all the provisions of title XVIII of the Act and regulations issued thereunder, as well as HCFA Rulings issued under the authority of the Administrator of the Health Care Financing Administration (see § 401.108 of this subchapter). The Board shall afford great weight to interpretive rules, general statements of policy, and rules

of agency organization, procedure, or practice established by HCFA.

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare-Hospital Insurance; No. 13.774, Medicare-Supplementary Medicare Insurance)

Dated: March 3, 1983.

Carolyn K. Davis,  
Administrator, Health Care Financing Administration.

Approved: April 26, 1983.

Margaret M. Heckler,  
Secretary.

[FR Doc. 83-13518 Filed 5-20-83; 8:45 am]  
BILLING CODE 4120-03-M

## DEPARTMENT OF TRANSPORTATION

### Urban Mass Transportation Administration

#### 49 CFR Part 630

[Docket No. 83-A]

#### Uniform System of Accounts and Records and Reporting System

**AGENCY:** Urban Mass Transportation Administration, DOT.

**ACTION:** Notice of Suspension of Reporting Requirement.

**SUMMARY:** In this document, the Urban Mass Transportation Administration (UMTA) announces the suspension of the requirement that grant recipients must report data pertaining to the average time per unlinked trip. This requirement is now part of UMTA's regulation on a Uniform System of Accounts and Records and Reporting System.

**EFFECTIVE DATE:** This suspension is effective May 23, 1983.

**FOR FURTHER INFORMATION CONTACT:** Philip G. Hughes, Office of Information Services, Room 6419, 400 Seventh Street, S.W., Washington, D.C. 20590, (202) 426-1957.

#### SUPPLEMENTARY INFORMATION:

##### Background

On February 10, 1983, UMTA issued a Notice in the *Federal Register* (48 FR 6143) requesting comments on UMTA's proposal to waive the requirement of 49 CFR 630.12(a)(7)(i), Table B-8 that requires the reporting of data concerning average time per unlinked trip. This requirement is part of UMTA's regulation on a Uniform System of Accounts and Records and Reporting System promulgated to implement Section 15 of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1611) (UMT Act).

UMTA published regulations to implement Section 15 on January 19, 1977, (42 FR 3772). These regulations are codified at 49 CFR Part 630 and have been amended several times (43 FR 58928, December 18, 1978; 44 FR 4493, January 22, 1979; and 44 FR 26052, May 3, 1979).

Section 630.12(a)(7) of this regulation requires recipients to provide specific operating data elements as set forth in Table B-8 therein. This Table B-8 includes a data element for average time per unlinked trip. Average time per unlinked trip, as used in this context, means the average (i.e., arithmetic mean) number of minutes that the passenger spends aboard the revenue vehicle for an unlinked passenger trip.

After examining the particular requirements for data relating to average time per unlinked trip, UMTA has concluded that this data might be less useful than originally envisioned, both to UMTA in administering its program and to State and local governments in planning their transportation programs. In addition, recipients have indicated that collection of this data can be unnecessary, costly and burdensome.

UMTA received 23 written comments from various sources with an interest in mass transportation. All supported the waiver. None of the commenters expressed any qualified opposition, or reservations about the desirability of granting an overall waiver.

#### Waiver

Based on these comments and UMTA's experience in administering the Section 15 program, I have determined that the waiver, in all cases, of the reporting requirements concerning average time per unlinked trip set forth at 49 CFR 630.12(a)(7)(i), Table B-8 is clearly necessary to reduce costly and burdensome unneeded Federal requirements and that the waiver is consistent with the intent of the UMT Act. Therefore, pursuant to the authority of 49 CFR 630.7, acting in my capacity as Administrator of the Urban Mass Transportation Administration, effective immediately, I hereby waive, in all cases, the reporting requirement concerning average time per unlinked trip set forth at 49 CFR 630.12(a)(7)(i), Table B-8.

#### List of Subjects in 49 CFR Part 630

Mass transportation, Reporting and recordkeeping requirements, Uniform system of accounts.

## PART 630—[AMENDED]

### § 630.12 [Temporarily waived and suspended in part]

Accordingly, 49 CFR 630.12(a)(7)(i), Table B-8 is waived and suspended until further notice.

Issued on: May 5, 1983.

Arthur E. Teele, Jr.,  
Administrator, Urban Mass Transportation Administration.

[FR Doc. 83-13629 Filed 5-20-83; 8:45 am]

BILLING CODE 4910-57-M

## INTERSTATE COMMERCE COMMISSION

### 49 CFR Part 1023

[Ex Parte No. MC-100 (Sub-No. 4)]

#### Amendment to the Standards for Operations of Interstate Motor Carriers

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Final rule.

**SUMMARY:** The purpose of this document is to prescribe and give notice of an amendment to the standards for evidencing the lawfulness of operations of interstate motor carriers (49 CFR Part 1023). The amendment will permit a motor carrier to prepare two or more cab cards which are effective for the same vehicle at the same time to make it easier for the carrier to show the lawfulness of new interstate operations authorized by the Commission during the year but after the initial cab card has been prepared for the vehicle. The present standard precludes preparing two or more cab cards.

**EFFECTIVE DATE:** The amendment will be effective on May 23, 1983.

**FOR FURTHER INFORMATION CONTACT:** Nan Heald, (202) 275-7004 or Andrew L. Lyon, (202) 275-7805

**SUPPLEMENTARY INFORMATION:** The purpose of this document is to prescribe and give notice of an amendment to the standards for evidencing the lawfulness of operations of interstate motor carriers (49 CFR Part 1023).

On March 24, 1983, the National Association of Regulatory Utility Commissioners (NARUC) certified to the Commission, under the provisions of 49 U.S.C. 11506, an amendment to the standards prescribed by the Commission in Part 1023 of Title 49 of the Code of Federal Regulations. The amendment will permit a motor carrier to prepare two or more cab cards which are effective for the same vehicle at the

same time to make it easier for the carrier to show the lawfulness of new interstate operations authorized by the Commission during the year but after the initial cab card has been prepared for the vehicle. The present standard precludes preparing two or more cab cards.

Pursuant to Pub. L. 89-170, 79 Stat. 648, approved September 6, 1965, which amended subsection (b) of section 302 of the Interstate Commerce Act (49 U.S.C. 11506), NARUC was authorized to determine and officially certify standards to the Commission for evidencing the lawfulness of interstate operations of motor carriers. The Commission is required to prescribe and maintain such standards, now set forth at 49 CFR Part 1023.

Under this same statutory provision, NARUC is authorized to amend these standards and certify them to the Commission for prescription. Pursuant to this authority, on March 11, 1983,

NARUC adopted a resolution amending the standards as noted above.

#### **Energy and Environmental Considerations**

This action will not significantly affect either the quality of the human environment or conservation of energy resources.

#### **Regulatory Flexibility Statement**

The Commission certifies that this amendment will not have a significant economic impact on a substantial number of small entities.

#### **List of Subjects in 49 CFR Part 1023**

Motor carriers, Insurance, Surety bonds.

#### **Prescription of Amendment**

We amend 49 CFR 1023.37 as set forth in the appendix. This action is taken under the authority of 49 U.S.C. 11506.

Dated: May 11, 1983.

By the Commission, Chairman Taylor, Vice Chairman Sterrett, Commissioners Andre, and Gradison.

Agatha L. Mergenovich,  
Secretary.

#### **Appendix**

#### **PART 1023—[AMENDED]**

Part 1023, Title 49, Code of Federal Regulations is amended as follows:

In the last sentence of § 1023.7, the words "shall not" are revised to read "may," and, as amended, the last sentence is revised to read:

**§ 1023.37 Use of cab cards in connection with vehicles not used in driveway operations.**

\* \* \* A motor carrier may prepare two or more cab cards which are effective for the same vehicle at the same time.

[FR Doc. 83-13741 Filed 5-20-83; 8:45 am]

BILLING CODE 7035-01-M

# Proposed Rules

Federal Register

Vol. 48, No. 100

Monday, May 23, 1983

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

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 9 CFR Parts 102, 104, and 112

[Docket No. 82-047]

#### Viruses, Serums, Toxins, and Analogous Products; Licenses, Permits, and Labeling

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The regulations in 9 CFR Parts 102 and 104 governing licenses and permits for veterinary biologics products have been reviewed in accordance with the Agency's plan to periodically review existing regulations. As a result of that review the Agency is proposing certain changes. This proposed action would change the number of documents required to be submitted by licensees and applicants, would delete obsolete and incorrect information, and would provide for inclusion of additional components in combination package products. The purpose of this proposed revision is to update and simplify regulatory requirements applicable to veterinary biological products.

**DATE:** Comments must be received on or before July 22, 1983.

**ADDRESS:** Interested parties are invited to submit written data, views, or arguments regarding the proposed regulations to: Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 829-A, Federal Building, Hyattsville, MD 20782.

**FOR FURTHER INFORMATION CONTACT:** Dr. David A. Espeseth, Senior Staff Veterinarian, Veterinary Biologics Staff, USDA, APHIS, VS, Room 829 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8245.

#### SUPPLEMENTARY INFORMATION: Paperwork Reduction Act

This proposed rule contains no new or amended recordkeeping, reporting, or application requirement or any type of information collection requirement subject to the Paperwork Reduction Act of 1980.

#### Executive Order 12291

This proposed action has been reviewed under USDA procedures established in Secretary's Memorandum No. 1512-1 to implement Executive Order 12291 and has been classified as a "Nonmajor Rule."

The proposed amendments would not have a significant effect on the economy and would not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. They would also not have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises, in domestic or export markets. These proposed revisions would reduce regulatory requirements.

#### Certification Under the Regulatory Flexibility Act

James O. Lee, Jr., Acting Administrator of the Animal and Plant Health Inspection Service, has determined that this action would not result in an adverse economic impact on a substantial number of small entities. Small entities are defined as independently owned businesses not dominant in the field of veterinary biologics manufacturing.

#### Background

This proposed rulemaking would amend 9 CFR 102.3 by deleting the numerical requirements with reference to the number of copies of plot plans, blueprints, legends, labels, and sketches. These are unnecessary because other 9 CFR references cited in Part 102 specify the number of required copies of such documents, as well as the distribution of copies after processing by Veterinary Services.

Changes in Department assignments of responsibility, revised filing procedures, and field office relocations have resulted in an overall reduction in copies of documents needed by Veterinary Services. Consequently, it is

proposed that 9 CFR 112.5 be amended to reduce the number of copies of labels which are required to be submitted for approval from five to three, and sketches from three to two. One additional copy of each Outline of Production for each product imported for sale and distribution would be required.

In an October 6, 1976, revision of this subchapter, provisions for special licenses were deleted. Reference to these obsolete documents remains in the labeling regulations. This proposed revision would delete this reference.

An error in publishing a July 28, 1975, docket resulted in failure to delete certain requirements in 9 CFR 112.7 for labeling Rabies Vaccines. These requirements were made obsolete by establishment of new Standard Requirements for those products. This proposed revision would delete the superfluous and conflicting requirements.

Combination package products consist of a desiccated component and a liquid component in the same box. The liquid product is used as a diluent for rehydrating the desiccated component for administration. Current requirements in 9 CFR 112.7(h) only apply to products where desiccated live virus vaccines are combined with specified bacterins. This proposed revision would provide for other combinations, such as desiccated live bacterial and chlamydial vaccines as well as other liquid products as diluents in addition to bacterins.

#### Alternatives

The alternatives considered are:  
1. Not amending the regulations would have the effect of continuing the duplication of sometimes conflicting references in the regulations to the number of documents needed for licensure. The number of Outlines of Production submitted to support a permit for sale and distribution of product would be insufficient to provide a copy for each office involved. Excess copies of labels and sketches would continue to be required. Reference to Special Licenses would be continued, resulting in confusion and misunderstanding. The erroneous material regarding labeling of Rabies Vaccine would continue, resulting in probable misunderstanding and increase in label preparation costs. No provisions would be available for use of liquid



vaccines as diluents in combination package products. No provisions would be available for use of desiccated bacterial or chlamydial vaccines in combination packages. Therefore, this alternative was not selected.

2. Amending the regulations to delete obsolete and incorrect information, to change the number of documents required, and to remove restrictions on combination package components would result in the deletion of obsolete and incorrect information from the regulations, and in the elimination of confusion and misunderstanding. There would also be a significant reduction in the numbers of copies of documents required from licensees and permittees. New combination package products would be permitted resulting in increased convenience and reduced costs to users. Therefore, this alternative was adopted.

#### List of Subjects

##### 9 CFR Part 102

Animal biologics.

##### 9 CFR Part 104

Animal biologics, Imports, Transportation.

##### 9 CFR Part 112

Animal biologics, Exports, Imports, Labeling, Packaging and containers, Transportation.

#### PART 102—LICENSES FOR BIOLOGICAL PRODUCTS

Section 102.3 would be amended by revising paragraphs (a)(4), (b)(2)(iii) and (b)(2)(iv) to read:

##### § 102.3 License applications.

(a) \* \* \*

(4) Facilities documents, prepared as prescribed in Part 108 of this subchapter, shall accompany the application for license unless previously filed with Veterinary Services.

(b) \* \* \*

(2) \* \* \*

(iii) Legends prepared as prescribed in § 108.5 of this subchapter designating which facilities are to be used in the preparation of each fraction; and

(iv) Labels in finished form or sketches prepared as prescribed in § 112.5 of this subchapter, together with information regarding all claims to be made on labels and in advertising matter to be used in connection with or related to the biological product.

#### PART 104—PERMITS FOR BIOLOGICAL PRODUCTS

Section 104.5 would be amended by revising paragraph (a)(4) to read:

##### § 104.5 Products for distribution and sale.

(a) \* \* \*

(4) The methods to be used in the preparation of each biological product shall be written into an approved Outline of Production prepared in accordance with the applicable provisions of Part 114 of this subchapter. Four copies of such Outlines of Production shall be submitted to Veterinary Services and be approved before the permit is issued.

#### PART 112—PACKAGING AND LABELING

Section 112.5 would be amended by revising paragraph (d)(1)(i), (d)(1)(ii), and (d)(3)(i)(a) to read:

##### § 112.5 Review and approval of labeling.

(d) \* \* \*

(1) \* \* \*

(i) Two copies of each sketch shall be submitted. One copy shall be returned with applicable comments. One copy shall be held on file by Veterinary Services until replaced by a finished label but not for more than 1 year after processing: *Provided*, That, sketches submitted in support of a license or permit shall be held as long as the application is considered active.

(ii) At least three copies of a label shall be submitted: *Provided*, That, when an enclosure is to be used with more than one biological product, one extra copy shall be required for each additional product. Two copies of each label will be retained by Veterinary Services. All remaining copies shall be stamped and returned. Labels to which exceptions are taken shall be marked as sketches and handled according to § 112.5(d)(1)(i).

(3) To appear on the top of each page:

(i) (a) Name and product code number of the biological product as it appears on the product license or permit.

Section 112.7 would be amended by revising paragraphs (d)(4)(i) through (d)(4)(iv) and revising paragraph (h) to read:

##### § 112.7 Special additional requirements.

(h) In the case of a liquid product authorized in a filed Outline of Production to be used as a diluent in a

combination package, the carton labels and enclosures used for serials which are either not tested for bactericidal or viricidal activity or have been found unsatisfactory by such test shall contain the statement: "CAUTION: DO NOT USE AS DILUENT FOR LIVE VACCINES."

(37 Stat. 832-833 (21 U.S.C. 151-158))

All written submissions made pursuant to this notice will be made available for public inspection at the address listed in this document during regular hours of business (8 a.m. to 4:30 p.m., Monday to Friday, except holidays) in a manner convenient to the public business (7 CFR 1.27(b)).

Done at Washington, D.C., this 17th day of May 1983.

Dale F. Schwindaman,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 83-13666 Filed 5-20-83; 8:45 a.m.]

BILLING CODE 3410-34-M

#### DEPARTMENT OF THE TREASURY

##### Comptroller of the Currency

##### 12 CFR Part 31

[Docket No. 83-19]

#### Extensions of Credit to Executive Officers, Directors and Principal Shareholders of National Banks and to Their Related Interests

**AGENCY:** Office of the Comptroller of the Currency, Treasury.

**ACTION:** Proposed rule.

**SUMMARY:** The Office of the Comptroller of the Currency proposes to amend 12 CFR Part 31, which governs loans by a national bank to certain insiders. The proposal implements the amendments of 12 U.S.C. 375a(4) and 375b(2) included in Title IV of the Garn-St Germain Depository Institutions Act of 1982. The amendments relate to limitations on "other" loans to executive officers, and the aggregate dollar limitation, above which loans to insiders must be approved in advance by the bank's board of directors.

**DATE:** Comments must be received by June 22, 1983.

**ADDRESS:** Comments should be sent to: [Docket No. 83-19], Communications Division, 3rd Floor, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, SW., Washington, D.C. 20219. Attention: C. Christine Jones. Comments will be available for inspection and photocopying at the same location.

**FOR FURTHER INFORMATION CONTACT:** Peggy Shriner, National Bank Examiner, Commercial Examinations Division, (202) 447-1165, or Raija Bettauer, Senior Attorney, Legal Advisory Services Division, (202) 447-1880, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, SW., Washington, D.C. 20219.

**SUPPLEMENTARY INFORMATION:** The principal drafter of this document is Raija Bettauer, Senior Attorney, Legal Advisory Services Division.

#### Background

The Garn-St Germain Depository Institutions Act of 1982 (Pub. L. 97-320, 96 Stat. 1469) ("Act") amended, among other things, paragraph (4) of section 22(g) of the Federal Reserve Act (12 U.S.C. 375a(4)) by striking out the \$10,000 limitation on loans by a member bank to its executive officer for purposes other than a residential mortgage or education of the officer's children. It also amended paragraph (2) of section 22(h) of the Federal Reserve Act (12 U.S.C. 375b(2)) by striking out the aggregate limit of \$25,000 beyond which a loan to an executive officer, director or principal shareholder of a bank must be approved in advance by a disinterested majority of the bank's entire board of directors. Instead, the Act authorized the appropriate Federal banking agencies to prescribe new limits by regulation.

Pursuant to the Act, the Office of the Comptroller of the Currency ("Office") issued a regulation, 12 CFR Part 31, which stated that, until other limits will be issued, national banks must continue to observe the provisions of Regulation O, 12 CFR Part 215, in this respect. 47 FR 49347 (November 1, 1982). Regulation O restated the old statutory limits of \$10,000 and \$25,000, respectively. 12 CFR 215.5(c)(3) and 215.4(b). The Office is now proposing to raise these dollar limits.

The proposed rule provides that a national bank may make, under 12 U.S.C. 375a(4), "other" loans to its executive officer up to the amount of \$25,000 or 2.5 per cent of its capital, whichever is higher. However, no such loans may be made in excess of \$100,000.

The proposed rule also provides that a national bank must obtain the prior approval of the majority of its board of directors for a loan to an executive officer, director, or principal shareholder, or their related interests, if the aggregate amount of any loans to such an individual exceeds \$25,000 or 5 per cent of the bank's capital, whichever is higher. All loans exceeding the

aggregate of \$500,000 must, nevertheless, be approved in advance by the bank's board of directors as provided in 12 U.S.C. 375b(2).

#### Regulatory Flexibility Act Analysis

Pursuant to Section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 et seq.), the Secretary of the Treasury has certified that the proposed amendments, if adopted, will not have a significant economic impact on a substantial number of small entities. The proposed amendments would ease the application of the existing regulations. The effect of the amendments is expected to be beneficial rather than adverse, and small entities are generally expected to share the benefits of the amendments equally with larger institutions.

#### Regulatory Impact Analysis

The Office has determined that the proposed amendments do not constitute a major rule within the meaning of Executive Order 12291. The amendments would ease burdens currently imposed by regulations and would have no adverse effect on the operations of the national bank subject to them. As such, the amendments would not have an annual effect on the economy of \$100 million or more, would not affect costs or prices for consumers, individual industries, government agencies or geographic regions, and would not have an adverse effect on competition, employment investment, productivity, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

#### List of Subjects in 12 CFR Part 31

National banks, Lending limits, Credit.

Accordingly, pursuant to its authority under 12 U.S.C. 375a(4) and 375b(2), as amended, the Office proposes to revise 12 CFR Part 31 to read as follows:

#### PART 31—EXTENSIONS OF CREDIT TO EXECUTIVE OFFICERS, DIRECTORS AND PRINCIPAL SHAREHOLDERS OF NATIONAL BANKS AND TO THEIR RELATED INTERESTS

- Sec.  
31.1 Authority.  
31.2 Loan limits.  
31.3 Definitions.

Authority: 12 U.S.C. 375a(4) and 375b(2), as amended.

##### § 31.1 Authority.

This subpart is issued by the Comptroller of the Currency pursuant to 12 U.S.C. 375a(4) and 375b(2), as amended.

##### § 31.2 Loan limits.

(a) A national bank is authorized to extend credit, for purposes not specifically authorized under 12 U.S.C. 375a, to an executive officer in an aggregate amount that equals the higher of \$25,000 or 2.5 per cent of the bank's capital. In no event shall the aggregate outstanding amount of such loans to each executive officer exceed \$100,000.

(b) No national bank shall extend credit to any of its executive officers, directors, or principal shareholders or to any related interest of that person in an amount that, when aggregated with the amount of all other extensions of credit to that person and all related interests of that person, exceeds the higher of \$25,000 or 5 per cent of the bank's capital, unless: (1) The extension of credit or line of credit has been approved in advance by a majority of the entire board of directors, and (2) the interested party has abstained from participating directly or indirectly in the vote. In no event shall a national bank extend credit to any of its executive officers, directors or principal shareholders or to any related interest of that person in an amount that, when aggregated with the amount of all other extensions of credit to that person and all related interests of that person, exceeds \$500,000, except by complying with the requirements set forth in paragraphs (b) (1), and (2) of this section.

##### § 31.3 Definitions.

For the purposes of this subpart, the definitions of the terms contained in Regulation O, 12 CFR 215.2 and 215.3 apply.

Dated: April 14, 1983.

C. T. Conover,  
Comptroller of the Currency.

[FR Doc. 83-13732 Filed 5-20-83; 8:45 am]  
BILLING CODE 4810-33-M

#### FEDERAL RESERVE SYSTEM

##### 12 CFR Part 215

[Docket Number R-0469]

#### Loan To Executive Officers, Directors, and Principal Shareholders of Member Banks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

**SUMMARY:** The Board of Governors of the Federal Reserve System proposes to amend Regulation O (12 CFR Part 215), which governs loans by a member bank to certain insiders, to implement certain

amendments to 12 U.S.C. 84, and sections 22(g) and 22(h) of the Federal Reserve Act (12 U.S.C. 375a and 375b) that were included in Title IV of the Garn-St Germain Depository Institutions Act of 1982 [Pub. L. 97-320, 96 Stat. 1469]. The amendments relate to the limitations on loans by a member bank to its executive officers, the aggregate dollar limitation on loans by a member bank to its insiders, and the dollar amount above which loans by a member bank to its insiders must be approved in advance by the board of directors of the member bank.

**DATE:** Comments must be received by June 20, 1983.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Johnson, Senior Counsel (202/452-3584), or Stephen Lovette, Supervisory Financial Analyst (202/452-3822), Board of Governors of the Federal Reserve System.

**SUPPLEMENTARY INFORMATION:** Prior to the enactment of the Garn-St Germain Depository Institutions Act of 1982 [Pub. L. 97-320, 96 Stat. 1469] (Garn Act), section 22(g) of the Federal Reserve Act prescribed the following limitations on loans by a member bank to its executive officers: \$60,000 for a home mortgage; \$20,000 to finance the education of the officer's children; and \$10,000 for all other purposes. Section 421(a) of the Garn Act eliminated the specific dollar limitation on home mortgage and educational loans and on October 28, 1982, the Board amended Regulation O to eliminate the limitations on such loans.

Section 421(b) of the Garn Act eliminated the dollar limitation for "other" loans and now provides that the member bank's appropriate federal regulatory agency shall prescribe a limitation for such loans. The proposed rule provides that, for other than home mortgage or educational purposes, a member bank may lend to any of its executive officers up to \$25,000 or 2.5 per cent of its capital, whichever amount is greater. However, at no time may the bank's outstanding loans to any executive officer exceed \$100,000.

Also prior to the enactment of the Garn Act, section 22(h)(2) of the Federal Reserve Act provided that no member bank shall lend to any executive officer, director or principal shareholder or to any related interest of such person if the amount of the loan, when aggregated with all other loans to such executive officer, director or principal shareholder, or to any related interest of such person exceeds \$25,000, unless such loan is approved in advance by a majority of the bank's entire board of directors, with the interested party abstaining

from the vote. Section 422 of the Garn Act eliminated the specific dollar limitation in section 22(h)(2) and now provides that the member bank's appropriate federal regulatory agency shall prescribe the amount above which the prior approval of the bank's board of directors is required.

The proposed rule provides that a member bank must obtain the prior approval of its board of directors for a loan to an executive officer, director or principal shareholder or to any related interest of such person if the amount of such loan, when aggregated with all other loans to such person or to any related interest of such person, exceed \$25,000 or 5 per cent of the member bank's capital, whichever is higher. All loans that exceed \$500,000 in the aggregate require prior approval of the bank's board of directors.

Section 22(h)(1) of the Federal Reserve Act provides that no member bank shall may any loan to any of its executive officers, principal shareholders or to any related interest of such persons in an amount that, when aggregated with all other loans made to such person or to any related interest of such person, exceed the limit in section 5200 of the Revised Statutes (12 U.S.C. 84) on loans to a single borrower by national banks. Section 401 of the Garn Act increased the limit in section 5200 of the Revised Statutes, effective April 15, 1983, and the proposed rule amends the definition of "lending limit" in Regulation O accordingly.

To aid the Board's consideration of this matter, interested persons are invited to submit relevant data, views or comments. Any such materials should be submitted in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received by June 20, 1983, and should include the docket number R-0469. Such material will be made available for inspection and copying upon request, except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information (12 CFR 261.6(a)).

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354; 5 U.S.C. 601 *et seq.*), the Board of Governors of the Federal Reserve System certifies that the amendments will not have a significant economic impact on a substantial number of small entities that would be subject to the regulation. The amendments will liberalize existing regulations and will not have any particular effect on small entities that would be subject thereto.

#### List of Subjects in 12 CFR Part 215

Banks, banking, Credit, Reporting requirement, Federal Reserve System.

#### PART 215—[AMENDED]

Accordingly, pursuant to its authority under sections 22(g) and 22(h) of the Federal Reserve Act (12 U.S.C. 375a and 375b), the Board of Governors proposes to amend Regulation O (12 CFR Part 215) as follows:

1. Paragraph (f) of § 215.2 is amended by revising the second sentence of the definition to read as follows:

#### § 215.2 Definitions [Amended]

(f) Lending limit. \* \* \* This amount is 15 per cent of the bank's unimpaired capital and unimpaired surplus in the case of loans that are not fully secured by readily marketable collateral having a market value at least equal to the amount of the loan, and an additional 10 per cent of the bank's unimpaired capital and unimpaired surplus in the case of loans that are fully secured by readily marketable collateral having a market value, as determined by reliable and continuously available price quotations, at least equal to the amount of the loan. \* \* \*

2. By revising paragraph (b)(1) of § 215.4 to read as follows:

#### § 215.4 General prohibitions.

(b) Prior Approval. (1) No member bank may extend credit or grant a line of credit to any of its executive officers, directors, or principal shareholders or to any related interest of that person in an amount that, when aggregated with the amount of all other extensions of credit to that person and to all related interests of that person, exceeds \$25,000 or 5 per cent of the member bank's capital, whichever is higher, unless: (i) The extension of credit or line of credit has been approved in advance by a majority of the entire board of directors of that bank, and (ii) the interested party has abstained from participating directly or indirectly in the voting. In no event may a member bank extend credit to any of its executive officers, directors or principal shareholders or to any related interest of such a person in an amount that, when aggregated with all other extensions of credit to such person and all related interests of that person, exceeds \$500,000, except upon compliance with the requirements in paragraphs (b)(1) (i) and (ii) of this paragraph.

3. By revising paragraph (c)(3) of § 215.5 to read as follows:

**§ 215.5 Additional restrictions on loans to executive officers of member banks.**

(3) for any other purpose not specified in paragraphs 215.5(c) (1) and (2) of this section, if the aggregate amount of loans to that officer under this paragraph does not exceed at any one time 2.5 per cent of the bank's capital or \$25,000, whichever is greater, but in no event more than \$100,000.

Board of Governors of the Federal Reserve System, May 17, 1983.

William W. Wiles,  
Secretary of the Board.

[FR Doc. 83-13684 Filed 5-20-83; 8:45 am]

BILLING CODE 6210-01-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 80-NE-21]

#### Airworthiness Directives; Rolls-Royce, Ltd., RB211-22B Turbofan Engines

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes to amend an existing Airworthiness Directive (AD), applicable to Rolls-Royce RB211-22B turbofan engines, by requiring accelerated removal from service of additional serial numbers of high pressure compressor (HPC) rotor stage 1 and 2 disk assemblies. The amendment is needed to prevent continued operation of disk assemblies which may have reduced mechanical properties due to possible manufacturing deficiencies and which could result in uncontained engine failure.

**DATE:** Comments must be received on or before June 20, 1983.

**ADDRESSES:** Send comments on the proposal, in duplicate, to: Federal Aviation Administration, New England Region, Office of the Regional Counsel, Attn: Rules Docket No. 80-NE-21, 12 New England Executive Park, Burlington, Massachusetts 01803.

Comments delivered must be marked: Docket No. 80-NE-21.

Comments may be inspected at Room 311 weekdays, except Federal holidays, between 8:00 a.m. and 4:30 p.m.

The applicable Alert Service Bulletin may be obtained from Technical

Publications Department, Rolls-Royce, Ltd., Derby, England DE2 8BJ.

A copy of the Alert Service Bulletin is contained in the Rules Docket at the above FAA address and may be examined weekdays, except Federal holidays, between 8:00 a.m. and 4:30 p.m.

**FOR FURTHER INFORMATION CONTACT:** Robert J. Koenig, Engine and Propeller Standards Staff, ANE-110, Aircraft Certification Division, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone: (617) 273-7330.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Director before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed amendment, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 80-NE-21." The postcard will be date/time stamped and returned to the commenter.

This notice proposes to amend Amendment 39-3804 (45 FR 41397), AD 80-13-05, which currently requires progressive removal from service of certain HPC stage 1 and 2 disk assemblies manufactured prior to 1974 and used on Rolls-Royce RB211-22B engines. After issuing Amendment 39-3804, some HPC stage 1 and 2 disk assemblies manufactured since 1974 were identified as having been produced by manufacturing processes similar to the pre-1974 disks. Therefore, the FAA is considering amending Amendment 39-3804 by reducing the cyclic life limit of

these later-manufactured disk assemblies which are identified by serial number and part number in Appendix 2 of Rolls-Royce Alert Service Bulletin No. RB211-72-A5722, Revision 3, and installed in Rolls-Royce RB211-22B turbofan engines.

#### List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety, and Safety.

#### The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by amending Amendment 39-3804 (45 FR 41397), AD 80-13-05, to read as follows:

**Rolls-Royce, Ltd.:** Applies to Rolls-Royce RB211-RB22B turbofan engines.

Compliance required as indicated, unless already accomplished.

To preclude possible high pressure compressor (HPC) rotor stage 1 and 2 disk assembly failure, remove from service all HPC rotor stage 1 and 2 disk assemblies, listed by part number and serial number in Appendices 1 and 2 of Rolls-Royce Alert Service Bulletin No. RB211-72-A5722, Revision 3, dated April 17, 1981, in accordance with the following compliance schedule:

1. For disk assemblies listed in Appendix 1:
  - a. After July 31, 1980, no disk assemblies may exceed 7,000 flight cycles.
  - b. After December 31, 1980, no disk assemblies may exceed 6,000 flight cycles.
  - c. All remaining disk assemblies by April 30, 1981.
2. For disk assemblies listed in Appendix 2:
  - a. After the effective date of this amendment, no disk assemblies may exceed 9,000 flight cycles.

**Note.**—For the purpose of this AD, a flight cycle is considered to be an engine operating sequence from takeoff to landing.

Replace with an FAA-approved, serviceable HPC rotor stage 1 and 2 disk assembly.

The FAA has requested Federal Register approval to incorporate by reference the manufacturer's Alert Service Bulletin identified and described in this directive.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); sec. 11.85, Federal Aviation Regulations (14 CFR 11.85))

**Note.**—The FAA has estimated, in a Draft Regulatory Evaluation, that the total cost impact of the proposed amendment to the AD will not exceed \$210,000. It is also determined that few, if any, small entities within the meaning of the Regulatory Flexibility Act will be affected since the proposed rule affects only domestic air carriers operating Lockheed L-1011 aircraft in which the RB211 engines are installed, none of which are believed to

be small entities. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The Draft Regulatory Evaluation prepared for this document is contained in the public docket, and a copy may be obtained by writing to Federal Aviation Administration, New England Region, Office of the Regional Counsel, Attn: Rules Docket No. 80-NE-21, 12 New England Executive Park, Burlington, Massachusetts 01803.

Issued in Burlington, Massachusetts, on May 9, 1983.

Robert E. Whittington,  
Director, New England Region.

(FR Doc. 83-12125 Filed 5-20-83; 8:45 am)

BILLING CODE 4910-13-M

#### 14 CFR Part 71

[Airspace Docket No. 83-ANE-16]

#### Designation of Federal Airways, Area Low Routes, Controlled Airspace and Reporting Points; Amend the Description of the Montpelier, Vermont, Control Zone and Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice (NPRM) proposes to amend the description of the Montpelier, Vermont Control Zone and 700-foot Transition Area. This revision is necessary due to the proposed relocation of the Montpelier VOR and the establishment of the VOR RWY 35 Original and NDB RWY 35 Original Standard Instrument Approach Procedures (SIAP) to Edward F. Knapp State Airport, Montpelier, Vermont.

DATE: Comments must be received on or before June 30, 1983.

ADDRESSES: Send comments to the Federal Aviation Administration, Office of the Regional Counsel, ANE-7, Attention: Rules Docket Clerk, Docket No. 83-ANE-16.

A public docket will be available for examination by interested persons in the Office of the Regional Counsel, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts.

FOR FURTHER INFORMATION CONTACT: David Hurley, Operations, Procedures and Airspace Branch, ANE-530, Federal Aviation Administration, Air Traffic Division, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273-7285.

#### Comments Invited

Interested persons may participate in the proposed rulemaking process by submitting such written data, views, or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the New England Region, Attention: Docket Clerk, ANE-7, Office of the Regional Counsel, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803. All communications received on or before June 30, 1983, will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

#### Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, S.W., Washington, D.C. 20591, or by calling (202) 426-8085. Communications must identify the number of this NPRM.

Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2 which describes the application procedures.

#### List of Subjects in 14 CFR Part 71

Aviation safety, Transition area, Control zone.

#### The Proposal

The FAA is considering an amendment to Subpart F and Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the description of the Montpelier, Vermont Control Zone and Transition Area. This revision is necessary due to the proposed relocation of the Montpelier VOR and the establishment of the VOR RWY 35 Original and NDB RWY 35 Original Standard Instrument Approach Procedures (SIAP) to Edward F. Knapp State Airport, Montpelier, Vermont.

#### The Proposed Amendment

##### PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.171 and Section 71.181 of Part 71 of

the Federal Aviation Regulations (14 CFR Part 71) as follows:

1. Amend § 71.171 of Part 71 of the Federal Aviation Regulations by amending the description of the Montpelier, Vermont Control Zone to read as follows:

##### Montpelier, Vermont Control Zone

Within a 6-mile radius of the center, lat. 44°12'15" N., long. 72°33'45" W., of Edward F. Knapp (Barre-Montpelier) State Airport, Barre-Montpelier, VT; within 1.5 miles each side of the Montpelier VOR, lat. 44°05'08" N., long. 72°26'59" W., 324° radial extending from the 6-mile radius zone to 1.5 miles northwest of the VOR; within 3.5 miles each side of the 158° bearing from Williams NDB, lat. 44°07'14" N., long. 72°31'08" W., extending from the 6-mile radius zone to 14 miles southeast of the NDB; within 2 miles each side of the center line of Runway 23 extending from the 6-mile radius zone to 8 miles southwest of the end of runway 23; excluding the airspace within a 1-mile radius of Washington (Carriers) Airport, lat. 44°07'00" N., long. 72°27'00" W.,

2. Amend § 71.181 of Part 71 of the Federal Aviation Regulations by amending the description of the Montpelier, Vermont Transition Area to read as follows:

##### Montpelier, Vermont 700-foot Transition Area

That airspace extending upward from 700 above the surface within a 10-mile radius of the center, lat. 44°12'15" N., long. 72°33'45" W., of Edward F. Knapp (Barre-Montpelier) State Airport, Barre-Montpelier, VT; within 5 miles each side of the Montpelier VOR, lat. 44°05'08" N., long. 72°26'59" W., 144° radial extending from the 10-mile radius area to 11.5 miles southeast of the VOR; within 4 miles each side of the 158° bearing from Williams NDB, lat. 55°07'14" N., long. 72°31'08" W., extending from the 10-mile radius area to 11 miles southeast of the NDB; within 4.5 miles each side of the Mount Mansfield NDB, lat. 44°23'11.8" N., long. 72°41'38.3" W., 331° and 151° bearings from the NDB extending from the 10-mile radius area to 10.5 miles northwest of the NDB, excluding that portion within the Morrisville, VT, transition area. (Secs. 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348(a) and Section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c) and 14 CFR 11.69))

Note.—The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, it is certified that this (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; (4) is appropriate to have a comment period of less than 45 days; and (5) if promulgated will not have a significant

economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Burlington, Massachusetts, on May 10, 1983.

Robert E. Whittington,  
Director, New England Region.

[FR Doc. 83-13622 Filed 5-20-83; 8:45 am]

BILLING CODE 4910-43-M

#### 14 CFR Part 71

[Airspace Docket No. 83-AWA-12]

#### Proposed Alteration of VOR Federal Airways; Albuquerque, NM, Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to redesignate segments of VOR Federal Airways V-19, V-68, V-83, V-187, and V-291, revoke segments of V-19, V-68, and V-83, and establish a new V-389 to enhance the traffic flow within the Albuquerque Air Route Traffic Control Center area.

**DATES:** Comments must be received on or before July 7, 1983.

**ADDRESSES:** Send comments on the proposal in triplicate to: Director, FAA, Southwest Region, Attention: Manager, Air Traffic Division, Docket No. 83-AWA-12, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 918, 800 Independence Avenue, SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

**FOR FURTHER INFORMATION CONTACT:** Boyd Archer, Airspace Regulations and Obstructions Branch (AAT-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8783.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in

developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 83-AWA-12." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

##### Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

##### The Proposal

The FAA is considering an amendment to § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to renumber V-19E between Cimarron, NM, and Pueblo, CO; renumber V-68S between Roswell, NM, and Hobbs, NM; renumber V-68N and V-83E between Roswell, NM, and Corona, NM; renumber V-60S between Otto, NM, and Albuquerque, NM; renumber V-68N between Corona, NM, and Albuquerque, NM; renumber V-19E between Albuquerque, NM, and Socorro, NM; renumber V-19W between Albuquerque, NM, and Santa Fe, NM; renumber V-187E between Albuquerque, NM, and Farmington, NM; renumber V-291N between Albuquerque, NM, and Gallup, NM; revoke V-83E between Otto, NM, and

Santa Fe, NM; revoke V-68S between Corona, NM, and Albuquerque, NM; and to revoke V-19W between Albuquerque, NM, and Socorro, NM, to enhance the traffic flow within the Albuquerque Air Route Traffic Control Center area. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Advisory Circular AC 70-3A dated January 3, 1983.

##### List of Subjects in 14 CFR Part 71 Airways.

#### PART 71—(AMENDED)

##### Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

##### 1. V-19 [Amended]

By deleting the words ", including a W alternate via INT Socorro 343° and Albuquerque 199° radials, and also an E alternate via INT Socorro 015° and Albuquerque 160° radials" after the words "Socorro; Albuquerque, NM" and by deleting the words ", including a west alternate via INT Albuquerque 019° and Santa Fe 268° radials" after the words "245° radials; Santa Fe" and deleting the words ", including an E alternate via INT Cimarron 053° and Pueblo 176° radials" after the words "Pueblo, CO"

##### 2. V-68 [Amended]

By deleting the words ", including an N alternate via INT Albuquerque 103° and Corona 328° radials and also an S alternate via INT Albuquerque 160° and Corona 278° radials; 41 miles 85 MSL, Roswell, NM, including an N alternate 85 MSL INT Corona 124° and Roswell 335° radials, Roswell; Hobbs, NM, including an S alternate;" after the words "Corona, NM, 311° radials; Corona" and inserting the words "; 41 miles 85 MSL, Roswell, NM; Hobbs, NM, via" between the words "Corona, NM, 311° radials; Corona" and the words "INT Hobbs 120° and" and by inserting the words "Farmington, NM, via INT Farmington 128° and Albuquerque 345° radials;" after the word "From"

##### 3. V-60 [Revised]

By substituting the words "From Gallup, NM, via INT Gallup 089° and Albuquerque 303° radials; Albuquerque, NM, via INT Albuquerque 103° and Otto 253° radials, Otto; to Las Vegas, NM."

##### 4. V-83 [Amended]

By deleting the words ", including an E alternate INT Roswell 335° and Corona 124° radials, 85 MSL Corona; Otto, NM" and by deleting the words ", including an east alternate via INT Otto 019° and Santa Fe 117° radials" after the words "Otto, NM, Santa Fe, NM"

##### 5. V-187 [Amended]

By inserting the words, "Socorro, NM, via INT Socorro 015° and Albuquerque 160°

radials" after the word "From" and by deleting the words "including an E alternate via INT Albuquerque 345° and Farmington 128° radials;"

**6. V-291 [Amended]**

By inserting the words "Hobbs, NM, via INT Hobbs 287° and Roswell 136° radials, Roswell, NM, via INT Roswell 335° and Corona 124° radials, Corona, NM, via INT Corona 328° and Albuquerque 103° radials," after the word "From" and by deleting the words ", including a north alternate via INT Albuquerque 303° and Gallup 089° radials".

**7. V-263 [Amended]**

By inserting the words "Albuquerque, NM, via INT Albuquerque 019° and Santa Fe 268° radials; Santa Fe, NM; Las Vegas, NM;" after the word "From".

**8. V-389 [New]**

By adding the words "From Cimarron, NM, via INT Cimarron 053° and Pueblo 176° radials; Pueblo, CO.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.65)

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

Issued in Washington, D.C., on May 13, 1983.

B. Keith Potts,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 83-13789 Filed 5-20-83; 8:48 am]

BILLING CODE 4910-13-M

**14 CFR Part 71**

(Airspace Docket No. 83-AGL-5)

**Proposed Alteration of VOR Federal Airway V-128, Rockford, IL**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to establish a new segment of VOR Federal Airway V-128. This new airway will be a major facet of a forthcoming restructuring of the Chicago O'Hare, IL, metropolitan traffic flow.

**DATE:** Comments must be received on or before July 7, 1983.

**ADDRESSES:** Send comments on the proposal in triplicate to: Director, FAA, Great Lakes Region, Attention: Manager, Air Traffic Division, Docket No. 83-AGL-5, Federal Aviation Administration, 2300 East Devon, Des Plaines, IL 60018.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

**FOR FURTHER INFORMATION CONTACT:**

Boyd Archer, Airspace Regulations and Obstructions Branch (AAT-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8783.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 83-AGL-5." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRM's**

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue SW., Washington D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a new segment of VOR Federal Airway V-128 between Rockford, IL, VORTAC and Peotone, IL, VORTAC. This new airway will be a major facet of a forthcoming restructuring of the Chicago O'Hare, IL, metropolitan traffic flow. The airway will provide a low altitude bypass route around the O'Hare Terminal Control Area. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in advisory Circular AC 70-3A dated January 3, 1983.

**List of Subjects in 14 CFR Part 71**

Airways.

**Proposed Amendment**

**PART 71—[AMENDED]**

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows

**1. V-128 [Amended]**

By adding the words "Rockford, IL, via INT Rockford 154° and Peotone 281° radials;" after the word "From"

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.65)

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

certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Washington, D.C., on May 17, 1983.

**B. Keith Potts,**

*Manager, Airspace-Rules and Aeronautical Information Division.*

[FR Doc. 83-13787 Filed 5-20-83; 8:45 am]

BILLING CODE 4910-13-M

#### 14 CFR Part 71

[Airspace Docket No. 83-AWA-14]

#### Proposed Alteration of VOR Federal Airway V-436; Oklahoma City, OK

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to realign VOR Federal Airway V-436 between Oklahoma City and Tulsa, OK, so the airway will be in the Kansas City Air Route Traffic Control Center's airspace.

**DATE:** Comments must be received on or before July 7, 1983.

**ADDRESSES:** Send comments on the proposal in triplicate to: Director, FAA, Southwest Region, Attention: Manager, Air Traffic Division, Docket No. 83-AWA-14, Federal Aviation Administration, P.O. Box 16889, Fort Worth, TX 76101.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

**FOR FURTHER INFORMATION CONTACT:** Boyd Archer, Airspace Regulations and Obstructions Branch (AAT-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8783.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory

decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 83-AWA-14." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

##### Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

##### The Proposal

The FAA is considering an amendment to § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to realign VOR Federal Airway V-436 to the north, so the airway will be in Kansas City Air Route Traffic Control Center's airspace thereby reducing coordination. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Advisory Circular AC 70-3A dated January 3, 1983.

##### List of Subjects in 14 CFR Part 71

Airways.

##### Proposed Amendment

##### PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend

§ 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

##### V-436 [Amended]

By deleting the words "INT Oklahoma City 079" and Tulsa, OK, 228" radials" and substituting for them the words "INT Oklahoma City 074" and Tulsa, OK, 230" radials".

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.05)

**Note.**—The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 28, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Washington, D.C., on May 17, 1983.

**B. Keith Potts,**

*Manager, Airspace—Rules and Aeronautical Information Division.*

[FR Doc. 83-13790 Filed 5-20-83; 8:45 am]

BILLING CODE 4910-13-M

## FEDERAL TRADE COMMISSION

### 16 CFR Part 304

#### Rules and Regulations Under the Hobby Protection Act

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed amendment and notice of opportunity to comment.

**SUMMARY:** The Federal Trade Commission, pursuant to the Hobby Protection Act (15 U.S.C. 2101, *et seq.*) has initiated a proceeding proposing an amendment to section 304.8 of the Rules and Regulations Under the Hobby Protection Act (16 CFR Part 304). The rule presently requires that the word "COPY" be marked on all imitation numismatic items in dimensions no less than 2 millimeters high and 6 millimeters wide. The amendment would permit use of a smaller marking on the many coins that are now being issued as miniature imitations.

All interested persons are hereby given notice of the opportunity to submit



written data, views and arguments concerning this proposal.

**DATE:** Written comments will be accepted on or before July 22, 1983.

**ADDRESS:** Send comments to Secretary, Federal Trade Commission, 6th and Pennsylvania Avenue, NW., Washington, D.C. 20580. Submissions should be marked "Hobby Protection Act—Amendment".

**FOR FURTHER INFORMATION CONTACT:** Kendall MacVey, Attorney, Federal Trade Commission, 11000 Wilshire Blvd., Los Angeles, CA 90024. (213) 209-7575.

#### List of Subjects in 16 CFR Part 304

Hobbies, Labeling and trade practices.

**SUPPLEMENTARY INFORMATION:** The Hobby Protection Act requires that all imitation numismatic items sold in or imported into the United States shall be marked with the word "COPY" in a manner to be determined by the Federal Trade Commission. In 1975 the Commission promulgated rules requiring the word "COPY" to be marked on either the obverse or the reverse surface of the item. The words must have a vertical dimension of not less than two millimeters and a horizontal dimension of not less than six millimeters. The concept of requiring the word "COPY" to be a minimum size rather than to vary with the size of the coin or words on a coin was selected to minimize compliance burdens and enforcement problems.

Since promulgation of the rules, miniature imitation numismatic items have become popular in the market. Marking some of these miniature imitations has posed a hardship since many are as small or smaller than the minimum size required for the word "COPY". When an item covered by the rules is of such a small size that it is impossible to conform with the minimum size requirement, the manufacturer must request the Commission to issue a variance.

The proposed amendment to the rule would permit manufacturers of miniature numismatic items to mark the word "COPY" in smaller diameter than those required under the present rule. For example, under the proposed amendment, a coin with a dimension of only six millimeters could have the word "COPY" in a horizontal dimension of no less than one-half the coin's diameter or three millimeters. The vertical dimension would be required to be no less than one-sixth of the diameter or one millimeter.

Because of the apparent increasing popularity of miniature imitation numismatic items, the amendment is considered appropriate to eliminate the necessity for individual variance applications.

Accordingly, it is proposed that Chapter I of 16 CFR Part 304 be amended as follows:

Authority: 15 U.S.C. 2101 *et seq.*

1. In § 304.1, paragraph (k) is added as follows:

#### § 304.1 Terms defined.

(k) "Diameter" of a reproduction means the length of the longest possible straight line connecting two points on the perimeter of the reproduction.

2. In § 304.6, paragraphs (b)(3) and (b)(4) are revised to read as follows:

#### § 304.6 Marking requirements for imitation numismatic items.

(b) . . .

(3) An imitation numismatic item of incusable material shall be incused with the word "COPY" in sans-serif letters having a vertical dimension of not less than two millimeters (2.0 mm) or not less than one-sixth of the diameter of the reproduction, and a minimum depth of three-tenths of one millimeter (0.3 mm) or to one-half (½) the thickness of the reproduction, whichever is the lesser. The minimum total horizontal dimension of the word "COPY" shall be six millimeters (6.0 mm) or not less than one-half of the diameter of the reproduction.

(4) An imitation numismatic item composed of nonincusable material shall be imprinted with the word "COPY" in sans-serif letters having a vertical dimension of not less than two millimeters (2.0 mm) or not less than one-sixth of the diameter of the reproduction. The minimum total horizontal dimension of the word "COPY" shall be six millimeters (6.0 mm) or not less than one-half of the diameter of the reproduction.

By the direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 83-13724 Filed 5-20-83; 8:45 am]

BILLING CODE 6750-01-M

#### 16 CFR Part 423

#### Care Labeling Rule; Information Collection Requirement

**AGENCY:** Federal Trade Commission.

**ACTION:** Notice of application to OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) for clearance of information collection requirements contained in the Care Labeling Rule.

**SUMMARY:** The Commission is seeking OMB clearance for information collection requirements contained in the Trade Regulation Rule Concerning Care Labeling of Textile Wearing Apparel and Certain Piece Goods, as amended.

The Care Labeling Rule, which became effective July 3, 1972, require manufacturers and importers of textile wearing apparel to attach a permanent label bearing care instructions that fully inform the consumer how to effect regular care maintenance. Manufacturers and importers of piece goods used to make wearing apparel must put care instructions on the end of the bolt. This rule is being amended as published in the *Federal Register* on May 20, 1983. The amendments more specifically define the required elements of a care instruction, provide standardized language that can be used in the instructions and make clear that any care instruction should be supported by a reasonable basis of accuracy.

**DATES:** Comments on this application must be submitted on or before June 22, 1983.

**ADDRESS:** Send comments to Ms. Nell Minnow, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3001, Washington, D.C. 20503. Copies of the applications may be obtained from Public Reference Branch, Room 130, Federal Trade Commission, Washington, D.C. 20580.

**FOR FURTHER INFORMATION CONTACT:** Carl D. Hevener, OMB Liaison Officer, Federal Trade Commission, Washington, D.C. 20580. (202) 523-3373.

#### List of Subjects in 16 CFR Part 423

Clothing, Labeling, Textiles, Trade practices.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 83-13697 Filed 5-20-83; 8:45 am]

BILLING CODE 6750-01-M

## DEPARTMENT OF TRANSPORTATION

Federal Highway Administration  
23 CFR Part 650

(FHWA Docket No. 83-6)

Bridges, Structures, and Hydraulics;  
Discretionary Bridge CriteriaAGENCY: Federal Highway  
Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking.

**SUMMARY:** The FHWA is requesting comments on a proposed rating factor for use in selecting bridges to be funded under the Discretionary Bridge Program. The proposed rating factor was developed in accordance with the criteria specified by section 161 of the Surface Transportation Assistance Act of 1982 (STAA of 1982). The rating factor will allow a more formalized process for selecting discretionary bridge projects.

**DATE:** Comments must be received on or before July 7, 1983.

**ADDRESS:** Submit written comments, preferably in triplicate, to FHWA Docket No. 83-6, Federal Highway Administration, Room 4205, HCC-10, 400 Seventh Street, SW., Washington, D. C. 20590. All comments received will be available for examination at the above address between 7:45 a.m. and 4:15 p.m. Monday through Friday. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

**FOR FURTHER INFORMATION CONTACT:** Mr. John J. Ahlsgog, Chief, Design and Inspection Branch, Bridge Division, Office of Engineering and Operation, (202) 472-7697, or Ms. Ruth R. Johnson, Office of the Chief Counsel, (202) 426-0781, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** On January 6, 1983, the President signed into law the STAA of 1982 (Pub. L. 97-424, 96 Stat. 2097). Section 161 requires the Secretary of Transportation to develop a selection process for discretionary bridges authorized to be funded under Section 144(g) of Title 23, United States Code, Discretionary Bridge Program. The selection process is to include a formula resulting in a rating factor based on the following criteria:

1. Sufficiency Rating—Computed as illustrated in Appendix A of the Recording and Coding Guide for the Structure Inventory and appraisal of the

Nation's Bridges, USDOT/FHWA (latest edition);<sup>1</sup>

2. Average Daily Traffic—Using the most current value form the national bridge inventory data;

3. Average Daily Truck Traffic;

4. Defense Highway System Status;

5. The State's unobligated balance of funds received under Section 144 of Title 23, United States Code, and the total funds received under Section 144 of Title 23, United States Code;

6. Total Project Cost; and

7. Special consideration should be given to bridges closed to all traffic or restricted to loads less than ten tons. Other unique considerations and the need to administer the program from a balanced national perspective should also be considered.

The discretionary bridge funds are being used to finance the replacement or rehabilitation of deficient high-cost Federal-aid system bridges. House Report 95-1485<sup>2</sup> to accompany the 1978 STAA states that it is the intent of Congress that only Federal-aid system bridges be funded with discretionary bridge funds. Funding priority will be given to continuation of those discretionary bridges already begun under the Discretionary Bridge Program. Section 161 specifies that after the issuance of a final regulation, new bridge projects eligible for the Discretionary Bridge Program will only include those with a rating factor of 100 or less, based on a scale of zero to infinity.

Any selection process must provide sufficient latitude to enable the FHWA to evaluate and select bridge projects considering nationwide needs and a balance in the national bridge program. For example, it would be unreasonable to allocate all or the major portion of the available discretionary bridge funds to only one or two States in any given year.

The rating factor will be used as part of a selection process for allocating discretionary bridge funds made available to the Secretary of Transportation under 23 U.S.C. 144(g). These funds may be used to finance deficient highway bridges on the Federal-aid highway system with replacement or rehabilitation costs exceeding \$10 million or with an estimated cost that is less than \$10 million but is twice the amount apportioned to that State for the year in which funds are requested.

<sup>1</sup> Available from the FHWA at the address above.

<sup>2</sup> H.R. Rep. No. 1485, 95th Cong., 2d Sess., page 19 (1978)

Applications for the discretionary bridge funds are requested each year through FHWA field offices. These applications are used to establish master funding plans for planning purposes. The States have submitted 215 bridges as candidates for the discretionary bridge program as of December 31, 1982. Sixty-three of these bridge projects have been selected for funding.

The following rating factor formula is proposed to be used in the selection process for ranking discretionary bridge candidates:

$$\text{Rating Factor (RF)} = \frac{\text{SR}}{\text{ADT}'} \times \frac{10}{D} \times \frac{\text{TPC}}{\text{ADT}'}$$

$$\times \left[ 1 + \frac{\text{Unobligated HBRRP Balance}}{\text{Total HBRRP Funds Received}} \right]$$

The lower the rating factor, the higher the priority for selection and funding. (For definition of terms, see proposed regulation below.)

**Discussion of Rating Factor Components**—The Rating Factor formula can be thought of as a compilation of four components:

**Essentiality Component**— $\text{SR}/\text{ADT}'$ —The sufficiency rating and the average daily traffic are principal factors in the selection process. The higher the  $\text{ADT}'$  and the lower the sufficiency rating, the more critical the bridge.

**Defense Component**— $10/D$ —Because it is vitally important to the nation to maintain the defense highway system, the proposed formula applies a 50 percent reduction in the rating factor for bridges that are on defense highways. The defense highway system consists of all routes that might reasonably be used for important defense shipments, movements of troops or military hardware and/or supplies, or for the evacuation of the general public from disaster areas. All routes identified by the States for these purposes are incorporated into and collectively form the Nation's Defense Highway Network.

**Cost-Effectiveness Component**— $\text{TPC}/\text{ADT}'$ —A good measure of project cost-effectiveness is the cost of the project for each vehicle using it each day.

## HBRRP Fund Use Component -

$$\left[ 1 + \frac{\text{Unobligated HBRRP Balance}}{\text{Total HBRRP Funds Received}} \right]$$

Unobligated balance of HBRRP funds are to be determined at the time the State's application is received.

States with a large unobligated balance of HBRRP funds are not making use of available funds. The rating factor will be increased for those States. However, to limit the effect of an obligated balance on States who receive the minimum amount of apportioned funds or who may be accumulating their funds to finance a high cost bridge project, only States that have an unobligated balance of \$10 million or greater will be affected.

Both the Essentiality and Cost-Effectiveness Components include a truck magnifier factor to emphasize the importance of major bridges to the transport of commodities, raw materials, manufactured goods and the special problems imposed upon trucks when heavy loads are restricted from using bridges.

Since States would be under no obligation to submit bridge projects for discretionary bridge funds and because the rating factor criteria merely formalizes existing selection procedures for the continuation of an ongoing program, it is not anticipated that this proposal will have a significant economic effect. Accordingly, a full regulatory evaluation is not required. For the foregoing reasons and under the criteria of the Regulatory Flexibility Act, it is certified that this proposal will not have a significant economic impact on a substantial number of small entities.

Comments are requested on the proposed rule from all interested parties. The comments should specifically address the effects of the proposed rating factor formula on the effectiveness of the Discretionary Bridge Program.

The FHWA has determined that this document contains neither a major rule under Executive Order 12291 nor a significant proposal under the regulatory policies and procedures of the Department of Transportation.

In consideration of the foregoing, and under the authority of section 161 of the 1982 Surface Transportation Assistance Act, 23 U.S.C. 144 and 49 CFR 1.48(b), the FHWA proposes to amend Part 650 of Title 23, Code of Federal Regulations,

by adding thereto a new Subpart G, as set forth below.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 and former OMB Circular A-95 regarding intergovernmental consultation on Federal programs and activities apply to this program)

**List of Subjects in 23 CFR Part 650**

Bridges, Grant programs—  
transportation, Highways and roads.

Issued on: May 16, 1983.

R. A. Barnhart,

*Federal Highway Administrator, Federal Highway Administration.*

Accordingly, Part 650 of title 23 of the Codes of Federal Regulations is proposed to be amended by adding Subpart G as set forth below:

**PART 650—BRIDGES, STRUCTURES, AND HYDRAULICS****Subpart G—Discretionary Bridge Candidate Rating Factor**

Sec.

650.701 Purpose.

650.703 Eligible projects.

650.703 Application for discretionary bridge funds.

650.707 Rating factor.

650.709 Special considerations.

Authority: 161, Pub. L. 97-424, 98 Stat. 2097; 23 U.S.C. 144, 315; 49 CFR 1.48(b).

**Subpart G—Discretionary Bridge Candidate Rating Factor****§ 650.701 Purpose.**

The purpose of this regulation is to describe a rating factor used as part of a selection process of allocation of discretionary bridge funds made available to the Secretary of Transportation under 23 U.S.C. 144.

**§ 650.703 Eligible projects.**

(a) Deficient highway bridges on Federal-aid highway system roads may be eligible for allocation of discretionary bridge funds to the same extent as they are for bridge funds apportioned under 23 U.S.C. 144, provided that the total project cost for a discretionary bridge candidate is at least \$10 million or twice the amount of 23 U.S.C. 144 funds apportioned to the State during the fiscal year for which funding for the candidate bridge is requested.

(b) After the effective date of this regulation for the discretionary bridge

candidate rating factor, only candidate bridges not previously selected with a computed rating factor of 100 or less will be eligible for consideration.

**§ 650.705 Application for discretionary bridge funds.**

The FHWA will each year through its field offices issue an annual call for discretionary bridge candidate submittals including updates of previously submitted but not selected projects. Each State is responsible for submitting such data as required for candidate bridges. Data requested will include structure number, funds needed by fiscal year, total project cost, current average daily truck traffic and a narrative describing the existing bridge, the proposed new or rehabilitated bridge and other relevant factors which the State believes may warrant special consideration.

**§ 650.707 Rating factor.**

(a) The following formula is to be used in the selection process for ranking discretionary bridge candidates:

$$\text{Rating Factor (RF)} = \frac{\text{SR}}{\text{ADT}} \times \frac{10}{D} \times \frac{\text{TPC}}{\text{ADT}}$$

$$\times \left[ 1 + \frac{\text{Unobligated HBRRP Balance}}{\text{Total HBRRP Funds Received}} \right]$$

The lower the rating factor, the higher the priority for selection and funding.

(b) The terms in the rating factor are defined as follows: SR is Sufficiency Rating computed as illustrated in Appendix A of the Recording and Coding Guide for the Structure Inventory and Appraisal of the Nation's Bridges, USDOT/FHWA (latest edition); (If SR is less than 1.0, use SR=1.0);

ADT is Average Daily Traffic in thousands taking the most current value from the national bridge inventory data;

ADTT is Average Daily Truck Traffic in thousands (Pick up trucks and light delivery trucks not included);

D is Defense Highway System Status

D=1 if not on defense highway

D=2 if bridge carries a designated defense highway

The last term of the rating factor expression includes the State's unobligated balance of funds received under 23 U.S.C. 144 at the time the State's application is received by FHWA, and the total funds received under 23 U.S.C. 144 for the last four fiscal years ending with the most recent fiscal year of the FHWA's annual call for discretionary bridge candidate submittals; (if unobligated HBRRP balance is less than \$10 million, use zero balance);

TPC is Total Project Cost in millions of dollars;

HBRRP is Highway Bridge Replacement and Rehabilitation Program;

ADT is ADT plus ADTT.

(c) In order to balance the relative importance of candidate bridges with very low (less than one) sufficiency ratings and very low ADT's against candidate bridges with high ADT's, the minimum sufficiency rating used will be 1.0. If the computed sufficiency rating for a candidate bridge is less than 1.0, use 1.0 in the rating factor formula.

(d) If the unobligated balance of HBRRP funds for the State is less than \$10 million, the HBRRP modifier is 1.0. This will limit the effect of the modifier on those States with small apportionments or those who may be accumulating funds to finance a major bridge.

#### § 650.709 Special considerations.

(a) The selection process for new discretionary bridge projects will be based upon the rating factor priority ranking. However, although not specifically included in the rating factor formula, special consideration will be given to bridges that are closed to all traffic or that have a load restriction of less than 10 tons. Consideration will also be given to bridges with other unique situations, and to bridge candidates in States which have not previously been allocated discretionary bridge funds.

(b) The need to administer the program from a balanced national perspective requires that the special cases set forth in paragraph (a) of this section and other unique situations be considered in the discretionary bridge candidate evaluation process.

(c) Priority consideration will be given to the continuation and completion of bridge projects previously begun with discretionary bridge funds.

[FR Doc. 83-13605 Filed 5-20-83; 8:45 am]

BILLING CODE 4910-22-M

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Parts 1, 20, and 25

[LR-200-76]

#### Qualified Conservation Contribution; Proposed Rulemaking

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed regulations relating to contributions of partial interests in property for conservation purposes. Changes to the applicable tax law were made by section 6 of the Tax Treatment Extension Act of 1980. This document is intended to clarify the statutory rules in effect under that Act.

**DATE:** Written comments and requests for a public hearing must be delivered or mailed by July 22, 1983. The amendments are proposed to be applicable for contributions made on or after December 18, 1980, and are proposed to be effective the date final regulations are published in the *Federal Register*.

**ADDRESS:** Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, Attention: CC:LR:T (LR-200-76).

**FOR FURTHER INFORMATION CONTACT:** John R. Harman of the Legislation & Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, Attention: CC:LR:T, 202-566-3287, not a toll-free call.

#### SUPPLEMENTARY INFORMATION:

##### Background

This document contains amendments proposed to conform the Income Tax Regulations (26 CFR Part 1) under section 170 of the Internal Revenue Code of 1954 (Code) relating to contributions not in trust of partial interests in property to section 6 of the Tax Treatment Extension Act of 1980.

The Tax Reform Act of 1969 and the regulations promulgated thereunder limited the deductibility of the donation of easements generally to charitable contributions of perpetual open space easements in gross. (section 170(f)(3)(B)(ii) of the Code and § 1.170A-7(b)(1)(ii) of the Income Tax Regulations). Although subsequent revenue rulings held that a variety of easements were deductible under the limitation of the 1969 Act (See, e.g., Rev. Rul. 75-358, 1975-2 C.B. 76), Congress in 1976 added further legislative authority

for the deductibility of easement donations.

Section 2124(e) of the Tax Reform Act of 1976 (Pub. L. 94-455, 90 Stat. 1919) provided, for the first time, specific statutory authority under section 170 of the Code for the deductibility of the donation to a qualified organization of easements, remainder interests, and certain other partial interests in property. The 1976 Act allowed the deduction for partial interests donated for a term of 30 years or more, but required that the donation be made "for conservation purposes." Conservation purposes was defined in section 170(f)(3)(C).

Section 309 of the Tax Reduction and Simplification Act of 1977 (Pub. L. 95-30, 91 Stat. 154) made two changes in the statutory language codified by the 1976 Act. The first change eliminated the deductibility of term easements for conservation purposes and required that such easements be perpetual in order to qualify for a deduction under section 170. The second change set the expiration date of these provisions at June 14, 1981.

Section 6 of the Tax Treatment Extension Act of 1980 made extensive changes in the existing statute, eliminated the expiration date, and incorporated the relevant language into a new section 170(h). The House and Senate Committee reports accompanying the legislation also provided, for the first time, an in-depth statement of congressional intent concerning the donation of partial interests for conservation purposes (H.R. Rep. No. 96-1278, S. Rep. No. 96-1007). The regulations reflect the major policy decisions made by the Congress and expressed in these committee reports.

#### Additional Information

Generally, the donation of an easement to preserve open space is deductible under section 170(h)(4)(A)(iii) if such preservation will yield a significant public benefit and is either for the scenic enjoyment of the general public or its pursuant to a clearly delineated governmental policy. The most difficult problem posed in this regulation was how to provide a workable framework for donors, donees, and the Internal Revenue Service to judge the deductibility of open space easements.

Defining "Significant public benefit" with any degree of precision is impossible. Any attempt to reduce the test to a mathematical formula would be arbitrary. The factors included at § 1.170A-13(d)(4)(iv) are not intended to be exclusive; however, a longer list of

factors would always fall short of being all-inclusive. The same statements can be made concerning the list of factors proposed under § 1.170A-13(d)(4)(ii) with respect to "scenic enjoyment."

It is believed, however, that the "sliding scale" approach proposed in § 1.170A-13(d)(4)(vi) that establishes a relationship between the requirements of "significant public benefit" and "clearly delineated governmental policy" will eliminate much of the uncertainty that surrounds this part of the statute. Additionally, by including prior state and local governmental determinations of specific resources to be protected as a criteria for meeting the "significant public benefit" and "scenic enjoyment" tests, a degree of certainty will be available to taxpayers in jurisdictions that have carefully articulated preservation policies. In the end, of course, some exercise of judgment and of responsibility is ultimately required by both donors and donees.

#### Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably seven copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the *Federal Register*.

#### Executive Order 12291 and Regulatory Flexibility Act

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required. The Internal Revenue Service has concluded that although this document is a notice of proposed rulemaking that solicits public comments, the regulations proposed herein are interpretative and the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, no Regulatory Flexibility Analysis is required for this rule.

#### Drafting Information

The principal authors of this regulation are John R. Harman and Stephen J. Small of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service

and Treasury Department participated in developing the regulation, both on matters of substance and style.

#### List of Subjects

26 CFR 1.61-1-1.281-4

Income taxes, Taxable income, Deductions, Exemptions.

26 CFR Part 20

Estate taxes.

26 CFR Part 25

Gift taxes.

#### Proposed Amendments to the Regulations

The proposed amendments to 26 CFR Parts 1, 20, and 25 are as follows:

#### PART 1—[AMENDED]

##### § 1.167(a)-5 [Amended]

Paragraph 1. Section 1.167(a)-5 is amended by adding at the end thereof the following new sentence: "For the adjustment to the basis of a structure in the case of a donation of a qualified conservation contribution under section 170(h), see § 1.170A-13(h)(3)(iii)."

Par. 2. Paragraph (a)(2)(ii) of § 1.170A-1 is amended by adding at the end thereof the following new paragraph:

##### § 1.170A-1 Charitable, etc., contributions and gifts; allowance of deduction.

(a) In general. \* \* \*

(2) Information required in support of deductions. \* \* \*

(ii) Contribution by individual of property other than money. \* \* \*

(f) In the case of a "qualified conservation contribution" under section 170(h), see § 1.170A-13(i).

Par. 3. Section 1.170A-7 is amended as follows:

a. The first sentence of paragraph (b)(1)(iii) is revised to begin with the phrase "With respect to contributions made on or before December 17, 1980,".

b. Paragraph (b)(1)(ii) is revised by adding at the end the following new sentence: "For the deductibility of a qualified conservation contribution, see § 1.170A-13.".

c. Paragraph (b)(3) is revised by adding at the end the following new sentence: "For the deductibility of the donation of a remainder interest in real property exclusively for conservation purposes, see § 1.170A-13.".

d. Paragraph (b)(4) is revised by adding at the end the following new sentence: "For the deductibility of the donation of a remainder interest in real property exclusively for conservation purposes, see § 1.170A-13.".

e. A new paragraph (b)(5) is added immediately after paragraph (b)(4), as set forth below.

f. The first sentence of paragraph (c) is revised to begin with the phrase "Except as provided in § 1.170A-13,".

g. Paragraph (e) is revised as set forth below.

##### § 1.170A-7 Contributions not in trust of partial interests in property.

(b) Contributions of certain partial interests in property for which a deduction is allowed. \* \* \*

(5) Qualified conservation contribution. A deduction is allowed under section 170 for the value of a qualified conservation contribution. For the definition of a qualified conservation contribution, see § 1.170A-13.

(e) Effective date. This section applies only to contributions made after July 31, 1969. The deduction allowable under § 1.170A-7(b)(1)(ii) shall be available only for contributions made on or before December 17, 1980. The deduction allowable under § 1.170A-7(b)(5) shall be available for contributions made on or after December 18, 1980.

Par. 4. A new § 1.170A-13 is added after § 1.170A-12 to read as set forth below.

##### § 1.170A-13 Qualified conservation contributions.

(a) Qualified conservation contributions. A deduction under section 170 is generally not allowed for a charitable contribution of any interest in property that consists of less than the donor's entire interest in the property other than certain transfers in trust (see § 1.170A-6 relating to charitable contributions in trust and § 1.170A-7 relating to contributions not in trust of partial interests in property). However, a deduction may be allowed under section 170(f)(3)(B)(iii) for the value of a qualified conservation contribution if the requirements of this section are met. A qualified conservation contribution is the contribution of a qualified real property interest to a qualified organization exclusively for conservation purposes. To be eligible for a deduction under this section, the conservation purpose must be protected in perpetuity.

(b) Qualified real property interest—  
(1) Entire interest of donor other than qualified mineral interest. The entire interest of the donor other than a qualified mineral interest is a qualified real property interest. A qualified mineral interest is the taxpayer's interest in subsurface oil, gas, or other

minerals and the right of access to such minerals. A property interest shall not be treated as a qualified real property interest by reason of section 170(h)(2)(A) or this paragraph (b)(1), if any time over the entire term of the taxpayer's interest in such property the taxpayer transferred any portion of that interest (except in the case of a donation of a perpetual conservation restriction under paragraph (b)(3) of this section) to any other person (except for minor interests, such as rights-of-way, that will not interfere with the conservation purposes of the donation).

(2) *Remainder interest in real property.* A remainder interest in real property is a qualified real property interest. A property interest shall not be treated as a qualified real property interest by reason of section 170(h)(2)(B) or this paragraph (b)(2), if at any time over the entire term of the taxpayer's interest in such property the taxpayer transferred any portion of that interest (except in the case of a donation under paragraph (b)(3) of this section) to any other person (except for minor interests, such as rights-of-way, that will not interfere with the conservation purposes of the donation).

(3) *Perpetual conservation restriction.* A perpetual conservation restriction is a qualified real property interest. A "perpetual conservation restriction" is a restriction granted in perpetuity on the use which may be made of real property—including, an easement or other interest in real property that under state law has attributes similar to an easement (e.g., a restrictive covenant or equitable servitude). For purposes of this section, the terms "easement", "conservation restriction", and "perpetual conservation restriction" have the same meaning. The definition of "perpetual conservation restriction" under this paragraph (b)(3) is not intended to preclude the deductibility of a donation of affirmative rights to use a land or water area under § 1.170A-13(d)(2). Any rights reserved by the donor in the donation of a perpetual conservation restriction must conform to the requirements of this section. See e.g., paragraphs (d)(4)(ii), (d)(5)(i), (e)(3), and (g)(4) of this section.

(c) *Qualified organization—(1) Eligible donee.* To be considered an eligible donee under this section, an organization must have the resources to enforce the restrictions and must be able to demonstrate a commitment to protect the conservation purposes of the donation. An established group organized exclusively for conservation purposes, for example, would meet this test. A qualified organization need not

set aside funds, however, to enforce the restrictions that are the subject of the contribution. For purposes of this section, the term "qualified organization" means:

(i) A governmental unit described in section 170(b)(1)(A)(v);

(ii) An organization described in section 170(b)(1)(A)(vi);

(iii) A charitable organization described in section 501(c)(3) that meets the public support test of section 509(a)(2);

(iv) A charitable organization described in section 501(c)(3) that meets the requirements of section 509(a)(3) and is controlled by an organization described in paragraphs (c)(1) (i), (ii), or (iii) of this section.

(2) *Transfers by donee.* A deduction shall be allowed for a contribution under this section only if in the instrument of conveyance the donor prohibits the donee from subsequently transferring the easement (or, in the case of a remainder interest or the reservation of a qualified mineral interest, the property), whether or not for consideration, unless the donee organization, as a condition of the subsequent transfer, requires that the conservation purposes which the contribution was originally intended to advance continue to be carried out. Moreover, subsequent transfers must be restricted to organizations qualifying, at the time of the subsequent transfer, as an eligible donee under paragraph (c)(1) of this section. When a later unexpected change in the conditions surrounding the property that is the subject of a donation under paragraph (b) (1), (2), or (3) of this section makes impossible or impractical the continued use of the property for conservation purposes, the requirement of this paragraph will be met if the property is sold or exchanged and any proceeds are used by the donee organization in a manner consistent with the conservation purposes of the original contribution. In the case of a donation under paragraph (b)(3) of this section to which the preceding sentence applies, see also paragraph (g)(5)(ii) of this section.

(d) *Conservation purposes—(1) In general.* For purposes of section 170(h) and this section, the term "conservation purposes" means—

(i) The preservation of land areas for outdoor recreation, or the education of the general public, within the meaning of paragraph (d)(2) of this section.

(ii) The protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem, within the

meaning of paragraph (d)(3) of this section.

(iii) The preservation of certain open space (including farmland and forest land) as described in paragraph (d)(4) of this section, or

(iv) The preservation of a historically important land area or a certified historic structure, within the meaning of paragraph (d)(5) of this section.

(2) *Recreation or education—(i) In general.* The donation of a qualified real property interest to preserve land areas for the outdoor recreation of the general public or for the education of the general public will meet the conservation purposes test of this section. Thus, conservation purposes would include, for example, the preservation of a water area for the use of the public for boating or fishing, or a nature or hiking trail for the use of the public.

(ii) *Public use.* The preservation of land areas for recreation or education will not meet the test of this section unless the recreation or education is for the substantial and regular use of the general public or the community.

(3) *Protection of environmental system—(i) In general.* The donation of a qualified real property interest to protect a significant relatively natural habitat in which a fish, wildlife, or plant community, or similar ecosystem, normally lives will meet the conservation purposes test of this section. The fact that the habitat or environment has been altered to some extent by human activity will not result in a deduction being denied under this section if the fish, wildlife, or plants continue to exist there in a relatively natural state. For example, the preservation of a lake formed by a man-made dam or a salt pond formed by a man-made dike would meet the conservation purposes test if the lake or pond were a nature feeding area for a wildlife community that included rare, endangered, or threatened native species.

(ii) *Significant habitat or ecosystem.* Significant habitats and ecosystems include, but are not limited to, habitats for rare, endangered, or threatened species of animal, fish, or plants; natural areas that represent high quality examples of a terrestrial community or aquatic community, such as islands that are undeveloped or not intensely developed where the coastal ecosystem is relatively intact; and natural areas which are include in, or which contribute to, the ecological viability of a local, state, or national park, nature preserve, wildlife refuge, wilderness area, or other similar conservation area.

(4) *Preservation of open space*—(i) *In general.* The donation of a qualified real property interest to preserve open space (including farmland and forestland) will meet the conservation purposes test of this section if such preservation is—

(A) Pursuant to a clearly delineated Federal, state, or local governmental policy and will yield a significant public benefit, or

(B) For the scenic enjoyment of the general public and will yield a significant public benefit.

An open space easement donated on or after December 18, 1980, must meet the requirements of this section in order to be deductible under section 170. See § 1.170A-7(b)(1)(ii).

(ii) *Scenic enjoyment*—(A) *Factors.* A contribution made for the preservation of open space may be for the scenic enjoyment of the general public. "Scenic enjoyment" will be evaluated by considering all pertinent facts and circumstances germane to the contribution. Regional variations in topography, geology, biology, and cultural and economic conditions require flexibility in the application of this test, but do not lessen the burden on the taxpayer to demonstrate the scenic characteristics of a donation under this paragraph. The application of a particular objective factor to help define a view as "scenic" in one setting may in fact be entirely inappropriate in another setting. Among the factors to be considered are:

(1) The compatibility of the land use with other land in the vicinity;

(2) The degree of contrast and variety provided by the visual scene;

(3) The openness of the land (which would be a more significant factor in an urban or densely populated setting or in a heavily wooded area);

(4) Relief from urban closeness;

(5) The harmonious variety of shapes and textures;

(6) The degree to which the land use maintains the scale and character of the urban landscape to preserve open space, visual enjoyment, and sunlight for the surrounding area;

(7) The consistency of the proposed scenic view with a methodical state scenic identification program, such as a state landscape inventory; and

(8) The consistency of the proposed scenic view with a regional or local landscape inventory made pursuant to a sufficiently rigorous review process, especially if the donation is endorsed by an appropriate state agency.

(B) *Preservation of a view.* To satisfy the requirement of scenic enjoyment by the general public, visual (rather than physical) access to or across the

property by the general public is sufficient. This, preservation of land may be for the scenic enjoyment of the general public if development of the property would impair the scenic character of the local rural or urban landscape or would interfere with a scenic panorama that can be enjoyed from a park, nature preserve, road, waterbody, trail, or historic structure or land area, and such area or transportation way is open to, or utilized by, the public.

(C) *Visible to public.* Under the terms of an open space easement on scenic property, the entire property need not be visible to the public for a donation to qualify under this section, although the public benefit from the donation may be insufficient if only a small portion of the property is visible to the public.

(iii) *Governmental conservation policy*—(A) *In general.* The requirement that the preservation of open space be pursuant to a clearly delineated Federal, state, or local governmental policy is intended to protect the types of property identified by representatives of the general public as worthy of preservation or conservation. A general declaration of conservation goals by a single official or legislative body is not sufficient. This requirement will be met by donations that further a specific, identified conservation project, such as the preservation of land within a state or local landmark district that is locally recognized as being significant to that district; the preservation of a wild or scenic river; the preservation of farmland pursuant to a state program for flood prevention and control; or the protection of the scenic, ecological, or historic character of land that is contiguous to, or an integral part of, the surroundings of existing recreation or conservation sites. For example, the donation of a perpetual conservation restriction to a qualified organization pursuant to a formal declaration (in the form of, for example, a resolution or certification) by a local governmental agency established under state law specifically identifying the subject property as worthy of protection for conservation purposes will meet the requirement of this paragraph. A program need not be funded to satisfy this requirement, but the program must involve a significant commitment by the government with respect to the conservation project.

(B) *Effect of acceptance by governmental agency.* Acceptance of an easement by an agency of the Federal Government or by an agency of a state or local government (or by a commission, authority, or similar body duly constituted by the state or local government and acting on behalf of the

state or local government) tends to establish the requisite clearly delineated governmental policy, although such acceptance, without more, is not sufficient. The more rigorous the review process by the governmental agency, the more the acceptance of the easement tends to establish the requisite clearly delineated governmental policy.

(iv) *Significant public benefit*—(A) *Factors.* All contributions made for the preservation of open space must yield a significant public benefit. Public benefit will be evaluated by considering all pertinent facts and circumstances germane to the contribution. Factors germane to the evaluation of public benefit from one contribution may be irrelevant in determining public benefit from another contribution. No single factor will necessarily be determinative. Among the factors to be considered are:

(1) The uniqueness of the property to the area;

(2) The intensity of land development in the vicinity of the property (both existing development and foreseeable trends of development);

(3) The consistency of the proposed open space use with public programs (whether Federal, state or local) for conservation in the region, including programs for outdoor recreation, irrigation or water supply protection, water quality maintenance or enhancement, flood prevention and control, erosion control, shoreline protection, and protection of land areas included in, or related to, a government approved master plan or land management area;

(4) The consistency of the proposed open space use with existing private conservation programs in the area, as evidenced by other land, protected by easement or fee ownership by organizations referred to in § 1.170A-13(c)(1), in close proximity to the property;

(5) The likelihood that development of the property would lead to or contribute to degradation of the scenic, natural, or historic character of the area;

(6) The opportunity for the general public to use the property or to appreciate its scenic values;

(7) The importance of the property in preserving a local or regional landscape or resource that attracts tourism or commerce to the area;

(8) The likelihood that the donee will acquire equally desirable and valuable substitute property or property rights;

(9) The cost to the donee of enforcing the terms of the conservation restriction;

(10) The population density in the area of the property; and

(11) The consistency of the proposed open space use with a legislatively mandated program identifying particular parcels of land for future protection.

(B) *Illustrations.* The preservation of an ordinary tract of land would not in and of itself yield a significant public benefit, but the preservation of ordinary land areas in conjunction with other factors that demonstrate significant public benefit or the preservation of a unique land area for public enjoyment would yield a significant public benefit. For example, the preservation of a vacant downtown lot would not by itself yield a significant public benefit, but the preservation of the downtown lot as a public garden would, absent countervailing factors, yield a significant public benefit. The following are other examples of contributions which would, absent countervailing factors, yield a significant public benefit: the preservation of farmland pursuant to a state program for flood prevention and control; the preservation of a unique natural land formation for the enjoyment of the general public; the preservation of woodland along a Federal highway pursuant to a government program to preserve the appearance of the area so as to maintain the scenic view from the highway; and the preservation of a stretch of undeveloped property located between a public highway and the ocean in order to maintain the scenic ocean view from the highway.

(v) *Limitation.* A deduction will not be allowed for the preservation of open space under section 170(h)(4)(A)(iii), if the terms of the easement permit a degree of intrusion or future development that would interfere with the essential scenic quality of the land or with the governmental conservation policy that is being furthered by the donation.

(vi) *Relationship of requirements—(A) Clearly delineated governmental policy and significant public benefit.* Although the requirements of "clearly delineated governmental policy" and "significant public benefit" must be met independently, for purposes of this section the two requirements may also be related. The more specific the governmental policy with respect to the particular site to be protected, the more likely the governmental decision, by itself, will tend to establish the significant public benefit associated with the donation. For example, while a statute in State X permitting preferential assessment for farmland is, by definition, governmental policy, it is distinguishable from a state statute, accompanied by appropriations, naming

the X River as a valuable resource and articulating the legislative policy that the X River and the relatively natural quality of its surrounding be protected. On these facts, an open space easement on farmland in State X would have to demonstrate additional factors to establish "significant public benefit." The specificity of the legislative mandate to protect the X River, however, would by itself tend to establish the significant public benefit associated with an open space easement on land fronting the X River.

(B) *Scenic enjoyment and significant public benefit.* With respect to the relationship between the requirements of "scenic enjoyment" and "significant public benefit," since the degrees of scenic enjoyment offered by a variety of open space easements are subjective and not as easily delineated as are increasingly specific levels of governmental policy, the significant public benefit of preserving a scenic view must be independently established in all cases.

(C) *Donations may satisfy more than one test.* In some cases, open space easements may be both for scenic enjoyment and pursuant to a clearly delineated governmental policy. For example, the preservation of a particular scenic view identified as part of a scenic landscape inventory by a rigorous governmental review process will meet the tests of both paragraphs (d)(4)(i)(A) and (d)(4)(i)(B) of this section.

(5) *Historic preservation—(i) In general.* The donation of a qualified real property interest to preserve an historically important land area or a certified historic structure will meet the conservation purposes test of this section. When restrictions to preserve a building or land area within a registered historic district permit future development on the site, a deduction will be allowed under this section only if the terms of the restrictions require that such development conform with appropriate local, state, or Federal standards for construction or rehabilitation within the district. See also, § 1.170A-13(h)(3)(ii).

(ii) *Historically important land area.* The term "historically important land area" includes:

(A) An independently significant land area (for example, an archaeological site or a Civil War battlefield) that substantially meets the National Register Criteria for Evaluation in 36 CFR 60.4 (Pub. L. 89-665, 80 Stat. 915);

(B) Any building or land area within a registered historic district (except buildings that cannot reasonably be

considered as contributing to the significance of the district); and

(C) Any land area adjacent to a property listed individually in the National Register of Historic Places (but not within a registered historic district) in a case where the physical or environmental features of the land area contribute to the historic or cultural integrity of the structure.

(iii) *Certified Historic structure—(A) Definition.* The term "certified historic structure," for purposes of this section, generally has the same meaning as in section 191(d)(1) (as it existed prior to the Economic Recovery Tax Act of 1981, relating to 5-year amortization of expenditures incurred in the rehabilitation of certified historic structures). However, a "structure" for purposes of this section means any structure, whether or not it is depreciable. Accordingly, easements on private residences may qualify under this section. In addition, a structure would be considered to be a certified historic structure if it were certified either at the time the transfer was made or at the due date (including extensions) for filing the donor's return for the taxable year in which the contribution was made.

(B) *Interior and exterior easements.* A deduction under this section will not be allowed for the donation of an interior or exterior easement prohibiting destruction or alteration of architectural characteristics inside or on the outside of a certified historic structure unless there is substantial and regular opportunity for the general public to view the architectural characteristics that are the subject of the easement.

(e) *Exclusively for conservation purposes.* (1) *In general.* To meet the requirements of this section, a donation must be exclusively for conservation purposes. See paragraphs (c)(1) and (g)(1) through (g)(5)(ii) of this section. A deduction will not be denied under this section when incidental benefit inures to the donor merely as a result of conservation restrictions limiting the uses to which the donor's property may be put.

(2) *Access.* Any limitation on public access to property that is the subject of a donation under this section shall not render the donation nondeductible if such limitation is necessary for protection of the conservation interests that are the basis of the deduction. For example, a restriction on all public access to the habitat of a threatened native animal species protected by a donation under paragraph (d)(3) of this section would be appropriate if such



restriction were necessary for the survival of the species.

(3) *Inconsistent use.* Except as provided in paragraph (e)(4) of this section, a deduction will not be allowed if the contribution would accomplish one of the enumerated conservation purposes but would permit destruction of other significant conservation interests. For example, the preservation of farmland pursuant to a State program for flood prevention and control would not qualify under paragraph (d)(4) of this section if under the terms of the contribution a significant naturally occurring ecosystem could be injured or destroyed by the use of pesticides in the operation of the farm. A donor is not required to demonstrate that all possible conservation interests associated with the property will be protected; rather, the terms of the donation must not permit destruction of significant conservation interests.

(4) *Inconsistent use permitted.* A use that is destructive of conservation interests will be permitted only if such use is necessary for the protection of the conservation interests that are the subject of the contribution. For example, a deduction for the donation of an easement to preserve an archaeological site that is listed on the National Register of Historic Places will not be disallowed if site excavation consistent with sound archaeological practices may impair a scenic view of which the land is a part. A donor may continue a pre-existing use of the property that does not conflict with the conservation purposes of the gift.

(f) *Examples.* The provisions of this section relating to conservation purposes may be illustrated by the following examples.

*Example (1).* State S contains many large tract forests that are desirable recreation and scenic areas for the general public. The forests' scenic values attract millions of people to the State. However, due to the increasing intensity of land development in State S, the continued existence of forestland parcels greater than 45 acres is threatened. J grants a perpetual easement on a 100-acre parcel of forestland that is part of one of the State's scenic areas to a qualifying organization. The easement imposes restrictions on the use of the parcel for the purpose of maintaining its scenic values. The restrictions include a requirement that the parcel be maintained forever as open space devoted exclusively to conservation purposes and wildlife protection, and that there be no commercial, industrial, residential, or other development use of such parcel. The law of State S recognizes a limited public right to enter private land, particularly for recreational pursuits, unless such land is posted or the landowner objects. The easement specifically restricts the landowner from posting the parcel, thereby maintaining

public access to the parcel according to the custom of the State. J's parcel is regarded by the local community as providing the opportunity for the public to enjoy the use of the property and appreciate its scenic values. Accordingly, J's donation qualifies for a deduction under this section.

*Example (2).* A qualified conservation organization owns Greenacre in fee as a nature preserve. Greenacre contains a high quality example of a tall grass prairie ecosystem. Farmacre, an operating farm, adjoins Greenacre and is a compatible buffer to the nature preserve. Conversion of Farmacre to a more intense use, such as a housing development, would adversely affect the continued use of Greenacre as a nature preserve because of human traffic generated by the development. The owner of Farmacre donates an easement preventing any future development on Farmacre to the qualified conservation organization for conservation purposes. Normal agricultural uses will be allowed on Farmacre. Accordingly, the donation qualifies for a deduction under this section.

*Example (3).* H owns Greenacre, a 900-acre parcel of woodland, rolling pasture, and orchards on the crest of a mountain. All of Greenacre is clearly visible from a nearby national park. Because of the strict enforcement of an applicable zoning plan, the highest and best use of Greenacre is as a subdivision of 40-acre tracts. H wishes to donate a scenic easement on Greenacre to a qualifying conservation organization, but H would like to reserve the right to subdivide Greenacre into 90-acre parcels with no more than one single-family home allowable on each parcel. Random building on the property, even as little as one home for each 90 acres, would destroy the scenic character of the view. Accordingly, no deduction would be allowable under this section.

*Example (4).* Assume the same facts as in example (3), except that not all of Greenacre is visible from the park and the deed of easement allows for limited cluster development of no more than five nine-acre clusters (with four houses on each cluster) located in areas generally not visible from the national park and subject to site and building plan approval by the donee organization in order to preserve the scenic view from the park. The donor and the donee have already identified sites where limited cluster development would not be visible from the park or would not measurably impair the view. Owners of homes in the clusters will not have any rights which respect to the surrounding Greenacre property that are not also available to the general public. Accordingly, the donation qualifies for a deduction under this section.

*Example (5).* State S has experienced a marked decline in open acreage well suited for agricultural use. In the parts of the State where land is highly productive in agricultural use, substantially all active farms are small, family-owned enterprises under increasing development pressures. In response to those pressures, the legislature of State S passed a statute authorizing the purchase of "agricultural land development rights" from farm owners and the placement of "agricultural preservation restrictions" on

their land, in order to preserve the State's open space and farm resources. Agricultural preservation restrictions prohibit or limit construction or placement of buildings except those used for agricultural purposes or dwellings used for family living by the farmer and his family and employees; removal of mineral substances in any manner that adversely affects the land's agricultural potential; or other uses detrimental to retention of the land for agricultural use. Money has been appropriated for this program and some landowners have in fact sold their "agricultural land development rights" to State S. K owns and operates a small dairy farm in State S. K desires to preserve his farm for agricultural purposes in perpetuity. Rather than selling the development rights to State S, K grants to a qualifying conservation organization an agricultural preservation restriction on his property in the form of a conservation easement. K reserves to himself, his heirs and assigns the right to manage the farm consistent with sound agricultural and management practices. K's farm is located in one of the more agriculturally productive areas within State S. Accordingly, a deduction is allowed under this section.

(g) *Enforceable in perpetuity*—(1) *In general.* In the case of any donation under this section, the interest in the property retained by the donor (and the donor's successors in interest) must be subject to legally enforceable restrictions that will prevent uses of the retained interest inconsistent with the conservation purposes of the donation. In the case of a contribution of a remainder interest, the contribution will not qualify if the tenants, whether they are tenants for life or a term of years, can use the property in a manner that diminishes the conservation values which are intended to be protected by the contributions.

(2) *Remote future event.* A deduction shall not be disallowed under section 170(f)(3)(B)(iii) and this section merely because the interest which passes to, or is vested in, the donee organization may be defeated by the performance of some act or the happening of some event, if on the date of the gift it appears that the possibility that such act or event will occur is so remote as to be negligible. See paragraph (e) of § 1.170A-1. For example, a state's statutory requirement that use restrictions must be rerecorded every 30 years to remain enforceable shall not, by itself, render an easement nonperpetual.

(3) *Retention of qualified mineral interest*—(i) *In general.* The requirements of this section are not met and no deduction shall be allowed in the case of a contribution of any interest when there is a retention of a qualified mineral interest if at any time there may be extractions or removal of minerals by

any surface mining method. Moreover, in the case of a qualified mineral interest gift, the requirement that the conservation purposes be protected in perpetuity is not satisfied if any method of mining that is inconsistent with the particular conservation purposes of a contribution is permitted at any time. See also § 1.170A-13(e)(3). However, a deduction under this section will not be denied in the case of certain methods of mining that may have limited, localized impact on the real property but that are not irretrievably destructive of significant conservation interests. For example, a deduction will not be denied in a case where production facilities are concealed or compatible with existing topography and landscape and when surface alteration is to be restored to its original state.

(ii) *Examples.* The provisions of paragraph (g)(3)(i) of this section may be illustrated by the following examples:

*Example (1).* K owns 5,000 acres of bottomland hardwood property along a major watershed system in the southern part of the United States. Agencies within the Department of the Interior have determined that southern bottomland hardwoods are a rapidly diminishing resource and a critical ecosystem in the south because of the intense pressure to cut the trees and convert the land to agricultural use. These agencies have further determined (and have indicated in correspondence with K) that bottomland hardwoods provide a superb habitat for numerous species and play an important role in controlling floods and in purifying rivers. K donates to a qualifying conservation organization all his interest in this property other than his interest in the gas and oil deposits that have been identified under K's property. K covenants and can ensure that, although drilling for gas and oil on the property may have some temporary localized impact on the real property, the drilling will not interfere with the overall conservation purpose of the gift, which is to protect the unique bottomland hardwood ecosystem. Accordingly, the donation qualifies for a deduction under this section.

*Example (2).* Assume the same facts as in *example (1)*, except that K does not own the mineral rights (or the right of access to those minerals) on the 5,000 acres and can not ensure that the mining and drilling will not interfere with the overall conservation purpose. Accordingly, a deduction for the donation of the easement would not be allowable under this section. The same rule would apply to disallow a deduction by K for the donation of a remainder interest in the land for conservation purposes. A different result would follow if under applicable State law the qualifying organization had sufficient rights to protect the conservation purpose of the gift. Additionally, a donation of K's entire interest in the 5,000 acres to an eligible organization would qualify for a deduction under section 170(f)(3)(A) without regard to this section.

*Example (3).* Assume the same facts as in *example (1)*, except that K sell the mineral

rights to an unrelated party in an arm's length transaction, subject to a recorded prohibition on the removal of any minerals by any surface mining method and a recorded prohibition against any mining technique that will harm the bottomland hardwood ecosystem. After the sale, K donates an easement for conservation purposes to a qualifying organization to protect the bottomland hardwood ecosystem. Since K can ensure in the easement that the mining of minerals on the property will not interfere with the conservation purposes of the gift, the donation qualifies for a deduction under this section.

(4) *Protection of conservation purpose where taxpayer reserves certain rights.*

(i) *Documentation.* In the case of a donation made after (the date final regulations are published in the *Federal Register*) of any qualified real property interest when the donor reserves rights the exercise of which may have an adverse impact on the conservation interests associated with the property, for a deduction to be allowable under this section the donor must make available to the donee, prior to the time the donation is made, documentation sufficient to establish the condition of the property at the time of the gift. Such documentation may include:

(A) The appropriate survey maps from the United States Geological Survey, showing the property line and other contiguous or nearby protected areas;

(B) A map of the area drawn to scale showing all existing man-made improvements or incursions (such as roads, buildings, fences, or gravel pits), vegetation and identification of flora and fauna (including, for example, rare species locations, animal breeding and roosting areas, and migration routes), land use history (including present uses and recent past disturbances), and distinct natural features (such as large trees and aquatic areas);

(C) An aerial photograph of the property at an appropriate scale taken as close as possible to the date the donation is made; and

(D) On-site photographs taken at appropriate locations on the property. If the terms of the donation contain restrictions with regard to a particular natural resource to be protected, such as water quality or air quality, the condition of the resource at or near the time of the gift must be established. The documentation, including the maps and photographs, must be accompanied by a statement signed by the donor and a representative of the donee clearly referencing the documentation and in substance saying "This natural resources inventory is an accurate representation of [the protected property] at the time of the transfer."

(ii) *Donee's right to inspection and legal remedies.* In the case of any donation referred to in paragraph (g)(4)(i) of this section, the donor must agree to notify the donee, in writing, before exercising any reserved right, e.g., the right to extract certain minerals which may have an adverse impact on the conservation interests associated with the property. The terms of the donation must provide a right of the donee to enter the property at reasonable times for the purpose of inspecting the property to determine if there is compliance with the terms of the donation. Additionally, the terms of the donation must provide a right of the donee to enforce the conservation restrictions by appropriate legal proceedings, including but not limited to, the right to require the restoration of the property to its condition at the time of the donation.

(5) *Extinguishment.* (i) *In general.* If a subsequent unexpected change in the conditions surrounding the property that is the subject of a donation under this paragraph can make impossible or impractical the continued use of the property for conservation purposes, the conservation purpose can nonetheless be treated as protected in perpetuity if the restrictions are extinguished by judicial proceeding and all of the donee's proceeds (determined under paragraph (g)(5)(ii) of this section) from a subsequent sale or exchange of the property are used by the donee organization in a manner consistent with the conservation purposes of the original contribution.

(ii) *Proceeds.* In case of a donation made after (the date final regulations are published in the *Federal Register*), for a deduction to be allowed under this section, at the time of the gift the donor must agree that the donation of the perpetual conservation restriction gives rise to a property right, immediately vested in the donee organization, with a fair market value that is a minimum ascertainable proportion of the fair market value to the entire property. See § 1.170A-13(h)(3)(iii). For purposes of this paragraph (g)(5)(ii), that original minimum proportionate value of the donee's property rights shall remain constant. Accordingly, when a change in conditions give rise to the extinguishment of a perpetual conservation restriction under paragraph (g)(5)(i) of this section, the donee organization, on a subsequent sale, exchange, or involuntary conversion of the subject property, must be entitled to a portion of the proceeds at least equal to the original proportionate value of the perpetual

conservation restriction, unless state law provides that the donor is entitled to the full proceeds from the conversion without regard to the terms of the prior perpetual conservation restriction.

(h) *Valuation*—(1) *Entire interest of donor other than qualified mineral interest.* The value of the contribution under section 170 in the case of a contribution of a taxpayer's entire interest in property other than a qualified mineral interest is the fair market value of the surface rights in the property contributed. The value of the contribution shall be computed without regard to the mineral rights. See paragraph (h)(4), *example (1)*, of this section.

(2) *Remainder interest in real property.* In the case of a contribution of any remainder interest in real property, section 170(f)(4) provides that in determining the value of such interest for purposes of section 170, depreciation and depletion of such property shall be taken into account. See § 1.170A-12. In the case of the contribution of a remainder interest for conservation purposes, the current fair market value of the property (against which the limitations of § 1.170A-12 are applied) must take into account any pre-existing or contemporaneously recorded rights limiting, for conservation purposes, the use to which the subject property may be put.

(3) *Perpetual conservation restriction*—(i) *In general.* The value of the contribution under section 170 in the case of a charitable contribution of a perpetual conservation restriction is the fair market value of the perpetual conservation restriction at the time of the contribution. See § 1.170A-7(c). If no substantial record of market-place sales is available to use as a meaningful or valid comparison, as a general rule (but not necessarily in all cases) the fair market value of a perpetual conservation restriction is equal to the difference between the fair market value of the land it encumbers before the granting of the restriction and the fair market value of the encumbered land after the granting of the restriction. The amount of the deduction in the case of a charitable contribution of a perpetual conservation restriction covering a portion of the contiguous land owned by a taxpayer and the taxpayer's family (see section 267(c)(4)) is the difference between the fair market value of the entire contiguous tract before and after the granting of the restriction. Accordingly, in the case of the donation of a perpetual conservation restriction in all or a portion of the contiguous land owned by a taxpayer and the taxpayer's

family (see section 267(c)(4)), if the donor or the donor's family receives, or can reasonably expect to receive, financial or economic benefits that are greater than those that will inure to the general public from the transfer, no deduction is allowable under this section. However, if the transferor receives, or can reasonably expect to receive, a financial or economic benefit that is substantial, but it is clearly shown that the benefit is less than the amount of the transfer, then a deduction under this section is allowable for the excess of the amount transferred over the amount of the financial or economic benefit received or reasonably expected to be received by the transferor. (See *example (11)* of paragraph (h)(4) of this section.)

(ii) *Fair market value of property before and after restriction.* If before and after valuation is used, the fair market value of the property before contribution of the conservation restriction must take into account not only the current use of the property but also an objective assessment of how immediate or remote the likelihood is that the property, absent the restriction, would in fact be developed, as well as any effect from zoning, conservation, or historic preservation laws that already restrict the property's potential highest and best use. Further, there may be instances where the grant of a conservation restriction may have no material effect on the value of the property or may in fact serve to enhance, rather than reduce, the value of property. In such instances no deduction would be allowable. In the case of a conservation restriction that allows for any development, however limited, on the property to be protected, the fair market value of the property after contribution of the restriction must take into account the effect of the development. Additionally, if before and after valuation is used, an appraisal of the property after contribution of the restriction must take into account the effect of restrictions that will result in a reduction of the potential fair market value represented by highest and best use but will, nevertheless, permit uses of the property that will increase its fair market value above that represented by the property's current use. The value of a perpetual conservation restriction shall not be reduced by reason of the existence of restrictions on transfer designed solely to ensure that the conservation restriction will be dedicated to conservation purposes. See § 1.170A-13(c)(2).

(iii) *Allocation of basis.* In the case of the donation of a qualified real property

interest for conservation purposes, the basis of the property retained by the donor must be adjusted by the elimination of that part of the total basis of the property that is properly allocable to the qualified real property interest granted. The amount of the basis that is allocable to the qualified real property interest shall bear the same ratio to the total basis of the property as the fair market value of the qualified real property interest bears to the fair market value of the property before the granting of the qualified real property interest. When a taxpayer donates to a qualifying conservation organization an easement on a structure with respect to which deductions are taken for depreciation, the reduction required by this paragraph (h)(3)(ii) in the basis of the property retained by the taxpayer must be allocated between the structure and the underlying land.

(4) *Examples.* The provisions of this section may be illustrated by the following examples. In examples illustrating the value or deductibility of donations, the applicable restrictions and limitations of § 1.170A-4, with respect to reduction in amount of charitable contributions of certain appreciated property, and § 1.170A-8, with respect to limitations on charitable deductions by individuals, must also be taken into account.

*Example (1).* A owns Goldacre, a property adjacent to a state park. A wants to donate Goldacre to the state to be used as part of the park, but A wants to reserve a qualified mineral interest in the property, to exploit currently and to devise at death. The fair market value of the surface rights in Goldacre is \$200,000 and the fair market value of the mineral rights is \$100,000. In order to ensure that the quality of the park will not be degraded, restrictions must be imposed on the right to extract the minerals that reduce the fair market value of the mineral rights to \$80,000. Under this section, the value of the contribution is \$200,000 (the value of the surface rights).

*Example (2).* Assume the same facts as in *example (1)*, except that A would like to retain a life estate in Goldacre. A donates a remainder interest in Goldacre to the county government to use Goldacre as a park after A's death, but reserves the mineral rights in Goldacre (with restrictions on extraction similar to those in *example (1)*). A's gift does not meet the requirements of § 1.170A-7, with respect to contributions not in trust of partial interests in property, of § 1.170A-13(b)(1), with respect to qualified mineral interests, or of § 1.170A-13(b)(2), with respect to remainder interests in real property. Accordingly, no income tax deduction is allowable under this section.

*Example (3).* In 1982, B, who is 62, donates a remainder interest in Greenacre to a qualifying organization for conservation purposes. Greenacre is a tract of 200 acres

of undeveloped woodland that is valued at \$200,000 at its highest and best use. Under § 1.170A-12(b), the value of a remainder interest in real property following one life is determined under § 25.2512-9 of the Gift Tax Regulations. Accordingly, the value of the remainder interest, and thus the amount eligible for an income tax deduction under section 170(f), is \$95,358 ( $\$200,000 \times .47679$ ).

**Example (4).** Assume the same facts as in example (3), except that Greenacre is B's 200-acre estate with a home built during the colonial period. Some of the acreage around the home is cleared; the balance of Greenacre, except for access roads, is wooded and undeveloped. See § 170(f)(3)(E)(i). However, B would like Greenacre to be maintained in its current state after his death, so he donates a remainder interest in Greenacre to a qualifying organization for conservation purposes pursuant to sections 170(f)(3)(B)(iii) and (b)(2)(B). At the time of the gift the land has a value of \$200,000 and the house has a value of \$100,000. The value of the remainder interest, and thus the amount eligible for an income tax deduction under section 170(f), is computed pursuant to § 1.170A-12. See § 1.170A-12(b)(3).

**Example (5).** Assume the same facts as in example (3), except that at age 62 instead of donating a remainder interest B donates an easement in Greenacre to a qualifying organization for conservation purposes. The fair market value of Greenacre after the donation is reduced to \$110,000. Accordingly, the value of the easement, and thus the amount eligible for a deduction under section 170(f), is \$90,000 ( $\$200,000$  less  $\$110,000$ ).

**Example (6).** Assume the same facts as in example (5), and assume that three years later, at age 65, B decides to donate a remainder interest in Greenacre to a qualifying organization for conservation purposes. Increasing real estate values in the area have raised the fair market value of Greenacre (subject to the easement) to \$130,000. Accordingly, the value of the remainder interest, and thus the amount eligible for a deduction under section 170(f), is \$87,324 ( $\$130,000 \times .51788$ ).

**Example (7).** Assume the same facts as in example (3), except that at the time of the donation of a remainder interest in Greenacre, B also donates an easement to a different qualifying organization for conservation purposes. Based on all the facts and circumstances, the value of the easement is determined to be \$100,000. Therefore, the value of the property after the easement is \$100,000 and the value of the remainder interest, and thus the amount eligible for deduction under section 170(f), is \$47,679 ( $\$100,000 \times .47679$ ).

**Example (8).** C owns Greenacre, a 200-acre estate containing a house built during the colonial period. At its highest and best use, for home development, the fair market value of Greenacre is \$300,000. C donates an easement (to maintain the house and Greenacre in their current state) to a qualifying organization for conservation purposes. The fair market value of Greenacre after the donation is reduced to \$125,000. Accordingly, the value of the easement and the amount eligible for a deduction under section 170(f) is \$175,000 ( $\$300,000$  less  $\$125,000$ ).

**Example (9).** Assume the same facts as in example (8) and assume that three years later, C decides to donate a remainder interest in Greenacre to a qualifying organization for conservation purposes. Increasing real estate values in the area have raised the fair market value of Greenacre to \$180,000. Assume that because of the perpetual easement prohibiting any development of the land, the value of the house is \$120,000 and the value of the land is \$60,000. The value of the remainder interest, and thus the amount eligible for an income tax deduction under section 170(f), is computed pursuant to § 1.170A-12. See § 1.170A-12(b)(3).

**Example (10).** D owns property with a basis of \$20,000 and a fair market value of \$80,000. D donates to a qualifying organization an easement for conservation purposes that is determined under this section to have a fair market value of \$80,000. The amount of basis allocable to the easement is \$15,000 ( $\$80,000 / \$80,000 = \$15,000 / \$20,000$ ). Accordingly, the basis of the property is reduced to \$5,000 ( $\$20,000$  minus  $\$15,000$ ).

**Example (11).** E owns 10 one-acre lots that are currently woods and parkland. The fair market value of each of E's lots is \$15,000 and the basis of each lot is \$3,000. E grants to the county a perpetual easement for conservation purposes to use and maintain eight of the acres as a public park and to restrict any future development on those eight acres. As a result of the restrictions, the value of the eight acres is reduced to \$1,000 an acre. However, by perpetually restricting development on this portion of the land, E has ensured that the two remaining acres will always be bordered by parkland, thus increasing their fair market value to \$22,500 each. If the eight acres represented all of E's land, the fair market value of the easement would be \$112,000, an amount equal to the fair market value of the land before the granting of the easement ( $8 \times \$15,000 = \$120,000$ ) minus the fair market value of the encumbered land after ( $8 \times \$1,000 = \$8,000$ ). However, because the easement only covered a portion of the taxpayer's contiguous land, the amount of the deduction under section 170 is reduced to \$97,000 ( $\$150,000 - \$53,000$ ), that is, the difference between the fair market value of the entire tract of land before ( $\$150,000$ ) and after ( $(8 \times \$1,000) + (2 \times \$22,500)$ ) the granting of the easement.

**Example (12).** Assume the same facts as in example (11). Since the easement covers a portion of E's land, only the basis of that portion is adjusted. Therefore, the amount of basis allocable to the easement is \$22,400 ( $(8 \times \$3,000) \times (\$112,000 / \$120,000)$ ). Accordingly, the basis of the eight acres encumbered by the easement is reduced to \$1,600 ( $\$24,000 - \$22,400$ ), or \$200 for each acre. The basis of the two remaining acres is not affected by the donation.

**Example (13).** F owns and uses as professional offices a two-story building that lies within a registered historic district. F's building is an outstanding example of period architecture with a fair market value of \$125,000. Restricted to its current use, which is the highest and best use of the property

without making changes to the facade, the building and lot would have a fair market value of \$100,000, of which \$80,000 would be allocable to the building and \$20,000 would be allocable to the lot. F's basis in the property is \$50,000, of which \$40,000 is allocable to the building and \$10,000 is allocable to the lot. F's neighborhood is a mix of residential and commercial uses, and it is possible that F (or another owner) could enlarge the building for more extensive commercial use, which is its highest and best use. However, this would require changes to the facade. F would like to donate to a qualifying preservation organization an easement restricting any changes to the facade and promising to maintain the facade in perpetuity. The donation would qualify for a deduction under this section. The fair market value of the easement is \$25,000 (the fair market value of the property before the easement, \$125,000, minus the fair market value of the property after the easement, \$100,000). Pursuant to § 1.170A-13(b)(3)(iii), the basis allocable to the easement is \$10,000 and the basis of the underlying property (building and lot) is reduced to \$40,000.

(i) **Substantiation requirement.** If a taxpayer makes a qualified conservation contribution and claims a deduction, the taxpayer must maintain written records of the fair market value of the underlying property before and after the donation and the conservation purpose furthered by the donation and such information shall be stated in the taxpayer's income tax return if required by the return or its instructions.

(j) **Effective date.** This section applies only to contributions made on or after December 18, 1980.

## PART 20—[AMENDED]

**Par. 5.** Paragraph (e)(2) of § 20.2055-2 is amended as follows:

a. The sixth sentence of paragraph (e)(2)(i) is revised to read: "However, except as provided in paragraphs (e)(2)(ii), (iii), and (iv) of this section, for purposes of this subdivision a charitable contribution of an interest in property not in trust where the decedent transfers some specific rights to one party and transfers other substantial rights to another party will not be considered a contribution of an undivided portion of the decedent's entire interest in property."

b. The eighth sentence of paragraph (e)(2)(i) is revised to read: "A bequest to charity made on or before December 17, 1980, of an open space easement in gross in perpetuity shall be considered the transfer to charity of an undivided portion of the decedent's entire interest in the property."

c. Paragraphs (e)(2)(iv), (e)(2)(v), (e)(2)(vi) are redesignated (e)(2)(v), (e)(2)(vi), and (e)(2)(vii), respectively.

d. A new paragraph (e)(2)(iv) is inserted after paragraph (e)(2)(iii) to read as set forth below.

§ 20.2055-2 Transfers not exclusively for charitable purposes.

(e) *Limitations applicable to decedents dying after December 31, 1969.*

(2) *Deductible interests.*

(iv) *Qualified conservation contribution.* The charitable interest is a qualified conservation contribution. For the definition of a qualified conservation contribution, see § 1.170A-13.

#### PART 25—[AMENDED]

Par. 6. Paragraph (c)(2) of § 25.2522(c)-3 is amended as follows:

a. The sixth sentence of paragraph (c)(2)(i) is revised to read: "However, except as provided in paragraphs (e)(2)(ii), (iii), and (iv) of this section, for purposes of this subdivision a charitable contribution of an interest in property not in trust where the decedent transfers some specific rights to one party and transfers other substantial rights to another party will not be considered a contribution of an undivided portion of the decedent's entire interest in property."

b. The eighth sentence of paragraph (c)(2)(i) is revised to read: "A bequest to charity made on or before December 17, 1980, of an open space easement in gross in perpetuity shall be considered the transfer to charity of an undivided portion of the decedent's entire interest in property."

c. Paragraphs (c)(2)(iv), (c)(2)(v), and (c)(2)(vi) are redesignated (c)(2)(v), (c)(2)(vi), and (c)(2)(vii), respectively.

d. A new paragraph (c)(2)(iv) is inserted after paragraph (c)(2)(iii), to read as set forth below.

§ 25.2522(c)-3 Transfers not exclusively for charitable, etc., purposes in the case of gifts made after July 31, 1969.

(c) *Transfers of partial interest in property.*

(2) *Deductible interest.*

(iv) *Qualified Conservation Contribution.* The charitable interest is a qualified conservation contribution. For the definition of a qualified conservation contribution, see § 1.170A-13.

Roscoe L. Egger, Jr.,  
Commissioner of Internal Revenue.

FR Doc. # 13893 Filed 5-20-83; 8:45 am

BILLING CODE 4830-01-M

#### DEPARTMENT OF JUSTICE

##### Parole Commission

##### 28 CFR Part 2

##### Paroling, Recommitting, and Supervising Federal Prisoners

AGENCY: Parole Commission, Justice.

ACTION: Proposed rule.

**SUMMARY:** As part of an effort to assist in relieving prison overcrowding, and to enhance equity among similarly situated offenders, the Commission is proposing to add a provision to its rules concerning the referral to the Bureau of Prisons, and ultimately to the sentencing court, of certain selected cases where the Commission would recommend reduction of a judicially imposed minimum sentence.

**DATE:** Public comment must be received by July 15, 1983.

**ADDRESS:** Send comment to Peter Hoffman, Research Director, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, MD 20815, telephone: (301) 492-5980.

**FOR FURTHER INFORMATION CONTACT:** Peter Hoffman, Research Director, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, MD 20815, (301) 492-5980.

**SUPPLEMENTARY INFORMATION:** The Bureau of Prisons and Department of Justice have recently asked the Parole Commission for assistance in addressing the problem of federal prison overcrowding. In their view, the federal prison population has seriously exceeded the Bureau's capacity.

As one part of an effort to assist in relieving this overcrowding, the Commission is proposing the following addition to its rules. This proposal involves a joint effort by the Bureau of Prisons and the Parole Commission to:

- (1) Identify certain prisoners who could be safely released from prison under current Parole Commission standards (see 18 U.S.C. 4206 and 28 CFR 2.20) but whose release is barred by a judicially imposed minimum sentence and (2) seek a reduction of the minimum sentence in such cases under the provisions of 18 U.S.C. 4205(g). Under 18 U.S.C. 4205(g) the Director of the Bureau of Prisons is vested with the authority to petition the sentencing court at any time for a reduction of minimum sentence. Under this proposal referrals to the sentencing court would be made when the prisoner has served the time required by the maximum of the applicable guideline range.

The Commission believes that through cooperation between the Commission,

the Bureau of Prisons and the sentencing court, this proposal could reduce the prison population by up to 500 beds over the course of a year without increasing the risk to public safety.

It is to be stressed that this proposal is only one part of a larger effort. The Commission intends to explore other methods for assisting in addressing the problem of prison overcrowding. For example, the Commission intends to stress through staff training for its hearing examiners the need for parsimony in making decisions within the Commission's guidelines, and to initiate special review procedures to ensure that decisions are made consistent with this principle.

##### List of Subjects in 28 CFR Part 2

Administrative practice and procedures, Prisoners, Probation and parole.

#### PART 2—[AMENDED]

Accordingly pursuant to 18 U.S.C. 4203(a)(1) and 4204(a)(6), the Commission proposes the addition of § 2.62 to 28 CFR Part 2:

##### § 2.62 Recommendation for reduction of minimum sentence.

Under 18 U.S.C. 4205(g) the sentencing court may reduce a minimum sentence upon the motion of the Director of the Bureau of Prisons. Where it appears that a prisoner with a minimum sentence exceeding the applicable guideline range under § 2.20 of this part would otherwise be suitable for release after service of the time required by the maximum of the applicable guideline range, the Regional Commissioner may recommend to the Director of the Bureau of Prisons a motion under 18 U.S.C. 4205(g) for reduction of the minimum sentence to the time required by the maximum of the applicable guideline range.

I certify that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Dated: May 5, 1983.  
Benjamin F. Baer,  
Chairman, Parole Commission.

[FR Doc. 83-13773 Filed 5-20-83; 8:45 am]  
BILLING CODE 4410-01-M

#### 28 CFR Part 2

Parole, Release, Supervision and Recommitment of Prisoners, Youth Offenders, and Juvenile Delinquents

AGENCY: Parole Commission, Justice.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Parole Commission seeks public comment on a proposal to establish a policy with respect to providing a reward for prisoners to offer their assistance in the investigation and prosecution of other criminals. The proposal calls for the establishment of a specified range of reductions from the cooperating prisoner's presumptive parole date, provided that his assistance has been otherwise unrewarded and the release of the prisoner would not threaten the public safety. The need for a clear policy on this matter arises from the fact that in many cases, some response from the Parole Commission is the only form of incentive or reward available to the Government.

**DATE:** Comment must be received by July 15, 1983.

**ADDRESS:** U.S. Parole Commission, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815, Attention: Michael A. Stover.

**FOR FURTHER INFORMATION CONTACT:** Michael A. Stover, Office of General Counsel, U.S. Parole Commission, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815, telephone (301) 492-5959.

**SUPPLEMENTARY INFORMATION:** A frequently critical factor in law enforcement is the informant who is able to provide accurate information and testimony in the investigation and prosecution of serious offenders. This proposal recognizes the practical need for a response from the Parole Commission when the informant is a Federal prisoner serving a sentence for some other crime.

Under this proposal, such assistance must not have been adequately rewarded by other official action and must be reported in sufficient detail by prosecuting authorities for the Commission to make an independent evaluation, the endorsement of the responsible Chief Criminal Assistant U.S. Attorney (or official of equivalent or superior rank) would be required, and prosecutors would not be permitted to guarantee a parole reward in advance.

If the release of the prisoner would not threaten the public safety, the Commission would consider a reduction of up to a certain proportion of the prison time required by the parole decision which would be otherwise ordered. The specified proportion would be for the most clearly meritorious case, where the assistance was a key factor in the successful prosecution of a major crime and/or a serious offender. Greater reductions would be considered only for extraordinary circumstances.

The Commission would not penalize the prisoner for any confession of wrongdoing made during testimony covered by a grant of immunity, unless the confession raised a compelling concern for the public safety.

Accordingly the Commission invites both comments and suggestions as to what appropriate percentage of actual prison time might be considered a fair standard to recognize valuable assistance to law enforcement, without overriding the need to satisfy justice in the prisoner's own case.

**Note.**—I certify that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Dated: May 12, 1983.

**Benjamin F. Baer,**  
Chairman, Parole Commission.

[FR Doc. 83-13774 Filed 5-20-83; 8:45 am]  
**BILLING CODE 4410-01-M**

## 28 CFR Part 2

### Paroling, Recommitting, and Supervising Federal Prisoners

**AGENCY:** Parole Commission, Justice.  
**ACTION:** Proposed rule.

**SUMMARY:** The United States Parole Commission seeks public comment on a rule designed to implement the Victim and Witness Protection and Assistance Act of 1982, insofar as that law gives the Parole Commission certain responsibilities with respect to the enforcement of orders of restitution imposed by the sentencing judge. The proposed rule provides that the Parole Commission will set a presumptive release date for such prisoners, but will not release any prisoner on his or her parole date if there is evidence of willful non-compliance with the order of restitution. Further, the proposed rule restates the Commission's statutory responsibilities in supervising parolees who have undischarged orders of restitution.

**DATE:** Comments must be submitted by July 15, 1983.

**ADDRESS:** United States Parole Commission, Office of the General Counsel, 5550 Friendship Blvd., Chevy Chase, MD 20815.

**FOR FURTHER INFORMATION CONTACT:** Michael A. Stover, Office of the General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, MD 20815, (301) 492-5959.

**SUPPLEMENTARY INFORMATION:** The new law, Pub. L. 97-291, imposes major new responsibilities on sentencing judges to consider whether or not to impose an

order of restitution in all offenses under 18 U.S. Code and 49 U.S.C. 1472 (the aircraft piracy statute), 18 U.S.C. 3579. If an order of restitution is not satisfied by the time of a defendant's release from prison, the order becomes a condition of parole supervision which the Parole Commission is obliged to enforce. Of course, this enforcement responsibility does not supersede the continuing responsibility of the U.S. Attorney's Office to enforce the order by normal civil collection methods, 18 U.S.C. 3579(h). Therefore, it is the Commission's intent that enforcement of a restitution order should routinely involve the active participation of the prosecutor, both in determining which enforcement method or combination thereof (civil action, the imposition of additional financial disclosure requirements to the conditions of parole, or the revocation of parole) will be best suited to bring about compliance, and in ensuring that the Commission has all available evidence in any parole revocation proceeding that is held.

The only important policy choice in this proposed rule is that the Commission would not release a prisoner on parole if it appeared that failure to satisfy an order of restitution was a willful defiance or evasion of that obligation. The Commission sees no point in placing a parolee under threat of revocation and return to prison for non-compliance, if the parolee's ability to pay has not changed since the date the Commission granted his release.

It should also be noted that a reasonable plan of payment must be included in every release plan where the prisoner proposes to accept a parole date without first satisfying an order of restitution. This places an additional responsibility on U.S. Probation Officers in investigating and conditionally approving such plans.

## PART 2—[AMENDED]

The text of the proposed new paragraph (d), (e), and (f) of § 2.7 is as follows:

### § 2.7 Committed fines and restitution orders.

(d) When there is an unsatisfied order of restitution and it appears that the prisoner has the ability to pay and has willfully failed to do so, the Commission shall require satisfaction of such order of restitution prior to granting an effective parole date. A hearing under § 2.28(e) of this part will be scheduled if a release date is retarded by more than 120 days because of an unsatisfied order of restitution.

(e) Upon the release of a prisoner with an unsatisfied order of restitution, such order automatically becomes a condition of parole. A reasonable plan for payment (or performance of services, if so ordered by the court) must be included in the prisoner's release plan to be acceptable to the Commission, and this plan becomes part of the conditions of release. The plan may be modified thereafter under § 2.40 (b) or (e) of this part, as circumstances may warrant.

(f) In determining whether to revoke parole for non-compliance with a condition of restitution, the Parole Commission shall consider the parolee's employment status, earning ability, financial resources, the willfulness of the failure to pay and any other special circumstances that may have a bearing on the matter. Revocation shall not be ordered unless the parolee is found to be deliberately evading or refusing compliance.

I certify that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Dated: May 12, 1983.

Benjamin F. Baer,  
Chairman, Parole Commission.

(FR Doc. 83-13775 Filed 5-20-83; 8:45 am)

BILLING CODE 4410-01-M

## LIBRARY OF CONGRESS

### Copyright Office

#### 37 CFR Part 202

[Docket RM 83-4]

#### Notice of Inquiry Deposit Of Computer Programs and Other Works Containing Trade Secrets

AGENCY: Library of Congress, Copyright Office.

ACTION: Notice of Inquiry.

**SUMMARY:** This notice of inquiry is issued to advise the public that the Copyright Office of the Library of Congress is reviewing its regulations with respect to the deposit under sections 407 and 408 of title 17 of the U.S. Code of computer programs and other works which contain material referred to as "trade secrets." The existing regulations of the Copyright Office governing the deposit of works in satisfaction of mandatory deposit under section 407 or in connection with registration of claims to copyright under section 408 appear at 37 CFR 202.19-21.

Owners of copyright in works containing trade secrets, especially owners of copyright in computer

programs, have expressed concern about public availability of materials deposited in the Copyright Office, and have asked that the Office consider the possibility of special deposit provisions. This notice is intended to elicit public comment, views, and information which will assist the Copyright Office in evaluating its present practices and in considering possible changes in its regulations.

**DATES:** Initial comments should be received on or before July 18, 1983. Reply comments should be received on or before August 15, 1983.

**ADDRESS:** Interested persons should submit ten copies of their written comments to the Copyright Office, Library of Congress. If delivered by hand, the copies should be brought to: Office of the General Counsel, James Madison Building, Room 407, First and Independence Ave., SE., Washington, D.C.

If sent by mail: Office of the General Counsel, U.S. Copyright Office, Library of Congress, Department DS, Washington, D.C. 20540.

**FOR FURTHER INFORMATION CONTACT:** Dorothy Schrader, General Counsel, Copyright Office, Library of Congress, Washington, D.C. 29559. Telephone (202) 287-8380.

#### SUPPLEMENTARY INFORMATION:

##### 1. Background

Section 702 of title 17 of the U.S. Code, the Copyright Act, authorizes the Register "to establish regulations not inconsistent with law for the administration of the functions and duties made the responsibility of the Register under this title." 17 U.S.C. 702. One of these duties, in the case of published works, is to enforce the mandatory deposit requirements, which apply to any work published in the United States with notice of copyright. 17 U.S.C. 407. Another is to register claims to copyright in any published or unpublished work upon receipt of an adequate application, deposit, and fee, provided the Register determines that the work constitutes copyrightable subject matter and that other legal and formal requirements have been satisfied. 17 U.S.C. 408 and 410. The Register also has the duty to retain articles deposited in the Copyright Office under section 408 but not selected by the Library of Congress for its collections. The Copyright Office also makes certain records of registration available for public inspection, including copyright deposits. 17 U.S.C. 704, 705.

a. *Mandatory deposit.* Deposit is made under two sections of the Copyright Act. Section 407 requires that

the owner of copyright or the owner of the exclusive right of publication in any work which has been published in the United States with notice of copyright deposit two complete copies or phonorecords of the best edition of the work for the collections of the Library of Congress. 17 U.S.C. 407. The Register is authorized under this section to exempt from the deposit requirement any types of works not needed for the Library of Congress collections, and has done so in 37 CFR 202.19(c). There is presently no general exemption in this regulation for material which contains trade secrets, although it is possible that most material containing trade secrets is not normally "published" within the meaning of the Copyright Act and is therefore not subject to section 407. 17 U.S.C. 101 (definition of "publication"). Moreover, computer programs are exempt from mandatory deposit under 37 CFR 202.19(c)(5).

b. *Deposit for registration.* Registration of a claim to copyright under section 408, though voluntary, also requires deposit. Title 17 U.S.C. 408 governs the nature of the deposit required in connection with copyright registration. Except as provided by subsection (c) thereof, subsection (b) generally requires the deposit of one complete copy or phonorecord in the case of an unpublished work, or two complete copies or phonorecords of the best edition in the case of a published work. For works first published outside the United States, the Act requires deposit of one complete copy or phonorecord as so published. Subsection (c) of section 408 authorizes the Register to specify administrative classes of works for purposes of deposit and registration, to determine the nature of the copies to be deposited, and to permit or require the deposit of identifying materials in lieu of actual copies.

In reliance on this authorization, the Copyright Office established regulations governing deposit for registration of claims to copyright at 37 CFR 202.20 and 202.21. Section 202.20 of 37 CFR provides a number of modifications to the deposit requirement in the case of certain works, but does not specifically provide for the deposit of identifying material in lieu of copies solely on the ground that the work contains trade secrets. However, special provision has been made for the deposit of literary works fixed or published in machine-readable form. 37 CFR 202.20(c)(vii). For computer programs, the regulations now require the deposit of "one copy of identifying portions of the program," which means the first and last 25 pages or their

equivalent. In applying this regulation, the Copyright Office has taken the position that the source code format of a computer program constitutes the best representation of the authorship in the program and therefore satisfies the "identifying portions" requirement.

Registration may be made for computer programs under the Office's "rule of doubt" based on an object code format as the deposit. In this exceptional case, the Office makes no independent determination that the object code format identifies an original work of authorship. The registration is made for whatever it may be worth based on an applicant's assertion that the object code identifies an original work of authorship. The Office also examines all other elements of the claim to determine whether formal and legal requirements have been satisfied.

The regulations also allow applicants the opportunity in exceptional cases to seek "special relief" from the deposit requirements by specific written request. Special relief may consist of allowing the deposit of identifying material in lieu of a copy or copies. 37 CFR 202.20(d). Under this procedure, the Examining Division has received many requests for such relief where the applicant seeks to maintain the confidentiality of a trade secret. Where it is possible to excise the confidential material and deposit a substantial representation of the authorship in the works, special relief is more likely to be granted.

c. "Secure test" regulation. Special provision is made in the deposit regulations for the registration of any work which is a "secure test." Section 202.20(c)(vi) provides that:

In the case of tests, and answer material for tests, published separately from other literary works, the deposit of one complete copy will suffice in lieu of two copies. In the case of any secure test the Copyright Office will return the deposit to the applicant promptly after examination; Provided, that sufficient portions, description, or the like are retained so as to constitute a sufficient archival record of the deposit.

Section 202.20(b)(4) defines a "secure test" as:

\* \* \* nonmarketed test administered under supervision at specified centers on specific dates; all copies of which are accounted for and either destroyed or returned to restricted locked storage following each administration.

For these purposes a test is not marketed if copies are not sold but it is distributed and used in such a manner that ownership and control of copies remain with the test sponsor or publisher."

In the case of the mandatory deposit of published works under section 407, "tests, and answer material for tests,

when published separately from other literary works," are completely exempt from deposit. 37 CFR 202.19(c)(8). Although no specific mention is made of "secure tests," this exemption is meant to encompass them and will, in almost every case, since most secure tests are published separately, if published at all.

Special provision for secure tests first appeared in our proposed rulemaking on deposit requirements, in Volume 42, No. 221 of the Federal Register for Wednesday, November 16, 1977 (pp. 59302-9). The preamble to the proposed regulations explained that the Copyright Office had considered the "special problems of confidentiality" faced by creators and administrators of secure tests. Consideration of the matter was prompted by correspondence from Educational Testing Service, whose position was supported by the American College Testing Program, The College Entrance Examination Board, The American Council on Education, and nineteen other examining boards and councils including the Law School Admission Council, the National Board of Medical Examiners, the Federation of State Medical Boards, and the National Conference of Bar Examiners.

After examining the concerns raised by these interested parties, the Copyright Office concluded that, although secure tests should be deposited in the Copyright Office for examination incident to registration under section 408, their retention by the Office and availability for public inspection could "severely prejudice the future utility, quality, and integrity of the materials." Accordingly, the proposed deposit regulation required that only one copy of any such test need be deposited, and provided for the special treatment which became, without change from the language in the proposed rulemaking, the present § 202.20(c)(vi). The proposed rulemaking also noted that the Library of Congress does not require such works for its collections and exempted them from mandatory deposit in proposed § 202.19, the regulation which prescribed deposit requirements for works subject to 17 U.S.C. 407. This exemption also became part of the final deposit regulations, as quoted above, at § 202.19(c)(8).

(d) Retention of copyright deposits and public access. Retention and disposal of deposits and public access to deposits made under sections 407 and 408 are governed by sections 704 and 705 of the Copyright Act, respectively, and material containing trade secrets, as well as all other deposit material retained by the Copyright Office, is subject to these provisions.

The statutory duty of the Register to retain works deposited in the Copyright Office is set forth in 17 U.S.C. 704. Subsection (a) recognizes three types of deposits: Copies, phonorecords, and identifying materials. The subsection provides that all types of deposits become U.S. Government property. In subsection (b), deposits for published works are available to the Library of Congress for its collections or for exchange or transfer to any other library, and the Library may select unpublished works for its collections or for transfer to the U.S. National Archives or to a Federal records center. Subsection (d) states that any deposits not selected are retained for the longest period practicable and desirable by the Register and the Librarian, but then may be destroyed or otherwise disposed of in accordance with the Act. The Copyright Office has recently published a policy decision regarding retention of deposits. (48 FR 12862). Published deposits will be retained for five years, except for works of the visual arts, which will be retained ten years or longer. No unpublished deposit will be disposed of during its term of copyright unless a facsimile reproduction of the entire deposit has been made and added to the Copyright Office records.

Title 17 U.S.C. 705 imposes upon the Register a duty to prepare and maintain records of "all deposits," registrations, recordings and other actions [subsection (a)]. Under subsection (b), such records and all articles deposited in connection with completed copyright registrations "shall be open to public inspection."

## 2. Some Policy Considerations

a. General. A number of requests for special relief from the deposit requirement, asking that various exceptions be made for computer programs and works containing trade secret material, caused us to institute this inquiry. Many requests asked for treatment similar to that now provided for "secure tests."

The secure test provision of the deposit regulations were sustained in a challenge in *National Conference of Bar Examiners and Educational Testing Service v. Multistate Legal Studies, Inc.*, 629 F. 2d 478 (7th Cir. 1982), (petition for certiorari filed), a copyright and trademark infringement case in which the defendant asserted that either the regulations under which plaintiffs' claims to copyright were registered, § 202.20(c)(vi), were inconsistent with the Copyright act, or that the Act was unconstitutional. The Seventh Circuit held that the secure test regulation is



authorized by 17 U.S.C. 408(c), that the regulation does not conflict with 17 U.S.C. 704(d), and that the regulation does not violate Article I, Section 8 of the Constitution.

Based on the *Multistate* decision, representations have been made to the Copyright Office that the Register has the necessary authority to promulgate regulations allowing the deposit of identifying material for works containing trade secrets. The purpose of this notice is to elicit comment, views, information, and suggestions that will assist the Office in reaching policy decisions regarding the appropriate deposit for computer programs and works containing trade secrets in general. The policy issues are important and may have profound significance for the system of copyright registration.

Registration before or within five years of publication creates a legal presumption of copyright validity and of the facts stated in the certificate of registration. 17 U.S.C. 410(c). Certain remedies (statutory damages and attorneys fees) are conditioned on timely registration. In the case of unpublished works, the registration record arguably establishes the metes and bounds of the claim to copyright, which, although arising upon creation of the work, is amorphous and undefined before registration.

To what extent should the benefits of a public registration record be offered to the claimants who may, for various reasons, be unwilling to disclose on the record at least a substantial portion of the authorship on which the claim is based? Is there any public interest in encouraging the disclosure of the scope of the claim to copyright? Can infringement actions be defended effectively where the public record discloses none or only a small portion of the authorship in a work which is the subject of litigation?

*b. Freedom of Information Act and the Trade Secrets Act.*

The Freedom of Information Act requires Federal agencies to make public all material in their possession that does not fall within nine specific exemptions. The fourth of these exemptions covers trade secrets and confidential commercial or financial information. 5 U.S.C. 552(b)(3)(4). In *Chrysler Corp. v. Brown*, 441 U.S. 281 (1979), the Supreme Court held that a private party had no right under FOIA to block the release of documents containing trade secrets that had been submitted to a government agency, stating that Congress intended the agency, and not the private entity submitting the documents, to have discretion over disclosure.

The Court left open the possibility that another federal law, the Trade Secrets Act, in combination with the requirements of the Administrative Procedure Act, could be used to block such disclosures of confidential material. The Trade Secrets Acts, 18 U.S.C. 1905.

If the Freedom of Information Act were applicable to copyright deposits, the Copyright Office would have discretion under the *Chrysler* case to issue a regulation governing disclosure of material which contains trade secrets. The Copyright Act, however, in making the Copyright Office subject to the Administrative Procedure Act of June 11, 1946, as amended, specifically exempted copyright deposits. 17 U.S.C. 701(d). The controlling disclosure provision is therefore section 705(b) of the Copyright Act which expressly requires that all section 408 copyright deposits, as well as other related material, "shall be open to public inspection." 17 U.S.C. 705. The Trade Secrets Act does not prevent disclosure where authorized by another federal statute. Disclosure of copyright deposits, whether they contain trade secrets or not, is not only authorized, but mandated by law.

Nevertheless, it is not clear that trade secrets are actually disclosed by copyright registration. Since the Copyright Office records are grouped in broad subject matter classifications, extensive searching may be required to locate a work unless one or more identifiers (title, author, claimant) is known precisely before hand.

*c. Alleged impairment of trade secrets.*

The principal argument for granting special treatment to works containing trade secret material, as expressed in requests for special relief, is that the public access that attends the deposit of such works arguably destroys or impairs their value to the copyright owner. In the case of deposit in connection with a copyright registration, it is argued that the harm done by public access may vitiate the benefits that copyright registration would otherwise provide to the copyright owner and thus discourage registration.

Some of the benefits of copyright registration were noted earlier. Additionally, no action for infringement of a copyright may be instituted until registration has been made or refused. 17 U.S.C. 411(a). Moreover, the importance of having deposits on record in the Copyright Office as evidence in litigation has long been acknowledged, particularly in the case of unpublished works. House Report 94-1476 notes the "continued value of deposits in identifying copyrighted works," and

refers to the "many difficulties encountered when copies needed for identification in connection with litigation or other purposes have been destroyed."<sup>1</sup> This philosophy lies behind the retention provision of section 704 of the Act.

The Copyright Office and the public have long been concerned with having an adequate record of a copyright registration or refusal to register, to protect those who must rely on the public record in infringement actions and commercial transactions. It is possible that the deposit of minimal identifying material in lieu of an actual copy or a reproduction of the complete authorship would weaken the value of the registration record in litigation.

The definition of the term "trade secret" is fundamental to consideration of any system of special treatment in the deposit regulations. The Roger Milgrim treatise, *Trade Secrets*, Volume II, Sec. 2.01, defines the term as follows:

A trade secret may consist of any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving material, a pattern for a machine or other device, or a list of customers. It differs from other secret information in a business . . . in that it is not simply information as to single or ephemeral events in the conduct of the business, as, for example, the amount or other terms of a secret bid for a contract or the salary of certain employees, or the security investments made or contemplated, or the date fixed for the announcement of a new policy or for bringing out a new model or the like. A trade secret is a process or device for continuous use in the operation of the business. Generally it relates to the production of goods, as for example, a machine or formula for the production of an article. It may, however, relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

It is unclear whether this definition is adequate to describe all of the "trade secret" materials likely to be submitted for deposit. If special provision is to be made by regulation, for works containing trade secrets, a workable definition which can be applied by examiners and the public, must be developed. The Copyright Office is concerned that the universe of "trade

<sup>1</sup> H.R. REP. NO. 94-1476, 94th Cong., 2d Sess. 171-172 (1976).

secret" materials may be exceedingly large.

Variations in deposit requirements which involve the submission of identifying material (unless adopted to conserve storage space) or special processing of any kind, tend to add significant administrative costs to the operating expenses of the Copyright Office. This additional expense must be considered by the Copyright Office in making its decision regarding deposit of computer programs and other material containing trade secrets.

The Office must also consider carefully the benefit to the public in having the most complete and representative collections possible in the Library of Congress. To some degree any replacement of actual copies by identifying material, for a large category such as trade secret materials, undermines the scope and worth of the Library's collections.

Finally, the Copyright Office in this Notice of Inquiry does not invite comment on deposit of confidential materials in general. The Office believes that exceptions from the deposit requirements for non-trade secret, confidential material can continue to be considered by means of requests for special relief under 37 CFR 202.19(e) and 202.20(d). However, if members of the public believe it is not possible to define trade secret material in a way that excludes confidential material, the Office will consider such comments.

### 3. Specific Questions

The Copyright Office is interested in receiving comments, views, information about business practices, and alternative deposit suggestions relevant to the deposit of computer programs and of material containing trade secrets. Of particular interest are answers to the following questions:

(1) To what extent is "industrial espionage" a problem with materials containing trade secrets, and to what extent would the presence of a copy of such a work in the Copyright Office records or in the Library of Congress collections exacerbate that problem?

(2)(a) Are works containing trade secrets usually registered for copyright? (b) Would a significantly greater number be registered but for the problem of public access to deposits? (c) What is the most typical type of trade secret material for which registration would be sought? (d) Is copyright registration considered an important system of protection for trade secret material by the owners of such material?

(3)(a) How should trade secret material be defined for the purposes of allowing special treatment, if any? (b)

What proof regarding trade secrecy should be required, if any? (c) Should specific assertions of the harm which would be caused by public disclosure be required, e.g. an assertion that disclosure would jeopardize national security, or would completely or substantially destroy the value of the work? (d) Should any attempt at definition be made, or should a simple assertion that a work contains trade secret material be sufficient?

(4) Are most materials containing trade secrets published or unpublished in terms of the definition of publication in 17 U.S.C. 101?

(5)(a) What are the public benefits in keeping trade secrets confidential? (b) How do such benefits compare to the public benefit in maintaining complete and open records of copyright registration? (c) To what extent should the benefits of copyright registration be available to claimants who are unwilling or unable to disclose on the public record at least a substantial portion of the authorship on which the claim is based?

(6)(a) To what extent are deposit copies of trade secret materials valuable in infringement actions or other lawsuits? (b) How would the evidentiary value of the deposit be affected if the deposit consisted of identifying material? (c) What type of identifying material would be best as an evidentiary copy? (d) Can infringement actions be defended effectively where the public record discloses none or only a small portion of the authorship in the contested work?

(7) If special treatment is granted for materials containing trade secrets, should it be handled as special relief on a case-by-case basis, or as a specific exemption in the deposit regulations?

(8) Would copyright owners be willing to bear part or all of the administrative cost of special treatment?

(9) What specific proposals for special treatment would be most effective in meeting the concerns of copyright owners in trade secret material?

(10)(a) Would owners of copyright in such materials be willing to maintain a secure file copy and produce it in court, or deposit the entire work whenever the material loses its trade secret status, as a condition of special treatment? (b) How could the Copyright Office enforce the condition, if adopted?

(11) Since the Copyright Office has no subject matter classifications other than the broad literary, visual arts, performing arts, and sound recording classes, does not the extensive searching ordinarily required to locate a work containing trade secret material

constitute a generally effective bar to actual disclosure of the trade secret?

(12)(a) Since object code formats of computer programs cannot be examined by the Copyright Office, under what conditions, if any, should the Office accept object code as the identifying reproduction of a computer program? (b) Should the Office require the deposit of both source code and object code, make its examination, and then return the source code? (c) Should the Office retain part of the source code in such form that no trade secret is disclosed? (d) What should be deposited if source code never existed?

(17 U.S.C. 407, 408, 410, and 701-706)

### List of Subjects in 37 CFR Part 202

Copyright registration requirements.

Dated: May 12, 1983.

David Ladd,

Register of Copyrights.

Approved:

Daniel J. Boorstin,

The Librarian of Congress.

[FR Doc. 83-13647 Filed 5-20-83; 8:45 am]

BILLING CODE 1410-03-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 764

[OPTS—62029; TSH-FRL 2345-7]

### 4,4'-Methylene Bis (2-Chloroaniline); Initiation of Regulatory Investigation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance notice of proposed rulemaking (ANPR).

**SUMMARY:** This notice announces the Environmental Protection Agency's intent to consider proposing the regulation of the chemical 4,4'-methylene bis (2-chloroaniline) (MBOCA) under the Toxic Substances Control Act (TSCA). MBOCA is used as a curing agent in the manufacture of certain polyurethane plastics and has been demonstrated to be carcinogenic in animals. EPA is concerned that the risk from exposure to MBOCA may be unreasonable and will explore a range of regulatory options including a complete or partial ban. EPA solicits comments on whether the manufacture, processing, use, or distribution in commerce of MBOCA should be subject to controls.

**DATE:** All comments must be received by July 22, 1983.

**ADDRESS:** Since some comments are expected to contain confidential

business information, all comments should be sent in triplicate to: Document Control Officer (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-409, 401 M St. SW., Washington, D.C. 20460.

Comments should include the docket number OPTS 62029. Comments received on this notice will be available for reviewing and copying from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays, in Rm. E-107 at the address given above.

**FOR FURTHER INFORMATION CONTACT:**

Jack P. McCarthy, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-511, 401 M St. SW., Washington, D.C. 20460, Toll-free: (800-424-9065), In Washington, D.C.: (554-1404), Outside the USA: (Operator—202-554-1404).

**SUPPLEMENTARY INFORMATION:** EPA has strong evidence that MBOCA is carcinogenic in several species and at multiple sites for at least one species. In rats, malignant tumors have been produced by MBOCA at statistically significant rates of incidence in the lung, liver, mammary gland, and Zymbal's gland. In mice, malignant tumors have been observed in the liver; in dogs, in the urinary bladder. The carcinogenicity of MBOCA in animal studies demonstrates its potential for human carcinogenicity.

MBOCA is used as a hardener or curing agent in the production of certain castable polyurethane elastomers (90 percent of domestic use) and polyurethane surface coatings (10 percent). Most elastomers using MBOCA are industrial products (such as solid tires, gears, gaskets, belts, rollers, etc.), while some are consumer products (such as shoe heels and soles, sport boots, and skate wheels).

The Toxic Substances Inventory compiled by EPA under section 8(b) of TSCA reports U.S. production of MBOCA in 1977 to be 2 to 20 million pounds. However, MBOCA is not currently manufactured in the United States. Of the former domestic manufacturers of MBOCA, E.I. du Pont de Nemours and Co., Inc. (Elastomaer Chemicals Department, Deepwater, New Jersey) voluntarily ceased production in 1978, and Anderson Development Company (Adrian, Michigan) halted production in 1979 by order of the State of Michigan. This State order has since expired, however, and domestic production could theoretically resume at any time. Current importation/domestic consumption estimates range from 1 to 3.5 million pounds per year. MBOCA is

used in some 200 to 400 polyurethane production plants, and most of these firms are relatively small.

Workplace procedures using MBOCA in polyurethane production present many opportunities for human exposure. The main occupational exposure to MBOCA at present occurs during its use as a polyurethane hardener. Release of MBOCA can occur during a number of steps in both manual and automated systems. Exposure to MBOCA occurs primarily from dust during handling and vapor from heat curing via the skin and lungs. Other populations potentially receiving lower but significant exposures are: (1) Persons living near MBOCA-using manufacturing facilities; (2) families of highly exposed workers from MBOCA-using manufacturing facilities; and (3) children playing in contaminated soils near a former production site. Should MBOCA manufacture resume in the United States, workers directly involved in MBOCA manufacture are expected to have exposure levels well above what presently occurs during processing and use of MBOCA.

In 1973, because of concern for carcinogenic effects of MBOCA, the Occupational Safety and Health Administration (OSHA) issued an Emergency Temporary Standard [38 FR 10929, May 3, 1973] and in 1974, a permanent health standard [39 FR 3756, January 29, 1974]. Later that year, the MBOCA standard was overturned by the courts solely on procedural grounds [506 F. 2d 385 (3rd Cir. 1974)]. In 1975, the identical standard was repropose [40 FR 4932, February 3, 1975]. MBOCA is not presently on the OSHA regulatory calendar. The National Institute of Occupational Safety and Health (NIOSH) recommends a time-weighted average exposure limit of 3 micrograms per cubic meter and avoidance of skin contact (Occupational Health Guidelines for Chemical Hazards, January 1981).

OSHA has communicated to EPA its intention to defer to OTS on potential MBOCA regulations (see Public Record). Because TSCA provides a broad range of unique regulatory strategies that can reach small processors, it is appropriate for OTS to consider regulation of MBOCA.

Because of concern about carcinogenic risk to humans from MBOCA exposure, EPA is considering regulation under section 6 of TSCA to control any unreasonable risks from MBOCA use. Section 6 of TSCA provides a number of alternative controls for reducing human exposure to chemicals which pose an unreasonable risk to health or the environment.

Control alternatives under this section include total or partial ban on the manufacture, processing, use, or distribution in commerce of a chemical; engineering controls for handling a chemical; or quality controls on the manufacture or processing of a chemical. EPA is especially interested in comments on the appropriateness of both a partial or total ban on the manufacture or import of MBOCA or its use in specified ways.

To determine whether an unreasonable risk exists and what type of control might be needed, the Agency will consider the costs, risks, and benefits of known MBOCA uses; and for those uses, the economic impact of regulations which might be developed including the suitability of substitutes.

To this end, the Agency is seeking views, arguments, and available data in three major areas: substitutes for MBOCA; sources of, adverse effects of, and ways to control exposure to MBOCA; and the economic impact of altering the present status of MBOCA.

**1. Substitutes.** We are aware that substitutes are available for at least some uses of MBOCA. In determining the proper control action, the Agency must evaluate what will happen if the availability or use of MBOCA is limited. Information on substitutes is important for the this purpose to ensure that more harmful substitutes would not replace restricted or banned uses of MBOCA, should the Agency take such action. Therefore, the Agency seeks further information on the identity, use, availability, costs, suitability, and toxicology of substitutes; whether there are MBOCA uses for which substitutes do not exist; and what process or equipment changes would be needed to use substitutes.

**2. Exposure.** Exposure is an important component of determining whether the manufacture, processing, distribution, or use of MBOCA poses an unreasonable risk. There are a number of steps during use of MBOCA when exposure can occur with either manual or automated handling. Available monitoring data are limited but sufficient to establish that human exposure to MBOCA can and does occur. The Agency needs to characterize better current exposures to MBOCA. Therefore, we solicit existing MBOCA monitoring and urine sampling data and information on the adverse effects of MBOCA exposure to humans.

In addition, we will examine ways to reduce/control exposure which could result from either elimination of certain uses or application of engineering controls and altered handling practices. To do this, additional information is

sought on current and alternative work practices and engineering controls or restricted use. In particular, information is sought on whether and what types of personal protective equipment is used, whether adequate equipment is available and effective, and whether such equipment is reasonable to purchase and place in the work setting.

Low-level contamination of surface water (streams, ditches, and shallow wells subject to contaminated run-off) occurred near the former manufacturing site in Michigan. For this reason, the Agency also solicits comments on the potential for water pollution from manufacturing or use of MBOCA; the environmental transport, distribution, and fate characteristics of MBOCA; and the potential exposures to humans through recreational uses of water, drinking of contaminated water, or consumption of contaminated fish.

The Agency also solicits information on disposal practices for unused MBOCA, the quantities being disposed (and what quantities of MBOCA dust or spilled pellets are included in ordinary trash from facilities using MBOCA to manufacture polyurethane parts), and whether disposal of products containing MBOCA could cause environmental contamination and resultant human exposure due either to leaching of the chemical from the solid matrix or from emissions during incineration of products made with MBOCA.

3. *Economics.* In determining whether an unreasonable risk exists, the Agency will evaluate the costs and benefits of specific uses of MBOCA and its substitutes and the differential costs of risk reduction options. To support this analysis, the Agency solicits information on the cost of substitutes versus MBOCA, the benefits of continued use of MBOCA, time required to switch to substitutes, costs of changing over to substitutes, and the expected impact on the regulated industry of the possible control actions indicated above. In addition, the Agency needs to identify and characterize better both the uses and users of MBOCA.

The Agency solicits information in each of these areas and any other relevant issues. EPA will consider all information supplied in response to this notice in determining the best course of action regarding MBOCA. Users of MBOCA and manufacturers of substitutes are encouraged to submit pertinent information.

#### Confidential Business Information

Information submitted as comments on this notice may be claimed

confidential by marking any part of all of that information as "TSCA Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A sanitized copy of any material containing TSCA Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

#### Public Record

EPA has established a public record for this proceeding (docket number OPTS 62029) which, along with a complete index, is available for inspection in the OPTS Reading Room from 8:00 a.m. to 4:00 p.m. on working days in (Rm. E-197, 401 M St., SW., Washington, D.C. 20460). This record includes basic information considered by the Agency in developing this ANPR. The Agency will supplement the record with additional information as it is received. The public record will include:

1. This notice.
2. All comments on this ANPR. Only sanitized versions of materials claimed to be TSCA Confidential Business Information will be included.
3. All relevant supporting documents and studies, including the OTS Priority Review Level 1 document which contains the factual information cited in this Notice.
4. Records of all communications between EPA personnel and persons outside the Agency pertaining to the development of this rule. (This does not include any inter- or intra-agency memoranda unless specifically noted in the index of this record.) The record will include a letter to OSHA which confirms EPA's understanding that OSHA has no plans to regulate MBOCA.

#### List of Subjects in 40 CFR Part 764

Chemicals, Environmental protection, Hazardous materials, Record keeping and reporting requirements.

(Sec. 6, Pub. L. 94-469, 90 Stat. 2020 (15 U.S.C. 2605))

Dated: May 11, 1983.

Lee L. Verstandig,  
Acting Administrator.

[FR Doc. 83-13813 Filed 5-20-83; 8:45 am]

BILLING CODE 6560-50-M

#### FEDERAL EMERGENCY MANAGEMENT AGENCY

#### 44 CFR Part 67

[Docket No. FEMA-6521]

#### National Flood Insurance Program; Proposed Flood Elevation Determinations

AGENCY: Federal Emergency  
Management Agency.

ACTION: Proposed rule.

**SUMMARY:** Technical information or comments are solicited on the proposed base (100-year) flood elevations and proposed modified base flood elevations listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**DATES:** The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

**ADDRESSES:** See table below.

**FOR FURTHER INFORMATION CONTACT:** Dr. Brian Mrazik, Acting Chief, Engineering Branch, National Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0230.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency gives notice of the proposed determinations of base (100-year) flood elevations and modified base flood elevations for selected locations in the nation, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

These elevations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be

used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not

have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the flood plain area. The elevation determination, however, impose no restriction unless and until the local community voluntarily adopts flood plain ordinances in accord with these elevations. Even if ordinances are

adopted in compliance with Federal standards, the elevations prescribe how high to build in the flood plain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

#### List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains  
The proposed base (100-year) flood elevations for selected locations are:

#### PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Alabama	City of Piedmont, Calhoun County	Mill Creek	Approximately 120 feet upstream of confluence of Dry Creek at State Highway 9.	*665
			Just upstream of State Highway 200	*694
		Mill Creek Tributary 1	Approximately 100 feet upstream of confluence of Mill Creek Tributary 1.	*698
			Just downstream of Southern Railway	*700
		Dry Creek	Approximately 150 feet upstream of Seaboard Coast Line Railroad.	*707
		Nances Creek	Approximately 90 feet upstream of Old State Highway 9 (Centre Avenue).	*666
Alabama	City of Fayette, Fayette County	Nances Creek	Approximately 100 feet upstream of Babbling Brook Road.	*682
			Just downstream of Spencer Street	*684
		Nances Creek Tributary 2	Just upstream of U.S. Highway 278	*675
Maps available for inspection at City Administration Building, 109 North Center Avenue and at Piedmont Public Library, 101 North Main Street, Piedmont, Alabama 36272. Send comments to Mayor James Garner or Mr. Brent Morrison, City Clerk, City Hall, P.O. Box 112, Piedmont, Alabama 36272.				
Alabama	City of Fayette, Fayette County	Sipsey River	Just downstream of County Road 35	*318
			Just downstream of Southern Railway	*321
			Just downstream of U.S. Highway 43 (State Highway 16).	*323
Maps available for inspection at City Clerk's Office, City Hall, 102 Second Avenue, S.E., Fayette, Alabama 35555. Send comments to Mayor Guthrie Smith or Ms. Pat Bagwell, City Clerk, City Hall, 102 Second Avenue, S.E., Fayette, Alabama 35555.				
Arizona	Pima (town), Graham County	Cottonwood Wash	Intersection of First West Street and U.S. Highway 70	#2
			Intersection of Second South Street and U.S. Highway 70.	#2
		Mud Hollow	Intersection of Fifth South Street and Second East Street.	#2
Maps available for inspection at the Town Clerk Office, Town Hall, 50 South 2nd West Street, Pima, Arizona. Send comments to the Honorable John Bryce, P.O. Box 426, Pima, Arizona 85543.				
Connecticut	Fenwick, borough, Middlesex County	Long Island Sound Connecticut River	Entire shoreline within community	*16
			Entire shoreline within community	*16
			Shoreline of South Cove at Neparsett Avenue (extended).	*13
			Shoreline of South Cove at Nibang Avenue (extended)	*12
Maps available for inspection at the Borough Office, Maple Avenue, Fenwick, Connecticut. Send comments to Honorable Elsworth Grant, Borough Warden of Fenwick, Maple Avenue, Fenwick, Connecticut 06475.				
Connecticut	Stonington, town, New London County	Fishers Island	Murphy Point	*13
			Pine Point	*13
			Ram Point	*15
			Entire shoreline of Baker Island	*16
			Southern end of Joyce Street extended	*13
			Lalimer Point	*16
			Entire shoreline of Quambog Cove	*11
			Lords Point	*16
			Stonington Harbor south of Conrail	*14
			Stonington Harbor north of Conrail	*13
			Palmer Neck Road extended	*16
			Pewcatuck Point	*16
Maps available for inspection at the Building Inspector's in the Town Clerk's Office, Stonington, Connecticut. Send comments to Honorable James Spellman, First Selectman of the Town of Stonington, Town Hall, Stonington, Connecticut 06378.				
Florida	Seminole (city), Pinellas County	Boca Ciega Bay	200 feet south from center of intersection of North Seminole Drive and State Highway 595.	*10
			Center of intersection of State Highway 595 (46th Avenue North) and 94th Street.	*11
			700 feet east from center of intersection of 94th Street and 46th Avenue North, along 46th Avenue North.	*13
			Lake Seminole	Easternmost end of Lake Vista Drive Loop
Maps available for inspection at City Hall, 7464 Ridge Road, Seminole, Florida. Send comments to Honorable Everett B. Allen, P.O. Box 3197, Seminole, Florida 33542.				

## PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. Elevation in feet (NGVD)
Florida	Sarasota County, unincorporated areas	Gulf of Mexico	Center of intersection of West River Road and Venice Farm Road.	*8
			Center of intersection of Mangrove Point Road and Midnight Pass Road.	*10
			Center of intersection of Cedar Park Circle and Higel Avenue.	*11
			Center of intersection of State Highway 789 and City Island Road.	*12
			Center of intersection of Givens Street and Ocean Boulevard.	*13
			Western most tip of Sarasota Point	*16
			200 feet due west from center of intersection of Sandspur Lane and Casey Key Road.	*17
			500 feet southwest from center of intersection of Uplands Boulevard and Parkview Drive.	*18
Maps available for inspection at the Building Department, 1301 Cattlemen Road, Sarasota, Florida. Send comments to Honorable Robert Anderson, P.O. Box 8, Sarasota, Florida 33578.				
Florida	Venice (city), Sarasota County	Gulf of Mexico	Center of intersection of Firenze Avenue and Riviera Street.	*11
			100 feet west from center of intersection of Esplanade North and Tarpon Center Drive.	*12
			200 feet west from center of intersection of Granada Avenue and Esplanade North.	*15
			300 feet west from center of intersection of Granada Avenue and Esplanade North.	*17
Maps available for inspection at the Building Inspector Department, 401 West Venice Avenue, Venice, Florida. Send comments to Honorable William F. Proctor, 401 West Venice Avenue, Venice, Florida 33595.				
Georgia	Town of Tyrone, Fayette County	Line Creek	Approximately 300 feet downstream of Castlewood Road.	*856
			Approximately 500 feet upstream of Castlewood Road.	*857
Maps available for inspection at Town Hall, Town Clerk's Office, Highway 74, Tyrone, Georgia 30290. Send comments to Mayor Willard Wright or Ms. Betty Percival, Town Clerk, Town Hall, P.O. Box 262, Tyrone, Georgia 30290.				
Idaho	Payette (city), Payette County	Payette River	100 feet south of the intersection of Sixth Avenue South and Sixth Street.	*2,143
Maps available for inspection at City Hall, 700 Center Avenue, Payette, Idaho. Send comments to the Honorable Dirk C. Bulcher, 700 Center Avenue, Payette, Idaho 83661.				
Idaho	Payette County (unincorporated areas)	Payette River	Intersection of U.S. Highway 95 and Killebrew Drive	*2,150
		Snake River	Intersection of Kennedy Road and Northwest 10th Avenue.	*2,139
Maps available for inspection at County Clerk's Office, 1130 3rd Avenue North, Payette, Idaho. Send comments to the Honorable Arnold Howard, 1130 3rd Avenue North, Payette, Idaho 83661.				
Indiana	(Uninc.) Jackson County	East fork White River	About 1 mile downstream of confluence with Medora Creek.	*523
			About 1.8 miles upstream of U.S. Highway 31A	*579
			Just upstream of State Highway 135	*615
			Just downstream of State Highway 258	*643
			Just upstream of Chessie System	*541
			Just downstream of Venus Road	*578
			Just upstream of abandoned railroad	*640
			Just downstream of State Highway 258*	*643
			Just upstream of County Road 600 South	*531
			Just downstream of Interstate 65	*547
			Mouth at Grassy Creek	*531
			About 2,000 feet upstream of U.S. Highway 31	*545
			Mouth at Little Salt Creek	*616
			About 1.22 miles upstream of County Road 680 North	*659
			Mouth at Kiper Creek	*628
			About 0.63 mile upstream of County Road 550 West	*677
			Mouth at east fork White River	*523
			About 100 feet upstream of town of Medora corporate limit.	*525
			Just upstream of County Road 600 South	*531
			At confluence with east arm tributary	*533
At Town of Medora corporate limits	*531			
About 800 feet upstream of town of Medora corporate limits.	*534			
Shallow flooding (overflow from south fork Medora Creek).	#1			
Shallow flooding (overflow from Medora Creek).	#2			
Maps available for inspection at the County Courthouse, Brownstown, Indiana. Send comments to Honorable Alfred Forgy, Planning Director, County of Jackson, Jackson County Planning Commission, County Courthouse, Brownstown, Indiana 47220				

## PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground, *Elevation in feet (NGVD)
Indiana	(T) Medora, Jackson County	Medora Creek	About 0.16 mile downstream of Washington Street	*524
			At northern corporate limit	*535
		South fork Medora Creek	At mouth	*526
			About 0.22 mile upstream of Jackson Street	*532
		East fork White River	Just downstream of State Highway 235	*524
			About 0.1 mile upstream of State Highway	*525
		Shallowing flooding (overflow from south fork Medora Creek)	Along southern corporate limits (south of Sparkville Road)	#1
	At western corporate limits just north of Chessie System	#1		
	Shallow flooding (overflow from Medora Creek)	South of Chessie System and east of State Highway 235	#2	
		Intersection of Adams Street and State Highway 235	#1	
		Intersection of Main Street and Elm Street	#2	
Maps available for inspection at the Town Hall, Medora, Indiana.				
Send comments to Honorable James Fish, Town Board President, Town of Medora, Town Hall, Box 65, Medora, Indiana 47260.				
Indiana	(C) Peru, Miami County	Wabash River	About 1.14 miles downstream of U.S. Route 31	*633
			About 1.45 miles upstream of Wayne Street	*645
		Little Pipe Creek	Mouth at Wabash River	*634
			About 0.13 mile upstream of 200 South Road	*651
			Just upstream of dam (about 200 feet upstream of Norfolk Southern Railway)	*675
			About 0.32 mile upstream of Norfolk Southern Railway	*682
		Parkview Heights ditch	Just upstream of Bob Tail Pike	*704
	About 0.73 mile upstream of Bob Tail Pike	*734		
Maps are available for inspection at the Miami County Courthouse, Peru, Indiana.				
Send comments to Honorable Larry Oylar, Mayor, City of Peru, Miami County Courthouse, Peru, Indiana 46970.				
Indiana	(C) Wabash, Wabash County	Wabash River	About 1.1 miles downstream of River Street	*661
			About 1.45 miles upstream of Huntington Street	*667
Maps available for inspection at the City Hall, 111 South Wabash, Wabash, Indiana.				
Send comments to Honorable George Dingley, Mayor, City of Wabash, City Hall, 111 South Wabash, Wabash, Indiana 46992.				
Illinois	(Uninc.) Calhoun County	Illinois River	Just upstream of State Route 100	*440
			At upstream County Boundary	*442
		Mississippi River	About 2 miles upstream of confluence of Illinois River	*441
		About 2.5 miles upstream of Lock & Dam No. 24	*459	
Maps available for inspection at the County Clerk's Office, Hardin, Illinois.				
Send comments to Honorable Jerome Sibley, Chairman, Calhoun County Board, Calhoun County Courthouse, Hardin, Illinois 62047.				
Illinois	(V) Clay City, Clay County	Little Wabash River	About 0.6 mile upstream of Chessie System	*429
			About 0.5 mile upstream of Main Street	*432
Maps available for inspection at the Village Hall, 140 South Main Street, Clay City, Illinois.				
Send comments to Honorable Kenneth Hostettler, Village President, Village of Clay City, Village Hall, 140 South Main Street, Clay City, Illinois 62624.				
Illinois	(C) Edwardsville, Madison County	Moony Creek	About 250 feet downstream of Kiowa Street	*475
			Just downstream of Dunlap Lake Dam	*486
			Just upstream of Dunlap Lake Dam	*514
			Just downstream of East Lake Drive	*518
		Cahokia Creek	Just upstream of Old Edwardsville Road	*455
			About 650 feet upstream of Springfield Road	*458
Maps available for inspection at the City Clerk's Office, 400 North Main Street, Edwardsville, Illinois.				
Send comments to Honorable Kenneth Evers, Sr., Mayor, City of Edwardsville, 400 North Main Street, Edwardsville, Illinois 62025.				
Illinois	(Uninc.) Gallatin County	Ohio River	Just upstream confluence of Saline River	*365
			At confluence of Wabash River	*369
Maps available for inspection at the Clerk's Office, Gallatin County Courthouse, Shawneetown, Illinois.				
Send comments to Honorable Edward Hines, Chairman, Gallatin County Board, Gallatin County Courthouse, Shawneetown, Illinois 62984.				
Illinois	(V) Gardner, Grundy County	Illinois Central Gulf Railroad ditch	Just upstream of State Route 53	*585
			About 0.3 mile upstream of East Street	*589
Maps available for inspection at the Village Hall, Major and Center Streets, Gardner, Illinois.				
Send comments to Honorable Ray Serena, Mayor, Village of Gardner, Village Hall, P.O. Box 545, Major and Center Streets, Gardner, Illinois 60424.				
Illinois	(V) Hainesville, Lake County	Squaw Creek	Within corporate limits	*783
		Shallow flooding	Northeast section of community (about 1,100 feet south, 800 feet east of intersection of Hainesville Road and Washington Street)	*783
Maps available for inspection at the Village Hall, Hainesville, Illinois.				
Send comments to Honorable George Benjamin, Village President, Village of Hainesville, Route 1, Box 21A, Grayslake, Illinois 60030.				
Illinois	(V) Hamburg, Calhoun County	Mississippi River	At the confluence of Irish Creek	*451
			About 0.86 mile upstream of confluence of Irish Creek	*452
Maps available for inspection at the City Clerk's Office, Village Hall, Hamburg, Illinois.				
Send comments to Honorable James E. Smith, Mayor, Village of Hamburg, Village Hall, Hamburg, Illinois 62045.				

## PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
Illinois	Jersey County	Mississippi River	At downstream County Boundary	*438	
		1	About 3.3 miles upstream of confluence of Illinois River	*441	
		Illinois River	At mouth	*440	
		About 6.0 miles above mouth	*441		
		About 1.8 miles upstream of confluence of Mecoupin Creek	*440		
Maps available for inspection at the County Clerk's Office, County Courthouse, 201 W. Pearl, Jerseyville, Illinois. Send comments to Honorable J. Richard Allen, Chairman, Jersey County Board, County Courthouse, 201 W. Pearl, Jerseyville, Illinois 62052.					
Illinois	(Uninc.) Jo Daviess County	Mississippi River	At downstream county boundary	*600	
			About 0.7 mile upstream of Illinois Central Gulf Railroad	*611	
		Galena River	At mouth	*604	
			About 0.9 mile upstream of County Route 3	*619	
		Hughlett branch	At city of Galena corporate limits	*624	
			About 250 feet upstream of the city of Galena corporate limits	*626	
Maps available for inspection at the Jo Daviess County Clerk's Office, J. Daviess County Courthouse, Galena, Illinois. Send comments to Honorable Tom Cullon, Chairman of the County Board, Jo Daviess County, Jo Daviess County Clerk's Office, Jo Daviess County Courthouse, Galena, Illinois 61036.					
Illinois	(V) Junction, Gallatin County	Ohio River	Within the corporate limits	*367	
Maps available for inspection at the Clerk's Office, Village Hall, Junction, Illinois. Send comments to Honorable Leon Bryant, Village President, Village of Junction, Village Hall, Junction, Illinois 62954.					
Illinois	(Uninc.) Marshall County	Illinois River	About 0.7 mile downstream of Atchison, Topoka and Santa Fe Railway	*460	
			Upstream county boundary	*462	
Maps available for inspection at the Marshall County Courthouse, Lacon, Illinois. Send comments to Honorable James Quinn, County Board Chairman, Marshall County, Marshall County Courthouse, Lacon, Illinois 61540.					
Illinois	(Uninc.) Mason County	Illinois River	Downstream county boundary	*450	
			Upstream county boundary	*455	
Maps available for inspection at the Zoning Administrator's Office, County Building, Main and Broadway Streets, Havana, Illinois. Send comments to Honorable Paul Martine, Chairman of the County Board, Mason County, County Building, Main and Broadway Streets, Havana, Illinois 62644.					
Illinois	(V) Sparland, Marshall County	Illinois River	Within corporate limits	*461	
Maps available for inspection at the Village Hall, 123 Center Street, Sparland, Illinois. Send comments to Honorable Lyle Schupp, Village Vice President, Village of Marshall, Village Hall, 123 Center Street, Sparland, Illinois 61565.					
Illinois	(C) Sycamore, DeKalb County	South Branch Kishwaukee River	About 0.21 mile upstream of Rich Road	*834	
			About 0.21 mile downstream of Bethany Road	*838	
			East Branch Kishwaukee River	About 0.5 mile downstream of Brickville Road	*826
				About 0.4 mile upstream of State Route 64	*837
Maps available for inspection at City Clerk's Office, Sycamore Municipal Building, Sycamore, Illinois. Send comments to Honorable Harold L. Johnson, Mayor, City of Sycamore, Sycamore Municipal Building, 535 DeKalb Avenue, Sycamore, Illinois 60176.					
Illinois	(Uninc.) Woodford County	Illinois River	Within the County Boundary	*460	
Maps available for inspection at the Woodford County Courthouse, Eureka, Illinois. Send comments to Honorable Lawrence Guard, Chairman, Woodford County Board, Woodford County Courthouse, P.O. Box 38, Eureka, Illinois 61530.					
Kentucky	City of Russellville, Logan County	Town Branch	Approximately 120 feet upstream of confluence of Town Branch Tributary D	*575	
			Approximately 125 feet downstream of West Third Street	*584	
			Approximately 150 feet upstream of Blue Grass Avenue	*596	
			Approximately 300 feet upstream of Louisville and Nashville Railroad	*620	
			Approximately 300 feet upstream of Emerson By-pass (Industrial Road)	*630	
			Approximately 60 feet downstream of West Sixth Street	*592	
			Approximately 130 feet upstream of U.S. Highway 79	*605	
			Just upstream of U.S. Highway 431	*585	
			Approximately 100 feet upstream of East Second Street	*562	
			Approximately 110 feet downstream of East Fifth Street	*591	
			Approximately 100 feet downstream of State Highway 100	*601	
			Approximately 120 feet upstream of State Highway 100	*610	
			Approximately 100 feet downstream of East Ninth Street	*597	
			Just upstream of Gravel Street	*615	



## PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Town Branch Tributary G	Approximately 450 feet upstream of confluence with Town Branch.	*565
		Proctor Branch Tributary A	Just upstream of the West Corporate Limits	*589
		Proctor Branch Tributary B	Just upstream of Modern-Maid Drive	*605
Maps available for inspection at City Hall, Russellville, Kentucky 42276. Send comments to Mayor Ken Smith or Ms. Peggy Jenkins, City Clerk, City Hall, Russellville, Kentucky 42276.				
Maine	Saco, City, York County	Atlantic Ocean	Shoreline at Palmer Avenue extended	*19
			Shoreline at Brooks Avenue (extended)	*14
			Shoreline at Lower Beach Road (extended)	*15
		Saco River	Upstream Cataract Dam	*48
			Upstream Springs Dam	*57
			Upstream Interstate Route 95	*61
			Upstream State Route 5	*69
			Upstream corporate limits	*73
		Goosefare Brook	Approximately 0.5 mile downstream of Boston & Maine Railroad.	*9
			Downstream Boston & Maine Railroad	*10
			Upstream Old Orchard Road	*15
			Upstream Ocean Park Road	*20
			Upstream Ross Road	*26
			Approximately 150' downstream U.S. Route 1	*30
Maps available for inspection at the Building Inspector's Office, City Hall, 300 Main Street, Saco, Maine. Send comments to Honorable David Wright, City Manager, City Hall, 300 Main Street, Saco, Maine 04072.				
Maryland	Chestertown, Town, Kent County	Chester River	Entire shoreline within community	*7
		Radcliffe Creek	Approximately 2,500 feet downstream of High Street/State Route 20.	*7
			Upstream High Street/State Route 20	*12
			Upstream corporate limits	*14
Maps available for inspection at the Town Hall, Maple Avenue and Cross Streets, Chestertown, Maryland. Send comments to Honorable Elmer E. Horsey, Mayor of Chestertown, P.O. Box 38, Chestertown, Maryland 21620.				
Maryland	Havre de Grace, City, Harford County	Chesapeake Bay	Shoreline of Susquehanna River above Chessie System bridge.	*12
			Shoreline of Susquehanna River at Pulaski Highway	*14
			Shoreline of Susquehanna River at Revolution Street extended.	*17
			Shoreline at Seneca Avenue extended	*16
Maps available for inspection at the City Hall, Havre de Grace, Maryland. Send comments to Honorable Charles Montgomery, Mayor of the City of Havre de Grace, 121 North Union Street, Havre de Grace, Maryland 21078.				
Massachusetts	Tisbury, Town, Dukes County	Vineyard Sound	Shoreline at Memphremagog Avenue (extended)	*13
			Shoreline at Minnesota Street (extended)	*13
		Lake Tashmoo	Shoreline at Lake Street (extended)	*11
		Vineyard Haven Harbor	Shoreline at Grove Avenue (extended)	*12
			Approximately 650' east of intersection of Lagoon Pond Road and shoreline at Cronig Way (extended).	*10
		Lagoon Pond	Shoreline at Weaver Lane	*12
Maps available for inspection at the Tisbury Town Hall and the Town Hall Annex, Tisbury, Massachusetts. Send comments to Honorable John Shilling, Chairman of the Tisbury Board of Selectmen, Town of Tisbury, P.O. Box 1239, Vineyard Haven, Massachusetts 02563.				
Michigan	(Twp) Hamburg, Livingston County	Huron River	Downstream corporate limit	*855
			Upstream corporate limit	*860
		Huron River-South Branch	About 3450 feet downstream of Beach Road	*855
			About 1000 feet upstream of Beach Road	*856
		Ore Lake	Shoreline	*860
		Zukey lake	Shoreline	*856
Maps available for inspection at the Clerk's Office, Town Hall, 7209 Stone Street, Hamburg, Michigan. Send comments to Honorable Henry Wuckert, Township Supervisor, Township of Hamburg, Town Hall, 7209 Stone Street, Hamburg, Michigan 48139.				
Michigan	(Twp) Highland, Oakland County	Petibone Creek	Downstream corporate limit	*957
			Just downstream of Livingston Road	*962
			Just upstream of Dam near Livingston Road	*975
			About 600 feet upstream of State Highway 59	*976
			Just upstream of Abandoned Dam (upstream of State Highway 59)	*985
			About 1000 feet downstream of Harvey Lake Road	*991
			Just upstream of Harvey Lake Road	*997
			Just upstream of Dunleavy Drive	*998
		Harvey Lake	Shoreline	*1001
		Duck Lake	Shoreline	*1017
		White Lake	Shoreline	*1021
Maps available for inspection at the Clerk's Office, Town Hall, 205 N. John Street, Highland, Michigan. Send comments to Honorable Willis Bullard, Jr., Township Supervisor, Township of Highland, Town Hall, 205 N. John Street, Highland, Michigan 48031.				
Minnesota	(C) Middle River, Marshall County	Middle River	Just downstream of Burlington Northern Railroad	*1138
			About 2350 feet upstream of 2nd Street	*1141
Maps available for inspection at Office of the City Clerk, Community Building, Middle River, Minnesota. Send comments to Honorable Sally Gentry, Mayor, City of Middle River, Community Building, Middle River, Minnesota 56737.				

## PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)
Missouri	(Uninc.) Callaway County	Stinson Creek	About 1.2 miles downstream of confluence of Smith Branch	*685
			At City of Fulton downstream corporate limits (about 1800 feet downstream of confluence of Smith Branch)	*592
		Big Hollow Creek	About 1800 feet upstream of U.S. Highway 54	*770
			About 0.9 mile downstream of Cote Sans Dessein Road	*768
		Missouri River	About 800 feet downstream of Cote Sans Dessein Road	*780
		About 1400 feet upstream of U.S. Highway 54	*604	
		At downstream county boundary	*529	
		At upstream county boundary	*562	

Maps available for inspection at the County Clerk's Office, Callaway County Courthouse, Fulton, Missouri.

Send comments to Honorable Charles Austahl, Presiding Judge, Callaway County, Callaway County Courthouse, Fulton, Missouri 65251.

Missouri	(C) Cedar City, Callaway County	Missouri River	About 0.28 mile downstream of U.S. Highway 54	*556
			About 1000 feet upstream of confluence of Turkey Creek	*558

Maps available for inspection at the Fire Station, Cedar City, Missouri.

Send comments to Honorable George O. Schupp, Mayor, City of Cedar City, P.O. Box 118, Cedar City, Missouri 65022.

New Jersey	Bridgeton, City, Cumberland County	Cohansey River	Downstream corporate limits	*9
			Upstream corporate limits	*10
			At confluence with Cohansey River	*9
		Mill Creek/Indian Field Branch	Downstream Commerce Street/East Lake Dam, And Spillway	*16
			At confluence of Jacksons Run	*27
			Downstream of North Burlington Road	*41
			Upstream corporate limits	*48
		Jackson Run	At confluence with East Lake	27
			At Kingsway	*52
			Upstream corporate limits	*58
		Sunset Lake	Entire area within community	*20
		Raceway	Entire length within community	*18
Jacksons Run (shallow flooding)	400 feet upstream of confluence with East Lake to Orchard Street	*2		

Maps available for inspection at the City Hall Annex, 168 East Commerce Street, Bridgeton, New Jersey.

Send comments to Honorable Donald Rainer, Mayor of the City of Bridgeton, 168 East Commerce Street, Bridgeton, New Jersey 08302.

New Jersey	Byram, Township, Sussex County	Musconetcong River	Downstream corporate limits	*642
			Downstream Access Road between CONRAIL and Lubbers Run	*655
			Corporate Limits upstream of Chestnut Road (extended)	*711
			Corporate limits at CONRAIL bridge upstream of Lake Musconetcong	*870
			Confluence with Musconetcong River	*661
		Lubbers Run	Upstream of U.S. Route 206	*685
			Upstream of Mansfield Drive	*714
			Upstream of Dam at Lake Lackawanna	*722
			Downstream of Lake Drive	*723
			Upstream of Spillway which is upstream of Lackawanna Drive	*786
			Upstream of Old Stanhope Road	*809

Maps available for inspection at the Municipal Building, 10 Mansfield Drive, Byram, New Jersey.

Send comments to Honorable Catherine M. Tomey, Mayor of Byram Township, Municipal Building, 10 Mansfield Drive, Stanhope, New Jersey 07874.

New Jersey	Franklin, Borough, Sussex County	Walkkill River	Downstream corporate limits	*479
			Upstream concrete weir	*504
			Confluence of Walkkill River Tributary	*511
			Upstream Church Street	*517
			Confluence of Black Creek	*533
			Upstream corporate limits	*555

Maps available for inspection at the Municipal Building, 46 Main Street, Franklin, New Jersey.

Send comments to Honorable John F. Carroll, Mayor of the Borough of Franklin, Municipal Building, 46 Main Street, Franklin, New Jersey 07416.

New Jersey	Hamburg, Borough, Sussex County	Walkkill River	Downstream corporate limits	*403
			Upstream Wheatsworth Road	*434
			Upstream second dam	*479

Maps available for inspection at the Municipal Building, 6 Walkkill Avenue, Hamburg, New Jersey.

Send comments to Honorable T. Pearse Reynolds, Mayor of the Borough of Hamburg, Municipal Building, 6 Walkkill Avenue, Hamburg, New Jersey 07419.

New Jersey	Lavellette, Borough, Ocean County	Atlantic Ocean	Entire shoreline within community	*13
			Entire shoreline of harbor	*7
			Swan Point Road (extended)	*8

Maps available for inspection at the Borough Hall, Brooklyn and Great Avenues (Route 35 N), Lavellette, New Jersey.

Send comments to Honorable Ralph D. Gorga, Mayor of the Borough of Lavellette, P.O. Box 67, Lavellette, New Jersey 08735.

## PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
New Jersey	Sea Girt, Borough, Monmouth County	Atlantic Ocean	Entire shoreline within community	*13
			Wreck Pond at Second Avenue extended	*9
			Wreck Pond at CONRAIL bridge	*10
			Wreck Pond at State Route 71	*9

Maps available for inspection at the Municipal Building, 4th and Baltimore Avenue, Sea Girt, New Jersey.

Send comments to Honorable Thomas Black, Mayor of the Borough of Sea Girt, P.O. Box 296, Sea Girt, New Jersey 08750.

New Mexico	City of Las Cruces, Dona Ana County	Flow Path 1	Just upstream of Elks Drive	*4010
			Just downstream of Interstate Highway 25	*4058
		Flow Path 2	Just upstream of Del Rey Boulevard	*4080
			Just downstream of U.S. Highways 70 and 82	*3971
		Flow Path 3	Just upstream of Triviz Drive	*4043
			Just upstream of Don Roser Drive	*4067
		Flow Path 4	Just downstream of Roadrunner Road	*4131
			Just upstream of U.S. Highway 70 and 82 (Main Street) Just downstream of Mesquite Street	*3916
		Flow Path 5	Just downstream of Mesquite Street	*3915
			Just upstream of Solano Drive	*3930
		Flow Path 6	Just upstream of Conway Avenue	*3882
			Just downstream of May Avenue	*3894
		Flow Path 7	Just upstream of Van Patten Avenue	*3898
			Just upstream of Park View Drive	*3887
		Flow Path 8	Just upstream of Perkins Drive (upstream most crossing)	*3891
Just downstream of Roadrunner Expressway	*4143			
Flow Path 9	Approximately 300 feet upstream of centerline of Government Dam	*4105		
	Just upstream of Interstate Highway 25	*4005		
Flow Path 10	Just upstream of Stern Drive	*3920		
	Just downstream of Frontage Road	*3925		
Flow Path 11	Just downstream of Interstate Highway 25	*3948		
	Just upstream of Las Alturas Road	*3964		
Flow Path 12	Just downstream of Farney Drive	*3885		
	Just upstream of West Hadley Avenue	*3891		
Flow Path 13	Just upstream of U.S. Highways 70 and 80 (West Picacho Avenue)	*3896		

Maps available for inspection at City Engineering Department, City-County Building, 575 S. Alameda, Las Cruces, New Mexico 88004.

Send comments to Mayor David Steinborn or Mr. Larry Rodriguez, Chief City Engineer, P.O. Drawer CLC, Las Cruces, New Mexico 88004.

New York	Macedon, Town, Wayne County	Ganargua Creek	Approximately 470 feet downstream of downstream Village of Macedon corporate limits	*456	
			At upstream Village of Macedon corporate limits	*470	
			Upstream of Canandaigua Road	*478	
			Upstream of Nolan Road	*486	
			Upstream of Victor Road	*499	
			Upstream of footbridge	*504	
			At upstream corporate limits	*511	
			New York State Barge Canal	Approximately .26 mile downstream of Village of Macedon corporate limits	*448
				Upstream of Canandaigua Road	*464
				At upstream corporate limits	*464

Maps available for inspection at the Town Hall, 30 West Main Street, Macedon, New York.

Send comments to Honorable Wayne Schiek, Mayor of the Town of Macedon, 30 West Main Street, Macedon, New York 14502.

New York	Onondaga, Town, Onondaga County	Onondaga Creek	Downstream corporate limits	*421
			Roswell Avenue (extended)	*426
			Upstream corporate limits	*433
		Harbor Brook	Approximately 650 feet downstream of Farm Road	*781
			Harris Road (upstream side)	*863
			Approximately 1,900 feet upstream of Harris Road	*889

Maps available for inspection at the Town Hall, 4801 West Seneca Turnpike, Syracuse, New York.

Send comments to Honorable Paul Wickers, Jr., Supervisor of the Town of Onondaga, Town Hall, 4801 Seneca Turnpike, Syracuse, New York 13036.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR of 1968, November 28, 1968), as amended (42 U.S.C. 4001-4128); Executive Order 12127, 44 FR 19367; and delegation of authority to the Associate Director)

Issued: May 5, 1983.

Dave McLoughlin,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 83-13625 Filed 5-20-83; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-6522]

National Flood Insurance Program;  
Proposed Flood Elevation  
Determinations

AGENCY: Federal Emergency  
Management Agency.

**ACTION:** Proposed rule.

**SUMMARY:** Technical information or comments are solicited on the proposed base (100-year) flood elevations and proposed modified base flood elevations listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**DATE:** The period for comment will be ninety (90) days following the second publication of the proposed rule in a newspaper of local circulation in each community.

**ADDRESSES:** See table below.

**FOR FURTHER INFORMATION CONTACT:** Dr. Brian R. Mrazik, Acting Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency Washington, D.C. 20472, (202) 287-0230.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency gives notice of the proposed determinations of base (100-year) flood

elevation and modified base flood elevations for selected locations in the nation, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

These elevations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, to whom

authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the flood plain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts flood plain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the flood plain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

**List of Subjects in 44 CFR Part 67**

Flood insurance, Flood plains.

The proposed modified base flood elevations for selected locations are:

## PROPOSED MODIFIED BASE FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Georgia	City of Lafayette, Walker County	Chattooga Creek	Just upstream of Shattuck Industrial Drive Just downstream of the confluence of Chattooga Creek Tributary.	*758	*767
				*769	*769
Maps available for inspection at the City Hall, P.O. Box 89, Lafayette, Georgia. Send comments to Honorable E. R. Gasque, Mayor, City of Lafayette, City Hall, P.O. Box 89, Lafayette, Georgia 30729.					
Maine	Fort Kent, Town, Aroostook County	St. John River	Approximately 700 feet along Alfred Street from the intersection with Dufour Street.	None	*519
Maps available for inspection at the New Municipal Center, Fort Kent, Maine. Send comments to Honorable Claude Dumont, Mayor of Fort Kent, New Municipal Center, P.O. Box 329, Fort Kent, Maine 04743.					
Maryland	Hagerstown, City, Washington County	Antietam Creek	Downstream of Mt. Aetna Road Upstream of Mt. Aetna Road Confluence with Hamilton Run Downstream of U.S. 40 Upstream corporate limits Approximately 800' upstream of upstream corporate limits.	*477	*475
				*480	*475
		Hamilton Run	Approximately 800' downstream of Chessie System Railroad (area not previously identified).	*481	*476
				*481	*476
Maps available for inspection at the City Hall, Hagerstown, Maryland. Send comments to Honorable Donald R. Frush, Mayor of Hagerstown, City Hall, Hagerstown, Maryland 21740.					
Massachusetts	Lowell, City, Middlesex County	Concord River	Upstream side of State Route 133 (Church Street). Downstream side of Wamesit Power Company Dam.	*72 *93	*73 *101
Maps available for inspection at the City Hall, 375 Merrimack Street, Lowell, Massachusetts. Send comments to Honorable Brendan Fleming, Mayor of Lowell, City Hall, 375 Merrimack Street, Lowell, Massachusetts 01852.					
New Hampshire	Claremont, City, Sullivan County	Sugar River	Broad Street/Monadnock Dam (directly upstream). Confluence with Grandy Brook Approximately 860 feet downstream of Claremont and Concord Railroad.	*530	*520
				*531	*530
		Grandy Brook	Confluence with Sugar River	*531	*530
Maps available for inspection at the City Hall, Claremont, New Hampshire. Send comments to Honorable Charles Puksta, Mayor of Claremont, City Hall, Claremont, New Hampshire 03743.					

## PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
New Jersey	Fairfield, Township, Essex County	Passaic River	Phyllis Lane extended	None	*173
			Farmstead Lane	None	*173
		Deepaval Brook	Orlando Drive	None	*172
			Kingsbridge Road	None	*172
Maps available for inspection at the Township Building, 230 Fairfield Road, Fairfield, New Jersey. Send comments to Honorable Theodore Nalesnik, Mayor of Fairfield 230 Fairfield Road, Fairfield, New Jersey 07006.					
New Jersey	Greenwich, Township, Gloucester County	Glommel Creek	Downstream of Swedesboro-Paulsboro Road	None	*10
Maps available for inspection at the Greenwich Township Building, Broad and Walnut Streets, Gibbstown, New Jersey. Send comments to Honorable Francis A. McDowell, Mayor of Greenwich, Broad and Walnut Streets, Gibbstown, New Jersey 08027.					
New Jersey	Westwood, Borough, Bergen County	Musquapsink Brook	Approximately 200 feet upstream of Forest Avenue Extension (area previously not identified)	None	*54
			Approximately 400 feet upstream of Forest Avenue Extension (area previously not identified)	None	*54
Maps available for inspection at the Borough Building, 51 Jefferson Avenue, Westwood, New Jersey. Send comments to Honorable Charles A. Bellon, Mayor of Westwood, 51 Jefferson Avenue, Westwood, New Jersey 07675.					
New York	Brutus, Town Cayuga County	Skaneateles Creek	From corporate limits approximately 600' along Hall Road (extended). Conrail (upstream side)	None None	*398 *401
Maps available for inspection at the Brutus Town Hall, 9021 North Seneca Street, Weedsport, New York. Send comments to Honorable David Coyle, Town Supervisor of Brutus, 9021 North Seneca Street, Weedsport, New York 13166.					
New York	Fort Edward, Village Washington County	Hudson River	Downstream corporate limits	*128	*131
			Divergence with East Channel	*129	*131
			Approximately 3,100 feet upstream of State Route 197.	*130	*131
		East Channel	Downstream corporate limits Along Bond Creek at U.S. Route 4 (extended).	*128 *128	*131 *131
Maps available for inspection at the Village Hall, 118 Broadway, Fort Edward, New York. Send comments to Honorable Leonard King, Mayor of Fort Edward, Village Hall, 118 Broadway, Fort Edward, New York, 12628.					
Pennsylvania	Solebury, Township Bucks County	Delaware River	Downstream corporate limits	*65	*62
			Downstream corporate limits of Borough of New Hope	*69	*67
			Upstream corporate limits of Borough of New Hope	*74	*73
			Upstream Upper York Road bridge	*84	*83
		Paunacussing Creek	Upstream Lumborville bridge	*96	*95
			Upstream corporate limits	*97	*96
			Upstream River Road bridge	*97	*96
			Upstream Paunacussing Road bridge	*210	*207
		Paunacussing Creek	Upstream Fleecy Dale Road bridge	*230	*225
			Upstream Sawmill Road bridge	None	*267
			Upstream Mechanicsville Road bridge	None	*400
			Upstream Stovers Mill Road bridge	*232	*231
Tributary No. 1	Approximately 1,500 feet upstream Stovers Mill Road bridge.	*240	*245		
Maps available for inspection at the Township Building, Solebury, Pennsylvania. Send comments to Honorable Patricia Knight, Chairwoman of the Solebury Board of Supervisors, P.O. Box 139, Solebury, Pennsylvania 18939.					
Pennsylvania	Whitehall, Township Lehigh County	Jordan Creek	Downstream corporate limits Upstream North Fifth Street Bridge Upstream McArthur Road Bridge Upstream Lehigh Valley Thruway Bridge	*264 *264 *268 *274	*260 *267 *272 *260
Maps available for inspection at the Township Building, 3219 McArthur Road, Whitehall, Pennsylvania. Send comments to Honorable Edward J. Galgon, Whitehall Township Executive, 3219 McArthur Road, Whitehall, Pennsylvania 18052.					
Texas	Abilene, City Taylor & Jones Counties	*Elm Creek	Approximately 1.2 miles upstream of confluence of Cedar Creek.	None	*1,647
			Downstream of Lake Phantom Hill Road	None	*1,653
		Cedar Creek	Downstream corporate limits (located approximately 2 miles upstream of confluence with Elm Creek).	None	*1,651
			Corporate limits (located 1.5 miles upstream of Industrial Boulevard).	*None	*1,746
Cat Claw Creek	Downstream of Buffalo Gap Road	*None	*1,802		
	Upstream of Buffalo Gap Road	None	*1,805		
Maps available for inspection at the City Hall, 555 Walnut Street, Abilene, Texas. Send comments to Honorable Elbert E. Hall, Mayor of Abilene, 555 Walnut Street, Abilene, Texas 79601.					
Texas	Coppell, City Dallas & Denton Counties	Elm Fork of Trinity River	FM 1380, Beltline Road (downstream side)	*439	*440

## PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
		Grapevine Creek	Ledbetter Road (upstream side)	*437	*438
		Denton Creek	Approximately 4,900' downstream of confluence of Cottonwood Branch	*455	*456
			Approximately 4,900' upstream of Denton Tap Road	None	*458
			Approximately 1,250' upstream of Denton Tap Road	*465	*466
		Cottonwood Branch	Approximately 3,200' downstream of Sandy Lake Road	*463	*464
			Approximately 1,000' upstream of Sandy Lake Road	*470	*471
				*483	*482
Maps available for inspection at the City Hall, 516 Coppel Road, Coppel, Texas. Send comments to Honorable Andrew Brown, Jr., Mayor of Coppel, P.O. Box 478, Coppel, Texas 75019.					
Texas	Palestine, City, Anderson County	Wells Creek Northwest	Approximately 400 feet upstream of U.S. Route 79	None	*400
			Upstream of U.S. Route 155	None	*412
			Upstream of Old Bushy Creek Road	None	*412
Maps available for inspection at the City Hall, Palestine, Texas. Send comments to Honorable Jack Conboy, Mayor of Palestine, P.O. Drawer Z, Palestine, Texas 75801.					
Virginia	Rockbridge County	Maury River	Confluence with James River	None	*723
			Upstream State Route 130 bridge	None	*724
			Approximately 600 feet downstream of confluence of Davidson Run	None	*730
Maps available for inspection at the County Courthouse, Courthouse Square, Lexington, Virginia. Send comments to Honorable Don G. Austin, Administrator of Rockbridge County, Courthouse Square, Lexington, Virginia 24450.					
Virginia	Smyth County	Middle Fork, Holston River	Downstream side of State Route 714 bridge	*2,198	*2,200
			Upstream side of Norfolk and Western Railway bridge	*2,205	*2,204
			Upstream side of Snider Branch Road bridge	*2,210	*2,209
			Confluence of Nick's Creek	*2,274	*2,275
			Upstream side of Hickory Lane bridge	*2,303	*2,304
Maps available for inspection at the County Building, Marion, Virginia. Send comments to Honorable Marvin R. Perry, Smyth County Administrator, P.O. Box 188, Marion, Virginia 24354.					
West Virginia	Follansbee, City, Brooke County	Ohio River	Upstream corporate limits extended to incorporate annexation	None	*669
Maps available for inspection at the City Manager's Office, City Hall, Follansbee, West Virginia. Send comments to Honorable Adam Dalessio, Mayor of Follansbee, City Hall, P.O. Box X, Follansbee, West Virginia 26037.					
West Virginia	Wheeling, City, Ohio and Marshall Counties	Wheeling Creek	Downstream of Ford	*704	*705
			Upstream corporate limits	*707	*708
Maps available for inspection at the City-County Building, 1500 Chapline Street, Wheeling, West Virginia. Send comments to Honorable Wayne Barte, City Manager of Wheeling, City-County Building, 1500 Chapline Street, Wheeling, West Virginia 26003.					

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

## List of Subjects in 44 CFR Part 65

Flood insurance, flood plains.

(National Flood Insurance Act of 1968 [Title XIII of Housing and Urban Development Act of 1968], effective January 28, 1969 [33 FR

17804, November 28, 1968], as amended; 42 U.S.C. 4001-4128; Executive Order 12127; 44 FR 19367; delegation of authority to Associate Director, State and Local Programs and Support)

Issued: April 29, 1983.

Dave McLoughlin,  
Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 83-13627 Filed 5-20-83; 8:45 am]  
BILLING CODE 6718-03-M

## 44 CFR Part 67

[Docket No. FEMA-6470]

**National Flood Insurance Program;  
Proposed Flood Elevation  
Determinations; Correction**

AGENCY: Federal Emergency Management Agency.

**ACTION:** Proposed rule; correction.

**SUMMARY:** This document corrects a Notice of Proposed Determinations of base (100-year) flood elevations previously published at 47 FR 57062 on December 22, 1982. This correction notice provides a more accurate representation of the Flood Insurance Study and Flood Insurance Rate Map for the City of Clanton, Chilton County, Alabama.

**FOR FURTHER INFORMATION CONTACT:** Dr. Brian R. Mrazik, Acting Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 287-0230.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency gives notice of the correction of the Notice of Proposed Determinations

of base (100-year) flood elevations for selected locations in the City of Clanton, Chilton County, Alabama, previously published at 47 FR 57062 on December 22, 1982, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 383 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

Pursuant to the provisions of U.S.C. 605(b), the Associate Director, to whom authority has been delegated by the Director, Federal Emergency

Management Agency hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under Section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the flood plain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts flood plain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal

standards, the elevations prescribe how high to build in the flood plain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new restrictions; of itself it has no economic impact.

#### List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The following sources of flooding have been amended to as follows. The remainder of the Notice of Proposed Base Flood Elevations remains unchanged.

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. Elevation in feet (NGVD)
		Possum Creek.....	Just upstream of 16th Avenue North.....	*579
			Just downstream of Center Street.....	*588
		Cripple Coon Creek.....	Just upstream of Old Thorby Road.....	*580
			Just upstream of 14th Avenue.....	*589

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); Executive Order 12127, 44 FR 19367; and delegation of authority to the Associate Director)

Issued: April 29, 1983.

David McLaughlin,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 83-13638 Filed 5-20-83; 8:45 am]

BILLING CODE 6718-03-M

#### 44 CFR Part 67

[Docket No. FEMA-6470]

#### National Flood Insurance Program; Proposed Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency.

**ACTION:** Proposed rule; revision.

**SUMMARY:** Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Town of Maplesville, Chilton County, Alabama.

Due to recent engineering analysis, this proposed rule revises the proposed determinations of base (100-year) flood elevations published in 47 FR 57062 on December 22, 1982 and in the *Independent Advertiser* on November 23, and November 30, 1982 and hence supersedes those previously published rules.

**DATES:** The period for comment will be ninety (90) days following the second publication of this notice in a newspaper of local circulation in the above-named community.

**ADDRESSES:** Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for inspection at Town Clerk's Office, Town Hall, Main Street, Maplesville, Alabama 36750.

Send comments to: Mayor Aubrey C. Morrison or Mr. Jesse J. Hayes, Jr., Town Councilman, Town Hall, P.O. Box 9, Maplesville, Alabama 36750.

**FOR FURTHER INFORMATION CONTACT:** Dr. Brian R. Mrazik, Acting Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0230.

**SUPPLEMENTARY INFORMATION:** Proposed base (100-year) flood elevations are listed below for selected locations in the Town of Maplesville in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(A).

These base (100 year) flood elevations are the basis for the flood plain management measures that the

community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under Section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the flood plain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts flood plain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal Standards, the elevations prescribe how

high to build in the flood plain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new

requirement; of itself it has no economic impact.

#### List of Subjects in 44 CFR Part 67

Flood insurance, flood plains.

The proposed base (100-year) flood elevations are:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Alabama	Town of Maplesville, Calhoun County	Byrd Creek	Just downstream of Illinois Central Gulf Railroad	*323
		Little Mulberry Creek	Just downstream of Farm Road Approximately 150 feet downstream of State Highway 22	*352 *325
		Mulberry Creek	Approximately 100 feet upstream of State Highway 22 At southeastern corporate limits approximately 50 feet north of the intersection of Illinois Central Gulf Railroad and Les Broadhead Road.	*326 *305

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); Executive Order 12127, 44 FR 19367; and delegation of authority to the Associate Director)

Issued: April 29, 1983.

David McLaughlin,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 83-13639 Filed 5-20-83; 8:45 am]

BILLING CODE 6718-03-M

#### 44 CFR Part 67

[Docket No. FEMA-6470]

#### National Flood Insurance Program; Proposed Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency.

**ACTION:** Proposed rule: revision.

**SUMMARY:** Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the City of Oxford, Calhoun County, Alabama.

Due to recent engineering analysis, this proposed rule revises the proposed determinations of base (100-year) flood elevations published in 47 FR 57062 on December 1, 1982, and in the *Oxford Sun* on November 24 and December 1, 1982, and hence supersedes those previously published rules.

**DATES:** The period for comment will be ninety (90) days following the second publication of this notice in a newspaper of local circulation in the above-named community.

**ADDRESS:** Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for inspection at the City Administrator's

Office, City Hall, 100 Choccolocco Street, Oxford, Alabama 36203.

Send comments to: Mayor Thurman Whitmore or Mr. Tom Simpson, City Administrator, City Hall, P.O. Box 3383, Oxford Alabama 36203.

**FOR FURTHER INFORMATION CONTACT:** Dr. Brian R. Mrazik, Acting Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0230.

**SUPPLEMENTARY INFORMATION:** Proposed base (100-year) flood elevations are listed below for selected locations in the City of Oxford, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR 67.4(A).

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations will also be used to calculate the appropriate flood insurance premium rates for new

buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under Section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the flood plain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts flood plain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the flood plain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

#### List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The proposed base (100-year) flood elevations are:



State	City/town/county	Source of Flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Alabama	City of Oxford, Calhoun County	Choccolocco Creek	Just downstream of Friendship Road	*605
		Snow Creek	Just upstream of Interstate Highway 20	*612
			Just downstream of Snow Street	*618
		Golden Springs Branch	Just upstream of U.S. Highway 78 and 431	*623
		Boiling Springs Branch	Just upstream of U.S. Highway 78 and 431	*632
		Park Creek	Approximately 80 feet downstream of McDaniel Street	*652
		Hobson Creek	Approximately 350 feet downstream of Southern Railway	*647
	DeArmanville Branch	Approximately 100 feet upstream of corporate limits	*627	

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); Executive Order 12127, 44 FR 19367; and delegation of authority to the Associate Director)

Issued: April 29, 1983.

David McLaughlin,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 83-13640 Filed 5-20-83; 8:45 am.]

BILLING CODE 6718-03-M

#### 44 CFR Part 67

[Docket No. FEMA-6499]

#### National Flood Insurance Program; Proposed Flood Elevation Determinations; Correction

AGENCY: Federal Emergency  
Management Agency.

ACTION: Proposed rule; correction.

**SUMMARY:** This document corrects a Notice of Proposed Determinations of base (100-year) flood elevations previously published at 48 FR 10880 on March 15, 1983. This correction notice provides a more accurate representation of the Flood Insurance Study and Flood Insurance Rate Map for the Township of Lebanon, Hunterdon County, New Jersey.

**FOR FURTHER INFORMATION CONTACT:** Dr. Brian R. Mrazik, Acting Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0230.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency gives notice of the correction to the Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the Township of Lebanon, Hunterdon County, New Jersey, previously published at 48 FR 10880 on March 15, 1983, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under Section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the flood plain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts flood plain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the flood plain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

#### List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

Source of flooding	Location	Elevation in feet, National Geodetic vertical datum
South Branch Raritan River.	CONRAIL (upstream side)	*411
Spruce Run	Approximately 50 feet upstream of 2nd Private Drive (upstream side).	*327
Willoughby Brook	Most downstream corporate limits.	*293
	Approximately 60' upstream of upstream crossing of Buffalo Hollow Road (upstream side).	*467

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Associate Director)

Issued: April 29, 1983.

Dave McLoughlin,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 83-13641 Filed 5-20-83; 8:45 am.]

BILLING CODE 6718-03-M

#### 44 CFR Part 67

[Docket No. FEMA-6373]

#### National Flood Insurance Program; Revision of Proposed Flood Elevation Determinations

AGENCY: Federal Emergency  
Management Agency

ACTION: Proposed rule.

**SUMMARY:** Technical information or comments are solicited on the proposed modified base (100-year) flood elevations shown on your community's preliminary Revised Flood Insurance Rate Map (FIRM).

Due to recent engineering analysis, this proposed rule revises the proposed modified determinations of base (100-year) flood elevations published in the Federal Register at 47 FR 34799 on August 11, 1982, and hence supersedes those previously published rules.

**DATES:** The period for comment will be ninety (90) days following the second publication of this notice in a newspaper of local circulation in each community.

**ADDRESSES:** Maps and other information showing the detailed outlines of the flood-prone areas and the proposed

flood elevations are available for review at the office of the Public Works Director, City Hall, 105 West Juan Linn, Victoria, Texas.

Send comments to: Honorable Ted B. Reed, Mayor of Victoria, P.O. Box 1758, Victoria, Texas 77901.

**FOR FURTHER INFORMATION CONTACT:** Dr. Brian R. Mrazik, Acting Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0230.

**SUPPLEMENTARY INFORMATION:** Proposed modified base (100-year) flood elevations are listed below for selected locations in the City of Victoria, Victoria County, Texas, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

These elevations, together with the flood plain management measures required by Section 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not

have a significant economic impact on a substantial number of small entities. A flood elevation determination under Section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the flood plain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts flood plain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the flood plain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

#### List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The proposed modified base (100-year) flood elevations are:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground, *Elevation in Feet (NGVD)	
				Existing	Modified
Texas	Victoria, City, Victoria County	Lone Tree Creek	Downstream corporate limits	None	'86
			Approximately 3,100' upstream of downstream corporate limits	None	'87
			Southern Pacific Railroad (upstream side)	None	'91
		Spring Creek	Houston Highway (upstream side)	'95	'92
			Lenora Drive (extended)	*101	'98
			Downstream corporate limits	*75	'77
	Confluence of Whispering Creek, North Outfall	None	'78		

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17604, November 28, 1968), as amended; 42 U.S.C. 4001-4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Associate Director)

Issued: May 6, 1983.

Dave McLoughlin,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 83-13942 Filed 5-20-83; 8:45 am]

BILLING CODE 6718-03-M

#### 44 CFR Part 67

[Docket No. FEMA-8499]

#### National Flood Insurance Program; Proposed Flood Elevation Determinations; Correction

**AGENCY:** Federal Emergency Management Agency.

**ACTION:** Proposed rule; correction.

**SUMMARY:** This document corrects a Notice of Proposed Determinations of base (100-year) flood elevations previously published at 48 FR 10880 on March 15, 1983. This correction notice provides a more accurate representation of the Flood Insurance Study and Flood

Insurance Rate Map for the Township of Lebanon, Hunterdon County, New Jersey.

**FOR FURTHER INFORMATION CONTACT:** Dr. Brian R. Mrazik, Acting Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0230.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency gives notice of the correction to the Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the Township of Lebanon, Hunterdon County, New Jersey, previously published at 48 FR 10880 on March 15, 1983, in accordance with Section 110 of the Flood Disaster

Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under Section 1363 forms the basis for new local ordinances, which, if adopted by a

local community, will govern future construction within the flood plain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts flood plain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the flood plain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

#### List of Subjects in 44 CFR Part 67

##### Flood insurance, Flood plains.

Source of flooding and location	Elevation in feet, national geodetic vertical datum
South Branch Raritan River:	
Downstream corporate limits	*327
CONRAIL (upstream side)	*411
Hoffmans Crossing Road (upstream)	*442
Approximately 300 feet upstream of confluence of Little Brook	*451
Vernon Road (downstream side)	*487
Upstream corporate limits	*489
Musconetcong River:	
State Route 31 Access Road (upstream side)	*346
Springtown Road (upstream side)	*357
Downstream Footbridge (downstream side)	*364
Approximately 150 feet downstream of confluence of Derry Run	*377
Mowder Road (upstream side)	*384
Mowder Hill Road (upstream side)	*395
Penwell Road (upstream side)	*413
Upstream corporate limits	*424
Spruce Run:	
Van Syckels Corner Road	*275
Confluence of Rocky Run	*302
Approximately 50 feet upstream of 2nd Private Drive (upstream side)	*327
Upstream corporate limits	*365
Rocky Run:	
Confluence with Spruce Run	*302
Approximately 75 feet upstream of CONRAIL	*336
Private Drive (downstream side)	*426
Rocky Run Road (upstream side)	*473
Approximately 1,235 feet upstream of Rocky Run Road	*530
Wroughby Brook:	
Confluence with Spruce Run Reservoir	*275
State Route 31 (upstream side)	*276
Most downstream corporate limits	*283
Downstream footbridge (upstream side)	*365
Upstream footbridge (downstream side)	*440
Approximately 80' upstream of upstream crossing of Buffalo Hollow Road (upstream side)	*467

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act

of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Associate Director)

Issued: May 11, 1983.

**Dave McLoughlin,**

*Deputy Associate Director, State and Local Programs and Support.*

[FR Doc. 83-13643 Filed 5-20-83; 845 am]

BILLING CODE 6718-03-M

#### 44 CFR Part 67

[Docket No. FEMA-6499]

#### National Flood Insurance Program; Revision of Proposed Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency.

**ACTION:** Proposed rule.

**SUMMARY:** Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in Wyoming County, West Virginia.

Due to recent engineering analysis, this proposed rule revises the proposed determinations of base (100-year) flood elevations published in the *Federal Register* at 48 FR 10886 on March 15, 1983, and hence supersedes those previously published rules.

**DATE:** The period for comment will be ninety (90) days following the second publication of this notice in a newspaper of local circulation in each community.

**ADDRESSES:** Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at the Office of the County Clerk, County Courthouse, Pineville, West Virginia.

Send comments to: Honorable William W. Bailey, President of the Wyoming County, Board of Commissioners, P.O. Box 309, Pineville, West Virginia 24874.

**FOR FURTHER INFORMATION CONTACT:** Dr. Brian R. Mrazik, Acting Chief, Engineering Branch, Natural Hazards Division, Federal Emergency

Management Agency, Washington, D.C. 20472, (202) 287-0230.

**SUPPLEMENTARY INFORMATION:** Proposed base (100-year) flood elevations are listed below for selected locations in Wyoming County, West Virginia, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under Section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the flood plain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts flood plain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the flood plain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

## List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The proposed base (100-year) flood elevations are:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Guyandotte River:	
Downstream County Boundary	*887
Downstream of RD Bailey Dam	*896
Approximately 2.0 miles downstream of Lanes Branch	*1,182
Downstream of County Route 10-7	*1,181
Upstream of Norfolk & Western Railway	*1,211
Upstream of County Route 160	*1,239
Upstream of County Route 18	*1,367
Upstream of State Route 10	*1,396
Upstream of State Route 16 (downstream crossing)	*1,444
Upstream of County Route 41	*1,479
Upstream of County Route 114	*1,510
Upstream of County Route 16-2	*1,525
Upstream corporate limits	*1,566
Laurel Fork:	
Downstream corporate limits	*1,279
Upstream of County Route 30	*1,351
Downstream of State Route 10	*1,363
Laurel Fork (Ravenscliff Reach):	
Upstream of County Route 34	*1,758
Laurel Fork (Glen Rogers Reach):	
Upstream of Norfolk & Western Railway (1st crossing)	*1,613
Upstream of Norfolk & Western Railway (2nd crossing)	*1,823
Approximately 0.6 mile upstream of Norfolk & Western Railway (2nd crossing)	*1,839
Clear Fork:	
Approximately 0.46 mile downstream of most downstream Private Road	*1,215
At confluence of McDonald Mill Creek	*1,220
Upstream of State Route 971	*1,234
Approximately 0.25 mile upstream Norfolk & Western Railway	*1,241
Milam Fork:	
Confluence with Laurel Fork	*1,730
Upstream of Abandoned Railway	*1,757
Upstream of Norfolk & Western Railway	*1,794
Upstream of County Route 5	*1,805
Approximately 1.93 miles upstream of County Route 5	*1,823
Indian Creek:	
Approximately 1.37 miles downstream of Turkey Wallow Road	*1,269
Upstream of Turkey Wallow Road	*1,292
Upstream of most upstream Private Road	*1,506
Approximately 200 feet downstream of State Route 16	*1,556
Slab Fork:	
Downstream corporate limits	*1,502

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Associate Director)

Issued: May 11, 1983.

Dave McLoughlin,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 83-13044 Filed 5-30-83; 8:45 am]

BILLING CODE 6718-03-M

## 44 CFR Part 67

[Docket No. FEMA-6499]

## National Flood Insurance Program; Revision of Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

**SUMMARY:** Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the City of Princeton, Mercer County, West Virginia.

Due to recent engineering analysis, this proposed rule revises the proposed determinations of base (100-year) flood elevations published in the Federal Register at 48 FR 10886 on March 15, 1983, and hence supersedes those previously published rules.

**DATE:** The period for comment will be ninety (90) days following the second publication of this notice in a newspaper of local circulation in each community.

**ADDRESSES:** Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at the Municipal Building, Princeton, West Virginia.

Send comments to: Honorable Emory J. Reaser, Mayor of the City of Princeton, Municipal Building, Princeton, West Virginia 24740.

**FOR FURTHER INFORMATION CONTACT:** Dr. Brian R. Mrazik, Acting Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0230.

**SUPPLEMENTARY INFORMATION:** Proposed base (100-year) flood elevations are listed below for selected locations in the City of Princeton, Mercer County, West Virginia, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance in existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under Section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction with the flood plain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts flood plain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the flood plain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

## List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The proposed base (100-year) flood elevations are:

Source of Flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Brush Creek	Downstream corporate limits	*2,366
	Downstream Thorn Street bridge	*2,388
	Upstream Brick Street bridge	*2,388
	Upstream Ingleside Road bridge	*2,383
	Upstream corporate limits	*2,383
Daves Fork	At confluence with Brush Creek	*2,389
	Upstream Athens Road bridge	*2,393
	Upstream Thorn Street bridge	*2,396
	Approximately .10 mile upstream Prince Street Bridge	*2,398
Gladly Fork	At confluence with Brush Creek	*2,391
	Upstream Old Bluefield-Princeton Road bridge	*2,397
	Upstream Bluefield Road bridge	*2,400
	Approximately .20 mile upstream Bluefield Road bridge	*2,401
	Approximately .68 mile upstream Bluefield Road bridge	*2,408

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804 November 28, 1968), as amended; 42 U.S.C. 4001-4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Associate Director)

Issued: April 29, 1983.

Dave McLoughlin,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 83-13645 Filed 5-20-83; 8:45 am]

BILLING CODE 6718-03-M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 46 CFR Part 67

### Maritime Administration

#### 46 CFR Parts 221 and 355

[CGD 82-103]

### Change in Interpretation of Section 2 of the Shipping Act, 1916, as Amended, for Coastwise Trading Purposes

**AGENCY:** Maritime Administration, (MARAD) and Coast Guard, DOT.

**ACTION:** Notice of Withdrawal of Advance Notice of Proposed Rulemaking.

**SUMMARY:** Notice is hereby given of the withdrawal of the advance notice of proposed rulemaking (ANPRM) that would have permitted a change in the interpretation of Section 2 of the 1916 Act for coastwise trading purposes. The ANPRM was published in the *Federal Register* on November 4, 1982 (47 FR 49990). MARAD and Coast Guard have determined that the proposed change in the longstanding interpretation of Section 2 of the 1916 Act cannot be accomplished without a change in the law.

**FOR FURTHER INFORMATION CONTACT:**

Ms. Doris Lansberry, Office of the Chief Counsel, Maritime Administration, (202/426-5711), or CDR John Distin, Maritime and International Law Division, United States Coast Guard (202/426-1527).

**SUPPLEMENTARY INFORMATION:** An

ANPRM seeking comments on a proposed change in the interpretation of Section 2 of the 1916 Act was published in the *Federal Register* on November 4, 1982 (47 FR 49990) with comments due by January 3, 1983. On December 30, 1982 a notice was published extending the comment period to January 24, 1983 (47 FR 58314).

Section 2 of the 1916 Act, as amended (46 U.S.C. 802), sets forth U.S. citizen ownership and control requirements for corporations and other forms of business entities which own vessels to be operated or that are operating in the U.S. coastwise trade. Based upon the

statute, its legislative history, and various court decisions relating to the requirements of Section 2 of the 1916 Act, MARAD and Coast Guard require the legal title owner and the beneficial owner of such vessels to be U.S. citizens. The ANPRM addressed a proposal submitted to MARAD and Coast Guard, Department of Transportation, concerning the agencies' interpretation of the citizenship requirements for equity investors in leveraged lease financings. The proponent stated that since the stock of major U.S. corporations is traded on the U.S. stock exchanges, foreign purchases of publicly traded stock can result in the loss of Section 2 citizenship of these banks and other financing institutions.

Because of this loss of Section 2 citizenship and the resultant sale of the equitable interest in the vessels to avoid loss of coastwise trading privileges, recapture of tax benefits can occur. It was maintained that based on the potential for recapture of tax benefits, some major banks and financial institutions may be reluctant to participate in future vessel financings possibly causing a shortage in funds available for vessel construction.

The proposal was limited to typical ship leveraged lease transactions in which any bank wishing to participate as a vessel owner in tax benefits establishes a trust with a passive U.S. citizen as trustee and itself as beneficiary. If it appears at some point that the bank's stockholders may not be 75% U.S. citizens required for coastwise trade vessel ownership, the bank forms a limited partnership as beneficiary of the trust and sells part of its interest in the trust to a U.S. citizen general partner. The partnership was stated to be in compliance with the new Vessel Documentation Act (VDA) which no longer requires all partners to be U.S. citizens. However, the VDA did not change the ownership requirements for vessels engaging in the coastwise trade. The proponent asked that the agencies permit this arrangement for ownership of vessels in the coastwise trade provided the noncitizen bank limited partner could not exercise control of the vessel and it only took a financing return (interest) on its ownership of the vessel plus the tax benefits of vessel

ownership. No other commenter, however, approved of this use of the VDA partnership provision.

Most said this use of the partnership provision was not permissible under Section 2 of the Shipping Act. The proposal has been considered with and without the partnership aspect.

### Comments

#### Summary

Approximately forty comments were received from members of Congress, law firms, U.S. shipping companies, and maritime associations and committees. The bank that submitted the proposal also commented.

Twenty-nine commenters said or implied that Section 2 sought to limit to 25% foreign participation in equitable ownership of vessels entitled to operate in the coastwise trade. Many claimed that the stock ownership provision in 46 U.S.C. 802(c) which addressed voting power and stock ownership apart from voting power, was clear evidence that equity ownership as well as control must meet the 75% citizenship test. Five members of the Congress stated in a joint letter referring to Section 2 that "The proposal contemplated in the ANPRM cannot legally be adopted as a matter of law unless the law is changed to permit such a course of action." Many recited the legislative history of Section 2 of the 1916 Act and referenced court decisions, including *Meacham Corp. v United States*, 207 F.2d 535 (4th Cir. 1953), cert. dismissed 348 U.S. 801, (1954), as a basis for finding the proposal unacceptable as a matter of law. In addition, some comments cited cases stating that agencies cannot "exceed their authority when they promulgate rules or regulations that are inconsistent with the statutory mandate."

Twelve commenters said that the participant with the greatest financial stake has real control of the vessel even if the various documents purport to deprive that party of control. Two commenters believe that the trustee is required by law to consider the noncitizen bank's interests which will give the bank "control" of a prohibited kind. One comment said allowing such an arrangement would permit a

corporation (the bank) to avoid the requirements on stock ownership which the drafters of Section 2 took such care to impose and which can only be eased by the Congress. Another said the proposal would enable foreigners to benefit from a U.S. subsidy program. Several said the national interest required the coastwise trade to be reserved to citizens to ensure the availability of a U.S. owned fleet.

Two commenters favored the proposal as helping to ensure availability of financing. Eight said they would consider a more limited proposal to ensure the largest number of potential participants in vessel financing. Two commenters said that equity and control are not synonymous and, if done with careful limitations, the permissible percentage of foreign equity could rise above 25%.

Seven commenters said there was no shortage of financing available for viable shipbuilding projects and some said there was no shortage of coastwise qualified vessels. Two commenters said that it was possible for a publicly traded corporation to protect itself against excessive foreign participation and one provided a document used by at least one vessel owning corporation that sets forth such protection.

#### Discussion

MARAD and Coast Guard are unaware of any current or projected shortage of private funds for viable construction projects for ships to be operated in the coastwise trade. No financing institution other than the proponent responded to the ANPRM.

MARAD is aware of instances where major corporations have called in unrestricted stock and reissued stock

with foreign ownership restrictions to avoid losing coastwise trade entitlement for its vessels. Accordingly, any institution wishing to participate in vessel ownership and willing to issue restricted stock is able to protect against inadvertent loss of coastwise trade entitlement on account of foreign stock purchases, and therefore avoid loss of tax benefits.

Finally, although some question was raised by the law firm and the bank offering the proposal as to whether MARAD and Coast Guard properly interpreted the proposal in the ANPRM, it is clear that the proposal submitted encompassed foreign equitable ownership in a U.S. flag vessel operating in the U.S. coastwise trade in excess of 25%.

#### Supplementary Proposal

As part of its January 19, 1983 comment contained in the docket, the proponent submitted another proposal which would permit equity in excess of 25% to be held by non-citizens. The new proposal dropped the partnership format and limited the applicability of the proposed regulation to regulated banks which receive only a financing return (interest) with no share of the profits. There would be, however, some indemnification of the nominal participants against losses. Limiting the coverage to regulated banks was purported to provide an objective limit on the scope of the proposed change from past Section 2 interpretations.

Although not requested by the agencies, the revised proposal was circulated to others who commented on same to the agencies. Two commenters supported and one would consider such an arrangement. Two said it was subject

to the same Section 2 objections as the original proposal and should fail.

#### Discussion

The revised proposal is subject to the same problems as the original proposal. No shortage of private funds for ship construction for these types of projects has been identified; stock ownership arrangements are available to protect against inadvertent loss of U.S. citizenship status by financial institutions; and greater than 25% foreign equity ownership in vessels engaged in the coastwise trade is contrary to section 2.

#### Conclusion

The agencies' ultimate conclusion is that the proposal set forth in the ANPRM and the supplementary proposal which permit in excess of 25% non-citizen equity ownership in vessels engaged in coastwise trading are not permitted by Section 2 of the Shipping Act. Therefore, the agencies cannot change their longstanding interpretation of Section 2 of the Shipping Act. Such change requires legislation.

Advance Notice of Proposed Rulemaking CG 82-103 is withdrawn. No further rulemaking on this subject is under consideration.

(75 Stat. 766 (46 U.S.C. 841(a)); 94 Stat. 3458 (46 U.S.C. 65v).)

Dated: May 4, 1983.

Clyde T. Lusk, Jr.,

Rear Admiral, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

Georgia P. Stamas,

Secretary, Maritime Administration.

[FR Doc. 83-13601 Filed 5-20-83; 8:45 am]

BILLING CODE 4910-14-M

## Notices

Federal Register

Vol. 48, No. 100

Monday, May 23, 1983

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

#### Animal and Plant Health Inspection Service

[Docket No. 82-321]

#### Khapra Beetle Eradication Program; Finding of No Significant Impact

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice of Finding of No Significant Impact.

**SUMMARY:** The Animal and Plant Health Inspection Service has prepared an environmental assessment for the proposed khapra beetle eradication program in Elizabeth and Jersey City, New Jersey. On the basis of the assessment, the Animal and Plant Health Inspection Service has determined that no significant adverse impact on the environment of the areas will result from the implementation of any of the identified alternatives. Therefore, an environmental impact statement (EIS) on this program will not be prepared.

**FOR FURTHER INFORMATION CONTACT:** Richard L. Cowden, Field Operations Support Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, Room 663 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (303) 436-8295.

**SUPPLEMENTARY INFORMATION:** The Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture (USDA), in cooperation with the New Jersey Department of Agriculture (NJDA), intend to eradicate an outbreak of khapra beetle on two infested premises in Elizabeth and Jersey City, New Jersey. If these infestations are not eradicated, it could have a significant adverse effect on International, national, State, and local agriculture and commerce due to damage to plant

products, control costs, increased costs to consumers, and decreased exports due to quarantine action by foreign governments.

Khapra beetle, *Trogoderma granarium* Everts, is considered to be the most destructive stored product pest in the world. It feeds on most stored plant products and some animal products and derivatives. The pest occurs in Asia, the Middle East, and Africa. It is also found in protected environments in Great Britain and Germany. The economic importance of the Khapra beetle is well documented in scientific literature.

Surveys for khapra beetle infestation have been conducted since the 1950's. The beetle was found in California in 1953 and subsequently in Arizona, New Mexico, Texas, and adjacent areas of the Republic of Mexico. It was eradicated from this country primarily by methyl bromide fumigation of infested premises. This operation required several years and large expenditures to accomplish. Other than these infestations and infestations found at ports-of-entry on import products, the nation has been free of this pest until October 30, 1980, when a khapra beetle infestation was detected at a spice company premises in Moonchie, New Jersey. Between that time and March 1983, 26 Khapra beetle infested properties were found at scattered locations within the United States. Sixteen of these infestations were concentrated in four Northeastern States.

Actions by APHIS and State personnel, to eradicate khapra beetle from infested premises have included careful cleaning of the structures involved, methyl bromide fumigation, including separate fumigation of contents and susceptible commodities if necessary, and the proper disposal of all trash. In metal or newer structures malathion high pressure spray and crack and crevice treatments have been carried out in lieu of fumigation with methyl bromide. Actual treatments were applied under the supervision of certified pesticide applicators experienced in pest control and certified pursuant to section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136b).

Currently, one building located in Elizabeth, New Jersey, and one building located in Jersey City, New Jersey, are known to be infested with khapra

beetle. A series of alternatives to eradicate the pest are available and were considered. These alternatives are:

- (a) No action.
- (b) Methyl bromide fumigation.
- (c) Surface spray and crack and crevice treatment.
- (d) Dursban®/DDVP fogging.

APHIS has selected alternative (b), methyl bromide fumigation, to eradicate khapra beetle from the two premises because this alternative appears to be the only viable choice. With alternative (b) a single application of methyl bromide gas would be made. Fumigation with methyl bromide has been successfully utilized to eradicate prior khapra beetle infestations. Alternative (a) is not acceptable because no control or eradication measures would be undertaken allowing the pest to persist in the premises. Alternative (c), which involves the use of an insecticide applied in accordance with label directions to all accessible areas of the premises including cracks and crevices, was not selected since khapra beetle eradication is not assured and the operations of these corporations do not lend themselves to this treatment. If such treatment were ineffective, the application of a fumigant would be subsequently required. The use of an ineffective treatment would result in the unnecessary application of pesticides in the environment. Lastly, alternative (d), which prescribes cleaning of the building of trash or food residues and a 3 month treatment schedule using Dursban and DDVP applied as a fog, has not been proven effective for khapra beetle eradication.

APHIS and NJDA after considering cumulative adverse effects of the implementation of any of the identified alternatives, has concluded that there will be no primary, secondary, or cumulative adverse effects on the quality of the human environment based on the properties and rates of application of the pesticide being proposed for use in this eradication program. No chain reactions or secondary adverse effects of interrelated activities are expected from any of the proposed alternatives. These officials have evaluated the uniqueness or rareness of resources being affected and have determined that the selected alternative will not have an effect on the continued existence of any endangered or threatened species or result in the

destruction or adverse modification of the habitats of such species. APHIS and NJDA have the technical expertise to minimize any environmental disturbance which could result from the proposed alternative and also possess the expertise to conduct the selected alternative safely and efficiently.

This action has been reviewed under the requirements of the National Environmental Policy Act, as amended (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality's (CEQ) National Environmental Policy Act Regulations (40 CFR Parts 1500-1508), and the APHIS Guidelines concerning Implementation of NEPA Procedures (44 FR 50381-50383).

Done at Washington, D.C. this 18th day of May 1983.

**Richard R. Backus,**

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

[FR Doc. 83-13797 Filed 5-20-83; 8:45 am]

BILLING CODE 3410-34-M

## DEPARTMENT OF COMMERCE

### International Trade Administration

#### Tuna From the Philippines; Postponement of Preliminary Countervailing Duty Determination

**AGENCY:** International Trade Administration, Commerce.

**ACTION:** Postponement of preliminary countervailing duty determination.

**SUMMARY:** The preliminary determination on tuna, packed or preserved in any manner (not in oil) in airtight containers from the Philippines is being postponed. We intend to issue it not later than August 8, 1983.

**EFFECTIVE DATE:** May 23, 1983.

**FOR FURTHER INFORMATION CONTACT:**

John J. Kenkel, Office of Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230, telephone: (202) 377-1281.

**SUPPLEMENTARY INFORMATION:** On March 31, 1983, we announced our initiation of a countervailing duty investigation to determine whether producers, manufacturers or exporters in the Philippines of tuna, packed or preserved in any manner (not in oil) in airtight containers, receive directly or indirectly, bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (48 FR 15505). The notice stated that we would issue a preliminary determination by June 6, 1983, if the investigation proceeded normally.

Petitioner has alleged that nine manufacturers and exporters in the Philippines are receiving countervailable benefits under approximately 20 complex programs. Moreover, the Administering Authority has not examined allegations of subsidies involving products from the Philippines since 1978. Major changes in Philippine investment incentive laws have occurred since that time; in effect, the Department is examining these programs for the first time. The parties are cooperating in this investigation.

Therefore, we conclude that this case is extraordinarily complicated in accordance with section 703(c)(1)(B) of the Tariff Act of 1930, as amended, and that additional time is necessary to make the preliminary determination. We intend to issue a preliminary determination not later than August 8, 1983.

This notice is published pursuant to section 703(c)(2) of the Act.

**Gary N. Horlick,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 83-13726 Filed 5-20-83; 8:45 am]

BILLING CODE 3510-25-M

### National Oceanic and Atmospheric Administration

#### National Marine Fisheries Service; Extension of Comment Period on Permit Application; Sea World, Inc.

On March 17, 1983, notice was published in the *Federal Register* (48 FR 11310) that an application was received from Sea World, Inc., 1720 South Shores Road, Mission Bay, San Diego, California 92109, for a Scientific Research/Public Display Permit under the Marine Mammal Protection Act of 1972 to take killer whales (*Orcinus orca*). On April 20, 1983, Notice was published in the *Federal Register* (48 FR 16934) that the comment period on this application was extended until May 19, 1983.

Notice is hereby given that the comment period for this application is further extended until June 17, 1983. Written data or views should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, Washington, D.C. 20235. Information concerning this notice or the application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; Regional Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731; and

Regional Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802.

Dated: May 17, 1983.

**R. B. Brumsted,**

*Acting Chief, Protected Species Division, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.*

[FR Doc. 83-13759 Filed 5-20-83; 8:45 am]

BILLING CODE 3510-22-M

### Receipt of Application for Marine Mammal Permit

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

**1. Applicant:**

a. Name: Mystic Marinelife Aquarium (P13Q).

b. Address: Mystic, Connecticut 06355.

**2. Type of Permit: Public Display.**

**3. Name and Number of Animals:** Belukha whales (*Delphinapterus leucas*)—2.

**4. Type of Take: Live import.**

**5. Location of Activity: Canada, Southwest Hudson Bay.**

**6. Period of Activity: 3 years.**

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved.

Concurrent with the publication of this notice in the *Federal Register*, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not



necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, N.W., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Northeast Region, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930.

R. B. Brumsted,

Acting Chief, Protected Species Division, National Marine Fisheries Service.

[FR Doc. 83-13758 Filed 5-20-83; 8:45 am]

BILLING CODE 3510-22-M

#### COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

##### Adjusting the Import Restraint Levels for Certain Cotton Apparel Products from Thailand; Correction

May 19, 1983.

On April 27, 1983 a notice was published in the *Federal Register* (47 FR 19063) which adjusted the import levels for cotton textile products in Categories 331 and 338/339, produced or manufactured in Thailand and exported during the eighteen-month period which began on January 1, 1982. The unit of measure shown for Category 338/339 in the letter to the Commissioner of Customs which followed that notice, should have read "dozen" instead of "dozen pairs."

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 83-13729 Filed 5-20-83; 8:45 am]

BILLING CODE 3510-25-M

##### Announcing Additional Import Controls for Certain Cotton Textiles and Cotton Textile Products from the Republic of Singapore

May 18, 1983.

**AGENCY:** Committee for the Implementation of Textile Agreements.

**ACTION:** Controlling imports of cotton yarn in Category 301, cotton gloves and mittens in Category 331, and cotton sweaters in Category 345, produced or manufactured in Singapore and exported during the agreement year which began on January 1, 1983, at respective levels of 260,869 pounds, 275,000 dozen pairs, and 24,000 dozen.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the *Federal Register* on

December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175) and May 3, 1983 (48 FR 19924).

**SUMMARY:** Under the terms of the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of August 21, 1981, as amended, between the Governments of the United States and the Republic of Singapore, the United States Governments has decided to control imports of cotton textile products in Categories 301, 331 and 345 in the same manner as other categories are currently being controlled.

**EFFECTIVE DATE:** May 24, 1983.

**FOR FURTHER INFORMATION CONTACT:** Ronald J. Sorini, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377-4212).

**SUPPLEMENTARY INFORMATION:** On December 23, 1982, there was published in the *Federal Register* (47 FR 56322) a letter dated December 17, 1982 from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs which established levels of restraint for certain specified categories of cotton, wool, and man-made fiber textile products, produced or manufactured in Singapore, which may be entered into the United States for consumption, or withdrawn from warehouse for consumption, during the twelve-month period which began on January 1, 1983 and extends through December 31, 1983. The letter published below further amends the letter of December 17, 1982 to include the designated import control levels for Categories 301, 331, and 345 during the same agreement period. The levels have not been adjusted to account for any imports after December 31, 1982. As the data become available, charges will be made for the period which began on January 1, 1983 and extends to the effective date of this action, as well as thereafter.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

May 18, 1983.

Commissioner of Customs,  
Department of the Treasury, Washington,  
D.C.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive issued to you on December 17, 1982 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool, and man-made fiber textile products, produced or manufactured in Singapore and exported during the twelve-month period which began on January 1, 1983.

Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding

International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of August 21, 1981, as amended, between the Governments of the United States and the Republic of Singapore; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11851 of January 6, 1977, you are directed to prohibit, effective on May 24, 1983 and for the twelve-month period beginning on January 1, 1983 and extending through December 31, 1983, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Categories 301, 331, and 345, produced or manufactured in Singapore, in excess of the following levels of restraint:

##### Category and 12-Month Level of Restraint<sup>1</sup>

301	260,869 pounds
331	275,000 dozen pairs
345	24,000 dozen

Textile products in Categories 301, 331, and 345 which have been exported to the United States prior to January 1, 1983 shall not be subject to this directive.

Textile products in Categories 301, 331, and 345 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the *Federal Register* on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of the Republic of Singapore and with respect to imports of cotton textile products from Singapore have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the *Federal Register*.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 83-13730 Filed 5-20-83; 8:45 am]

BILLING CODE 3510-25-M

<sup>1</sup> The levels of restraint have not been adjusted to reflect any imports after December 31, 1982.

### Increasing Import Restraint Levels for Certain Cotton and Man-Made Fiber Textile Products From the Republic of Singapore

May 18, 1983.

**AGENCY:** Committee for the Implementation of Textile Agreements.

**ACTION:** Increasing the consultation levels for women's, girls', and infants' cotton and man-made fiber blouses in Categories 341 and 641, produced or manufactured in the Republic of Singapore and exported during the agreement year which began on January 1, 1983, to respective levels of 77,304 dozen from 48,276 dozen and to 90,000 dozen from 48,276 dozen.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the *Federal Register* on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175) and May 3, 1983 (48 FR 19924)).

**SUMMARY:** Pursuant to the terms of the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of August 21, 1981, as amended, between the Governments of the United States and the Republic of Singapore, the consultation levels established for cotton and man-made fiber textile products in Categories 341 and 641 are being increased for the agreement year which began on January 1, 1983 and extends through December 31, 1983.

**EFFECTIVE DATE:** May 24, 1983.

**FOR FURTHER INFORMATION CONTACT:** Ronald J. Sorini, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377-4212).

**SUPPLEMENTARY INFORMATION:** On December 23, 1982, there was published in the *Federal Register* (47 FR 57322) a letter dated December 17, 1982 from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs, which established levels of restraint for certain specified categories of cotton, wool, and man-made fiber textile products, including Categories 341 and 641, produced or manufactured in Singapore, which may be entered into the United States for consumption, or withdrawn from warehouse for consumption, during the twelve-month period which began on January 1, 1983 and extends through December 31, 1983. In the letter published below, in accordance with the terms of the bilateral agreement, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to adjust the twelve-month levels

previously established for Categories 341 and 641 to the designated amounts.

Walter C. Lenahan,  
*Chairman, Committee for the Implementation of Textile Agreements.*

May 18, 1983.

Commissioner of Customs,  
*Department of the Treasury, Washington, D.C.*

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of December 17, 1982 from the Chairman of the Committee for the Implementation of Textile Agreements which directed you to prohibit entry for consumption, or withdrawal from warehouse for consumption, during the twelve-month period which began on January 1, 1983 and extends through December 31, 1983, of cotton, wool, and man-made fiber textile products in certain specified categories, produced or manufactured in Singapore, in excess of designated levels of restraint.

Effective on May 24, 1983, you are directed to increase the levels previously established for cotton and man-made fiber textile products in Categories 341 and 641 to the following amounts:

#### Category and Amended 12-Month Level of Restraint<sup>1</sup>

341	77,304 dozen
641	90,000 dozen

The action taken with respect to the Government of the Republic of Singapore and with respect to imports of cotton and man-made fiber textile products from Singapore have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the *Federal Register*.

Sincerely,

Walter C. Lenahan,  
*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 83-13731 Filed 5-20-83; 8:45 am]

**BILLING CODE 3510-25-M**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### Defense Science Board Task Force on Fire Support for Amphibious Warfare; Advisory Committee Meeting

The Defense Science Board Task Force on Fire Support for Amphibious Warfare will meet in closed session on 29-30 June 1983 in the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of

<sup>1</sup> The levels of restraint have not been adjusted to reflect any imports after December 31, 1982.

Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense.

At the meeting on 29-30 June 1983, the Task Force will consider the basic requirements for fire support during amphibious warfare operations.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. I (1976)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. 552b(c) (1) (1976), and that accordingly these meetings will be closed to the public.

M. S. Healy,

*OSD Federal Register Liaison Officer,  
Washington Headquarters Service,  
Department of Defense.*

May 17, 1983.

[FR Doc. 83-13744 Filed 5-20-83; 8:45 am]

**BILLING CODE 3810-01-M**

#### Defense Science Board Task Force on Supercomputer Applications; Advisory Committee Meeting

The Defense Science Board Task Force on Supercomputer Applications will meet in closed session on 20-21 June 1983 in Washington, D.C.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense.

At the meeting on 20-21 June 1983, the Task Force will conduct a review of the Defense Department's programs to apply the emerging capacity of computers to contribute to military programs and issues. It will attempt to identify areas where the expected many orders of magnitude improvement in computing power can be of aid to the Defense establishment.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. I, (1976)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1976), and that accordingly these meetings will be closed to the public.

M. S. Healy,

*OSD Federal Register Liaison Officer,  
Washington Headquarters Service,  
Department of Defense.*

May 17, 1983.

[FR Doc. 83-13745 Filed 5-20-83; 8:45 am]

**BILLING CODE 3810-01-M**

## DEPARTMENT OF EDUCATION

**National Advisory Council on Indian Education; Meeting**

**AGENCY:** National Advisory Council on Indian Education.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice sets forth the scheduled and proposed agenda of a forthcoming meeting of the full Council. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend the meeting.

**DATES:** Executive Committee Meeting: June 7, 1983, 9:00 a.m. to 5:00 p.m.; and June 8, 1983, 9:00 a.m. to 5:00 p.m.

**FOR FURTHER INFORMATION CONTACT:** NACIE Advisor, National Advisory Council on Indian Education, Pennsylvania Building, Suite 326, 425 13th Street NW., Washington, D.C. 20004 (202/376-8882).

**SUPPLEMENTARY INFORMATION:** The National Advisory Council on Indian Education is established under Section 442 of the Indian Education Act, Title IV of Pub. L. 92-318 (20 U.S.C. 1221g). The Council is established to submit to the Secretary of Education a list of nominees for the position of Director of Indian Education Programs; advise the Secretary of Education with respect to the administration of any program in which Indian children or adults participate from which they can benefit; review applications for assistance under Title III of the Act of September 30, 1950, and make recommendations to the Secretary with respect to their approval; evaluate programs and projects carried out under any program of the Department of Education in which Indian children or adults can participate or from which they can benefit and disseminate the results of such evaluations; provide technical assistance to local educational agencies and to Indian educational agencies, institutions and organizations; assist the Secretary of Education in developing criteria and regulations for the administration and evaluation of grants made under Section 303(b) of the Act of September 30, 1950; submit to Congress not later than June 30 of each year a report of its activities; and be consulted by the Secretary of Education regarding the definition of the term Indian.

The meeting will be open to the public. This meeting will be held at the National Advisory Council on Indian Education, Pennsylvania Building, Suite 326, 425 13th Street NW., Washington, D.C. 20004 (202/376-8882).

The proposed agenda includes:

- (1) NACIE Budget Meeting.
- (2) NACIE Planning Meeting.

Records shall be kept of all Council proceedings and shall be available for public inspection at the office of the National Advisory Council on Indian Education located at 425 13th Street NW., Suite 326, Pennsylvania Building, Washington, D.C. 20004.

Dated: May 18, 1983.

Signed at Washington, D.C.

**James Burris,**

*Advisor, National Advisory Council on Indian Education.*

[FR Doc. 83-13800 Filed 5-20-83; 8:45 am]

**BILLING CODE 4000-01-M**

**National Advisory Council on Indian Education; Amended Notice of Meeting**

**AGENCY:** National Advisory Council on Indian Education.

**ACTION:** Amendment of notice.

**SUMMARY:** This notice sets forth the schedule and agenda of a meeting of the National Advisory Council on Indian Education. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act and is an addition to the Notice of meeting of the National Advisory Council on Indian Education published April 22, 1983, on page 17370, Vol. 48, No. 79.

**DATE:** May 10, 1983.

**ADDRESS:** National Advisory Council on Indian Education, Pennsylvania Building, Suite 326, 425 13th Street NW., Washington, D.C. 20004 (202/376-8882).

**FOR FURTHER INFORMATION CONTACT:** NACIE Advisor, National Advisory Council on Indian Education, Pennsylvania Building, Suite 326, 425 13th Street NW., Washington, D.C. 20004 (202/376-8882).

**SUPPLEMENTARY INFORMATION:** The National Advisory Council on Indian Education is established under Section 442 of the Indian Education Act (20 U.S.C. 1221g). The Council is established to assist the Secretary in carrying out responsibilities under Section 441(a) of the Indian Education Act (Title IV of Pub. L. 92-318), through advising Congress, the Secretary of Education, the Under Secretary of Education and the Assistant Secretary of Elementary and Secondary Education with regard to programs benefiting Indian children and adults.

The meeting of the Council was close to the public on May 10, 1983, from 5:00 p.m. to 6:30 p.m. The agenda for the meeting included a review of applications for the position of Executive Director of the Council.

Discussion of the applications included consideration of the qualifications and fitness of the candidates and touched upon matters which would constitute a serious invasion of personal privacy if conducted in open session. A summary of the activities which are informative to the public, consistent with 5 U.S.C. 552b, will be available to the public within fourteen days of the meeting. The meeting was closed under the authority of Section 10(d) of Pub. L. 92-463; 5 U.S.C. Appendix 1; and under exemptions (2) and (6) of Section 552b(c) of Pub. L. 94-409; 5 U.S.C. 552b(c) (2) and (6).

Records are kept of all Council proceedings and are available for public inspection at the Office of the National Advisory Council on Indian Education, Pennsylvania Building, Suite 326, 425 13th Street NW., Washington, D.C., from the hours of 8:30 a.m. to 4:30 p.m., Monday through Friday, except holidays.

Dated: May 16, 1983.

**James Burris,**

*Advisor, National Advisory Council on Indian Education.*

[FR Doc. 83-13799 Filed 5-20-83; 8:45 am]

**BILLING CODE 4000-01-M**

**Secretary's Initiative To Improve the Quality of Chapter 1, ECIA Projects; Application Notice for Fiscal Year 1983 Grants**

Applications are invited from State educational agencies (SEAs) for new projects under the Secretary's Initiative to improve the quality of Chapter 1, Education Consolidation and Improvement Act (ECIA) compensatory education programs. These awards will be made in Fiscal Year 1983 under the authority of Section 183 of Title I of the Elementary and Secondary Education Act (ESEA), for activities designed to apply the results of evaluation activities in order to improve the effectiveness of local projects funded by Chapter 1, ECIA. These efforts will draw upon SEA and local education agency (LEA) evaluation experiences and expertise, and upon the findings of evaluations of local Title I, ESEA or Chapter 1, ECIA programs. Efforts are particularly encouraged that will draw upon evaluation findings related to school and classroom effectiveness, and which will disseminate evaluation results and evaluated materials related to the teaching of disadvantaged children.

Section 183 of Title I, ESEA provides, among other things, that the Secretary shall: consult with SEAs and LEAs to develop jointly sponsored evaluation

activities within States (Section 183(c)), provide technical and other assistance to SEAs to enable them to assist LEAs and State agencies in the development and application of systematic evaluations (Section 183(e)), develop a system for identifying exemplary projects, or particularly effective elements of projects, and for disseminating information about such projects to SEAs and LEAs (Section 183(h)), and give priority to assisting States, LEAs and State agencies to conduct Chapter 1 evaluations (Section 183(i)).

#### Closing Date for Transmittal of Applications

Applications for new awards must be mailed or hand delivered by July 15, 1983.

#### Program Information

**1. Scope of the Secretary's Initiative.** The Secretary's Initiative is aimed at encouraging the participation of SEAs and LEAs, through a grants competition, in activities designed to improve Chapter 1 projects. This grant competition will provide financial assistance directly to SEAs for the purposes of local program improvement efforts. Other components of the Initiative will be carried out directly by the Department of Education (ED). These additional components may include dissemination or other activities: e.g., conferences hosted by the Secretary's Regional Representatives which are designed to share information and to disseminate materials developed under this grant competition in order to enhance their use nationwide.

**2. Eligible Applicants.** Only SEAs may apply for grants under this competition. SEAs are encouraged to involve LEAs and other public or private agencies, organizations or institutions in planning and implementing project activities. However, SEAs are not required to do so as a condition of applying for or receiving funds under this competition. Applicants may apply only for a project that does not exceed one year in duration.

**3. Rationale for Program Focus.** Funds available for Fiscal Year 1983 under the authority of Section 183 of Title I, ESEA will be used, among other purposes, to provide assistance to SEAs to support evaluation-related activities, at the State and local school district level. These activities will be designed to apply the findings of national, State and local evaluations, including findings on school and classroom effectiveness, on the teaching of disadvantaged children, and on dissemination strategies, to programs designed by the applicants to improve

the effectiveness of Chapter 1, ECIA local projects. The activities funded under this competition will result in Chapter 1 projects that provide better services to students as a result of planned improvements in instruction, management, or both.

The major goal of the Initiative, and the focus of the criteria used to review applications, relates to the potential improvements in Chapter 1 instruction or management that will lead to improved project effectiveness and efficiency. This Initiative in Chapter 1 reflects the major goal and performance priority of ED—excellence in education through the promotion of more effective learning. The Chapter 1 Initiative will achieve that end specifically through activities to assist local educators in renewing our Nation's commitment to excellence and achievement in education at the local level by promoting identification, development, and communication of effective practices.

The rationale for a program of competitive grants to SEAs is based on several factors:

- States and local school districts have spent considerable resources on developing and implementing evaluation systems for their Title I projects. They are now in a position to identify the strengths and weaknesses of programs, and thus improve them;

- Years of Federal, State and local research and evaluation on compensatory education, on principles of effective schooling, and on dissemination strategies, have provided a solid body of knowledge, and knowledgeable educators, for teaching the basic skills to disadvantaged and educationally deprived children. This set of projects will capitalize on the knowledge gained, and on the resources developed by State and local school districts, to establish more intensive efforts to identify, validate and disseminate information about exemplary projects and practices, and to incorporate the results thereof into Chapter 1 projects; and

- Planning and conserving is necessary to enhance the cost-effectiveness of projects, especially in light of limited monetary resources. Thus, a major goal of the Secretary's Initiative is to encourage SEA's and LEA's to identify and implement practices or projects that can serve more children, and serve them more effectively.

**4. Types of Projects.** SEA's may propose activities ranging from those designed to be implemented primarily at the State level to activities most appropriately conducted by LEA's, that

will result in the development of new strategies that will lead to improved Charter 1 instruction or management, or that will expand upon programs already underway in the State or region for which an application is submitted.

The eventual goal of all evaluation activities is to increase the effectiveness and efficiency of programs through a systematic process. The evaluation process is evolutionary in nature, but it can be characterized in part by three phases: identification and validation, dissemination, and implementation. The first phase includes activities aimed at ascertaining and verifying the overall effectiveness of programs and in assessing the relative strengths and weaknesses of programs. In the second phase, information about effective practices and programs, results of research and development activities, and other materials and strategies for enhancing the effects and operations of programs are shared with concerned program managers. In the third phase, program managers try to incorporate components from exemplary programs, or research and evaluation-based strategies, into their own programs.

SEA's and LEA's across the country are at various stages in developing evaluation systems that include all three phases of the total process. The major purpose of this Initiative is to assist in the improvement of instructional or management aspects of Chapter 1 projects by building upon Federal, State, and district evaluation and dissemination activities.

For purposes of application development and project planning, States may propose efforts that include activities in any or all of the following three areas:

**A. Identification or Validation Efforts.** SEA's may propose to initiate or expand upon already existing processes, methods or materials, which can be used to identify exemplary projects or to recognize more completely the full range of effective Chapter 1 projects and practices within a State. SEA's may also propose the development or expansion of processes, methods or materials which can be used to validate the effectiveness of previously identified projects, or to examine, the effectiveness of adoptions/adaptations of exemplary projects or activities. Some examples of projects in this area are—

- Improving or expanding State systems for identifying or validating exemplary Chapter 1 programs within the State or region. Specific activities may include, but are not limited to—

Building upon their accumulated Title I evaluation data in order to develop methods to identify their most consistently successful (or least successful) projects; or,

Designing a review process aimed at determining what practices are contributing to the success, or failure of projects. This review process may utilize reviewers from LEA's, intermediate agencies, institutions of higher education, SEA's, regional organizations, or other private or public organizations, and may incorporate training for these reviewers.

- Developing or refining evaluation methods which can be used to identify the strengths and weaknesses of Chapter 1 programs, for instance, developing, training, and supporting review teams or school district staff to conduct on-site evaluations or validation activities.

B. *Dissemination Efforts.* SEA's may apply for assistance in order to support activities to produce and disseminate information or materials about exemplary projects and practices under Chapter 1. Dissemination activities should be designed to bring information about effective Chapter 1 projects and practices, or about related technical assistance or services that can aid districts with their program improvement activities, to the attention of all Chapter 1 projects. Specific efforts may include—

- Developing activities or networks which will enable Chapter 1 directors and instructional staff from around the State (or from other States) to visit with and learn from staff who have developed and are operating exemplary Chapter 1 projects. When designing dissemination strategies for providing information, technical assistance, or training, SEA's may build upon existing systems, such as State publications, computerized information files, dissemination by State or National Diffusion Network facilitators, or assistance from regional resources;

- Developing materials and sharing information about problems and activities in Chapter 1 projects. These may take the form of periodic newsletters, publications, or specific information packages;

- Designing workshop presentations and follow-up activities, discussions, or training materials which may be presented at scheduled State meetings or conferences, to bring to the attention of school district personnel some of the issues related to Chapter 1 program improvement; or,

- Designing or expanding upon existing networks already used to support Title I/Chapter 1 dissemination

and/or program improvement activities. Elements in such intrastate or interstate networks may include staff (e.g. State Federal program directors, State facilitators, intermediate or service district staff), technology (satellite communications, computerized information files, electronic mail systems), and technical assistance organizations (e.g., Research and Development Exchanges, Technical Assistance Centers).

C. *Provision of Technical Assistance for Program Improvement Through the Use of Evaluation Findings Related to Specific Programs or Practices.* SEAs may apply for assistance to work with school districts interested in evaluation-based program improvement activities, instructional practices or management strategies.

Activities may include evaluation-based planning and technical assistance services by SEAs to LEAs in such areas as:

- Developing program improvement strategies for increasing the cost-effectiveness of Chapter 1 projects, to allow more children to receive Chapter 1 services. Such projects may be based on the adaptation of strategies from previously-identified cost-effective programs;

- Developing strategies for incorporating into projects some of the factors identified by evaluation as being associated with successful programs. For instance, SEAs and their participating LEAs can develop staff planning and training activities, propose methods for examining and improving classroom management techniques so as to increase students' actual time-on-task, or devise systems for better evaluation feedback for students and parents;

- Using district and student level evaluation procedures in order to design instructional activities focused on the academic needs of project participants; or

- Modifying SEA program monitoring procedures in order to encourage local Chapter 1 projects to consider possible systematic improvements.

5. *Required Grantee Activities.—Documentation and Evaluation.* SEAs must discuss in their applications how they plan to document and evaluate the nature and effectiveness of all projects and activities for which they apply. The purpose in requiring thorough documentation and evaluation is to enhance the potential for national dissemination and utilization of activities and materials developed by SEAs and LEAs as part of this Initiative. SEAs should be aware that they must produce a final evaluation report and

should consider these factors when preparing applications—

- Documentation of each activity undertaken, including the nature of the activity, the types of staff involved, the results of the activity, and unanticipated problems and their solutions. SEAs must provide budget planning and actual expenditure information in the final evaluation report. This document can then be shared with other project directors and staff, nationwide, who are planning to undertake similar types of efforts;

- Provision for evaluations that assess the process of implementation of new Chapter 1 instructional strategies or classroom management techniques. Documentation in the final evaluation report must describe actual program improvement activities, and the experiences of staff, students and other project participants when the changes are implemented; or,

- Provision for evaluations that assess the effects of programmatic change supported by the project.

*Other Activities and Requirements.* SEAs are encouraged to discuss their needs for additional technical assistance in order to carry out their proposed activities. Technical or other assistance may be provided directly by ED, where appropriate and upon request, or may be proposed and budgeted for in the application. For instance, in the former case, the services of the Chapter 1 evaluation technical Assistance Centers (TACs) are available to chapter 1 grantees for assistance or training in evaluation-related areas. Assistance from regional research and Development exchanges (RDx's) is available to SEAs, in some cases without additional charge and in other cases via contractual agreement. Applicants may also consider using, where appropriate and beneficial to the project, consultants, regional organizations, university faculty, private firms, or staff of other Chapter 1 projects that have implemented similar program improvement activities.

All applicants should budget \$500 for one person, for one trip. Applicants may be invited to attend a meeting either in Washington, D.C. or at an ED regional office. The purposes of this trip will include—

- Meeting and conferring with other grantees under this competition, particularly those who will undertake or have experience with similar program improvement activities;

- Meeting and consulting with staff of the Office of the Secretary, and with other officials of ED, especially on ED Project Officer who will be responsible

for Federal monitoring of the project; and

- Conferring with grant specialists from the Assistance Management and Procurement Service of ED, in order to review the requirements and responsibilities of grantees under this Initiative.

6. *Evaluation Criteria.* It is anticipated that applications will describe a wide variety of projects appropriate under the Secretary's Initiative. The Secretary also anticipates applications from States with diverse geographic and demographic characteristics. In evaluating applications, the Secretary will apply the following criteria.

(a) *Quality of the Project Plan.* (35 points) The Secretary reviews each application for information that shows how well the project will meet the purposes of the Initiative, and how well each project addresses the specific needs of the applicant. The Secretary looks for information that describes—

(1) A statement of the needs of the applicant and a statement of how the objectives of the project relate to those needs; (5 points)

(2) The proposed tasks and activities of the project, including a timeline appropriate for completing each task; (10 points)

(3) How the tasks and activities of the project are designed to meet the objectives of the project; (10 points) and

(4) The potential utility of proposed activities, materials and products for enabling an applicant to improve Chapter 1 instruction or program management, within the SEA or in other States with similar concerns. (10 points)

(b) *The Commitment of the Applicant SEA.* (15 points) The Secretary reviews each application for information that describes the applicant's commitment to the project and its goals, and the commitment of any other participating SEAs and LEAs to the project, including documentation of any in-kind contributions, and plan for appropriate use of other resources, e.g., district or State staff, consultants, TACs, or RDx's.

(c) *Plan of Operation.* (20 points) The Secretary reviews each application for information that shows the quality of the plan of operation for the project. The Secretary looks for information that shows—

(1) High quality in the design of the project;

(2) An effective plan of management that insures proper and efficient administration of the project;

(3) A clear description of how the objectives of the project relate to the purpose of this initiative;

(4) The way the applicant plans to use its resources and personnel to achieve each objective;

(5) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic minority groups, women or handicapped persons; and

(6) A clear description of how the applicant will provide opportunity for participation of students enrolled in private schools.

(d) *Quality of Key Personnel.* (15 points) The Secretary reviews each application for information that shows the qualifications for the key personnel the applicant plans to use on the project. To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides. The Secretary looks for information that shows—

(1) The qualifications of the project director (if one is to be used);

(2) The qualifications of each of the other key personnel to be used in the project;

(3) The time that each key person will commit to the project; and

(4) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic minority groups, women, handicapped persons, and the elderly.

(e) *Budget and Cost Effectiveness.* (5 points) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective. The Secretary looks for information that shows—

(1) The budget for the project is adequate to support project activities; and

(2) The costs reasonable in relation to the objectives of the project.

(f) *Evaluation Plan.* (7 points) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and quantifiable.

(g) *Adequacy of Resources.* (3 points) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project. The Secretary looks for information that shows—

(1) The facilities that the applicant plans to use are adequate; and

(2) The equipment and supplies that the applicant plans to use are adequate.

#### Waiver of Rulemaking

In accordance with Section 431 of the General Education Provisions Act and the Administrative Procedure Act, 5 U.S.C. 553, it is the practice of the Department of Education to provide an opportunity for public comment in response to proposed regulations before issuing the regulations in final form. However, the Secretary of Education has determined that proposed rulemaking would be impracticable and contrary to the public interest for the rules in this notice and is therefore waiving the opportunity for public comment, in accordance with 5 U.S.C. 553(b)(3)(B).

The rules in this notice apply only to a competition for grant awards that must be made in the current fiscal year, which ends September 30, 1983. The awards should be made as far in advance of that date as possible to permit planning by grantees for use of funds during the 1983-84 school year. Given the time required to prepare, clear, and publish proposed and final regulations, to invite and review applications, and to negotiate and award grants, there is insufficient time to follow proposed rulemaking procedures and still obligate funds on a timely basis in this fiscal year. Therefore, it is impracticable and contrary to the public interest to follow rulemaking procedures. (5 U.S.C. 553(b); 20 U.S.C. 1232).

*Effective Dates:* Unless the Congress takes certain adjournments the funding criteria and other rules in this notice are expected to take effect 45 days after publication in the Federal Register. For further information as to the effective date of these funding criteria and other rules, call or write the Department of Education contact person.

*Available Funds:* There may be up to 20 separate awards made, depending on the technical quality of applications received and on the amount of available funds. The size of awards will range between \$25,000 and \$75,000. These estimates do not bind the Department of Education to a specific number of grants or to the amount of any grant unless the amount is otherwise specified by statute or regulations.

*Applications Delivered by Mail:* An application sent by mail must be addressed to the Department of Education, Application Control Center, Attention: 84.157, Secretary's Initiative to Improve the Quality of Chapter 1 Projects, Washington D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

- (a) A legibly dated U.S. Postal Service Postmark;
- (b) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service;
- (c) A dated shipping label, invoice, or receipt from a commercial carrier; or
- (d) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark; or (2) A mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered.

**Applications Delivered by Hand:** An application that is hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Street, SW., Washington, D.C.

The Application Control Center will accept a hand-delivered application between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily except Saturdays, Sundays, and Federal holidays. An application that is hand delivered will not be accepted after 4:30 p.m. on the closing date.

**Application Forms:** Application forms and information packages are expected to be available on or around May 23, 1983 and may be obtained by writing to Dr. Robert M. Stonehill, State and Local Grants Division, Office of Planning, Budget and Evaluation, 400 Maryland Ave., S.W., Room 4032, Washington, D.C. 20202.

Copies of application forms and information packages will be sent directly to all Chief State School Officers and to all State Chapter 1, ECIA Coordinators.

Applications must be prepared and submitted in accordance with regulations, instructions, and forms included in the program information package.

The Secretary strongly urges that applicants not submit information that is not requested. However, the program information is only intended to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any paperwork, application content,

reporting, or grantee performance requirement beyond those imposed under the statute and regulations.

**Applicable Regulations:** Regulations applicable to this competition include:

- (a) Regulations contained in this Notice, applicable solely to awards made during Fiscal Year 1983; and
- (b) Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, and 78).

**FOR FURTHER INFORMATION CONTACT:** For further information, contact Dr. Robert Stonehill, State and Local Grants Division, Office of Planning, Budget and Evaluation, U.S. Department of Education, 400 Maryland Ave., S.W., Room 4032, Washington, D.C. 20202. Telephone: (202) 245-9401.

(20 U.S.C. 2833)

Dated: May 18, 1983.

T. H. Bell,  
Secretary of Education.

[FR Doc. 83-13798 Filed 5-20-83; 8:45 am]

BILLING CODE 4000-01-M

## DEPARTMENT OF ENERGY

### Energy Information Administration

#### Publication of Alternative Fuel Price Ceilings and Incremental Price Threshold for High Cost Natural Gas

The Natural Gas Policy Act of 1978 (NGPA) (Pub. L. 95-621) signed into law on November 9, 1978, mandated a new framework for the regulation of most facets of the natural gas industry. In general, under Title II of the NGPA, interstate natural gas pipeline companies are required to pass through certain portions of their acquisition costs for natural gas to industrial users in the form of a surcharge. The statute requires that the ultimate costs of gas to the industrial facility should not exceed the cost of the fuel oil which the facility could use as an alternative.

Pursuant to Title II of the NGPA, Section 204(e), the Energy Information Administration (EIA) herewith publishes for the Federal Energy Regulatory Commission (FERC) computed natural gas ceiling prices and the high cost gas incremental pricing threshold which are to be effective June 1, 1983. These prices are based on the prices of alternative fuels.

For further information contact: Leroy Brown, Jr., Energy Information Administration, 1000 Independence Avenue, S.W., Room BE-034, Washington, D.C. 20585, Telephone: (202) 252-6077.

## Section I

As required by FERC Order No. 50, computed prices are shown for the 48 contiguous States. The District of Columbia's ceiling is included with the ceiling for the State of Maryland. FERC, by an Interim Rule issued on March 2, 1981, in Docket No. RM79-21, revised the methodology for calculating the monthly alternative fuel price ceilings for State regions. Under the revised methodology, the applicable alternative fuel price ceiling published for each of the contiguous States shall be the lower of the alternative fuel price ceiling for the State or the alternative fuel price ceiling for the multistate region in which the State is located.

The price ceiling is expressed in dollars per million British Thermal Units (BTU's). The method used to determine the price ceilings is described in Section III.

State	Dollars per million BTU's
Alabama	3.57
Arizona <sup>1</sup>	3.77
Arkansas <sup>1</sup>	3.57
California	3.74
Colorado <sup>2</sup>	3.72
Connecticut	3.84
Delaware <sup>1</sup>	3.75
Florida	3.56
Georgia <sup>1</sup>	3.73
Idaho <sup>2</sup>	3.72
Illinois <sup>1</sup>	3.59
Indiana	3.57
Iowa <sup>1</sup>	3.96
Kansas <sup>1</sup>	3.96
Kentucky <sup>1</sup>	3.59
Louisiana	3.56
Maine <sup>1</sup>	3.90
Maryland <sup>1</sup>	3.75
Massachusetts	3.79
Michigan <sup>1</sup>	3.59
Minnesota	3.85
Mississippi <sup>1</sup>	3.73
Missouri <sup>1</sup>	3.96
Montana <sup>2</sup>	3.72
Nebraska <sup>1</sup>	3.96
Nevada <sup>1</sup>	3.77
New Hampshire <sup>1</sup>	3.90
New Jersey	3.65
New Mexico	3.21
New York	3.74
North Carolina <sup>1</sup>	3.73
North Dakota <sup>1</sup>	3.96
Ohio	3.37
Oklahoma <sup>1</sup>	3.57
Oregon <sup>1</sup>	3.77
Pennsylvania <sup>1</sup>	3.75
Rhode Island <sup>1</sup>	3.90
South Carolina <sup>1</sup>	3.73
South Dakota <sup>1</sup>	3.96
Tennessee <sup>1</sup>	3.73
Texas <sup>1</sup>	3.57
Utah <sup>2</sup>	3.72
Vermont <sup>1</sup>	3.90
Virginia <sup>1</sup>	3.73
Washington <sup>1</sup>	3.77
West Virginia <sup>1</sup>	3.59
Wisconsin <sup>1</sup>	3.59
Wyoming <sup>2</sup>	3.72

<sup>1</sup> Region based price as required by FERC Interim Rule, issued on March 2, 1981, in Docket No. RM-79-21.

<sup>2</sup> Region based price computed as the weighted average price of Regions E, F, G, and H.

## Section II. Incremental Pricing Threshold for High Cost Natural Gas

The EIA has determined that the volume-weighted average price for No. 2 distillate fuel oil landed in the greater New York City Metropolitan area during March 1983 was \$31.02 per barrel. In order to establish the incremental pricing threshold for high cost natural gas, as identified in the NPGA, Title II, Section 203(a)(7), this price was multiplied by 1.3 and converted to its equivalent in millions of BTU's by dividing by 5.8. Therefore, the incremental pricing threshold for high cost natural gas, effective June 1, 1983, is \$8.95 per million BTU's.

## Section III. Method Used To Compute Price Ceilings

The FERC, by Order No. 50, issued on September 29, 1979, in Docket No. RM79-21, established the basis for determining the price ceilings required by the NPGA. FERC also, by Order No. 167, issued in Docket No. RM81-27 on July 24, 1981, made permanent the rule that established that only the price paid for No. 6 high sulfur content residual fuel oil would be used to determine the price ceilings. In addition, the FERC, by Order No. 181, issued on October 6, 1981, in Docket No. RM81-28, established that price ceilings should be published for only the 48 contiguous States on a permanent basis.

### A. Data Collected

The following data were required from all companies identified by the EIA as sellers of No. 6 high sulfur content (greater than 1 percent sulfur content by weight) residual fuel oil: for each selling price, the number of gallons sold to large industrial users in the months of January 1983, February 1983, and March 1983.<sup>1</sup> All reports of volume sold and price were identified by the State into which the oil was sold.

### B. Method Used To Determine Alternative Price Ceilings

(1) *Calculation of Volume-Weighted Average Price.* The prices which will become effective June 1, 1983 (shown in Section I), are based on the reported price of No. 6 high sulfur content residual fuel oil, for each of the 48 contiguous States, for each of the 3 months, January 1983, February 1983, and March 1983. Reported prices for sales in January 1983 were adjusted by the percent change in the nationwide

volume-weighted average price from January 1983 to March 1983. Prices for February 1983 were similarly adjusted by the percent change in the nationwide volume-weighted average price from February 1983 to March 1983. The volume-weighted 3-month average of the adjusted January 1983 and February 1983, and the reported March 1983 prices were then computed for each State.

(2) *Adjustment for Price Variation.* States were grouped into the regions identified by the FERC (see Section III.C.). Using the adjusted prices and associated volumes reported in a region during the 3-month period, the volume-weighted standard deviation of prices was calculated for each region. The volume-weighted 3-month average price (as calculated in Section III.B.(1) above) for each State was adjusted downward by two times this standard deviation for the region to form the adjusted weighted average price for the State.

(3) *Calculation of Ceiling Price.* The lowest selling price within the State was determined for each month of the 3-month period (after adjusting up or down by the percent change in oil prices at the national level as discussed in Section III.B.(1) above). The products of the adjusted low price for each month times the State's total reported sales volume for each month were summed over the 3-month period for each State and divided by the State's total sales volume during the 3 months to determine the State's average low price. The adjusted weighted average price (as calculated in Section III.B.(2)) was compared to this average low price, and the higher of the values was selected as the base for determining the alternative fuel price ceiling for each State. For those States which had no reported sales during one or more months of the 3-month period, the appropriate regional volume-weighted alternative fuel price was computed and used in combination with the available State data to calculate the State alternative fuel price ceiling base. The State's alternative fuel price ceiling base was compared to the alternative fuel price ceiling base for the multistate region in which the State is located and the lower of these two prices was selected as the final alternative fuel price ceiling base for the State. The appropriate lag adjustment factor (as discussed in Section III.B.4) was then applied to the alternative fuel price ceiling base. The alternative fuel price (expressed in dollars per gallon) was multiplied by 42 and divided by 6.3 to estimate the alternative fuel price ceiling for the State (expressed in dollars per million BTU's).

There were insufficient sales reported in Region G for the months of January, February, and March 1983. The alternative fuel price ceilings for the States in Region G were determined by calculating the volume weighted average price ceilings for Region E, Region F, Region G, and Region H.

(4) *Lag Adjustment.* The EIA has implemented a procedure to partially compensate for the two-month lag between the end of the month for which data are collected and the beginning of the month for which ceiling prices become effective. It was determined that *Platt's Oilgram Price Report* publication provides timely information relative to the subject. The prices found in *Platt's Oilgram Price Report* publication are given for each trading day in the form of high and low prices for No. 6 residual oil in 21 cities throughout the United States. The low posted prices for No. 6 residual oil in these cities were used to calculate a national and a regional lag adjustment factor. The national lag adjustment factor was obtained by calculating a weighted average price for No. 6 high sulfur residual fuel oil for the ten trading days ending May 13, 1983, and dividing that price by the corresponding weighted average price computed from prices published by Platt's for the month of March 1983. A regional lag adjustment factor was similarly calculated for four regions. These are: one for FERC Regions A and B combined; one for FERC Region C; one for FERC Regions D, E, and G combined; and one for FERC Regions F and H combined. The lower of the national or regional lag factor was then applied to the alternative fuel price ceiling for each State in a given region as calculated in Section III.B.(3).

### Listing of States by Region

States were grouped by the FERC to form eight distinct regions as follows:

Region A	Region B
Connecticut	Delaware
Maine	Maryland
Massachusetts	New Jersey
New Hampshire	New York
Rhode Island	Pennsylvania
Vermont	
Region C	Region D
Alabama	Illinois
Florida	Indiana
Georgia	Kentucky
Mississippi	Michigan
North Carolina	Ohio
South Carolina	West Virginia
Tennessee	Wisconsin
Virginia	
Region E	Region F
Iowa	Arkansas
Kansas	Louisiana
Missouri	New Mexico
Minnesota	Oklahoma

<sup>1</sup> Large Industrial User—A person/firm which purchases No. 6 fuel oil in quantities of 4,000 gallons or greater for consumption in a business, including the space heating of the business premises. Electric utilities, governmental bodies (Federal, State, or Local), and the military are excluded.



Nebraska  
North Dakota  
South Dakota

Texas

Region G

Colorado  
Idaho  
Montana  
Utah  
Wyoming

Region H

Arizona  
California  
Nevada  
Oregon  
Washington

Issued in Washington, D.C., May 18, 1983.

Albert H. Linden, Jr.,

Deputy Administrator, Energy Information Administration.

[FR Doc. 83-13819 Filed 5-18-83; 11:15 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. TA83-2-31-004]

Arkansas Louisiana Gas Co.; Compliance Filing

May 16, 1983.

Take notice that on April 29, 1983, Arkansas Louisiana Gas Company (Arkla) submitted for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Rate Schedule G-2, copies of 5th Revised Sheet No. 12B, 6th Revised Sheet No. 12C, 6th Revised Sheet No. 12D and 2nd Substitute 33rd Revised Sheet No. 4 to become effective April 1, 1983.

Arkla states that this filing is in compliance with Ordering Paragraphs (D) and (D) of the Commission's order dated March 31, 1983, which required Arkla to file tariff sheet changes on exchange gas within a 30-day period. This supplementary filing also makes certain reductions in cost projections in the supporting work sheets and summary sheets of the PGA filing concerning reductions in costs for certain deep deregulated gas and certain tight formation gas.

Arkla states that copies of the filing were mailed to the customers served under Arkla's Rate Schedule No. G-2.

Any person desiring to be heard or to protest said complaint should file a petition to intervene or protest with the Federal Energy Regulatory Commission 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before May 20, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Any person wishing to become a party must file a petition to intervene. Copies of this complaint are on file with the

Commission and are available for public inspection.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 83-13714 Filed 5-20-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-291-000]

Arkansas Louisiana Gas Company, a Division of Arkla, Inc.; Request Under Blanket Authorization.

May 17, 1983.

Take notice that on April 25, 1983, Arkansas Louisiana Gas Company, a division of Arkla, Inc. (Arkla), P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP 83-291-000 a request pursuant to § 157.205 of the regulations under the Natural Gas Act (18, CFR 157.205) that Arkla proposes to construct and operate two sales taps and related appurtenant facilities, one on its line KM-12 and the other on its line LAC-10, to permit the direct sales of natural gas to Tosco Corporation (Tosco) and Coloma Petroleum, Inc. (Coloma), respectively, under the authorization issued in Docket Nos. CP82-340-000 and CP82-340-001 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Arkla states that the peak day volumes to be delivered to Tosco and Coloma by the proposed facilities is estimated to be approximately 12 Mcf and 1,500 Mcf, respectively, with an estimated 4,380 Mcf and 72,000 Mcf, respectively, being delivered annually. Arkla further states these volumes are *de minimis* when compared with Arkla's 1982 peak day and annual deliveries of 1,827,927 Mcf and 394,607,813 Mcf, respectively. Arkla further states that the volumes delivered to Tosco to operate its DeLone-Burns oil pumping station in Union County, Arkansas, would be billed at the retail rates applicable under Arkla's effective rates as filed with the Arkansas Public Service Commission. It is asserted that the volumes delivered to Coloma for the use and consumption of its gas lift operations in Kingfisher County, Oklahoma, would be billed at the retail rates applicable under Arkla's effective rates as filed with the Oklahoma Corporation Commission. It is estimated that the cost of the construction of the proposed facilities for Tosco and Coloma would be \$1,330 and \$22,990, respectively.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission,

file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 83-13715 Filed 5-20-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ES82-69-001]

Interstate Power Co.; Amended Application

May 17, 1983.

Take notice that on May 9, 1983, Interstate Power Company (Applicant) filed an amendment to its application in Docket No. ES82-69-001 with the Federal Energy Regulatory Commission. Applicant seeks authority to increase its short-term borrowings from \$40 million to \$50 million outstanding consisting of promissory notes and/or commercial paper to be issued on or before December 31, 1983, and to mature not later than December 31, 1984.

Any person desiring to be heard or to make any protest with reference to such application, as amended, should, on or before May 31, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). The application, as amended, is on file with the Commission and available for public inspection.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 13717 Filed 5-20-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-318-000]

Intrastate Gathering Corp., Application

May 17, 1983.

Take notice that on May 9, 1983, Intrastate Gathering Corporation (Applicant), P.O. Box 32999, San Antonio, Texas 78216, filed in Docket No.

CP83-318-000 an application pursuant to Section 311(a)(2) of the Natural Gas Policy Act of 1978 and § 284.127 of the Commission's Regulations for authority to transport certain quantities of natural gas for Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tenneco), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it is currently engaged in the transportation of natural gas on behalf of Tenneco pursuant to a transportation agreement dated July 5, 1979. It is stated that service under this agreement commenced July 6, 1979, for an initial term of two years under the self-implementing provisions of § 284.122(a) of the Commission's Regulations and was extended for a period of two years commencing July 6, 1981, pursuant to § 284.125 of the Commission's Regulations. In order that the transportation service might be continued on an uninterrupted basis, Applicant has requested the Commission issue an order authorizing a continuation of the transportation arrangement for a period of two years commencing July 6, 1983, and ending July 5, 1985.

Applicant proposes to transport up to 25,000 Mcf of gas per day for Tenneco or such additional daily volumes which Applicant determines that its operating conditions shall reasonably permit. Applicant states that it would transport Tenneco's volumes from Gulf Oil Corporation's wells in Zapata, Starr, Cameron and Hidalgo Counties, Texas, to Tenneco's Webb, Corckett, Sullivan or Starr redelivery points in Webb, Hidalgo and Zapata Counties, Texas, and other mutually agreeable point or points. A transportation rate of 5.0 cents per Mcf would be charged for gas transported to the Webb redelivery point, 21.91 cents per Mcf for gas transported to the Crockett redelivery point and 25.94 cents per Mcf for gas transported to the Sullivan or Starr redelivery points.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 7, 1983, 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). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to

make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

**Kenneth F. Plumb,**  
*Secretary.*

[FR Doc. 83-13716 Filed 5-20-83; 8:45 am]  
BILLING CODE 6717-01-M

[Docket No. CP83-290-000]

**Panhandle Eastern Pipe Line Co. and Trunkline Gas Co.; Application**

May 17, 1983.

Take notice that on April 25, 1983, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77001, and Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP83-290-000 a joint application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon a transportation service for United Gas Pipe Line Company (United), all as more fully set forth in the application which is file with the Commission and open to public inspection.

It is stated that Applicants were authorized to transport up to 100,000 Mcf of gas per day on an interruptible basis for United from Dewey County, Oklahoma, to St. Mary and LaSalle Parishes, Louisiana, and Waller County, Texas. Applicants assert that the reasons for the abandonment is that the sale of gas to United in Dewey County, Oklahoma, has been terminated as of April 21, 1982, and no gas has been received for transportation since March 1982. It is further asserted that no facilities would be abandoned.

Any persons desiring to be heard or to make any protest with reference to said application should on or before June 7 1983, 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 protestests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any persons wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a

motion to intervene 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 itervene is filed within the time required herein, if the Commission on its own review of the matter finds that 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 Applicants to appear or be represented at the hearing.

**Kenneth F. Plumb,**  
*Secretary.*

[FR Doc. 83-13716 Filed 5-20-83; 8:45 am]  
BILLING CODE 67170-01-M

[Docket No. CP83-277-000]

**Transcontinental Gas Pipe Line Corp.; Application**

May 17, 1983.

Take notice that on April 14, 1983, Transcontinental Gas Pipe Line Corporation (Applicant), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP83-277-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for the account of Columbia Gas Transmission Corporation (Columbia), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco proposes to transport up to 1,800 dt equivalent of natural gas per day for Columbia, an existing resale customer, pursuant to the provisions of Transco's Rate Schedule T.

It is stated that the gas would be made available to Transco at its existing point of delivery to Columbia at Dranesville, Fairfax County, Virginia, where Columbia would reduce its takes of equivalent quantities of gas under Transco's Rate Schedule CD-2 and Transco would transport such gas and

deliver it by displacement for the account of Columbia to Lynchburg, Virginia.

The Rate Schedule T transportation rate for this upstream delivery is currently 4.0¢ per dt equivalent with no retention for fuel requirements, it is stated.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 7, 1983, 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 jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

Kenneth F. Plumb.

Secretary.

[FR Doc. 83-13719 Filed 5-20-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP83-30-002]

### Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

May 16, 1983.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) on April 21, 1983 tendered for filing certain revised tariff sheets to Original Volume

No. 2 of its FERC Gas Tariff, and alternatives thereto, which propose changes in the rates applicable to three transportation rate schedules covering service performed in the production area of Transco's system. Transco states that the purpose of its filing is to establish rates for the involved rate schedules which are comparable to those transportation rates that were filed by Transco on December 15, 1982 in Docket No. RP83-30 and which are applicable to similar production area transportation service performed by Transco. Transco's preferred alternative tariff sheets filed in this case reflect the adjustments required by the Commission's January 14, 1983 suspension order in Docket No. RP83-30 as well as the rate of return provided for in Article IV of the settlement agreement filed by Transco on April 13, 1983 in Docket Nos. RP83-11 and RP83-30. In the event that the Commission does not approve the settlement in a timely fashion, Transco has submitted alternative tariff sheets that do not reflect the rate of return provided for therein.

Transco has requested that its filing in this case be made effective concurrently with the effectiveness of the rates filed in Docket No. RP83-30 on April 22, 1983 and that this case be consolidated with the proceedings in Docket No. RP83-30. Transco requests that the Commission grant all necessary waivers to allow concurrent effective dates.

Copies of the filing were served upon the Company's jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rule 2.14 and Rule 2.11 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such petitions or protests should be filed on or before May 20, 1983. Protests will be considered by the Commission 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 must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb.

Secretary.

[FR Doc. 83-13720 Filed 5-20-83; 8:45 am]

BILLING CODE 6717-01-M

### Western Area Power Administration

[Rate Order No. WAPA-19]

### Colorado River Storage Project; Order Confirming, Approving, and Placing Increased Power and Transmission Rates in Effect on an Interim Basis

#### Correction

In FR Doc. 83-11569, beginning on page 19990, in the issue of Tuesday, May 3, 1983, make the following correction.

On page 19992, first column, the twenty-second line of the third paragraph should have read: "Fort Collins Area. In many of the years since the inception of CRSP O&M program, it has".

BILLING CODE 1505-01-M

### ENVIRONMENTAL PROTECTION AGENCY

[OPTS-59123C; TSH-FRL 2367-8]

### Certain Chemicals; Approval of Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

**SUMMARY:** This notice announces EPA's approval of TM-83-46, an application for a test marketing exemption (TME) under section 5(h)(6) of the Toxic Substances Control Act (TSCA). The test marketing conditions are described below.

**EFFECTIVE DATE:** May 12, 1983.

**FOR FURTHER INFORMATION CONTACT:** Theodore C. Jones, Acting Chief, Notice Review Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-204, 401 M St. SW., Washington, DC 20460 (202-382-3725).

**SUPPLEMENTARY INFORMATION:** Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and to permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities.

EPA has determined that test marketing of the new chemical substances described below, under the conditions set out in the applications, and for the time periods specified below, will not present any unreasonable risk

of injury to health or the environment. Production volume, number of workers exposed to the new chemical, and the levels and duration of exposure must not exceed that specified in the applications. All other conditions described in the applications must be met. The following additional restrictions apply:

1. If the substance is shipped, the applicant must maintain records of the date(s) of shipment(s) to each customer and the quantities supplied in each shipment, and must make these records available to EPA upon request.

2. A bill of lading accompanying each shipment must state that use of the substance is restricted to that approved in the TME.

#### TME 83-46

*Date of Receipt:* April 7, 1983.

*Notice of Receipt:* April 15, 1983 (48 FR 16330).

*Applicant:* The Warfield Company, Inc.

*Chemical:* Polyamine adduct (Generic).

*Use:* Confidential.

*Import Volume:* Confidential.

*Test Marketing Period:* 1 year.

*Commencing On:* May 12, 1983.

*Risk Assessment:* The Agency did not identify any significant health or environmental effects based on the information received from the submitter and other information presently available to the Agency. In addition, the potential for exposure and release are very low. The overall concerns, therefore, for health and ecotoxicity are low.

*Public Comments:* None.

The Agency reserves the right to rescind approval of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present an unreasonable risk to health or the environment.

Dated: May 12, 1983.

Marcia E. Williams,

Acting Director, Office of Toxic Substances.

[FR Doc. 83-12751 Filed 5-20-83; 8:45 am]

BILLING CODE 6560-50-M

#### [OPTS-59123B; TSH-FRL 2367-5]

### Certain Chemicals; Approval of Test Marketing Exemption

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces EPA's approval of TM-83-44, and TM-83-45,

two applications for test marketing exemptions (TME) under section 5(h)(6) of the Toxic Substances Control Act (TSCA). The test marketing conditions are described below.

**EFFECTIVE DATE:** May 12, 1983.

**FOR FURTHER INFORMATION CONTACT:** Theodore C. Jones, Acting Chief, Notice Review Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-204, 401 M St. SW., Washington, D.C. 20460 (202-382-3725).

**SUPPLEMENTARY INFORMATION:** Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and to permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities.

EPA has determined that test marketing of the new chemical substances described below, under the conditions set out in the applications, and for the time periods specified below, will not present any unreasonable risk of injury to health or the environment. Production volume, number of workers exposed to the new chemical, and the levels and duration of exposure must not exceed that specified in the applications. All other conditions described in the applications must be met. The following additional restrictions apply:

1. If the substance is shipped, the applicant must maintain records of the date(s) of shipment(s) to each customer and the quantities supplied in each shipment, and must make these records available to EPA upon request.

2. A bill of lading accompanying each shipment must state that use of the substance is restricted to that approved in the TME.

#### TME83-44

*Date of Receipt:* April 6, 1983.

*Notice of Receipt:* April 15, 1983 (48 FR 16330).

*Applicant:* Morton Thiokol, Incorporated.

*Chemical:* Polyalkyl polyurethane, acrylate capped.

*Use:* Coating for photographic film.

*Production Volume:* 50,000 kg.

*Worker Exposure:* Manufacture: dermal, 5 workers, 8 hours/day, 10 days/year. Processing: 6 workers, 8 hours/day, 5 days/year.

*Test Marketing Period:* 1 year.

*Commencing on:* May 12, 1983.

*Risk Assessment:* The Agency did not identify any significant health or environmental effects based on the information received from the submitter and other information presently available to the Agency. The TME substance is expected to be poorly absorbed and cause little or no systemic toxicity. Based on the molecular weight and low water solubility, it is of low concern for environmental effects. In addition, the potential for significant exposure and release is very low. The overall concerns, therefore, for health and ecotoxicity are low.

*Public Comments:* None.

#### TME83-45

*Date of Receipt:* April 7, 1983.

*Notice of Receipt:* April 15, 1983 (48 FR 16330).

*Applicant:* Confidential.

*Chemical:* Lignosulfate, reaction product with a phenolic monomer and an oxidant (Generic).

*Use:* Confidential.

*Production Volume:* 60,000 lb. of a solution containing approximately 50% final solids content. (Production volume was mistakenly cited as 60,000 gallons in the notice of receipt.)

*Number of Customers:* 1.

*Worker Exposure:* Manufacture: dermal and inhalation, 2-3 workers. Transport and use: dermal and inhalation, 4 workers.

*Test Marketing Period:* 5 months.

*Commencing on:* May 12, 1983.

*Risk Assessment:* The Agency did not identify any significant health or environmental effects based on the information received from the submitter on a closely-related analog and on other information presently available to the Agency. In addition, potential for exposure and release are very low. The overall concerns, therefore, for health and ecotoxicity are low.

*Public Comments:* None.

The Agency reserves the right to rescind approval of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present an unreasonable risk to health or the environment.

Dated: May 12, 1983.

Marcia Williams,

Acting Director, Office of Toxic Substances.

[FR Doc. 83-12750 Filed 5-20-83; 8:45 am]

BILLING CODE 6560-50-M

[WH-FRL 2352-2]

**Approval of West Virginia's NPDES Program To Use a Surface Mine Application Form****AGENCY:** Environmental Protection Agency.**ACTION:** Notice of approval of the State of West Virginia's request to use a National Pollutant Discharge Elimination System (NPDES) application form for surface mine discharges.**SUMMARY:** On May 10, 1983, the Environmental Protection Agency (EPA) approved the State of West Virginia's request to use a new NPDES permit application form for surface mine discharges. Previously the State had been approved to participate in the NPDES program, which included use of an application form covering all mining discharges.**FOR FURTHER INFORMATION CONTACT:** Allen J. Danzig, Permits Division (EN-336), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, 202-755-0750.**SUPPLEMENTARY INFORMATION:** On May 10, 1982, the EPA Administrator approved West Virginia's request to administer the NPDES program. This action included approval of an NPDES permit application form for mining discharges. The approved mining form covered all mining discharges, including deep mines and surface mines. Shortly thereafter, West Virginia requested EPA approval of a revised NPDES application form to cover surface mine discharges only. The revised application form provides more complete State coverage of surface mining and eliminates non-applicable deep mining items. Today's Federal Register notice is to announce the approval of the State of West Virginia's request to use an NPDES application form for surface mine discharges. EPA received only one comment during the public comment period, which requested changes in the stream sampling conditions of the form. Since these conditions are required by the State Department of Natural Resources and not by the Federal NPDES regulations, EPA has forwarded these comments to the State for its review.**Review Under the Regulatory Flexibility Act and Executive Order 12291**

Under the Regulatory Flexibility Act, EPA is required to prepare a Regulatory Flexibility Analysis for all rules which may have significant impact on a substantial number of small entities. The approval of the West Virginia NPDES permit application form for surface mine

discharges merely provides more specific State requirements for surface mine discharges. No new substantive Federal requirements are established by this action. Therefore, this notice does not have a significant impact on a substantial number of small entities. It does not trigger the requirement of a Regulatory Flexibility Analysis.

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

Dated: May 10, 1983.

**Lee L. Verstandig,**  
*Acting Administrator.*

[FR Doc. 83-13749 Filed 5-23-83; 8:45 am]

**BILLING CODE 6560-50-M**

[OPTS-51464; TSH-FRL 2355-5]

**Certain Chemicals; Premanufacture Notices***Correction*

In FR Doc. 83-11622, beginning on page 20487, in the issue of Friday, May 6, 1983, on page 20488, in the first column, "PMN 83-44" should read "PMN 83-644".

**BILLING CODE 1505-01-M****FEDERAL DEPOSIT INSURANCE CORPORATION****General Counsel's Opinion No. 6—The Legality of Discount Brokerage Services When Offered By Insured Nonmember Banks****AGENCY:** Federal Deposit Insurance Corporation (FDIC).**ACTION:** Notice of FDIC General Counsel's Opinion No. 6.**SUMMARY:** The FDIC's Legal Division has received numerous inquiries from insured nonmember banks and their counsel concerning whether or not insured nonmember banks may offer discount brokerage services to their customers. The inquiries have primarily focused on whether or not an insured nonmember bank may lawfully enter into a contractual arrangement with an unrelated discount broker whereby the broker executes securities transactions for bank customers and the bank shares in commissions generated by those transactions. FDIC General Counsel's Opinion No. 6 set forth below responds to those inquiries.**FOR FURTHER INFORMATION CONTACT:** Pamela E. F. LeCren, Senior Attorney, Legal Division, (202-389-4171), Room 4126E, 550 17th Street, NW., Washington, D.C. 20429.**Opinion**The FDIC has received numerous inquiries from insured nonmember banks and their counsel asking whether or not it is lawful for an insured nonmember bank to offer discount brokerage services to its customers. The inquiries primarily focus on the lawfulness of contractual arrangements between banks and unrelated discount brokers whereby the discount broker executes securities transactions for bank customers and the bank shares in the commissions generated by the transactions. A response to those questions necessarily involves an inquiry into the permissible scope of an insured nonmember bank's direct securities activities under the Banking Act of 1933 (popularly known as the Glass-Steagall Act and codified in several sections of the United States Code). The Glass-Steagall Act is generally recognized as separating the business of banking from that of investment banking (*i.e.*, the securities business). Most of what is the Glass-Steagall Act applies solely to member banks of the Federal Reserve System. (*See* section 20 (prohibiting the affiliation of *member* banks and companies engaged principally in the issue, floatation, underwriting, public sale, or distribution of stocks, bonds, debentures, notes or other securities, 12 U.S.C. 377) and section 32 (prohibiting officers, directors, or employees of companies primarily engaged in the issue, floatation, underwriting, public sale, or distribution of stocks, bonds, or similar securities, or partners or employees of a partnership so engaged, from serving as directors, officers, or employees of *member* banks, 12 U.S.C. 78)).

Section 21 of the Glass-Steagall Act (12 U.S.C. 378) is applicable, however, to member and nonmember banks alike. Section 21 provides, in part, that it shall be unlawful for, any person, firm, corporation, association, business trust, or other similar organization, engaged in the business of issuing, underwriting, selling, or distributing \* \* \* stocks, bonds, debentures, notes or other securities, to engage at the same time to any extent whatever in the business of receiving deposits \* \* \*.

Section 21 further provides, however, that nothing therein should be read to prohibit \* \* \* State banks \* \* \* whether or not members of the Federal Reserve System) \* \* \* from dealing, underwriting, purchasing, and selling investment securities to the extent permitted to national banking

associations by the provisions of section 24 of this title." Section 24(7th) of Title 12 of the United States Code (hereinafter referred to as section 16 of the Glass-Steagall Act) limits "the business of dealing in securities and stock \* \* \* to purchasing and selling such securities and stock without recourse, solely upon the order, and for the account of, customers \* \* \*." Section 16 ends with the proviso that a national banking association (and thus a nonmember bank) may purchase certain listed investment securities for its own account.

A nonmember bank may therefore, consistent with the Glass-Steagall Act, purchase and sell securities for the account of a customer if it is without recourse and solely upon the order of the customer. It is the opinion of the Legal Division of the FDIC, after reviewing the language of the statute, current case law interpreting the Glass-Steagall Act, and the Act's legislative history, that "discount brokerage" is a permissible activity falling within the language of section 16. By the term "discount brokerage" we are referring to the practice by a bank of executing securities transactions solely at the direction of a bank customer but not providing that customer with any investment advice.

As explained in the Senate Report accompanying the Glass-Steagall Act, section 16 would permit national banks "to purchase and sell investment securities for their customers to the same extent as heretofore \* \* \*." S. Rep. No. 77, 73rd Cong., 1st Sess. 16 (1933). National banks were engaged in brokerage type activities prior to the enactment of the Glass-Steagall Act and their involvement in such activities had been judicially recognized. (See *Blakley v. Brinson*, 286 U.S. 254 (1932); *McNair v. Davis*, 68 F. 2d 935 (5th Cir.), cert. denied, 292 U.S. 647 (1934); and *Block v. Pennsylvania Exchange Bank*, 253 N.Y. 227, 170 N.E. 900 (1930)). Bank trust departments also had traditionally performed brokerage functions with regard to trust accounts administered by banks. Therefore in our opinion both the legislative history of section 16 and the historical involvement of banks in brokerage activities support the conclusion that a nonmember bank is not prohibited from engaging in discount brokerage activities as defined above.

Further support for the opinion that discount brokerage activities are a permissible activity for banks can be found in court decisions construing the Glass-Steagall Act. As early as 1947 the Supreme Court, in determining whether a securities firm was "primarily

engaged" in securities activities covered by section 32 of the Glass-Steagall Act, did not give any weight to the firm's substantial brokerage activities. *Board of Governors of the Federal Reserve System v. Agnew*, 329 U.S. 441 (1947). Implicit in that decision, and the later observations of the Court concerning section 16, is the premise that the Glass-Steagall Act is not concerned with activities in which banks traditionally engaged which do not raise the types of hazards sought to be addressed by the Glass-Steagall Act.

As recognized by the Supreme Court in *Investment Company Institute v. Camp*, 401 U.S. 617, 630-634 (1971), the legislative history of the Glass-Steagall Act reflects concern that a bank might be harmed by its direct or indirect involvement in certain securities activities. Those hazards included the possibility that: (1) The association of the bank with a securities company affiliate could impair public confidence in the bank if the latter performed poorly; (2) the bank might be tempted to make unsound loans to its securities affiliate or to companies whose securities the bank's affiliate was underwriting; (3) bank customer goodwill could suffer if any customer suffered losses after investing in a security associated with the bank; (4) the bank may make unsound "purpose loans" (loans obtained for the purpose of acquiring securities) in order to facilitate the sale of securities in which the bank or its securities affiliate dealt; (5) the bank's affiliate could dump poor issues into the bank's trust department; and (6) the bank's promotional interest in the securities would be in direct conflict with its obligation to render impartial investment advice.

The above hazards have been found not to be present in the case of discount brokerage. The U.S. District Court for the District of Columbia, for example, found automatic investment services ("AIS") by banks not to violate the Glass-Steagall Act. *New York Stock Exchange v. Smith*, 404 F. Supp. 1091 (D.D.C. 1975), vacated on other grounds sub nom. *New York Stock Exchange v. Bloom*, 562 F. 2d 736 (D.C. Cir 1977) cert. denied, 435 U.S. 942 (1978). Under an AIS program, a bank periodically makes purchases of equity stocks for bank customers from among a list of corporations provided by the bank and debits the customer's account accordingly, i.e., the service is essentially a discount brokerage program. As stated by the lower court in *New York Stock Exchange v. Smith*.

Banks offering AIS do not have a salesman's interest in the securities

performances. Since the banks do not manage the customers' investments, they need not prove that they perform better than anyone else. This is quite different from the situation in *Investment Company Institute*, where banks were compelled to outperform mutual funds. Under AIS, banks are in competition with investment brokers only in terms of convenience, cost, and dependability. This sort of competition does not engender the threat to banks' solvency which concerned the drafters of the Glass-Steagall Act because it is independent of any investment decision. 404 F. Supp. at 1099-1100.

Based on the foregoing, it is the opinion of the Legal Division that discount brokerage services offered by a nonmember bank are permissible under the Glass-Steagall Act. The legality of any particular brokerage activity may, however, vary from circumstance to circumstance. Discount brokerage can function in as many ways as there are discount brokers or banks. A bank may merely introduce its customers to the broker/dealer services of a discount broker with the bank's subsequent involvement in any securities transaction being limited to debiting or crediting the customer's bank account after each securities transaction (i.e., the customer directly contacts the broker/dealer to initiate transactions and the broker/dealer confirms all transactions directly with the customer). A bank's involvement may typically increase along a continuum. For example, the bank customer may contact the bank for price quotations, for the placing of buy and sell orders, etc. The bank may act as a conduit of information to the broker/dealer, with the bank confirming transactions with the customer; the bank transmitting funds and securities from the customer to the broker/dealer; and the bank possibly acting as custodian for the customers' securities. In either case the bank would receive a portion of the broker's commission generated by each transaction.

While we obviously cannot comment on all discount brokerage programs as the facts may vary in each, we will observe that generally speaking the Legal Division would not cite as a violation of the Glass-Steagall Act a program in which: (1) The bank clearly acted solely at the customer's direction; (2) the transactions are for the account of the customer and not the account of the bank; (3) the transactions are without recourse; (4) the bank makes no warranty as to the performance or quality of any security; and (5) the bank did not advise the customer to make any particular investment decision. (Trust and agency accounts with regard to which the bank has investment

discretion are not subject to this restriction.) Item (5) is in keeping with the traditional role played by banks with respect to investment advice. The Legal Division is of the opinion that investment advice to bank customers is appropriately confined to the administration of trust accounts and should not be done on the commercial side of the bank. This separation plays a significant role in avoiding conflicts of interest and avoiding loss of confidence in the bank due to the performance of a particular securities investment and thus is significant in determining that discount brokerage services do not violate the Glass-Steagall Act.

It is further the Legal Division's opinion that the bank may lawfully promote the discount brokerage service. The bank should assure itself, however, that its promotional literature does not mischaracterize the bank's role in providing the discount brokerage service. This will serve to prevent public misconception about the bank's function with regard to the securities investment. If the bank intends to utilize the contractual arrangement with the broker/dealer for transactions executed in connection with trust department accounts, the bank should not receive any additional compensation with regard to those transactions from the broker/dealer, *i.e.*, the bank trust department should not share in any commission associated with the transaction. To do so would raise possibilities of a breach of fiduciary obligation toward the bank's trust account customers.

If a bank's discount brokerage activities are anything more involved than merely introducing bank customers to a broker/dealer pursuant to a contractual arrangement, the bank is advised to review and comply with Part 344 of FDIC's regulations to the extent that they are applicable. (12 CFR Part 344). Part 344 sets forth recordkeeping and confirmation requirements for securities transactions. Nonmember banks are also reminded that any margin lending engaged in with regard to the discount brokerage services must comply with Part 221 of the Federal Reserve Board's regulations (12 CFR Part 221) and should fully comport with sound banking practices.

Lastly, we reiterate that while we are generally of the opinion that discount brokerage comports with the Glass-Steagall Act whether or not the broker/dealer through whom the transaction is executed is an affiliate or a subsidiary of the bank, the FDIC will have to judge each particular program on a case-by-case basis. Any discount brokerage

activities on the part of a nonmember bank must fully comport with State law and be consistent with the powers and authorities of any State nonmember bank as defined by State law. This opinion is not intended to address the issue of whether or not discount brokerage presents any conflicts of interests or any safety or soundness concerns. That issue and others are presently being studied by the FDIC in connection with the agency's Proposed Rulemaking concerning the need, if any, to condition, restrict or prohibit securities activities of subsidiaries of nonmember banks and the need for regulations to govern the relationship between a nonmember bank and its securities affiliates.

Dated: May 17, 1983.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,  
Executive Secretary.

[FR Doc. 83-13626 Filed 5-20-83; 8:45 am]

BILLING CODE 6714-01-M

## FEDERAL ELECTION COMMISSION

### Filing Dates for Illinois Special Primary and General Elections

**AGENCY:** Federal Election Commission.

**ACTION:** Notice of Filing Dates for Illinois Special Primary and General Elections.

**SUMMARY:** Committees required to file reports in connection with the special primary election to be held in the 1st Congressional District of Illinois on July 26, 1983, must file a combined 12-day pre-primary and semiannual report by July 14, 1983. Committees required to file reports in connection with both the special primary election and the special general election to be held on July 26, 1983, and August 23, 1983, respectively, must file a combined 12-day Pre-primary and semiannual report by July 14, 1983, the 12-day pre-general election report by August 11, 1983, and the 30-day post-election report by September 22, 1983.

After filing these reports, committees should resume filing reports on a semiannual basis.

**FOR FURTHER INFORMATION CONTACT:** Ms. Bobby Werfel, Public Information Office, 1325 K Street, NW, Washington, D.C. 20463, Telephone: (202) 523-4068, Toll-free: (800) 424-9530.

### Notice of Filing Dates for Special Primary and Special General Elections, 1st Congressional District, Illinois

All principal campaign committees of candidates in the special primary election and all other semiannually filing political committees supporting

candidates in this special primary election shall file a combined 12-day pre-primary election and semiannual report due on July 14, 1983, with coverage dates from date of candidacy, or last report, through July 6, 1983.

All principal campaign committees of candidates in the special primary election and the special general election and all other semiannually filing political committees supporting candidates in these elections shall file a combined 12-day pre-primary election and semiannual report due on July 14, 1983, with coverage dates from date of candidacy, or last report, through July 6, 1983, a 12-day pre-general election report due on August 11, 1983, with coverage dates from July 7, 1983, through August 3, 1983, and a 30-day post-election report due on September 22, 1983, with coverage dates from August 4, 1983, through September 12, 1983.

After filing these reports, committees should resume filing reports on a semiannual basis.

Dated: May 18, 1983.

Danny L. McDonald,  
Chairman, Federal Election Commission.

[FR Doc. 83-13782 Filed 5-20-83; 8:45 am]

BILLING CODE 6750-01-M

## FEDERAL MARITIME COMMISSION

### Independent Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as independent ocean freight forwarders pursuant to section 44(a) of the Shipping Act, 1916 (75 Stat. 522 and 46 U.S.C. 841(c)).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to communicate with the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, D.C. 20573.

Maria I. Borges, 1998 West 64th Street,  
Hialeah, FL 33012

C & R Freight Forwarders, Inc., 22-22  
Harman Street, Ridgewood, NY 11385,  
Officer: Christa A. Ciaccio, Sole  
Officer

Dated: May 18, 1983.

By the Federal Maritime Commission.

Francis C. Hurney,  
Secretary.

[FR Doc. 83-13796 Filed 5-20-83; 8:45 am]

BILLING CODE 6730-01-M

## FEDERAL TRADE COMMISSION

## Commission Determination Re Barclay Cigarettes

AGENCY: Federal Trade Commission.

ACTION: Announcement of Commission Clarification of Past Federal Register Notice.

SUMMARY: This document announces the Commission's clarification of its announcement at 48 FR 15953.

## FOR FURTHER INFORMATION CONTACT:

Judith P. Wilkenfeld, Federal Trade Commission, Bureau of Consumer Protection, (202) 724-1499, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: On April 13, 1983, the Commission published a Federal Register notice entitled "Commission Determination Re Barclay Cigarettes; Amendment of Report of 'Tar', Nicotine and Carbon Monoxide Content of 208 Varieties of Cigarettes; Request for Comment on Possible Testing Modifications", 48 FR 15953.

In that notice, the Commission stated, *inter alia*, that, based on information developed to date, the Commission has determined that its present testing methodology for "tar", nicotine, and carbon monoxide does not accurately measure Barclay cigarettes and that without a new testing methodology precise statements as to the appropriate "tar", nicotine, and carbon monoxide rankings for Barclay cigarettes are not possible.

The Commission announced that it was amending its March, 1983 Report of "Tar," Nicotine and Carbon Monoxide of the Smoke of 208 Varieties of Domestic Cigarettes, 48 FR 12368 (March 30, 1983) "by appending copies of this Notice to the Report." However, to avoid any possible ambiguity the Commission hereby gives further notice that all "tar," nicotine and carbon monoxide values for all varieties of Barclay cigarettes should be considered as having been deleted from both its March 1983 Report, 48 FR 12368, and its December, 1981 Report of "Tar," Nicotine and Carbon Monoxide of the Smoke of 200 Varieties of Cigarettes, 46 FR 61828.

By direction of the Commission.

Emily H. Rock,  
Secretary

[FR Doc. 83-13766 Filed 5-20-83; 8:45 am]

BILLING CODE 6750-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Centers for Disease Control

## Epidemiological Investigations of Falls From Ladders; Open Meeting

The following meeting will be convened by the National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and will be open to the public for observation and participation, limited only by space available:

Date: June 8, 1983

Time: 9:00 a.m. to 4:30 p.m.

Place: Appalachian Laboratory for Occupational Safety and Health, Safety Wing, Room S.120, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505

Purpose: To discuss the efficacy of epidemiological techniques in the study of traumatic injury and the specific protocol and instruments developed for this study. Viewpoints and suggestions from industry, organized labor, academia, other government agencies, and the public are invited.

Additional information may be obtained from: Joseph Custin, Division of Safety Research, National Institute for Occupational Safety and Health, Center for Disease Control, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505, Telephone: FTS: 923-4676, Commercial: 304/291-4576

Dated: May 10, 1983.

William H. Foege,

Director, Centers for Disease Control.

[FR Doc. 83-13790 Filed 5-20-83; 8:45 am]

BILLING CODE 4160-19-M

## Review of Current Literature on Polyhalogenated Aromatic Compounds; Open Meeting

The following meeting will be convened by the Center for Environmental Health of the Centers for Disease Control (CDC) and will be open to the public for observation and participation, limited only by space available:

Date: June 28-29, 1983

Time: June 28, 8:30 a.m.-5:00 p.m., June 29, 8:30 a.m.-12 noon

Place: Conference Room, Building 9, CDC Chamblee Facility, 4770 Buford Highway, Chamblee, Georgia 30341

Purposes: The review and discuss current literature related to the toxicity and environmental occurrence of polyhalogenated aromatic compounds

Additional information may be obtained from: Ms. Linda Anderson, Special Studies Branch, Chronic Disease Division, Center for Environmental Health, Centers for Disease Control, Atlanta, Georgia 30333, Telephones: FTS: 236-4161, Commercial: 404/452-4161

Dated: May 12, 1983.

William H. Foege,

Director, Centers for Disease Control.

[FR Doc. 83-13794 Filed 5-20-83; 8:45 am]

BILLING CODE 4160-19-M

## Office of Child Support Enforcement

## Redelegations of Authority To Make Various Certifications and to Cause the Department Seal To Be Affixed or Impressed

On September 27, 1982 (47 FR 44159-60, dated October 6, 1982), the Assistant Secretary for Management and Budget (the Assistant Secretary) of the Department of Health and Human Services (HHS) delegated to the Director (the Director), of HHS' Office of Child Support Enforcement (OCSE) authority to certify true copies of any books, records, papers or other documents on file in OCSE, or extracts from such documents; authority to certify that true copies are true copies of the entire record on file on OCSE; authority to certify the complete original record on file in OCSE; authority to certify that particular records are not on file in OCSE; and authority to cause the Department Seal to be affixed or impressed to such certifications and to agreements, awards, citations, diplomas and similar documents. The Director may redelegate these authorities.

Notice is hereby given that the Director has redelegated the authorities specified above to the Deputy Director of OCSE and the Director of OCSE's Division of Management and Budget. These redelegations are effective as of the date this notice is published in the Federal Register.

Any actions by these delegates prior to this date which amount to the exercise of any of the subject authorities are affirmed and ratified.

Dated: May 13, 1983.

John A. Svahn,

Director, Office of Child Support Enforcement.

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## Endangered Species Permit; Receipt of Applications; Patuxent Wildlife Research Center

The following applicants have applied for permits 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.*):



Applicant: Dr. John G. Rogers, Patuxent Wildlife Research Center, U.S. Fish and Wildlife Service, Laurel, MD, PRT 2-8045.

Applicant: James C. Cook, Montague, CA, PRT 2-10465.

The applicant requests a permit to purchase in interstate commerce 2 pairs of captive-born masked bobwhite quail (*Colinus virginianus ridgwayi*) for enhancement of propagation.

Applicant: Zoological Society of San Diego, San Diego, CA, PRT 2-10470.

The applicant requests a permit to import one female captive-born African wild ass (*Equus africanus*) from the Basel Zoo in Switzerland for enhancement of propagation.

Documents and other information submitted with these applications are available to the public during normal business hours in Room 601, 1000 N. Glebe Rd., Arlington, Virginia, or by writing to the U.S. Fish & Wildlife Service, WPO, P.O. Box 3654, Arlington, VA 22203.

Interested persons may comment on these applications within 30 days of the date of this publication by submitting written data, views, or arguments to the above address. Please refer to the file number when submitting comments.

Dated: May 18, 1983.

Larry LaRochelle,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 13792 Filed 5-20-83; 8:45 am]

BILLING CODE 4310-55-M

## Bureau of Reclamation

### Colorado Coastal Plains Project, Texas; Intent To Prepare an Environmental Statement and To Hold Environmental Scoping Meetings

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior proposes to prepare an environmental statement (ES) and hold environmental scoping meetings for the Colorado Coastal Plains Project, Texas, here referred to as "project." A draft environmental statement is scheduled to be filed with the Environmental Protection Agency and be available for review and comment by June 1985.

The project purpose is to provide a dependable municipal and industrial water supply for projected needs in the Lower Colorado River Basin coastal counties. Other project purposes may include fish and wildlife, recreation, and environmental enhancement. The most promising alternative identified in the first phase of the study is a dam and reservoir on the Colorado River between

La Grange and Columbus, Texas. A reservoir in this reach of the river could increase the Lower Colorado River Authority's system yield by as much as 190,000 acre-feet a year.

A public information meeting was held at Columbus, Texas, on November 29, 1982, to present background information and receive comments regarding the proposed action and other alternatives considered. The purpose of environmental scoping meetings is to determine the scope of issues to be addressed in the ES and to identify the significant environmental issues related to the proposed action.

The Bureau of Reclamation plans to hold these meetings in Columbus, Texas, on June 7, 1983, in the Veterans Community Center at 7 p.m.; and at Bay City, Texas, on June 8, 1983, in the District Court Room, Matagorda County Courthouse, at 7 p.m.

Interested public entities and individuals may obtain information on the proposed project and provide information for preparation of the ES by contacting Brooks Gallman, Study Manager, Bureau of Reclamation, 714 South Tyler, Suite 201, Amarillo, Texas 79101, telephone (806) 378-5475.

Dated: May 20, 1983.

H. W. Furman II,

Acting Commissioner.

[FR Doc. 83-13858 Filed 5-20-83; 11:05 am]

BILLING CODE 4310-09-M

## DEPARTMENT OF THE TREASURY

### Office of the Secretary

[Dept. circular Public Debt series No. 15-83]

### Treasury Notes of May 31, 1985, Series U-1985

May 19, 1983.

#### 1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately \$7,750,000,000 of United States securities, designated Treasury Notes of May 31, 1985, Series U-1985 (CUSIP No. 912827 PN 6). The securities will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the bid yield of each accepted tender. The interest rate on the securities and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of these securities may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the

new securities may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

#### 2. Description of Securities

2.1. The securities will be dated May 31, 1983, and will bear interest from that date, payable on a semiannual basis on November 30, 1983, and each subsequent 6 months on May 31 and November 30 until the principal becomes payable. They will mature May 31, 1985, and will not be subject to call for redemption prior to maturity. In the event and interest payment date or the maturity date is a Saturday, Sunday, or other nonbusiness day, the interest or principal is payable on the next succeeding business day.

2.2. The income derived from the securities is subject to all taxes imposed under the Internal Revenue Code of 1954. The securities are subject to estate, inheritance, gift, or other excise taxes, whether Federal or State, but are exempt from all taxation now or hereafter imposed on the principal or interest thereof by any State, any possession of the United States, or any local taxing authority.

2.3. The securities will be acceptable to secure deposits of public monies. They will not be acceptable in payment of taxes.

2.4. Securities registered as to principal and interest will be issued in denominations of \$5,000, \$10,000, \$100,000, and \$1,000,000. Book-entry securities will be available to eligible bidders in multiples of these amounts. Interchanges of securities of different denominations and of registered and book-entry securities, and the transfer of registered securities will be permitted. Bearer securities will not be available, and the interchange of registered or book-entry securities for bearer securities will not be permitted.

2.5. The Department of the Treasury's general regulations governing United States securities apply to the securities offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

#### 3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20226, up to 1:30 p.m., Eastern Daylight Savings time, Tuesday, May 24, 1983. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Monday, May 23, 1983, and received no later than Tuesday, May 31, 1983.

3.2. The face amount of securities bid for must be stated on each tender. The minimum bid is \$5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Common fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield. No bidder may submit more than one noncompetitive tender, and the amount may not exceed \$1,000,000.

3.3. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their positions in and borrowings on such securities, may submit tenders for account of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.4. Tenders will be received without deposit for their own account from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from others must be accompanied by full payment for the amount of securities applied for (in the form of cash, maturing Treasury securities, or readily collectible checks), or by a payment guarantee of 5 percent of the face amount applied for, from a commercial bank or a primary dealer.

3.5. Immediately after the closing hour, tenders will be opened, followed by a public announcement of the amount and yield range of acceptable bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, on the basis of a  $\frac{1}{8}$  of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted

price above the original issue discount limit of 99.500. That rate of interest will be paid on all the securities. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.6. Competitive bidders will be advised of the acceptance or rejection of their tenders. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price is over par.

#### 4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of securities specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

#### 5. Payment and Delivery

5.1. Settlement for allotted securities must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on securities allotted to institutional investors and to others whose tenders are accompanied by a payment guarantee as provided in Section 3.4., must be made or completed on or before Tuesday, May 31, 1983. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds (with all coupons detached) maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no

later than Thursday, May 26, 1983. When payment has been submitted with the tender and the purchase price of allotted securities is over par, settlement for the premium must be completely timely, as specified in the preceding sentence. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder. Payment will not be considered complete where registered securities are requested if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (an individual's social security number or an employer identification number) is not furnished. When payment is made in securities, a cash adjustment will be made to or required of the bidder for any difference between the face amount of securities presented and the amount payable on the securities allotted.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the face amount of securities allotted, shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered securities tendered in payment for allotted securities are not required to be assigned if the new securities are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new securities are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (securities offered by this circular) in the name of (name and taxpayer identifying number)." Specific instructions for the issuance and delivery of the new securities, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment should be surrendered to the Federal Reserve Bank or Branch or to the Bureau of the Public Debt, Washington, D.C. 20226. The securities must be delivered at the expense and risk of the holder.

5.4. Delivery of securities in registered form will be made after the requested form of registration has been validated, the registered interest account has been established, and the securities have been inscribed.

#### 6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized and requested to receive

tenders, to make allotments as directed by the Secretary of the Treasury, to issue such notices as may be necessary, and to receive payment for and make delivery of securities on full-paid allotments.

6.2. The Secretary of the Treasury may at any time issue supplemental or amendatory rules and regulations governing the offering. Public announcement of such changes will be promptly provided.

Carole J. Dineen,

*Fiscal Assistant Secretary.*

[FR Doc. 83-13901 Filed 5-20-83; 11:58 am]

BILLING CODE 4810-40-M

[Dept. Circular Public Debt Series No. 16-83]

### Treasury Notes of August 15, 1988, Series J-1988

May 19, 1983.

#### 1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately \$5,750,000,000 of United States securities, designated Treasury Notes of August 15, 1988, Series J-1988 (CUSIP No. 912827 PP 1). The securities will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the bid yield of each accepted tender. The interest rate on the securities and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of these securities may be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

#### 2. Description of Securities

2.1. The securities will be dated June 1, 1983, and will bear interest from that date, payable on a semiannual basis on February 15, 1984, and each subsequent 6 months on August 15 and February 15 until the principal becomes payable. They will mature August 15, 1988, and will not be subject to call for redemption prior to maturity. In the event an interest payment date or the maturity date is a Saturday, Sunday, or other nonbusiness day, the interest or principal is payable on the next-succeeding business day.

2.2. The income derived from the securities is subject to all taxes imposed under the Internal Revenue Code of 1954. The securities are subject to estate, inheritance, gift, or other excise taxes, whether Federal or State, but are exempt from all taxation now or hereafter imposed on the principal or interest thereof by any State, any

possession of the United States, or any local taxing authority.

2.3. The securities will be acceptable to secure deposits of public monies. They will not be acceptable in payment of taxes.

2.4. Securities registered as to principal and interest will be issued in denominations of \$1,000, \$5,000, \$10,000, \$100,000, and \$1,000,000. Book-entry securities will be available to eligible bidders in multiples of those amounts. Interchanges of securities of different denominations and of registered and book-entry securities, and the transfer or registered securities will be permitted. Bearer securities will not be available, and the interchange of registered or book-entry securities for bearer securities will not be permitted.

2.5. The Department of the Treasury's general regulations governing United States securities apply to the securities offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

#### 3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20226, up to 1:30 p.m., Eastern Daylight Saving time, Wednesday, May 25, 1983. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, May 24, 1983, and received no later than Wednesday, June 1, 1983.

3.2. The face amount of securities bid for must be stated on each tender. The minimum bid is \$1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Common fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield. No bidder may submit more than one noncompetitive tender, and the amount may not exceed \$1,000,000.

3.3. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their positions in and borrowings on such securities, may submit tenders for account of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.4. Tenders will be received without deposit for their own account from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from others must be accompanied by full payment for the amount of securities applied for (in the form of cash, maturing Treasury securities, or readily collectible checks), or by a payment guarantee of 5 percent of the face amount applied for, from a commercial bank or a primary dealer.

3.5. Immediately after the closing hour, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, on the basis of a 1/8 of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 98.750. That rate of interest will be paid on all of the securities. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.6. Competitive bidders will be advised of the acceptance or rejection of

their tenders. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price is over par.

#### 4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of securities specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it is the public interest. The secretary's action under this Section is final.

#### Payment and Delivery

5.1. Settlement for allotted securities must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on securities allotted to institutional investors and to others whose tenders are accompanied by a payment guarantee as provided in Section 3.4, must be made or completed on or before Wednesday, June 1, 1983. Payment in full must accompany tenders submitted by all other investors.

Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds (with all coupons detached) maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Friday, May 27, 1983. When payment has been submitted with the tender and the purchase price of allotted securities is over par, settlement for the premium must be completed timely, as specified in the preceding sentence. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder. Payment will not be considered complete where registered securities are requested if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (an individual's social security number or an employer identification number) is not furnished. When payment is made in securities, a cash adjustment will be made to or required of the bidder for any difference between the face amount of securities presented and the amount payable on the securities allotted.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the face amount of securities allotted, shall, at

the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered securities tendered in payment for allotted securities are not required to be assigned if the new securities are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new securities are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (securities offered by this circular) in the name of (name and taxpayer identifying number)." Specific instructions for the issuance and delivery of the new securities, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment should be surrendered to the Federal Reserve Bank or Branch or to the Bureau of the Public Debt, Washington, D.C. 20226. The securities must be delivered at the expense and risk of the holder.

5.4. Delivery of securities in registered form will be made after the requested form of registration has been validated, the registered interest account has been established, and the securities have been inscribed.

#### 6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized and requested to receive tenders, to make allotments as directed by the Secretary of the Treasury, to issue such notices as may be necessary, and to receive payment for and make delivery of securities on full-paid allotments.

6.2. The Secretary of the Treasury may at any time issue supplemental or amendatory rules and regulations governing the offering. Public announcement of such changes will be promptly provided.

Carole J. Dineen,

*Fiscal Assistant Secretary.*

[FR Doc. 83-13963 Filed 5-20-83; 11:58 am]

BILLING CODE 4810-40-M

### INTERSTATE COMMERCE COMMISSION

[Volume No. OP1-177]

#### Motor Carriers; Permanent Authority Decisions; Restriction Removals; Decision-Notice

Decided: May 13, 1983.

The following restriction removal applications, are governed by 49 CFR Part 1165. Part 1165 was published in the *Federal Register* of December 31, 1980, at 45 FR 86747 and redesignated at 47 FR 49590, November 1, 1982.

Persons wishing to file a comment to an application must follow the rules under 49 CFR 1165.12. A copy of any application can be obtained from any applicant upon request and payment to applicant of \$10.00.

Amendments to the restriction removal applications are not allowed.

Some of the applications may have been modified prior to publication to conform to the special provisions applicable to restriction removal.

#### Findings

We find, preliminarily, that each applicant has demonstrated that its requested removal of restrictions or broadening of unduly narrow authority is consistent with the criteria set forth in 49 U.S.C. 10922(h).

In the absence of comments filed within 25 days of publication of this decision-notice, appropriate reformed authority will be issued to each applicant. Prior to beginning operations under the newly issued authority, compliance must be made with the normal statutory and regulatory requirements for common and contract carriers.

By the Commission, Review Board No. 2, Members Carleton, Williams and Ewing, Member Ewing not participating.

Agatha L. Mergenovich,  
*Secretary.*

Please direct status inquiries to Team 1, at (202) 275-7992.

MC 153901 (Sub-5)X, filed April 29, 1983. Applicant: AIM INDUSTRIES, INC., 330 Manhattan Ave., Jersey City, NJ 07307. Representative: Gerard J. Donovan, 4791 S.W. 82nd Ave., Davie, FL 33328. Sub-No. 4 Certificate: Remove the following restriction, "restricted to traffic having an immediately prior or subsequent movement by water."

[FR Doc. 83-13738 Filed 5-20-83; 9:45 am]

BILLING CODE 7035-01-M

#### Motor Carriers; Permanent Authority Decisions; Decision-Notice

*Motor Common and Contract Carriers of Property (fitness-only); Motor Common Carriers of Passengers (fitness-only); Motor Contract Carriers of Passengers; Property Brokers (other than household goods).*

The following applications for motor common or contract carriage of property

and for a broker of property (other than household goods) are governed by Subpart A of Part 1160 of the Commission's General Rules of Practice. See 49 CFR Part 1160, Subpart A, published in the *Federal Register* on November 1, 1982, at 47 FR 49583, which redesignated the regulations at 49 CFR 1100.251, published in the *Federal Register* on December 31, 1980. For compliance procedures, see 49 CFR 1160.19. Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart B.

The following applications for motor common or contract carriage of passengers filed on or after November 19, 1982, are governed by Subpart D of the Commission's Rules of Practice. See 49 CFR Part 1160, Subpart D, published in the *Federal Register* on November 24, 1982, at 49 FR 53271. For compliance procedures, see 49 CFR 1160.86. Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart E.

These applications may be protested *only* on the grounds that applicant is not fit, willing, and able to provide the transportation service or to comply with the appropriate statutes and Commission regulations.

Applicant's representative is required to mail a copy of an application, including all supporting evidence, within three days of a request and upon payment to applicant's representative of \$10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

#### Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication (or, if the

application later becomes unopposed), appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

**Note.**—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce, over irregular routes unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract."

**Please direct status inquiries about the following to Team 2, (202) 275-7030.**

#### Volume No. OP2-230

Decided: May 16, 1983.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 156062 (Sub-1), filed May 6, 1983.  
Applicant: NYACK BUS CO., INC., 88 Brookside Ave., Nyack, NY 10960.  
Representative: Sidney J. Leshin, 3 East 54th St., New York, NY 10022, 212-759-3700. Transporting *passengers*, in charter and special operations, between points in the U.S. (except HI).

**Note.**—Applicant seeks to provide privately-funded charter and special transportation.

MC 162063 (Sub-1), filed May 6, 1983.  
Applicant: LDI TRANSPORT, INC., 5600 North County Rd. 18, Minneapolis, MN 55428. Representative: Samuel Rubenstein, P.O. Box 5, Minneapolis, MN 55440, 612-542-1121. Transporting for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S. (except AK and HI).

MC 167823, filed May 5, 1983.  
Applicant: INTERSTATE TRANSPORTATION SERVICES, INC., 1401 N. Little, Cushing, OK 74023.  
Representative: Steven B. Cochran, (same address as applicant), 918-225-0365. As a *broker of general*

*commodities* (except household goods), between points in the U.S.

MC 167843, filed May 6, 1983.  
Applicant: ARNOFF LIVERY SERVICE, Millerton Rd., Lakeville, CT 06039.  
Representative: Robert J. Gallagher, 1000 Connecticut Ave., NW., Suite 1200, Washington, DC 20036, 202-785-0024. Transporting *passengers*, in charter and special operations, between points in the U.S.

**Note.**—Applicant seeks to provide privately-funded charter and special transportation.

**Please direct status inquiries about the following to team 4 at (202) 275-7669.**

#### Volume No. OP4-299

Decided: May 13, 1983.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 167846, filed May 6, 1983.  
Applicant: EAGLE COURIER SERVICES, P.O. Box 1663, Rockville, MD 20850. Representative: Emil H. Tabassi, (same address as applicant), (301) 279-8787. Transporting *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S. (except AK and HI).

MC 167907, filed May 9, 1983.  
Applicant: D & S BROKERAGE, INC., 40 N. Front, Suite 5, Central Point, OR 97502. Representative: David English (same address as applicant), (503) 664-3337. As a *broker of general commodities* (except household goods), between points in the U.S.

#### Volume No. OP4-302

Decided: May 13, 1983.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 153497 (Sub-3), filed May 9, 1983.  
Applicant: UNITED AMERICAN FREIGHT, INC., 9324 Harrison Rd., Romulus, MI 48174. Representative: Wilhelmina Boersma, 1600 1st Federal Bldg., Detroit, MI 48226, (313) 962-6492. As a *broker of general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 167937, filed May 9, 1983.  
Applicant: CITY TOURES, INC., 8 Station Square, Rutherford, NJ 07070.  
Representative: Eugene M. Malkin, Suite 1832, 2 World Trade Center, New York, NY 10048, (212) 466-0220. Transporting *passengers*, in charter and special operations, between points in the U.S.

**Note.**—Applicant seeks to provide privately-funded charter and special transportation.

MC 167946, filed May 9, 1983.  
Applicant: BOB BUTLER, Rt. 6, Box 127,

Vincennes, IN 47591. Representative: Charles H. Wickman, 901 Burlington Ave., P.O. Box 128, Western Springs, IL 60558, (312) 246-9090. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

MC 167947, filed May 9, 1983. Applicant: CAM-CON CORPORATION, 16 Sturtevant St., Somerville, MA 02145. Representative: Robert L. Cope, Suite 501, 1730 M St., NW., Washington, DC 20036, (202) 296-2900. As a *broker of general commodities* (except household goods), between points in the U.S. (except AK and HI). Condition: The person or persons who appear to be engaged in common control of applicant and another regulated carrier must either file an application under 49 U.S.C. 11343(A) or submit an affidavit to the Secretary's office indicating why such approval is unnecessary. In order to expedite issuance of any authority, please submit a copy of the affidavit or proof of filing the application(s) for common control to Team 4, Room 2410. In lieu of filing an application for approval, such person or persons may wish to file a letter-petition for exemption from Commission action. Such a petition should include the notice required by section 11343(e)(2). See Ex Parte 400 (Sub-No. 1), *Procedures for Handling Exemptions Filed by Motor Carriers of Property Under 49 U.S.C. 11343*, 47 FR, 42947.

Agatha L. Mergenovich,  
Secretary.

(FR Doc. 83-13742 Filed 5-20-83; 8:45 am)  
BILLING CODE 7035-01-M

#### Motor Carrier Temporary Authority Application

The following are notices of filing of applications for temporary authority under Section 10928 of the Interstate Commerce Act and in accordance with the provisions of 49 CFR 1131.3. These rules provide that an original and two (2) copies of protests to an application may be filed with the Regional Office named in the *Federal Register* publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the *Federal Register*. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon

which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the ICC Regional Office to which protests are to be transmitted.

**Note.**—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

#### Motor Carriers of Property

The following applications were filed in Region I: Send protests to: Interstate Commerce Commission, Regional Authority Center, 150 Causeway Street, Room 501, Boston, MA 02114.

MC 17051 (Sub-1-6TA), filed May 9, 1983. Applicant: BARNET'S EXPRESS, INC., 28 Garfield Place, South Hackensack, NJ 07606. Representative: Carl S. DiPiazza (same as applicant). *General commodities, except Classes A and B explosives, household goods, and commodities in bulk, and garments on hangers*, between Jackson, TN and GA, OH, IL and TX, on the one hand, and, on the other, between AL, AR, GA, KY, IL, OH, TN and TX. Supporting shipper: Sears Roebuck and Co., Sears Towers, Chicago, IL 60684.

MC 167887 (Sub-1-1TA), filed May 9, 1983. Applicant: CLAUSE WAREHOUSING & DISTRIBUTION CORP., 420 Paterson Plank Road, Carlstadt, NJ 07072. Representative: Robert B. Pepper, 168 Woodbridge Avenue, Highland Park, NJ 08904. *General commodities, except Classes A and B explosives, household goods and commodities in bulk* between Commercial Zone of New York, NY and points in NJ, on the one hand, and, on the other, points in CT, DE, DC, MD, MA, NJ, NY, PA and RI. Supporting shipper(s): There are six statements of support attached to this application which may be examined at the I.C.C. Regional Office, Boston, MA.

MC 154839 (Sub-1-2TA), filed May 9, 1983. Applicant: CRAIG TRANSPORTATION, INC., 110

Shrewsbury Drive, Livingston, NJ 07039. Representative: Robert B. Pepper, 168 Woodbridge Avenue, Highland Park, NJ 08904. *General commodities (except Class A and B explosives, household goods and commodities in bulk)* between Suffolk County, NY and New York, NY Commercial Zone, on the one hand, and, on the other, points in CT, DE, DC, GA, ME, MD, MA, NH, NJ, NY, NC, PA, RI, SC, VA and WV. Supporting shipper(s): There are six statements of support attached to this application which may be examined at the Regional Office of the I.C.C. in Boston, MA.

MC 167793 (Sub-1-1TA), filed May 4, 1983. Applicant: CROSS TOWN EXPRESS, INC., 478 Court Street, P.O. Box 572, Binghamton, NY 13902. Representative: Jeffrey P. Bump (same as above). *Contract carrier: irregular routes: Machines, copying, duplicating, or reproducing, and/or parts and accessories thereof*, between Savin Corp. facilities in Binghamton, Apalachin, Owego, NY and Hallstead, PA, under continuing contract(s) with Savin Corp., Binghamton, NY. Supporting shipper: Savin Corp., 33 Lewis Road, Binghamton, NY 13905.

MC 167834 (Sub-1-1TA), filed May 6, 1983. Applicant: CUMBERLAND FARMS DAIRY INC., 777 Dedham Street, Canton, MA 02021. Representative: George Joseph Kerins III, c/o Cumberland Farms Dairy Inc., 165 Flanders Road, Westboro, MA 01581. (1) *Such merchandise as is dealt in by wholesale, retail and chain grocery and good business houses and, (2) Rubber or miscellaneous plastic products* between points in AL, CT, DE, DC, FL, GA, ME, MD, MA, NH, NJ, NY, NC, OH, PA, RI, SC, VT, VA, and WV. Supporting shipper(s): Springfield Sugar and Products Co. Northboro Division, P.O. Box 638, Northboro, MA 01532; Dunkin Donuts Northeast Distribution Center, Inc., Box 664, 195 Flanders Road, Westboro, MA 01581; New England Apple Products Co., Inc., Box 425, Harwood Station, Littleton, MA 01460.

MC 50307 (Sub-1-5TA), filed May 6, 1983. Applicant: INTERNATIONAL DISTRIBUTION CENTERS, INC., 215 County Avenue, Secaucus, NJ 07094. Representative: Irwin Rosen (same as applicant). *Contract carrier: irregular routes: Food and related products* between Queens, NY and points in the U.S. (excluding AK and HI), under continuing contract(s) with Modern Maid, Garden City, NY. Supporting shipper(s): Modern Maid, 200 Garden Plaza, Garden City, NY.

MC 161984 (Sub-1-2TA), filed May 5, 1983. Applicant: DON JACKSON

EXPRESS, INC., 575 Kennedy Road, Cheektowaga, NY 14227. Representative: Jerry B. Sellman, 50 West Broad Street, Columbus, OH 43215. *Contract carrier: irregular routes: General commodities (except Classes A and B explosives, household goods, commodities in bulk, and commodities which, because of their size or weight, require special equipment), between points in Erie, Niagara, Monroe and Onondaga Counties, NY, on the one hand, and, on the other, points in the U.S. (except AK and HI), under continuing contract(s) with SPEC/COM Corporation of Cheektowaga, NY. Supporting shipper: SPEC/COM Corporation, 575 Kennedy Road, Cheektowaga, NY 14227.*

MC 167795 (Sub-1-1TA), filed May 4, 1983. Applicant: MARTIN BAKER, d.b.a. M & B TRANSPORT, Route 196, Topsham, ME 04086. Representative: Hughan R. H. Smith, 26 Kenwood Place, Lawrence, MA 01841. *Contract carrier: irregular routes: Commodities sold and distributed in retail grocery stores, between points in the U.S. (except AK and HI) under continuing contract(s) with S. Praver Company, Portland, ME 04106. Supporting shipper: S. Praver Company, 150 Read Street, So. Portland, ME 04106.*

MC 77129 (Sub-1-1TA), filed May 4, 1983. Applicant: PUFFER TRANSPORT, INC., RFD 1, Box 15, Vernon, VT 05354. Representative: David M. Marshall, Marshall and Marshall, Sixth Floor—95 State Street, Springfield, MA 01103. *Contract carrier: irregular routes: Such commodities as are dealt in by distributors of beverages, food products and related items, between Brattleboro, VT, Merrimack, NH, Springfield and Danvers, MA, Hartford, CT, Baldwinville, NY, Newark, NJ, Columbus, OH, and Williamsburg, VA, under continuing contract(s) with DeWitt Grocery Company, d.b.a. DeWitt Beverage, of Brattleboro, VT. Supporting shipper: DeWitt Grocery Company d.b.a. DeWitt Beverage, Putney Road, Brattleboro, VT 05301.*

MC 166843 (Sub-1-1TA), filed May 9, 1983. Applicant: JOHN ROBERT REID, d.b.a. REID'S BUS SERVICE, Hillside, R.R. 1, Trenton, Nova Scotia, CD B0K 1X0. Representative: Frank J. Weiner, 15 Court Square, Boston, MA 02108. *Passengers and their baggage, in charter operations beginning and ending at ports of entry on the International Boundary line between the U.S. and CD in ME, and extending to Bangor, ME. Supporting shipper(s): Steeltown Friendly Group Sr. Citizens, Maple Street, Trenton, Nova Scotia, CD B0K 1X0 and Golden Years Senior Citizens*

Club, 95 Pine Street, New Glasgow, Nova Scotia, CD.

MC 167796 (Sub-1-1TA), filed May 5, 1983. Applicant: NORMAN RICHARD, d.b.a. N. RICHARD & SONS, RFD No. 1, Box 43, Champlain, NY 12919. Representative: Norman Richard (same address as applicant). *Contract carrier: irregular route: General commodities (except Classes A and B explosives and household goods), from Clinton County, NY to points in NY, VT, NH, ME, MA, CT, RI, NJ, MD, WV, VA, NC, SC, GA, FL, TN, KY, IL, IN, OH, PA, MI and WI, under continuing contract(s) with Harris Graphics Corp. of Champlain, NY; Champlain Agway, Inc., Mooers Forks Agway, Inc., Champlain, NY. Supporting shipper(s): Champlain Agway Inc., Mooers Forks Agway, Inc., Champlain, NY 12912; Harris Graphics Corp., Elm St., Champlain, NY 12912.*

MC 164768 (Sub-1-3TA), filed May 9, 1983. Applicant: S & F ENTERPRISES, INC., 9 Albert Avenue, Newark, NJ 07105. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. *(1) Beverages, and (2) Materials, equipment, and supplies used in the manufacture and sale of beverages, between New York, NY, on the one hand, and, on the other, Baldwinville, Fulton, and Albany, NY; Milwaukee, WI; Winston-Salem, NC; Philadelphia, and Allentown, PA; Baltimore, MD; and Newark, NJ. Supporting shipper(s): There are seven statements of support attached to this application which may be examined at the Regional Office in Boston, MA.*

MC 167781 (Sub-1-1TA), filed May 4, 1983. Applicant: TRANSPORT QUEB-U.S., INC., No. 1 50th Avenue South, Bois-des-Filions, Terrebonne, Quebec, CD J6Z 2N3. Representative: Russell R. Sage, Suite 304, Overlook Building, 6121 Lincolnia Road, Alexandria, VA 22312. *Lumber and wood products between ports of entry on the International Boundary line between the U.S. and CD on the one hand, and, on the other, points in the U.S. located east of the western boundaries of MN, IA, MO, AR, and LA. Supporting shipper(s): There are eight statements in support of this application which may be examined at the I.C.C. Regional Office, Boston, MA.*

MC 167833 (Sub-1-1TA), filed May 9, 1983. Applicant: VHR ENTERPRISES, INC., 10065 Route 60, Fredonia, NY 14063. Representative: E. Stephen Heisley, P.C., 1919 Pennsylvania Avenue, N.W., Suite 500, Washington, DC 20006. *Contract carrier: irregular routes: General commodities (except Classes A and B explosives, household goods as defined by the Commission, and commodities in bulk), between*

points in the U.S. (except AK and HI), under continuing contract(s) with Coast to Coast Shippers Association, Inc., Cheswick, PA. Supporting shipper: Coast to Coast Shippers Association, Inc., Traffic Concepts, Inc., Allegheny Industrial Park, Harmer Township, Cheswick, PA 15024.

MC 167840 (Sub-1-1TA), filed May 9, 1983. Applicant: VAN INTERNATIONAL TRANSFER D.C. INC., 7665 Lacordaire Boulevard, St. Leonard (Montreal) PQ, CD H1S 2A7. Representative: J. P. Vermette, 250 Napoleon-Provost Street, Repentigny, PQ, CD J6A 1H5. *(1) Wood Veneer, (2) Paper Rolls and paper products, (3) Steel cases for industrial batteries and ancillary commodities, and (4) Animal hides between ports of entry on the International Boundary Line between the U.S. and CD and points in AL, AR, CA, CT, FL, GA, IA, IL, IN, KY, KS, LA, MD, MI, MN, MO, MS, NC, NJ, ND, NE, NY, OH, OK, PA, SC, SD, TN, TX, VA, WI and WV. Supporting shipper(s): Placage Rustic Ltee, Route 20, Sortie 228, St. Louis de Blandford, PQ, CD G0Z 1B0; Martin & Stewart Inc., 3500 St. Patrick Street, Montreal, PQ, CD H4E 1A2; Termaco Limitee, 325 Boulevard Industrial, St. Jean, PQ, CD J3B 7M3; and Oxford Paper Company Limited, 5350 Ferrier Street, Montreal, PQ, CD H4P 1L4.*

The following applications were filed in Region 2. Send protests to: ICC, Fed. Res. Bank Bldg., 101 North 7th St., Rm. 620, Philadelphia, PA 19106.

MC 167804 (Sub-II-1TA), filed May 4, 1983. Applicant: BROOKSON MOTOR LINES, INC., P.O. Box 6245, Akron, OH 44312. Representative: Donald E. Watson (same address as applicant). *Contract, irregular: General commodities (except Classes A and B explosives, household goods as defined by the Commission and commodities in bulk), between points in the United States (except AK and HI) under contract with Matco Tools Corporation of Tallmadge, OH for 270 days. Supporting shipper(s) Matco Tools Corp., 124 West Ave., Tallmadge, OH 44278.*

MC 167253 (Sub-II-1TA), filed May 3, 1983. Applicant: HAROLD G. LOWYN, JR., d.b.a. CAMEO TOURS, P.O. Box 543, Pittston, PA 18640. Representative: Robert J. Brooks, 1828 L St., N.W., Suite 1111, Washington, DC 20036. *Passengers and their baggage, in special and charter operations, beginning and ending in Lackawanna, Luzerne, Monroe, Pike and Wayne Counties, PA, and extending to points in DE, MD, NJ, NY, VA and DC. An underlying ETA seeks 120 days authority. Supporting*

shipper(s): There are seven support statements attached to this application which may be examined at the Phila. Regional office.

MC 167822 (Sub-II-1TA), filed May 5, 1983. Applicant: JOSEPHINE PROVANCE, d.b.a. D & J DELIVERY, 465 Clark Street Road, Columbus, OH 43230. Representative: Robert M. O'Donnell, 145 W. Wisconsin Ave., Neenah, WI 54956. *Such commodities as are dealt in by retail fashion outlets between the facilities of The Limited, Inc. at Columbus, OH, on the one hand, and, on the other, points in PA and WI for 270 days.* Supporting shipper(s): The Limited, Inc., One Limited Parkway, Columbus, OH 43216.

MC 167755 (Sub-II-1TA), filed May 3, 1983. Applicant: DIRECT OVERLAND EXPRESS, INC., Rt. 4, Box 326—A Airport Rd., Charlottesville, VA 22901. Representative: Barry Weintraub, Suite 403, 7700 Leesburg Pike, Falls Church, VA 22043. *General commodities (except class A and B explosives, household goods and commodities in bulk) between Boston, MA, Providence, RI, Hartford, CT, New York, NY, Newark, NJ, Philadelphia, PA, Baltimore, MD, Washington, DC, Richmond, VA, Charlottesville, VA, Norfolk, VA, Hampton, VA, Roanoke, VA, Lynchburg, VA, Raleigh, NC, Durham, NC, Chapel Hill, NC, Greensboro, NC, Charlotte, NC, Greenville, SC, Spartanburg, SC, Atlanta, GA and their commercial zones, on the one hand, and, on the other, points in MA, CT, RI, NY, NJ, PA, DE, MD, DC, VA, NC, SC, and GA.* Supporting shipper(s): There are eight statements of support attached to this application which may be examined at the Phila. Regional office.

MC 167065 (Sub-II-1TA), filed May 4, 1983. Applicant: EDMISON TRUCKING, INC., 4801 E. St. Rte. 55, Casstown, OH 45312. Representative: John P. McMahon, 100 E. Broad St., Columbus, OH 43215. *Food and related products between the plant facilities of Dinner Bell Foods at Defiance and Troy, OH and Wilson, NC, on the one hand, and, on the other, points in NY, PA, CT, MA, VT, ME, MD, NJ, DE, VA, KY, IL, IN, MI and WI for 270 days.* An underlying eta seeks 120 days authority. Supporting shipper(s): Dinner Bell Foods, Inc., P.O. Box 388, Defiance, OH 43512.

MC 143308 (Sub-II-3TA), filed May 5, 1983. Applicant: GENERAL TRUCKING SERVICE, INC., 3700 Park East Dr., Cleveland, OH 44122. Representative: Carla T. Novak, 1101 31st St., Downers Grove, IL 60515. Contract, irregular: *Automobile Parts, between Chicago, IL, on the one hand, and, on the other, Atlanta and Valdosta, GA, under*

continuing contract(s) with Acme Consolidated, Inc. of Chicago, IL for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): Acme Consolidated, Inc., 6151 S. State St., Chicago, IL 60621.

MC 107012 (Sub-II-293TA), filed May 3, 1983. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 US Hwy 30 West, PO Box 988, Fort Wayne, IN 46801. Representative: Gerald A. Burns (same as applicant). Contract, irregular: *General commodities (except classes A & B explosives, commodities in bulk, and household goods as defined by the Commission) between points in the U.S. under continuing contract(s) with Hon Industries, Muscatine, IA. An underlying ETA seek 120 days authority.* Supporting shipper: Hon Industries, 200 Oak Street, Muscatine, IA 52761.

MC 107012 (Sub-II-294TA), filed May 3, 1983. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Highway 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: Margaret S. Vegeler (same as applicant). Contract, irregular: *General commodities (except classes A & B explosives and commodities in bulk) between points in the United States under continuing contract(s) with Nixdorf Computer Corp., of North Reading, MA, and its divisions and subsidiaries. An underlying ETA seeks 120 days authority.* Supporting shipper: Nixdorf Computer Corp., 80 Main Street, North Reading, MA 01864.

MC 107012 (Sub-II-295TA), filed May 4, 1983. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Highway 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: Margaret S. Vegeler (same as applicant). Contract, irregular: *General commodities (except household goods, classes A and B explosives, and commodities in bulk) between points in the United States under continuing contract(s) with Mister Minit America, Inc. of Mathews, NC, and its divisions and subsidiaries. An underlying ETA seeks 120 days authority.* Supporting shipper: Mister Minit America, Inc., 600-51 Highway 51, Mathews, NC 28105.

MC 107012 (Sub-II-296TA), filed May 4, 1983. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Highway 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: Margaret S. Vegeler (same as applicant). Contract, irregular: *General commodities (except classes A & B explosives and commodities in bulk) between points in the United States under continuing contract(s) with Structural Display, Inc., of Long Island City, NY, and its divisions and subsidiaries. An*

underlying ETA seeks 120 days authority. Supporting shipper: Structural Display, Inc., 12-12 33rd Avenue, Long Island City, NY 11106.

MC 107012 (Sub-II-297TA), filed May 4, 1983. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Highway 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop (same as applicant). Contract, irregular: *General commodities (except classes A & B explosives and commodities in bulk) between points in the United States under continuing contract(s) with Amfac Hotels and Resorts, Inc., of Burlingame, CA, for 270 days.* An underlying ETA seeks 120 days authority. Supporting shipper: Amfac Hotels and Resorts, Inc., 111 Amza, Burlingame, CA 94010.

MC 124111 (Sub-II-19TA), filed May 5, 1983. Applicant: OHIO EASTERN EXPRESS, INC., P.O. Box 2297, Sandusky, OH 44870. Representative: David A. Turano, 100 E. Broad St., Columbus, OH 43215. (1) *Metal products, and (2) equip., materials and supplies (except commodities in bulk) used in the manufacture and distribution of metal products, between points in OH and PA, on the one hand, and, on the other, points in the U.S. in and east of MN, IA, MO, AR and TX for 270 days.* Supporting shippers: There are a total of ten statements of support attached to the application which can be examined at the office of the Interstate Commerce Commission at Philadelphia, PA.

MC 2202 (Sub-II-37TA), filed May 2, 1983. Applicant: ROADWAY EXPRESS, INC., 1077 Gorge Boulevard, Post Office Box 471, Akron, OH 44309. Representative: William O. Turney, 7101 Wisconsin Ave., Suite 1010, Washington, D.C. 20814. Contract, irregular: *General commodities (except household goods as defined by the Commission, classes A and B explosives, and commodities in bulk) from Dillon, SC, Greenville, MS, and Dublin, GA to points in the U.S., except AK and HI, under contract or contracts with Mohasco Corporation, Atlanta, GA 30339 for 270 days.* Supporting shipper(s): Mohasco Corp., 1755 The Exchange, Atlanta, GA 30339.

MC 110683 (Sub-II-23TA), filed May 3, 1983. Applicant: SMITH'S TRANSFER CORPORATION, P.O. BOX 1000, Staunton, VA 24401. Representative: Harry J. Jordan, 1090 Vermont, Ave., NW, Washington, DC 20005. Contract, irregular: *General commodities (except household goods as defined by the Commission, commodities in bulk and Classes A and B explosives); between points in the U.S. (except AK and HI),*



under continuing contract(s) with Rohm & Haas Company. An underlying ETA seeks 120 days authority. Supporting shipper(s): Rohm & Haas Company, Independence Mall West, Philadelphia, PA 19105.

MC 167805 (Sub-II-1TA), filed May 4, 1983. Applicant: UNION TRANSPORT COMPANY, 785 Union Commerce Building, Cleveland, OH 44115. Representative: Martin J. Leavitt, 22375 Haggerty Rd., P.O. Box 400, Northville, MI 48167. *Alcoholic beverages* from Detroit, MI to Dimondale, MI for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Sea-Land Service, Inc., P.O. Box 800, Iselin, N.J. 08830.

The following applications were filed in Region 3. Send protests to: ICC, Regional Authority Center, Room 300, 1776 Peachtree Street, N.E. Atlanta, GA 30309.

MC 167375 (Sub-3-1TA), filed April 17, 1983. Applicant: DONALD H. AND FLORENCE T. AMMON, d.b.a. D AND F ENTERPRISES, 1103 Sam Davis Road, Smyrna, TN 37167. Representative: Donald H. Ammon (same as above). *Contract carrier*: irregular routes; *new and used truck parts*, between Nashville, TN, Birmingham, AL, Chattanooga, TN, and Cookeville, TN. Supporting shipper: Safety Service Company, 15 Fairfield Avenue, Nashville, TN 37202.

MC 140484 (Sub-3-34TA), filed May 6, 1983. Applicant: LESTER COGGINS TRUCKING, INC., P.O. Box 69, Fort Myers, FL 33902. Representative: Chester A. Zyblut, 366 Executive Bldg., 1030 Fifteenth St. NW., Washington, D.C. 20005. *Contract carrier over irregular routes, General commodities, except Classes A & B explosives, household goods as defined by the Commission and commodities in bulk*, between points in the United States (except AK and HI), under contract(s) with Coast to Coast Shipper's Association, Inc. 101 Kappa Drive, Pittsburgh, PA 15238.

MC 167290 (Sub-3-1TA), filed May 10, 1983. Applicant: SHELTON WILLIAMS TRUCKING, Route 3, Box 83B, Douglas, GA 31533. Representative: Shelton Williams (same address as applicant). *Solite in bulk in dump vehicle* from Green Cove Springs, FL to Douglas, GA. Supporting shipper: Hercules Block Co., Box 941, Douglas, GA 31533.

MC 2934 (Sub-3-75TA), filed May 9, 1983. Applicant: AERO MAYFLOWER TRANSIT COMPANY, INC., 9998 North Michigan Road, Carmel, Indiana 46032. Representative: W. G. Lowry (same as above). *Contract*: Irregular; *Household goods*, between points in the U.S.

(excluding AK and HI), under continuing contracts with Burlington Northern, Inc., 1111 Third Avenue, Seattle, WA 98101. Supporting shipper: Burlington Northern, Inc., 1111 Third Avenue, Seattle, WA 98101.

MC 94201 (Sub-3-8TA), filed May 9, 1983. Applicant: BOWMAN TRANSPORTATION, INC., P.O. Box 17744, Atlanta, GA 30316. Representative: Gerald D. Colvin, Jr., Bishop, Colvin & Johnson, 601-09 Frank Nelson Building, Birmingham, AL 35203. *Contract*: Irregular; *General Commodities (except Classes A and B explosives, commodities in bulk, and household goods)*, between all points in the United States (except AK and HI) under continuing contract with J. C. Penney Company, Inc.,

MC 2473 (Sub-3-6TA), filed May 9, 1983. Applicant: BILLINGS TRANSFER CORP., INC., Green Needles Road, Lexington, N.C. 27292. Representative: Homer M. Curry (same as above). *General commodities (except Household goods as defined by the Commission and Classes A and B explosives)*, between points in AL, on the one hand, and, on the other, points in DC, DE, GA, MD, NC, NJ, NY, PA, SC, TN, and VA. Supporting shippers: L. P. Muller and Company, Inc., 500 East Morehead Street, Charlotte, N.C.; Talladega Manufacturing, Inc., West Parkway, Talladega, AL, and Color Sciences, Inc., 20-07 40th Avenue, Long Island City, N.Y.

MC 166220 (Sub-3-1TA), filed May 12, 1983. Applicant: CARPET CITY CONSOLIDATORS, INC., P.O. Box 3128, Dalton, GA 30721. Representative: Kim G. Meyer, Suite 1006, 225 Peachtree St., N.E., Atlanta, GA 30303. *Contract*, irregular: *General commodities (except classes A and B explosives, household goods and commodities in bulk)*, between points in the U.S. (except AK and HI) under continuing contract(s) with Highway Marketing & Sales, Inc., Dalton, GA. Supporting shipper: Highway Marketing & Sales, Inc., 4868 Highway 42, Suite E, Ellenwood, GA 30049.

MC 152631 (Sub-3-1TA), filed May 12, 1983. Applicant: THE LEADER COMPANY, P.O. Box 2142, Shelby, NC 28150. Representative: W. Franklin Howell, Jr., (same address as applicant). *General commodities (except Class A and B explosives, household goods, commodities in bulk, or those requiring special equipment)* between points in NC, SC, GA, AL. Supporting shipper: The Baxter Corporation, 211 N. Poston St., Shelby, NC 28150.

MC 168013 (Sub-3-1TA), filed May 12, 1983. Applicant: WALLACE TRUCKING

CO., INC. 13700 N.W. 19th Avenue, Opa-Locka, FL 33054. Representative: Charles E. Wallace, P.O. Box 6513, Bay Harbor Isl. FL 33154. *Foodstuffs and related products (bakers and confectioners products and edible nuts) pre-packaged for sale and distribution*, between points in FL, on the one hand, and, on the other, points in MA. Supporting shipper: Schrafft Candy Company, 529 Main Street, Charlestown, MA 02129 and International Nut Corp., 100 Phoenix Ave., Lowell, MA 01853.

MC 155816 (Sub-3-2TA), filed May 12, 1983. Applicant: D & W TRUCKING SERVICE, Route One, Box 96, Abbeville, AL 36310. Representative: Wayne Money (same as applicant). *Contract*, irregular: *Lumber, Plywood & Wood Products* between AL, GA, FL, MS, TN. Supporting shippers: Ft. Gaines Lumber Co., Inc., Highway 39 North, Ft. Gaines, GA, Dun-Ply Inc., Industrial Park, Abbeville, AL 36310, St. Regis Paper Co. Allied Operations, P.O. Box 249, Abbeville, AL 36310, Great Southern Wood Preserving, Inc., P.O. Box 458, Abbeville, AL 36310.

MC 167972 (Sub-3-1TA), filed May 12, 1983. Applicant: WALKER TRUCKING, INC., 10201 West Beaver Street, Lot 89, Jacksonville, FL 32220. Representative: Sol H. Proctor, 1101 Blackstone Building, Jacksonville, FL 32202. *General Commodities (except Classes A and B explosives, commodities in bulk, household goods, hazardous waste and materials)*, between Jacksonville, FL on the one hand, and, on the other, points in FL, GA, SC, NC, VA, AL, MS, LA, TN, KY, OH and MI, having a prior or subsequent movement by water. Supporting shippers: Transcribe Freight Corporation, 8525 Mallory Street, Jacksonville, FL 32220; Valley Freight Systems, 8525 Mallory Street, Jacksonville, FL 32220; Rainbow Express, Inc., 8525 Mallory Street, Jacksonville, FL 32220; Southeastern Maritime Company, 2040 East 19th Street, Jacksonville, FL 32201.

MC 159155 (Sub-3-4TA), filed May 12, 1983. Applicant: PULLEN BROS., INC., 2901 Swindell Rd., Lakeland, FL 33801. Representative: Harry F. Horak, Suite 115, 5001 Brentwood Stair Rd., Fort Worth, TX 76112. *Automotive parts*, between Paragould, AR, on the one hand, and, on the other, points in the U.S. (except AK and HI). Supporting shipper: Monroe Auto Equipment, International Dr., Monroe, MI 48161.

MC 2934 (Sub-3-76TA), filed May 12, 1983. Applicant: AERO MAYFLOWER TRANSIT COMPANY, INC., 9998 North Michigan Road, Carmel, IN 46032. Representative: W. G. Lowry (same as

above). *Contract*: Irregular; *EDM machine tool systems and accessories, used machine tools, electronic controls, used household goods, and exhibit materials*, between points in the U.S. (excluding AK and HI), under continuing contracts with Agietron Corporation, P.O. Box 469, 839 South Route 53, Addison, IL 60101-0469. Supporting shipper: Agietron Corporation, P.O. Box 469, 839 South Route 53, Addison, IL 60101-0469.

MC 2900 (Sub-3-43TA), filed May 11, 1983. Applicant: RYDER TRUCK LINES, INC., P.O. Box 2408, Jacksonville, FL 32203. Representative: S. E. Somers, Jr., (same address as above). *Contract carrier*: irregular; *General Commodities (except Classes A and B explosives, household goods as defined by the Commission, and commodities in bulk)* between points in the U.S. (except AK and HI) under continuing contract(s) with The Quaker Oats Company. Supporting shipper: The Quaker Oats Company, Merchandise Mart Plaza, Chicago, IL 60654.

MC 167966 (Sub-3-1TA), filed May 11, 1983. Applicant: HOUSTON TRANSPORT COMPANY, INC., 632 South Center Street, Statesville, NC 28677. Representative: Melvin L. Watt, 951 S. Independence Blvd., Charlotte, NC 28202. *Passengers and their baggage and personal property in charter operations* beginning and ending at points in Iredell, Alexander, Wilkes, Forsyth, Catawba, Mecklenburg, Rowan, Davidson, Yadkin, Davie, Cabarrus, and Lincoln County, NC, and extending to points in FL, GA, SC, TN, VA, MD, DE, NJ, NY, PA, Washington, DC, AL, LA, MA, MS, KY, TX, OH, CT, and WV. There are 12 support statements attached to this application which may be examined at the ICC Regional Office, Atlanta, GA.

MC 159978 (Sub-3-1TA), filed May 11, 1983. Applicant: TRANSCORP CARRIERS, INC., 1809 Carmel Road, Greensboro, NC 27408. Representative: Robert B. Walker, 915 Pennsylvania Bldg., 425 13th Street, N.W., Washington, DC 20004. *Tobacco and tobacco products* between points in KY, NC, and VA on the one hand, and on the other, AL, CT, DE, DC, FL, GA, KY, ME, MD, MA, MS, NH, NJ, NY, NC, PA, RI, SC, TN, VA, WV, and VT. Supporting shipper: Lorillard Division of Loews Theatres, Inc., 2525 East Market Street, Greensboro, NC 27401.

MC 167945 (Sub-3-1TA), filed May 11, 1983. Applicant: Kenneth Timmons, d.b.a. KENNETH TIMMONS TRUCKING COMPANY, P.O. Box 64, Fyffe, AL 35971. Representative: John W. Cooper, P.O. Box 162, Mentone, AL

35984. *Contract carrier, irregular; Floor Covering Materials* between all points in the U.S., except AK and HI, under continuing contract with Mohawk International, d.b.a. International Supply Company, Inc., and its subsidiaries and divisions, of Portland, OR. Supporting shipper: Mohawk International, d.b.a. International Supply Company, 6408 N.E. Halsey, Portland, OR 97213.

The following applications were filed in Region 5. Send protest to: Consumer Assistance Center, Interstate Commerce Commission, 411 West 7th Street, Suite 500, Fort Worth, TX 76102.

MC 79658 (Sub-5-19TA), filed May 9, 1983. Applicant: ATLAS VAN LINES, INC., Post Office Box 509, Evansville, IN 47711. Representative: Robert C. Mills, or Michael L. Harvey (same as above). *Household goods* between points in the U.S. (except AK and HI) under continuing contract(s) with Butler's Shoe Corporation, Marietta, GA.

MC 117832 (Sub-5-3TA), filed May 10, 1983. Applicant: Bill Bruton, d.b.a. TRI-WESTERN EXPRESS, #8 Westwood Lane, Little Rock, AR 72204. Representative: Bill Bruton (same as applicant). *Bakery products and related items* from Dallas, TX to points in AR, LA, and MS. Supporting shippers: Oroweat Baking Company, Dallas, TX. Griggs Distributing Company, Benton, AR.

MC 135762 (Sub-5-1STA), filed May 9, 1983. Applicant: JOHN H. NEAL, INC., P.O. Box 3877, Fort Smith, AR 72913. Representative: Don A. Smith, P.O. Box 43 Fort Smith, AR 92902. *Contract*: Irregular; *General commodities (except Classes A and B explosives, commodities in bulk and household goods as defined by the Commission)*, between points in the U.S. (except AK and HI) under a continuing contract with L.S.T. Corporation, Toledo, OH.

MC 141950 (Sub-5-3TA), filed May 9, 1983. Applicant: IOWA MINNESOTA EXPRESS, LTD., 2216 5th Avenue, South, Ft. Dodge, IA 50501. Representative: Thomas E. Leahy, JR., 1980 Financial Center, Des Moines, IA 50309. *Food and related products* between Chicago, IL, Des Moines, IA, Minneapolis, MN, Sioux Falls, SD, Fargo, ND and Arkansas City, KS on the one hand and, on the other, points in the U.S. except AK and HI. Supporting shipper: CFS Continental, North Region, Minneapolis, MN.

MC 147354 (Sub-5-6TA), filed May 9, 1983. Applicant: FAUBION TRUCK LINES INC., P.O. Box 5795, Alexandria, LA 71301. Representative: Donald Sharp, P.O. Box 6118, Alexandria, LA 71307-6118. *Contract*: Irregular. *Food and kindred products* between New Orleans,

LA and points in CA, OR, WA. Supporting shipper: Baumer Foods, Inc., New Orleans, LA 70179-0164.

MC 151383 (Sub-5-16TA), filed May 9, 1983. Applicant: NICKELL TRUCKING CO., 4901 West 51st Street, Tulsa, OK 74107. Representative: Fred Rahal, Jr., Suite 305, Reunion Center, 9 East Fourth Street, Tulsa, OK 74103. *Contract*: Irregular; *iron and steel articles; and Materials and supplies used in the manufacture and distribution thereof* between points in the U.S. (except AK and HI) under continuing contract(s) with Babcock & Wilcox Tubular Products Group, Babcock & Wilcox Co. of Beaver Falls, PA.

MC 156124 (Sub-5-2TA), filed May 9, 1983. Applicant: RAPID DELIVERY SERVICE, INC., P.O. Box 2516, Des Moines, IA 50315. Representative: Michael A. Mauro, (same as above). (1) *Tires* (2) *Beer* (1) from Des Moines, IA to Milwaukee, WI; (2) from Milwaukee, WI to Des Moines, IA. Supporting shipper(s): Armstrong Ruber Co., Des Moines, IA Rite Beverage Co., Des Moines, IA.

MC 158003 (Sub-5-2TA), filed May 9, 1983. Applicant: CROWN TRANSPORTATION & DELIVERY SERVICE INC., 810 Lynwood Lane, Broken Arrow, OK 74012. Representative: Jack R. Anderson, Suite 305 Reunion Center, Tulsa, OK 74103. *Contract*, irregular; *General commodities (except classes A and B explosives, household goods and commodities in bulk)*, between all points in the U.S. (except AK and HI) under a continuing contract(s) with Avon Products, Inc. New York, NY.

MC 162576 (Sub-5-2TA), filed May 10, 1983. Applicant: TANCO DISTRIBUTING COMPANY, 6930 Market St. (Rear), El Paso, TX 79915. Representative: Dann L. Drewry (same as applicant). *Foodstuffs, including Meats, Meat By-Products and Packinghouse Products*, between Amarillo and El Paso, TX, on the one hand, and, on the other, points in CA, CO, IA, IL, KS, LA, MO, NE, OH, OK, SD, TN, and UT. Supporting shipper: John Morrell & Company, Northfield, IL.

MC 162577 (Sub-5-3TA), filed May 9, 1983. Applicant: TIFFANY TRUCK LINES LIMITED, 419 Rue Decatur, Suite 108 New Orleans, LA 70130. Representative: D. R. Beeler, P.O. Box 482, Franklin, TN 37064. *General commodities (except Classes A and B explosives, household goods, and commodities in bulk)* between Savannah, GA; New Orleans, LA; Gulfport, MS; Galveston, TX; Houston, TX; and Charleston, SC on the one hand,

and, on the other, points in the U.S. in and east of ND, SD, NE, CO, and NM; restricted to transportation of commodities having a prior or subsequent movement by water. Supporting Shippers: Panalpina, Inc., New Orleans, LA; L.E.P. Transport, New Orleans, LA; McTeer International Freight Forwarding Company, Savannah, GA.

MC 167092 (Sub-5-2TA), filed May 9, 1983. Applicant: FISHER TRUCKING, INC., 4204 Oak Grove Rd., P.O. Box 181, Springdale, AR 72764. Representative: Joseph C. Fisher (same as above). *Waterbeds, waterbed parts, accessories and furniture; treated wood products and materials and supplies used in the manufacture, sale, and distribution thereof; between points in the U.S. (except AK and HI). Supporting shipper: Waterbeds Unlimited, WKRP, Ft. Smith, AR, Treatwood Products, Marshall, AR.*

MC 167582 (Sub-5-2TA), filed May 10, 1983. Applicant: CHUCK ELLIS TRUCKING CO., INC. d.b.a. Ellis Trucking Company, Inc., P.O. Box 445, Gainesville, MO 65655. Representative: Bruce McCurry, 910 Plaza Towers, Springfield, MO 65804. *General commodities, except Class A&B Explosives and household goods, between The R.T. French plant site in Springfield, MO and points in the U.S. except AK and HI. Supporting shipper: The R.T. French Company, Springfield, MO.*

MC 167791 (Sub-5-1TA), filed May 9, 1983. Applicant: ROLLA TRANSPORTATION, INC., Box T, Rolla, MO 65401. Representative: B. W. LaTourette, Jr., 11 South Meramac, Suite 1400, St. Louis, MO 63105. *General commodities, except Classes A and B explosives and household goods, between points in the U.S., except AK and HI. Supporting shippers: Grellner Sales & Service, Inc., Rolla, MO; Floyd Charcoal Co., Salem, MO; and Con Agra Inc., Pet Products, Rolla, MO.*

MC 167888 (Sub-5-1TA), filed May 9, 1983. Applicant: JAMES B. SIZEMORE, d.b.a. EAGLE OILFIELD HAULING, 709 Plaza Drive, Moore, OK 73160. Representative: William P. Parker, 400 N. Lincoln, Suite 10, Oklahoma City, OK 73105. *Mercer commodities, between Oklahoma City and Moore, OK on the one hand, and, on the other, point in TX, LA, AR, KS, WY, CO, NM and CA. Supporting shipper(s): Driltrol, Moore, OK; LOR, Inc., Oklahoma City, OK; and N.L. Shaffer Co., Oklahoma City, OK.*

MC 135469 (Sub-5-3TA), filed May 5, 1983. Applicant: HAWKEYE TRANSPORT CO., P.O. Box 126, Stanwood, IA 52337. Representative: Carl E. Munson, P.O. 796, Dubuque, IA

52001. *Liquid fertilizer and liquid fertilizer ingredients, in bulk; from points in Jo Daviess County, IL, Cedar and Lee Counties, IA, to points in IL, IA, MN, MO and WI. Supporting shipper: Getty Refining & Marketing, Tulsa, OK.*

MC 142463 (Sub-5-TA), filed May 12, 1983. Applicant: SPECIALIZED HAULING, INC., 1500 Omaha St., Sioux City, IA 51102. Representative: Daniel O. Hands, 104 South Michigan Ave., Suite 410, Chicago, IL 60603. *Meal products from the facilities of Revere Copper Products, Inc., Rome Div., at or near Rome, NY to points in AZ, CA, CO, NV, UT and WY. Supporting shipper: Revere Copper Products, Inc., Rome Division, Rome, NY.*

MC 152152 (Sub-5-1TA), filed May 13, 1983. Applicant: THOMAS J. WEBER, 12122 W Street, Omaha, NE 68137. Representative: James F. Crosby & Associates, 7363 Pacific Street, Suite 210B, Omaha, NE 68114. *Food and related products, between points in Pottawattamie County, IA and Douglas and Sarpy Counties, NE, and Monmouth County, NJ on the one hand, and, on the other, points in the U.S. (except AK & HI). Supporting shipper: Blue Star Foods, Inc., Council Bluffs, IA.*

MC 153392 (Sub-5-7TA), filed May 13, 1983. Applicant: CENTRAL TRACTOR FARM & FAMILY CENTER, INC., 1515 East Euclid, Des Moines, IA 50316. Representative: WILLIAM L. FAIRBANK, 2400 Financial Center, Des Moines, IA 50309. Contract: Irregular. *General commodities (except household goods, Classes A and B explosives and commodities in bulk), between points in the U.S. (except AK and HI), under contract with National Commercial Services Co., Inc., of Des Moines, IA.*

MC 167976 (Sub-5-1TA), filed May 12, 1983. Applicant: B & E TRUCKING, INC., 508 Guadalupe Drive, Saginaw, TX 78178. Representative: William Sheridan, P.O. Drawer 5049, Irving, TX 75062. Contract: Irregular. *General commodities (except classes A and B explosives, household goods or bulk commodities) between Superior, WI; TN and TX, on the one hand, and, on the other, points in the U.S. Restricted to shipments for the accounts of AMSOIL, Inc., Certified Shipping or White River Hardwoods. Supporting shippers: AMSOIL, Inc., Superior, WI, Certified Shipping, Duncanville, TX; and White River Hardwoods, Fayetteville, AR.*

MC 168006 (Sub-5-1TA), filed May 13, 1983. Applicant: ABELN EXPRESS CO., INC., 3322 Marbury Drive, St. Louis, MO 63129. Representative: Jack L. Schiller, 111-56 76th Drive, Forest Hills, NY 11375. *Coca-Cola syrup from St. Louis, MO to the facilities of P.F.D. Supply*

Corp., located at or near Lebanon, IL. Supporting shipper: P.F.D. Supply Corp., Lebanon, IL.

MC 167483 (Sub-5-1TA), filed May 12, 1983. Applicant: Chalmette Drayage, P.O. Box 7178, New Orleans, La. 70186. Representative: Harold E. Potts (same as above). *General commodities of foreign commerce in steamship or railroad containers/trailers, within the commercial zone of the City of New Orleans, La. Supporting shippers: Kerr Steamship Co., Inc., New Orleans, La., Venezuelan Lines, New Orleans, La.*

The following applications were filed in Region 6. Send protests to: Interstate Commerce Commission, Region 6 Motor Carrier Board, 211 Main St., Suite 501, San Francisco, CA 94105.

MC 167860 (Sub-1TA), filed May 5, 1983. Applicant: AMERICAN FURNITURE WAREHOUSE, 5445 Bannock St., Denver, CO. 80216. Representative: Ron Catlin (same as applicant). *Contract Carrier, Irregular Routes: New furniture and fixtures, Rubber and Plastic Products, from: Denver and Adams Counties, CO, to points in AZ, CA, NM, NV, ID, and UT, for the accounts of Shafer Commercial Seating, Inc., and United Foam Corporation, for 270 days. Supporting shippers: Shafer Commercial Seating, Inc., 4101 E. 48th Ave., Denver, CO and United Foam Corporation, 11020 Leroy Dr., Northglenn, CO.*

MC 155793 (Sub-6-3TA), filed May 6, 1983. Applicant: CALIFORNIA/NEVADA BIG VALLEY EXPRESS, INC., a California Corporation d.b.a. BIG VALLEY EXPRESS, 2201 Branstetter Lane, Redding, CA. 96001. Representative: M. D. Burrows (same as above). *Contract carrier; Irregular route, General Commodities (except Class A and B explosives, household goods, hazardous waste, and commodities in bulk). (1) Between points and places in Washoe County, NV, on the one hand, and, Carson City, NV, on the other, (2) Between points and places in Washoe County, NV, on the one hand, and points and places in CA on the other, for 270 days. Supporting shipper(s): K Mart Corporation, 3100 W. Big Beaver Road, Troy MI 48084.*

MC 167766 (Sub-G-1TA), filed May 3, 1983. Applicant: BOB'S AUTO SERVICE, INC., 4300 South Federal Blvd., Englewood, CO 80110. Representative: James A. Beckwith, Suite 228, 770 Grant St., Denver, CO. 80203. (1) *Wrecked or disabled motor vehicles and trailers and replacements therefor between points lying in and west of AR, IA, LA, MN, and MO; and (2) Total loss settlement and salvage vehicles between points in*

AZ, CO, KS, NE, NM, OK, UT and WY for 270 days. An underlying ETA seeks 120 days authority. Supporting shippers: There are 5 shippers. Their statements may be examined in the office listed.

MC 165930 (Sub-6-2TA), filed May 6, 1983. Applicant: COLORADO AIR FREIGHT EXPRESS, INC., 3955 Newport St., Suite B, Denver, CO 80207.

Representative: Robert E. Butts, (same as applicant). *Contract Carrier* Irregular routes: *Hospital and drug supplies including medicines, pharmaceuticals and narcotics*, from Denver County, CO, to points in NM and WY for the account of Fox Meyer for 270 days. Supporting shipper: Fox Meyer, 1100 W. 47th Ave., Denver, CO 80217.

MC 166941 (Sub-6-1TA), filed May 10, 1983. Applicant: CORNUCOPIA LINES, INC., 4880 N. Cedar #102, Fresno, CA 93728. Representative: E.D. Anderson, 1001 Connecticut Ave., N.W., Suite 838, Washington, D.C. 20016. *Contract carrier*, irregular routes, *General commodities (except household goods, class A & B explosives, mercer commodities which because of size or weight require special equipment, and hazardous materials)* between points in the U.S. for the account of S & S Enterprises of Wilmington, Inc., for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: S & S Enterprises, POB 1357, Wilmington, NC 28402.

MC 146044 (Sub-6-3 TA), filed May 5, 1983. Applicant: JOE COSTA TRUCKING, Highway 299 at Arlington Way, P.O. Box 748, Drawer BB, Arcata, CA 95521. Representative: Marvin Handler, 100 Pine St. #2550, San Francisco, CA 94111. *Lumber and forest products* from Humboldt County, CA to Shasta, Glenn, Sacramento, Mendocino, Sonoma, Tehama, Lassen and Trinity counties, CA for 270 days. An underlying ETA seeks 120 days authority. Interline privileges requested. Supporting shipper: Simpson Timber Company, P.O. Drawer V, Arcata, CA 94429.

MC 158622 (Sub-6-2 TA), filed May 11, 1983. Applicant: LEONARD N. CRUSE, d.b.a. LEONARD CRUSE TRUCKING, 4403 Stone St., Billings, MT 59101. Representative: (same as applicant). *Contract carrier*, irregular routes, *cement* between points in MT and ND on the one hand, on the other, between points in the U.S. under continuing contract with Vizina's Ready Mix of Williston, ND for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Vizina's Ready Mix, Box 108, Williston, ND 58801.

MC 167428 (Sub-6-1 TA), filed May 3, 1983. Applicant: DESERT EMPIRE

TRANSFER & STORAGE, INC., Building 5, 3016 Kansas Ave., Riverside, CA 92507. Representative: William J. Monheim, P.O. Box 1756, Whittier, CA 90609. *Tobacco products*, from Riverside, CA, to points in Clark County, NV, for 270 days. Supporting shipper(s): Philip Morris U.S.A., P.O. Box 26603, Richmond, VA 23261.

MC 41098 (Sub-6-27 TA), filed May 6, 1983. Applicant: GLOBAL VAN LINES, INC., One Global Way, Anaheim, CA 92803. Representative: Alan F. Wohlstetter, 1700 K. St., NW., Washington, D.C. 20006. *Contract*, irregular, *Household Goods* between points in the U.S. under continuing contract(s) with Lockheed Corp. of Burbank, CA and its subsidiaries, for 270 days. Supporting shipper: Lockheed Corp., P.O. B 551, Burbank, CA 91520.

MC 153183 (Sub-6-1 TA), filed May 5, 1983. Applicant: GUILLERMO GUILLEN, d.b.a. GUILLEN & SON TRUCKING, 5809 Pilar Court, San Jose, CA 95120. Representative: Eldon M. Johnson, 650 California St., Suite 2908, San Francisco, CA 94108. *Contract carrier*, irregular routes, *Food and related products*, between points in AR, AZ, CA, KY, LA, NM, OK, TN and TX, for 270 days. Supporting shippers: Glazer's Wholesale Drug Co., Inc., 508 Park Ave., Dallas, TX 75221; Beech-Nut California Corp., P.O. Box 5759, San Jose, CA 95150; Quality Beverage Co., Inc., 11515 S. Main St., Houston, TX.

MC 146740 (Sub-6-1TA), filed May 6, 1983. Applicant: EARL HANSON TRUCKING CO., 2517 Riverbend Road, Mount Vernon, WA 98273. Representative: James D. Hanson (same as applicant). (1) *Dry Commodities in Bulk and/or Bags* between OR, WA, ID, and British Columbia, CD for 270 days. ETA was applied for 120 days. Supporting shipper: IMC Olivine, 915 Pettit Street, P.O. Box 58, Hamilton, WA 98255.

MC 159401 (Sub-6-2TA), filed May 5, 1983. Applicant: JOHNSON DISTRIBUTORSHIP, INC., Route 1, Box 920AA, Flagstaff, AZ 86001. Representative: Phil B. Hammond, 3003 N. Central, Suite 2201, Phoenix, AZ 85012. *General commodities*, excluding classes A and B explosives and household goods, between points in AZ, for 270 days. Supporting shippers: There are 9 shippers. Their statements may be examined in the office listed.

MC 167965 (Sub-6-1TA), filed May 11, 1983. Applicant: GUILLERMO G. ZAVALA & RENE LOPEZ, d.b.a. L & Z TRUCKING CO., 3130 Juniper St., No. B, San Diego, CA 92104. Representative: William R. Daly, P.O. Box 20597, San Diego, CA 92120. *Contract carrier*,

Irregular routes, *asphalt in bulk* from the U.S. Mexican border at San Ysidro (San Diego) CA to points and places in Los Angeles and Orange counties, CA for HY Building Materials for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: HY Building Materials, Inc., 840 W. 24th St., National City, CA 92050.

MC 151623 (Sub-6-3TA), filed May 9, 1983. Applicant: MC DOUGALD OIL, INC., 459 Nichols Ln., Moab, UT 84532. Representative: Dale E. Isley, 50 S. Steele St., No. 330, Denver, CO 80209. *Contract Carrier*: irregular routes: *Petroleum products in bulk*, between points in Nye County, NV; Mesa County, CO; Davis and Salt Lake Counties, UT; and San Juan and McKinley Counties, NM, for 270 days; for the account of Petro Source, Inc. An underlying ETA seeks 120-day authority. Supporting shipper: Petro Source, Inc., 11767 Katz Freeway, No. 420, Houston, TX 77079.

MC 144319 (Sub-6-1TA), filed May 2, 1983. Applicant: JOHN BRACY, d.b.a. NORTHWEST AGRI SUPPLY, 1056 Wiloma Dr., Billings, MT 59105. Representative: Timothy R. Stivers, POB 1576, Boise, ID 83701. *Fertilizer* from points in ID, UT and WA to points in MT, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): McIntosh Grain and Feed, Inc., POB 1425, Great Falls, MT 59403.

MC 167859 (Sub-6-1TA), filed May 6, 1983. Applicant: PORT DELIVERY SYSTEMS, INC., P.O. Box 17069, Portland, OR 97217. Representative: John Rogers (same as applicant). *Contract Carrier*, irregular routes: *Paper and paper products*, between points in OR and WA, for the account of Paper Products Marketing, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Paper Products Marketing, 806 S.W. Broadway, Portland, OR.

MC 157421 (Sub-6-3TA), filed May 9, 1983. Applicant: JESSE ROBERTS, d.b.a. POWER TRANSPORT, East 6607 Broadway, Spokane, WA 99206. Representative: Andrew D. Shafer, 1200 IBM Bldg., Seattle, WA 98101. *Contract carrier*, Irregular routes: *Canned foodstuffs and materials used in the production of canned foodstuffs* between points in CA, OR, WA, ID, UT and NV, for 270 days, for the account of Del Monte. Supporting shipper: Del Monte Corporation, 1111 Civic Drive, Suite 200, Walnut Creek, CA 94596.

MC 167726 (Sub-6-1TA), filed May 2, 1983. Applicant: PROMPT REFRIGERATED TRANSPORT, INC., 6401 E. UpRiver Dr., Spokane, WA 99207. Representative: Boyd Hartman,

P.O. Box 3641, Bellevue, WA 98009. *Food and food products* between points in WA, OR, ID, MT, WY, ND, SD, NB, KS, IA, MN, WI, CO, and UT, for 270 days. Supporting shippers: Fast Food Merchandisers, 1811 19th St., S.W., Mason City, Iowa 50401 and Vern's Pies, Inc., 1730 W. Sharp, Spokane, WA 99201.

MC 166734 (Sub-6-1TA), filed May 3, 1983. Applicant: ROBINSON EXCAVATING & TRUCKING, P.O. Box 232, Metaline Falls, WA 99153. Representative: James E. Wallingford, P.O. Box 11841, Spokane, WA 99214. *Coal, Bituminous, Crushed Gypsum Rock or Anhydrite* between points from the U.S./Canadian border and points in the WA for 270 days. Supporting shippers: Lehigh Portland Cement Ltd., P.O. Box 1882, Allentown, PA 18105; Esso Minerals, 237 Fourth Ave., S.W., Calgary, Alberta, CD T2P-OH6.

MC 167599 (Sub-6-1TA), filed May 6, 1983. Applicant: SHERWOOD BROS., INC., 5222 Pinemont Dr., Murray, UT 84107. Representative: Bruce W. Shand, Ste. 280, 311 S. State St., Salt Lake City, UT 84111. *Contract carrier, irregular routes, building materials*, between points in WA, ID, OR, and UT for 270 days. Under a continuing contract(s) with Glu-Laminated Wood Systems, Inc. An underlying ETA seeks 90 days authority. Supporting shipper: Glu-Laminated Wood Systems, Inc., 3090 S. 8000 W. Magna, UT 84044.

MC 167858 (Sub-6-1TA), filed May 6, 1983. Applicant: SONOMA AIRPORTER, INC., P.O. Box 301, Sonoma, CA 95476. Representative: Warren I. Jaycox (same address as applicant). *Passengers* in charter and special operations between points in CA, NV, OR, WA and AZ for 270 days. Supporting shippers: There are 5 shippers. Their statements may be examined at the Regional Office listed above.

MC 167782 (Sub-6-1TA), filed May 10, 1983. Applicant: SOUNDVIEW LIMO SERVICE, INC., d.b.a. SOUNDVIEW TOUR AND LIMO SERVICE, INC., 5710 34th Avenue, N.W., Gig Harbor, WA 98335. Representative: Frank R. Gately (same as applicant). *Passengers* in charter operations, beginning and ending at points in Kitsap, Pierce, and King Counties, WA and extending to points in the U.S. (excluding AK and HI), for 270 days. Supporting shippers: There are 5 shippers. Their statements may be examined in the office listed.

MC 156408 (Sub-6-2TA), filed May 5, 1983. Applicant: SOUTHWEST CANNERS, INC., P.O. Box 862, Portales, NM 88130. Representative: James W. Hightower, Suite 301, 5801 Marvin D. Love Frwy., Dallas, TX 75237-2385.

*General Commodities (except Classes A & B explosives, household goods and commodities in bulk)* from points in CA on and North of CA St. Hwy. 46, 99 and 178; to points in UT and CO on and North of US Hwy. 50, for 270 days. Supporting shipper: Johanson Transportation Service, P.O. Box 2645, Fresno, CA.

MC 151878 (Sub-6-14TA), filed May 5, 1983. Applicant: THREE WAY CORPORATION, 1120 Karlstad Drive, Sunnyvale, CA 94086. Representative: Charles H. White, Jr., 1000 Potomac St., N.W., Suite 501, Washington, D.C. 20007. *Contract Carrier, irregular routes General commodities (except Classes A and B explosives and commodities in bulk)* between points in the U.S., for 270 days. Supporting shippers: Three Way Brokerage Co., 1120 Karlstad Drive, Sunnyvale, CA 94086.

MC 167461 (Sub-6-1TA), filed May 10, 1983. Applicant: WIL-MAK AGRICULTURAL ENTERPRISES, P.O. Box 1088, Umatilla, OR 97882. Representative: John H. Goslin, P.O. Box 921, Caldwell, ID 83605. *Contract carrier, irregular route; Dry Bulk Fertilizer*, between points in AZ, CA, ID, NV, OR, UT, and WA, for the account of J. R. Simplot Company, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: J. R. Simplot Company, P.O. Box 27, Boise, ID 83707.

MC 166942 (Sub-6-1TA), filed May 12, 1983. Applicant: LEILANI SPELL d.b.a. ELITE TRUCKING, 100 Harter Ave., Woodland, CA 95695. Representative: Leilani Spell (same as applicant). *General commodities (except classes A & B explosives, bulk commodities)* between Woodland, CA and WA and OR for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Radio Shack warehouse (0603), 700 Santa Anita Dr., Woodland, CA 95695.

MC 167395 (Sub-6-1TA), filed May 5, 1983. Applicant: P. SAWCHUK TRUCKING LTD., 12345 90 Street, Edmonton, Alberta, T5B 3Z6. Representative: Peter Sawchuk (same as above). *Contract Carrier, Irregular routes: (1) Precut Lumber*, between Port of Entry on U.S. CD Border in ID, MT on the one hand and on the other points in CA, WA, OR, NV, AZ for the account of Sunchild Forest Products (1983) Ltd. (2) *Office Furniture*, between Port of Entry on U.S. CD Border in ID, MT, on the one hand and the other points in CA, WA, OR, TX, for the account of Superior Steel Desk (Mfg) Ltd. for 270 days. An underlying ETA seeks 120 days authority. SUPPORTING SHIPPER: Superior Steel Desk (Mfg) Ltd., 11415-

168 St., Edmonton, Alberta; and Sunchild Forest Products, Box 88, Winterburn, Alberta T0E 2N0.

Agatha L. Mergenovich,  
Secretary.

[FR Doc. 83-13743 Filed 5-20-83; 8:45 am]  
BILLING CODE 7035-01-M

### Motor Carriers; Notice of Proposed Exemptions

AGENCY: Interstate Commerce Commission.

ACTION: Notices of proposed exemptions.

SUMMARY: The motor carriers shown below seek exemptions pursuant to 49 U.S.C. 11343(e), and the Commission's regulations in Ex Parte No. 400 (Sub-No. 1), *Procedures for Handling Exemptions Filed by Motor Carriers of Property Under 49 U.S.C. 11343*, 367 I.C.C. 113 (1982), 47 FR 53303 (November 24, 1982).

DATE: Comments must be received within 30 days after the date of publication in the *Federal Register*.

FOR FURTHER INFORMATION CONTACT: Warren C. Wood (202) 275-7977.

SUPPLEMENTARY INFORMATION: Please refer to the petition for exemption, which may be obtained free of charge by contracting petitioner's representative. In the alternative, the petition for exemption may be inspected at the offices of the Interstate Commerce Commission during usual business hours.

By the Commission, Heber P. Hardy,  
Director, Office of Proceedings.

Agatha L. Mergenovich,  
Secretary.

Volume No. OP4F-305

Decided: May 13, 1983.

### Groendyke Investment, Inc.—Continuance in control exemption—The Transport Company of Texas and Groendyke Transport, Inc.

MC-F-15250. Groendyke Investment, Inc. (GII), a non-carrier, and, in turn H.C. Groendyke, who controls GII through stock ownership, seeks an exemption from the requirement of prior regulatory approval for his continuance in control of GII's subsidiaries, Texas Carriers, Inc. (a non-carrier), Groendyke Transport, Inc. (MC-111401), and The Transport Company of Texas (MC-167667).

The Transport Company of Texas has filed as a directly related application its initial common carrier application. This application, docketed No. MC-167667, is published in this same *Federal Register* issue.

Send comments to:

- (1) Motor Section, Room 2139, Interstate Commerce Commission, Washington, DC 20423  
and  
(2) Petitioner's representative, Mike Cotten, P.O. Box 1148, Austin, TX 78767.

Comments should refer to No. MC-F-15250.

This request is republished here to indicate the proper type of application and manner of comments required.

Volume No. OP5F-235

Decided: May 17, 1983.

**Thomas C. Lange—Continuance in control exemption—TLC Lines, Inc., and WTS, Inc.**

MC-F-15259. Thomas C. Lange, an individual, seeks an exemption from the requirement under section 11343 of prior regulatory approval for its continued control of TLC Lines, Inc., and WTS, Inc. Mr. Lange is the owner of all of the outstanding stock of TLC Lines, Inc. (No. MC-144117), and 50 percent of the outstanding stock of WTS, Inc.

Send comments to:

- (1) Motor section, Room 2139, Interstate Commerce Commission, Washington, DC 20423  
and  
(2) Petitioner's representative, Peter W. Kinsella, Jr., 9717 Landmark Dr., Suite 201, St. Louis, MO 63127.

Comments should refer to No. MC-F-15259.

[FR Doc. 83-13736 Filed 5-20-83; 8:45 am]

BILLING CODE 7035-01-M

[No. 38893]

**Motor Carriers; Roberts & Oake, Inc.—Petition for Exemption From Tariff Filing Requirements**

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of final exemption of existing operations and provisional exemption of future operations.

**SUMMARY:** The provisional exemption of petitioner's existing operations granted at 47 F.R. 46592 (October 19, 1982) is made final. Additionally, in accordance with current Commission policy, a provisional exemption of petitioner's future contracts is granted.

**DATE:** Comments are due on June 7, 1983. The provisional exemption of petitioner's future contracts will become final 15 days after the close of the comment period, unless in response to timely filed adverse comments, the Commission issues a further decision withdrawing this relief.

**ADDRESS:** Send an original and 15 copies of comments to: No. 38893, Room 2139, Interstate Commerce Commission, Office of Proceedings, Washington, DC 20423.

**FOR FURTHER INFORMATION CONTACT:** Leonard L. Arnaiz, (202) 275-7831

or

Howell I. Sporn, (202) 275-7691.

**SUPPLEMENTARY INFORMATION:**

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. Infosystems, Inc., Room 2227, 12th and Constitution Ave., N.W., Washington, D.C. 20423, or call 289-4357 in the DC metropolitan area or toll free (800) 424-5403.

Decided: May 13, 1983.

By the Commission, Division 1, Commissioners Andre, Sterrett, and Gradison.

Agatha L. Mergenovich,  
Secretary.

[FR Doc. 83-13736 Filed 5-20-83; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-6 (Sub-No. 145F)]

**Rail Carriers; Burlington Northern Railroad Co.—Abandonment—Larimer County, Co.; Notice of Findings**

The Commission has issued a certificate authorizing Burlington Northern Railroad Company to abandon its 13.29-mile rail line between milepost 79.00 near Fort Collins and milepost 92.29 at the end of the line near Rex in Larimer County, CO. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and served concurrently on the applicant, with copies to Louis E. Gitomer, Room 5417, Interstate Commerce Commission, Washington, DC 20423, no later than 10 days from publication of this Notice. Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

Agatha L. Mergenovich,  
Secretary.

[FR Doc. 83-13740 Filed 5-20-83; 8:45 am]

BILLING CODE 7035-01-M

[I.C.C. Order No. 84 Under Service Order No. 1344]

**Rail Carriers; Rerouting Traffic; Chesapeake and Ohio Railway; Grand Trunk Western Railroad Co.; Michigan Northern Railway Co., and Soo Line Railroad Co.**

In the opinion of J. Warren McFarland, Agent, the Detroit and Mackinac Railway Company is unable to transport promptly all traffic offered for movement via Straits Car Ferry between St. Ignace and Mackinaw City, Michigan, because the car ferry is out of service. As this matter is considered to be outside the scope of a single railroad as provided by Ex Parte No. 376, this action by the Commission is required.

*It is ordered:*

(a) *Rerouting Traffic.* The Detroit and Mackinac Railway Company being unable to transport promptly all traffic offered for movement via Straits Car Ferry between St. Ignace and Mackinaw City, Michigan, because the car ferry is out of service, those lines named above are authorized to reroute such traffic via any available route to expedite the movement. Traffic necessarily diverted by authority of this order shall be rerouted so as to preserve as nearly as possible the participation and revenues of other carriers provided in the original routing. All traffic accepted for movement via this routing must be rerouted in accordance with this order and will not be subject to diversion or other charges beyond those covered by paragraph (d) of this order. The billing covering all such cars rerouted shall carry a reference to this order as authority for the rerouting. This order vacates Reroute Orders SOO 1-83 and MN 1-83, and SOO Embargo 1-83.

(b) *Notification to shippers.* Each originating carrier accepting traffic to be rerouted in accordance with this order, shall notify each shipper at the time each shipment is accepted and, to the best of its ability, shall furnish to such shipper the new routing provided for under this order.

(c) *Concurrence of receiving roads to be obtained.* The railroad rerouting cars in accordance with this order shall receive the concurrence of other railroads to which such traffic is to be diverted or rerouted, before the rerouting or diversion is ordered.

(d) Inasmuch as the diversion or rerouting of traffic is deemed to be due to carrier disability, the rates applicable to traffic diverted or rerouted by said Agent shall be rates which were applicable at the time of shipment on the shipments as originally routed.

(e) In executing the directions of the Commission and of such Agent provided for in this order, the common carriers involved shall proceed even though no contracts, agreements or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to said traffic. Divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, said divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(f) *Effective date.* This order shall become effective at 12:01 a.m., May 10, 1983.

(g) *Expiration date.* This order shall expire at 11:59 p.m., June 30, 1983, unless otherwise modified, amended or vacated.

This order shall be served upon the Association of American Railroads, Transportation Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. A copy of this order shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., May 9, 1983.

J. Warren McFarland

Agent.

[FR Doc. 83-13737 Filed 5-20-83; 8:45 am]

BILLING CODE 7035-01-M

[No. 38909 et al.\*]

#### Riverside Transportation, Inc.; Petition for Exemption From Tariff Filing Requirements

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of final exemption of existing operations and provisional exemption of future operations.

**SUMMARY:** The provisional exemption of petitioners' existing operations granted at 47 FR 51638 (November 16, 1982), 47 FR 52237 (November 19, 1982), and 47 FR 52573 (November 22, 1982) respectively, are made final. Additional, in accordance with current Commission policy, a provisional exemption of petitioners' future contracts is granted.

**DATE:** Comments are due on June 7, 1983. The provisional exemption of

\*For final notice purposes, the following individual provisional exemption petitions were consolidated: No. 38909, Riverside Transportation, Inc.; No. 38919, Shippers service Transport, Inc. and No. 38925, All Freight Transportation, Inc.

petitioners' future contracts will become final 15 days after the close of the comment period, unless in response to timely filed adverse comments, the Commission issues a further decision withdrawing this relief.

**ADDRESS:** Send an original and 15 copies of comments to: No. 38909, Room 2139, Interstate Commerce Commission, Office of Proceedings, Washington, D.C. 20423.

**FOR FURTHER INFORMATION CONTACT:**

Robin Williams, (202) 275-7697,

OR

Howell I. Sporn, (202) 275-7691

**SUPPLEMENTARY INFORMATION:**

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. Infosystems, Inc., Room 2227, 12th and Constitution Ave. NW., Washington, D.C. 20423, or call 289-4357 in the D.C. metropolitan area or toll free (800) 424-5403.

Decided: May 13, 1983.

By the Commission, Division 1,  
Commissioners Andre, Sterrett, and  
Gradison.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 13734-5 Filed 5-20-83; 8:45 am]

BILLING CODE 7035-01-M

#### [Ex Parte No. 387]

#### Exemptions for Contract Tariffs; Pittsburgh and Lake Erie Railroad Co., et al.

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notices of Provisional Exemptions.

**SUMMARY:** Provisional exemptions are granted under 49 U.S.C. 10505 from the notice requirements of 49 U.S.C. 10713(e), and the below-listed contract tariffs may become effective on one day's notice.\* These exemptions may be revoked if protests are filed.

**DATE:** Protests are due within 15 days of publication in the Federal Register.

**ADDRESS:** An original and 6 copies should be mailed to: Office of the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

**FOR FURTHER INFORMATION CONTACT:**  
Douglas Galloway, (202) 275-7278.

**SUPPLEMENTARY INFORMATION:** The 30-day notice requirement is not necessary in these instances to carry out the transportation policy of 49 U.S.C. 10101a

\*Note tariff supplements advancing contract's effective date shall refer to these decisions for authority.

or to protect shippers from abuse of market power; moreover, the transaction is of limited scope. Therefore, we find that the exemption requests meet the requirements of 49 U.S.C. 10505(a) and are granted subject to the following conditions:

These grants neither shall be construed to mean that the Commission has approved the contracts for purposes of 49 U.S.C. 10713(e) nor that the Commission is deprived of jurisdiction to institute a proceeding on its own initiative or on complaint, to review these contracts and to determine their lawfulness.

Sub-No.	Name of railroad, contract number, and specifics	Review board*	Decided date
925	The Pittsburgh and Lake Erie Railroad Co., ICC-PLC-C-14, Supplement 3, (Scrap iron or steel)	2	5-13-83
928	The Pittsburgh and Lake Erie Railroad Co., ICC-PLC-C-0105, (Bituminous steam coal) Via Port of Ashtabula Harbor, OH	2	5-13-83
930	The Pittsburgh and Lake Erie Railroad Co., ICC-PLC-C-0032, (Slabs, iron or steel)	3	5-13-83
931	Canadian Pacific Rail, ICC-CPE-C-0017, (Cement, natural or Portland)	1	5-13-83
933	Seaboard System Railroad, Inc., ICC-SBD-C-0046, Supplement 2, (Scrap iron)	1	5-13-83

\*Review Board No. 1, Members Parker, Chandler, and Fortier. Review Board No. 2, Members Carleton, Williams, and Ewing. Member Ewing not participating. Review Board No. 3, Members Krock, Joyce, and Dowell. Member Dowell not participating.

This action will not significantly affect the quality of the human environment or conservation of energy resources.

(49 U.S.C. 10505)

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-13572 Filed 5-20-83; 8:45 am]

BILLING CODE 7035-01-M

#### SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 22939; 70-6645]

#### American Electric Power Co., Inc.; Proposed Additional Indemnification by Holding Company in Connection With Subsidiaries' Self-Insured Workers' Compensation Programs

May 13, 1983.

American Electric Power Company, Inc. ("AEP") 180 East Broad Street, Columbus, Ohio 43215, a registered holding company, has filed with this Commission a further post-effective amendment to the declaration in this proceeding pursuant to Section 12(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 45 promulgated thereunder.

By orders in this proceeding dated October 29, 1981, and September 17, 1982 (HCAR Nos. 22248 and 22610), AEP was authorized to enter into an agreement or agreements of indemnity with one or more surety bonding companies providing for indemnification by AEP of liabilities incurred by any such surety bonding company or companies in connection with the issuance of surface mining reclamation surety bonds, self-insurance workers' compensation surety bonds, and self-insurance pneumoconiosis (black lung) disability bonds that are required by certain AEP system companies operating in Virginia, West Virginia, Ohio, and Utah. The maximum amount of indemnity from AEP at any one time outstanding with respect to each type of bonds will not exceed \$45,000,000, \$39,000,000, and \$5,000,000 respectively. AEP was also authorized to indemnify one or more surety bonding companies with respect to any liability that may be incurred as a result of any default under performance bonds purchased by certain subsidiaries of AEP to comply with the terms of coal leases on federal lands in Utah and permits issued by the Ohio Department of Natural Resources for the construction of dams, spillways, or levees.

AEP now requests authority to enter into an agreement to indemnify Appalachian Power Company ("Appalachian"), a subsidiary of AEP, for any liability, claims, or obligations for payments Appalachian may have in connection with its self-insured workers' compensation program under the Workmen's Compensation Act of Virginia. The Industrial Commission of Virginia has required that Appalachian obtain such indemnification from AEP. AEP also requests authority to act as guarantor and/or surety and to provide indemnification on behalf of any AEP System company which now operates or which in the future seeks to operate as a self-insurer under the workers' compensation laws of any state. It is stated that AEP System companies that operate or may in the future operate self-insured workers' compensation programs have or will have the advantage of substantial annual savings over the costs of purchased workers' compensation insurance.

The amended declaration and any further amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by June 7, 1983, to the Secretary, Securities and Exchange Commission, Washington,

D.C. 20549, and serve a copy on the declarant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as now amended or as it may be further amended, may be permitted to become effective.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,  
Secretary.

[FR Doc. 83-13756 Filed 5-20-83; 8:45 am]  
BILLING CODE 8010-01-M

#### **Boston Stock Exchange, Inc.; Notice of Applications for Unlisted Trading Privileges and of Opportunity for Hearing**

May 18, 1983.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Hart, Schaffner & Marx, Common Stock, \$2.50 Par Value (File No. 7-6638)  
Hazelton Corporation, Common Stock, No Par Value (File No. 7-6639)  
Helene Curtis Industries, Inc., Common Stock, \$1 Par Value (File No. 7-6640)  
Hudson Bay Mining & Smelting Company, Ltd., Common Stock, No Par Value (File No. 7-6641)  
Integrated Resources, Inc., Common Stock, \$10 Par Value (File No. 7-6642)  
Jamesway Corporation, Common Stock, \$1 Par Value (File No. 7-6643)  
Johnson Controls, Inc., Common Stock, \$1 Par Value (File No. 7-6644)  
Jorgensen (Earle M.) Company, Common Stock, \$1 Par Value (File No. 7-6645)  
Jostens, Inc., Common Stock, \$3.33 1/3 Par Value (File No. 7-6646)  
Kaneb Services, Inc., Common Stock, No Par Value (File No. 7-6647)  
Kane-Miller Corp., Common Stock, \$1 Par Value (File No. 7-6648)  
Kellwood Company, Common Stock, No Par Value (File No. 7-6649)  
Enterra Corp., Common Stock, \$1 Par Value (File No. 7-6650)  
These securities are listed and registered on one or more other national

securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 7, 1983 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,  
Secretary.

[FR Doc. 83-13752 Filed 5-20-83; 8:45 am]  
BILLING CODE 8010-01-M

[File No. 12460]

#### **Fedders Corp.; Notice of Application and Opportunity for Hearing**

May 18, 1983.

Notice is hereby given that Fedders Corporation (the "Company") has filed an application pursuant to clause (ii) of Section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding by the Commission that trusteeship of J. Henry Schroder Bank & Trust Company ("Schroder") under Indentures dated April 22, 1971 ("1971 Indenture") and May 23, 1974 ("1974 Indenture") (collectively, the "Indentures"), previously qualified under the Act, is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Schroder from acting under both of the Indentures. The Debentures issued pursuant to the Indentures are wholly unsecured.

The present application, filed pursuant to clause (ii) of Section 310(b)(1) of the Act, seeks to exclude the Indentures from the operation of Section 310(b)(1) of the Act.

The effect of the proviso contained in clause (ii) of Section 310(b)(1) of the Act on the matter of the present application is such that the Indentures may be excluded from the operation of Section 310(b)(1) of the Act if the Company shall have sustained the burden of proving, by this application to the Commission and



after opportunity for hearing thereon, that the trusteeship of Schroder under the Indentures is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Schroder from acting as trustee under each of the Indentures.

The Company alleges that:

(1) Schroder is presently Trustee of the Company's 8% percent Subordinated Debentures due 1994 ("8% percent Debentures") of which \$18,717,000 are presently outstanding. The 8% percent Debentures were issued pursuant to the 1974 Indenture with the Chase Manhattan Bank, N.A. as Trustee. On August 19, 1977, the Company appointed Schroder as successor Trustee of the 8% percent Debentures.

(2) On April 28, 1983, Schroder was appointed successor Trustee of the Company's 5 percent Convertible Subordinated Debentures due 1996 ("5 percent Debentures") of which \$29,976,000 are presently outstanding. The 5 percent Debentures were issued pursuant to the 1971 Indenture with Chemical Bank as Trustee. Bradford Trust Company became successor Trustee to Chemical Bank in 1977 and resigned as Trustee on April 28, 1983, since it is becoming Trustee of two other debentures issues of the Company which are to be equally and partially secured (Act File Nos. 22-12201 and 12208).

(3) The Company presently is making exchange offers of new debentures for the 5 percent Debentures and 8% percent Debentures. Based on tenders as of April 25, 1983, there will be \$14,366,000 of the 5 percent Debentures and \$2,445,000 of the 8% percent Debentures outstanding on April 29, 1983. The 5 percent Debentures and 8% percent Debentures are each unsecured.

(4) Such differences as exist between each of the Indentures are not likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Schroder from acting as trustee under any of the Indentures.

The Company has waived notice of hearing, hearing and any and all rights to specify procedures under the Rules of Practice of the Securities and Exchange Commission in connection with this matter.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to said application which is on file in the offices of the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549.

Notice is further given that an order granting the application may be issued

by the Commission at any time on or after June 13, 1983, unless prior thereto a hearing upon the application is ordered by the Commission, as provided in clause (ii) of Section 310(b)(1) of the Trust Indenture Act of 1939. Any interested person may, no later than June 10, 1983, at 5:30 p.m., Eastern Daylight Time, in writing submit to the Commission his views or any additional facts bearing upon this application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting a hearing, the reasons for such request, and the issues of fact and law raised by the application which he desires to controvert.

By the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

George A. Fitzsimmons,  
Secretary.

[FR Doc. 83-13781 Filed 5-20-83; 8:45 am]

BILLING CODE 8010-01-M

[70-6709; Ref No. 22938]

### New England Electric System et al.; Notice of Proposed Merger of Utility Subsidiaries

May 13, 1983.

In the matter of New England Electric System, Massachusetts Electric Company, 25 Research Drive, Westborough, Massachusetts 01581 and Manchester Electric Company, 35 Beach Street, Manchester, Massachusetts 01944.

The New England Electric System ("NEES"), a registered holding company, and two of its electric utility subsidiaries, Manchester Electric Company ("Manchester"), a retail electric company serving the community of Manchester, Massachusetts, and Massachusetts Electric Company ("Mass Electric"), have filed a post-effective amendment to an application-declaration previously filed with this Commission pursuant to Sections 9, 10, 11, and 12 of the Public Utility Holding Company Act of 1935 ("Act") and Rules 40, 43, and 45 promulgated thereunder.

By prior order in this proceeding (HCAR No. 22699, November 8, 1982), the Commission approved NEES' proposal to acquire the common stock of Manchester by offering to exchange 2.5 shares of NEES common stock for one share of Manchester common stock. As of April 1, 1983, NEES had acquired

98.8% of the authorized and issued shares of Manchester common stock. An extension of the exchange offer was authorized by the Commission on May 6, 1983 (HCAR No. 22929) to permit the remaining shareholders of Manchester to receive common shares of NEES pending review of the transactions proposed in said post-effective amendment.

NEES and its subsidiaries have requested authority to effect a merger of Manchester and Mass Electric. The proposed transaction would include: (1) the merger of Manchester into Mass Electric with the latter being the surviving company; (2) the contribution by NEES to the capital of Mass Electric, on the consummation date of the merger, of all the common stock of Manchester then held by NEES; (3) the cancellation of all Manchester common stock with cash compensation to any remaining shareholders and (4) the consolidation of accounts by appropriate accounting entries.

Mass Electric and Manchester have entered into an Agreement of Merger subject to necessary regulatory approvals. The directors and stockholders of Mass Electric and Manchester have approved the proposed merger. The capital contribution by NEES is subject to the approval of the NEES Board of Directors.

On the consummation date of the merger, subsequent to the capital contribution by NEES of all Manchester shares then held by it, all Manchester shares of common stock then issued and outstanding will be automatically cancelled and of no value. Mass Electric will pay to any holder of record, other than itself, an amount equal to 2.5 times the average weekly high and low prices of NEES common stock on the New York Stock Exchange during the time period of the exchange offer. The exchange offer period terminates on the date immediately preceding the consummation date of the merger and the compensation valuation will be determined as of the last business day of the week preceding the merger date. By way of illustration, the average weekly high and low price of NEES common stock as of the week ending May 6, 1983 was \$34.55 so that, if the proposed merger had taken place in the week immediately thereafter, the compensation amount would have equaled \$86.37.

Upon consummation of the merger, Mass Electric will assume all the liabilities of Manchester, including short-term indebtedness, and any potential liabilities under pending litigation. Mass Electric may seek a

waiver from the holder of a Manchester long-term note in the amount of \$195,000 to permit it to assume the note, or, in the alternative, Mass Electric may repay the note in accordance with the terms set forth therein.

Mass Electric also seeks specific approval to account for the merger by combining Manchester's accounts with its accounts, pursuant to "Note to Instruction 5, Electric Plant Instructions," of the Federal Energy Regulatory Commission Uniform System of Accounts for Public Utilities, as adopted by the Massachusetts Department of Public Utilities.

NEES and its subsidiaries have stated that several benefits will result from the proposed merger. It would simplify the NEES System by reducing the number of corporate entities therein and eliminating minority interests in Manchester. There will be a reduction in expenses incurred by Manchester operating as a separate entity, including the maintenance of a separate accounting and billing system, the costs of the ratemaking process, and compliance with various regulatory requirements. The reliability of electric service to the town of Manchester should be improved through the availability of greater financial and personnel resources of Mass Electric to maintain and improve the Manchester distribution system. Mass Electric's rates currently average ten to fifteen percent less than Manchester's and these lower rates would be used for future billings to Manchester's customers. It is stated that any reduction in revenues to the NEES System would be more than offset by savings generated to the merged company.

The application-declaration, as amended by said post-effective amendment, and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by June 7, 1983, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants-declarants at the addresses specified above. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice of order issued in this matter. After said date, the application-declaration, as amended or as it may be further amended, may be

granted and permitted to become effective.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,  
Secretary.

[FR Doc. 83-13757 Filed 5-20-83; 6:45 am]

BILLING CODE 8010-01-M

[Rel. No. 19763; SR-PSE-83-6]

**Pacific Stock Exchange, Inc.; Order Approving Proposed Rule Change**

May 13, 1983.

The Pacific Stock Exchange, Inc. ("PSE"), 618 South Spring Street, Los Angeles, CA 90014, submitted on February 15, 1983, copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b-4 thereunder, to amend options floor procedure Advice B-5 to correct an anomaly that currently exists in the PSE's policies governing transactions in options traded on the PSE by market makers on a leave of absence. Options Floor Procedure Advice B-5, in discussing market maker leaves of absence, provides that a market maker is not permitted to make opening transactions in PSE listed options through the use of a floor broker while he is on leave of absence. Options Floor Procedure Advice B-11 provides that only transactions initiated while a market maker is on the floor shall be counted as market maker transactions and receive exempt credit treatment. Advice B-11 provides an exception for certain "good-til-canceled" ("GTC") orders entered with a floor broker while a market maker is on the floor. These orders may open new positions in the market maker's account which can properly be granted exempt credit treatment.

Although an exception is provided for certain GTC orders in Advice B-11, Advice B-5 does not provide the same exemption for a market maker on a leave of absence. Thus, the language of Advice B-5 would appear to prohibit any opening transaction while a market maker is on a leave of absence. This language, according to the PSE, creates an anomaly in the rules. A market

<sup>1</sup> Floor Procedure Advices B-5 and B-11 are based on Rule 15c3-1, promulgated by the Commission, and Regulation T, promulgated by the Federal Reserve Board, which provide that market makers may receive special credit treatment in return for meeting their obligations as market makers. The rationale behind the Advices is that only those transactions that market makers initiate while on the floor of the Exchange enable them to perform their obligations as market makers and, therefore, only these transactions should receive exempt credit treatment.

maker who simply leaves the floor for a period of longer than two weeks without applying for a leave of absence may leave GTC orders which will open new positions in his account and receive exempt credit treatment. However, a market maker who does apply for a leave of absence would not be accorded the privilege of leaving GTC orders with a floor broker prior to the effective date of the leave of absence which opens positions while he is gone. The proposed rule change will provide the same exemption for all GTC orders left with a floor broker by a market maker during the market maker's absence, provided the requirements of Advice B-11 are met.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission Release (Securities Exchange Act Release No. 19643, March 31, 1983) and by publication in the Federal Register (48 FR 15062, April 6, 1983). No comments were received with respect to the proposed rule filing.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulations pursuant to delegated authority.

George A. Fitzsimmons,  
Secretary.

[FR Doc. 83-13753 Filed 5-20-83; 6:45 am]

BILLING CODE 8010-01-M

[812-5469; Rel. No. 13243]

**Wingate Housing Partners, Ltd. II and Continental Wingate Co., Inc.; filing of Application for an Order Granting Exemption from all Provisions of the Act**

May 13, 1983.

Notice is hereby given that Wingate Housing Partners, Ltd. II (the "Partnership"), a California limited partnership, and its general partner, Continental Wingate Company, Inc. (the "General Partner" and, together with the Partnership, referred to herein as "Applicants"), Suite 2020, One Boston Place, Boston, Mass. 02108, filed an application on March 4, 1983, and an

amendment thereto on April 29, 1983, for an order of the Commission, pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act") exempting the Partnership from all provisions of the Act. All interested persons are referred to the application on file with the commission for a statement of the representations contained therein, which are summarized below.

Applicants state that the Partnership was formed under the Uniform Limited Partnership Act of the State of California on February 25, 1983, for the purpose of providing investors with a vehicle for diversified investment in government-assisted rental housing in accordance with the express determination made by Congress in Title IX of the Housing and Urban Development Act of 1968 ("Title IX"). Applicants represent that the partnership will operate as a "two-tier" partnership, i.e., the Partnership, a limited partnership, will invest in other limited partnerships ("Local Limited Partnerships") which, in turn, will primarily be engaged in the acquisition, ownership and operation of existing government-assisted housing developments ("Housing Developments"). The application states that each Housing Development is financed and/or operated with one or more forms of assistance from federal, state and/or local governments or agencies. Applicants represent that the Partnership is organized as a limited partnership because a limited partnership is the only form of organization which provides investors with both (1) the ability to claim on their individual tax return the deductions, losses and other tax items arising from the ownership and operation of the Housing Developments, and (2) liability limited to their capital investment.

The application states that on March 2, 1983, the Partnership filed a Registration Statement on Form S-11 (File No. 2-82185) which covers the sale of a minimum of 4,700 (which may be increased to 7,500 in the discretion of the General Partner) and a maximum of 15,000 limited partnership interests ("Interests") (not including 15,000 Interests subject to an over-allotment option) to be offered at \$1,000 per interest including selling commissions, with a minimum subscription of five Interests (\$5,000). Applicants submit that offers to sell and sales of Interest are proposed to be effected, on a best efforts basis, through Continental Wingate Capital Corporation, a wholly-owned subsidiary of the General Partner, and other registered broker-dealers. Applicants represent that no

subscription for Interests will be accepted unless it is approved by the General Partner, which approval will be conditioned upon representations as to the suitability of the investment for each subscriber. Applicants submit that each subscriber will represent, among other things, that some part of his income for the foreseeable future will, but for the effect of his investment in the Interests, be taxable at a combined federal and state income tax rate of 40% or more (which combined rate represents a minimum 1983 marginal federal tax rate of approximately 35.8%) and that he is aware of the risks involved in investing in the Partnership. Applicants submit that a 1983 marginal federal tax rate of 35% applies to the same taxable income bracket as a 1982 marginal federal tax rate of 39%, because of the reductions in tax rates in the Economic Recovery Tax Act of 1981. Applicants further submit that each transferee of Interests must, as a condition to being admitted to the Partnership as a substitute limited partner ("Limited Partner"), represent that he meets the same suitability standards as those applicable to original investors.

Applicants state that the Housing Developments in which the Partnership invests may have only from 8 to 15 years remaining under their respective government assistance payments contracts with the Department of Housing and Urban Development ("HUD") or other agencies. Applicants state that some older Housing Developments may be operated under 5-year renewable rental assistance contracts, at the expiration of which the owner has the option not to renew the contract. Applicants further state that when any of these contracts terminate, the Local Limited Partnerships may also elect, subject to any required approval of HUD or the applicable governmental agency, to refinance the underlying mortgage and to replace it with conventional financing, thereby removing all forms of governmental regulation with respect to the Housing Development. Applicants represent that proceeds from the sale or refinancing of any Housing Development will not be reinvested.

Applicants state that the Partnership anticipates having a minimum of \$4,206,500 and a maximum of \$26,850,000 (assuming the over-allotment option is exercised) available for investment from this offering. Applicants represent that the Partnership will invest substantially all of its available capital in Local Limited Partnerships which will own and operate Housing Developments. The application states that the Partnership

has agreed to invest in two Local Limited Partnerships which will utilize approximately 32% of the net proceeds of an offering of 15,000 Interests. Applicants represent that affiliates of the General Partner will be a general partner and a limited partner in the two Local Limited Partnerships.

Applicants state that the Partnership has not yet identified other Local Limited Partnerships in which to invest the remaining proceeds, if any, of the offering; however, the Partnership has reserved the right to invest in a Local Limited Partnership that will acquire and rehabilitate a "Certified Historic Structure" as that term is defined in the Internal Revenue Code of 1954, as amended ("Code"), in order to obtain the 25% investment tax credit available for qualified rehabilitation expenditures for such structures. Applicants state that such a structure would be rehabilitated for use as an income-producing property, which may or may not be multi-family housing and which may or may not receive government assistance.

According to the application, the Partnership will be controlled by the General Partner pursuant to a Certificate and Agreement of Limited Partnership of the Partnership (the "Partnership Agreement") and the Limited Partners, consistent with their limited liability status, will not be entitled to participate in the control of the Partnership's business. Applicants submit, however, that the majority in interest of the Limited Partners will have the right to remove the General Partner, and to elect successor general partners, if to do so will not adversely affect the tax or limited liability status of the Limited Partners, and to continue the Partnership upon the bankruptcy or other incapacity of the General Partner. Applicants further submit that, under the Partnership Agreement, each Limited Partner is entitled to review the records of the Partnership at reasonable times, including the register of the names, addresses and number of Interests owned by each other Limited Partner.

Applicants state that, as provided in the Partnership Agreement, annual reports will be distributed to each Limited Partner within 90 days after the end of each fiscal year containing a balance sheet, statement of income, partners' equity and changes in financial position for such fiscal year, all of which will be prepared in accordance with generally accepted accounting principles and accompanied by a report and opinion of a certified public accountant. Applicants state that such annual report shall also include a report of the Partnership's activities during the year

and a cash flow statement setting forth distributions to Limited Partners and specifying the specific sources of such cash. Applicants also state that the General Partner will distribute the following interim reports of operations to the Limited Partners: (1) A semi-annual report within 60 days after the end of the first six-month period of each year containing an unaudited balance sheet, statement of income, cash flow statement and other pertinent information concerning the Partnership's activities; (2) within 60 days after the end of each quarter, a report setting forth the fees from the Partnership or the Local Limited Partnerships which the General Partner or its affiliates received and the services they rendered during that quarter; and (3) a special report within 60 days after the end of each quarter in which the Partnership acquires or disposes of any Local Limited Partnership interest, detailing the material terms of such transactions and the aggregate investments to that date. Applicants represent that the Partnership will also file with the Commission pursuant to Section 15(d) of the Securities Exchange Act of 1934 all required annual reports, quarterly reports and current reports on Forms 10-K, 10-Q and 8-K, as well as any other reports required by such Act, all of which will be available to Limited Partners at the Commission's offices.

Applicants state that the General Partner expressly recognizes that it has fiduciary obligations to the Partnership and the Limited Partners and will act in accordance with such fiduciary obligations in offering and selling interests in other limited partnerships it may sponsor. Applicants represent that, although the General Partner is engaged in other real estate transactions and manages other limited partnerships, the Partnership will not sell, acquire or lease properties or interests therein to or from the General Partner or its affiliates. Applicants represent that the General Partner or its affiliates may, however, purchase interests in a Local Limited Partnership in its own name (and assume loans in connection therewith) and temporarily hold such interests for purposes of facilitating the acquisition of the interests by the Partnership or the borrowing of money or obtaining of financing for the Partnership or any other purpose related to the Partnership's business. Applicants further represent that the interests in the Local Limited Partnership may not be sold to the Partnership for a purchase price greater than the cost of the

interests to the General Partner or its affiliate.

The application states that, as set forth in the Partnership Agreement, the General Partner and its affiliates will receive substantial reimbursements, fees and other compensation from the proceeds of the sale of the interests and from the operations of Local Limited Partnerships in which affiliates of the General Partner are Local General Partners. Applicants maintain that such reimbursements, fees and other compensation are comparable to those which would be paid to third parties or charged to third parties for the services rendered and are competitive with those generally paid or received for similar services in the multi-family government-assisted housing industry. Applicants represent that such reimbursements and fees are in substantial conformity with the standards imposed by the North American Securities Administrators Association, Inc., and the California Corporations Commissioner. Applicants further represent that such fees and reimbursements are reasonable and fair, do not involve overreaching and are competitive from the point of view of the Partnership, the Local Limited Partnerships and the Limited Partners in the Partnership. It is stated that Front-End Fees, as defined in the Registration Statement, are expected to be approximately 25% of the gross proceeds of the offering.

Section 6(c) of the Act provides in part that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction from any provision of the Act or rule thereunder if, and to the extent that, such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

The application states that neither the Partnership nor the General Partner concedes that the Partnership is an investment company, as that term is defined by the Act. Applicants assert that the Partnership's exemption from the provisions of, and the rules and regulations promulgated pursuant to, the Act is both necessary and appropriate in the public interest. Applicants assert that, by investing in limited partnership interests in Local Limited Partnerships developing government-assisted, low-income housing, the Partnership is implementing the national policy enunciated by Congress in Section 901

of Title IX. Applicants assert that investment in government-assisted, low income housing is not economically suitable for private investors without the tax and organizational advantages of the limited partnership form; the limited partnership structure is the only way to bring substantial private equity capital into government-assisted housing. Applicants submit, however, that the limited partnership form of organization is incompatible with the Act, and that it would be impossible for the partnership to comply with certain provisions of the Act. Applicants further submit that to discourage two-tier limited partnership arrangements by application of the Act would result in elimination of a prime format with which to attract equity capital into government-assisted housing, and would frustrate national policy.

Applicants state that the contemplated arrangement is not susceptible to abuses of the sort the Act was designed to remedy. Applicants assert that the regulations imposed on each Local Limited Partnership by various federal, state and municipal agencies, and the Partnership Agreement, provide protection to investors comparable to, and in some cases greater than that provided by the Act. Applicants state that interests will be sold only to investors who have special qualifications, and it is expected that the prospective Limited Partners will have both the ability and incentive to inform themselves concerning their investment and to exercise sound judgment in connection therewith.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than June 7, 1983, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. Persons who request a hearing will receive any notices and orders issued in this matter. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of

Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-13760 Filed 5-20-83; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-5260]

**Zero Corp. 10% Subordinated Sinking Fund Debentures (due 1989); Notice of Application To Withdraw From Listing and Registration**

May 13, 1983.

The above named issuer has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

As a result of private purchases and the offer to purchase by Zero Corporation ("Company"), as of February 1, 1983 the number of debenture holders of record has been reduced to 685. In addition, the Company was advised by Amex that only \$36,000 principal amount of debentures were traded on the Exchange during the twelve months ended February 28, 1983. For the above reasons, the Company has determined that the costs and expenses of continued listing on the Amex is not justified. The Amex has posed no objection to this matter.

Any interested person may, on or before June 6, 1983, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-13754 Filed 5-20-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 19769; File No. SR-DTC-83-3]

**Filing and Immediate Effectiveness of Proposed Rule Change by the Depository Trust Co.**

May 16, 1983.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 2, 1983, the Depository Trust Company ("DTC") filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The proposed rule change revises DTC's current fees for certain major services. The fee change raises the fees for certain corporate securities services, including deposits, urgent withdrawals, maintenance of long positions and continuous net settlement deliveries. The proposed rule change restructures the fee schedule for municipal bond services by establishing new, lower fees for services involving fully registered municipal bonds. The proposed rule change also adds new fees for money adjustments made at settlement to correct participant initiated errors or adjustments due to added or killed deliveries and late deliver orders when the receiving participant requests a reversal during the reclamation period. DTC believes that the proposed rule change is consistent with Section 17A of the Securities Exchange Act of 1934 by providing for the equitable allocation of fees among DTC's participants and by more accurately reflecting the depository's cost in providing those services.

The foregoing change has become effective pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change 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.

Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days after the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549.

Reference should be made to File No. SR-DTC-83-3.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 5th Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-13760 Filed 5-20-83; 8:45am]

BILLING CODE 8010-01-M

[Release No. 19771; File No. SR-Phlx-83-6]

**Self Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Filing and Order Granting Accelerated Approval of Proposed Rule Change**

May 16, 1983.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 13, 1983, the Philadelphia Stock Exchange, Inc. ("Phlx"), 1900 Market Street, Philadelphia, PA 19103, filed with the Securities and Exchange Commission the proposed rule change described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The Phlx proposed to extend temporary Rules 933 and 941 until July 13, 1983. Both these rules terminated by their own terms on May 14, 1983.<sup>1</sup> Rule

<sup>1</sup> The Commission approved adoption of Rule 933 for a one year period on December 21, 1981 (Securities Exchange Act Release No. 18350, December 21, 1981; 46 FR 63434 December 31, 1981); approved its extension through March 14, 1983 on December 14, 1982 (Securities Exchange Act Release No. 19334, December 14, 1982; 47 FR 51776, December 22, 1982) and approved its extension through May 14, 1983 on March 11, 1983 (Securities Exchange Act Release No. 19594, March 11, 1983; 48 FR 11547, March 18, 1983). The Commission initially approved the adoption of Rule 941 on October 21, 1982 (Securities Exchange Act Release No. 19335, October 21, 1982; 47 FR 49503, November 1, 1982); approved its extension through March 14, 1983 on December 14, 1982 (Securities Exchange Act Release

933 requires Phlx members who lease their seats to execute a sale and subordination agreement under which the Exchange may sell the membership upon termination of the lease and apply the proceeds of such sale to the satisfaction of the priority claims specified in Phlx By-law XV. Rule 941 requires Phlx member organizations and members who are parties to a-b-c agreements to execute a similar sale and subordination agreement. The Phlx states in its filings that the purpose of extending these two rules is to keep them effective until their principal provisions are incorporated in the Phlx rules on a permanent basis under a pending Phlx proposed rule change contained in File No. SR-Phlx-82-4.<sup>2</sup> The Phlx states that the statutory basis for the proposed rule changes is Section 6(b)(1), 6(b)(5) and 6(c)(3)(A) of the Act.

Interested persons are invited to submit written data, views and arguments concerning the proposed rule change within 21 days after the date of publication in the **Federal Register**. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549. Reference should be made to File No. SR-Phlx-83-6.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes which are filed with the Commission and all written communications relating to the proposed rule changes between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 5th Street, N.W., Washington, D.C. Copies of the filings and of any subsequent amendments also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities

exchanges and, in particular, the requirements of Section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof, in that the proposed rule change merely keeps in effect two Phlx rules that currently are operative. Both rules terminated on May 14, 1983, and an extension is necessary in order to allow time for consideration of their proposed adoption as permanent rules as part of SR-Phlx-82-4. The Commission believes it is appropriate to extend the effectiveness of these rules for an additional two-month period pending final Commission action on SR-Phlx-82-4.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule changes referenced above be, and hereby are approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

**George A. Fitzsimmons,**  
*Secretary.*

[FR Doc. 83-13762 Filed 5-20-83; 8:45 am]  
BILLING CODE 8010-01-M

## SMALL BUSINESS ADMINISTRATION

### [Declaration of Disaster Loan Area #2085]

#### Kansas; Declaration of Disaster Loan Area

Shawnee County in the State of Kansas constitutes a disaster area as a result of damage caused by tornadoes which occurred on May 6 and 7, 1983. Eligible persons, firms and organizations may file applications for physical damage until the close of business on July 14, 1983, and for economic injury until the close of business on February 13, 1984, at the address listed below:

U.S. Small Business Administration,  
Scarritt Building, 818 Grand Avenue,  
Kansas City, Missouri 64106

or other locally announced locations.

Interest rates for applicants filing for assistance are as follows:

	Percent
Homeowners with credit available elsewhere	11.125
Homeowners without credit available elsewhere	5.625
Businesses with credit available elsewhere	10.500
Businesses without credit available elsewhere	8.000
Businesses (EIDL) without credit available elsewhere	8.000
Other (non-profit organization including charitable and religious organizations)	11.375

It should be noted that assistance for agricultural enterprises is the primary

responsibility of the Farmers Home Administration as specified in Public Law 96-302.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: May 13, 1983.

**James C. Sanders,**  
*Administrator.*

[FR Doc. 83-13805 Filed 5-20-83; 8:45 am]  
BILLING CODE 8025-01-M

## Region V—Advisory Council; Public Meeting

The Small Business Administration Region V Advisory Council, located in the geographical area of Minneapolis/St. Paul, will hold a public meeting at 3:00 P.M., Wednesday, June 1, 1983, in the SBA Classroom, 610-C Butler Square, 100 North Sixth Street, Minneapolis, MN, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Celso C. Moreno, District Director, U.S. Small Business Administration, 610-C Butler Square, 100 North Sixth Street, Minneapolis, MN 55403, 612/349-3530. May 17, 1983.

**Jean M. Nowak,**

*Acting Director, Office of Advisory Councils.*

[FR Doc. 83-13809 Filed 5-20-83; 8:45 am]  
BILLING CODE 8025-01-M

## DEPARTMENT OF STATE

### [Public Notice 863]

#### Visa Office; Change of Address

Notice is hereby given that on Thursday, May 26, and Friday, May 27, the Visa Office of the Department of State will move to new quarters in the Columbia Plaza Office Building located at 2401 E Street, N.W., Washington, D.C. 20520. All Visa Office telephone numbers will remain the same in the new quarters. The Visa Office will terminate its regular business at twelve noon on Wednesday, May 25, 1983 and will not reopen for regular business until 8:15 a.m. on Thursday, June 2, 1983.

Telephone communication with the Visa Office by the general public, during the period when regular business is suspended, should be limited to emergency calls where urgent action is required. These calls will be handled by a skeleton staff at the following number(s): (202) 632-3732, 3733, 3734.

No. 19335, December 14, 1983; 47 FR 51776, December 22, 1982; and approved its extension through May 14, 1983, on March 11, 1983 (Securities Exchange Act Release No. 19594, March 11, 1983; 48 FR 11547, March 8, 1983).

<sup>2</sup>Notice of SR-Phlx-82-4 has been given by Commission Release (Securities Exchange Act Release No. 19163, October 21, 1982); and by publication in the **Federal Register** (47 FR 49515, November 1, 1982). On May 13, 1983, Phlx granted an extension of time to July 13, 1983, for Commission action on this filing.

Dated: May 18, 1983.

Diego C. Asencio,

Assistant Secretary for Consular Affairs.

(FR Doc. 83-13812 Filed 5-20-83; 8:45 am)

BILLING CODE 4710-06-M

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

(Summary Notice No. PE-83-11)

Petitions for Exemption; Summary of  
Petitions Received; Dispositions of  
Petitions IssuedAGENCY: 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.

**DATE:** Comments on petitions received must identify the petition docket number involved and must be received on or before June 13, 1983.

**ADDRESS:** Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief

Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. \_\_\_\_\_, 800 Independence Avenue SW., Washington, D.C. 20591.

**FOR FURTHER INFORMATION:** 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-204), Room 916, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-3644.

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, D.C., on May 16, 1983.

John H. Cassady,

Assistant Chief Counsel, Regulations and Enforcement Division.

## PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
19651	Gates Learjet Corp.	14 CFR 21.197	Extension of Exemption 2081 to permit the issuance of special flight permits to petitioner for ferrying aircraft, for the purpose of completion, between Wichita, KS, and Tucson, AZ, subject to certain conditions and limitations.
12638	Air Transport Association of America	14 CFR 121.99	Extension of Exemption 2081E to allow dispatch with only a single HF communication system on certain oceanic routes between Northeastern U.S. and the San Juan ARTCC boundary.
21597	Flight Safety International	14 CFR 135.303	Extension of Exemption 3315 to permit petitioner's instructor pilots seeking FAA-approval for check pilot status to take the flight test in an FAA-approved simulator in lieu of the aircraft, subject to certain conditions.
23588	Executive Air Fleet Corp	14 CFR 21.197(a)	To allow petitioner to apply for the issuance of a special flight permit with continuing authorization for Part 91 aircraft operated by petitioner.
2365	Jack Vance McCain	14 CFR 65.93	To enable you to become eligible for renewal of your inspection authorization without complying with the requirements of this section.
23624	Air Transport Association of America	14 CFR 121.413(c)(1)	To allow certain pilot check airmen and pilot flight instructors to be trained by qualifying in a Part 121 carrier's advanced simulator.
22872	Air Transport Association of America	14 CFR 61.157(a), 121.424 (a) and (b), Part 61, Appendix A, & Part 121, Appendix E	Amendment to Exemption 3853, as amended, to permit the use of an approved advanced pictorial means in training for preflight inspection. It would be used in lieu of conducting an actual visual inspection of the exterior and interior of an actual static airplane. This training method would be used in the case of pilot a candidate employed by a certificate holder who is enrolled in that certificate holder's course of instruction for initial training in a large airplane which requires only two flight crewmembers for its operation and who is a candidate for a type rating in a large airplane which requires only two flight crewmembers for its operation.
19109	Pyramid Airlines	14 CFR Portions of Parts 21 & 91	Extension of Exemption 2948A to allow petitioner to obtain a supplemental type certificate covering the operations of YS-11 A-500 aircraft N159P and N187P, and YS-11 A-600 aircraft N924 in accordance with Piedmont Airlines FAA-approved minimum equipment list for those aircraft. Also requested is an amendment which would add an additional aircraft to the exemption.
21844	Airborne Express, Inc.	14 CFR 121.623, 121.643, & 121.645	To extend Exemption 3443A to allow petitioner to operate its DC-9 and YS-11 aircraft under the provisions of Sections 121.619 and 121.639 in the conduct of its all-cargo air service, subject to conditions and limitations.
23572	Grand Canyon Airlines	14 CFR 141.35(e)	To permit Mr. Robert Donaldson to serve as Chief Instructor for petitioner's Twin Otter Ground School without fully meeting experience requirements.
23622	Mr. Ivor Oberholtzer	14 CFR 91.27	To allow petitioner to apply for a special flight authorization for four F-51D and one P-51D aircraft to be displayed and operated at various airshows. Maintenance on those aircraft would be performed as needed.
20352	Arway Corp.	14 CFR 61.58(c)	To allow petitioner's BAC 1-11 aircraft pilots in command to complete the entire 24-month pilot-in-command check in an FAA-approved simulator with the stipulation that the pilot taking the flight check must have completed three takeoffs and landings within the preceding 90 days in the particular type aircraft for which the check is required.

## DISPOSITIONS OF PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought disposition
23528	Air Wisconsin	14 CFR 121.411 (a)(1), (a)(2), (a)(3), (a)(5), and 121.413(c)	Amendment to Exemption 3733 to permit petitioner to substitute two different British Aerospace pilots for training petitioner's check airmen, flight instructors, and flight crewmembers in the BAe 146 aircraft. Granted 4/29/83.

## DISPOSITIONS OF PETITIONS FOR EXEMPTION—Continued

Docket No.	Petitioner	Regulations affected	Description of relief sought disposition
23537	Frank B. Angarola	14 CFR 61.16(b)	To permit petitioner to apply for an airline transport pilot certificate with a rotocraft rating although he has not flown 1,200 hours of flight time as pilot within the past 8 years. Granted 5/3/83.
23540	Sperry Flight Systems	14 CFR 21.195(b)	To allow petitioner to apply for an experimental certificate to operate its owned and leased aircraft in market survey. Granted 5/10/83.
21245	New York Air	14 CFR 91.307	To amend Exemption No. 3110 to add 2 aircraft. The present exemption allows operation in the United States, under a service to small communities exemption, of specified two-engine airplanes, identified by registration and serial number, that have not been shown to comply with the applicable operating noise limits as follows: Until not later than January 1, 1985: 14 DC-9s. Granted 5/9/83.
23331	American International Airways, Inc.	14 CFR 91.307	To amend Exemption No. 3619a to delete one aircraft. The present exemption allows operation in the United States, under a service to small communities exemption, of specified "Stage 1 airplanes," powered by two engines, identified by registration and serial number, that have not been shown to comply with the applicable operating noise limits as follows: Until not later than January 1, 1985: 4 DC-9s. Granted 5/9/83.
23469	Jet Fleet International Airlines, Inc.	14 CFR 91.307	To allow operation in the United States, under a service to small communities exemption, of 1 civil, subsonic "Stage 1 airplane" powered by two engines identified by registration and serial number, that has not been shown to comply with the applicable operating noise limits as follows: Until not later than January 1, 1988: 1 BAC-1-11; N900DM. Granted 5/9/83.
23464	Richard L. Wyatt	14 CFR 103.1, 103.7, and 103.15	To permit petitioner to operate ultralight vehicles over congested areas for purposes other than sport and recreation. Denied 4/29/83.
23050	Boeing Commercial	14 CFR 21.231(a)(1)	To allow application of Airplane Company Delegation Option Authorization (DOA) procedures to the type, production, and airworthiness certification of Boeing Models 727, 737, and 747 including derivatives involving major changes exemplified by the 737-300. Granted 5/12/83.
23053	Cessna Aircraft Co.	14 CFR 21.231	To permit petitioner to use the authority in Delegation Option Authorization procedures for type, production, and airworthiness certification of airplanes, regardless of type certification basis, as long as the airplanes are of 75,000 pounds maximum gross takeoff weight or less and are not intended for operations under Part 121 of the FAR. Granted 5/12/83.
20044	Air Transport Association of America	14 CFR 61.63(b) and 121.437(c)	An extension of Exemption 2965A to permit petitioner, its member airlines and any other Part 121 certificate holder and its pilot employees to be issued an additional category and class rating to that person's pilot certificate subject to certain conditions and limitations. Partial grant 4/29/83.
18920	Transamerica Airlines, Inc.	14 CFR Part 121	To extend Exemption 2947, as amended, to permit petitioner to conduct scheduled passenger service, authorized by the CAB over certain routes utilizing the flight control dispatch procedures, communications procedures, airport and route qualification procedures of Part 121 that are applicable to supplemental air carriers. Partial grant 4/29/83.
19113	Capitol Air, Inc. formerly Capitol International Airways, Inc.	14 CFR Portions of Part 121	To extend Exemption 2746 to permit petitioner to continue to conduct scheduled passenger service over routes authorized by the Civil Aeronautics Board (CAB) utilizing the flight control dispatch procedures and communication procedures of Part 121 that are applicable to supplemental air carriers. Partial grant 4/29/83.
23390	Ms. Gail Hall	14 CFR 103.1(e)	To permit occupancy of an ultralight vehicle by two persons, one of whom is legally blind. Denied 4/29/83.

[FR Doc. 83-12126 Filed 5-20-83; 8:45 am]

BILLING CODE 4810-13-M

## UNITED STATES INFORMATION AGENCY

## Privacy Act of 1974; Report of Proposed System

**AGENCY:** United States Information Agency—German-American Tricentennial Commission.

**ACTION:** Notice of proposed system of records.

**SUMMARY:** In accordance with the requirements of the Privacy Act of 1974 we are proposing to establish a new system of records on behalf of the German-American Tricentennial Commission. The system is intended to provide names, telephone numbers, and mailing addresses of persons or institutions interested in German-American relations and the Tricentennial. Individuals or institutions so identified may be contacted in order to provide them with information on the activities of the Commission and

Tricentennial events, to solicit information on programs they may be planning for the Tricentennial, to solicit participation in these activities, or to obtain support, financial or otherwise, and to enable the Commission to carry out its activities. The public is requested to submit comments.

**DATE:** Comments are due June 22, 1983.

**ADDRESS:** Comments should be addressed to: Director, Office of Public Liaison, USIA, 400 C Street SW, Washington, D.C. 20547.

**FOR FURTHER INFORMATION CONTACT:** Director, Office of Public Liaison, USIA, 400 C Street SW, Washington, D.C. 20547.

**SUPPLEMENTARY INFORMATION:** The United States Information Agency is seeking comments on the proposed system of records for the German-American Tricentennial Commission Contact System. The system is intended to provide names, telephone numbers, and mailing addresses of persons or institutions interested in German-American relations and the Tricentennial. Individuals or institutions

so identified may be contacted in order to provide them with information on the activities of the Commission and Tricentennial events, to solicit information on programs they may be planning for the Tricentennial, to solicit participation in these activities, or to obtain support, financial or otherwise, and to enable the Commission to carry out its activities.

**SYSTEM NAME:**

Contacts.

**SECURITY CLASSIFICATION:**

Unclassified.

**SYSTEM LOCATION:**

Presidential Commission for the German-American Tricentennial, 730 Jackson Place, Washington, D.C. 20006.

**CATEGORIES OF INDIVIDUALS COVERED IN THE SYSTEM:**

U.S. private sector leaders; representatives of foreign countries resident and not resident in the U.S.; U.S. legislative and executive branch personnel; private citizens, business,



academic, student, cultural, labor, military and social leaders, federal and state employees, members of the press, organizations, and corporations interested in German-American relations and the German-American Tricentennial.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Name, title, affiliation, address, telephone number, participation in Tricentennial and German-American activities, amount of money contributed or pledged by individuals and by organizations to the Commission.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Authority for this system of records is derived from the Federal Records Act, 44 U.S.C. 3101, U.S. Information and Educational Exchange Act of 1948, as amended (22 U.S.C. 1431 *et seq.*) and the Mutual Educational and Cultural Exchange Act of 1981, as amended (22 U.S.C. 2451 *et seq.*).

**PURPOSE OF THE SYSTEM:**

The Presidential Commission for the German-American Tricentennial has established a contact system for use by the Commission Staff. The system is intended to provide names, telephone numbers, and mailing addresses of persons or institutions interested in German-American relations and the Tricentennial. Individuals or institutions so identified may be contacted in order to provide them with information on the activities of the Commission and Tricentennial events, to request information on programs they may be planning for the Tricentennial, to solicit participation in these activities, or to obtain support, financial or otherwise, to enable the Commission to carry out its activities.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Identification of persons or institutions who may have interest in German-American relations and the Tricentennial; distribution of information to individuals interested in the Tricentennial; solicitation of support, including contributions; and recording participation of individuals in various activities of the Tricentennial.

Information is available to the Presidential Commission for the German-American Tricentennial staff, including volunteers, as may be required for the performance of their official duties.

These records may be turned over to a contractor for use in the name of the Presidential Commission for the German-American Tricentennial and

under conditions specified by the Commission.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

All information will be maintained on an automated system—on a magnetic disk for active use and back-up.

**RETRIEVABILITY:**

Records are retrieved by name, function title, organization, address, city, state, ZIP code, occupational category, specialty, affiliation and comments.

**SAFEGUARDS:**

Files are kept at the offices of the Presidential Commission for the German-American Tricentennial and may be called up only by the Commission staff, including volunteers.

**RETENTION AND DISPOSAL:**

Files will be destroyed upon the termination of the Commission no later than January 13, 1984.

**SYSTEM MANAGER(S) AND ADDRESS:**

Presidential Commission for the German-American Tricentennial, 730 Jackson Place, Washington, D.C. 20006.

**NOTIFICATION PROCEDURE:**

Director, Office of Public Liaison, United States Information Agency, 400 C Street, SW., Washington, D.C. 20547.

**RECORD ACCESS PROCEDURE:**

Requests from individuals should be addressed to: Director, Office of Public Liaison, USIA, 400 C Street, SW., Washington, D.C. 20547.

**CONTESTING RECORD PROCEDURES:**

The United Information Agency's rules for access and for contesting contents and appealing initial determinations by the individual concerned are published in Part 505 of Title 22, Code of Federal Regulations.

**RECORD SOURCE CATEGORIES:**

Information is provided by the individual concerned, from published sources or from lists provided by German-American organizations and individuals.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

Dated: April 18, 1983.

Gilbert A. Robinson,

Acting Director, United States Information Agency.

[PK Doc. 83-13781 Filed 5-20-83; 9:45 am]

BILLING CODE 8230-01-M

**Privacy Act of 1974; Report of Proposed System**

**AGENCY:** United States Information Agency.

**ACTION:** Notice of proposed system of records.

**SUMMARY:** In accordance with the requirements of the Privacy Act of 1974 we are proposing to establish a new system of records for the International Youth Exchange Contact System. The system is intended to provide names, telephone numbers, and mailing addresses of persons or institutions interested in youth exchange.

Individuals or institutions so identified may be contacted in order to provide them with information on the activities of the President's Council for International Youth Exchange, to solicit participation in these activities, or to obtain support, financial or otherwise, for participation in the youth exchange initiative. The public is requested to submit comments.

**DATE:** Comments are due on or before June 22, 1983.

**ADDRESS:** Comments should be addressed to: Director, Office of Public Liaison, USIA, 400 C Street SW., Washington, D.C. 20547.

**FOR FURTHER INFORMATION CONTACT:** Director, Office of Public Liaison, USIA, 400 C Street SW., Washington, D.C. 20547.

**SUPPLEMENTARY INFORMATION:** The United States Information Agency is seeking comments on the proposed system of records for the International Youth Exchange Contact System. The system is intended to provide names, telephone numbers, and mailing addresses of persons or institutions interested in youth exchange. Individuals or institutions so identified may be contacted in order to provide them with information on the activities of the President's Council for International Youth Exchange, to solicit participation in these activities, or to obtain support, financial or otherwise, for participation in the youth exchange initiative.

**SYSTEM NAME:**

Staff for International Youth Exchange Contact System.

**SECURITY CLASSIFICATION:**

Unclassified.

**SYSTEM LOCATION:**

Office of International Youth Exchange Staff, United States Information Agency, 1750 Pennsylvania Ave., NW., Washington, D.C. 20547.

**CATEGORIES OF INDIVIDUALS COVERED IN THE SYSTEM:**

U.S. private sector leaders; representatives of foreign countries resident and not resident in the U.S.; U.S. legislative and executive branch personnel; grantee organizations and grant applicants; private citizens, organizations, and corporations interested in the President's Council; federal employees; and members of the press.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Name, title, affiliation, address, telephone number, degree of participation in Youth Exchange activities, attendance records of President's Council events, amount of money contributed or pledged to President's Initiative by individuals and by companies, tracking of correspondence.

**AUTHORITY FOR MAINTENANCE OF SYSTEM:**

Authority for this system of records is derived from the Federal Records Act, 44 U.S.C. 3101, U.S. Information and Educational Exchange Act of 1948, as amended (22 U.S.C. 1431 *et seq.*) and the Mutual Educational and Cultural Exchange Act of 1981, as amended (22 U.S.C. 2451 *et seq.*).

**PURPOSE OF THE SYSTEM:**

The United States Information Agency intends to establish a contact system for use by the International Youth Exchange Staff. The system is intended to provide names, telephone numbers, and mailing addresses of persons or institutions interested in youth exchange. Individuals or institutions so identified may be contacted in order to provide them with information on the activities of the President's Council for International Youth Exchange, to solicit participation in these activities, or to obtain support, financial or other wise, for participation in the youth exchange initiative.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Identification of persons or institutions who may have interest in international youth exchange, distribution of information to individuals interested in supporting youth exchange and to solicit support including contributions, and recording participation of individuals in various

activities of the President's Council for International Youth Exchange.

Information is available to the International Youth Exchange Staff, the President's Council for Youth Exchange, and to other personnel of the United States Information Agency as may be required for the performance of their official duties.

Information in these records is available to individuals, organizations, or agencies outside the U.S. Information Agency, involved in youth exchange activities or other programs benefitting youth. The released information may be used to solicit support including contributions and to record participation of individuals in various activities of the President's Council for International Youth Exchange.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:****STORAGE:**

All information will be maintained on an automated system—on a magnetic disk for active use and back-up.

**RETRIEVABILITY:**

Records are retrieved by name, affiliation, geographic location, occupation, invitation lists contact history, telephone number, invitation history, pledge and contribution records.

**SAFEGUARDS:**

Files are to be called up by designated persons only with preassigned passwords on a terminal in the Office of the Staff for International Youth Exchange, the office of the President's Council for International Youth Exchange, and the Office of the Chairman of the Council whether or not situated at the USIA.

**RETENTION AND DISPOSAL:**

Files will be reviewed annually and retained, retired, or destroyed as appropriate.

**SYSTEM MANAGER(S) AND ADDRESS:**

International Youth Exchange Staff, USIA, 1750 Pennsylvania Ave., NW., Washington, D.C. 20547.

**NOTIFICATION PROCEDURE:**

Director, Office of Public Liaison, USIA, 400 C Street SW., Washington, D.C. 20547.

**RECORDS ACCESS PROCEDURES:**

Requests from individuals should be addressed to: Director, Office of Public Liaison, USIA, 400 C Street SW., Washington, D.C. 20547.

**CONTESTING RECORD PROCEDURES:**

The Agency's rules for access and for contesting contents and appealing initial determinations by the individual concerned are published in Part 505 of Title 22, Code of Federal Regulations.

**RECORD SOURCE CATEGORY:**

Information is provided by the individual concerned or from published sources.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

Dated: April 21, 1983.

Gilbert Robinson,  
*Acting Director, United States Information Agency.*

[FR Doc. 83-11760 Filed 5-20-83; 8:45 am]

BILLING CODE 8320-01-M

**VETERANS ADMINISTRATION****Medical Research Service Merit Review Board; Availability of Annual Report**

Under section 10(d) of Pub. L. 92-463 (Federal Advisory Committee Act) notice is hereby given that the Annual report of the Veterans Administration Medical Research Service Merit Review Boards for calendar year 1982 has been issued.

The report summarizes activities of the Boards on matters related to the review, discussion and evaluation of individual investigator initiated medical research projects. It is available for public inspection at two locations: Library of Congress, Serial and Government Publications Reading Room, LM 133, Madison Building, Washington, DC 20540; and Veterans Administration, Medical Research Service, Chief, Merit Review Board Staff Division, Room 755, 810 Vermont Avenue, NW, Washington, DC 20420.

Dated: May 13, 1983.

By direction of the Administrator.

Rosa Maria Fontanez,  
*Committee Management Officer.*

[FR Doc. 83-13727 Filed 5-20-83; 8:45 am]

BILLING CODE 8320-01-M

# Sunshine Act Meetings

Federal Register

Vol. 48, No. 100

Monday, May 23, 1983

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).

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1

### FEDERAL ENERGY REGULATORY COMMISSION

#### Notice of meeting

May 18, 1983.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-409), 5 U.S.C. 552b:

**AGENCY HOLDING MEETING:** Federal Energy Regulatory Commission.

**TIME AND DATE:** 10 a.m., May 25, 1983.

**PLACE:** 825 North Capitol Street, N.E., Washington, D.C. 20426, Room 9306.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

#### CONTACT PERSON FOR MORE INFORMATION:

Kenneth F. Plumb, Secretary, Telephone (202) 357-8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Division of Public Information.

**Consent Power Agenda—771st Meeting, May 25, 1983, Regular Meeting (10 a.m.)**

CAP-1. Project No. 6389-001, Lawrence J. McMurtrey

CAP-2. Project No. 6397-001, Lawrence J. McMurtrey

CAP-3. Project No. 6802-000, Snowbird, Ltd.

CAP-4. Project No. 6188-001, Birch Creek Hydro, Inc.

CAP-5. Project No. 6839-000, Fairview Orchards Association

CAP-6. Project Nos. 2774-000 and 001,

Modesto and Turlock Irrigation Districts and City and County of San Francisco;

Project Nos. 5642-001 and 002, Tuolumne County, California

CAP-7. Project No. 4839-002, City of Rohnert Park

CAP-8. Project Nos. 349-018 and 2408-000, Alabama Power Co.

CAP-9. Project No., 6513-001, Village of Winnetka, Illinois and River Cities Associates; Project No. 6892-001, the Village of Channahon, Illinois

CAP-10. Omitted

CAP-11. Project No. 3738-002, Mitchell Energy Company, Inc.; Project No. 3813-000, Energenics Systems, Inc.; Project No. 4145-000, City of Valentine, Nebraska; Project No. 4225-002, Ainsworth Irrigation District

CAP-12. Omitted

CAP-13. Project No. 6814-002, Sheep Creek Irrigation Co.

CAP-14. Project No. 5448-000, Western Power, Inc.; Project No. 6071-000, Public Utility District No. 1 of Lewis County, Washington; Project No. 6387-001, Western Hydro Electric, Inc.

CAP-15. Project No. 2701-002, Niagara Mohawk Power Corp.

CAP-16. Project No. 4929-000, City of Rohnert Park; Project No. 5049-001, Modesto Irrigation District

CAP-17. Project Nos. 5653-000, 5655-000 and 5656-000, Flathead Joint Board of the Flathead Mission and Jocko Valley Irrigation Districts

CAP-18. Docket No. ER83-418-000, Kansas Power and Light Co.

CAP-19. Docket No. ER83-420-000, Northern States Power Co. (Wisconsin)

CAP-20. Docket No. ER83-425-000, Ohio Edison Co.

CAP-21. Docket Nos. ER83-427-000 and ER83-428-000, Utah Power & Light Co.

CAP-22. Docket No. ER83-429-000, Wisconsin Power and Light Co.

CAP-23. Docket No. ER83-430-000, Virginia Electric and Power Co.

CAP-24. Docket No. ER83-433-000, Rochester Gas & Electric Co.

CAP-25. Docket No. ER83-437-000, Commonwealth Edison Co.

CAP-26. Docket No. ER83-438-000, Montana Power Co.

CAP-27. Docket No. ER83-424-000, Pacific Power & Light Co.

CAP-28. Docket No. ER83-444-000, Maine Public Service Co.

CAP-29. Docket Nos. ER79-126-007, 008 and 009, Arizona Public Service Co.

CAP-30. Docket No. ER83-299-001, Public Service Co. of New Mexico

CAP-31. Docket No. ER83-114-001, Western Massachusetts Electric Co.

CAP-32. Docket No. EL82-21-001, Sacramento Municipal Utility District V. Pacific Gas and Electric Co., Southern California Edison Co. and San Diego Gas and Electric Co.

CAP-33. Docket Nos. ER81-400-001 and 002, Pennsylvania Power and Light Co.

CAP-34. Docket No. ER81-620-001, Public Service Co. of New Hampshire

CAP-35. Docket No. ER83-164-000, Iowa Public Service Co.

CAP-36. Omitted

CAP-37. Docket No. EL83-16-000, Louisiana Power & Light Co.

CAP-38. Docket No. EF83-4021-000, Southwestern Power Administration—Sam Rayburn Project

CAP-39. Docket Nos. ER82-80-000 and ER82-389-000, Public Service Co. of Oklahoma

CAP-40. Docket Nos. ER80-592, et al., Allegheny Power System; Docket Nos. ER80-664-000, ER80-666-001, ER80-667-000, ER80-668-000, ER80-616-002, ER80-618-001, ER80-782-001, Wisconsin Power and Light Co.; Docket Nos. ER80-628-000 and ER80-586-000, Duquesne Light Co.

CAP-41. Docket Nos. ER76-827-000 and 001, ER77-427-000 and 001, ER80-5-000 and 004, Minnesota Power and Light Co.

CAP-42. Docket Nos. ER82-426-000, ER82-610-000 and ER83-115-000, Jersey Central Power and Light Co.

CAP-43. Docket No. ER82-743-000, Carolina Power and Light Co.

CAP-44. Docket No. ER82-751-003, Delmarva Power & Light Co.

### Consent Miscellaneous Agenda

CAM-1. Docket No. RM79-76-093 (Texas-18), High-Cost Gas Produced From Tight Formations

CAM-2. Docket No. RM79-76-154 (Texas-27), High-Cost Gas Produced From Tight Formations

CAM-3. Docket No. RM79-76-178 (Texas-35), High-Cost Gas Produced From Tight Formations

CAM-4. Docket No. RM79-76-179 (New Mexico-19), High-Cost Gas Produced From Tight Formations

CAM-5. Docket No. GP82-30-000, Railroad Commission of Texas, Natomas North America, Inc., Section 102 NGPA Determination, Jones, No. 1 Well, FERC No. JD81-43076

CAM-6. Docket No. GP82-49-000, Railroad Commission of Texas, Section 108 NGPA Determinations, Shell Oil Co., Logsdon, C.W.-E-No. 1 Well, FERC JD No. 8211279, Logsdon, C.W.-E-No. 3 Well, FERC JD No. 8206941, Steedman, L.A. No. 1 Well, FERC JD No. 8232812, University Block 9, Penn Unit No. 15 Well, FERC JD No. 8206936

### Consent Gas Agenda

CAG-1. Docket Nos. RP78-94-014, 015 and 016, Texas Gas Transmission Corp.

CAG-2. Docket Nos. RP83-52-005 and RP83-53-000, United Gas Pipe Line Co.

CAG-3. Docket No. TA83-2-42-001 (PGA83-2 and IPR83-2), Transwestern Pipeline Co.

CAG-4. Docket No. TA83-2-33-001, El Paso Natural Gas Co.

CAG-5. Docket Nos. RP80-91-004 and RP80-93-000, Arkansas Louisiana Gas Co., a Division of Arkla, Inc.

CAG-6. Docket No. TA83-2-29-000 (PGA83-2a), Transcontinental Gas Pipe Line Corp.

CAG-7. Docket No. TA83-2-28-000 (PGA83-3), Panhandle Eastern Pipeline Corp.  
 CAG-8. Docket No. 83-2-35-000 (PGA83-2), Peoples Natural Gas Co.  
 CAG-9. Docket No. TA83-2-55-000 (PGA83-2), Mountain Fuel Resources, Inc.  
 CAG-10. Docket No. TA83-2-56-000 (PGA83-2), Valero Interstate Transmission Co.  
 CAG-11. Docket No. TA83-2-9-000 (PGA83-2), Tennessee Gas Pipeline Co.  
 CAG-12. Docket No. TA83-2-32-000 (PGA83-3), Colorado Interstate Gas Co.  
 CAG-13. Docket No. TA83-2-58-000 (PGA83-2), Texas Gas Pipe Line Corp.  
 CAG-14. Docket Nos. CP81-477-000 and CP82-103-000, Mfg. Inc.; Docket No. CP81-531-000, Mountain Fuel Supply Co.; Docket No. CP81-472-000, Colorado Interstate Gas Co.  
 CAG-15. Docket No. RP83-79-000, Michigan Wisconsin Pipe Line Co.  
 CAG-16. Docket No. RP83-80-000, Ringwood Gathering Co.  
 CAG-17. Docket No. RP83-81-000, Montana-Dakota Utilities Co.  
 CAG-18. Docket No. RP83-82-000, Valley Gas Transmission, Inc.  
 CAG-19. Docket No. RP83-83-001, Border Gas, Inc.  
 CAG-20. Docket No. OR81-3-000, Loop, Inc.; Docket No. OR81-4-000, Locap, Inc.  
 CAG-21. Docket No. OR83-2-000, Coastal States Marketing, Inc. and Coastal States Trading, Inc. v. Texas-New Mexico Pipeline Co. and the Texas Pipeline Co., Operator  
 CAG-22. Docket Nos. RP78-68-015, RP80-121-010, RP81-81-005 and RP82-57-009, United Gas Pipe Line Co.  
 CAG-23. Docket No. RP83-8-000, Columbia Gas Transmission Corp. v. Tennessee Gas Pipeline Co., a Division of Tenneco Inc., Docket No. RP83-19-000, Tennessee Gas Pipeline Co., a Division of Tenneco Inc. v. Columbia Gas Transmission Corp.  
 CAG-24. Docket No. RP81-95-000, Pacific Interstate Transmission Co.  
 CAG-25. Docket No. RP82-137-000, Texas Gas Transmission Corp.; Docket No. RP83-4-000, Columbia Gas Transmission Corp. v. Texas Gas Transmission Corp.  
 CAG-26. Docket Nos. RP83-8-000, RP82-33-000, RP72-116, RP82-86-000, RP82-94-000, RP82-108-000, RP81-141-000 and RP83-13-000, El Paso Natural Gas Co.  
 CAG-27. Docket Nos. IS81-60-000 and IS82-25-000, Dome Pipeline Corp.  
 CAG-28. Docket No. ST80-299-001, Sugar Bowl Gas Corp.  
 CAG-29. Docket No. ST83-165-000, Tangram Transmission Co.  
 CAG-30. Docket No. CI83-148-001, Eugene Shoal Oil Co.  
 CAG-31. (A) Docket No. CS83-62-001, Lois D. Cannady; (B) Docket No. CI83-148-001, Oxy Petroleum, Inc.; Docket No. CI79-600-002, Northwestern Mutual Life Insurance  
 CAG-32. Docket No. CP83-134-002, Houston Pipe Line Co.  
 CAG-33. Docket Nos. CI75-633-003, 004, 005, and 006, et al., MRT Exploration Co., et al., Docket No. CP77-558-001, et al., United Gas Pipe Line Co.; Docket No. CP77-580-001, et al., Sea Robin Pipeline Co.  
 CAG-34. Docket No. CP82-368-001, United Gas Pipe Line Co.  
 CAG-35. Docket No. CP82-177-001, United Gas Pipe Line Co.

CAG-36. Docket No. CP85-379-000, Husky Pipeline Co.  
 CAG-37. Docket No. CP83-196-000, National Fuel Supply Corp.  
 CAG-38. Docket No. CP83-220-000, Houston Pipe Line Co.  
 CAG-39. Docket No. CP83-220-000, Houston Pipe Line Co.; Docket No. CP83-224-000, Oasis Pipe Line Co.  
 CAG-40. Docket No. CP83-269-000, Mountain Fuel Supply Co.  
 CAG-41. Docket Nos. CP83-213-000 and CP83-214-000, Northwest Pipeline Corp.; Docket No. CP83-251-000, the Washington Water Power Co.  
 CAG-42. Docket No. CP82-319-000 and CP82-319-001, Cities Service Gas Co.  
 CAG-43. Docket Nos. TA81-1-21-000 and TA81-2-21-000, Columbia Gas Transmission Corp.  
 CAG-44. Docket No. TA83-1-22-000 (PGA83-1, IRP83-1 and AP83-1), Consolidated Gas Supply Corp.  
 CAG-45. Docket Nos. RP82-116-000 and TA83-2-7-000, Southern Natural Gas Co.  
 CAG-46. Docket Nos. TA81-2-48-05 and TA82-1-48-003, Michigan Wisconsin Pipe Line Co.

#### I. Licensed Project Matters

P-1. Project No. 5951-000, Gordon Ravenscroft; Project No. 6660-000, Raleigh and Virginia Stevens  
 P-2. Omitted  
 P-3. Omitted  
 P-4. Omitted

#### II. Electric Rate Matters

ER-1. Docket No. ER78-417-000, Kentucky Utilities Co.  
 ER-2. Docket No. ER78-490-000, Ohio Edison Co.; Docket No. ER80-673-000, Ohio Power Co.  
 ER-3. Docket Nos. EF81-2011-000, EF81-2021-000 and EF82-2011-001, Bonneville Power Administration—System Power and Transmission Rates  
 ER-4. Docket No. PL83-4-000, Policy Statement Regarding the Commission's Enforcement Role Under Section 210 of the Public Utility Regulatory Policies Act of 1978

#### Miscellaneous Agenda

M-1. Docket No. RM81-41-000, Sales of Electric Power to the Bonneville Power Administration; Methodology and Filing Requirements  
 M-2. Reserved  
 M-3. Reserved  
 M-4. Docket No. RM83-64-000, Amendment to Notice and Protest Procedures for Oil Pipeline Tariff Filings  
 M-5. (A) Docket No. GP81-34-000, State of Ohio, Section 103 NGPA Determination, Charles O. Lighthizer, A. R. Crawford No. 1 Well, FERC No. JD79-8124, State Docket No. 2595, Marshall No. 1 Well, Ferc No. JD79-12527, State Docket No. 3903  
 (B) Docket No. GP83-9-000, State of Kansas, Section 102 NGPA Determination, TXO Production Corp., Cromer No. 1 Well, JD No. 83-03969, State Docket No. K-82-0699 Docket No. GP83-10-000, State of Mississippi, Section 107 NGPA Determination, Sun Exploration and

Production Co., Sun Gas Division, Ross Beatty No. 1 Well, JD No. 82-52240  
 (C) Docket No. GP83-12-000, Kansas Corporation Commission, Continental Energy Co., Section 103 NGPA Determination, Stanley No. 1 Well, JD81-01760; Docket No. GP82-9-000, State of West Virginia, Section 103 NGPA Determination, Patrick Petroleum Corp., Jacob Daugherty No. 1 Well, FERC No. JD81-27387; Docket No. GP82-48-000, State of New Mexico, Section 103 NGPA Determination, Warren Petroleum Co. (a Division of Gulf Oil Corp.), Mark Well No. 8, FERC Docket No. JD79-16337  
 M-6. Omitted  
 M-7. Docket Nos. GP80-37-000 and GP80-83-000, Oklahoma Natural Gas Gathering Co.

#### Gas Agenda

##### I. Pipeline Rate Matters

RP-1. Omitted

##### II. Producers Matters

CI-1. Docket No. RI 73-60-006 and RI73-60-007, Mitchell Energy Corp.

##### III. Pipeline Certificate Matters

CP-1. Docket No. CP82-392-000, Natural Gas Pipeline Co. of America; Docket No. CP82-462-000, Florida Gas Transmission Co.

Kenneth F. Plumb,  
 Secretary.

[5-730-83 Filed 5-19-83; 3:38 pm]

BILLING CODE 6717-01-M

## 2

### FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

May 18, 1983.

TIME AND DATE: 10 a.m., Wednesday, May 25, 1983.

PLACE: Room 600, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following.

1. Secretary of Labor *ex rel.* Bennett, *et al.* v. Emery Mining Corporation, WEST 80-489-D(A). (Issues include whether the ALJ correctly calculated awards due to discriminatees).

#### CONTACT PERSON FOR MORE INFO:

Jean Ellen, (202) 653-5632.

[5-731-83 Filed 5-19-83; 3:38 pm]

BILLING CODE 6735-01-M

## 3

### SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission held the following meeting on Tuesday, May 17, 1983, at 9:30 a.m. at 450 5th

Street, NW., Washington, D.C., to consider the following item.

Formal order of investigation.

The Commissioners, Counsel for the Commissioners and the Secretary of the Commission attended the closed meeting. Certain staff members who are responsible for the calendared matter were present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the item considered at the closed meeting was considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10).

Chairman Shad and Commissioners Longstreth and Treadway voted to consider the item listed for the closed meeting in closed session.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any matters have been added, deleted or

postponed, please contact: Diane Klinke at (202) 272-2014.

May 18, 1983.

[S-729-83 Filed 5-19-83; 12:40 pm]

BILLING CODE 8010-01-M

4

**NATIONAL COMMISSION ON STUDENT FINANCIAL ASSISTANCE**

**DATE:** June 6, 1983.

**TIME:** 10 a.m.-5 p.m.

**PLACE:** Cannon House Office Building, Room 311.

**PURPOSE:** To receive reports from several Commission subcommittees.

**FOR FURTHER INFORMATION CONTACT:**

Richard T. Jerue, Chief Executive Officer, (202) 724-2914.

This meeting was called by the Commission Chairman, Mr. David R. Jones.

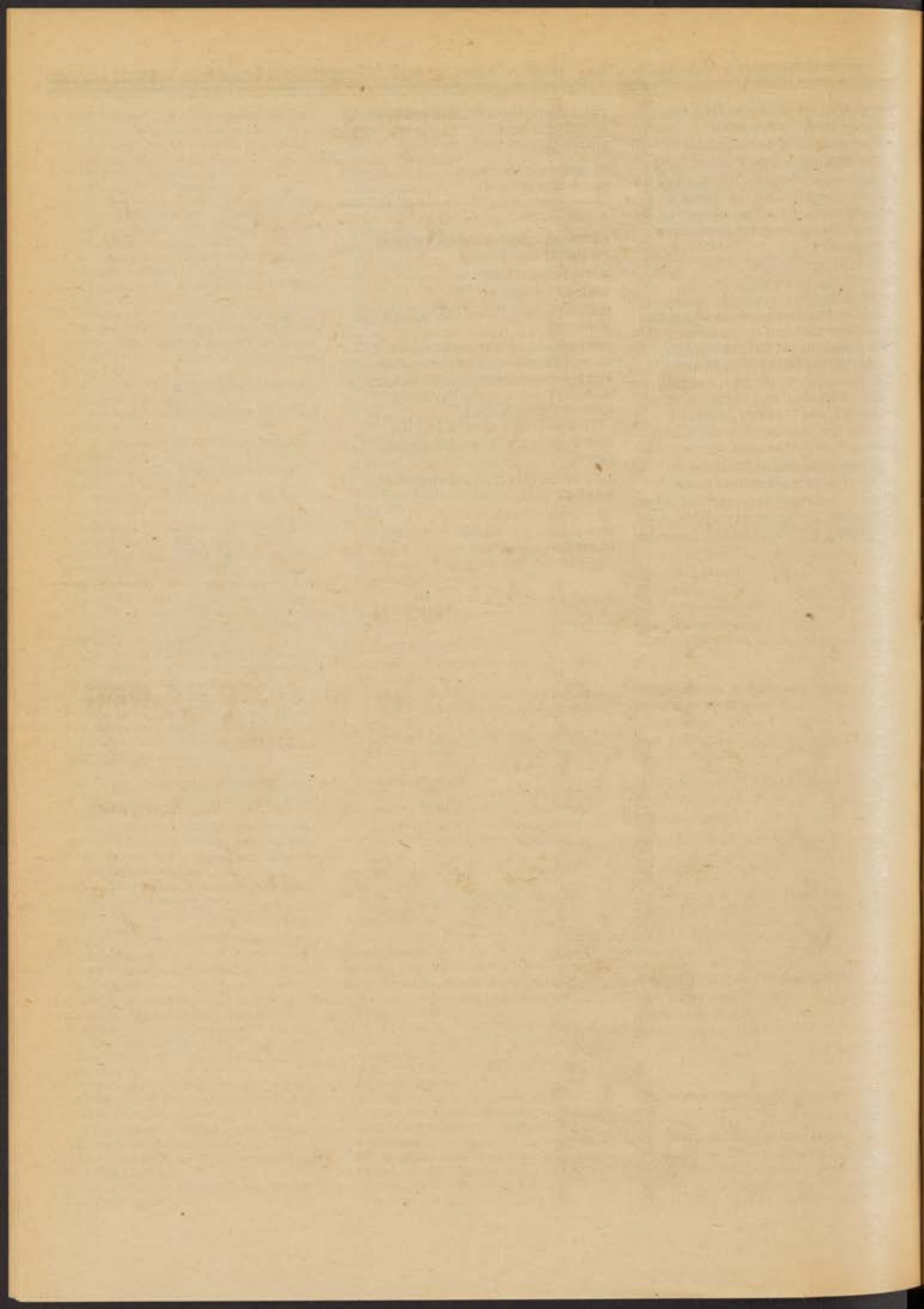
Submitted the 17th day of May, 1983.

**Richard T. Jerue,**

*Chief Executive Officer.*

[S-728-83 Filed 5-19-83; 10:39 am]

BILLING CODE 6820-BC-M



# **federal register**

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Monday  
May 23, 1983

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## **Part II**

### **Federal Home Loan Bank Board**

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**Implementation of New Powers;  
Limitation on Loans to One Borrower;  
Final Rule**

**FEDERAL HOME LOAN BANK BOARD**

12 CFR Parts 523, 526, 541, 545, 555, 561, and 563

**Implementation of New Powers;  
Limitation on Loans to One Borrower**

**AGENCY:** Federal Home Loan Bank Board.

**ACTION:** Final rule.

**SUMMARY:** The Federal Home Loan Bank Board has implemented the new powers granted to Federal associations by the Garn-St Germain Depository Institutions Act of 1982 by issuing new regulations on public unit NOW accounts, demand deposits, commercial lending, and operating leases, and by amending its regulations on real estate lending, consumer loans, commercial paper and corporate debt security investments, investments in government securities, service corporation activities and limits on loans to one borrower. The Board has also made revisions to its regulations to permit certain suretyship and trust activities and collateralization of deposits. Further, the Board has revised Part 545 to permit Federal associations to engage in all activities authorized by statute subject to these regulations and to incorporate various technical amendments. These amendments expand the investment authority of, and services offered by, Federal associations.

**EFFECTIVE DATE:** May 26, 1983. Paragraph (i) of § 545.33 shall expire on December 31, 1983.

**FOR FURTHER INFORMATION CONTACT:**

General authority, Federal preemption, Election of classification, Government securities, Commercial paper and corporate debt securities, Service corporations: Wendy B. Samuel, Deputy Director, Policy and Projects Division, Office of General Counsel, (202) 377-6465

Consumer lending, Educational lending, Leasing, Overdraft loans, Title VIII notice: Robert S. Monheit, Attorney, Office of General Counsel, (202) 377-6466

Commercial lending, Letters of credit, Manufactured home lending, Loans-to-one-borrower limitations: Michael D. Schley, Attorney, Office of General Counsel, (202) 377-6444

Real estate lending: Neil R. Crowley, Attorney, Office of General Counsel, (202) 377-6417

Demand deposit accounts, Governmental unit NOW accounts, Suretyship, Passive trusts: Robert H. Ledig, Attorney, Office of General Counsel, (202) 377-7057

All other aspects not specifically listed above: Wendy B. Samuel, (202) 377-6465, Deputy Director, or Peter M. Barnett, (202) 377-6445, Director, Policy and Projects Division, Office of General Counsel

**SUPPLEMENTARY INFORMATION:** The Garn-St Germain Depository Institutions Act of 1982 (DIA), Pub. L. No. 97-320, 96 Stat. 1469, signed into law on October 15, 1982, granted broad new powers to Federally chartered savings and loan associations and mutual savings banks (Federal associations). As part of an effort to strengthen home mortgage lenders and ensure the availability of mortgage loans and credit for other goods and services, the DIA amended the Home Owners' Loan Act of 1933 (HOLA), 12 U.S.C. 1461-1470, to permit Federal associations new authority to accept demand deposits, to offer NOW accounts to governmental units, to invest in time deposits in institutions the accounts of which are insured by the Federal Savings and Loan Insurance Corporation (FSLIC), to make commercial loans and to engage in leasing operations. The DIA also expanded the existing power of Federal associations to make real estate loans, to invest in governmental obligations and commercial paper and corporate debt securities, and to make educational and consumer loans. The Board implemented certain of these authorities by interim regulations which have remained in effect pending adoption of permanent regulations. Board Resolution No. 82-730 (November 4, 1982), 47 FR 51732 (November 17, 1982).

On December 16, 1982, the Board proposed to amend its regulations in order to implement fully these new powers. Board Resolution No. 82-813 (December 16, 1982), 48 FR 2340 (January 19, 1983). In addition to incorporating the new powers specifically authorized by the DIA, the Board reconsidered existing regulations in light of the scope and purpose of the legislation, and accordingly proposed other new authorizations for Federal associations. These included the authority to collateralize deposits, to act as surety, to issue letters of credit and to engage in certain trust activities. The Board also proposed to expand the list of preapproved service corporation activities to include leasing and commercial lending. Lastly, the proposal included simplification, reduction and renumbering of the existing authority contained in Part 545.

*Comment Summary*

The Board received seventy-nine comment letters on the proposal. Forty-five commenters are FSLIC-insured

institutions, ten are law firms, four are bank trade associations, five are thrift trade associations, four are other trade associations, three are savings and loan service corporations, and two are securities brokers. Comment letters were also received from a savings and loan holding company, a government corporation, an investment banker, an equipment lease marketing firm, an insurance company, and an unidentified lender. Generally, commenters supported the proposal, commending particularly the Board's quick response to the new statutory authority and the broad scope of the proposed implementation of these new powers. Many comment letters also contained suggestions or raised questions concerning particular sections of the proposal, and these will be discussed below in conjunction with the specific elements of this action.

**General**

*Scope of Authority*

Current Part 545 is based upon the premise that the investment authority of the HOLA must be implemented expressly by regulation. Many of the provisions of the statute, however, do not require regulatory action. In order to grant associations the maximum flexibility to exercise the authorities granted by the HOLA, the Board has determined to revise the general approach to regulating investment activities of Federal associations. Accordingly, Part 545 now addresses the authority of associations only to limit, interpret or recognize incidental authority. Federal associations may exercise all of the authority granted by the HOLA subject only to limitations contained in the regulations. Because this approach differs from the current treatment, these amendments to Part 545 include a section specifically stating that Federal associations may exercise all statutory authority subject to the limitations in this Part. The Board emphasizes that deletion of sections specifically implementing existing authority does not mean that any authority can no longer be exercised. In addition, to facilitate the transition to the new rules, § 545.3 provides that until December 31, 1983, associations may continue to rely on the regulations as they existed prior to adoption of these amendments.

*Federal Preemption*

The proposal included a new section stating specifically the Board's intent that these regulations preempt state law. The preemptive effect of the Board's



regulations has been amply recognized by the courts; it derives from and is an integral part of the Board's exercise of its authority under Federal law. Although a statement is unnecessary to give these regulations preemptive effect, the Board desires to make clear its views on the preemptive nature of the authority conferred on Federal associations by the HOLA and the Board's regulations.

#### *Election of Classification*

The Board has long taken the position that where a loan or investment meets the requirements of more than one authority, the association could elect to place it in any applicable category. The Board proposed to substitute a general codification of this position to replace specific election provisions contained in the regulations. The proposed section has been revised in light of comments requesting clarification, and has been expanded to include apportioning loans or investments among categories, and moving such items from one category to another. Also, the provision on collateral loans—authorizing associations to make loans secured by assignments of loans which the association could make or purchase—has been incorporated into this section.

One commenter suggested that the regulations should provide that a loan sold "without recourse" will nevertheless be counted toward investment limits if it is sold with an understanding that repurchase will be required in the event of an impairment in the borrower's credit standing. The Board believes no such amendment is necessary because such a loan sale would be treated as a "with recourse" sale for purposes of the regulation.

Another commenter suggested that associations should be given a reasonable period of time to divest assets that exceed percentage-of-assets limitations. This is in fact the present case; examiners and supervisory staff now permit divestiture of loans in violation on a schedule designed to avoid undue losses. The Board believes this case-by-case approach works well, and therefore refrains from inserting a specific time requirement in the regulation.

#### *Liability Powers*

##### *Savings Accounts*

Continuing the process of deregulating the issuance and maintenance of accounts by Federal associations begun by Board Resolution No. 82-193 (47 FR 13776 (1982)), the Board proposed to provide Federal associations with broad authority to structure their account-

related operations. The final regulations modify the proposal by deleting sections that address matters within a Federal association's discretion as an account-issuing institution. The final regulations also include several substantive changes from the proposal which are discussed below. The Board believes that, as adopted, the regulations governing savings accounts will provide Federal associations with the management flexibility necessary to compete for funds subject only to the liquidity, insurance, and rate-control regulations that apply to all insured institutions.

Section 312 of the DIA (12 U.S.C. 1464 (b)(1)(A)-(b)(1)(B)) authorizes Federal associations to offer savings accounts for various periods of time, and demand accounts to the extent permitted by the Act. The proposal would have authorized Federal associations to issue insured accounts as permitted by their charters subject only to the provisions of the Bank System Regulations (12 CFR Part 526), the Insurance Regulations (12 CFR Part 563), and the regulations of the Depository Institutions Deregulation Committee (DIDC) (12 CFR Part 1204). Accordingly, the proposal deleted provisions regarding rates of return and renewal of fixed-term accounts that applied only to Federal associations.

The final regulation adopts the proposal in substance but deletes several provisions included in the proposal that are inconsistent with the general approach to Part 545 outlined above. Provisions concerning premiums, fees, sales commissions, determination date, small accounts, amounts withdrawn between distribution dates, duplicate evidence of accounts, debit cards, travelers' convenience withdrawals, and payments to third parties have been deleted as unnecessary restrictions on the flexibility of associations pursuant to the statute to develop savings instruments. Of course, provisions of Parts 526, 563, and 1204 will continue to apply to accounts issued by Federal associations.

The provisions governing account records in the proposal differed from the existing regulations (§ 545.2) in two respects. The signature card requirement was modified in favor of a more general provision, and the evidence-of-account provision was amended to codify an interpretation which permitted Federal associations to issue accounts in book-entry form. In the final regulations, the requirements relating to evidence of ownership and account forms have been combined and reference the corresponding provisions of the Insurance Regulations. The evidence-of-account provision has been modified to

require that accounts must be evidenced by a written agreement with transactions confirmed by issuance of a receipt.

Two commenters expressed concern that aspects of the regulation did not conform to an association's authority to establish accounts in book-entry form. The Board does not believe that the regulations as adopted restrict the use of book-entry accounts. The evidence-of-account regulation, when applied to an account established in book-entry form by an agent, requires only that the association enter into a written agreement with the agent rather than with each party having a beneficial interest in the account. Similarly, when a party with a beneficial interest in an account established in book-entry form by an agent transfers his interest to another individual, the underlying book-entry account is unaffected. Both commenters suggested that the Board consider at this time making changes in Part 564 of the Insurance Regulations to reflect the use of book-entry accounts and to conform to current industry practices. The Board declines to undertake such a revision without benefit of comments on a proposed regulation.

The current authorization for a Federal association to use an FDIC- or FSLIC-insured institution as a collecting agent is being amended to clarify that an institution may also act as a transfer and paying agent for the association. This will assist Federal associations in obtaining funds on a nationwide basis. The final regulation also amends the provisions governing payment of withdrawal requests by a Charter N association where the association does not pay such requests in full, to apply to all Federal associations. Pursuant to the reduction in the notice of withdrawal requirement contained in Section 312 of the DIA (12 U.S.C. 1464(b)(1)(C)) from thirty days to fourteen days, the Board is adding a provision to conform to the requirements of the statute. The final regulation deletes proposed § 545.1-3(a) which relates to penalties for an early withdrawal from a certificate account and the right of a Federal association to prohibit such withdrawals. The right to impose a penalty or to prohibit an early withdrawal is encompassed in the general authority for associations to set terms and conditions for accounts.

##### *Demand Deposit and NOW Accounts*

The proposal restated the authority of Federal associations contained in section 312 of the DIA to offer demand accounts to persons or organizations that have a business, corporate,

commercial or agricultural loan relationship with the association, or to a commercial, corporate, business or agricultural entity for the sole purpose of effectuating payments thereto by nonbusiness customers. The proposal defined a business, corporate, commercial or agricultural loan to include any loan other than a loan on a home occupied or to be occupied by the borrower, a loan to a natural person for personal, family, or household use, or a participation interest in such loans. A loan relationship was defined as an outstanding loan, a line of credit, or a previous loan and a reasonable expectation of a renewal of a lending relationship based on the usual and customary activities and needs of the borrower. One commenter expressed concern that the language of the proposed regulation does not expressly require the loan relationship to be more than *de minimis*. The Board takes this opportunity to state that it will expect associations to issue and maintain demand accounts only under circumstances that indicate that there is a bona fide loan relationship. The final regulation merely references the statutory authority of Federal associations to issue demand accounts but retains the interpretations of the terms "business, corporate, commercial, or agricultural loan" and "loan relationship." In accordance with the suggestion of one commenter, the Board has determined to include a finance lease as an outstanding loan for purposes of § 545.12(b).

The final regulation omits the authorization in the proposal for Federal associations to issue NOW accounts, since associations may offer NOW accounts pursuant to their authorization to issue savings accounts. The Board's interpretation of the statutory eligibility provisions for NOW accounts, which now extend to the deposit of public funds by a unit of a Federal, State or local government pursuant to section 706 of the DIA, is found in § 526.1(f) in the final rule.

#### *Depositories, Fiscal Agents and Suretyship*

Proposed § 545.1-5 combined an existing regulation regarding public deposits and suretyship with one concerning the authority of Federal associations to act as depositories and fiscal agents of the United States Government. The substance of both regulations was unchanged by the proposal. In response to a comment, § 545.16(c) of the final regulations has been clarified to provide that Board approval is not necessary in order for an association to serve, subject to

regulation of the U.S. Treasury Department, as a depository for Federal taxes, as a Treasury tax and loan depository, or as a depository of public money and fiscal agent of the Government. The proposal specifically requested comments on the authority of Federal associations to act as surety under proposed § 545.1-5(b)(3), particularly in regard to the procedures the Board should follow in reviewing requests to exercise this authority. One commenter suggested that associations be granted general authority to act as surety subject to the right of the Board to deny an association's application within ten days of receipt.

The Board is empowered by 12 U.S.C. 1464(b)(2) to act by regulation or in writing to authorize Federal associations to be surety as defined by the Board. Under the regulation in its proposed and existing form the Board had to approve individual suretyship applications. In view of the Board's experience derived from reviewing such applications and the likelihood that the number of applications will begin to increase, the Board has decided to authorize Federal associations expressly to enter into suretyship agreements, provided such agreements meet conditions developed through the Board's review of individual applications. The Board's primary concern is the protection of the association in the event that it is called upon to discharge its role as surety.

Accordingly, the Board has adopted § 545.103 which will govern the general suretyship activities of Federal associations. An association may act as surety subject to several restrictions. An association may enter into a suretyship agreement only if performance under the agreement would create an obligation authorized for investment by an association. The association's obligation under the suretyship agreement must be treated as a loan to its principal for purposes of Board regulations governing loans to one borrower and loans to affiliated persons. The association must maintain a security interest in qualified assets of its principal. Qualified assets may consist of real estate or marketable securities. If real estate, a qualified person designated by the association's board of directors must submit a signed appraisal showing the value of the property to be at least 110 percent of the association's obligation under the suretyship agreement. In determining compliance with the 110 percent requirement, the association must consider the value of prior mortgages, liens or other encumbrances on the property, except those held by the party for whose protection the suretyship

agreement is made. If marketable securities, the association must provide for establishment and maintenance of the market value of the securities at a level at least equal to 110 percent of the association's obligation. When an association is required to meet its obligation under a suretyship agreement, the amount expended shall be treated as an extension of credit for purposes of percentage-of-assets limitations. Any pledge of assets by the association to secure its obligation must be made subject to the FSLIC right to purchase contained in § 563.8-2.

#### *Funds Transfer*

The proposed regulations included a section affirming the broad authority of a Federal association to transfer both its own funds and those of its customers. One commenter requested that the regulations include specific references to methods by which associations may effectuate transfers of their own funds. While the final regulation does not refer to an association's transfer of its own funds, the Board believes that an association may employ any mechanism or device conforming with applicable laws and established commercial practice with respect to its own funds under its incidental authority.

#### *Net Worth Certificates*

The proposal included new provisions regarding the issuance of stock and net worth certificates. The net worth certificate provision is retained in the final regulation along with an existing regulation concerning the issuance of mutual capital certificates. The issuance of stock, of course, is authorized by the charter of a stock association.

#### *Collateralization of Deposits*

The proposal included the elimination of the current prohibition on collateralization of savings deposits by Federal associations. Collateralization would be permitted provided that the collateral was subject to purchase by the FSLIC, pursuant to § 563.8-2, within thirty days of a notification of an association's default on the obligation, at a price to be set by sale or other means. The FSLIC right to purchase would not extend to liquid assets, as defined in 12 CFR 523.10, or to assets which would be liquid but for their remaining term to maturity. Proposed § 563.8-2 would apply to security given for Eurodollar deposits, borrowing, and savings deposits. Three commenters approved of the elimination of the prohibition on collateralization of savings deposits. One expressed the view that it would improve the ability of

Federal associations to attract deposits from entities acting in a fiduciary capacity. Another commenter supported proposed § 563.8-2 but suggested that the thirty-day period for FSLIC to exercise its right to purchase collateral be reduced to ten business days, based on a concern that the longer period could have an impact on the price an association would receive for collateral it had to sell.

The final regulation governing the authority of Federal associations to borrow and to give security eliminates the prohibition on collateralization of savings deposits and provides express authority for such activities, deleting the existing requirement of authorization by charter or in writing by the Board. The FSLIC right to purchase is adopted as proposed, and will also apply to collateral used by a Federal association to meet its obligation under a suretyship agreement. Upon consideration the Board has concluded that the protection of the insurance fund requires that the FSLIC continue to be permitted to have 30 days to exercise a right to purchase collateral that is not liquid or actively traded in organized markets.

#### *Borrowing From State-Chartered Central Reserve Institutions*

Both the existing and proposed regulations include a section concerning borrowing from a state-chartered central reserve institution, including a state mortgage finance agency. This provision is deleted by the final amendments. The restrictions on borrowing from state mortgage finance agencies are contained in 12 U.S.C. 1464(b)(3), with the exception of proposed § 545.4-1(e), which is a matter which is within the authority of the state mortgage finance agency. Federal associations will continue to be subject to the express provisions of the statute. The Board views borrowing from state-chartered central reserve institutions as an aspect of a Federal association's general power to borrow, contained in 12 U.S.C. 1464(b)(2) and implemented by § 545.20.

#### *Remote Service Units*

The Board did not propose changes in the remote service unit (RSU) regulation, but received two comments concerning this section. One commenter suggested that the definition of an "RSU account" should be expanded to include demand accounts. The Board has adopted this suggestion and has also provided that an RSU may not be used to open a demand account. Another commenter expressed several concerns about the current regulations. The commenter stated that the regulation precluded the use of personal security identifiers

(PSIs) other than a personal identification number. The Board does not regard the regulation as prohibiting the use of other identification techniques. The final regulation does retain the prohibition on the use of a passbook as a PSL. The commenter requested that nonautomated telephone transfer systems be exempted from the requirement that an accountholder not be required to disclose a PSI to another person. The Board notes that this type of transaction is not subject to the RSU provision. The commenter also suggested changes in the provision of security for RSUs. The Board believes that the current regulation provides appropriate guidance and procedures for Federal associations. In response to a comment, the Board has clarified § 545.140(f) by providing that a Federal association may share an RSU controlled by a party not subject to examination by a Federal regulatory agency if that party agrees that the RSU is subject to examination by the Board. The final regulation also deletes the provisions regarding service charges and bonding because the Board believes there is no need to address these matters by regulation.

#### *Passive Trusts*

The proposal included an amendment to § 545.17-1 authorizing Federal associations to act as trustees having no active fiduciary duties, without obtaining Board approval under 12 CFR Part 550, provided that state law permitted other financial institutions to act in such a capacity. The Board regards this authorization to be incident to its power under 12 U.S.C. 1464(n)(1) to grant full trust powers to Federal associations. The Board received three comments supporting this proposal, and adopts the amendment as proposed. In accordance with this amendment, Federal associations in Puerto Rico may act as trustees for IRA-type accounts established under Puerto Rican law.

#### *Issuance of GNMA-guaranteed, Mortgage-Backed Securities*

The proposal included the existing section concerning the authority of Federal associations to issue and sell GNMA-guaranteed mortgage-backed securities. One commenter suggested that the provision be extended to apply to FNMA-guaranteed mortgage-backed securities. The final regulation deletes the existing section, since broad authority for Federal associations to deal in loans and to issue securities includes the issuance and sale of GNMA securities and the marketing of FNMA securities.

#### *Correspondent Services*

The correspondent services regulation was unchanged in the proposal. The Board received one comment suggesting that the regulation authorize associations to receive interest-bearing as well as noninterest-bearing deposits from correspondent institutions. In the final rule this provision has been deleted. The Board regards the HOLA as providing the implied authority for a Federal association to provide to other parties, primarily other depository institutions, services it would be authorized to generate in-house for itself in the course of its regular business. The Board also notes that two aspects of correspondent services have been expressly authorized by the DIA. Federal associations may accept either interest-bearing deposits, which may now be made by other Federal associations pursuant to Section 323 of the DIA (12 U.S.C. 1464(c)(1)(G)), or noninterest-bearing demand deposits pursuant to Section 312 of the DIA (12 U.S.C. 1464(b)(1)(A)). The Board has also deleted the provisions of previously existing § 545.9-2 which expressly permitted maintenance of accounts at institutions subject to state deposit insurance programs in conjunction with a correspondent relationship. This authority is inherent in the authority to maintain correspondent relationships.

#### *Investment Powers*

##### *Real Estate Loans*

Section 322 of the DIA provides that Federal associations may make "[l]oans on the security of liens upon residential or nonresidential real property" subject to a forty percent-of-assets limitation for investments in nonresidential real property. In implementing this provision, the Board proposed to define the terms "residential real estate" and "nonresidential real estate," to revise other definitions pertaining to real estate lending, and to reorganize and consolidate many of the remaining real estate lending regulations. The Board also proposed to retain the existing loan-to-value ratios, notwithstanding their deletion from the statute, for reasons of safety and soundness, but requested comment on whether the ratios were necessary. The Board further requested comment on whether a loan on the security of an interest in a time-share unit should be considered a real estate loan in those instances where state law gives the owner a fee simple interest in the real estate comprising the unit. The proposal included a Board ruling that would allow Federal associations to receive a portion of the

interest on a loan in the form of a share of the income generated by the security property. The proposed ruling would have clarified those situations in which an association would be permitted to participate in the loan with a borrower without acquiring an equity interest in the security property. The proposal further made several other minor changes and generally solicited comment on all aspects of the Board's real estate lending regulations.

#### Definitions

In the final amendments, the Board has adopted the proposed definitions essentially unchanged, and has renumbered several sections to reflect the deletion of other definitions. "Residential real estate" (or "residential real property") is defined substantially the same as in section 5(c)(6)(A) of the HOLA (12 U.S.C. 1464(c)(6)(A)) and includes homes, multi-family dwellings, combinations of either of these and business property, farm residences, combinations of farm residences and commercial farm real estate, or property that will be improved by the construction of such structures. "Nonresidential real estate" (or "nonresidential real property") includes all other real estate.

Residential real estate includes "real estate used for primarily residential purposes other than a home (but which may include homes)," and "combinations of such real estate and business property involving only minor business use." This language includes those types of real estate that were defined in the previously existing regulations (12 CFR 541.16) as "other dwelling units," such as multi-family dwellings, structures (or parts thereof) designed or used as fraternity or sorority houses which include sleeping accommodations for students at a college or university, structures used primarily for living accommodations for students, employees, or staff of a college, university, or hospital, or for a nursing home or convalescent home. In light of the broad definition of residential real estate, the Board believes that the definition of "other dwelling unit" is no longer necessary and for that reason has deleted it from Part 541.

The amendments also revise § 541.3, "Combination of residential real estate and business property involving only minor or incidental business use" to reflect the deletion of the term "other dwelling unit" from the regulations. The substance of this definition has not been changed, but the Board has amended it to state that no more than twenty percent of the total "appraised" value of

the property may be attributable to business use. This change makes clear that for such combinations of real estate the proper measure is the appraised value, rather than some other figure such as the income generated by the property. The amendments also adopt several other minor definitional changes as they had been proposed.

#### Authorization and General Provisions

The authorization for Federal associations to make real estate loans, § 545.32(a), is in substance the same as in the proposal. A Federal association may originate, invest in, sell, purchase, service, or participate in real estate loans subject to the limitations of the HOLA and Part 545. The final amendments expressly include the brokerage and warehousing of loans within the authority to "otherwise deal in" real estate loans in order to clarify that such activities are permissible. The final amendments also incorporate into the general provisions for real estate loans the regulations pertaining to appraisals and initial repayments, formerly 12 CFR 545.8-5(a), 545.8-8 (1982). The substance of these provisions is essentially unchanged and they have been moved in order to consolidate the general requirements that apply to all real estate loans into one section.

In addition, the amendments allow an association to adjust the interest rate, payment, balance, or term to maturity on a real estate loan (other than a home loan secured by borrower-occupied property) to the extent permitted by the loan contract. The Board's most recent amendments to the real estate lending regulations imposed limitations on the adjustments that an association could make on any home loan. 12 CFR 545.6-2(a)(2) (47 FR 36612 (1982)). The final amendments provide that only those home loans that are secured by borrower-occupied property are subject to the regulatory limitations on adjustments which are discussed below. For all other real estate loans, adjustments are a matter to be negotiated and incorporated into the loan contract. The amendments also allow the receipt of interest in the form of a share of the appreciation of the security property or a share of the income generated from the property, as permitted by the new Board ruling at § 555.19.

#### Security Property

The proposal enumerated three instances in which a loan would be considered to be secured by a lien on real estate. In conjunction with this issue the Board asked for comment on

whether it would be appropriate to include within the real estate lending authority loans on the security of time-share units where under state law the borrower has a fee interest in the unit, rather than merely a right to use the property. Previously, loans on a time-share unit were authorized only as consumer loans. Most commenters supported this proposal, but suggested that the loans be allowed to the full value of the unit and all incidental benefits rather than the borrower's *pro rata* share of the market value of the real estate, as had been proposed.

In the final amendments the Board has revised the prior regulation in order to make clear what is required for a loan to be secured by real estate. As adopted, § 545.32(c) provides that a loan will be considered to be secured by real estate if: (1) the security property is real estate under state law, (2) the association's security interest may be enforced as a real estate mortgage or its equivalent under state law, (3) the security property is capable of being separately appraised, (4) the association relies substantially on the real estate as primary security for the loan, and (5) if the security property is a leasehold or another interest for a term of years, it must extend or be subject to extension at the option of the association for at least five years beyond maturity of the loan.

Under the revised regulation, an association may make a real estate loan on the security of a time-share unit if the security property is real estate under state law. This is broader than the proposed rule, which would have required a fee interest. The Board believes that the proposed language was unnecessarily restrictive in excluding property interests other than a fee simple where the interests are real estate and extend for at least five years beyond the maturity of the loan. By requiring that the security property be real estate that is capable of separate appraisal, the Board intends that those rights and benefits that do not constitute real estate interests but are included in the price of a unit are not to be considered part of the security property. To the extent that an association makes a loan, consistent with its applicable loan-to-value ratios, on the basis of a unit's purchase price, the part of the loan balance attributable to non-real estate factors may be made only as a consumer loan. The Board believes that this restriction is necessary because real estate loans, by statute, must be secured by real estate. Thus, any part of a loan that is used to finance any facilities in which the borrower's interest does not

meet the requirements of § 545.32(c) may not be included as part of the real estate loan.

#### Loan-to-Value Ratios

The Board had proposed to retain loan-to-value-ratio requirements for all real estate loans but also requested comment on whether the ratios are necessary. Most commenters favored the elimination of regulatory loan-to-value requirements so that Federal associations could make real estate loans as they deem prudent. After considering the issue, the Board has determined that loan-to-value ratios are an important part of the underwriting process and that they should be retained in some form. The Board also believes, however, that associations are capable of establishing their own underwriting standards, including their loan-to-value ratios. Accordingly, the Board has deleted the regulatory loan-to-value ratios for loans on the security of real estate. In lieu of the former requirements, the Board is requiring associations to establish loan-to-value ratios for real estate loans, subject to certain conditions.

The final amendments provide that at the time of origination a real estate loan may not exceed 100 percent of the appraised value of the security property. Prior to the expiration of the transition period for these amendments, an association's board of directors must establish loan-to-value ratios for all types of real estate loans that it makes, and the resolution adopting the ratios must be included in the minutes of its meeting. An association may establish the ratios at any percent of the initial appraised value of the security property. Home loans made on the combined security of real estate and savings accounts may be made in excess of the ratios adopted by the association if the excess is secured by the funds in the account and the funds belong to the borrower, his family members, or his employer. The substance of this exception derives from the former provision on pledged-account loans, 12 CFR 545.6-2(a)(5) (amended 47 FR 36612 (1982)), which has been deleted as unnecessary in light of these amendments. Loans originated in excess of 90 percent of the property's value must comply with certain requirements.

For home loans originated in excess of ninety percent of the initial appraised value, an association must obtain private mortgage insurance for that part of the loan balance that exceeds eighty percent of the property's value. In addition, for all other loans on the security of real estate that are originated in excess of ninety percent of value, the

board of directors must review and approve each loan prior to its origination and the board's approval must be included in the minutes of its meeting. For purposes of determining compliance with the loan-to-value ratios, the amendments provide that "value" includes only the current appraised value of the real estate securing the loan. This effectively excludes other benefits that may constitute part of the market value of the real estate, such as in the case of a time-share unit. The Board believes that this limitation is necessary in order for the loan to be considered secured by real estate, which is required by 12 U.S.C. 1464(c)(1)(B).

The Board's intent in amending the loan-to-value regulations is to provide associations with more flexibility in establishing their underwriting standards, to the extent that they are consistent with safe and sound lending practices. The Board believes that the prior approval of each real estate loan (other than a home loan) originated in excess of ninety percent, will enable the directors to evaluate the prospective loan, thereby ensuring that the security property and the income generated by it will be sufficient to protect the association's financial interest. The requirement for private mortgage insurance on home loans allows associations to make loans with high loan-to-value ratios, yet also provides protection against the increased risk of default that is associated with such loans. Statistically, home loans for which a borrower has little or no equity in the security property have a greater incidence of default than do loans for which the borrower has some equity at stake.

The final amendments further provide that the loan-to-value ratios established under these amendments may not exceed 100 percent of the value of the security property. If an association originates a loan secured by real estate in excess of 100 percent of the property's value, the excess portion must be made under another source of an association's investment authority, such as that conferred by 12 U.S.C. 1464(c)(1)(R) to make unsecured loans. Such a loan would, of course, also require prior approval of the association's directors.

Subsequent to origination, the loan-to-value ratio on a home loan may increase above 100 percent of the appraised value of the security property if the increase is due to an adjustment authorized by paragraph (c) or (e) of § 545.33. The loan-to-value ratio may not exceed 125 percent as a result of such an adjustment unless it does so pursuant to

paragraph (e)(2)(i) of § 545.33, or unless the loan contract provides for payment adjustments at least once every five years, beginning not later than the tenth year, that are sufficient to amortize the loan over the remaining term. This is unchanged from the previous regulations. For all other loans on the security of real estate, the loan-to-value ratio may at no time exceed 100 percent as a consequence of any adjustments.

#### Home Loans

*General.* Section 545.33 of the regulations defines a home loan as one made on the security of homes, including a unit of a condominium or cooperative, combination of homes and business property, farm residences, and combinations of farm residences and commercial farm real estate, and states the applicable limitations. The existing maximum term of 40 years for a home loan has been retained, as has the requirement for semi-annual payments of interest, except as expressly authorized. Home loans must be repaid in semi-annual installments, except for those loans that are nonamortized (*i.e.*, interest-only loans) or that are line-of-credit loans. Nonamortized loans, by their nature, require no repayments of principal until maturity and the Board has expressly excluded them in order to clarify its position with respect to questions that have arisen about repayment of principal on such home loans.

In response to comments on the matter of repayments of principal, the Board is amending the regulations pertaining to the loans on the security of farm residences and combinations of farm residences and commercial farm real estate. Borrowers that obtain such loans often receive their income on an annual basis concurrently with their crop sales. The Board believes that associations providing services to this type of borrower should have the flexibility to structure the loan repayments to meet the ability of these borrowers to pay. Accordingly, § 545.33 expressly authorizes home loans to such borrowers to be repaid in at least annual installments.

Section 545.33 of the final amendments states that a home loan may be fully amortized (principal payments made over the term of the loan), partially amortized (balloon loan), nonamortized (interest-only), or a line-of-credit loan (either open-end or closed-end). In addition, the loan contract may provide for negative amortization of a portion of the interest, or of all interest on a loan such as a reverse annuity mortgage. Th

substance of these provisions is unchanged from the Board's prior regulations. As provided in § 545.33(b)(3), an association may also receive part of the consideration for making a home loan in the form of a share of the property's appreciation since origination or as allowed by the Board ruling at § 555.19.

**Loan-to-Value Ratios.** Section 545.33(d) sets forth the loan-to-value provisions that are applicable to home loans. The regulation refers to § 545.32 and states that at origination the ratio may not exceed that adopted by the association pursuant to § 545.32. During the loan term the ratio may increase above the limits if the increase is due to an adjustment permitted by § 545.33 (c) or (e). The ratio may not increase above 125 percent of the original value of the security property as a result of such adjustments, unless the increase is authorized by paragraph (e)(2)(i) of this section or unless the contract provides for subsequent adjustments that will be sufficient to amortize the balance over the remaining term. These provisions have been retained unchanged in substance from the prior regulations. The final amendments have also retained unchanged the provision authorizing associations to refinance a home loan if the loan balance exceeds otherwise applicable loan-to-value ratios due to adjustments made to the loan.

**Adjustments.** In August 1982, the Board amended its real estate lending regulations by allowing adjustments to the terms of home loans subject to certain conditions. 12 CFR 545.6-2(a)(2) (47 FR 36612 (1982)). Although these regulations have been in effect since August 16, 1982, associations have had the option of using the regulations in effect prior to that date during the transition period, which was extended in January 1983 to the later of June 30, 1983 or the adoption of these amendments. Since August, the Board has had the opportunity to review these provisions and now believes that it is not necessary to apply these restrictions to loans made to developers and investors simply because the security property is a home. The adjustment limitations are most necessary when the loan is secured by the borrower's residence and, accordingly, the final amendments provide that only for such home loans must the adjustments to the interest rate, payment, balance, or term be made in compliance with the provisions of § 545.33(e). As before, an association may contractually impose further limits on its right to make

adjustments and may decrease the interest rate at any time.

The Board has retained the requirement that interest rate adjustments must correspond directly to the movement of an interest rate index or of an index that measures the rate of inflation or the rate of change in consumer disposable income. The final amendments also specify that the inflation or consumer income index may be either a regional or national index, in order to be consistent with the similar provision in paragraph (e)(2) of the same section. In addition, the rate may be increased pursuant to a formula or schedule in the loan contract that specifies the amount of the increase and the time at which it may be made. The question has arisen as to whether an association may make a loan on which the interest rate may be fixed for an initial period (typically below market rates) and, following that period, adjusted periodically to correspond to the movement of an index. In this case, the amount of the increase set forth in the loan contract is the difference between the initial rate and the index value (or some other value determined with reference to the index) at the end of the initial period. In substance, such a loan is nothing more than a combination of a formula or schedule of adjustments with adjustments that correspond to the movement of an index. Accordingly, an association may make such a loan if each type of adjustment complies with the applicable regulatory restrictions.

Under the former regulations for adjustable mortgage loans, 12 CFR 545.6-4(a)(1982), an association was required to adjust the interest rate by calculating the difference between the initial index value at origination and the index value at the adjustment date, and adding or subtracting that difference to the initial loan interest rate. An association may continue to use this method of calculation if it desires to do so for any reason, such as for facilitating sale in the secondary market. The amendments, however, require only that the change in the loan interest rate correspond directly to the movement of the index.

The remaining limitations on adjustments to home loans are in most respects unchanged from the proposal and the prior regulations. Section 545.33(e)(2) has been amended by including a provision pertaining to line-of-credit loans. Under the amendments of August 1982, a Federal association may make line-of-credit loans secured by a lien on a home. Adjustments to the payment or balance of a home loan that did not reflect an interest rate

adjustment, however, could only be made in two specified instances. Furthermore, an association must give notice of any adjustments to the rate, payments, balance, or term. These provisions have hindered the ability of Federal associations to make line-of-credit loans on the security of a home.

As amended, the final regulations provide that adjustments to the payment or the balance that do not reflect an interest rate adjustment also may be made if the adjustments reflect an advance taken by a borrower under the line of credit. Where a borrower draws funds under an open-end line-of-credit loan secured by a home, the outstanding balance and the payments needed to repay the loan within the amortization period must necessarily change correspondingly. The amendments simply allow such adjustments in order to facilitate these types of loans.

In this context, the Board is also amending § 545.33(e)(4), regarding notice of adjustments, to provide that notice of an adjustment to the payments or balance need not be given if the adjustment reflects an advance taken by a borrower under an open-end line-of-credit loan. Similarly, notice of a change in the interest rate and any resulting changes in the payment need not be given on such a line-of-credit loan. Such loans would, of course, continue to be subject to Truth in Lending regulations, 12 CFR 226.1-226.29 (1982) and the Board's disclosure requirements.

The final rule also relocates two provisions that had formerly been included within the section limiting adjustments on home loans. Under § 545.32(b)(3) of the final amendments, the Board allows associations to make shared appreciation loans and to take as part of their consideration on any real estate loan a share of the income from the property, as permitted by the Board ruling at § 555.19. Because this provision contains no limitations on an association's authority, as do the other provisions pertaining to home loans, the Board believes that it should be incorporated as part of the general provisions in § 545.32 which apply to all real estate loans. The final amendments have also included the authorization for deferral and capitalization of interest on a home loan with the other general provisions regarding amortization on a home loan. This provision applies to all home loans and thus should no longer be included with limitations on adjustments that apply only to loans secured by borrower-occupied property.

**Disclosure.** In August 1982, the Board revised its real estate lending regulations and made the disclosure

provisions applicable to all home loans. 12 CFR 545.6-2(a)(7) (47 FR 36612 (1982)). Prior to that time the disclosure requirements for home loans applied only to specific types of adjustable mortgage instruments. A number of commenters have suggested that these disclosures mandated by the August amendments are unnecessary for standard fixed-rate mortgages and that they are unworkable in practice. Since the most recent amendments, the Board has had the opportunity to assess this issue and has decided to revise further the disclosure requirements.

Under the final amendments, disclosures must be given only for home loans that are secured by property occupied or to be occupied by the borrower. In addition, the amendments provide that for a standard fixed-rate loan an association need only disclose information about loan provisions pertaining to a due-on-sale clause, prepayment penalty, late charge, and escrow account. The remaining disclosure requirements, which are substantially the same as in the August amendments, apply only to adjustable home loans.

The Board believes that the full disclosures formerly required for all home loans are not necessary for standard fixed-rate home loans. The general public is more familiar with this type of instrument and is more likely to understand the manner in which it works. Furthermore, much of the information required to be disclosed about fixed-rate loans under the prior regulations is also included in the Truth in Lending disclosures that Federal associations provide in compliance with Regulation Z (12 CFR 226.1-226.29 (1982)). The Board believes that as a result of these changes, applicants most in need of the protection afforded by mandatory disclosure—those whose homes are to be used as security—will receive it, while associations will be able to establish their own disclosure practices with regard to other applicants, such as investors and developers. This will also ease the administrative burden on associations somewhat by reducing the number of applicants that must receive the disclosures.

**All Home Loans Secured by Borrower-Occupied Property.** Under the final amendments there are two categories of information that must be disclosed: that which is required for all home loans secured by borrower-occupied property, and that additional information which is required for adjustable loans (*i.e.*, any loan other than one that is fully amortizing and on

which the interest rate, balance, term, and the amount of the payments are fixed). Under the first category an association must disclose the existence of a due-on-sale clause in the loan contract and the rights of the association under the clause. In a separate resolution, the Board is also adopting a new Part 591, which implements section 341 of the DIA and governs the use of a due-on-sale clause (See Res. No. 83-242; April 26, 1983).

Late charges and prepayment penalties also are in the first category of information. The Board has amended its regulations to allow an association, subject to certain conditions, to impose such a charge or penalty as provided in the loan contract. (See § 545.34 of these amendments). The Board believes that in the absence of substantive limits on the authority to impose these charges an association should disclose to the loan applicants the substance of the contractual provisions authorizing the charges or penalties. Such disclosure must include the amount of the charge or penalty or, if the amount may not be determined at the time of disclosure, the manner in which the charge is to be calculated.

If the penalty or charge may vary—*i.e.*, is to be calculated on the basis of the movement of an index—an association must also disclose a reasonable estimate of the minimum and maximum amounts that may be assessed for a loan of the same type and comparable initial principal balance as that of the borrower. By this the Board intends that a prospective borrower should have an understanding of the possible magnitude of the penalty that may be incurred on prepayment of the loan. If there is no limit in the loan contract as to the maximum penalty that may be assessed, the disclosure must state that there is no limit and that the penalty may increase to any degree allowed by the index. The Board is aware that where a loan contract includes an interest-rate-sensitive prepayment penalty it is not possible beforehand to state precisely the amount of the penalty that may be assessed. Accordingly, the regulation permits the use of reasonable estimates and an association may comply with this requirement by providing an example of the size of the increases that may occur under the penalty provision for a comparable loan.

The final information that must be disclosed under this first category concerns escrow payments. The former provisions, 12 CFR 545.8-3(b) (47 FR 36612 (1982)), specified in detail the limitations applicable to such accounts,

and largely restated the provisions of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601-2617) ("RESPA"). The Board proposed to simplify this regulation by only referencing the requirements of RESPA. In the final amendments the Board has decided to remove the substantive provisions pertaining to escrow accounts, allowing such matters to be governed by the loan contract, and in their place require a more detailed disclosure about the accounts. Of course, associations will remain subject to the requirements of RESPA in addition to the Board's regulations and, if consistent with that statute, may require escrow accounts to the extent agreed to in the loan contract.

If the loan contract requires escrow accounts, the association must disclose this fact. It must also disclose the purpose served by the accounts (*i.e.*, what the funds are used for), how the amount of the escrow payment is determined, and the rights of the association in the event that the borrower fails to make the escrow payments (*i.e.*, the right to deduct the amounts from the monthly payment). The Board believes that the provision of this information will adequately apprise the applicant of the amount and types of payments that must be held in escrow. In light of this disclosure and the provisions of RESPA, the Board believes that the existing provisions on escrow accounts are no longer necessary and for that reason has deleted them.

**Adjustable Home Loans.** The second category of information that must be disclosed applies only to home loans on the security of borrower-occupied property that are adjustable in some way. The amendments exclude from this requirement those loans that are fully amortizing, and on which the interest rate, balance, payments, and term are fixed at origination. The information required to be disclosed under this paragraph is substantially the same as under the August 1982 regulations. The Board has made some amendments, however, to clarify further the disclosure requirements and to make them consistent with the remaining disclosure provisions.

Under the disclosure regulations adopted in August 1982, an association was required to disclose a "description of all contractual contingencies under which the loan may become due or which may result in a forced sale of the home." This language caused some uncertainty about exactly what information must be disclosed. As a result, there has been a lack of uniformity in the types of information

being received by prospective borrowers. The final amendments clarify this language by excluding from this requirement the standard default provisions that arise "from the borrower's breach or nonperformance of an obligation under the loan contract or mortgage." The Board believes that compliance with this provision will not be unduly burdensome because most mortgage instruments contain relatively few such provisions. For example, this paragraph would require disclosure of provisions in a contract for a reverse annuity mortgage under which the outstanding loan principal may become due and payable as a result of the borrower's death, upon maturity of the loan, or upon a failure to maintain the security property.

The prior regulations also required disclosure of how an association "establishes an amortization schedule for the loan". In attempting to comply with this requirement, some associations have provided borrowers with such information as a mathematical formula according to which the loan amortizes. This clearly conflicts with the general requirement that the information must be in plain language and must convey an understanding of how the loan provision operates. To clarify this matter the Board has amended the wording of this provision. Thus, an association must disclose how the amount of the payment relates to, and is determined by, the initial balance, the interest rate, and the term to maturity. The Board intends that the concept of amortization, not the mathematics of it, be disclosed so that the borrower will understand generally that the monthly payment depends on the other factors. To the extent that adjustments to any of the factors affects the amortization of the loan, that effect should also be explained. The provision requiring disclosure of the proportion of each payment that is credited to interest has been deleted from the second category of information because the requirement pertains generally to all types of loans, not just adjustable loans.

**Timing.** Under the August 1982 amendments, the disclosures were required to be given "[p]rior to accepting an application for a loan." Because this language has proven susceptible to varying interpretations, the final amendments clarify the time at which disclosures must be given. The disclosures must now be given within three business days after receipt of a written application. By adopting this time frame, the Board intends that borrowers will receive adequate information about their loans before becoming obligated on the loan contract.

In addition, this time frame will make compliance with the disclosure requirements less burdensome because associations will be able to provide the information within the same maximum time limit, three days, as is required for most mortgage loans under the Truth in Lending regulations, 12 CFR 226.1-226.29 (1982), to which associations are also subject. The Board does not intend to require unnecessary duplication of disclosure material. Accordingly, if information given in compliance with some other authority conveys the information required by the Board, it may be considered as part of the Board's disclosure if given within the required time frame.

One issue raised in the comments was whether purchased loans must conform with the Board's disclosure requirements. Purchased loans may be originated by lenders not subject to disclosure requirements or subject to different disclosure requirements. It has long been the view of the Board that a Federal association may purchase only those loans that it may make itself. However, in order that the Board's disclosure requirements do not hinder an association's ability to participate in the secondary market, the Board has decided to permit an association to purchase home loans without regard to compliance with the Board's disclosure requirements for loan originations in certain circumstances.

The final amendments provide that the disclosures must be provided for loans originated by Federal associations, for loans purchased from an affiliated entity, and for loans purchased under a business arrangement to purchase loans not yet originated. The Board believes that this provision will allow associations to participate in legitimate secondary market transactions without creating the risk that they will circumvent the disclosure requirements by purchasing their loans from entities not subject to the Board's regulations.

As noted in § 545.3, the home lending provisions are subject to the transition period stated in § 545.33(i). The Board is establishing this separate transition period, which closes contemporaneously with the period stated in § 545.3, in order to prevent any confusion that may arise from the overlap of a transition period for the most recent amendments to the home loan provisions.

Effective August 16, 1982, the Board substantially amended its home lending regulations (12 CFR 545.6-2(a) (47 FR 36612)), and provided that between that date and December 31, 1982 Federal associations could make home loans

pursuant to either the August amendments or the home lending regulations as constituted prior to that date. (12 CFR 545.6-2(a), 545.6-4, 545.6-4a, 545.6-b (1982)). The Board subsequently extended this transition period to the later of June 30, 1982, or final Board action on these amendments. Board Resolution No. 83-42 (48 FR 3584 (1983)).

These amendments become effective on May 26, 1983. Until that date associations may, or may commit to, make, purchase, participate, or otherwise deal in home loans pursuant to either the regulations as they were constituted prior to August 16, 1982 (12 CFR 545.6-2(a), 545.6-4, 545.6-4a, 545.6-4b (1982)) or the regulations as amended effective August 16, 1982 (12 CFR 545.6-2(a) (47 FR 36612)). As of May 26, 1983, and until December 31, 1983, an association may, or may commit to, make, purchase, participate, or otherwise deal in home loans pursuant to either the regulations as constituted prior to August 16, 1982. (12 CFR 545.6-2(a), 545.6-4, 545.6-4a 545.6-4b (1982)), or these amendments. (12 CFR 545.33) The home lending regulations that became effective on August 16, 1982 (12 CFR 545.6-2(a) (47 FR 36612)) have been subsumed into these amendments and the authority to make home loans pursuant to the August amendments shall cease as of May 26, 1983.

#### *General Provisions for Loans Secured by Owner-Occupied Home*

In the final amendments the Board has adopted a new § 545.34, "Limitations for home loans secured by borrower-occupied property," which concerns due-on-sale clauses, late charges, loan payments, and prepayment penalties for such loans. The substance of these provisions had formerly been part of the proposed § 545.6-7, which also included provisions regarding initial fees and charges, loan contract provisions, escrow accounts, and appraisal. As part of its efforts at deregulation, the Board has deleted a number of these provisions as being unnecessary, and has moved others to more appropriate sections of the regulations.

The Board has deleted from the proposed § 545.6-7 paragraph (a), pertaining to initial fees and charges, parts of paragraph (b), pertaining to loan contract provisions, escrow accounts, late charges, and loan payments. In the final amendments the Board has replaced much of the substantive provisions on escrow accounts, late charges, and prepayment penalties with expanded disclosure requirements. (See



§ 545.33(f) of these amendments). As explained above, the Board believes that the increased disclosure obviates the need for most of the substantive limitations in the prior regulations. The Board has, however, retained some of the limitations on late charges and prepayment penalties, and, in a separate resolution, has adopted a new Part 591, which pertains to due-on-sale clauses (See Res. No. 83-242; April 26, 1983).

In essence, an association may include a provision in the loan contract imposing such a charge or penalty as a matter of negotiation with the borrower, provided it complies with certain requirements. For late charges the limitations are in substance unchanged from the previous regulations, with the exception that the association must comply with the disclosure requirements for borrower-occupied home loans.

With respect to prepayment penalties, an association may impose a penalty if the loan contract provides for one and if the provision is disclosed pursuant to § 545.33(f). If the interest rate on a home loan may be adjusted, an association may not impose a prepayment penalty within ninety days of notice of an adjustment. The Board believes that if an association may adjust the interest rate and payments on a home loan to keep pace with market rates of interest, the borrower should have a limited period following notice of the adjustment within which to prepay without penalty. On a traditional fixed rate mortgage instrument such a grace period would not be necessary, though disclosure of the penalty provision would be required.

The final amendments also provide that an association may include a due-on-sale clause in its mortgage instruments. Section 341 of the DIA and the new Part 591, concerning preemption of state due-on-sale prohibitions, are also referenced. This reiterates the Board's long-standing position on this issue.

#### *Multi-Family Dwellings and Nonresidential Real Estate*

The DIA deleted the statutory requirement that loans on the security of nonresidential real estate must be secured by a first lien, and allowed investment in such property to forty percent of an association's assets. The Board implemented these changes on an interim basis and incorporated them into the proposal. In the proposal the provisions pertaining to multi-family dwellings and nonresidential real estate loans were nearly identical, with the exception that construction loans for the former property were repayable within six years, and for the latter within five

years. Because these types of loans are so similar, the Board has decided to consolidate the prior provisions into one section. Accordingly, the loan-to-value-ratio requirements for each of these types of loans may not exceed the limits established by the association's directors. If the loan exceeds ninety percent, however, it must also be approved by the directors. The loan term may not exceed thirty years, except that nonamortized loans (*i.e.*, interest-only loans) must be repaid within five years.

The final amendments have also changed from five years to six years the time within which construction loans on nonresidential real estate must be repayable, making the period the same as for multi-family dwelling construction loans. The amended regulation requires semi-annual payment of interest, except to the extent that the loan contract provides for negative amortization. The ratio of the loan balance to the initial appraised value of the property, however, may not exceed 100 percent as a result of any negative amortization. The provisions of § 545.32 also apply to all loans made under this section.

#### *Loans To Acquire or Develop Real Estate*

The Board proposed to consolidate into one provision the investment limitations pertaining to loans for the acquisition on development of real estate, loans on the security of building lots and sites, and loans for the construction or rehabilitation of real estate. Previously, most of these provisions had applied only to loans on the security of residential real estate.

In the final amendments these provisions apply to all loans on the security of real estate. In addition, the final amendments include a statement that the term "building lots and site" may include a lot on which a manufactured home will be located. The prior regulations were unclear about whether associations could make such loans secured only by the land on which a manufactured home was to be located. The amendments clarify this by allowing associations to make loans on the security of a manufactured home site to the same extent that they may make loans on the security of lots or sites to be used for the construction of homes or other structures. Any such loan must comply with the loan-to-value limitations adopted by the association and the maximum loan terms (15 years for lots on which the borrower will have his principal residence and six years for other lots), that are applicable to loans on lots and sites generally.

With one change, the Board has adopted that part of the proposal that pertained to the maximum permissible loan terms for construction and rehabilitation loans, loans (other than for an individual residence) on the security of lots and sites, loans to finance the development of real estate, and combination loans. The amendments have deleted the provisions allowing extensions of the loan term for these loans, and have increased the length of the maximum terms by the amount of the extension formerly permitted for the respective types of loans. In order to provide parity for nonresidential real estate loans and multi-family dwelling loans, the Board has increased the maximum term for construction and rehabilitation loans on the security of nonresidential real estate from five to six years, as is permitted for loans for the construction or rehabilitation of multi-family dwellings.

#### *Combination Loans*

The Board had proposed to simplify the method required to be used in amortizing the outstanding principal balance by requiring calculations to be made on a straight-line basis, rather than at a rate of 1½ percent. The final amendments adopt this part of the proposal unchanged.

The proposal also would have required that the proceeds of any combination loan be repaid at the end of the third year following initial disbursement if the development or construction to be financed with the proceeds had not commenced by that time. The Board's intent in proposing this provision was to prevent associations from using their authority to make combination loans as a means of making loans for the acquisition of land with terms that would exceed the three years permitted for such loans. The Board has clarified this provision in the final amendments. It provides that for a combination loan that includes the acquisition of land, the loan contract must provide that any development or construction that is to be funded by the loan must commence no later than the end of the third year. If no development or construction is intended within this time, the loan is essentially equivalent to one for the acquisition of unimproved land and should be subject to the limitations for that type of loan.

The proposed amendments would have required repayment within eleven years of combination loans for construction, inclusive of acquisition and/or development of land. The substance of the proposal was unchanged from the existing regulations.

but the Board has clarified the language somewhat to indicate that where the loan pertains to a single-family dwelling that is to be used as the borrower's principal place of residence, the maximum term may be forty years, which is the maximum term permitted for home loans, plus the period allowed by this section.

#### *Leeway Authority*

The proposed amendments made no substantive changes to an association's leeway authority to invest in nonconforming loans. The final amendments have deleted this provision from the Board's regulations. The Board believes that the prior regulatory language, which in large part simply restated the provisions of 12 U.S.C. 1464(c)(3)(C), is unnecessary and that associations desiring to make such loans may simply refer to the statute, which was amended by the DIA by deleting section 1464(c)(3)(D). The Board has also included within the disclosure requirements a statement that an association making a home loan secured by borrower-occupied property must also comply with the applicable disclosure provisions.

#### *Insured and Guaranteed Loans; Home Improvement Loans*

In the proposal, the various regulatory provisions pertaining to investment in insured and guaranteed loans were consolidated into one section without substantive changes. In the final amendments the Board has condensed these provisions considerably in order to simplify them. Under § 545.38 an association may, without regard to any other limitations in Part 545, invest in any loan on the security of residential real estate if the loan is insured or guaranteed by an agency or instrumentality of the Federal government, or if it is insured or guaranteed by a state where either the full faith and credit of the state supports the insurance or guarantee, or the state program is approved by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association. The Board believes that this amendment serves the same purpose as the prior provisions and is more easily understandable.

The limitations on investment in loans guaranteed under the Farmers Home Administration (FmHA) Rural Housing Program are in substance unchanged from the prior regulations, though the final amendments delete the record-keeping requirement as being redundant. In addition, the provision authorizing investment in loans on the security of

nonresidential real estate have been retained with no substantive changes.

With respect to loans guaranteed under the Foreign Assistance Act of 1961, the final amendments are unchanged in substance from the previous regulations, but have been condensed. The Board has deleted from the regulation the limitation on investment to one percent of assets. This investment restriction is stated in the statute and the Board believes that it need not be repeated in the regulations. Similarly, for home improvement loans the Board has simplified the regulation, 12 CFR 545.42, by referring to the statutory authority, 12 U.S.C. 1464(c)(1)(J), rather than repeating its provisions. The Board's limitations on the authority to make these loans have been retained without change.

The final amendments adopt the proposed regulation for loans on low-rent housing, 12 CFR 545.40, which is essentially the same as the proposal, with one minor change. The proposal had provided that no loan under this section may be made in excess of ninety percent of the appraised value of the security property. The final amendments change this by stating that no loan may exceed the loan-to-value ratios established by the association's directors.

With respect to community development loans and investments, and loans to and investments in state housing corporations, the final amendments have not changed the substance of the prior regulations. Each of these regulations has been condensed somewhat and refers to the statutory investment authority, rather than repeat it. The former provision pertaining to insured loans for title purchase has been deleted from the regulations in its entirety, because it simply repeated the provisions of 12 U.S.C. 1464(c)(1)(K).

#### *Board Ruling*

As part of the revisions to its real estate lending regulations, the Board proposed to adopt a new ruling that would clarify the extent to which a Federal association may participate with a borrower in the income generated by security property. As proposed, an association would be permitted to receive a share of the income from the security property if, in substance, it constituted no more than a portion of the interest received by the association in return for the use of its money. Most commenters favored such a ruling and some urged the Board to allow fuller participation (*i.e.*, out-right ownership of the security property or participation as a joint venturer) with the borrower. As noted in the proposal, Federal

associations lack statutory authority to acquire equity interests in real estate except in certain limited circumstances. For that reason the Board proposed, and is now adopting in final form, the limitation that any such participation must in substance constitute a part of the interest on the loan.

In the final amendment, the Board has adopted the substance of the proposal, with some additions. An association may receive a share of the income from the property securing a real estate loan, regardless of the method of calculating the share, if the income "in substance constitutes no more than a part of the compensation received for the use of the association's funds." The Board considered specifying maximum percentages of interest that may be received in this manner, but believes that at this time it is best to require only that a "substantial" amount of the total interest received be calculated periodically as a percentage of the outstanding balance. The Board intends that interest received under this section should be considered as an addition or supplement to the periodic interest and should constitute no more than a small part of the total interest. The Board does not intend that associations use this authority as a basis of calculating all, or a substantial part, of the interest received on a given loan. If, at a later time, it becomes apparent that specific limitations are necessary the Board will reconsider the issue.

In light of the new authority to make commercial loans, the Board is incorporating additional provisions into the ruling that make it applicable to loans other than those secured by real estate. Thus, the final amendments provide that an association may receive interest calculated by reference to the income of a corporate borrower or some other measure of the venture's success. The Board wishes to emphasize that, as a general matter, Federal associations lack the authority to acquire the stock of a corporate borrower. Thus, they may not receive such shares as a form of interest under this section. It would be permissible, however, to use the market value of the stock as a point of reference or as a measure of the success of the project in calculating a share of the borrower's income to be received as interest. Additionally, the Board believes that an association could receive and sell marketable contract rights (including stock warrants) consistent with this authority. An association could not, due to the absence of statutory authority to own stock, exercise such warrants or any

other contractual rights that it could not otherwise exercise.

#### *Manufactured Home Financing*

In the proposal, the Board requested comment on two significant changes to the existing regulations on manufactured home financing (12 CFR 545.7-6 (1982), as amended at 47 FR 10787, 36620 (1982)) designed to enhance the ability of Federal associations to invest in manufactured home chattel paper.

One proposed change was the deletion of the requirement currently found in § 545.7-6(e)(2) that a Federal association may invest in conventional retail manufactured home chattel paper only if the manufactured home is to be maintained as a residence of the owner (or beneficial owner) or the owner's relative. The proposal stated the Board's belief that owner occupancy does not necessarily provide significant enhancement of the security afforded by manufactured home collateral. Some commenters noted that the proposed change would relieve a present competitive disadvantage of manufactured housing in the rental markets. Other commenters supported the proposal because it would enhance the success of manufactured housing pass-through securities by eliminating a restriction on the make-up of underlying loan pools. After considering these comments, the Board believes elimination of the owner-occupancy requirement will foster the availability of alternative forms of housing, will promote the Board's policy of deregulation without significantly increasing risks to Federal associations, and will be consistent with the broad statutory authority for manufactured home financing in section 5(c)(1)(J) of the HOLA. The change is therefore adopted as proposed.

The second proposed change related to current § 545.7-6, which provides that a Federal association may invest in manufactured home chattel paper secured by property located outside the association's normal lending territory only if the seller of the paper retains a 25 percent interest in each document evidencing a loan secured by the paper. The Board noted that this requirement effectively prevents Federal associations from investing in secondary market offerings of pass-through securities based on manufactured home loans, and proposed either to delete the requirement entirely or to impose substitute or alternate requirements relating to primary credit insurance, pool insurance (for pass-through and similar securities), investment-grade rating of secondary market securities, or

any combination of these criteria. Commenters who addressed this proposal overwhelmingly supported elimination of the 25 percent retention requirement, although there was little agreement regarding whether substitute criteria should be adopted. Commenters disagreed on whether the Board should adopt all three criteria (primary credit insurance, pool insurance, and investment ratings), adopt only one or two of the criteria, or permit associations to choose which of the three criteria to satisfy in the case of particular chattel paper. From these comments the Board has determined that primary credit insurance might in some cases prove unduly expensive, and that safeguards identical or comparable to those proposed will be found in secondary market securities in the absence of regulatory requirements. In light of these considerations, the Board has decided to eliminate the 25 percent retention requirement and adopt no substitute requirements. The Board believes deregulation is most appropriate in cases where, as here, there is evidence that adequate safeguards will arise as the result of market discipline.

Two commenters suggested that in connection with elimination of the 25 percent retention requirement, the Board should make other changes to its manufactured home financing regulation to treat manufactured home loans more like loans on site-built homes. These suggestions included a higher, 95 percent loan-to-value ratio with a primary credit insurance requirement corresponding to that in the residential real estate regulations, and an elimination of the maximum twenty-year loan term requirement. Without addressing the desirability of these suggestions, the Board declines to adopt them at this time, believing that such major changes would more appropriately be considered at a later date after an opportunity for additional public comment.

No comment was received on the Board's proposal to make a technical change in the language of the existing regulation to clarify that the ninety percent loan-to-value ratio applies to new homes; accordingly, the change is adopted as proposed. In addition, the cross-reference in paragraph (e)(2)(ii) of the proposed regulation to the residential real estate lending regulations has been corrected so that it has the same substantive effect as the cross-reference in the current regulation.

#### *Letters of Credit*

Although not conferred expressly by statute, the authority for Federal associations to issue letters of credit is

implicit in at least two provisions of the Act and also flows from one preexisting statutory provision. Within the DIA one source of authority is section 325, which authorizes commercial lending activities for Federal associations. As discussed under "Commercial Loans" below, Congress intended to give Federal associations competitive parity (subject to percentage-of-assets limitations) with national banks with respect to the types of credit services they may provide to business customers. That national banks may issue commercial and standby letters of credit as an activity incidental to commercial lending is well established. See *Border National Bank v. American National Bank*, 282 F. 73 (5th Cir. 1922). This same authority was therefore conferred on Federal associations by section 325. Another source of authority is the commercial real estate lending authority broadened by section 322 of the DIA. Implicit in the authority to make a real-estate-secured loan for commercial purposes is the authority to commit to extend such credit in the form of a letter of credit, and to provide standby letters of credit that facilitate the project being financed.

A third source of authority for letters of credit predates the DIA. Since 1974, section 5(b)(2) of the HOLA has authorized Federal associations to "be surety as defined by the Board." That standby letters of credit are in fact used as a suretyship device is widely recognized by legal commentators although courts discussing this issue have given some emphasis to technical distinctions. Thus, section 5(b)(2) empowers the Board to authorize by regulation the issuance of standby letters of credit by Federal associations for the purpose of guaranteeing obligations of others.

In its proposed rule, the Board set forth a new regulation authorizing commercial and standby letters of credit with general requirements regarding safe and sound practices that are comparable to those applicable to national banks. The requirements constitute prudent practice guidelines derived from case law and the Comptroller's experience in supervising letter-of-credit practices of national banks, and are equally relevant for Federal associations. Thus, each letter of credit must conspicuously state that it is a letter of credit, the undertaking of the issuer must be for a specified term and amount, the obligation to pay must be dependent only on presentation of confirming documents, and the account party must have an unqualified obligation to reimburse the issuer for payments made.

One of the few comments addressing the proposed letter of credit regulation suggested that the Board reconsider and clarify the applicable percentage-of-assets limitations, if any, for issuance of letters of credit. Under the proposal, the amounts of all outstanding standby letters of credit would be included with commercial loans for purposes of the investment limitation under the commercial lending regulations. After careful consideration of the comments, however, the Board has decided to revise this rule to reflect better the investment authorities underlying letters of credit and the credit risks involved.

Under the final rule, a letter of credit will not be counted toward any investment basket until funds are actually advanced. This rule is appropriate because no investment of assets actually occurs until funds are advanced, and it is consistent with the Board's treatment of loan commitments and loans in process under the final regulations. In addition, funds advanced pursuant to a letter of credit will not be counted toward a percentage-of-assets limitation if the association has been fully compensated (*i.e.*, paid in cash) by the account party. Finally, an association may allocate funds advanced under a letter of credit to the percentage-of-assets limitation for any loan authority that describes the type of credit extended. For example, if credit extended under a letter of credit is secured by nonresidential real estate and conforms to the regulations on nonresidential real estate loans, it may be counted toward the forty percent-of-assets limitation in § 545.35(d). The Board believes this treatment is more consistent with the congressional intent underlying investment authority limitations in the HOLA, as it permits letters of credit to be categorized with other investments posing similar risks.

Pursuant to a suggestion in the comments, the regulation has been amended to state specifically the authority to collateralize letters of credit, which was only implicit in the proposed regulation.

Issuance of letters of credit brings many attendant risks. The treatment of standby letters of credit under the final regulation on loans to one borrower, discussed below, is designed to reduce the risk that an association may have too many letters of credit outstanding for one account party at one time. There is no limitation, however, on the total letters of credit an association may have outstanding at one time; the percentage-of-assets limitations are triggered only when funds are advanced. The Board notes that accounting rules require

associations to disclose significant letter-of-credit commitments in notes to audited financial statements, and the Board is considering adding this information to regulatory reporting requirements. The Board believes that these factors will provide sufficient inducement for Federal associations to follow prudent guidelines in issuing letters of credit and making other off-balance-sheet commitments; however, industry practices in this regard will be closely monitored in the coming months in case further regulatory restrictions should be appropriate.

#### Consumer Loans

Section 329 of the DIA expands the consumer lending authority to include loans reasonably incident to personal, family, or household purposes. The legislative history specifically indicated that this authorization is intended to include inventory and floor planning financing to facilitate the purchase by consumers of retail goods. This section also increased, from twenty to thirty percent, the proportion of an association's assets that may be invested in consumer loans.

The proposed rule would have implemented this expanded authority by increasing the percent-of-assets limitation to thirty percent; by expanding the scope of the rule to include inventory and floor planning loans, overdrafts on NOW accounts, and loans reasonably incident to loans for personal, family or household purposes. The Board requested comments and suggestions of other types of financing that might be covered, including loans secured by accounts receivable derived from credit sales of consumer goods. The proposed rule also would have substituted the commercial loans-to-one-borrower limitations for the more restrictive limits contained in the current rule.

The commenters addressing this portion of the proposal all favored the expansion of consumer lending authority. Some, but not all, supported extension of this authority to include loans secured by accounts receivable derived from credit sales of consumer goods. In addressing this suggestion, the Board notes that loans to businesses secured by accounts receivable are permitted as commercial loans. Thus, the issue is not whether these loans can be made by associations, but rather in which "basket" (consumer or commercial) should these loans be included? The language of section 5(c)(2)(B) of the HOLA indicates that the test to be applied to determine if a loan is a "consumer" loan is a test based upon purpose, *i.e.*, " \* \* \* loans for

personal, family, or household purposes \* \* \* " 12 U.S.C. 1464(c)(2)(B). The expansion of this authority under section 329 of the DIA did not eliminate this test. Instead, it broadened it to include loans reasonably incident to these purposes. Loans to businesses are not necessarily for personal, family, or household purposes, or even reasonably incident to these purposes, even if secured by accounts receivable derived from credit sales or consumer goods. While Congress specifically stated that inventory and floor planning financing are intended to be included in the expansion of consumer lending, there is not indication by Congress that loans for other business or commercial purposes should also be included merely because they are secured by accounts receivable derived from credit sales of consumer goods. Without an equally clear statement of legislative intent, the Board is reluctant to expand the consumer loan "basket" to include loans that are clearly for commercial purposes. Therefore, the Board is not adopting the suggestions to include loans secured by accounts receivable derived from credit sales of consumer goods.

One commenter suggested that overdraft loans on NOW accounts should not be included in the provision on consumer loans. The issue of overdraft authority has created some confusion. The purpose of a bona fide overdraft loan is to permit occasional and infrequent payment of drafts and other orders made in excess of a customer's available balance. The provision on overdraft loans (§ 545.47) has been clarified to indicate that only bona fide overdraft loans may be made under that authority. If a debit balance created through a draft drawn in excess of the available balance continues to exist for more than thirty days after notice, it is not a bona fide overdraft. A line of credit accessed by a NOW account, in which a separate balance is maintained (or added to a credit card or line of credit balance) and which is repaid over time is not a bona fide overdraft. Rather, if this line of credit is established for personal, family, or household purposes, then it will be considered to be a consumer loan, even though it is accessed by a NOW account. A loan made for these purposes that is secured by real estate (such as a home equity line-of-credit loan) will be considered a real estate loan, and thus subject to the limitations for such loans, if it is made in compliance with the provisions of § 545.32(c) of this Part. To avoid confusion, the Board is dropping reference to overdrafts on NOW accounts from the consumer loan

regulation. The definition of consumer loan has been deleted from Part 541 and consolidated into § 545.50. The percentage-of-assets limitation is expanded from twenty to thirty percent as proposed. Finally, the proposed rule is revised to clarify that loans to dealers in consumer goods to finance inventory and floor planning are to be treated as commercial loans for loans-to-one-borrower limitations.

#### Commercial Loans

Section 325 of the DIA added a new Section 5(c)(1)(R) to the HOLA (12 U.S.C. 1464(c)(1)(R)), which authorizes Federal associations to invest in "[s]ecured or unsecured loans for commercial, corporate, business, or agricultural purposes." The legislative history of this provision indicates that Congress intended to authorize the same types of investments and activities that constitute "commercial lending" as practiced by national banks. Loans made under this provision are subject to the same loans-to-one-borrower limits applicable to national bank loans. The only distinction between the commercial lending authority in Section 5(c)(1)(R) and the commercial lending authority of national banks is that the percentage of assets a Federal association may invest in such loans is limited—to five percent (7½ percent in the case of a Federal savings bank) prior to January 1, 1984, and ten percent thereafter.

The proposal was designed to implement as broadly as possible the new commercial lending authority and to provide guidelines for application of the percentage-of-assets limitations. The proposed regulation restated the statutory definition of a commercial loan, adding that an association may rely in good faith on the borrower's statement of a loan's purpose in cases where the borrower is a natural person. The proposal further provided that the statutory percentage-of-assets limitation must be applied to overdraft loans on demand accounts, standby letters of credit, and commercial loans made by a service corporation and not secured by real estate (with *pro rata* attribution in the case of service corporations owned by multiple stockholders); but the limitation would not apply to loan commitments, or to loans sold without recourse to third parties.

Commenters generally supported the approach of the proposed regulations while submitting some suggestions for minor improvements. Several commenters addressed the inclusion of standby letters of credit in the percentage-of-assets limitation for commercial loans. This treatment was proposed on the assumption that

standby letters of credit are issued for commercial purposes, and thus generally result in an extension of credit comparable or identical to a commercial loan. However, various considerations suggest that different regulatory treatment would be appropriate. The reference to standby letters of credit accordingly has been removed from the regulation. New §§ 545.31 and 545.48 set forth rules regarding calculation of percentage-of-assets limits for letters of credit, which are explained in the discussions of these provisions elsewhere in the supplementary information. Because the proposed rules on commercial loan commitments and commercial loans sold belong more appropriately in a general provision regarding lending authorities, they also have been moved to new § 545.31.

The remaining comments were addressed to the scope of the commercial lending authority under the new regulation. The Board intends to implement fully the broad statutory commercial lending authority described above, in order to give Federal associations competitive parity with commercial banks with respect to the types of loans they may make for business purposes. The Board interprets the regulatory "purpose test" to be satisfied in the case of any loan to a business enterprise, since a business purpose may be presumed in such instances. The proposed rule provided that the purpose test would be satisfied in the case of a loan to an individual if an association relies in good faith on his statement that the loan is for a commercial, corporate, business, or agricultural purpose. The Board believes it is unnecessary to state this rule in the final regulation, because the small percentage-of-assets authority for commercial loans will serve as a disincentive to classification of loans to individuals as commercial loans; nevertheless, good faith reliance on an individual's statement of purpose will satisfy the regulatory purpose test. Any project or investment that an individual seeks to finance for the purpose of producing income, including a part-time venture or an investment in stocks, will satisfy the purpose test. In addition, the Board interprets the purpose test to be satisfied in the case of any loan to a government or nonprofit organization, since such loans are included in the commercial lending authority of national banks.

Commercial loans made pursuant to the new authority may take the form of loan transactions in which funds are advanced in exchange for a term note or under a revolving credit agreement, or

may take less conventional forms. For example, commercial credit may be extended through a purchase of a business' accounts receivable ("factoring"); through a reverse repurchase agreement with a corporate entity; through a "deposit" with a financial institution; through the acceptance of a customer's time draft; or through the purchase of debt obligations of a business entity. With respect to the last example, the Board wishes to clarify that an investment in notes, paper, or debt securities may be treated as a commercial loan to the issuer whether or not they satisfy the rating, marketability, and other requirements of § 545.75.

Commenters who addressed the issue agreed that there is no need for special recordkeeping requirements for commercial loans; consequently, none are being adopted at this time.

#### Educational Loans

Section 330(3)(B) of the DIA expands the authority of Federal associations to make loans for any educational purpose. Current regulations reflect the limited authority to make loans for the payment of college, university, or vocational education. The proposed amendment made changes in the language of the regulation to correspond to the expanded statutory authority. In keeping with the approach towards eliminating unnecessary and duplicative regulations, the final rule eliminates the regulation. This action is taken because the proposed rule merely restated the statutory authority to make educational loans and referenced other general features applicable to this type of loan. This action does not in any way diminish a Federal association's authority.

#### Government Securities

Section 324 of the DIA extended the authority of Federal associations to invest in general obligations of or issued by states and political subdivisions to include other types of obligations, subject to a ten percent of capital and surplus limitation on obligations other than general obligations of a single issuer. The proposal added this statutory limitation on obligations of a single issuer and removed the limitation to general obligations, while retaining the current rating requirement, and the authority to invest up to one percent of capital and surplus in government obligations without regard for investment rating where the issuer is located in the same political subdivision as the home office of the association.

Two comment letters suggested changes in the proposal. One stated that the rating requirement is unnecessary because none appeared in the statute, and also stated that the limitation on purchases of obligations of a single issuer should be ten percent instead of one percent. The second letter requested clarification of whether the one percent of assets permitted to be invested in obligations not meeting the rating requirement was includable in the ten percent limit on other than general obligations of a single issuer.

The Board believes that prudent oversight requires that an association be subject to some limitations that assure the quality of its government securities investment. Therefore, the Board has retained the rating requirement even though not required by statute. The comment with respect to the limitation on purchases from a single issuer demonstrates a misreading of the proposal, and the request for clarification underscores the necessity for amplification of this aspect. The one percent of assets investment is a special category for investments that do not meet rating requirements. While investments in this category would have to be counted as part of the ten percent of assets of a single issuer (if in obligations other than general obligations), it is not a substitute for the limitation on obligations of a single issuer. For these reasons, the Board has elected to make no change in content, but to revise the form of this section from that in the proposal to make its intentions clear. While the ten percent of assets limitation on purchases of other than general obligations of a single issuer is not restated, it is incorporated by reference to the statutory authority.

#### *Service Corporations*

Section 5(c)(4)(b) of the HOLA, 12 U.S.C. 1464(c)(4)(B), provides that a Federal association may invest up to three percent of its assets in a corporation chartered in the state where the association has its home office; investments in excess of two percent of assets must be for community development purposes. The Board implemented this authority in 12 CFR 545.9-1 by authorizing investment in service corporations, listing activities in which service corporations may engage without prior approval, and setting investment limitations. The DIA made no changes in the service corporation authority. The proposal to implement the DIA, however, included some expansion of the list of preapproved activities by adding activities newly authorized for parent associations—commercial lending and personal property leasing.

The proposal also included various technical changes.

The comments on the service corporation proposal were generally favorable. Seven comment letters addressed particular aspects of the service corporation proposal. Several noted that the existing authority of service corporations to engage in futures transactions and to invest in certain securities was inadvertently deleted along with the existing authority to invest in inventory loans to dealers in consumer goods in the restatement of permissible activities. More substantive suggestions concerned extending the time limits for development of real property, deleting the requirement that leased property retain no more than seventy percent of its value, extending the limits for conforming loans to subsidiaries, and permitting third party real estate brokerage and options trading.

The final regulation is in many substantive respects identical to the proposal; it also incorporates many of these suggestions and some additional amendments. Commercial lending has been added to the preapproved list as proposed, as has the issuance of letters of credit. The leasing provision now deals only with personal property leasing, as real property leasing is included in § 545.74(c)(3)(iii), and it does not include the proposed seventy percent residual value requirement. This reflects the Board's belief that service corporations should have more freedom to experiment, and that the percent-of-assets limitation on investment in service corporations is sufficient to insulate the parent institution from large losses as a result of service corporation activity. The regulation also restates the existing authority to invest in inventory loans to dealers in consumer goods. Investing in financial futures and options trading have also been added as preapproved activities since these activities are permitted to parent institutions.

Moreover, the Board has extended the time for real estate development to eleven years, the same time permitted for loans made by the parent institution. The Board has raised the limit on conforming loans that may be made to service corporations, so that loans to "statewide" service corporations or service corporations of which the lender owns less than ten percent are unlimited, except by the loans-to-one-borrower regulations, and conforming loans to other service corporations may be made up to fifty percent of the loans-to-one-borrower limit. This reflects the Board's view that the dealing of a parent

and a closely held subsidiary cannot be assumed to be at arm's length, but that conforming loans are less likely than other types of investments to be damaging to an association economically. The Board has again considered permitting real estate brokerage for third parties, an activity in which many associations have expressed an interest. However, in view of the significant extensions of opportunity granted by the DIA and these regulations, the Board sees no necessity for such a change at this time.

The Board also has removed the restriction on transfer of real estate owned to service corporations. Since these investments are required to be treated by the association as scheduled items even if owned by the service corporation, there is no need for this provision. The service corporation authority has deleted provisions on insider dealing, now covered by the conflict of interest regulations, as well as certain definitions now included in the text rather than a separate section. The prohibition on use of terms in the name suggesting identification with the government or an insurance fund has also been deleted, because it reiterates a general statutory prohibition contained at 18 U.S.C. 709.

Technical amendments to the service corporation authority include clarification of the Board's existing requirement that a service corporation permit and pay the cost of examination, and of the prior provision, which proved confusing in the proposal, not requiring prior notification for formation of a service corporation or establishment of preapproved activities. The revised regulation also codifies the Board's long standing position that it may deny or curtail service corporation activities for supervisory reasons. Because data processing generally is now a preapproved activity, reference to data processing in connection with the provision of clerical, accounting and internal auditing for financial institutions has been deleted.

#### *Commercial Paper and Corporate Debt Securities*

Section 329 of the DIA extended the authority of Federal associations to invest in commercial paper and corporate debt securities by eliminating the percentage-of-assets limitation. The proposal would have carried this forward into the regulation, and in addition would have established new limitations on purchases from a single issuer and a separate category of one percent of assets that could be invested in securities that an association had

reasonable grounds to believe would be repaid even where the rating and marketability requirements were not met. The proposal retained rating and marketability requirements generally, but deleted domestic issuer requirements.

Eight comment letters addressed this type of investment, three in some detail. Several commenters suggested that the percentage limitations should be increased to permit greater investment in unrated securities and in purchases from a single issuer, and requested a broader definition that would clearly include such instruments as mortgage pass-through certificates. One commenter stated that there should be no rating requirements, and another that rating by two nationally recognized rating services should be required; the latter also suggested deletion of the authority for unrated paper of an issuer with rated paper outstanding. It was also suggested that the six-year average maturity is too short and that permissible average maturities should be increased. The deletion of the domestic issuer requirement was favored, and some commenters requested additional broadening of this section to include purchase of securities issued by foreign governments. Several commenters opposed imposition of the commercial loans-to-one-borrower limitation, which they pointed out would usually be stricter than the prior one-percent-of-assets limitation.

Based on these comments and its own reconsideration of these issues, the Board has restructured this investment authority in the final regulations. Investment in commercial paper will be required to be rated in either of the two highest grades by two nationally recognized rating services. The proposal would also have permitted investment in unrated commercial paper if issued by an entity with rated securities outstanding. The final amendments have modified this section to permit purchase of such securities only if guaranteed by the issuer of securities meeting the rating requirement. Securities meeting the rating requirements will not be considered commercial loans for purposes of the percentage-of-assets limitation, but will be subject to the commercial loans-to-one-borrower limit. Corporate debt securities will be limited to investment in instruments that are marketable and are rated in one of the four highest categories by two nationally recognized rating services. Investment in securities not meeting one or both of the rating or marketability requirements will be permitted up to one percent of assets. The Board believes

that this approach effectively strikes a balance between permitting flexibility and preventing speculative investment and excessive investment in instruments issued by a single entity. The reference to the statutory authority in the amended regulation incorporates the Board's reading of section 329 of the DIA as deleting percentage-of-assets limitations for this investment category.

This amendment adopts the proposed deletion of the requirement that commercial paper and corporate debt securities eligible for purchase by Federal associations be issued by an entity domiciled in the United States. The Board believes that where such instruments meet the marketability and rating requirements, they pose no greater risk of loss than similarly rated, marketable domestic issues. However, the Board has declined to take other steps to permit purchases of issues by foreign governments. Where such instruments qualify as commercial paper or corporate debt securities under the definitions contained in §§ 541.25 and 541.26, they are permissible investments under the revised regulations without reference to the identity of the issuer; the Board does not believe that the statutory authority was intended to include instruments not issued by a corporation.

Although many commenters opposed imposition of the commercial loans-to-one-borrower restriction, the Board has adopted it as proposed, with two changes. The Board believes that the large expansion of this category caused by removal of the percent-of-assets limitation and the new authority to invest in unrated and foreign securities will give associations an opportunity to make substantial investments in commercial paper and corporate debt securities. Precisely because this category has been expanded so greatly, the Board believes that it is necessary to prevent an association from becoming too heavily involved in the securities of a single issuer, and therefore exposed to heavy losses if that entity suffers reverses. However, the Board has added a provision permitting investment of one percent of assets or one million dollars, whichever is greater, in the highly rated securities of a single issuer, notwithstanding the commercial loans-to-one-borrower limitation. This should ease the difficulties the tighter limit might impose, particularly on smaller institutions. In addition, the revised regulation permits waiver of the loans-to-one-borrower limitations for purchases of commercial paper and corporate debt securities in connection with the purchase or sale of branch

offices, or supervisory mergers or acquisitions. These are situations in which the Board has ample opportunity to assure that these transactions will not be detrimental to the institution involved, and where the imposition of the loans-to-one-borrower limitation might prove a serious impediment.

The proposal included corresponding amendments to the liquidity regulations concerning commercial paper and corporate debt securities. This results from the statutory authority to make investments in liquid assets, and also in the tradition that permissible investments for federally chartered associations may be counted in satisfaction of the liquidity requirement. The final amendment adopts this approach, but the Board believes that a general reconsideration of this position may have to be made in the future because of the expansion of the investment authority of Federals.

Finally, the authority to invest in open end management investment companies registered with the Securities and Exchange Commission under the Investment Company Act of 1940 has been placed in a separate section. These investments result from separate statutory authority, and are not subject to the commercial loans-to-one-borrower limitation. No substantive amendments to this authority have been made.

#### *Small Business Investment Corporations*

Section 330 of the DIA provided new authority for Federal associations to invest up to one percent of assets in obligations or securities of any small business investment company formed pursuant to section 301(d) of the Small Business Investment Act of 1958. Because this authority was inadvertently omitted from the proposed revision, it is implemented at new § 545.80 in order to give associations notice of this expansion.

#### *Time Deposits in FSLIC-Insured Institutions*

Section 323 of the DIA expanded the authority of Federal associations to invest in deposits to include authority to invest in accounts of institutions insured by the FSLIC. Because this new power is fully implemented by statute, and the Board sees no reason to limit or interpret it, this authority has not been codified.

#### *Overdraft Loans*

In recognition of the expanded authority granted to Federal associations to offer demand accounts (as well as NOW accounts), section 321

of the DIA also expanded the authority of Federal associations to make overdraft loans specifically related to transaction accounts. The proposed rule implemented this authority, defining overdraft loans as secured or unsecured credit to cover payment of drafts or other funds transfer orders in excess of the available balance of an account on which they are drawn. The proposed rule also provided that overdraft loans on demand accounts would be included in the percentage-of-assets limitations for commercial loans, while overdraft loans on NOW accounts would be included in the percentage-of-assets limitations for consumer loans.

The classification of overdraft loans on demand accounts as commercial loans for purposes of the percentage-of-assets limitations is based on a clear statement of Congressional intent:

The aggregate commercial and agricultural loans authorized under this section are intended to include any overdraft loans on commercial demand deposits permitted under this bill. Thus, the aggregate limits are for the entire operation of the savings and loan association.

S. Rep. No. 97-536, 97th Cong., 2d Sess. 16. No similar statement of intent, however, was made concerning the treatment of overdraft loans on NOW accounts as consumer loans, either in the original grant of authority (section 401, Pub. L. 96-221, 94 Stat. 151) and its legislative history or in the expansion authorized by the DIA. In light of this contrast in the legislative history of overdraft loans on demand accounts versus those on NOW accounts the Board has decided to retain the commercial loan percentage-of-assets limitations for demand accounts and to eliminate the reference to overdraft loans on NOW accounts in the provision on consumer loans.

The Board is concerned that the authority to make overdraft loans may be subject to abuse and employed as a method to circumvent other regulatory requirements. For example, a zero balance "shell" NOW account could be established having an overdraft loan secured by a second mortgage on a borrower's home. Similarly, a NOW account might have an authorization to access an open-end line of credit agreement in which the credit is carried as part of the customer's credit card balance. The Board believes that these types of arrangements constitute other types of loans that are merely accessed through the use of a draft or other transfer order. As such, these transactions do not constitute bona fide overdrafts and are not authorized by the section of the regulations pertaining to

overdrafts. Rather, these transactions are authorized only under those regulations governing the type of credit extension which the draft or transfer order is used to access. A bona fide overdraft loan would only be authorized under this section if it is a short term extension of credit, not exceeding thirty days from notice to the customer, made as a convenience to customers when they occasionally draw drafts or make other transfer orders in excess of their available balance.

The final rule thus authorizes the extension of secured or unsecured credit to cover payment of bona fide overdrafts. All other extensions of credit through the use of drafts or funds transfer orders are not considered to be made pursuant to this rule. The final rule continues to treat overdrafts on demand accounts as commercial loans for percentage-of-assets limitations, but does not treat overdrafts on NOW accounts as consumer loans.

#### *Technical Amendments to Investment Authority*

As a result of the Board's new approach, the investment authority previously codified at 12 CFR 545.9 (a), (b), (c), (d), and (f) has been deleted. The authority to invest in liquid assets, United States government obligations, Government National Mortgage Association securities, Federal Home Loan Mortgage Corporation obligations, Federal National Mortgage Association obligations, Federal Home Loan Bank stock, and Student Loan Marketing Association obligations is contained in 12 U.S.C. 1464(c)(1)C-F, and therefore is no longer codified. This amendment has the additional effect of permitting investment in securities of the Federal Home Loan Mortgage Corporation, which is authorized by statute but had not been included in the previous regulation. An additional amendment to the investment authority is an expansion of the provision, previously contained at § 545.9(a), which permitted investment in assets other than time deposits and bankers' acceptances that would qualify as liquid assets but for their term to maturity. While the Board has retained the exclusion of bankers' acceptances, which the Board believes are instruments that by their nature should have a short term to maturity, this limitation has been eliminated with respect to time deposits. Because there is a developing secondary market for these instruments, the Bank Board no longer believes that a short maturity is necessary to make these investments proper for a Federal association.

#### *Business Development Credit Corporations*

In keeping with the approach adopted in revising Part 545 (whereby the regulations only include limitations, interpretations, or recognitions of incidental authority), § 545.8-4 "Loans to and investments in business development credit corporations" has been deleted. The authority of Federal associations to make these loans is fully implemented by section 5(c)(4)(A) of HOLA (12 U.S.C. 1464(c)(4)(A)) and the Board sees no reason to limit or interpret it. Therefore, it has not been codified in the final rule.

#### *Finance Leasing*

It has been the Board's view that Federal associations have the authority to engage in leasing activities under the lending authority provided by the HOLA, provided that the leasing activities are the functional equivalent of lending. This type of leasing, referred to as "finance leasing", is distinguished from, and in addition to, the operational leasing authority conferred by section 330 of the DIA. Current regulations (12 CFR 545.7-10a) implement this authority by providing that Federal associations may become legal or beneficial owners of personal property to be leased to consumers for personal, family, or household purposes. This authority, however, is circumscribed by requirements that reflect the guidelines established by courts for bank leasing activities that are the functional equivalent of lending. See *M & M Leasing Co. v. Seattle First National Bank*, 563 F. 2d 1377 (9th Cir. 1977), cert. denied, 436 U.S. 956 (1978). These limitations include requirements that the lease be "net" (prohibiting the association from taking responsibility for maintenance of the leased property), "full-payout" (requiring the association to expect full return of its investment plus the estimated cost of financing from rentals, estimated tax benefits, and residual value of the property), and limit the association's residual value risk (by requiring that the residual value not exceed 25 percent of its acquisition cost unless the excess over that amount is guaranteed).

The proposed rule was intended to expand existing finance leasing authority to reflect the new commercial lending authority and to permit real property leasing that is the functional equivalent of real estate lending. The authority of a Federal association to purchase real property for leasing is derived from the authority to lend on the security of real property, but only if the



lease transaction is the functional equivalent of a real estate loan. Therefore, the net, full-payout, and residual value requirements were retained. The proposed rule would have required that, in the finance leasing of real property, the estimated residual value of the real estate could not exceed twenty percent of its acquisition costs. Since these finance leases are the functional equivalents of consumer, commercial, or real estate lending, the proposed rule would subject them to all of the limitations on investments in comparable loans, including limitations on loans-to-one-borrower and limitations on total investments.

The Board believes that it is necessary to impose limitations on finance leasing that ensure that these transactions are the functional equivalents of the lending activities authorized by the HOLA. Contrary to the suggestions of some commenters, imposing only those restrictions on loans to one borrower would not be sufficient to ensure that a finance lease is viewed as an equivalent of a particular type of loan. While the application of some requirements may make the use of finance leasing less desirable, these requirements should not substantially reduce the advantages of a finance lease over the functionally equivalent loan. The Board further believes that the decision in *M & M Leasing, supra*, while pertaining directly to the lease of personal property by a national bank, provides guidance that should be applied to all forms of finance leasing by Federal associations. Thus, the proposed rule was formulated to prevent Federal associations from leasing on a daily or short-term basis, from providing operational services, and from relying on the residual value of the property (in any substantial way) for the return on their investment.

The Board proposed that the residual value of the leased property not exceed 25 percent of its acquisition value for personal property or twenty percent of its acquisition value for real property. While the comments received acknowledged that the 25 percent residual value requirement was reasonable for leases of personal property, the commenters objected to the twenty percent residual value requirement for real property. The commenters noted that real property usually retains a far greater value over the life of a functionally equivalent real estate loan. The Board agrees, but wants to ensure that finance leasing of either personal property or real estate does not require the lessor association to look to the residual value for a substantial

portion of its return nor to enter into repeated short term leases of the same property. These actions would lead a court to conclude that the association is participating in the rental business and not in the functional equivalent of lending. Therefore, the final rule does not require the residual value of either personal property or real estate at the end of the lease to be, respectively, 25 percent or twenty percent of its acquisition cost, but instead limits the association's reliance on the residual value of the personal or real property to no more than twenty percent of its return (along with rental payments and tax benefits) under the full-payout requirement. As a result, there is no need to require that the portion of the estimated residual value in excess of the proposed limitation be guaranteed.

The final rule extends the existing authority of Federal associations to make finance leases that are the functional equivalent of lending by permitting leases of personal property for business purposes and real property in addition to leases of personal property. The leases must be net, *i.e.*, precluding the association from directly or indirectly becoming obligated to provide for the repair or maintenance of the property, the purchasing of parts or accessories, the loan of replacement or substitute property, the purchasing of insurance for the lessee, or the renewal of any license, registration, or filing required for the property. The lease must be a full-payout lease in which the association reasonably could expect to recover its investment in the property, plus the cost of financing it over the lease term, from rental payments, estimated tax benefits, and the estimated residual value at the expiration of the lease term. As discussed above, the amount of the recovery derived from the residual value of leased real property cannot exceed twenty percent. The final rule would permit the association to protect the value of the property or its interest as the lessor or lessor's assignee by including in the lease any appropriate provisions. Since finance leasing is the functional equivalent of lending on the security of the leased property, the final rule requires that the transaction be subject to all of the limitations on investment in comparable loans. Also, the final rule requires associations to liquidate their interest in the property as soon as practicable upon expiration of the lease.

#### General Leasing Authority

Section 330 of the DIA authorizes Federal associations to invest up to ten percent of assets in all types of tangible

personal property for the purpose of leasing such property. This authority differs from the authority to enter into finance leases that are the functional equivalent of loans (discussed above). Under the authority granted by section 330, associations would not be limited to entering into net, full-payout leases, but would be permitted to assume responsibility for, among other things, servicing and maintaining the property. In addition, an association would not have to expect to be reimbursed for its investment in the leased property within the lease term.

The new regulation implements this authority with only one limitation. Leases in which the estimated residual value of the leased property would exceed seventy percent of the acquisition cost of the property will be prohibited. The effect of this limitation will be to prevent an association from entering into extremely short-term leases, such as daily rentals of cars. The Board believes that this limitation is necessary at this time to allow Federal associations to enter the leasing business in a gradual, safe, and sound manner.

Several commenters suggested that the authority granted by Section 330 included the authority for Federal associations to purchase and sell tangible personal property. It is the Board's position that it would be inappropriate at present to permit associations generally to enter the business of selling personal property. Therefore, the Board has limited the authority to sell tangible personal property only to sales incidental to the lease of such property. This would include the authority to offer lease-purchase options and to dispose of the property at the end of its useful life.

The final rule authorizes Federal associations to invest in tangible personal property for the purpose of leasing such property, provided that the residual value of the leased property does not exceed seventy percent of its acquisition cost. Federal associations should account for such activities in accordance with GAAP and the Financial Accounting Standards Boards technique described in FASB Statement No. 13.

#### Agencies

A Federal association has been permitted to establish agencies for limited administrative purposes, without prior approval, in the same state as the association's home office. Because of the recent developments in the industry that have resulted in associations operating branches outside the state

where the home office is located, the Board proposed to permit the establishment of agencies without Board approval in the state where the home office or any branch office approved by the Board is located. No comments were received discussing this proposal, and it is adopted as proposed.

#### Insurance Regulation Amendments

##### *Liquidity Base*

Section 5A of the Federal Home Loan Bank Act sets certain liquidity requirements for members of the Federal Home Loan Bank System, and provides that the Board shall determine how these requirements shall be calculated. Pursuant to this authority, the Board has promulgated 12 CFR 523.10(d), which provides that "net withdrawable accounts" used in calculating the liquidity base includes all withdrawable accounts. Since the Board has determined that deposits can be collateralized, it has amended the definition to exclude accounts to the extent that security has been given upon them. No comments addressed this provision, which is adopted as proposed.

##### *Scheduled Items*

"Scheduled items" are those items whose value may not be fully realizable. The value of these items is factored into the calculation of net worth requirements, and contributes generally to the Board's assessment of an institution's financial soundness. The Board proposed to expand this concept to include non-real estate items, based on the broadened authority of associations to invest in other types of assets. No comments addressed this section of the proposal, and the Board has adopted it unchanged.

##### *Limitations on Loans to One Borrower*

Pursuant to its authority under Title IV of the National Housing Act (12 U.S.C. 1724 *et seq.*) to issue regulations relating to safe and sound practices of FSLIC-insured institutions, the Board has for many years imposed limitations on the amount of credit an insured institution may have outstanding to one borrower. These limitations are currently codified in § 563.9-3 of the Board's insurance regulations (12 CFR 563.9-3). Section 325 of the DIA superimposes a new layer of loans-to-one-borrower restrictions on existing Board regulations by providing that Federal associations may not make commercial loans to one borrower, under the authority of that section, in excess of the amount a national bank

having an identical total capital and surplus could lend such borrower.

In its December proposal the Board set forth revisions to § 563.9-3 that would (1) clarify the operation of existing rules and (2) implement new rules on the extension of commercial credit to one borrower by insured institutions that would be comparable to those applicable to national banks. The Board cited the increased insurance risks posed by excessive commercial lending to one borrower as justification for the application of stricter loans-to-one-borrower limits to commercial lending by state-chartered insured institutions. The Board formulated a proposed definition of "capital and surplus" for purposes of applying the commercial-loans-to-one-borrower rule, and described the types of loans and investments that would be subject to the new rule. The details of each of these proposals follow, with an analysis of the comments received and the provisions of the final rule.

*One borrower.* The Board did not propose any changes to the definition of "one borrower" in § 563.9-3. During the comment period the Board received several inquiries regarding whether the term is intended to include a subsidiary of an insured institution. Historically there has been no exception from the loans-to-one-borrower rule for loans to a subsidiary of an insured institution. As the Board is currently studying investments by insured institutions in their subsidiaries, no action will be taken in response to this comment at this time.

The new definition of one borrower incorporates a change in the attribution rules regarding loans to limited partnerships that was adopted by Board Resolution No. 83-90-A of February 18, 1983 (48 FR 8431 (1983)). The second part of the definition of one borrower states a clarification of the phrase "loan on the security of \* \* \* real estate the title to which has been conveyed to a bona fide purchaser of such real estate," which appeared in the proposal. As explained in Resolution No. 83-90-A, the purpose of this phrase was to exclude from the definition of outstanding loans to one borrower a loan to that borrower that has been assumed by a third party. For purposes of clarity, the exception has been moved to the definition of one borrower, and it has been broadened to apply to any assumed loan, in view of the many new types of loans made by insured institutions that are not secured by real estate.

Two commenters suggested a new approach to loans-to-one-borrower limits that would disregard the identity

of the borrower in cases of loans involving certain types of security. One commented that no limit should apply to loans that are insured or guaranteed by the United States Government, regardless of the identity of the borrower, because no risk is involved. The other commenter suggested a broader approach that would exempt from § 563.9-3 any loans on the security of collateral in which the lending insured institution is authorized to invest. In view of the many issues raised by these comments, the Board will postpone consideration of a regulatory amendment until it has had an opportunity to study the issues involved and, if appropriate, request further public comment.

The Board notes that the definition of one borrower set forth in paragraph (a)(1) of the regulation is different in some respects from the attribution rules found in currently effective regulations of the Comptroller of the Currency interpreting 12 U.S.C. 84, as well as those in new 12 CFR 32.5 (48 FR 15844, April 12, 1983), which takes effect on June 14, 1983. The definition in paragraph (a)(1) will be enforced by the Board as it applies the limits in 12 U.S.C. 84 to commercial lending by insured institutions. This means there will not be exact parity in treatment between national banks and Federal associations with respect to this issue. While the Board acknowledges that parity was a goal of section 325 of the DIA, it does not believe that Congress would have intended to impose upon Federal associations the inordinate administrative burden of applying two different sets of attribution rules—the Comptroller's rules for purposes of the commercial lending limits in 12 U.S.C. 84, and the Board's historic rules for purposes of the aggregate lending limit in § 563.9-3. Furthermore, the Board believes that the stricter rules set forth in its new regulation are warranted by safety and soundness concerns, in view of the industry's inexperience in this area. Accordingly, only one set of rules will apply for purposes of both lending limits. The Board believes this will not result in any significant disparity of treatment between Federal associations and national banks, because both sets of rules are based on principles of economic benefit and common enterprise, and because the few differences in result do not uniformly benefit either industry.

*Outstanding loans.* The primary change proposed for the regulatory definition of outstanding loans was to exclude loan commitments specifically, in order to codify a longstanding Board

interpretation. Several commenters supported an approach that would focus on the amount of funds advanced to a borrower, rather than on potential credit obligations, since the former approach more accurately reflects the true risk of loss. The Board favors a "funds advanced" approach for this reason, and also because it permits sound credit management practices, as it enables an institution to enter into total loan commitments to one borrower in excess of the loans-to-one-borrower limits, provided that total credit outstanding at one time does not exceed the limits. This ability may be important to lending institutions that do not expect all of their loan commitments to be called, or engage in lending that involves partial advances in several stages over a long term. Therefore, the Board's final regulation clarifies that the lending limits are applied only to funds actually advanced.

Consistent with this approach, loan commitments are not included in outstanding loan amounts, and "wraparound" mortgages are counted only to the extent credit has actually been extended to the borrower (although an obligation to pay a prior lien will be treated as credit extended). However, because an obligation to disburse loan proceeds under an executed note is usually more immediate than such an obligation under a loan commitment, undisbursed loan proceeds will be counted toward the regulatory limits unless the institution has obtained an overline buyout commitment covering the loan involved. The Board encourages institutions making use of the funds advanced approach to ensure that they will not be forced to choose between honoring a commitment and violating the regulation. This dilemma may be prevented through careful credit-flow planning, overline participation commitments from correspondents and other prudent credit management practices. The Board's examinations and supervision staff will be monitoring this particular area for unsafe and unsound practices, and the FSLIC will continue to pursue legal remedies against negligent directors and management for losses sustained as a result of violations of § 563.9-3.

In its December action the Board proposed to include in its definition of "outstanding commercial loans to one borrower" commercial paper and corporate debt securities of one issuer, financing leases for commercial loan purposes, and amounts of standby letters of credit. Each of these has been retained in the final regulation,

notwithstanding recommendations to the contrary by commenters.

The proposal to include commercial paper and corporate debt securities in the limit on commercial loans generated significant opposition. Several commenters noted that the fifteen percent-of-capital-and-surplus limit is, for most institutions, stricter than the one percent-of-assets limit to which such investments were previously subject. Others pointed out that the number of issuers of investment-quality obligations has decreased recently, which will make it more difficult to abide by the stricter limits. Some commenters suggested that there should be a limit on investment securities separate from the loans-to-one-borrower limits, similar to the ten percent-of-capital-and-surplus investment securities limit for national banks. After careful consideration of all these comments, the Board has decided that investments in these obligations generally should be treated as loans subject to § 563.9-3, as proposed because commercial paper and corporate debt securities evidence extensions of credit that raise the same risks of credit concentration that arise from more conventional types of loans. The Board believes it is appropriate to subject them to the limitation on commercial loans to one borrower because they are in fact a form of commercial credit. Under the final rule, § 563.9-3(a)(2) clarifies that these investments are loans subject to both the aggregate and commercial loan limits. However, in response to comments regarding the diminished number of issuers of highly rated paper and debt securities, the Board has decided to adopt a separate one-percent-of-assets limitation for obligations in the top rating for commercial paper and the top two ratings for corporate debt securities. This rule is appropriate because of the reduced risk involved in such obligations; a lower limit might serve to frustrate the purposes of the regulation by encouraging investment in poorer-quality credits. It should be noted, finally, that investments in certain commercial and business paper will be exempt from the commercial lending limit pursuant to 12 U.S.C. 84(c)(1) (as amended effective April 14, 1983).

One commenter objected to the treatment of financing leases as outstanding loans. The Board believes this approach is appropriate and necessary because finance leases are the substantive equivalent of loans (see *M&M Leasing Co. v. Seattle First National Bank*, 563 F.2d 1377 (9th Cir.

1977), *cert. denied*, 436 U.S. 956 (1978)) and thus pose the same credit concentration risks that arise from conventional loans. A different rule would elevate form over substance and permit frustration of the regulatory policies underlying § 563.9-3. The final rule provides that a finance lease is a loan to the lessee; the commercial lending limit will be applicable if the lease serves the same purpose as a commercial loan.

Standby letter of credit and guarantee or suretyship obligations are treated as outstanding loans to the account party or principal, rather than loan commitments, contrary to the suggestion of one commenter. The legal liabilities involved in these obligations are much greater than those involved in loan commitments; furthermore, they pose credit risks of a type with which most insured institutions have little or no experience at this time. These obligations will be subject to the commercial-loans-to-one-borrower limit if they serve a business purpose of the customer. The Board notes that this approach is comparable to that taken by lending regulations of national banks.

One commenter believed that the exclusion for loans sold without recourse should be amended to encompass a loan sold subject to the obligation, whether express or tacit, to repurchase the loan in the event the credit standing of the borrower should deteriorate. The Board already interprets such a sale to be one with recourse, and thus believes no amendment is necessary.

The final regulation also clarifies that § 563.9-3 does not apply to deposits and sales of federal funds covered by § 563.9-6, which are subject to a separated limitation.

*Outstanding commercial loans.* The final rule states that "outstanding commercial loans" are outstanding loans described in the preceding paragraph of the regulation that are made for commercial, corporate, business, or agricultural purposes. Also included are commercial loans made by a subsidiary of an insured institution, since such loans would be commercial loans for a Federal association (See new § 545.46) and thus must be subject to the commercial-loans-to-one-borrower limit, pursuant to section 325 of the DIA.

The definition excludes loans for commercial purposes to the extent they are secured by real property. The purpose of this exclusion, as stated in the proposal, is to separate the commercial real estate credit, with which insured institutions already have considerable experience. As

recommended in the comments, this exclusion applies to all types of commercial credit, regardless of form, that are described in the definition of outstanding loans. The Board realizes that the definition of outstanding commercial loans includes commercial-purpose loans such as inventory financing that could be made by a Federal association under a percentage-of-assets authority other than the commercial lending authority introduced by section 325, and thus is broader than required by that statute. Nevertheless, the Board has adopted this definition out of safety and soundness concerns, because the percentage-of-assets classification applicable to the lending authority of Federal associations bears no relation to the credit risks § 563.9-3 is designed to protect against.

**Unimpaired capital and unimpaired surplus.** The final rule defines "unimpaired capital and unimpaired surplus" for purposes of applying the commercial-loans-to-one-borrower limit as "regulatory net worth plus specific reserves for loan losses, less appraised equity capital," as proposed. One commenter suggested that appraised equity capital should be included, since it is used for some purposes as a measure of net worth. However, the Board is persuaded that appraised equity capital should be excluded because it has no equivalent in the capital and surplus of a national bank, and because of its scheduled phaseout in the near future.

One commenter noted that the proposal to use the Semiannual Financial Report for measuring an institution's unimpaired capital and unimpaired surplus precludes a more accurate application of the limit by institutions that calculate current net worth figures on a frequent basis. The Board agrees, and has decided to eliminate the reference to the Semiannual Financial Report. Institutions will thus be able to lend on the basis of their most current net worth figures.

**Aggregate loan limit.** The final rule states the limitation on aggregate loans to one borrower that was set forth in the proposal and is currently found in the regulation, with one significant change. The \$200,000 "floor" one-borrower limit has become applicable to an increasing number of institutions during the recent period of deteriorating net worth. In response to the September 30, 1982 solicitation of comments on this issue (Res. No. 82-668; 47 FR 44334 (1982)), many commenters recommended higher one-borrower limits in view of the greater profitability of large commercial-

purpose loans, such as real estate development loans. The Board continues to believe that credit risk exposure to one borrower generally should not exceed an institution's net worth; however, an alternative ceiling of \$500,000 will permit more troubled institutions to make sizable loans that will help restore them to profitability. Accordingly, the provision now contains a \$500,000 alternative ceiling that will be adjusted annually for inflation.

One commenter suggested that the aggregate lending limit should be replaced with a requirement that each institution establish its own prudent lending limitations. The Board in fact expects each institution to establish its own policy regarding concentration of credit in one borrower; the limitations set forth in the regulation are outer limits on such policies, mandated by basic safety and soundness considerations. Thus, it is possible that an institution may be cited by an examiner for excessive lending to one borrower, even though no violation of § 563.9-3 has occurred, if the particular fact situation indicates that the lending posed undue risk to the institution. The Board believes the commenter's recommendation of new regulatory requirements for internal lending guidelines would involve additional interference in management discretion that is not warranted by any specific evidence of abuse before the Board at this time.

One commenter suggested that the lending limits should be revised to apply only at the time a loan is made, so that costly divestitures would not be required by a diminution of net worth. This is in fact the Board's present policy; the final regulation more clearly reflects this rule. Since the Comptroller of the Currency follows the same rule in applying 12 U.S.C. 84, new § 563.9-3(b)(2) also states the rule.

**Commercial loan limit.** The final regulation language limiting commercial loans to one borrower is basically unchanged from the proposal. Some commenters recommended that the statutes referred to in this section that limit loans by national banks, together with interpretive regulations of the Comptroller of the Currency (12 CFR Part 32), be reproduced in full for the convenience of insured institutions. The Board has chosen not to reproduce the statutes and laws in this regulation because to do so would multiply the length of § 563.9-3 several times, and would be inconsistent with the approach to drafting regulations announced in this resolution. Instead, the Board will codify in § 563.9-3 only those interpretations

that are necessary to adapt the national bank lending limits to the thrift industry, such as the definition of "unimpaired capital and unimpaired surplus" in § 563.9-3(a)(4). The Board intends to publish a T Memorandum in the near future that will reproduce the applicable statutes and regulations. Until such time, institutions engaging in commercial lending would be well advised to examine the Comptroller's new regulations (12 CFR Part 32) reproduced at 48 FR 15844 (April 12, 1983) for a thorough explanation of the applicable lending limits and their exceptions.

**Waiver.** The final regulation contains a new waiver provision for certain loans with prior Board approval. This recognizes that the limitations in § 563.9-3 are designed for ordinary business operations of insured institutions, and do not necessarily reflect appropriate guidelines in extraordinary cases such as mergers and consolidations. The waiver is similar to that found in 12 U.S.C. 84(c)(7) for national banks.

#### *Geographic Lending Restrictions*

Historically, Federal associations evolved as local home-financing institutions. Until amended by the Depository Institutions Deregulation and Monetary Control Act of 1980, section 5(c) of the HOLA imposed complex geographic restrictions on the investment authority of the Federal associations. However, even those restrictions were subject to exceptions, such as the authority still found in section 5(c)(4)(C) to make loans guaranteed under the Foreign Assistance Act of 1961 and the authority to invest in various securities of nationwide issuers. The elimination of these geographic restrictions and the recent removal of the section 5(a) characterization of Federal associations as "local" thrift institutions by section 311 of the DIA indicate Congress' recognition and approval of the geographic diversification of Federal associations' lending and investment activities in response to the evolution of the credit markets in which they participate. Specifically, the Board believes Congress intended that Federal associations be able to make commercial-purpose loans without limitations based on the domicile of the borrower or the location of security property, in order to provide parity with national banks.

One issue raised in the comment letters was whether section 403(b) of the National Housing Act (12 U.S.C. 1726(b)) and corresponding regulations at 12 CFR 563.9 impose any geographic limitations

on the lending activities authorized under Part 545; and, if so, whether such a restriction should continue in light of the new lending powers of insured institutions. Section 403(b) reads in pertinent part:

Each applicant for [FSLIC] insurance shall also file with its application an agreement that during the period that the insurance is in force it will not make any loans beyond one hundred miles from its principal office, except \* \* \* loans which are made pursuant to regulations of the Corporation \* \* \*

In response to this comment, the Board has decided to revise section 563.9 to provide for no geographic limitations on the lending activities of insured institutions. The effect of the revised section is to lift entirely the 100-mile restriction in section 403(b) of the National Housing Act, in order that an insured institution may make loans to the extent authorized by its chartering authority. The Board believes that this issue is most appropriately regulated by chartering authorities at this time.

#### Notice to Housing Creditors

Title VIII of the DIA authorizes certain housing creditors to make alternative mortgage transactions, notwithstanding any State constitution, law, or regulation. Section 804(a) of the DIA specifies that housing creditors other than banks, credit unions, and Federal associations may make alternative mortgage transactions only in accordance with regulations governing alternative mortgage transactions issued by the Board for federally chartered savings and loan associations. "Alternative mortgage transactions" is defined in section 803(1) to include loans or credit sales secured by residential real property, a dwelling, all stock in a residential cooperative, or a residential manufactured home (1) in which the interest rate finance charge may be adjusted or renegotiated, (2) in which rate adjustments are implicitly permitted by having the debt mature during an interval shorter than the term of amortization, or (3) in which the method of determining return, term, or repayment is not common to traditional fixed-rate, fixed-term transactions. This definition, however, requires that permissible transactions be described and defined by applicable regulation.

Section 807(b) directs the Board to identify, describe and publish those portions of its regulations that are inappropriate for, and thus inapplicable to, the non-federally chartered housing creditors. On November 17, 1982, the Board published a "Notice to Housing Creditors" (47 FR 51732, 51733), and requested comments thereon. The Notice provided that housing creditors

that are not commercial banks, credit unions or Federal associations may make alternative mortgage loans secured by a single-family dwelling or dwelling units for four or fewer families, subject to the limitations contained in 12 CFR 545.8-2(a) (2), (7) (as amended, 47 FR 36612 (1982)). These housing creditors would, therefore, comply with the Board requirements on adjustments to rate, payment, balance or term and on disclosure. Requirements concerning loan-to-value ratios and other requirements designed to ensure safety and soundness in residential real estate lending by Federal associations were deemed inappropriate for, and thus inapplicable to, these housing creditors. For all other residential real property loans, all requirements as to adjustments to rate, payment, balance or term, and to disclosures were deemed inappropriate and inapplicable as well.

The Board's approach to the applicability of its regulations is premised on the clear statement of Congressional intent that Title VIII "does not place non-federally chartered housing creditors under the supervision of the federal agencies, but instead merely enables them to follow a federal program as an alternative to state law." S. Rep. No. 97-483, 97th Cong., 2d Sess. 55. The Notice to Housing Creditors should, therefore, identify as appropriate those regulations that further "describe and define" (section 803(1)) alternative mortgage transactions, and not those regulations intended for the general supervision of Federal associations. Also, those requirements applicable to mortgage lending generally (*i.e.*, fixed-rate, fixed-term, fully amortized loans as well as alternative mortgage transactions) are deemed inappropriate because they do not further "describe or define" alternative mortgage transactions defined in section 803(1) of Pub. L. 97-320.

The comments received on the November 17, 1982 Notice raised a number of issues. Some commenters requested that the Notice be expanded to include references to partially amortized loans, to forty year amortization limitations, to regulations on manufactured home loans, and to loan-to-value requirements.

In responding to these suggestions, the Board adheres to the approach that those regulatory provisions that describe and define alternative mortgage transactions should be deemed applicable, but those provisions that apply generally to mortgage loans, those outside of the authority granted by Title VIII, and those imposed on Federal associations for safety and soundness

purposes should not be applied. The revised Notice, therefore, does not include a reference to the forty year amortization limit because this requirement is not one particular to alternative mortgage transactions. The provisions on loan-to-value ratios are not deemed appropriate because they reflect the consideration of safety and soundness in the Board's supervision of Federal associations. References to manufactured home loans or other types of loans are not included in the Notice because section 803(1) clearly defines the types of loans to which the authority to make alternative mortgage transactions is applicable.

The final rule incorporates a revised Notice to Housing Creditors as an Appendix to Part 545. The Board believes that codification of the Notice in this manner will make reference to the applicable regulations easier for housing creditors that must rely on the regulations pursuant to section 804(a)(3). The revised Notice references the basic authority to make alternative mortgage transactions and the statutory definition set forth in section 803. The Notice identifies only the following rules as applicable:

§ 545.33(c), setting forth the authority to make partially amortized or non-amortized loans and to adjust the interest rate, payment, balance, or term to maturity;

§ 545.33(e), setting forth limitations on adjustments to loans secured by borrower-occupied property; and

§ 545.33(f) (4) thru (11), setting forth requirements for disclosures on loans secured by borrower-occupied property that are not fixed-rate and fully amortized.

The Board believes that these provisions are an integral part of, and particular to, alternative mortgage transactions made by Federal associations. The adjustment and disclosure provisions are further limited in applicability to loans secured by borrower-occupied property, and therefore are limited in the same manner for housing creditors other than commercial banks and credit unions. All other regulations are deemed inappropriate and, therefore, inapplicable.

#### Equalization of Interest Rates

Most favored lender status is conferred on FSLIC-insured institutions by section 522 of the Depository Institutions Deregulation and Monetary Control Act of 1980 (12 U.S.C. 1730g). The Board, therefore, deletes existing § 545.8-9 relating to the equalization of interest rates.

## Final Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, Pub. L. No. 96-35, 94 Stat. 1164 (September 19, 1980), the Board is providing the following regulatory flexibility analysis:

1. *Reasons, objective, and legal basis underlying the rule.* These elements have been incorporated elsewhere into the supplementary information regarding the rule.

2. *Small entities to which the rule will apply.* The rule will apply only to Federal savings and loan associations and institutions the accounts of which are insured by the FSLIC.

3. *Impact of the rule on small institutions.* The rule will permit institutions to expand their services and investment activities regardless of size. There will be no disproportionate effect on small institutions.

4. *Overlapping or conflicting federal rules.* There are no known Federal rules that may duplicate, overlap, or conflict with the rule.

5. *Alternatives to the rule.* To the extent that there are alternatives to any elements of the rule, discussion of them has been incorporated into the supplementary information.

## List of Subjects in 12 CFR Parts 523, 526, 541, 545, 555, 561, and 563

Federal home loan banks, Savings and loan associations.

## Effective Date

The Board has determined that the full thirty day delay of effective date following publication of the regulations pursuant to 5 U.S.C. 553(d) and 12 CFR 508.14 is unnecessary because they relieve limitations imposed by regulations currently in effect, and it is in the public interest to provide for implementation of new powers as expeditiously as possible. Therefore, the regulations will take effect on May 26, 1983.

## SOURCES OF REVISED SECTIONS

Revised section(s)	Title	Original section(s)
523.10	Definitions for purposes of this section, § 523.11 and § 523.12	523.10,
526.1	Definitions used in this Part	526.1,
541.1	General	541.1,
541.2	Act	541.2,
541.3	Combination of residential real estate and business property involving minor or incidental business use	541.3,
541.4	Combination of home and business property	541.4,
541.5	Cooperative housing development	541.5,
541.6	Director	541.6,
541.7	Dwelling unit	541.7,
541.8	Federal association	541.8,
Redesignated as § 541.9	Interim Federal association	541.8-1,
Redesignated as § 541.10	Interim state institution	541.8-2,
Redesignated as § 541.11	Insured institution	541.8-3,
Redesignated as § 541.12	General reserves	541.9,
Redesignated as § 541.13	Guaranteed loan	541.10,
Redesignated as § 541.14	Home	541.11,
Redesignated as § 541.15	Improved residential real estate	541.12 and 541.17(b),
[Removed]	Loans secured by liens on real estate	541.14,
Redesignated as § 541.16	Insured loan	541.19,
Redesignated as § 541.17	Regulatory net worth	541.15,
Incorporated as § 541.29	Other dwelling unit	541.16,
Incorporated as §§ 541.15 and 541.31	Other improved real estate	541.17,
541.18	Principal Supervisory Agent	541.18,
541.19	Short-term savings accounts	541.19,
541.20	Single-family dwelling	541.20,
541.21	Supervisory Agent	541.21,
541.22	Surplus	541.22,
Redesignated as § 541.23	Withdrawal value of a savings account	541.24,
Incorporated as § 541.50	Consumer loans	541.25,
Redesignated as § 541.24	Loans	541.26,
Redesignated as § 541.25	Commercial paper	541.27,
Redesignated as § 541.26	Corporate debt security	541.28,
Redesignated as § 541.27	Unimproved real estate	541.29,
Redesignated as § 541.28	Debit card	541.30,
541.29	Residential real estate	Encompasses § 541.16, with added provisions [New],
541.30	Nonresidential real estate	541.17(a) and 541.17(c),
541.31	Improved nonresidential real estate	[New],
545.1	General authority	[New],
545.2	Federal preemption	545.8a,
545.3	Transition period	[New],
545.4-545.10	[Reserved]	
545.11	Insured accounts	545.1, 545.1-1, 545.1-2, 545.1-3, 545.1-4, 545.2- 1, and 545.2-2,
545.12	Demand deposit accounts	[New],
545.13	Account records	545.2,
545.14	Determination and distribution of earnings	545.1-1, 545.3, and 545.3-1,
545.15	Withdrawals	545.4,
545.16	Public deposits, depositories, and fiscal agents	545.24-2 and 545.24-3,
545.17	Funds transfer services	545.4-1,
545.18	Issuance of mutual capital certificates	545.5-1,
545.19	Issuance of net worth certificates	[New],
545.20	Borrowing, issuing obligations and securities, and giving security	545.24,
545.21	Give-aways	545.5,
545.22-545.30	[Reserved]	
545.31	Election regarding classification of loans or investments	Encompasses § 545.7-9 with added provisions
545.32	Real estate loans	545.6, 545.6-2, 545.6-4, 545.6-5, and 545.6-8
545.33	Home loans	545.6-2,
545.34	Limitations for home loans secured by borrower-occupied property	545.6-3, 545.6-4, and 545.6-5,

## SOURCES OF REVISED SECTIONS—Continued

Revised section(s)	Title	Original section(s)
545.35	Other real estate loans	545.6-2(b) and 545.6-6
545.35	Loans to acquire or to improve real estate	545.6-2(c), 545.6-2(d), and 545.6-2(e)
545.37	Combination loans	545.6-2(b)
545.38	Insured and guaranteed loans	545.6-1, 545.6-13, and 545.6-14
545.39	Loans guaranteed under the Foreign Assistance Act of 1961	545.6-11
545.40	Loans on low-rent housing	545.6-9
545.41	Community development loans and investments	545.6-10
545.42	Home improvement loans	545.6-3
545.43	State housing corporation investment-insured	545.7-3a
545.44	Mortgage transactions with the Federal Home Loan Mortgage Corporation	545.6-10
545.45	Manufactured home financing	545.7-6
545.46	Commercial loans	[New]
545.47	Overdraft loans	545.4-1
545.48	Letters of credit	[New]
545.49	Loans on securities	545.7-1
545.50	Consumer loans	545.7-10
545.51	Credit cards	545.7-7
545.52	Loans on savings accounts	545.7
545.53	Finance leasing	545.7-10a
545.54-545.70	[Reserved]	
545.71	Liquid Assets	545.9
545.72	Government obligations	545.7-11 and 545.9
545.73	Intra-American Savings and Loan Bank	545.9(f)
545.74	Service corporations	545.9-1
545.75	Commercial paper and corporate debt securities	545.9-4
545.76	Investment in open-end management investment companies	545.9-4
545.77	Real estate for office and related facilities	545.10
545.78	Leasing	[New]
545.79	Gold transactions	545.8-11
545.80	Small business Investment Corporations	[New]
545.81-545.90	[Reserved]	
545.91	Home office	545.13
545.92	Branch offices	545.14
545.93	Upgrading of approved branch office	545.14-1
545.94	Closing a branch office	545.14-2
545.95	Change of office location and redesignation of offices	545.15
545.96	Agency	545.16
545.97-545.100	[Reserved]	
545.101	Fiscal agency	545.17
545.102	Trustee	545.17-1
545.103	Suretyship	545.24-2
545.104-545.110	[Reserved]	
545.111	Adjustments to book value of assets	545.18
545.112	Real estate owned	545.19
545.113	Accounting records	545.20
545.114	Monthly reports	545.22
545.115	Statement of condition	545.23
545.116-545.120	[Reserved]	
545.121	Indemnification of directors, officers and employees	545.25
545.122	Employment contracts	545.25-1
545.123	Advisory boards and committees	545.26
545.124-545.125	[Reserved]	
545.126	Referral of insurance business	545.27
545.127-545.130	[Reserved]	
545.131	Communication between members of a Federal mutual association	545.28
545.132-545.135	[Reserved]	
545.136	Financial futures transactions	545.29
545.137	Financial options transactions	545.29-1
545.138	Data-processing services	545.16-1
545.139	[Reserved]	
545.140	Remote Service Units (RSUs)	545.4-2
545.141	Home banking services	[New]
Appendix	Notice to Housing Creditors Regarding Alternative Mortgage Transactions	[New]
555.3	Real estate	555.3
555.15	Prepayment penalty on mortgage loans	555.15
555.19	Receipt of interest expressed as a percentage of other income	555.19
561.15	Scheduled items	561.15
561.42	Non withdrawable account	[New]
563.3-3	Eurodollar deposits	563.3-3
563.8	Borrowing limitations	563.8
563.8-2	Corporation's right of purchase	[New]
563.9	Geographic lending restrictions	563.9
563.9-3	Loans to one borrower	563.9-3

## STATUTORY AUTHORITY NOT CODIFIED

Statutory authority	Title	Original section(s) (removed by this action)
12 U.S.C. 1464(c)(3)(C)	Loeway authority for loans relating to residential real estate and farms	545.6-5
12 U.S.C. 1464(c)(1)(D)	Loans and investments relating to development of new communities	545.7-2
12 U.S.C. 1464(c)(4)(A)	Loans to and investments in business development credit corporations	545.7-3
12 U.S.C. 1464(c)(4)(D)	Educational loans	545.7-4
12 U.S.C. 1464(c)(1)(K)	Insured loans for life purchase	545.7-5
12 U.S.C. 1730g	Equalization of interest rates	545.6-9
12 U.S.C. 1464(c)(1)(C), (D), (E) and (F)	Securities and other investments	545.9 (a), (b), (c), (d), and (f)

## STATUTORY AUTHORITY NOT CODIFIED—Continued

Statutory authority	Title	Original section(s) (removed by this action)
12 U.S.C. 1464(c)(1)(N)	Investments in corporations and partnerships authorized by title IX of the Housing and Urban Development Act of 1968.	545.9-3.
12 U.S.C. 1464(b)(2) and 1464(c)	Issuance of GNMA-guaranteed, mortgage backed securities	545.24-1.
12 U.S.C. 1464(a)	Correspondent services	545.30.
12 U.S.C. 1464(c)(1)(G)	Time deposits in FSLIC-insured institutions	[New].
12 U.S.C. 1464(b)(3)	Borrowing from a state-chartered central reserve institution	545.24a.

Accordingly, the Board hereby amends Parts 523 and 528 of Subchapter B, Parts 541, 545 and 555 of Subchapter C, and Parts 561 and 563 of Subchapter D, Chapter V of Title 12, *Code of Federal Regulations*, as set forth below.

#### SUBCHAPTER B—FEDERAL HOME LOAN BANK SYSTEM

##### PART 523—MEMBERS OF BANKS LIQUIDITY

1. Revise paragraphs (d), (g) (6) and (9), and (h) (3) and (5) of § 523.10, as follows:

##### § 523.10 Definitions for purposes of this section, § 523.11 and § 523.12.

(d) *Net withdrawable accounts.* All withdrawable accounts less the unpaid balance of all loans secured by such accounts, but not including tax and loan accounts, note accounts, accounts to the extent that security has been given upon them pursuant to § 563.8-2 of this Chapter, United States Treasury General Accounts, or United States Treasury Time Deposit-Open Accounts.

##### (g) *Liquid assets.* \* \* \*

(6) Obligations of or obligations issued by (other than gold-related obligations) any state, territory or possession of the United States or political subdivision thereof, including any agency, corporation or instrumentality of a state, territory, possession or political subdivision:  
*Provided, That:*

(i) Such obligations continue to meet the requirements of § 545.72(a); and  
(ii) Such obligations will mature in 2 years or less;

(9) Corporate debt obligations and commercial paper denominated in dollars provided that:

(i) Such corporate debt obligations (a) continue to be rated in one of the four highest grades by the most recently published rating of such obligations by two nationally recognized investment rating services, (b) are marketable as defined by § 541.26 of this part, (c) will mature in three years or less, and (d) are not convertible to common stock;

(ii) Such commercial paper (a) continues to be rated in one of the two highest grades by the most recently published rating of such paper by two nationally recognized investment rating services, or, if unrated, is guaranteed by a company having outstanding paper that is so rated, (b) will mature in 270 days or less; and

*Provided,* That an amount not in excess of one percent of such institution's assets invested in eligible corporate debt obligations or commercial paper of a single issuer shall be counted as a liquid asset; and

##### (h) *Short-term liquid assets.* \* \* \*

(3) Savings accounts, including loans of unsecured day(s) funds, that qualify as liquid assets under paragraph (g)(4) of this section, and, in the case of negotiable savings accounts, will mature in six months or less;

(5) obligations specified in paragraph (g)(6)(i)(b) of this section that will mature in 6 months or less;

#### PART 526—LIMITATIONS ON RATE OF RETURN

2. Amend § 526.1 by (1) removing the word "notice" from the first sentence of paragraph (e) thereof and substituting in its place the word "note", and (2) revising paragraph (1) thereof, as follows:

##### § 526.1 Definitions used in this Part.

(1) *NOW (negotiable order of withdrawal) account.* A savings account authorized by 12 U.S.C. 1832 on which interest is paid subject to the rate limitation in § 526.3 of this Part. For purposes of 12 U.S.C. 1832:

(1) An organization shall be deemed "operated primarily for religious, philanthropic, charitable, educational, or other similar purposes \* \* \* and not for \* \* \* profit" if it is described in sections 501(c)(3) through (13), 501(c)(19), or 528 of the Internal Revenue Code, and

(2) The funds of a sole proprietorship or unincorporated business owned by a husband and wife shall be deemed

beneficially owned by "one or more individuals."

#### SUBCHAPTER C—FEDERAL SAVINGS AND LOAN SYSTEM

##### PART 541—DEFINITIONS

3. Revise Part 541 in its entirety as follows:

##### Sec.

- 541.1 General.
  - 541.2 Act.
  - 541.3 Combination of residential real estate and business property involving only minor or incidental business use.
  - 541.4 Combination of home and business property.
  - 541.5 Cooperative housing development.
  - 541.6 Director.
  - 541.7 Dwelling unit.
  - 541.8 Federal association.
  - 541.9 Interim Federal association.
  - 541.10 Interim state institution.
  - 541.11 Insured institution.
  - 541.12 General reserves.
  - 541.13 Guaranteed loan.
  - 541.14 Home.
  - 541.15 Improved residential real estate.
  - 541.16 Insured loan.
  - 541.17 Regulatory net worth.
  - 541.18 Principal Supervisory Agent.
  - 541.19 Short-term savings accounts.
  - 541.20 Single-family dwelling.
  - 541.21 Supervisory Agent.
  - 541.22 Surplus.
  - 541.23 Withdrawal value of a savings account.
  - 541.24 Loans.
  - 541.25 Commercial paper.
  - 541.26 Corporate debt security.
  - 541.27 Unimproved real estate.
  - 541.28 Debit card.
  - 541.29 Residential real estate.
  - 541.30 Nonresidential real estate.
  - 541.31 Improved nonresidential real estate.
- Authority: Sec. 5, 48 Stat. 132, as amended; 12 U.S.C. 1464, Reorg. Plan No. 3 of 1947; 3 CFR 1943-1948 Comp., p. 1071, unless otherwise noted.

##### § 541.1 General.

Unless another definition is provided in this subchapter, definitions in Part 521 of this Chapter apply.

##### § 541.2 Act.

The Home Owners' Loan Act of 1933, as amended.



**§ 541.3 Combination of residential real estate and business property involving only minor or incidental business use.**

Residential real estate for which no more than twenty percent of the total appraised value of the real estate is attributable to the business use.

**§ 541.4 Combination of home and business property.**

A home used in part for business.

**§ 541.5 Cooperative housing development.**

Real estate primarily comprising a group of single-family dwellings owned by a non-profit cooperative housing organization.

**§ 541.6 Director.**

The Director or Deputy Director—Office of Examinations and Supervision.

**§ 541.7 Dwelling unit.**

The unified combination of rooms designed for residential use by one family, other than a single-family dwelling.

**§ 541.8 Federal association.**

A savings and loan association or savings bank chartered by the Board under section 5 of the Act and, except as the Board may otherwise provide, any building and loan, savings and loan, building, or homestead association, organized or incorporated under the laws of the District of Columbia.

**§ 541.9 Interim Federal association.**

An association chartered by the Board under section 5 of the Act to facilitate the acquisition of 100 percent of the voting shares of an existing Federal stock association or other insured stock institution by a newly formed company or an existing savings and loan holding company or to facilitate any other transaction the Board may approve.

**§ 541.10 Interim state institution.**

An insured institution, other than a Federal association, the accounts of which are insured by the Federal Savings and Loan Insurance Corporation, to facilitate the acquisition of 100 percent of the voting shares of an existing Federal stock association or other insured stock institution by a newly formed company or an existing savings and loan holding company or to facilitate any other transaction the Board may approve.

**§ 541.11 Insured institution.**

An insured institution as defined in § 561.1 of this Chapter.

**§ 541.12 General reserves.**

Aggregate reserves established solely to meet losses.

**§ 541.13 Guaranteed loan.**

A loan guaranteed or as to which a commitment to guarantee has been made under the Servicemen's Readjustment Act of 1944, or Chapter 37 of Title 38, United States Code, as amended.

**§ 541.14 Home.**

Real estate comprising a single-family dwelling(s) or a dwelling unit(s) for four or fewer families in the aggregate.

**§ 541.15 Improved residential real estate.**

Residential real estate containing offsite or other improvements sufficient to make the property ready for primarily residential construction, and real estate in the process of being improved by a building or buildings to be constructed or in the process of construction for primarily residential use.

**§ 541.16 Insured loan.**

A loan as to which the mortgagee is insured, or as to which a commitment for such insurance has been made under the National Housing Act or the Servicemen's Readjustment Act of 1944, or Chapter 37 of Title 38, United States Code, as amended.

**§ 541.17 Regulatory net worth.**

Any reference to the term "net worth" included in this Subchapter shall mean "regulatory net worth" as defined in § 561.13 of this Chapter.

**§ 541.18 Principal Supervisory Agent.**

The President of the Bank of the district in which a Federal association, or insured institution (as defined in § 561.1 of this Chapter), is, or will be, located or any other person designated in writing as Principal Supervisory Agent by the Board to serve as such for such term as under such conditions as may be specified.

**§ 541.19 Short-term savings account.**

A savings account which will be withdrawn in less than twenty-four months or was established to accumulate funds to pay taxes or insurance premiums on real estate securing a loan.

**§ 541.20 Single-family dwelling.**

A structure designed for residential use by one family, or a unit so designed, whose owner owns, directly or through a non-profit cooperative housing organization, an undivided interest in the underlying real estate, including property owned in common with others which contributes to the use and enjoyment of the structure unit.

**§ 541.21 Supervisory Agent.**

The Principal Supervisory Agent or any other officer or employee of the Bank designated under § 501.10 or § 501.11 of this Chapter.

**§ 541.22 Surplus.**

Undistributed earnings held as unallocated reserves for general corporate use.

**§ 541.23 Withdrawal value of a savings account.**

The amount invested in a savings account plus earnings credited thereto, less lawful deductions therefrom.

**§ 541.24 Loans.**

Obligations and extensions or advances of credit; and any reference to a loan or investment includes an interest in such a loan or investment.

**§ 541.25 Commercial paper.**

Any note, draft, or bill of exchange which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which has a maturity at the time of issuance of not exceeding nine months, exclusive of days of grace, or any renewal thereof the maturity of which is likewise limited.

**§ 541.26 Corporate debt security.**

A marketable obligation, evidencing the indebtedness of any corporation in the form of a bond, note and/or debenture which is commonly regarded as a debt security and is not predominantly speculative in nature. A security is marketable if it may be sold with reasonable promptness at a price which corresponds reasonably to its fair value.

**§ 541.27 Unimproved real estate.**

Real estate that will be improved, as defined in §§ 541.15 or 541.31 of this Part.

**§ 541.28 Debit card.**

A card that enables an accountholder to obtain access to a savings account for the purpose of making withdrawals or of transferring funds to a third party by non-transferable order or authorization.

**§ 541.29 Residential real estate.**

The terms "residential real estate" or "residential real property" mean homes (including condominiums and cooperatives), combinations of homes and business property, other real estate used for primarily residential purposes other than a home (but which may include homes), combinations of such real estate and business property involving only minor business use, farm

residences and combinations of farm residences and commercial farm real estate, property to be improved by the construction of such structures, or leasehold interests in the above real estate.

#### § 541.30 Nonresidential real estate.

The terms "nonresidential real estate" or "nonresidential real property" mean real estate that is not "residential real estate," as that term is defined in § 541.29 of this Part.

#### § 541.31 Improved nonresidential real estate.

Nonresidential real estate (a) containing a permanent structure(s) constituting at least 25 percent of its value, or (b) containing improvements which make it usable by a business or industrial enterprise; or (c) used, or to be used within a reasonable time, for commercial farming, excluding hobby and vacation property.

### PART 545—OPERATIONS

4. Revise Part 545 in its entirety as follows:

Sec.  
545.1 General authority.  
545.2 Federal preemption.  
545.3 Transition period.  
545.4-545.10 [Reserved]  
545.11 Insured accounts.  
545.12 Demand deposit accounts.  
545.13 Account records.  
545.14 Determination and distribution of earnings.  
545.15 Withdrawals.  
545.16 Public deposits, depositories, and fiscal agents.  
545.17 Funds transfer services.  
545.18 Issuance of mutual capital certificates.  
545.19 Issuance of net worth certificates.  
545.20 Borrowing, issuing obligations and securities, and giving security.  
545.21 Give-aways.  
545.22-545.30 [Reserved]  
545.31 Election regarding classification of loans or investments.  
545.32 Real estate loans.  
545.33 Home loans.  
545.34 Limitations for home loans secured by borrower-occupied property.  
545.35 Other real estate loans.  
545.36 Loans to acquire or to improve real estate.  
545.37 Combination loans.  
545.38 Insured and guaranteed loans.  
545.39 Loans guaranteed under the Foreign Assistance Act of 1961.  
545.40 Loans on low-rent housing.  
545.41 Community development loans and investments.  
545.42 Home improvement loans.  
545.43 State housing corporation investment-insured.  
545.44 Mortgage transactions with the Federal Home Loan Mortgage Corporation.  
545.45 Manufactured home financing.

Sec.  
545.46 Commercial loans.  
545.47 Overdraft loans.  
545.48 Letters of credit.  
545.49 Loans on securities.  
545.50 Consumer loans.  
545.51 Credit cards.  
545.52 Loans on savings accounts.  
545.53 Finance leasing.  
545.54-545.70 [Reserved]  
545.71 Liquid assets.  
545.72 Government obligations.  
545.73 Inter-American Savings and Loan Bank.  
545.74 Service corporations.  
545.75 Commercial paper and corporate debt securities.  
545.76 Investment in open-end management investment companies.  
545.77 Real estate for office and related facilities.  
545.78 Leasing.  
545.79 Gold transactions.  
545.80 Small Business Investment Corporations.  
545.81-545.90 [Reserved]  
545.91 Home office.  
545.92 Branch offices.  
545.93 Upgrading of approved branch office.  
545.94 Closing a branch office.  
545.95 Change of office location and redesignation of offices.  
545.96 Agency.  
545.97-545.100 [Reserved]  
545.101 Fiscal agency.  
545.102 Trustee.  
545.103 Suretyship.  
545.104-545.110 [Reserved]  
545.111 Adjustments to book value of assets.  
545.112 Real estate owned.  
545.113 Accounting records.  
545.114 Monthly reports.  
545.115 Statement of condition.  
545.116-545.120 [Reserved]  
545.121 Indemnification of directors, officers and employees.  
545.122 Employment contracts.  
545.123 Advisory boards and committees.  
545.124-545.125 [Reserved]  
545.126 Referral of insurance business.  
545.127-545.130 [Reserved]  
545.131 Communication between members of a Federal mutual association.  
545.132-545.135 [Reserved]  
545.136 Financial futures transactions.  
545.137 Financial options transactions.  
545.138 Data-processing services.  
545.139-545.140 [Reserved]  
545.141 Remote Service Units (RSUs).  
545.142 Home banking services.  
Appendix—Notice to Housing Creditors Regarding Alternative Mortgage Transactions.

Authority: Sec. 5, 48 Stat. 132, as amended; 12 U.S.C. 1464, Reorg. Plan No. 3 of 1947; 3 CFR 1943-1948 Comp., p. 1071, unless otherwise noted.

#### § 545.1 General authority.

A Federal association may exercise all authority granted it by the Home Owners' Loan Act of 1933, 12 U.S.C. 1464, as amended, and its charter and bylaws, whether or not implemented specifically by Bank Board regulation,

subject to the limitations and interpretations contained in this Part.

#### § 545.2 Federal preemption.

The regulations in this Part 545 are promulgated pursuant to the plenary and exclusive authority of the Board to regulate all aspects of the operations of Federal associations, as set forth in section 5(a) of the Home Owners' Loan Act of 1933, 12 U.S.C. 1464, as amended. This exercise of the Board's authority is preemptive of any state law purporting to address the subject of the operations of a Federal association.

#### § 545.3 Transition period.

Except for § 545.33 (which is subject to the transition period in § 545.33(i)) until December 31, 1983, a Federal association may continue to rely on the provisions of Part 545 as constituted prior to May 26, 1983. This section shall expire automatically as of December 31, 1983.

#### §§ 545.4-545.10 [Reserved]

#### § 545.11 Insured accounts.

Pursuant to 12 U.S.C. 1464 (b)(1)(A)-(b)(1)(B) a Federal association may issue insured accounts as defined in § 561.3 of this Chapter in the form of demand deposit accounts and savings accounts for indefinite or fixed terms ("certificate accounts"), in the form of shares or deposits. An association may establish classes of accounts and specify terms and conditions for such accounts. Amounts deposited in insured accounts may be in cash or property in which the association is authorized to invest. The authority of an association to issue insured accounts pursuant to this Part is subject to any applicable provisions of Parts 526 and 563 of this Chapter and Part 1204 of this Title.

#### § 545.12 Demand deposit accounts.

For purposes of 12 U.S.C. 1464 (b)(1)(A)-(b)(1)(B) pursuant to which an association may issue demand accounts:

(a) A "business, corporate, commercial or agricultural loan" shall include any loan other than a home loan on property occupied or to be occupied by the borrower, a loan to a natural person for personal, family, or household use, or a participation interest in such loans.

(b) A "loan relationship" is established where there is a line of credit, any outstanding loan (including a finance lease), or a previous loan and a reasonable expectation of the renewal of a lending relationship based on the usual and customary activities and needs of the borrower.

**§ 545.13 Account records.**

(a) *Evidence of ownership and account.* An association shall comply with the requirements found at §§ 563.1 and 563.17-1(c)(5) of the Chapter. Accounts must be evidenced by a written agreement with transactions confirmed by issuance of a receipt or advice.

(b) *Ownership of record.* (1) *General rule.* An association may treat the holder of record of an insured account as the owner, regardless of any notice to the contrary, until the account is transferred on the association's books. Insured accounts shall be transferable only on the association's books on proper application by the transferee and acceptance of the transferee as a member on terms approved by the board of directors.

(2) *Exception.* Paragraph (b)(1) of this section notwithstanding, an association may issue negotiable certificate accounts in bearer form without recording ownership on the books of the association: *Provided,* That any provisions of the association's charter regarding membership and voting shall not apply to such certificates.

(c) *Use of collecting and paying agent.* An association may authorize any bank that is a member of the Federal Deposit Insurance Corporation or any institution that is a member of the Federal Savings and Loan Insurance Corporation to prepare, sign and deliver evidence of accounts, to collect and transmit funds obtained from those accounts, and to maintain records with respect to such accounts. The association may provide for issuance of duplicate certificates, bond, security and other protection in connection with such activities. An association may also authorize any such institution to pay an account according to its terms.

**§ 545.14 Determination and distribution of earnings.**

(a) *Rates of return.* An association may issue savings accounts earning interest at different rates of return which may be fixed at the time the account is issued or may vary, on any basis specified at the time the deposit is accepted, or in accordance with § 1204.201 of this Title. The authority referred to in this paragraph is subject to any applicable provisions of Part 526 of this Chapter and Part 1204 of this Title.

(b) *Time of distribution.* An association may distribute earnings on savings accounts, or designated classes thereof, as provided in its charter and bylaws and the terms of the account.

(c) *Distribution on share accounts.* No distribution of earnings on share accounts may be made under this

section until provision has been made for payment of expenses and for the *pro rata* portion of credits to reserves required by the association's charter and by Part 563 of this Chapter.

**§ 545.15 Withdrawals.**

(a) *Right to require notice for withdrawal from savings account.* A Federal association shall reserve the right to require a fourteen day advance notice of intention to withdraw from savings accounts not having a fixed or minimum term of at least fourteen days or a prior notice-of-withdrawal requirement of at least fourteen days.

(b) *Payment of withdrawal requests.* Unless otherwise specified in its charter, when a Federal association cannot pay withdrawal requests within fourteen days of the date of receipt of written request therefor, it shall number and file all requests in the order received and proceed in the following manner while any request remains unpaid for more than fourteen days:

(1) Requests shall be paid in numerical order, and as each number is reached the accountholder shall be paid the lesser of \$1,000 or the amount of the withdrawal request. If the amount of the request is not paid in full the request shall be renumbered, placed at the end of the list of requests, and acted upon in the same way when its new number is reached, until the request is paid in full. However, when a request is reached for payment, the association shall so notify the accountholder by registered mail to his last address as recorded on the association's books and, unless the holder, within fourteen days from the mailing of the notice, applies in person or in writing for payment, the request shall be cancelled and not paid. Regardless of any other provision in this section, the board of directors may pay on an equitable basis an amount not exceeding \$200 to any accountholder in any calendar month; and

(2) The association shall allot to the payment of withdrawal requests the remainder of the association's receipts from all sources after deducting therefrom amounts for expenses, required payments on indebtedness, earnings distributable in cash to holders of savings accounts, and a fund for general corporate purposes of not more than twenty percent of the association's receipts from its accountholders and its borrowers.

(c) *Grace period with respect to withdrawals.* An association may compute earnings on amounts withdrawn from its insured accounts having an indefinite term during the last three business days of any period for which earnings are distributable as if

the withdrawal had been made immediately after the close of that period.

**§ 545.16 Public deposits, depositaries, and fiscal agents.**

(a) *Definitions.* As used in this section—

(1) "Moneys" includes "monies" and has the meaning it has in applicable state law;

(2) "State law" includes actions by a governmental body which has a charter adopted under the constitution of the state with provisions respecting deposits of public money of that body;

(3) "Surety" means surety under real and/or personal suretyship, and includes guarantor; and

(4) Terms in paragraph (b) of this section have the meanings they have under applicable state law.

(b) *Authority to act as surety for public deposits.* (1) An association that is a deposit association may give bond or security for deposit in it of public moneys or investment in it by a governmental unit if required to do so by state law, either as an alternative condition or otherwise, regardless of the amount required. Any bond or security may be given and any substitution or increase thereof may be made under this section at any time.

(2) If state law requires as a condition of such deposit or investment that the association or its bond or security, or any combination thereof, be surety for or with respect to other deposits or instruments, whether of that depositor or investor or of any other(s), and whether in the association or in any other institution(s) having, when the investments or deposits were made, insurance by the Federal Savings and Loan Insurance Corporation, the same shall become, or if the state law is self-executing shall be, such surety.

(c) *Depositaries and fiscal agents.* Subject to regulation of the U.S. Treasury Department, an association may serve as a depositary for Federal taxes, as a Treasury tax and loan depositary, as a depositary of public money and fiscal agent of the Government or with regard to any other instrumentality thereof when designated for that purpose by such instrumentality and approved by the Board, and satisfy any requirement in connection therewith, including: (1) maintaining accounts described in § 526.1 (n), (o), (p) and (q) of this Chapter, (2) pledging collateral, and (3) performing the services outlined in 31 CFR 202.3(b) (1981), or any section that supersedes or amends § 202.3(b).

**§ 545.17 Funds transfer services.**

An association is authorized to transfer, with or without fee, its customers' funds from any account (including a line of credit) of the customer at the association or at another financial intermediary to third parties or other accounts of the customer on the customer's order or authorization by any mechanism or device, including cashier's checks, conforming with applicable laws and established commercial practices.

**§ 545.18 Issuance of mutual capital certificates.**

A Federal mutual association may issue mutual capital certificates as its charter permits, subject to the requirements of § 583.7-4 of this Chapter or as the Board may otherwise authorize in writing.

**§ 545.19 Issuance of net worth certificates.**

A Federal association may issue net worth certificates as its charter permits, in accordance with Part 572 of this Chapter or as the Board may otherwise authorize in writing.

**§ 545.20 Borrowing, issuing obligations and securities, and giving security.**

Pursuant to 12 U.S.C. 1464(b)(2)-(b)(3), a Federal association may borrow, give security, and issue notes, bonds, debentures, or other obligations, or other securities, including capital stock, subject to the provisions of Parts 581-571 of this Chapter.

**§ 545.21 Give-aways.**

(a) *Definitions used in this section.* (1) "Give-away" means any thing of value, or service performed in any part outside an association's premises, given without adequate payment, but not including (i) providing safety deposit facilities at reduced rental to members of the association, or (ii) repaying to members of any part of amounts paid by them for safe deposit facilities located outside the association's facilities.

(2) "Doing business" has the meaning it has in the statute described in paragraph (c) of this section, and "domestic association" means any savings and loan, building and loan, homestead association, or cooperative bank which is a domestic association under that statutory provision.

(b) *Prohibition.* No Federal association doing business in a state which has in effect a statutory provision as described in paragraph (c) of this section and regulatory restrictions adopted under that statute, shall (1) condition the distribution of a give-away on the recipient's possessing, opening, or adding to a savings account, or

maintaining a minimum balance therein; (2) except under paragraph (d) of this section, refer in any of its advertising to any give-away, other than printed material of an educational or informational nature or a coin bank, with a cost not exceeding \$2.50; or (3) enter any agreement with, or accept funds for investment in a savings account from, any person engaging in such activities.

(c) *Reciprocal statutory provision.* The statutory provision referred to in paragraph (b) of this section must authorize a specified state official to impose any regulation restrictions on domestic associations of the state equivalent to those imposed on Federal associations by paragraphs (b) (1) and (2) of this section if, while the restriction is in force, Federal associations doing business in the state are likewise restricted.

(d) *Exception.* Notwithstanding paragraph (b) of this section, a Federal association may advertise give-aways during a single period of thirty days ending not more than one year after it opens its first office.

**§§ 545.22-545.30 [Reserved]****§ 545.31 Election regarding classification of loans or investments.**

(a) If a loan or other investment is authorized under more than one section of the Home Owners' Loan Act of 1933, 12 U.S.C. 1464, as amended, or this Part, an association may designate under which section the loan or investment has been made. Such a loan or investment may be apportioned among appropriate categories, and may be moved, in whole or part, from one category to another.

(b) For purposes of determining whether aggregate investments under one provision of the Home Owners' Loan Act of 1933, 12 U.S.C. 1464, as amended, or this Part exceed an applicable percentage-of-assets limitation, a loan commitment shall be counted as an investment and shall be included in total assets of an association only to the extent that funds have been advanced (and not repaid) pursuant to the commitment. The term "loan commitment" used in the preceding sentence includes a loan in process, a letter of credit, or any other commitment to extend credit.

(c) Loans sold to a third party shall be included in calculation of a percentage-of-assets investment limitation only to the extent they are sold with recourse.

(d) An association may make a loan secured by assignment of loans to the extent that it could, under applicable

law and regulations, make or purchase the underlying assigned loans.

**§ 545.32 Real estate loans.**

(a) *Authorization.* Pursuant to 12 U.S.C. 1464(c)(1)(B), a Federal association may originate, invest in, sell, purchase, service, participate, or otherwise deal in (including brokerage or warehousing) loans made on the security of residential or nonresidential real estate, or interests in such loans, subject to the limitations of this Part.

(b) *General.* (1) *Appraisals.* An association may make a real estate loan only after a qualified person designated by its board has submitted a signed appraisal of the security property, except that an insured or guaranteed loan may be made on the basis of a valuation of the security property furnished to the association by the insuring or guaranteeing agency. The association shall pay the cost of any appraisal of the security property obtained by the association after loan closing but prior to maturity of a loan, unless the borrower specifically requests the appraisal or the appraisal is made pursuant to the borrower's request to modify or refinance the loan.

(2) *Initial repayments on real estate loans.* Except as expressly authorized by this Part, repayments on real estate loans shall begin not later than 60 days after the loan is disbursed: *Provided,* That if such loans are for construction, substantial alteration, repair, or improvement, repayments may begin not later than 36 months (24 months for loans secured by real estate consisting solely of a home or combination of home and business property) after the date of the first disbursement, and interest shall be payable at least semi-annually until regular periodic payments begin.

(3) *Adjustments.* Subject to the limitations of § 545.33(e), an association may adjust the interest rate, payment, balance, or term to maturity on any real estate loan as authorized by the loan contract, and may receive a portion of the consideration for making a real estate loan in the form of a percentage of the amount by which the current market value of the property, during the loan term or at maturity, exceeds the original appraised value, or as provided in § 555.19 of this subchapter.

(c) *Security property.* A loan is made on the security of real estate if:

(1) The security property is real estate pursuant to the law of the state in which the property is located;

(2) The security interest of the association may be enforced as a real estate mortgage or its equivalent

pursuant to the law of the state in which the property is located;

(3) The security property is capable of separate appraisal;

(4) The association relies substantially upon the real estate as the primary security for the loan; and

(5) With regard to a security property that is a leasehold or other interest for a period of years, the term of the interest extends, or is subject to extension or renewal at the option of the association, for a term of at least five years following maturity of the loan.

(d) *Loan-to-value ratios.* (1) At the time of origination, a real estate loan may not exceed 100 percent of the market value of the security property. A Federal association shall, by a vote of its board of directors, establish maximum loan-to-value ratios for loans made on the security of real estate, and the resolution adopting such ratios shall be included in the minutes of the directors' meeting. Home loans made on the combined security of real estate and savings accounts may be made in excess of the maximum loan-to-value ratios adopted pursuant to this paragraph (d) with such excess secured by the savings account, if the account consists only of funds belonging to the borrower, members of his family, or his employer.

(2) With respect to home loans originated or refinanced in excess of 90 percent of the appraised value of the security property, that part of the unpaid balance that exceeds 80 percent of the property's value shall be insured or guaranteed by a mortgage insurance company that the Federal Home Loan Mortgage Corporation has determined to be a "qualified private insurer."

(3) With respect to all other loans on the security of real estate originated in excess of 90 percent of the appraised value of the security property, an association's board of directors shall approve each such loan prior to its origination and such approval shall be recorded in the minutes of its meeting.

(4) In determining compliance with maximum loan-to-value-ratio limitations for real estate loans, at the time of making a loan an association shall add together the unpaid amount, or in the case of a line-of-credit loan the approved credit limit, of all recorded loans secured by prior mortgages, liens or other encumbrances on the security property that would have priority over the association's lien, and shall not make such a loan unless the total amount of such loans (including the one to be made but excluding loans that will be paid off out of the proceeds of the new loan) does not exceed the applicable maximum loan-to-value-ratio

limitations prescribed in this paragraph (d). In valuing the real estate security, an association shall use the current appraised value of the security property, which may include any expected value of improvements to be financed. "Value" for a real estate loan means the market value of the real estate.

#### § 545.33 Home loans.

Any loan made on the security of homes (including a unit of a condominium or cooperative), combinations of homes and business property, farm residences, and combinations of farm residences and commercial farm real estate (home loans) shall be subject to the limitations of this section.

(a) *Term; interest.* The loan term shall not exceed 40 years, with interest payable at least semi-annually, except as expressly authorized by this section.

(b) *Repayment of principal.* The loan balance, for other than nonamortized and line-of-credit loans, shall be repayable in at least semi-annual installments: *Provided*, That loans on the security of farm residences and combinations of farm residences and commercial farm real estate may be repayable in annual installments.

(c) *Amortization.* The loan may be fully amortized, partially amortized, nonamortized, or a line-of-credit loan. The loan contract may provide for the deferral of principal and capitalization of a portion of interest, or of all interest on loans to natural persons secured by borrower-occupied property and on which periodic advances are being made.

(d) *Loan-to-value ratios.* (1) At origination, the loan balance may not exceed the maximum loan-to-value ratios established pursuant to § 545.32(d) of this Part. During the term of the loan, the loan-to-value ratio may increase above the maximum permissible percentage if the increase results from an adjustment authorized by paragraph (c) or (e) of this section. The Board will assume continued compliance with the loan-to-value-ratio limitations where the original ratio met the requirements of this paragraph (d), but in no event may the loan balance exceed 125 percent of the original appraised value of the property during the term of the loan, unless pursuant to the paragraph (e)(2)(i) of this section or unless the loan contract provides that the payment shall be adjusted at least once every five years, beginning no later than the tenth year of the loan, to a level sufficient to amortize the loan at the then-existing interest rate and loan balance over the remaining term of the loan. The 125-percent limitation shall

not apply to that portion of a loan balance that is interest received in the form of a percentage of the appreciation in value of the security property pursuant to paragraph (b)(3) of § 545.32 or as permitted by § 555.19 of this Subchapter.

(2) If, at maturity of a home loan that provides for adjustments pursuant to paragraph (c) or (e) of this section, the ratio of the loan balance to the current market value of the security property exceeds the maximum permissible under § 545.32(d) the association may offer to refinance the loan if (i) it complies with § 545.32(d)(2), and (ii) the loan contract requires that, in addition to full or partial amortization of the loan, the *pro rata* portion, based on the number of installments due annually, of estimated annual taxes and assessments on the security property be paid in advance to the association with each installment payment.

(e) *Adjustments.* For any home loan secured by borrower-occupied property, adjustments to the interest rate, payment, balance, or term to maturity shall comply with the limitations of this paragraph (e).

(1) Adjustments to the interest rate shall correspond directly to the movement of an interest-rate index or of a national or regional index that measures the rate of inflation or the rate of change in consumer disposable income, which index is readily available to and verifiable by the borrower and is beyond the control of the association. An association also may increase the interest rate pursuant to a formula or schedule that specifies the amount of the increase, the time at which it may be made, and which is set forth in the loan contract. An association may decrease the interest rate at any time.

(2) Adjustments to the payment and the loan balance that do not reflect an interest-rate adjustment may be made if (i) the adjustments reflect a change in a national or regional index that measures the rate of inflation or the rate of change in consumer disposable income, is readily available to and verifiable by the borrower, and is beyond the control of the association, (ii) in the case of a payment adjustment, the adjustment reflects a change in the loan balance or is made pursuant to a formula, or to a schedule specifying the percentage or dollar change in the payment as set forth in the loan contract or (iii) in the case of an open-end line-of-credit loan, the adjustment reflects an advance taken by the borrower under the line-of-credit and is permitted by the loan contract.

(3) Any combination of indices or a moving average of index values may be used as an index, and an association may use more than one index during the term of a loan, if set forth in the loan contract.

(4) At least 30 but not more than 120 days prior to an adjustment and at least 90 but not more than 120 days prior to the expected maturity of a non- or partially-amortized loan (including a loan with a "call" provision pursuant to paragraph (e)(5) of this section), an association shall provide the borrower with notice of the adjustment or of maturity. However, where the loan contract provides that changes in the interest rate shall occur more frequently than changes in the payment, the association need not notify the borrower of changes in the rate, nor of changes in the loan balance or term resulting from a rate change, until notice of a payment adjustment is given. (For purposes of notification, a payment adjustment is considered to occur as of the date of the interest-rate change immediately preceding the due date of the adjusted payment.) In addition, where the loan contract sets out a schedule of payment adjustments, notice need not be given of payment changes made pursuant to that schedule. In the case of an open-end line-of-credit loan, notice of an adjustment to the payment or the balance need not be given if the adjustment reflects advances taken by the borrower under the line of credit, and notice of a change in the interest rate permitted by the loan contract (and any resulting change in the payment) need not be given.

(5) The loan term may be adjusted only to reflect a change in the interest rate, the payment or the loan balance. A loan contract may provide an association with the right to call the loan due and payable either after a specified number of years has elapsed following closing or upon the occurrence of a specified event external to the loan.

(f) *Disclosure.* Not later than three business days following receipt of a written application an association shall disclose to each applicant for a home loan, including a nonconforming loan made pursuant to 12 U.S.C. 1464(c)(3)(C), that is secured by property occupied or to be occupied by the borrower the information specified by this paragraph (f). These disclosures must be provided for all such loans that are originated by the association, for loans purchased from an affiliate (as defined in § 583.15 of this Chapter) and for loans purchased from an unaffiliated entity as part of a business arrangement or agreement to purchase loans not yet originated. The

disclosures shall be in one or more documents other than the loan documents and shall be in plain language. The purpose of this disclosure requirement is to ensure full understanding of the operation of the loan for which the individual is applying. The disclosures do not constitute a commitment on the part of an association to make a loan to the applicant. For all home loans secured by borrower-occupied property the disclosure material provided to an applicant shall include at least such of the following information as is relevant to the type of loan being offered:

(1) Whether the loan contract contains a due-on-sale clause, and, if so, what rights the association has under the clause.

(2) A statement about whether the loan contract authorizes the imposition of a late charge or a prepayment penalty and, if so, the amount of the charge or penalty or the manner in which it is to be determined. If the amount of the charge or penalty may vary over the term of the loan, the association must indicate the approximate minimum and maximum amounts that may be imposed for a loan of the same type and with an initial balance comparable to that of the borrower.

(3) If the loan contract provides for escrow payments, a statement explaining the purpose of requiring escrow payments, how the amount of the escrow payment is established, and the rights of the association if the borrower fails to make the escrow payments.

(4) The term to maturity, if known, or the manner in which the term will be established.

(5) The initial interest rate, if known, or the manner in which the initial interest rate will be established.

(6) The amount of the initial payment, if known, and an explanation of how the amount of the payment is determined by reference to the initial loan balance, the interest rate, and the term over which the balance is scheduled to be repaid.

(7) If the interest rate, the payment, the loan balance, or the term to maturity may be adjusted, a full explanation of how the adjustments may be made, including identification of the index(es) to be used and how index values may be obtained by the borrower, and how the adjustment of one item may affect the others.

(8) What information will be contained in each notice of an adjustment and, in the case of a non- or partially-amortized loan (including a loan giving the association the right to call the loan due and payable after a

number of years or upon the occurrence of an event external to the loan), in the notice of maturity, and how far in advance of an adjustment or maturity each notice will be provided.

(9) A description of all contractual contingencies, other than those arising from the borrower's breach or nonperformance or an obligation under the loan contract, under which the loan may become due or which may result in a forced sale of the home.

(10) In the case of a non- or partially-amortized loan, unless the association unconditionally obligates itself to refinance the loan, a statement that a large payment will be due at maturity of the loan and that the association is under no obligation to refinance the loan; if the loan gives the association the right to call the loan due and payable after a number of years or upon the occurrence of an event external to the loan, a statement that a large payment may be due at such time and that the association is not obligated to refinance the loan.

(11) An example of the interaction of all variable features of the loan over any period of time.

(12) Notwithstanding any provisions in this paragraph (f), for all home loans secured by borrower-occupied property that are fully amortizing and on which the interest rate, balance, term and the amount of the payments are fixed, an association need only provide the information specified in paragraphs (f) (1)-(3) of this section.

(g) *Loans on cooperatives.* A loan made on the security of a cooperative under this section shall comply with the following requirements:

(1) *Loans on the security of cooperative housing developments ("blanket" loans).* The association shall require that the cooperative housing development maintain reserves at least equal to those required for comparable developments insured by the Federal Housing Administration.

(2) *Loans on individual cooperative units.* Such loans may be made on the security of (i) a security interest in stock, membership certificate, or other evidence of ownership issued to a stockholder or member by a cooperative housing organization; and (ii) an assignment of the borrower's interest in the proprietary lease or occupancy agreement issued by such organization.

(h) *Loans to facilitate trade-in or exchange.* Loans made to facilitate the trade-in or exchange of security property shall not exceed the loan-to-value ratios adopted by the association and shall be repayable within eighteen months.

(i) *Transition period.* (1) Effective August 16, 1982, the Board substantially amended its home lending regulations (12 CFR 545.6-2(a) (47 FR 36612)), and provided that between that date and December 31, 1982 Federal associations could make home loans pursuant to either the August amendments or the home lending regulations as constituted prior to that date. (12 CFR 545.6-2(a), 545.6-4, 545.6-4a, 545.6-4b (1982)). The Board subsequently extended this transition period to the later of June 30, 1982, or final Board action on these amendments. Board Resolution No. 83-24 (48 FR 3584 (1983)).

(2) These amendments become effective on May 26, 1983. Until that date associations may, or may commit to, make, purchase, participate, or otherwise deal in home loans pursuant to either the regulations as they were constituted prior to August 16, 1982 (12 CFR 545.6-2(a), 545.6-4, 545.6-4a, 545.6-4b (1982)) or the regulations as amended effective August 16, 1982. (12 CFR 545.6-2a (47 FR 36612)). As of May 26, 1983, and until December 31, 1983, an association may, or may commit to, make purchase, participate, or otherwise deal in home loans pursuant to either the regulations as constituted prior to August 16, 1982 (12 CFR 545.6-2(a), 545.6-4, 545.6-4a, 545.6-4b (1982)), or these amendments (12 CFR 545.33). The home lending regulations that became effective on August 16, 1982 (12 CFR 545.6-2(a) (47 FR 36612)) have been subsumed into these amendments and the authority to make home loans pursuant to the August amendments shall cease as of May 26, 1983.

(3) This paragraph (i) shall expire automatically as of December 31, 1983.

#### § 545.34 Limitations for home loans secured by borrower-occupied property.

(a) *Due-on-sale clauses.* Subject to the provisions of 12 U.S.C. 1701j-3 (which preempts state prohibitions of due-on-sale clauses) and Part 591 of this Chapter, an association may include a provision in its loan instrument whereby the association may, at its option, declare immediately due and payable sums secured by the association's security instrument if all or any part of the real property securing the loan is sold or transferred by the borrower without the association's prior written consent.

(b) *Late charges.* With respect to any loan made after July 31, 1976, on the security of a home occupied or to be occupied by the borrower, no late charge, regardless of form, shall be assessed or collected by an association, unless (1) any monthly billing, coupon, or notice the association may provide

regarding installment payments due on the loan discloses the date after which the charge may be assessed, and (2) the association has disclosed the information pertaining to the charge pursuant to § 545.33(f)(1)(ii) of this Part. An association may not impose a late charge more than one time for late payment of the same installment, and any installment payment made by the borrower shall be applied to the longest outstanding installment due. An association shall not assess a late charge as to any payment received by it within fifteen days of the due date of such payment.

(c) *Loan payments and prepayments.* Except for loans to natural persons secured by borrower-occupied property and on which periodic advances are being made, payments on the principal indebtedness of all loans on real estate shall be applied directly to reduction of such indebtedness, but prepayments made on an installment loan may be reapplied from time to time wholly or partly to offset payments which subsequently accrue under the loan contract. Subject to the disclosure provisions of § 545.33(f)(1)(ii), an association may impose a penalty on prepayment of a loan as provided in the loan contract. Notwithstanding the above, for any home loan secured by borrower-occupied property and on which the yield may be adjusted pursuant to § 545.33(e), an association may not impose a penalty on any prepayment made within 90 days of a notice of an adjustment.

#### § 545.35 Other real estate loans.

A loan made on the security of residential real estate other than a home or on the security of nonresidential real estate shall be subject to the limitations of this section.

(a) The loan term shall not exceed 30 years, except for nonamortized loans, which shall be repayable within five years.

(b) Interest shall be payable at least semi-annually, except to the extent that the loan contract provides for the deferral and capitalization of interest.

(c) At origination, the loan balance may not exceed the maximum loan-to-value ratios specified in § 545.32(d) of this Part. During the term of the loan, the loan-to-value ratio may increase above the maximum permissible percentage if the increase results from the deferral and capitalization of interest, but at no time during the loan term may the ratio of the loan balance to the initial appraised value of the security property exceed 100 percent as a result of the deferral and capitalization of interest.

(d) An association's aggregate investment in nonresidential real estate loans under this section shall not exceed 40 percent of assets.

#### § 545.36 Loans to acquire or to improve real estate.

In addition to any other limitations in this Part pertaining to real estate loans, loans for the purpose of acquiring unimproved real estate, for financing the development of real estate, on the security of building lots and sites (including a lot on which a manufactured home will be located), for construction of structures on real estate, or for the rehabilitation of real estate shall be subject to the provisions of this section.

(a) Such loans shall not exceed the loan-to-value ratios adopted under § 545.32(d) of this Part.

(b) Such loans shall be repayable within the following terms:

(1) *Two years:* loans for the construction or rehabilitation of an individual single-family dwelling;

(2) *Three years:* loans for the acquisition of land;

(3) *Six years:* loans for the construction or rehabilitation of multi-family dwellings, of nonresidential real estate, or of more than one single-family dwelling, and loans on the security of building lots and sites (other than for a borrower's principal residence);

(4) *Eight years:* loans to finance the development of real estate;

(5) *Fifteen years:* loans on the security of building lots and sites for single-family dwellings to be used as the borrower's principal place of residence (as evidenced by a borrower's certification of intention that the property will be so used).

(c) For loans made to finance the development of real estate, loans on the security of building lots and sites, and construction loans, upon release of any portion of the security property from the lien securing the loan, the principal balance of the loan shall be reduced by an amount at least equal to that portion of the outstanding loan balance attributable to the value of the property to be released. "Value" for the purposes of the preceding sentence is the appraised value fixed at the time the loan was made.

(d) Loan documentation for development loans shall contain a preliminary development plan that is satisfactory to the association. In addition, loans to one borrower (as defined in § 563.9-3 of this Chapter) made under this section for any one development project shall not exceed two percent of an association's assets. A

development project may include all facilities that compose an integrated development plan. With respect to construction loans, associations shall reserve the right to impose limits on the number of structures under construction at a given time.

#### § 545.37 Combination loans.

(a) Any loans authorized by this Part may be combined, with the term of each loan beginning at the end of the term of the preceding loan and interest and principal payment requirements as specified in the applicable sections of this Part.

(b) With respect to a combination of loans to finance development of real estate and loans on building lots and sites and/or construction loans, whether or not development has been completed, (i) beginning not more than three years after the initial disbursement of loan proceeds for construction purposes, the borrower shall make monthly payments sufficient to amortize, on a straight-line basis, that portion of the principal loan balance applicable to any improvement, including the building site, over the remaining term of the loan, and (ii) beginning not more than four years after such disbursement, the borrower shall make monthly payments sufficient to amortize, on a straight-line basis, that portion of the loan balance not applicable to the construction of any improvement and its building site, over the remaining term of the loan.

(c) For a combination loan that includes the acquisition of land, the loan contract shall provide that if the development or construction to be financed with the loan has not commenced by the end of the third year from the initial disbursement of the loan proceeds, the loan balance outstanding shall be due and payable.

(d) Notwithstanding any other provisions of this section, a combination loan for construction inclusive of acquisition and/or development, other than loans for single-family dwellings to be used as the principal place of residence of the borrower (which may be repayable within the period allowed by this section plus 40 years), shall be repayable within eleven years.

#### § 545.38 Insured and guaranteed loans.

Without regard to any other limitations of this Part, a Federal association may make or invest in any of the following:

(a) Loans on the security of residential real estate that constitute guaranteed or insured loans as defined in §§ 541.13 or 541.16 of this Chapter, or that are insured or guaranteed by an agency or instrumentality of a state (1) whose full

faith and credit is pledged to support the insurance or guarantee, or (2) whose insurance or guarantee program is approved by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.

(b) Loans on the security of residential real estate guaranteed under the Farmers Home Administration (FmHA) Rural Housing Program: *Provided*, That (1) FmHA guarantees at least eighty percent of the principal amount and accrued interest of each loan made under the program; (2) the loan terms must be acceptable to FmHA; and (3) the association invests not more than the greater of 2.5 percent of its assets or one-half of its net worth in the aggregate out-standing balance of the non-guaranteed portions of all loans made under the program and held by the association.

(c) Loans on the security of non-residential real estate that are guaranteed by one of the following agencies: (1) Economic Development Administration (under the Public Works and Economic Development Act of 1965, as amended, or the successor to that Act; or the Trade Act of 1974, as amended); (2) Farmers Home Administration (under the Consolidated Farm and Rural Development Act of 1974, as amended); (3) Small Business Administration (under the Small Business Investment Act of 1958, as amended; or the Small Business Act of 1953, as amended).

#### § 545.39 Loans guaranteed under the Foreign Assistance Act of 1961.

(a) Pursuant to 12 U.S.C. 1464(c)(4)(C) a Federal association may invest in a Federal association may invest in a federal project loan guaranty under Section 221 of the Foreign Assistance Act of 1961, as in effect before December 30, 1969; any loans guaranteed under Section 224 of that Act, as in effect before December 30, 1969; or any loan guaranteed under Sections 221 or 222 of that Act, as in effect after December 29, 1969, subject to paragraph (b) of this section.

(b) *Requirements.* For any investment made pursuant to this section:

(1) The loan agreement shall specify what constitutes an event of default, and provide that upon default in payment of principal or interest under such agreement, the entire amount of the outstanding indebtedness thereunder shall become immediately due and payable, at the lender's option; and

(2) The contract of guaranty shall cover 100 percent of any loss of investment thereunder, except for any portion of the loan arising out of fraud or misrepresentation for which the party seeking payment is responsible, and

provide that the guarantor shall pay for any such loss in U.S. dollars within a specified reasonable time after the date of application for payment.

#### § 545.40 Loans on low-rent housing.

(a) *General.* Limitations in this Part relating to maximum loan terms and loan-to-value ratios shall not apply to any loan secured by a lien on real estate which is, or is being constructed, remodeled, rehabilitated, or renovated to be, the subject of (1) an annual contributions contract for low-rent housing under former Sections 23 or 5 of the United States Housing Act of 1937, as amended, or (2) a Housing Assistance Payment (HAP) contract for low-income housing under Section 8 of the United States Housing Act of 1937, as amended, which the borrower has agreed in writing to enter into for the maximum term available for the particular project type and financing; *Provided*, That no loan by a Federal association pursuant to the authority of this section shall exceed the applicable loan-to-value ratio specified in § 545.32(d) or, the purchase price if the security property is to be purchased by a local public housing authority, and in no event, shall loan proceeds in excess of 80 percent of such appraised value be disbursed to the borrower until the Department of Housing and Urban Development has issued its final approval of the project under the subsidy program. Loans insured under the National Housing Act may be made on terms and conditions permitted by the insuring agency as provided in § 545.38 of this Chapter.

(b) *Appraisals.* The appraisals of any real estate required by § 545.32(b)(1) shall be rendered in accordance with the general appraisal guidelines issued by the Office of Examinations and Supervision.

#### § 545.41 Community development loans and investments.

(a) *General.* A Federal association may make investments pursuant to 12 U.S.C. 1464(c)(3)(B) that are located within any of the following areas: (1) Any neighborhood strategy area (as defined in 24 CFR 570.301(c)) receiving concentrated development assistance under Title I of the Housing and Community Development Act of 1974, as amended; (2) Any general location (as specified in 24 CFR 570.306(b)(3)(ii)) which is specified in a community's Housing Assistance Plan (as defined in 24 CFR 570.306) as an area for housing assistance goals and which is receiving such concentrated assistance; (3) Any urban renewal area (as defined in Section 110(a) of the Housing Act of



1949, as amended) receiving such concentrated assistance in order to finish uncompleted urban renewal projects; and (4) Any locales specified by a community as receiving Urban Development Action Grants or otherwise receiving significant amounts of such concentrated assistance.

(b) *Investment in loans and other obligations secured by liens on real estate.* Such investments shall conform to all limitations in this Part 545 applicable to the type of real estate securing the investments.

(c) *Investments in real estate.* Investments in real estate may not exceed the appraised value of the property plus usual settlement costs. In determining the two-percent statutory investment limit, the following rules shall apply:

(i) A reasonable allowance for depreciation computed under the straight-line method may be deducted from the cost of improved real property or investments in improved real property owned by the association;

(ii) If a leasehold interest in land is acquired, the amount of the investment as to rental obligations under the lease shall be determined on the basis of the "present value of an annuity due" and for the purpose of such determination, the worth of money shall be deemed to be a market rate as of the date of the lease; and

(iii) The investment in improvements to land in which the association has a leasehold interest shall be the cost to the association of the improvement, less reasonable allowance for amortization computed under the straight-line method.

#### § 545.42 Home improvement loans.

For any home improvement loan, with or without security, made pursuant to 12 U.S.C. 1464(c)(1)(J), installments shall be payable at least quarterly, the first installment due no later than 120 days from the date the loan is made and the final installment due no later than 20 years and 32 days from such date. Installments shall be substantially equal except to the extent that the loan complies with mortgage provisions authorized under § 545.33(e) of this Part.

#### § 545.43 State housing corporation investment-insured.

A Federal association may make investments in, commitments to invest in, loans to, or commitments to lend to any state housing corporation (as defined in § 571.8 of this chapter), pursuant to 12 U.S.C. 1464(c)(1)(P), provided that the aggregate outstanding direct investment and investment in loans and loan commitments under this

section shall not exceed 30 percent of the association's assets at the time of investment, and shall not exceed 10 percent of such assets for investments in state housing corporations located outside the association's home state.

#### § 545.44 Mortgage transactions with the Federal Home Loan Mortgage Corporation.

Without regard to any other provisions of this Part, a Federal association may enter into and perform any mortgage transaction with the Federal Home Loan Mortgage Corporation specified in § 305(a) of the Federal Home Loan Mortgage Corporation Act. For purposes of this section, the term "mortgage" shall have the meaning prescribed in section 302(d) of such Act.

#### § 545.45 Manufactured home financing.

##### (a) Definitions.

(1) "Manufactured home" shall have the same definition as that contained in the National Manufactured Home Construction and Safety Standards Act, 42 U.S.C. 5402(6).

(2) "Manufactured home chattel paper"—a document evidencing an installment sales contract or a loan or interest in a loan secured by a lien on one or more manufactured homes and equipment installed or to be installed therein.

(3) "Manufacturer's invoice price"—a manufacturer's itemized charges, shown on its invoice, for a specifically identified manufactured home, furnishings, equipment, and accessories installed by the manufacturer, and freight.

(b) *General investment authority.* Pursuant to 12 U.S.C. 1464(c)(1)(J), an association may invest in manufactured home chattel paper and interests therein without limitation as to percentage of assets.

(c) *Inventory financing.* An association may invest in manufactured home chattel paper which finances a manufactured home dealer's acquisition of inventory, if:

(1) The inventory is held for sale by the dealer in its ordinary course of business;

(2) The loan evidenced by the chattel paper is the dealer's obligation; and

(3) The loan amount does not exceed the following:

(i) For new manufactured homes, 100 percent of manufacturer's invoice price for each manufactured home and equipment to be installed by the dealer;

(ii) For used manufactured homes, 75 percent of appraised market value or other generally accepted valuation of each manufactured home, including installed equipment.

(d) *Retail financing.* (1) *Insured and guaranteed loans.* An association may invest in retail manufactured home chattel paper that is insured or guaranteed, as defined in § 541.13 or § 541.16 of this Subchapter, or that has a commitment for such insurance or guarantee.

(2) *Conventional loans.* An association may invest in conventional retail manufactured home chattel paper if:

(i) The manufactured home is located at a manufactured home park or other permanent or semi-permanent site;

(ii) The manufactured home chattel paper is payable within 20 years, in monthly payments which are substantially equal except to the extent that the financing complies with mortgage provisions authorized under § 545.33 (c), (e) and (f) of this Part; and

(iii) The financed amount (excluding time-price differential or interest, however computed) does not exceed (a) in the case of a new manufactured home, 90 percent of the buyer's total costs, including freight, itemized set-up charges, sales or other taxes, filing and recording fees imposed by law and premiums for related insurance, or (b) in the case of a used manufactured home, 90 percent of the appraised market value or other generally accepted valuation of the manufactured home plus sales and other taxes, filing and recording fees imposed by law, premiums for related insurance, and freight and itemized set-up charges, if any.

(3) *Combination loans.* An association may invest in manufactured home chattel paper secured by combinations of manufactured homes and lots on the following terms:

(i) *Affixed manufactured homes.* If the wheels and axles have been removed and the manufactured home is permanently affixed to a foundation, a loan secured by a combination of manufactured home and lot on which it sits may be treated as a residential real estate loan under § 545.33(b) of this Part.

(ii) *Unaffixed manufactured homes.* If the manufactured home is not affixed in the manner described in paragraph 3(i) of this section, an association may make a loan secured by a combination of manufactured home and lot on which it is or is to be located if the financing complies with the requirements of paragraphs (d)(2) (i), (ii) and (iii) of this section and the loan-to-value ratio does not exceed 75 percent of the appraised value of the lot and lot improvements and 90 percent of the buyer's total costs of the manufactured home (or valuation of used manufactured home) as defined in paragraph (d)(2)(iii) of this section.

(iii) *Insured and guaranteed loans.* Notwithstanding the other provisions of this paragraph (d)(3), of this section, an association may invest in a combination manufactured home and lot chattel paper that is insured or guaranteed as defined in §§ 541.13 or 541.16 of this Subchapter, or that has a commitment for such insurance or guarantee.

(e) *Sale of paper.*

(1) All manufactured home chattel paper sold by an association shall be sold without recourse, as defined in § 561.8 of this Chapter.

(2) No association may sell manufactured home chattel paper if, at the close of its most recent semi-annual period, it has manufactured home chattel paper scheduled items (other than assets acquired in a supervisory merger) in excess of five percent of its total portfolio in such paper: *Provided*, That application may be made to the Board for a waiver of this restriction.

§ 545.46 **Commercial loans.**

(a) *Investment authority.* Pursuant to 12 U.S.C. 1464(c)(1)(R), an association may invest in, sell, purchase, participate in, or otherwise deal in loans for commercial, corporate, business, or agricultural purposes: *Provided*, That at any one time the total investment made under this section shall not exceed five percent of the association's assets (or 7.5 percent in the case of a savings bank) prior to January 1, 1984, and ten percent thereafter.

(b) *Loans covered.* Notwithstanding the provisions of § 545.31 of this Chapter, the percentage-of-assets limitations in paragraph (a) of this section shall apply to:

(i) Overdraft loans on demand accounts; and

(ii) Commercial loans not secured by real estate that are made by a service corporation of the association: *Provided*, That, in the case of a service corporation with multiple stockholders, the amount of such loans attributed to one stockholder association will be calculated *pro rata* on the basis of the percentage of the service corporation's stock owned by the association.

§ 545.47 **Overdraft loans.**

(a) *Authorization.* Pursuant to 12 U.S.C. 1464(c)(1)(A), a Federal association may extend secured or unsecured credit to cover payment of drafts or other funds transfer orders in excess of the available balance of an account on which they are drawn, subject to the limitations of this section.

(b) *Loans not subject to this section.* Extensions of credit through the use of drafts or other funds transfer orders for purposes other than the payment of

bona fide overdrafts or which result in a debit balance existing for more than 30 days after notice shall not be considered to be made pursuant to this section.

(c) *Demand accounts.* Overdraft credit relating to demand accounts is subject to specific limitations set forth in § 545.46 of this Chapter.

§ 545.48 **Letters of credit.**

(a) An association may issue commercial and standby letters of credit in conformance with the Uniform Commercial Code or the Uniform Customs and Practice for Documentary Credits and may pledge collateral to secure its obligations thereunder, subject to the following requirements:

(1) Each letter of credit must conspicuously state that it is a letter of credit;

(2) The issuer's undertaking must contain a specified expiration date or be for a definite term, and must be limited in amount;

(3) The issuer's obligation to pay must be solely dependent upon the presentation of conforming documents as specified in the letter of credit, and not upon the factual performance or nonperformance by the parties to the underlying transaction; and

(4) The account party must have an unqualified obligation to reimburse the issuer for payments made under the letter of credit.

(b) To the extent funds are advanced under a letter of credit without compensation from the account party, the amount shall be treated as an extension of credit subject to percentage-of-assets limits and other requirements under an applicable provision of this Part.

§ 545.49 **Loans on securities.**

A Federal association may invest in loans secured by obligations of, or by obligations fully guaranteed as to principal and interest by, the United States or any agency or instrumentality of the United States named in § 523.10(g)(3) of this Chapter, if:

(a) The borrower is a financial institution insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, or is a broker or dealer registered with the Securities and Exchange Commission; and

(b) The market value of the securities for each loan at least equals the amount of the loan at the time it is made.

§ 545.50 **Consumer loans.**

(a) *Authorization.* Pursuant to 12 U.S.C. 1464(c)(2)(B), a Federal association may make consumer loans, subject to the limitations of this section.

(b) *Definition.* Consumer loans are defined as loans for personal, family or household purposes and loans reasonably incident thereto, and may be made as either open-end or closed-end consumer credit, but does not include credit extended in connection with credit cards nor bona fide overdraft loans.

(c) *Loans to dealers in consumer goods.* A Federal association may include loans to dealers in consumer goods to finance inventory and floor planning in the total investment made under this section. For purposes of the limitations on loans to one borrower, loans to dealers in consumer goods to finance inventory and floor planning shall be treated as commercial loans.

§ 545.51 **Credit cards.**

(a) *Authorization.* Pursuant to 12 U.S.C. 1464(b)(4), a Federal association may issue credit cards, extend credit in connection therewith, and otherwise engage in or participate in credit card operations, subject to the limitations of this section.

(b) Credit card operations may be subject to § 545.140 of this Part. If a personal security identifier, as defined in § 545.140(a)(2), is used in conjunction with a credit card, the identifier may not be disclosed to a third party.

§ 545.52 **Loans on savings accounts.**

(a) *Authorization.* Pursuant to 12 U.S.C. 1464(c)(1)(A), a Federal association may make loans on the security of its savings accounts, whether or not the borrower is the owner of the account, subject to the limitations of this section.

(b) Loans may be made pursuant to this section if the association obtains a lien on, or a pledge of, such accounts as security therefor. Such a loan shall not exceed the withdrawal amount of the savings account and shall not be made when the association has any unpaid application for withdrawal on file more than 14 days.

§ 545.53 **Finance leasing.**

(a) *Authorization.* Pursuant to 12 U.S.C. 1464(c)(1)(B), (c)(1)(R), and (c)(2)(B), a Federal association may engage in leasing activities that are the functional equivalent of lending, subject to the limitations of this section.

(b) *General.* (1) A Federal association may become the legal or beneficial owner of tangible personal property or real property for the purpose of leasing such property, may obtain an assignment of a lessor's interest in a lease of such property, and may incur obligations incidental to its position as

the legal or beneficial owner and lessor of the leased property, if (i) the lease is a net, full-payout lease representing a non-cancelable obligation of the lessee, notwithstanding the possible early termination of the lease and (ii) at the expiration of the lease, the association's interest in the property shall be liquidated or released on a net basis as soon as practicable.

(2) A lease of tangible personal property made to a natural person for personal, family or household purposes pursuant to this section shall be subject to all limitations applicable to the amount of a Federal association's investment in consumer loans. A lease made for commercial, corporate, business or agricultural purposes pursuant to this section shall be subject to all limitations applicable to the amount of a Federal association's investment in commercial loans. A lease of residential or nonresidential real property made pursuant to this section shall be subject to all limitations applicable to the amount of a Federal association's investment in real estate loans.

(c) *Definitions.* For the purposes of this section:

(1) A "net lease" is a lease under which the association will not, directly or indirectly, provide or be obligated to provide for:

(i) The servicing, repair or maintenance of the leased property during the lease term;

(ii) The purchasing of parts and accessories for the leased property; *Provided*, That improvements and additions to the leased property may be leased to the lessee upon its request in accordance with the full-payout requirements of this section;

(iii) The loan of replacement or substitute property while the leased property is being serviced;

(iv) The purchasing of insurance for the lessee, except where the lessee has failed to discharge a contractual obligation to purchase or maintain insurance; or

(v) The renewal of any license, registration or filing for the property unless such action by the association is necessary to protect its interest as an owner or financier of the property.

(2) A "full-payout" lease is one from which the lessor can reasonably expect to realize a return of its full investment in the leased property, plus the estimated cost of financing the property over the term of the lease, from rentals, estimated tax benefits, and the estimated residual value of the property at the expiration of the initial term of the lease: *Provided*, That no more than 20 percent of the return may be realized

from the residual value of the property at the expiration of the initial term of the lease. Both the estimated residual value of the property and that portion of the estimated residual value relied upon by the lessor to satisfy the requirements of a full-payout lease must be reasonable in light of the nature of the leased property and all relevant circumstances so that realization of the lessor's full investment plus the cost of financing the property depends primarily on the creditworthiness of the lessee, and not on the residual market value of the leased property. The maximum term of a full-payout lease shall be 40 years.

(d) *Salvage powers.* If, in good faith, an association believes that there has been an unanticipated change in conditions that threatens its financial position by significantly increasing its exposure to loss, the provisions of paragraphs (b) and (c) of this section shall not prevent the association:

(1) As the owner and lessor under a net, full-payout lease, from taking reasonable and appropriate action to salvage or protect the value of the property or its interest arising under the lease;

(2) As the assignee of a lessor's interest in a lease, from becoming the owner and lessor of the leased property pursuant to its contractual right, or from taking any reasonable and appropriate action to salvage or protect the value of the property or its interest arising under the lease; or

(3) From including any provisions in a lease, or from making any additional agreements, to protect its financial position or investment in the circumstances set forth in paragraphs (d) (1) and (2) of this section.

#### §§ 545.54-545.70 [Reserved]

#### § 545.71 Liquid assets.

An association may invest in assets that are described in § 523.10(g) of this Chapter. For purposes of this section, the maturity limitations (except those for banker's acceptances) of § 523.10(g) shall not apply.

#### § 545.72 Government obligations.

Pursuant to 12 U.S.C. 1464(c)(1)(H), an association may invest in obligations of or issued by any state, territory or possession of the United States or political subdivision thereof (including any agency, corporation, or instrumentality), subject to the following conditions:

(a) Government obligations must continue to hold one of the four highest national investment grade ratings, or must be issued by a public housing

agency and backed by the full faith and credit of the United States.

(b) Notwithstanding the limitations contained in paragraph (a) of this section, an association may invest up to one percent of its assets in the obligations of a state, territory, possession or political subdivision in which the association's home office or a branch office is located.

(c) Investment in gold-related obligations is prohibited.

#### § 545.73 Inter-American Savings and Loan Bank.

Pursuant to 12 U.S.C. 1464(c)(4)(C), an association may invest in the share capital and capital reserve of the Inter-American Savings and Loan Bank, subject to the following conditions:

(a) The association's net worth meets the requirements of § 563.13 of this Chapter, its scheduled items do not exceed 2.5 percent of its specified assets, and all appraised losses have been offset by specific loss reserves to the extent required by § 563.17-2 of this Chapter;

(b) The association's aggregate investment pursuant to this paragraph, including the amount of any obligations undertaken to provide said Bank with reserve capital in the future (callable capital), will not, as a result of such investment, exceed one-quarter of one percent of its assets or \$100,000, whichever is less; and

(c) The association's aggregate investment under this paragraph and its aggregate outstanding principal amount of investment under 12 U.S.C. 1464(c)(4)(C) of this Part, will not, as a result of such investment, exceed one percent of its assets.

#### § 545.74 Service corporations.

(a) *Definitions.* As used in this section—

(1) "Aggregate outstanding investment" means the sum of amounts paid to acquire capital stock or securities and amounts invested in obligations of service corporations less amounts received from the sale of capital stock or securities of service corporations and amounts paid to the association to retire obligations of service corporations. It also includes all nonconforming loans and conforming loans to the extent that they exceed in the amounts specified in paragraph (d)(2) of this section.

(2) "Confirming loan" means a loan or portion thereof which a Federal association may make under any provision of this Part other than this section, except a loan made under 12 U.S.C. 1464(c)(3)(C). A guarantee or

take-out commitment with respect to a loan which could have been made by a Federal association as a conforming loan may be deemed a conforming loan for purposes of this section if the Federal association complies with all requirements of this Chapter, including appraisal and recordkeeping requirements, as though it were itself making the loan subject to its guarantee or take-out commitment.

(3) "Joint venture" means any joint undertaking by a service corporation or a wholly-owned subsidiary thereof with one or more persons or legal entities in any form, including a joint tenancy, tenancy in common, or partnership and including investment in a corporation other than a wholly-owned subsidiary.

(4) "Scheduled items" and "specified assets" have the meanings prescribed in §§ 561.15 and 561.17 of this Chapter.

(5) "Subsidiary" includes a wholly-owned subsidiary and any joint venture in which a service corporation or wholly-owned subsidiary thereof (i) owns, controls, or holds with power to vote more than 25 percent of the capital stock, (ii) is a general partner, or (iii) is a limited partner and has contributed more than 25 percent of the limited partnership's capital.

(b) *General.* Pursuant to 12 U.S.C. 1464(c)(4)(B), a Federal association may invest in service corporations organized under the laws of the state (including District, commonwealth, territory or possession) in which the association's home office is located, provided that:

(i) The service corporation's activities, performed directly or through one or more wholly-owned subsidiaries or joint ventures, consist of one or more of the activities set forth in paragraph (c) of this section, or are otherwise specifically approved by the Board subsequent to its review of an application;

(ii) If all of the capital stock is held by fewer than five savings and loan associations, or more than 40 percent of such stock is held by one savings and loan association, with a home office in such State, then the consolidated debt outstanding at any one time (to holders of its capital stock and to others) of the service corporation and its subsidiaries may not exceed:

(a) Ten times the total of the service corporation's consolidated net worth and its unsecured debt (excluding accounts payable incurred in the ordinary course of business and paid within 60 days) to holders of at least 25 percent of its capital stock; or

(b) Twenty times such total if the service corporation is engaged solely in the activities set forth in paragraph (c)(1)(i) of this section. The consolidated

debt of the service corporation and its subsidiaries shall include the entire amount of any obligation of the service corporation or subsidiary resulting from the sale of loans with recourse;

(iii) The service corporation must agree in writing to permit and to pay the cost of such examination as the Board deems necessary;

(iv) The Board may limit service corporation activities, or refuse to permit activities, for supervisory reasons.

(c) *Permitted activities.* A service corporation in which a Federal association may invest is permitted to engage in activities reasonably related to the activities of Federal associations as the Board may approve. Applications for approval to engage in such activities shall be made to the Supervisory Agent. In addition, a service corporation may engage in the following activities without prior Board approval:

(1) *Loans.* Originating, investing in, selling, purchasing (including purchasing participations in) servicing, or otherwise dealing in (including brokerage or warehousing), any of the following:

(i) Loans, and participations in loans, on a prudent basis and secured by real estate or liens on manufactured homes;

(ii) Loans, and participations in loans with or without security, for altering, repairing, improving, equipping, or furnishing real estate;

(iii) Loans and participations in loans for business purposes secured in part by real estate and insured or guaranteed by an agency of the United States;

(iv) Educational loans and participations therein;

(v) Consumer loans, including inventory and floor planning loans, and participations therein;

(vi) Commercial loans and participations therein: *Provided*, That such loans together with commercial loans made by the parent association pursuant to § 545.46 of this Part do not exceed five percent of the assets of the parent, or 7.5 percent if the parent is a Federally chartered savings bank, prior to January 1, 1984, or ten percent thereafter. Where a service corporation is owned by more than one association, each parent for purposes of this calculation shall include a portion of the subsidiary's commercial loans in the proportion of that parent's investment in the service corporation.

(2) *Services primarily for financial institutions.* Performing any of the following services, primarily for financial institutions:

(i) Credit analysis, appraising, construction loan inspection, and abstracting;

(ii) Developing and administering personnel benefit programs, including life insurance, health insurance, and pension or retirement plans;

(iii) Research, studies, and surveys;

(iv) Developing and operating storage facilities for microfilm or other duplicate records;

(v) Advertising, brokerage and other services to procure and retain both savings accounts and loans, but not pooling savings accounts or soliciting or promoting pooled savings accounts;

(vi) Serving as escrow agent or as trustee under deeds of trust, including executing and delivering conveyances, reconveyances, and transfers of title;

(vii) Providing liquidity management, investment, advisory and consulting services;

(viii) Providing clerical, accounting, and internal auditing services;

(ix) Establishing, owning, leasing, operating or maintaining remote service units.

(3) *Real estate services.*

(i) Maintaining and managing real estate, including real estate used for agricultural purposes;

(ii) Managing owners' associations for condominium, cooperative, Planned Unit Development or other rental real estate projects;

(iii) Providing home ownership and financial counseling;

(iv) Providing relocation services;

(v) Providing real estate brokerage services for property owned by an association that owns capital stock of the service corporation, the service corporation, or a joint venture in which the service corporation participates, but not for property owned by third parties;

(vi) Acquiring real estate for prompt development or subdivision, for construction of improvements, for resale or leasing to others for such construction, or for use as manufactured home sites: *Provided*, That any development, subdivision, and construction of improvements is to be completed within eleven years after acquisition of the real estate, unless such period is extended by the Principal Supervisory Agent upon written application by the service corporation, which application shall be supported by information evidencing that the service corporation will proceed or has proceeded in accordance with a prudent development plan and has not caused undue delay in the completion of construction: and *Provided further*, That acquisition of an option to purchase is not an acquisition for the purpose of determining the periods provided for in this subparagraph;

(vii) Acquiring improved real estate or manufactured homes to be held for rental or resale, or for remodeling, renovating, or demolishing and rebuilding for sale or rental;

(viii) Acquiring, maintaining and managing real estate (improved or unimproved) to be used for offices and related facilities of a stockholder of the service corporation, or for such offices and related facilities and for rental or sale, if such acquisition, maintenance and management is performed under a prudent program of property acquisition to meet either the stockholder's present needs or reasonable future needs for office and related facilities: *Provided*, That without prior approval of the Board, no service corporation shall acquire such real estate if, as a result of the acquisition, the outstanding aggregate book value of all such real estate owned by the stockholder and its service corporations would exceed their consolidated net worth.

(4) *Other investments.*

(i) Making investments in securities and in corporations or partnerships authorized by title IX of the Housing and Urban Development Act of 1968;

(ii) Investing in savings accounts in an insured institution that is a stockholder of the service corporation: *Provided*, That the service corporation receives no consideration, other than interest at the current market rate, for opening or maintaining any such account;

(iii) Investing in the capital stock or in the accounts of an interim Federal association or an interim state institution that has been chartered solely for the purpose of becoming a constituent in a merger that will result in the acquisition of a stock association by a savings and loan holding company or by a company which will, after the acquisition, be a savings and loan holding company;

(iv) Investing in tax-exempt bonds of state governments or political subdivisions thereof used to finance residential real property for family units and issued pursuant to section 103 of the Internal Revenue Code, and tax-exempt obligations of public housing agencies used to finance housing projects with rental assistance subsidies and issued pursuant to section 11(b) of the United States Housing Act of 1937, as amended; and

(v) Investing in the capital of a small business investment company or minority enterprise small business investment company licensed pursuant to section 301(d) of the Small Business Investment Act of 1958 by the U.S. Small Business Administration to invest in small businesses engaged exclusively in

the activities listed in paragraphs (c) (1)-(5) of this section;

(vi) Engaging in interest rate futures transactions subject to the provisions of § 563.17-4 of this Chapter, but not subject to any notification requirements thereof;

(vii) Engaging in financial options trading subject to the provisions of § 563.17-5 of this Chapter;

(viii) Making investments specified in §§ 545.71-73, and 545.76 and in 12 U.S.C. § 1464(c)(1)(C)-(F), (M) and (N).

(5) *Other services.*

(i) Preparing state and Federal tax returns for individuals or organizations that are not corporations operated for profit;

(ii) Insurance brokerage or agency for liability, casualty, automobile, life, health, accident, or title insurance, but not private mortgage insurance;

(iii) Providing fiduciary services upon application to the Board pursuant to § 550.2, and subject to the conditions provided in §§ 550.1-550.16, of this Subchapter;

(iv) Issuing notes, bonds, debentures, or other obligations or securities;

(v) Issuing credit cards, extending credit in connection therewith, and otherwise engaging in or participating in credit card operations;

(vi) Acquiring personal property, including office equipment, for the purpose of leasing such property or obtaining an assignment of a lessor's interest in a lease of such property;

(vii) Providing data processing services to the extent permitted to the parent association pursuant to § 545.138 of this Part;

(viii) Issuing letters of credit.

(6) Activities reasonably incident to those listed in paragraphs (c) (1)-(5) of this section.

(d) *Amount of investment.* (1) An association may invest under this section in the capital stock, obligations, or other securities of service corporations: *Provided*, That its aggregate outstanding investment does not exceed three percent of assets, and any investment in excess of two percent of assets serves primarily community, inner-city or community development purposes. The investment limitations of this paragraph shall include all loans (but not including accounts payable incurred in the ordinary course of business and paid within 60 days) secured and unsecured, and all guarantees or take-out commitments of such loans, to service corporations or any subsidiaries thereof, and to joint ventures of such service corporations or subsidiaries, whether or not the association is a stockholder therein. An association with an aggregate

outstanding investment in excess of two percent of assets shall designate investments that serve primarily community, inner-city or community development purposes which shall include the following:

(i) Investments in governmentally insured, guaranteed, subsidized or otherwise sponsored programs for housing, small farms, or businesses that are local in character;

(ii) Investments for the preservation or revitalization of either urban or rural communities;

(iii) Investments designed to meet the community development needs of, and primarily benefit, low- and moderate-income communities; or

(iv) Other community, inner-city or community development-related investments approved by the Principal Supervisory Agent.

(2) In addition to amounts which it may invest under paragraph (d)(1) of this section, an association that has a net worth at least equal to the minimum net-worth requirement for an association on the annual closing date of the twentieth anniversary of insurance of accounts as provided in paragraph (b) of § 563.13 of this Chapter, and that has a ratio of scheduled items (other than assets acquired in a merger instituted for supervisory reasons) to specified assets of not more than 2.5 percent (except as provided in paragraph (d)(4) of this section), may loan additional amounts as follows:

(i) An aggregate outstanding amount, not to exceed the loans-to-one borrower limit, may be invested in conforming loans made to a service corporation of which the association owns or holds with power to vote not more than ten percent of the capital stock, or to a joint venture in which service corporations in which the association is a stockholder, including subsidiaries of such service corporations, (a) own or hold with power to vote not more than a total of ten percent of the capital stock, or (b) are limited partners and have contributed not more than ten percent of such joint venture's capital.

(ii) Conforming loans in an aggregate amount up to 50 percent of the loans-to-one borrower limit may be made to service corporations in which the association owns more than ten percent of the capital stock, or to a joint venture in which service corporations in which the association is a stockholder, including subsidiaries of such service corporations, (a) own or hold with power to vote more than a total of ten percent of the capital stock, or (b) are partners and have contributed more

than ten percent of such joint venture's capital.

(3) The limitation in paragraph (d)(1) of this section does not apply to conforming loans to any service corporation in which the lending association does not have any investment made under authority of this section, or to conforming loans to a statewide service corporation in which

(i) All of the capital stock is available for purchase by, and only by, any and all savings and loan associations with a home office in such state;

(ii) No savings and loan association owns, or may own, more than ten percent of the service corporation's outstanding capital stock, except that in any state in which the home offices of fewer than fifteen savings and loan associations are located, no association owns, or may own, more than one-third of such stock;

(iii) Every eligible savings and loan association may own an equal amount of capital stock or may, on such uniform basis as the service corporation may determine, own an amount of such stock equal to a stated percentage of its assets or savings capital at the time the stock is purchased, but capital stock outstanding on December 31, 1964, may be disregarded in determining compliance with this requirement.

(4) An association that has a net worth at least equal to the minimum net-worth requirement for an association on the annual closing date of the twentieth anniversary of insurance of accounts as provided in paragraph (b) of § 563.13 of this Chapter, may apply to the Board by filing an application with the Supervisory Agent for an exception from the scheduled-items limitation in paragraph (d)(2) of this section. The application shall be supported by information evidencing the association's sound investment, lending, appraisal, and underwriting policies and favorable operating results. The application shall be filed with the Principal Supervisory Agent with a copy to the Director, Office of Examinations and Supervision. The application is approved if, within 30 calendar days after the date the Principal Supervisory Agent receives it, he has not notified the applicant that approval is withheld. If approval is withheld, the Principal Supervisory Agent shall promptly cause the application to be submitted to the Board for its decision. The Principal Supervisory Agent may request additional information from the applicant, but need not consider such additional information received less than five calendar days before the end of the 30-day period.

(e) *Disposal of investment.* Whenever a service corporation, including any subsidiary thereof, engages in an activity which is not permissible for, or exceeds limitations on, a service corporation in which a Federal association may invest, or whenever the capital stock ownership requirements of this section are not met, a Federal association having an interest in the corporation, including any subsidiary thereof, shall dispose of its investment promptly unless, within 90 days after the Board mails written notice to the association, the impermissible activity is discontinued, the limitation is complied with, or the capital stock ownership requirements are met.

**§ 545.75 Commercial paper and corporate debt securities.**

(a) *General.* Pursuant to 12 U.S.C. 1464(c)(2)(B) a Federal association may invest in, sell, or hold commercial paper and corporate debt securities, including corporate debt securities convertible into stock, subject to the limitations set forth in paragraph (b) of this section.

(b) *Limitations.* (1) Commercial paper must be: (i) denominated in dollars and (ii) as of the date of purchase, as shown by the most recently published rating made of such investments by at least two nationally recognized investment rating services, rated in either one of the two highest grades or (iii) if unrated, guaranteed by a company having outstanding paper that is rated as provided in paragraph (b)(1)(ii) of this section.

(2) Corporate debt securities must be: (i) denominated in dollars, (ii) securities that may be sold with reasonable promptness at a price which corresponds reasonably to their fair value, and (iii) rated in one of the four highest grades by at least two nationally recognized investment rating services at their respective most recent published rating before the date of purchase of the security.

(3) An association's total investment in the commercial paper and corporate debt securities of any one issuer, or issued by any person or entity affiliated with such issuer, together with other commercial loans, shall not exceed the limitations contained in § 563.9-3.

(4) Investments in corporate debt securities convertible into stock are subject to the following additional limitations: (i) the purchase of securities convertible into stock at the option of the issuer is prohibited; (ii) at the time of purchase, the cost of such securities must be written down to an amount which represents the investment value of the securities considered independently of the conversion feature;

(iii) associations are prohibited from exercising the conversion feature.

(5) At any one time, the average maturity of an association's portfolio of corporate debt securities may not exceed six years.

(6) An association shall maintain information in its files adequate to demonstrate that it has exercised prudent judgment in making investments under this section.

(c) Notwithstanding the limitations contained in this section, the Board may permit investment in corporate debt securities of another insured institution in connection with the purchase or sale of a branch office or in connection with a supervisory merger or acquisition.

(d) Notwithstanding any rating and marketability limitations contained in paragraphs (b) (1) and (2) of this section, an association may invest up to one percent of its assets in commercial paper and corporate debt securities if in the exercise of its prudent business judgment it determines that there is adequate evidence that the obligor will be able to perform all that it undertakes to perform in connection with such securities, including all debt service requirements.

**§ 545.76 Investment in open-end management investment companies.**

A Federal association may invest in, redeem, or hold shares of any open-end management investment company which has registered with the Securities and Exchange Commission under the Investment Company Act of 1940 and whose portfolio is restricted by such management company's investment policy, changeable only if authorized by shareholder vote, solely to the investments that an association is authorized to make. An association's total investment in the shares of any one such company shall not exceed five percent of the association's assets.

**§ 545.77 Real estate for office and related facilities.**

(a) *General.* A Federal association may invest in real estate (improved or unimproved) to be used for office and related facilities of the association, or for such office and related facilities and for rental or sale, if such investment is made and maintained under a prudent program of property acquisition to meet the association's present needs or its reasonable future needs for office and related facilities. The association shall obtain Board approval before making an investment which would cause the outstanding aggregate book value of all such investments (including investments under § 545.74(c)(3)(viii) of this Part) to

exceed its net worth. The association shall also obtain Board approval before investing in real estate which the Board has not approved for the establishment or maintenance of an office facility, if the investment, together with the association's other investments in real estate lacking such approval, would exceed 25 percent of its net worth.

(b) *Requests for Board approval of exceptions.* An association shall send requests for Board approval of exceptions to limitations in this section to the Supervisory Agent, with a copy to the Director, Office of Examinations and Supervision.

#### § 545.78 Leasing.

(a) *Authorization.* Pursuant to 12 U.S.C. 1464(c)(2)(A), a Federal association may invest in tangible personal property for the purpose of leasing that property, subject to the limitations of this section.

(b) *Residual value.* The estimated residual value of the property at the expiration of the initial term of the lease shall not exceed 70 percent of the acquisition cost to the lessor.

#### § 545.79 Gold transactions.

No Federal association shall engage in any transaction or activity involving gold (including gold coins) or gold-related instruments or securities.

#### § 545.80 Small Business Investment Corporations.

Pursuant to 12 U.S.C. 1464(c)(4)(D), an association may invest in small business investment companies formed pursuant to section 301(d) of the Small Business Investment Company Act of 1958.

#### § 545.81-545.90 [Reserved]

#### § 545.91 Home office.

All operations of a Federal association shall be subject to direction from the home office.

#### § 545.92 Branch offices.

(a) *General.* A branch office of a Federal association is any office other than its home office, agency office, data processing or administrative office, or a remote service unit. Except as limited by this section, any business of a Federal association may be transacted at a branch office. A Federal association shall not establish a branch office without prior written approval of the Board or its Principal Supervisory Agent.

(b) *Eligibility.* A Federal association may apply for a branch regardless of the number of branch applications it has pending before the Board, unless otherwise currently restricted under an agreement between the Board and a

state agency that regulates state-chartered savings and loan associations.

(c) *Application form; filing; completion; supervisory objection.*

Applicants shall obtain Board-approved application and notice forms and related instructions from the Supervisory Agent. An application is filed when four copies are delivered to the Supervisory Agent; the application is complete when the Supervisory Agent determines that all required information has been submitted. The Board shall not accept an application if in its opinion the association is not eligible or its policies, condition, or operations afford a basis for supervisory objection. The Supervisory Agent shall determine that the application is complete, the applicant is eligible, and that as a preliminary matter there is no basis for supervisory objection to the application, before giving direction for publication of notice.

(d) *Processing of application.*

Processing of an application under this Part shall follow the procedures set forth in § 543.2 (c), (d), (e), and (f) of this Subchapter except that the applicant shall publish the required newspaper notice of application in the applicant's home office community and in the community to be served by the proposed branch office.

(e) *Approval by the Board or the Principal Supervisory Agent.* (1) The Board shall approve an application only if, in its opinion, the overall policies, condition, and operation of the applicant afford no basis for supervisory objection and the proposed branch will open within twelve months of approval unless otherwise allowed by the Board or the Principal Supervisory Agent. In considering whether to approve an application, the Board will assess and take into account an institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, pursuant to Part 563e of this Chapter; assessment of an institution's record of performance may be the basis for denying an application. An application may also be denied on the basis of restrictions imposed by the Board pursuant to an existing agreement between the Board and a state agency that regulates state-chartered savings and loan associations.

(2) The Principal Supervisory Agent may approve, on behalf of the Board, an application for permission to establish a branch office if no substantial protest based on Part 563e of this Chapter has been filed. Such application shall be deemed to be approved by the Board 30 days after notification that the application is complete, unless the

applicant is notified by the Principal Supervisory Agent that objection has been taken on grounds set forth in paragraph (e)(1) of this section.

(f) *Approval of temporary or permanent location.* The Supervisory Agent may approve a temporary and/or permanent location of an approved branch office if the new location is in the immediate vicinity of the approved location.

(g) *Offices not requiring prior written approval.* A Federal association may establish without prior approval a drive-in and/or pedestrian office opened in conjunction with an approved branch or home office of the association, located within 500 feet of a public entrance of that office and closer to that entrance than to a public entrance of any other FSLIC-insured institution, and the functions of which are limited to the ordinary functions performed at a teller-window.

(h) *Application for and maintenance of branch office after conversion, consolidation, purchase of bulk assets, merger or purchase from receiver.* (1) An existing institution which converts to a Federal association may not maintain an existing office, and a Federal association which acquires offices through consolidation, purchase of bulk assets, merger or purchase from the receiver of an institution the accounts of which are insured by the Federal Savings and Loan Insurance Corporation may not maintain any acquired office, without written Board approval.

(2) A Federal association may not file a branch application after having filed an application to merge or otherwise surrender its Federal charter, unless the merger or conversion application has been pending for at least six months.

(3) The Board may deny a branch application if it determines that the applicant will not in fact operate such branch as an office of a Federal association.

(i) *Exclusive agreements prohibited.* A Federal association may not enter into any kind of agreement(s) that would result in the exclusive right to operate a branch office in a regional shopping center, as defined in § 571.11(b) of this Chapter, or in a majority of all locations of a chain store, or enter into an agreement under which other financial institutions would be excluded from operating offices in a regional shopping center or any location of a chain store where the Federal association does not have an office.

**§ 545.93 Upgrading of approved branch office.**

(a) *General.* A branch office is upgraded if the association is relieved of any of the restrictions imposed on operation of the office when it opened.

(b) *Notice.* A Federal association operating a limited, mobile, or satellite facility approved before January 1, 1981, or a branch office with conditions imposed on its operation shall notify the Supervisory Agent at least 30 days before upgrading the facility.

(c) *Approval.* If, within 30 days of receipt of the notice, the Supervisory Agent does not notify the association of supervisory objection which would require the association to submit an application or additional information before upgrading, the association may upgrade the facility.

(d) *Upgrading with change of location.* Any upgrading which involves a permanent change of location must be approved under § 545.95 of this Part.

**§ 545.94 Closing a branch office.**

A Federal association shall notify the Supervisory Agent not less than 60 days or, in the case of an emergency, as early as circumstances permit, before closing a branch office.

**§ 545.95 Change of office location and redesignation of offices.**

(a) *General.* A Federal association shall not change the permanent location of its home office or any approved branch office, or redesignate a home or branch office, without prior approval of the Board or the Supervisory Agent.

(b) *Processing of application.* (1) Processing of an application for a change of office location or redesignation of a home or branch office shall follow the procedures set forth in § 545.92 (c), (d), (e), (f), (g), (h), and (i) of this Part, except that (1) the applicant shall publish the required newspaper notice of application in (i) the applicant's home office community, (ii) the community to be served by the new office, and (iii) the community where the office is to be closed or the home office is to be redesignated as a branch; and (2) the applicant shall post notice of the application for seventeen days from the date of first publication in a prominent location in the office to be closed or redesignated.

(2) The Principal Supervisory Agent may approve, on behalf of the Board, an amendment to section 2 of an association's charter in connection with approval of a home office relocation or redesignation under this section.

(c) *Short-distance relocations.* (1) Notwithstanding paragraph (a) of this section, an association may change the

permanent location of a home or branch office, without applying for Board approval, to a site within the market area and short-distance relocation area of the office site that has been approved in accordance with § 545.92 of this Part or paragraph (a) of this section. The short-distance relocation area of an office site is:

(i) The area within a 1,000-foot radius of the site if it is located within a central city of a Standard Metropolitan Statistical Area ("SMSA") designated by the U.S. Department of Commerce;

(ii) The area within a one-mile radius of the site if it is located within an SMSA designated by the U.S. Department of Commerce but not within a central city; or

(iii) The area within a two-mile radius of the site if it is not located within an SMSA.

(2) An association shall notify the Supervisory Agent in writing at least 30 days before such an office relocation and may proceed with the relocation unless, within 30 days of receipt of the notice, the Supervisory Agent notifies the association that the relocation does not satisfy the criteria in the first sentence of this paragraph (c), in which case the association must file an application and obtain Board approval in accordance with paragraph (b) of this section.

**§ 545.96 Agency.**

(a) *General.* A Federal association may, without approval of the Board, to the extent authorized by its board of directors, establish or maintain, within the same state as the home office of the association or the same state as any branch office approved by the Board, agencies which only service and originate (but do not approve) loans and contracts and/or manage or sell real estate owned by the association.

(b) *Additional services.* Except for payment on savings accounts and loan approval services, offering of any services not listed in paragraph (a) may be approved by the Principal Supervisory Agency.

(c) *Records.* An agency shall maintain records of all business it transacts and transmit copies to a branch or home office of the association.

(d) *Notice.* A Federal association shall notify the Supervisory Agent when it opens or closes an agency.

**§§ 545.97-545.100 [Reserved]****§ 545.101 Fiscal agency.**

A Federal association designated fiscal agent by the Secretary of the Treasury or, with Board approval by another instrumentality of the United

States, shall, as such, perform such reasonable duties and exercise only such powers and privileges as the Secretary of the Treasury or such instrumentality may prescribe.

**§ 545.102 Trustee.**

A Federal association may act:

(a) As a trustee of any trust created or organized in the United States and forming part of a stock bonus, pension, or profit sharing plan qualifying for specific tax treatment under Section 401(d) of the Internal Revenue Code of 1954, and (b) as trustee or custodian of an individual retirement account within the meaning of Section 408(a) of the Code, or (c) as trustee with no active fiduciary duties if state law authorizes a financial institution to act in such capacity; *Provided*, That the funds of the trust or account are invested only in the association's savings accounts or deposits or its obligations or securities. The association may receive reasonable compensation for acting in any trust capacity authorized by this section.

**§ 545.103 Suretyship.**

Pursuant to the authority given to the Board under 12 U.S.C. 1464(b)(2), a Federal association is authorized to enter into an agreement to act as surety subject to the following provisions:

(a) An association may enter into a suretyship agreement only if performance under the agreement would create an obligation authorized for investment by an association. An association's obligation under the suretyship agreement will be treated as a loan to its principal for purposes of the requirements of §§ 563.9-3 and 563.43 of this Chapter.

(b) An association must take and maintain a security interest in real estate or marketable securities of its principal having a market value of at least 110 percent of the association's suretyship obligation. If real estate, the value must be established by a signed appraisal by a person designated by the association's board of directors. In determining compliance with the 110 percent requirement, the association must consider the value of prior mortgages, liens or other encumbrances on the property, except those held by the party for whose protection the suretyship agreement is made. If marketable securities, such securities must be of a type in which the association is authorized to invest, and the association must provide for maintenance of the security at the required level during the term of the suretyship agreement.



(c) To the extent an association is required to meet its obligation under a suretyship agreement, the amount expended shall be treated as an extension of credit subject to percentage-of-assets limits in accordance with the obligation thereby created to the association.

§§ 545.104-545.110 [Reserved]

§ 545.111 Adjustments to book value of assets.

If the Supervisory Agent determines that an asset's stated book value exceeds its value or that documentation in the association's loan file is inadequate to demonstrate that an investment made under 12 U.S.C. 1464(c)(3)(C) is sound, the Supervisory Agent may require the association to charge off the asset immediately or establish and maintain a special reserve(s) equalling the overvaluation.

§ 545.112 Real estate owned.

A Federal association may not carry real estate on its books for a sum in excess of the total amount invested by the association on account of such real estate, including advances, costs, and improvements, but excluding accrued but uncollected interest.

§ 545.113 Accounting records.

(a) *Accounting practices.* Each Federal association shall use such forms and follow such accounting practices as the Board may require, and shall close its books at least annually as of the end of such month(s) as the association's board of directors may designate. The date of the association's annual closing shall be not less than fifteen days or more than three months and fifteen days before its annual meeting.

(b) *Maintenance of records.* An association shall maintain a complete record of its business transactions and maintain at its home office, or at a branch or service office located within 100 miles of the home office, all general accounting records, including control records, of its business transactions. The association may not transfer the general accounting or control records or the maintenance thereof from any of its offices to another, unless its board of directors has (1) by resolution authorized the transfer or maintenance and (2) sent a certified copy of the resolution to the District Director-Examinations of its district. An association which determines to maintain any of its records by means of data processing services shall so notify the District Director-Examinations, in writing, at least 90 days before such maintenance will begin. Notification shall include identification of the

records and the location at which they will be maintained. Any contract, agreement, or arrangement under which data processing services are to be performed shall expressly provide that the records maintained by such services shall at all times be available for examination and audit.

§ 545.114 Monthly reports.

A Federal association's officers shall make a monthly report to the association's board of directors on forms prescribed by the Board and available from any Federal Home Loan Bank. The association shall send a copy of the report to the Bank of which it is a member and two copies to the Board.

§ 545.115 Statement of condition.

Within the month after the annual closing of a Federal association's books, the association shall mail to all of its members, or if it is a Charter S association to all of its depositors and borrowers, at their last address appearing on the association's books, or publish in an English-language newspaper of general circulation in the county in which the association's home office is located, a statement of the association's condition as of such closing, on forms prescribed by the Board and available from any Federal Home Loan Bank or from the Board. Within five days after mailing or publishing the statement, the association shall send a certification to that effect signed by one of its executive officers, and a copy of the statement, to the Bank of which it is a member. This section shall not apply in a year in which the association sends to its voting members an annual report as required by § 563.45(a) of this Chapter.

§§ 545.116-545.120 [Reserved]

§ 545.121 Indemnification of directors, officers and employees.

A Federal association shall indemnify its directors, officers, and employees in accordance with the following requirements:

(a) *Definitions and rules of construction.* (1) Definitions for purposes of this section.

(i) *Action.* Any judicial or administrative proceeding, or threatened proceeding, whether civil, criminal, or otherwise, including any appeal or other proceeding for review;

(ii) *Court.* Includes, without limitation, any court to which or in which any appeal or any proceeding for review is brought.

(iii) *Final judgment.* A judgment, decree, or order which is not appealable or as to which the period for appeal has expired with no appeal taken.

(iv) *Settlement.* Includes entry of a judgment by consent or confession or a plea of guilty or nolo contendere.

(2) References in this section to any individual or other person, including any association, shall include legal representatives, successors, and assigns thereof.

(b) *General.* Subject to paragraph (c) of this section, an association shall indemnify any person against whom an action is brought or threatened because that person is or was a director, officer, or employee of the association, for:

(1) Any amount for which that person becomes liable under a judgment in such action; and

(2) Reasonable costs and expenses, including reasonable attorney's fees, actually paid or incurred by that person in defending or settling such action, or in enforcing his rights under this section if he attains a favorable judgment in such enforcement action.

(c) *Requirements.* Indemnification shall be made to such person under paragraph (b) of this section only if:

(1) Final judgment on the merits is in his favor; or

(2) In case of: (i) Settlement (ii) final judgment against him, or (iii) final judgment in his favor, other than on the merits, if a majority of the directors of the association determine that he was acting in good faith within the scope of his employment or authority as he could reasonably have perceived it under the circumstances and for a purpose he could reasonably have believed under the circumstances was in the best interests of the association or its members. However, no indemnification shall be made unless the association gives the Board at least 60 days' notice of its intention to make such indemnification. Such notice shall state the facts on which the action arose, the terms of any settlement, and any disposition of the action by a court. Such notice, a copy thereof, and a certified copy of the resolution containing the required determination by the Board of directors shall be sent to the Supervisory Agent, who shall promptly acknowledge receipt thereof. The notice period shall run from the date of such receipt. No such indemnification shall be made if the Board advises the association in writing, within such notice period, of its objection thereto.

(d) *Insurance.* An association may obtain insurance to protect it and its directors, officers, and employees from potential losses arising from claims against any of them for alleged wrongful acts, or wrongful acts, committed in their capacity as directors, officers, or employees. However, no association

may obtain insurance which provides for payment of losses of any person incurred as a consequence of his willful or criminal misconduct.

(e) *Payment of expenses.* If a majority of the directors of an association concludes that, in connection with an action, any person ultimately may become entitled to indemnification under this section, the directors may authorize payment of reasonable costs and expenses, including reasonable attorneys' fees, arising from the defense or settlement of such action. Nothing in this paragraph shall prevent the directors of an association from imposing such conditions on a payment of expenses as they deem warranted and in the interests of the association. Before making advance payment of expenses under this paragraph, the association shall obtain an agreement that the association will be repaid if the person on whose behalf payment is made is later determined not to be entitled to such indemnification.

(f) *Exclusiveness of provisions.* No association shall indemnify any person referred to in paragraph (b) of this section or obtain insurance referred to in paragraph (d) of this section other than in accordance with this section. However, an association which has a bylaw in effect relating to indemnification of its personnel shall be governed solely by that bylaw, except that its authority to obtain insurance shall be governed by paragraph (d) of this section.

#### § 545.122 Employment contracts.

(a) *General.* A Federal savings and loan association with bylaws amended under § 544.6(k), a Federal mutual savings bank or a Charter S or Charter T association, upon specific approval of its board of directors, may enter into employment contracts with its officers and other employees in accordance with § 563.39 of this Chapter.

(b) *Contracts with other entities or persons.* An officer of an association shall have no other written or oral agreement concerning employment as an officer of the association with any entity or person other than the association.

#### § 545.123 Advisory boards and committees.

A Federal association's board of directors may establish one or more advisory boards of directors or advisory committees to advise the association as the board of directors may authorize. Each member of such a board or committee shall be appointed by the board of directors on a year-to-year basis. Such members may be permitted

to attend meetings of the board of directors, but they shall have no vote on matters acted upon by the board of directors.

#### § 545.124 and 545.125 [Reserved]

#### § 545.126 Referral of insurance business.

(a) For purposes of this section the terms "owned" and "referral" have the meanings prescribed in § 555.17(a) (1) and (3) of this Subchapter.

(b) No Federal association shall refer any insurance business to an agency owned by officers or directors of the association, or by persons having power to direct its management, unless:

(1) A specific state statute or regulation precludes Federal associations' service corporations (or wholly owned subsidiaries thereof) from engaging in the insurance business;

(2) The association, after filing any necessary applications and making a bona fide attempt to obtain any necessary approval (with or without instituting legal proceedings against state officials to compel approval) has been denied permission by the appropriate state licensing or regulatory authorities for its service corporation, or a wholly owned subsidiary thereof, to engage in the insurance business;

(3) Such state authorities follow an established and well-known policy of refusing to accept or approve such applications (the association need not demonstrate existence of such a policy by instituting legal proceedings against such authorities to compel approval);

(4) The referral takes place within a reasonable period of time (not exceeding 18 months) after a change in such state law, regulation, or policy for the association to investigate the feasibility and desirability of acquiring or establishing its own service corporation insurance business; or

(5) An application for permission to establish or acquire a service corporation insurance business is on file with the appropriate state agencies and/or the Board.

#### §§ 545.127-545.130 [Reserved]

#### § 545.131 Communication between members of a Federal mutual association.

(a) *Disclosure of membership list prohibited.* (1) As used in this section, "membership lists" means any document of the association containing: (i) a list of members of the association; (ii) their addresses; (iii) their savings account or loan balances or records; or (iv) any data from which that information reasonably could be constructed.

(2) Federal mutual associations may not disclose in any manner, directly or

indirectly, their membership lists to any person (other than officers of the association, or others employed by them, in the usual course of conducting the association's business) except with prior written approval of the Board.

(3) The Supervisory Agent may approve or disapprove requests made under paragraph (a)(2) of this section, and may specify terms and conditions of approval.

(b) *Right of inspection of member's own records.* A member of a Federal mutual association has the right to inspect the association's books and records pertaining solely to the member's own savings or borrowing account(s).

(c) *Right of communication with other members.* A member of a Federal mutual association has the right to communicate, as prescribed in paragraph (d) of this section, with other members of the association regarding any matter related to the association's affairs, except for "improper" communications, as defined in paragraph (e) of this section. The association may not defeat that right by redeeming a savings member's savings account in the association.

(d) *Member communication procedures.* If a member of a Federal mutual association desires to communicate with other members, the following procedures shall be followed:

(1) The member shall give the association a written request to communicate;

(2) If the proposed communication is in connection with a meeting of the association's members, the request shall be given at least thirty days before the annual meeting or 10 days before a special meeting;

(3) The request shall contain— (i) The member's full name and address;

(ii) The nature and extent of the member's interest in the association at the time the information is given;

(iii) A copy of the proposed communication; and

(iv) If the communication is in connection with a meeting of the members, the date of the meeting;

(4) The association shall reply to the request within either—

(i) Fourteen days;

(ii) Ten days, if the communication is in connection with the annual meeting; or

(iii) Three days, if the communication is in connection with a special meeting;

(5) The reply shall provide either—

(i) The number of the association's members and the estimated reasonable

cost to the association of mailing to them the proposed communication; or

(ii) Notification that the association has determined not to mail the communication because it is "improper", as defined in paragraph (e) of this section;

(6) After receiving the amount of the estimated costs of mailing and sufficient copies of the communication, the association shall mail the communication to all members, by a class of mail specified by the requesting member, either—

(i) Within fourteen days;

(ii) Within seven days, if the communication is in connection with the annual meeting;

(iii) As soon as practicable before the meeting, if the communication is in connection with a special meeting; or

(iv) On a later date specified by the member;

(7) If the association refuses to mail the proposed communication, it shall return the requesting member's materials together with a written statement of the specific reasons for refusal, and shall simultaneously send to the Supervisory Agent two copies each of the requesting member's materials, the association's written statement, and any other relevant material. The materials shall be sent within (i) fourteen days, (ii) ten days if the communication is in connection with the annual meeting, or (iii) three days, if the communication is in connection with a special meeting, after the association receives the request for communication.

(e) *Improper communication.* A communication is an "improper communication" if it contains material which: (1) at the time and in the light of the circumstances under which it is made (i) is false or misleading with respect to any material fact or (ii) omits a material fact necessary to make the statements therein not false or misleading, or necessary to correct a statement in an earlier communication on the same subject which has become false or misleading; (2) relates to a personal claim or a personal grievance, or is solicitous of personal gain or business advantage by or on behalf of any party; (3) relates to any matter, including a general economic, political, racial, religious, social, or similar cause, that is not significantly related to the business of the association or is not within the control of the association; or (4) directly or indirectly and without expressed factual foundation (i) impugns character, integrity, or personal reputation, (ii) makes charges concerning improper, illegal, or immoral conduct, or (iii) makes statements

impugning the stability and soundness of the association.

§ 545.132-545.135 [Reserved]

§ 545.136 *Financial futures transactions.*

A Federal association may engage in financial futures transactions in compliance with § 563.17-4 of this Chapter.

§ 545.137 *Financial options transactions.*

A Federal association may engage in financial options transactions in compliance with § 563.17-5 of this Chapter.

§ 545.138 *Data-processing services.*

(a) *Authorization.* A Federal association may engage in any permissible activity or service by using data processing equipment or technology, and may provide data processing and data transmission services to others on a for-profit basis as permitted by this section. An association may establish and maintain an office to provide such services to others without observing the application and approval procedures for branch offices set forth in this Part.

(b) (1) *Permissible data.* The data to be processed or transmitted by an association pursuant to paragraph (a) of this section must be financial, economic, or related to thrift, home financing, or the activities of depository institutions.

(2) *Customer restrictions.* An association must provide data processing and transmission services primarily for itself, other depository institutions (including the parent or a subsidiary of either), and persons with whom the association has established a loan or deposit relationship. An association may also provide such services to other persons if the services constitute less than one half of the data processing services provided under paragraphs (a) and (b) of this section.

(3) *Facilities.* In conjunction with providing services pursuant to paragraphs (a) and (b), an association may supply data processing software, documentation, and operating personnel. Any such facilities, as well as those used by the association, must be designed and operated for the processing or transmission of permissible data.

(c) *By-products and excess capacity.*

As an incident to providing data processing and data transmission services pursuant to paragraph (b) of this section, an association may:

(1) Market by-products of such services (including software and compilations of data) to any person, only if the by-products are not designed, created, or substantially enhanced

primarily for the purpose of such marketability, and

(2) Market excess capacity of its data processing facilities, provided that the involvement of the association is limited to furnishing access to its facilities and providing the necessary operating personnel, and that the association has not artificially created excess capacity by acquiring equipment or facilities whose capacity is substantially greater than that necessary to accommodate its present or expected future needs for providing permissible data processing services.

(d) *Controls.* An association providing data processing services or marketing excess capacity to any person under this section shall establish internal and system controls for both hardware and software such that the integrity of its records and those of its depositors and customers are adequately protected. At a minimum, the controls shall be consistent with Generally Accepted Auditing Standards. Any agreement pursuant to which the association provides data processing services shall contain a provision that generally describes the security measures so taken.

(e) *Contract and tying restrictions.* Any contract for data processing services authorized by this section shall incorporate the relevant limitations specified herein and state that the association's facilities are to be used only for the processing and transmission of permissible data. An association providing such services under this section shall comply with the anti-tying provisions of 12 U.S.C. 1464(q) (Pub. L. 97-320, § 331, 96 Stat. 1469, 1503 (1982)).

(f) An association may participate with others in establishing or maintaining a data processing office: *Provided*, That the association may participate in establishing or maintaining a data processing office controlled by an entity not subject to examination by a Federal agency regulating financial institutions only if such entity has agreed in writing with the Board that it will permit and pay for such examination of the office as the Board deems necessary, and that it will make available for such purposes any records in its possession relating to the operation of the office.

§§ 545.139 and 545.140 [Reserved]

§ 545.141 *Remote Service Units (RSUs).*

(a) *Definitions.* As used in this section—

(1) "Generic data" means statistical information which does not identify any individual account holder.

(2) "Personal security identifier" (PSI) means any word, number, or other security identifier essential for an accountholder to gain access to an account.

(3) "Remote service unit" (RSU) means an information processing device, including associated equipment, structures and systems, by which information relating to financial services rendered to the public is stored and transmitted, instantaneously or otherwise, to a financial institution. Any such device not on the premises of a Federal association that, for activation and account access, requires use of a machine-readable instrument and PSI in the possession and control of an accountholder, is an RSU. The term includes, without limitation, point-of-sale terminals, merchant-operated terminals, cash-dispensing machines, and automated teller machines. It excludes automated teller machines on the premises of a Federal association, unless shared with other financial institutions. An RSU is not a branch, satellite, or other type of facility or agency of a Federal association under § 545.92 *et seq.* of this Part.

(4) "RSU account" means a savings or loan account or demand account that may be accessed through use of an RSU.

(b) *General.* Subject to the requirements of the Electronic Fund Transfer Act (15 U.S.C. 1693 *et seq.*) and Regulation E of the Federal Reserve Board (12 CFR 205.2), a Federal association may establish or use RSUs and participate with others in RSU operations, on an unrestricted geographic basis. No RSU may be used to open a savings account, a demand account or establish a loan account.

(c) *RSU access techniques.* A Federal association shall provide a PSI to each accountholder and require its use when accessing an RSU; it may not employ RSU access techniques that require the accountholder to disclose a PSI to another person. The association must inform each accountholder that the PSI is for security purposes and shall not be disclosed to third parties. Any device used to activate an RSU shall bear the words "Not transferable" or their equivalent. A passbook may not be such a device.

(d) *Privacy of account data.* A Federal association shall allow accountholders to obtain any information concerning their RSU accounts. Except for generic data or data necessary to identify a transaction, no Federal association may disclose account data to third parties, other than the Board or its representatives, unless express written consent of the accountholder is given, or applicable law requires. Information

disclosed to the Board will be kept in a manner to ensure compliance with the Privacy Act, 5 U.S.C. 552a. A Federal association may operate an RSU according to an agreement with a third party or share computer systems, communications facilities, or services of another financial institution only if such third party or institution agrees to abide by this section as to information concerning RSU accounts in the Federal association.

(e) *Security.* A Federal association shall protect electronic data against fraudulent alterations or disclosure. All RSUs shall meet the minimum security devices requirements of Part 563a of this Chapter as though such units were offices, as defined in § 563a.1 of said Part, except to the extent that an association satisfies the Board's Supervisory Agent that those requirements are inappropriate. In such a case, alternative measures satisfactory to the Board's Supervisory Agent must be taken for installation, maintenance, and operation of security devices and procedures, reasonable in cost, to discourage robberies, burglaries, larcenies, and computer theft and to assist in identification and apprehension of persons who commit such acts.

(f) *Board supervision.* A Federal association may share an RSU controlled by an institution or another party not subject to examination by a Federal regulatory agency only if such institution or other party has agreed in writing that the RSU is subject to such examination by the Board as it deems necessary.

#### § 545.142 Home banking services.

A Federal association may utilize any electronic technology to provide its customers with home banking services. Any such services provided under this section are subject to the Electronic Funds Transfer Act (15 U.S.C. 1693 *et seq.*) and Regulation E of the Federal Reserve Board (12 CFR 205) (as construed by Supplement II—Official Staff Interpretation, 2-23). "Home banking services" means the transfer of funds or financial information, or the performance of other transactions initiated by a customer by means of an electronic home terminal, such as a telephone, a home computer terminal, or a television set that is linked to an association's computer by telephone or cable television lines. An association providing services authorized by this section shall adopt security measures adequate to prevent unauthorized access to its records or those of its customers or the use of a home terminal to defraud the association or any of its customers.

## Appendix

Notice to Housing Creditors Regarding Alternative Mortgage Transactions.

Pursuant to Title VIII, Pub. L. 97-320, housing creditors that are not commercial banks, credit unions, or Federal associations may make alternative mortgage transactions (as defined by Section 803 of Pub. L. 97-320 and as further defined and described by applicable regulations identified herein) notwithstanding any state constitution, law or regulation. In accordance with Section 807(b) of Pub. L. 97-320, the provisions listed below are identified as appropriate and applicable to the exercise of this authority, and all regulations not identified herein are deemed inappropriate and inapplicable: §§ 545.33 (c), (e), and (f) (4)-(11).

### PART 555—BOARD RULINGS

5. Revise § 555.3 by amending the first sentence of paragraph (a) thereof, removing paragraph (b) thereof, and redesignating paragraph (c) as paragraph (b) as follows:

#### § 555.3 Real estate.

(a) For lending purposes, a motel is generally considered "improved nonresidential real estate." \* \* \*

#### § 555.11 [Removed]

6. Remove § 555.11.

7. Amend § 555.15 by removing the second sentence, by removing all references to "§ 545.8-5(b)" and inserting in their place "§ 545.34(c)", and by amending the first sentence to read as follows:

#### § 555.15 Prepayment penalty on mortgage loans.

Section 545.34(c) makes clear that, with the exception of certain instances enumerated therein, the charging of a prepayment penalty is a matter of contract between a Federal association and a borrower, and that the borrower may wholly or partly prepay the loan without penalty unless the loan contract contains an express provision imposing a prepayment penalty. \* \* \*

8. Add a new § 555.19 as follows:

#### § 555.19 Receipt of interest expressed as a percentage of other income.

(a) With limited exceptions, Federal Associations lack the statutory authority to acquire an equity interest either in real estate or in a corporation. Accordingly, associations cannot, as part of a loan transaction, acquire an ownership interest in the security property or in a corporate borrower. The issue has arisen as to whether the receipt of a share of the income

generated by the security property or of a corporate borrower, or any similar participation with the borrower in the loan project, necessarily constitutes an unauthorized acquisition of an equity interest.

(b) The Board has determined that the receipt of such income or the right to receive income should not be considered an equity interest if it in substance constitutes no more than a part of the compensation received for the use of the association's funds. Accordingly, if the borrower has an unconditional obligation to repay the loan principal, and if an association receives a substantial payment of interest calculated periodically as a percentage of the outstanding principal loan balance, it may receive additional interest calculated on the basis of the income from or the appreciation of the security property, the income of a corporate borrower, or some other measure of a venture's success. The means by which an association calculates its share of the income is not a material consideration in determining whether the share constitutes an equity interest in the property.

#### SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

#### PART 561—DEFINITIONS

9. Amend § 561.15 by revising paragraphs (g), (h), (i), the introductory text of (j), and (k) as follows:

##### § 561.15 Scheduled items.

(g) Assets acquired in exchange for any of the scheduled items described in this section except (1) securities, if the market value of a security when it is acquired at least equals its unpaid principal balance, or (2) securities that qualify as liquid assets under § 523.10(g) of this Chapter.

(h) Assets transferred by an insured institution to a service corporation or referred to in § 545.74 of this Chapter, or to any other corporation in which an insured institution has an investment, to the same extent that they, or the amount invested therein, would be counted as scheduled items if not transferred.

(i) The amount invested in personal property acquired through enforcement of a security interest, including manufactured homes and any personal property in the possession of any servicing company or dealer acting on behalf of an insured institution but excluding personal property owned pending transfer to an issuing or guaranteeing agency of the U.S. Government.

(j) The unpaid principal balance of any loan secured by, and any contract for the sale of, personal property described in paragraph (i) of this section, if the unpaid balance exceeds any applicable lending limitation or 100 percent of the wholesale value, including any installed equipment, of the personal property as established at the time of sale in a dealer's market or by appraisal; except that, with respect to loans secured by or contracts for the sale of manufactured homes, only twenty percent of the unpaid principal balance of any such loan or contract will be included in "scheduled items" if all of the following requirements are met: \* \* \*

(k) For purposes of this section, a lease made or otherwise invested in by an insured institution that conforms to the description of a finance lease, as set out in § 545.53 of this Chapter, shall be treated as if it were a loan secured by the type of property leased.

10. Add a new § 561.42 to read as follows:

##### § 561.42 Nonwithdrawable account.

An account which by the terms of the contract of the holder with the institution or by provisions of state law cannot be paid to the holder until all liabilities, including other classes of share liability, of the institution have been fully liquidated and paid upon the winding up of the institution is referred to as a "nonwithdrawable account."

#### PART 563—OPERATIONS

11. Amend § 563.3-3 by revising paragraph (c) as follows:

##### § 563.3-3 Eurodollar deposits.

(c) *Collateralization of certificates.*  
An institution may give security for Eurodollar deposits subject to the provisions of § 563.8-2 of this Part.

12. Amend § 563.8 by revising paragraph (c) as follows:

##### § 563.8 Borrowing limitations.

(c) An institution may give security for borrowings other than from a Federal Home Loan Bank or state-chartered central reserve institution subject to the provisions of § 563.8-2 of this Part.

13. Add a new § 563.8-2 as follows:

##### § 563.8-2 Corporation's right of purchase.

(a) *General rule.* For any security given by an insured institution other than for borrowings from a Federal Home Loan Bank or state-chartered central reserve institution, the terms of the security agreement or other

documentation shall provide that the Corporation receive prompt written notification of any default on the obligation and, before a sale or other disposition of any portion of the collateral, that the Corporation shall have thirty (30) days after receipt of written notice of the proposed sale or other disposition to exercise a right to repurchase the collateral at the price to be paid at the sale or to acquire the collateral at the value to be assigned to it in any other disposition.

(b) *Exceptions.* The notice and right of purchase required by paragraph (a) of this section shall not apply to collateral consisting of liquid assets as defined in § 523.10 of this Chapter or collateral that would qualify as liquid assets but for its remaining term to maturity.

14. Revise § 563.9 as follows:

##### § 563.9 Geographic lending restrictions.

An insured institution may invest in, sell, purchase, participate or otherwise deal in loans or interests therein without geographic restriction.

15. Revise paragraphs (a) and (b) of § 563.9-3 as follows:

##### § 563.9-3 Loans to one borrower.

(a) *Definitions used in this section.* (1) *One borrower.* (i) The term "one borrower" means:

(a) Any person or entity that is, or that upon the making of a loan will become, obligor on a loan;

(b) nominees of such obligor;

(c) All persons, trusts, syndicates, partnerships, and corporations of which such obligor is a nominee, a beneficiary, a member, a general partner, a limited partner owning an interest of ten percent or more (based on the value of his contribution), or a record or beneficial stockholder owning ten percent or more of the capital stock; and

(d) If such obligor is a trust, syndicate, partnership, or corporation, all trusts, syndicates, partnerships, and corporations of which any beneficiary, member, general partner, limited partner owning an interest of ten percent or more, or record or beneficial stockholder owning ten percent or more of the capital stock, is also a beneficiary, member, general partner, limited partner owning an interest of ten percent or more, or record or beneficial stockholder owning ten percent or more of the capital stock of such obligor.

(ii) In the case of a loan that has been assumed by a third party with the consent of the lending insured institution, the former debtor shall not be deemed an "obligor."

(2) *Outstanding loans.* The term "outstanding loans" means the total amounts of funds advanced under a loan agreement or commitment plus any additional advances and interest due and unpaid, less repayments. The term also includes: (i) credit extended in the form of finance leases satisfying the criteria set forth in § 545.53 of this Chapter; (ii) potential liabilities under standby letters of credit, lines of credit, and guarantee or suretyship obligations, except to the extent the institution has recourse to cash or a segregated deposit account of its customer to indemnify it against such liabilities; (iii) undisbursed loan proceeds, unless the loan is subject to an overline purchase commitment of another financial institution; and (iv) investments in commercial paper and corporate debt obligations. The term does not include a loan or participation interest sold without recourse, a loan secured by a first lien on real estate subject to an annual contributions contract under former section 23 of the United States Housing Act of 1937, as amended, a loan on the security of the institution's deposit accounts, or a deposit or a loan of unsecured day(s) funds described in § 563.9-6 of this Chapter. The amount of an outstanding "wraparound" loan is determined by the amount of funds advanced by the institution, except to the extent the institution has become liable to pay an obligation secured by a lien on the security property prior to its own.

(3) *Outstanding commercial loans.* The term "outstanding commercial loans" means:

- (i) Outstanding loans for commercial, corporate, business, or agricultural purposes, except to the extent secured by real property; and
- (ii) Loans described in paragraph (d)(3)(i) of this section made by an institution's subsidiary, attributed *pro*

*rata* on the basis of the percentage of the subsidiary's stock owned by the institution.

(4) *Unimpaired capital and unimpaired surplus.* The term "unimpaired capital and unimpaired surplus" means regulatory net worth plus specific reserves for loan losses, less appraised equity capital.

(b) *Limitations.* (1) *Aggregate loans.* No insured institution shall make any loan to one borrower if the sum of (i) the amount of such loan and (ii) the total balances of all outstanding loans owed to such institution and its service corporation affiliates by such borrower exceeds an amount equal to ten percent of such institution's withdrawable accounts or an amount equal to such institution's net worth, whichever amount is less: *Provided*, That, notwithstanding any other limitation of this sentence, any such loan may be made if the sum of items (b)(1)(i) and (ii) above does not exceed \$500,000 and, beginning on January 1, 1984, and annually thereafter, such amount adjusted by the dollar amount that reflects the percentage increase, if any, in the Consumer Price Index during the previous twelve months as shown in the November-to-November index.

(2) *Commercial loans.* No insured institution may make any commercial loan to one borrower if the sum of such loan and the total balances of outstanding commercial loans to such borrower exceeds the amount a national bank having an identical unimpaired capital and unimpaired surplus could lend such borrower. The general rule stated in § 5200 of the Revised Statutes (12 U.S.C. 84) is that total loans and extensions of credit by a national bank to one borrower are limited to fifteen percent of the bank's unimpaired capital and unimpaired surplus, plus an additional ten percent for loans fully

secured by readily marketable collateral. Several exceptions to these limits are set forth in section 5200; and additional limitations on loans to one borrower are found in sections 11(m) and 13 of the Federal Reserve Act (12 U.S.C. 248(m), 372).

(3) *Rated obligations.* Notwithstanding the limitations in paragraphs (b) (1) and (2), an insured institution may invest up to one percent of assets or one million dollars, whichever is more, in obligations of one issuer evidenced by:

- (i) Commercial paper rated, as of the date of purchase, as shown by the most recently published rating by at least two nationally recognized investment rating services, in the highest grade; or
- (ii) Corporate debt securities that may be sold with reasonable promptness at a price that corresponds reasonably to their fair value, and that are rated in one of the two highest grades by at least two nationally recognized investment rating services at their respective most recently published ratings before the date of purchase of the security.

(4) *Waiver.* The Board may waive the application of the limitations in this paragraph to any loan that is part of the resolution of a supervisory case or integral to the acquisition, merger, consolidation, or corporate reorganization of an insured institution.

(Sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425a); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402, 403, 48 Stat. 1256, 1257, as amended (12 U.S.C. 1725, 1726); Reorg. Plan No. 3 of 1947; 12 FR 4981, 3 CFR 1943-46 Comp., p. 1071)

By the Federal Home Loan Bank Board.  
J. J. Finn,  
Secretary.

[FR Doc. 83-13317 Filed 5-15-83; 8:45 am]  
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# **Federal Register**

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Monday  
May 23, 1983

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**Part III**

## **Environmental Protection Agency**

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**Biphenyl; Proposed Test Rule**

**ENVIRONMENTAL PROTECTION  
AGENCY**
**40 CFR Part 799**

[OPTS-42031; TSH-FRL 2338-7 ]

**Biphenyl; Proposed Test Rule**
**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** In the Tenth Report of the Interagency Testing Committee (ITC), submitted to the Administrator on May 10, 1982 and published in the *Federal Register* of May 25, 1982 (47 FR 22585), the ITC designated biphenyl for priority consideration for environmental effects and chemical fate testing. Under section 4 of the Toxic Substances Control Act (TSCA), EPA is proposing that manufacturers and processors of biphenyl test this chemical for acute toxicity to aquatic macrophytes and oysters, chronic toxicity and bioconcentration in oysters, chronic toxicity to aquatic vertebrates and invertebrates, and aerobic and anaerobic sediment biodegradation. Testing would be performed according to test standards prescribed in a subsequent rulemaking. This notice constitutes EPA's response to the ITC's designation of biphenyl as a priority candidate for testing.

**DATES:** The public is invited to submit written comments on or before July 22, 1983. If persons request time for oral comment by July 7, 1983, EPA will hold a public meeting on August 8, 1983 on this rule in Washington, D.C. For further information on arranging to speak at the meeting see Unit VI of this preamble.

**ADDRESS:** Address written comments identified by the document control number [OPTS-42031] in triplicate to: TSCA Public Information Office (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-108, 401 M St. SW., Washington, D.C. 20460.

The administrative record supporting this action is available for public inspection at the above address from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

For exact time and place of meeting contact Jack P. McCarthy (See "For Further Information Contact").

**FOR FURTHER INFORMATION CONTACT:** Jack P. McCarthy, Director, Industry Assistance Office (TS-799), Office of Toxic Substance, Environmental Protection Agency, Rm. E-511, 401 M St. SW., Washington, D.C. 20460, Toll Free: (800-424-9065). In Washington, D.C.:

(554-1404). Outside the USA: (Operator-202-554-1404).

**SUPPLEMENTARY INFORMATION:**
**I. Introduction**

Section 4(e) of TSCA (Pub. L. 94-469, 90 Stat. 2003 *et seq.*; 15 U.S.C. 2601 *et seq.*) established an Interagency Testing Committee (ITC) to recommend to EPA a list of chemicals for priority consideration and for testing under section 4(a) of the Act.

The ITC designated biphenyl for priority consideration in its Tenth Report, published in the *Federal Register* of May 25, 1982 (47 FR 22585). The ITC recommended that biphenyl be tested for chronic toxicity to fish and invertebrates, acute toxicity to aquatic macrophytes, and chemical fate. The ITC based its designation of biphenyl on substantial production, on the reported use/disposal pattern of biphenyl in dye-carrier applications, and on the potential persistence of biphenyl and biphenyl byproducts in the aquatic environment.

(A) (i) the manufacture, distribution in commerce, processing, use, or disposal of a chemical substance or mixture, or that any combination of such activities, may present an unreasonable risk of injury to health or the environment,

(ii) there are insufficient data and experience upon which the effects of such manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data; or

(B) (i) a chemical substance or mixture is or will be produced in substantial quantities, and (I) it enters or may reasonably be anticipated to enter the environment in substantial quantities or (II) there is or may be significant or substantial human exposure to such substance or mixture,

(ii) there are insufficient data and experience upon which the effects of the manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data.

EPA uses a weight of evidence approach in making section 4(a)(1)(A) findings in which both exposure and toxicity information are considered to make the finding that the chemical may present an unreasonable risk. For the first finding under section 4(a)(1)(B), EPA considers only production, exposure, and release information to determine if there is substantial exposure or release. For the second finding under both sections 4(a)(1)(A) and 4(a)(1)(B), EPA examines toxicity and fate studies to determine if existing information is adequate to determine or reasonably predict the effects of human exposure to, or environmental release of, the chemical. In making the third

The ITC was concerned about the use of biphenyl as a fungicide. Use of biphenyl as a fungicide is regulated under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and cannot be regulated under TSCA [see TSCA section 3(2)(B)(ii)].

The ITC was also concerned that mono- and dichlorobiphenyls might be released from the chlorination of biphenyl at dye-carrier waste treatment facilities. EPA has concluded that release of mono and dichlorobiphenyls resulting from the chlorination of biphenyl at dye-carrier waste treatment facilities is likely to be insignificant. The EPA has reached this conclusion based on existing data on effluent concentrations of biphenyl from dye-carrier facilities and on chlorination of biphenyl under simulated wastewater treatment conditions.

Under section 4(a)(1) of TSCA, EPA must require testing of a chemical substance to develop health or environmental test data if the Agency finds that:

finding that testing is necessary, EPA considers whether any ongoing testing will satisfy the information needs for the chemical and whether testing which the Agency might require would be capable of developing the necessary information.

EPA's process for determining when these findings apply is described in detail in EPA's first and second proposed test rules. The section 4(a)(1)(A) finding is discussed in the *Federal Register* of July 18, 1980 (45 FR 48528) and June 5, 1981 (46 FR 30300) and the section 4(a)(1)(B) finding is discussed in the *Federal Register* of June 18, 1981 (46 FR 30302).

In evaluating the ITC's testing recommendations concerning biphenyl,



EPA considered all available relevant information including the following: information presented in the ITC's report recommending testing consideration; production volume, use, exposure, and release information reported by manufacturers of biphenyl under the TSCA section 8(a) Preliminary Assessment Information Rule (40 CFR Part 712); unpublished health and safety studies voluntarily submitted by some (but not all) manufacturers and processors of biphenyl under the TSCA section 8(d) Health and Safety Data reporting Rule (40 CFR Part 716); and other published and unpublished data available to the Agency. Based on its evaluation, as described in this proposed rule and the accompanying technical support document, EPA is proposing environmental effects and chemical fate testing requirements for biphenyl under section 4(a)(1)(A) of TSCA.

## II. Proposed Rule

### A. Profile

Biphenyl (CAS No. 92-52-4) is a solid organic compound at ambient temperature and pressure. Between 37 and 47 million pounds of biphenyl (42 million pounds average) were domestically produced in 1981. Biphenyl is used to produce dye carriers, heat-transfer fluids, and alkylated biphenyls. The use/disposal pattern for biphenyl suggests that biphenyl has the potential to be released into the environment at significant concentrations from dye-carrier applications through wastewater discharge or from leakage of heat-transfer fluids.

### B. Findings

EPA is basing its proposed testing on the authority of section 4(a)(1)(A) of TSCA. The analyses on which these findings are based are presented in the biphenyl technical support document for this rulemaking which is available from the Industry Assistance Office.

1. EPA has concluded that the use and disposal of biphenyl may present an unreasonable risk of injury to organisms in the aquatic environment. EPA has reached this conclusion because: (1) Available information indicates that use and disposal of biphenyl-containing dye carriers and heat transfer fluids are the principal sources of release of this compound to the aquatic environment; (2) monitoring studies report measurable concentrations of biphenyl in the water and sediment of several U.S. rivers; and (3) existing toxicity data indicate that biphenyl may be toxic to organisms in the aquatic and sediment environment at the measured concentrations and may persist in the sediment environment.

2. EPA has concluded that there are

insufficient data to reasonably determine or predict the acute effects of biphenyl for aquatic plants and that testing is necessary to develop such data. EPA has reached this conclusion because existing algae acute toxicity data for biphenyl, measured concentrations of biphenyl in the aquatic environment and existing data on the sensitivity of aquatic plants versus algae to detect acute effects of chemicals suggest, but are not sufficient to conclude, that biphenyl is acutely toxic to aquatic plants.

3. EPA has concluded that there are insufficient data to reasonably determine or predict the chronic effects of biphenyl for aquatic vertebrates and invertebrates and that testing is necessary to develop such data. EPA has reached this conclusion because existing biphenyl acute toxicity data for vertebrates and invertebrates and measured concentrations of biphenyl in the aquatic environment suggest, but are not sufficient to conclude, that biphenyl is chronically toxic to aquatic vertebrates and invertebrates.

4. EPA has concluded that there are insufficient data to reasonably determine or predict the biodegradation of biphenyl in sediments and the acute and chronic toxicities and bioconcentration of biphenyl for and in benthic (sediment-dwelling) organisms. EPA has reached this conclusion because existing data on biphenyl sorption to sediments and measured concentrations of biphenyl in sediments suggest, but are not sufficient to conclude that biphenyl will persist in sediments and may be acutely or chronically toxic to or will bioconcentrate in benthic organisms.

The ITC's recommendations and EPA's proposed tests are summarized in Table 1. EPA concurs with the ITC's recommendations and in addition believes that acute, chronic and bioconcentration testing in the oyster is necessary because biphenyl may sorb to sediments and persist or accumulate to levels potentially toxic to such benthic invertebrates.

TABLE 1.—BIPHENYL TEST SUMMARY

Test	ITC recommendation	EPA proposed test
Acute aquatic macrophyte	Yes	Yes
Chronic fish	Yes	Yes
Chronic daphnid	Yes	Yes
Acute oyster	No	Yes
Bioconcentration and chronic oyster	No	Yes
Chemical fate	Yes	Yes

### C. Test Substance

EPA is proposing that biphenyl of 99 percent purity be used as the test

substance because biphenyl of this purity is readily available commercially and may provide more definitive information on biphenyl toxicity than biphenyl of lower purity.

### D. Persons Required to Test

Section 4(b)(3)(B) specifies that the activities for which the Administrator makes section 4(a) findings (manufacture, processing, distribution, use and/or disposal) determine who bears the responsibility for testing. Manufacturers are required to test if the findings are based on manufacturing ("manufacture" is defined in section 3(7) of TSCA to include "import"). Processors are required to test if the findings are based on processing. Both manufacturers and processors are required to test if the exposures giving rise to the potential risk occur during use, distribution, or disposal. Because EPA has found that the use and disposal of biphenyl may present an unreasonable risk to the environment, EPA is proposing that persons who manufacture or process, or who intend to manufacture or process, biphenyl at any time from the effective date of this test rule to the end of the reimbursement period be subject to the rule. The end of the reimbursement period ordinarily will be 5 years after the submission of the last final report required under the test rule.

Because TSCA contains provisions to avoid duplicative testing, not every person subject to this rule must individually conduct testing. Section 4(b)(3)(A) of TSCA provides that EPA may permit two or more manufacturers or processors who are subject to the rule to designate one such person or a qualified third person to conduct the tests and submit data on their behalf. Section 4(c) provides that any person required to test may apply to EPA for an exemption from that requirement (as discussed in Unit II.F. below).

### E. Development and Adoption of Study Plans

EPA proposed generic test methodology requirements (generic test standards) in the Federal Register of May 9, 1979 (44 FR 27334), July 26, 1979 (44 FR 44054), and November 21, 1980 (45 FR 77332). In response to concerns about the rigidity of generic test methodology requirements, EPA has changed its approach for providing test standards for TSCA section 4 test rules. It has issued generic test methodology guidelines to replace the previously proposed generic test methodology requirements. The TSCA guidelines have been published by the National Technical Information Service (NTIS)

for health effects (PB 82-232984), environmental effects (PB 82-232992), and chemical fate (PB 82-233008). Good Laboratory Practice (GLP) standards for development of data on health effects of chemical substances were proposed in the *Federal Register* of May 9, 1979 (44 FR 27334) and July 26, 1979 (44 FR 44054). GLP standards for development of data on physical, chemical, persistence, and ecological effects of chemical substances were proposed in the *Federal Register* of November 21, 1980 (45 FR 77353). These GLP standards will continue to be promulgated as generic requirements.

Under the new approach, test rule development will be a two-phase process. In Phase I, test rules will be promulgated for individual chemicals, specifying the health and/or environmental characteristics and the reporting requirements for which test data are to be developed. In Phase II, following promulgation of a test rule, those persons subject to the rule will be required to provide study plans for the development of data pertaining to the effects and characteristics specified in the rule. For guidance in preparing study plans, it is recommended that test sponsors consult the TSCA Test Guidelines as referenced above; the Organization for Economic Cooperation and Development's (OECD) Guidelines, as adopted by the OECD Council on May 12, 1981; or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Pesticide Registration Guidelines: Proposed Data Requirements published by NTIS (see the *Federal Register* of November 24, 1982 [47 FR 53192] for a list of these guidelines). Pesticide Assessment Guidelines related to this rulemaking include Subparts E (Hazard Evaluation: Wildlife and Aquatic Organisms; PB 83-153908), J (Hazard Evaluation: Nontarget Plants; PB 83-153940), and N (Chemistry Requirements: Environmental Fate; PB 83-153973).

Sponsors must submit their study plans to EPA within 90 days from the effective date of the test rule. After an opportunity for public comment, EPA will issue a final rule adopting the study plans as proposed or modified. The approved and adopted study plans will become the enforceable test requirements and will serve as the chemical specific test standards for the test rule. Testing will also be subject to EPA's generic GLP standards. Modifications to the adopted study plans may be made only with EPA approval; see *Federal Register* of March 26, 1982 (47 FR 13012) for a more detailed explanation of the new approach to providing generic test methodology guidelines.

EPA intends to issue a procedural rule which will set out the details of the two-phase rulemaking process. That procedural rule will apply to the test rule for biphenyl and all other test rules. Information on this proposed procedure appears in the July 18, 1980 *Federal Register* (45 FR 48512), which describes the proposed exemption policy and procedures, in the March 26, 1982 *Federal Register* (47 FR 10312) which provides the policy statement on the test rules development process; and in the proposed test rule for diethylenetriamine, see the April 29, 1982 *Federal Register* (47 FR 18390). The final procedural rule will be issued before the biphenyl rule is promulgated. If there are significant changes in the final procedural rule, EPA may allow a short period of supplementary comment on the biphenyl proposal.

#### *F. Exemption Procedures*

Within 30 days after the effective date of the final rule, each biphenyl manufacturer or group of biphenyl manufacturers must either: (1) Notify EPA that it intends to conduct or sponsor testing and to submit study plans for the required tests, or (2) apply for an exemption on a belief that testing will be performed by others. Study plans must be submitted 90 days after the effective date of this rule.

If no manufacturer notifies EPA of its intent to sponsor testing, EPA will inform manufacturers that their exemptions will not be granted and will give them an opportunity to submit study plans in compliance with this rule.

Processors of biphenyl will not be required to apply for an exemption, submit study plans or conduct testing unless manufacturers fail to sponsor the required tests. If manufacturers do not submit study plans and conduct testing, EPA will issue a notice in the *Federal Register* requiring processors to submit notices of intent to test or apply for an exemption, submit study plans and conduct testing. No exemptions will be granted until a study plan for each of the required tests is received and approved.

EPA is not proposing to require the submission of equivalence data as a condition for exemption from the proposed testing for biphenyl. As noted in Unit II.C. above, EPA is interested in evaluating the effects attributable to biphenyl itself and has specified a relatively pure substance for testing.

EPA proposed exemption procedures for section 4 test rules in the *Federal Register* of July 18, 1980 (45 FR 48512). EPA intends to issue these procedures as a final rule shortly. If there are significant changes in the exemption procedures, EPA may allow a short

period of supplementary comment on the biphenyl proposal.

#### *G. Reporting Requirements*

EPA is proposing that all data be reported in accordance with its proposed GLP Standards to appear in 40 CFR Part 792. EPA has reviewed public comments on the proposed GLP Standards and is now developing final GLP Standards. The final GLP Standards will apply to this rule.

EPA is required by TSCA section 4(b)(1)(C) to specify the time period during which persons subject to a test rule must submit test data. These deadlines will be established in the Phase II rulemaking in which study plans are approved.

TSCA section 14(b) governs Agency disclosure of all test data submitted pursuant to section 4 of TSCA. Upon receipt of data required by this rule, the Agency will publish a notice of receipt in the *Federal Register* as required by section 4(d).

#### *H. Enforcement Provisions*

Section 15(1) of TSCA makes it unlawful for any person to fail or refuse to comply with any rule or order issued under section 4. Section 15(3) of TSCA makes it unlawful for any person to fail or refuse to: (1) Establish or maintain records, (2) submit reports, notices, or other information, or (3) permit access to or copying of records required by the Act or any regulation or rule issued under TSCA. The Agency considers failure to comply with any aspect of a section 4 rule to be a violation of section 15 of TSCA.

Additionally, TSCA section 15(4) makes it unlawful for any person to fail or refuse to permit entry or inspection as required by section 11. Section 11 applies to any "establishment, facility, or other premises in which chemical substances or mixtures are manufactured, processed, stored, or held before or after their distribution in commerce \* \* \*." The Agency considers testing facility to be a place where the chemical is held or stored, and therefore, subject to inspection. Laboratory audits/inspections will be conducted periodically in accordance with the authority and procedures outlined in TSCA section 11 by duly designated representatives of the EPA for the purpose of determining compliance with any final rule for biphenyl. These inspections may be conducted for purposes which include verification that testing has begun, that schedules are being met, that reports accurately reflect the underlying raw data and interpretations and evaluations thereof, and that the studies

are being conducted according to EPA GLP standards and the protocols established in the Phase II rule.

Violators of TSCA are subject to criminal and civil liability. Persons who submit materially misleading or false information in connection with the requirement of any provision of this rule may be subject to penalties which may be calculated as if they never submitted their data. Under the penalty provision of section 16 of TSCA, any person who violates section 15 could be subject to a civil penalty of up to \$25,000 for each violation with each day of operation in violation constituting a separate violation. This provision would be applicable primarily to manufacturers or processors that fail to submit a letter of intent or an exemption request and that continue manufacturing or processing after the deadlines for such submissions. Knowing or willful violations could lead to the imposition of criminal penalties of up to \$25,000 for each day of violation and imprisonment for up to one year. Other remedies are available to EPA under sections 7 and 17 of TSCA, such as seeking an injunction to restrain violations of TSCA section 4 and the seizure of chemical substances manufactured or processed in violation of the rule.

Individuals, as well as corporations, could be subject to enforcement actions. Sections 15 and 16 of TSCA apply to "any person" who violates various provisions of TSCA. EPA may, at its discretion, proceed against individuals as well as companies themselves. In particular, this includes individuals who report false information or who cause it to be reported.

### III. Economic Analysis of Proposed Rule

To evaluate the potential economic impact of test rules, EPA has adopted a two-stage approach. All candidates for test rules go through a Level I analysis. This consists of evaluating each chemical or chemical group on four principal market characteristics: (1) Demand sensitivity, (2) cost characteristics, (3) industry structure, and (4) market expectations. The results of the Level I analysis, along with the consideration of the costs of the required tests, indicate whether the possibility of a significant adverse economic impact exists. Where the indication is negative, no further economic analysis is done for that chemical substance or group. However, for those chemical substances or groups where the Level I analysis indicates a potential for significant economic impact, a more comprehensive and detailed analysis is conducted. This Level II analysis attempts to predict more precisely the magnitude of the expected impact.

For a more complete and thorough discussion of the methodology used to conduct the economic analysis of this test rule, see the *Level I Economic Impact Analysis for Biphenyl* (EPA Contract No. 68-01-6630).

Total testing costs for the proposed rule for Biphenyl are estimated to range from \$27,500 to \$90,300. The annualized cost range is \$7,100 to \$23,400 based on a 25 percent cost of capital over 15 years; the estimated unit costs range from 0.02 to 0.06 cents per pound.

The Level I analysis of the biphenyl industry indicates that, despite relatively high price elasticity and declining markets, the potential for adverse economic effects due to the estimated testing costs is low. This conclusion is based on the following observations: (1) The estimated test cost is very low (i.e., from 0.02 to 0.06 cents per pound or 0.06 to 0.2 percent of the 1981 selling price of 36 cents per pound). (2) Biphenyl is a secondary product that is manufactured at large petrochemical plants. Minor adjustments in its production can occur without disrupting overall plant operations.

### IV. Availability of Test Facilities and Personnel

Section 4(b)(1) requires EPA to consider "the reasonably foreseeable availability of the facilities and personnel needed to perform the testing required under the rule." Therefore, EPA conducted a study to assess the availability of test facilities and personnel to handle the additional demand for testing services created by section 4 test rules and test programs negotiated with industry in place of rulemaking. Copies of the study, *Chemical Testing Industry: Profile of Toxicological Testing*, can be obtained through the NTIS (PB 82-140773).

On the basis of this study, the Agency believes that there will be available test facilities and personnel to perform the testing in this proposed rule.

### V. Environmental Impact Statement

EPA is not required to prepare Environmental Impact Statements (EISs), under the National Environmental Policy Act (NEPA), 41 U.S.C. 4321, for test rules. EPA has determined that voluntary preparation of an EIS is not appropriate for regulations issued under section 4 of TSCA. See the preamble to the Agency's rules for compliance with NEPA published in the *Federal Register* of November 6, 1979 (44 FR 64174).

### VI. Public Meetings

If persons wish to present comments on this proposed rule to EPA officials who are directly responsible for

developing the rule and supporting analyses, EPA will hold a public meeting on August 8, 1983 in Washington, D.C. This meeting is scheduled after the deadline for submission of written comments, so that issues raised in the written comments can be discussed by EPA and the public commenters. Information on the exact time and place of the meeting will be available from the OTS Industry Assistance Office (IAO). Toll Free: (800-424-9065). In Washington, D.C.: (554-1404). Outside the U.S.A. (Operator-202-554-1404).

Persons who wish to attend or present comments at the meeting should call the IAO by July 7, 1983. While the meeting will be open to the public, active participation will be limited to those persons who arranged to present comments and to designated EPA participants. Attendees should call the IAO before making travel plans because the meeting will not be held if members of the public do not wish to make oral presentations.

Should a meeting be held, the Agency will transcribe the meeting and include the written transcript in the public record. Participants are invited, but not required, to submit copies of their statements prior to or on the day of the meeting. All such written materials will become part of EPA's record for this rulemaking.

### VII. Public Record

EPA has established a public record for this rulemaking (docket number OPTS-42031) which is available for inspection in the OPTS Reading Room, Rm. E-107, 401 M St., SW., Washington, D.C., from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays. This record includes basic information considered by the Agency in developing this proposal, and appropriate *Federal Register* notices. The Agency will supplement the record with additional information as it is received.

The Public Record shall include the following information:

(1) *Federal Register* notices pertaining to this rule consisting of:

(a) Notice of proposed rule on biphenyl.

(b) Notice containing the ITC designation of biphenyl to the Priority List.

(c) Notices relating to EPA's environmental effects and chemical fate test guidelines and GLP standards.

(d) Notice of proposed rule on exemption policy and procedures.

(e) Notice of proposed rulemaking on reimbursement policy and procedures.

(2) Support Documents: consisting of:

- (a) Biphenyl support document.
- (b) Biphenyl economic evaluation.
- (3) Minutes of informal meetings.
- (4) Communications before proposal consisting of:

- (a) Written public and intra-agency or interagency memoranda and comments.
- (b) Telephone conversations.
- (c) Meetings.
- (d) Reports—published and unpublished factual materials, including contractors' reports.

#### VIII. Classification of Rule

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore subject to the requirement of a Regulatory Impact Analysis. This test rule is not major because it does not meet any of the criteria set forth in section 1(b) of the Order. First, the estimated annualized cost of the testing proposed for biphenyl is less than \$24,000 over the testing and reimbursement period. Second, because the cost of the required testing will be distributed over a large production volume the rule will have only very minor effects on users' prices (less than 0.2 percent) for this chemical, even if all test costs were passed on. Finally, taking into account the nature of the market for this substance, the low level of costs involved, and the expected nature of the mechanisms for sharing the costs of the required testing, EPA concludes that there will be no significant adverse economic effects of any type as a result of this rule.

This proposed regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

#### IX. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (15 U.S.C. 601 *et seq.* Pub. L. 96-354, September 19, 1980), EPA is certifying that this test rule, if promulgated, will not have a significant impact on a substantial number of small businesses because: (1) They will not perform testing themselves, or will not participate in the organization of the testing effort; (2) they will experience only very minor costs in securing exemption from testing requirements; and (3) they are unlikely to be affected by reimbursement requirements.

#### X. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) authorizes the Director of OMB to review certain information collection requests by Federal agencies. The test rule proposed

in this Notice, if promulgated, could result in the submission of several types of information related to the required testing, including study plans and final reports for each test required by persons sponsoring the tests. For the reasons set forth in the Federal Register of June 5, 1981 (46 FR 30300), EPA believes that the test rule contained in this Notice does not constitute an information collection request as defined in the Paperwork Reduction Act.

#### List of Subjects in 40 CFR Part 799

Testing, Environmental protection, Hazardous material, Chemicals.

Dated: May 10, 1983.

Lee L. Verstandig,

Acting Administrator.

#### PART 799—IDENTIFICATION OF SPECIFIC CHEMICAL SUBSTANCE TESTING REQUIREMENTS

Therefore, it is proposed that a new § 799.925 be added to the proposed Part 799 to read as follows:

##### Subpart A—[Reserved]

##### Subpart B—Specific Chemical Testing

###### § 799.925 Biphenyl.

(a) *Identification of test substance.* (1) Biphenyl (CAS No. 92-52-4) shall be tested in accordance with this Part.

(2) Biphenyl of 99 percent purity shall be used as the test substance.

(b) *Persons required to test.* (1) All persons who manufacture, process or intend to manufacture or process biphenyl from the effective date of this rule June 22, 1983, to the end of the reimbursement period shall submit study plans, conduct tests and submit data as specified by this part.

(2) Any person subject to the requirements of this section may apply to EPA for an exemption from study plan submission, testing and data submission. No later than 30 days after the effective date of this rule, each manufacturer of biphenyl must notify EPA by letter, of its intent either to submit a proposed study or to be exempted from testing for each test required in this rule.

(3) If manufacturers submit study plans, conduct testing, and submit data in a satisfactory manner, processors will be given an automatic exemption by EPA. If manufacturers fail to submit satisfactory study plans or data, all persons who process or intend to process biphenyl from the effective date of this rule to the end of the reimbursement period shall be directed in a special Federal Register Notice to

submit study plans, and to conduct tests and submit data as specified by this Part or be in violation of this rule.

(c) *Study plans*—(1) *Testing.* Testing shall be performed using a study plan submitted and approved in accordance with 40 CFR Part 770. All raw data, documentation, records, protocols, specimens and reports generated as a result of a study shall be developed, reported and retained in accordance with the EPA Good Laboratory Practice (GLP) standards in 40 CFR Part 792. These data and other reports shall be made available during an inspection or submitted to EPA upon request by EPA or its authorized representative.

(2) *Submission.* (i) Manufacturers of biphenyl who indicate they will perform testing must submit proposed study plans on or before 90 days after the effective date of this rule. Only one set of study plans should be prepared and submitted by persons who are jointly sponsoring testing.

(ii) If, by the date specified in paragraph (b)(2) of this section, no manufacturer of biphenyl files a letter of intent to submit a proposed study plan for any test required by this rule, EPA will so notify the manufacturers of biphenyl. If no manufacturer promptly decides to submit a study plan and conduct testing, EPA will publish a Federal Register notice of this fact and then (A) no later than 30 days after publication of such a notice, each processor must notify EPA by letter of its intent either to submit a proposed study plan for each test that will not be covered by a manufacturer's study plans or to be exempted from testing and (B) processors who indicate they will perform testing must submit proposed study plans on or before 90 days after publication of such a notice.

(iii) Manufacturers who do not notify EPA of their intent, either to submit a proposed study plan or to be exempted from testing for each test or study for which testing is required in this rule, will be considered in violation of the rule beginning on the 31st day after the effective date of the rule. Manufacturers who indicate they will perform testing and which do not submit proposed study plans on or before 90 days after the effective date of this rule will be considered in violation of the rule beginning on the 91st day after the effective date of this rule. Each processor who fails to submit a letter of intent to submit a study plan or to request an exemption when required will also be considered in violation of this rule beginning on the 31st day after publication of the notice described in paragraph (c)(2)(ii) of this section.

(iv) If no study plan for conducting tests and submitting data is proposed for each test or study required in this rule, every manufacturer and every processor of biphenyl will be in violation of this rule beginning on the 91st day after publication of the notice described in paragraph (c)(2)(ii) of this section, until such a study plan is submitted by an appropriate sponsor.

(3) *Content.* (i) All study plans are required to contain the following information:

(A) Identity of the test rule and the specific test requirements of that rule to be covered by the study plan.

(B) (1) The names and addresses of the test sponsors.

(2) The names and addresses of the responsible administrative officials and project manager(s) in the principal sponsor's organization.

(3) The name, address and telephone number of the appropriate individual for oral and written communications with EPA.

(4)(i) The name and address of the testing facility, including responsible administrative officials and project manager(s) responsible for this testing.

(ii) Brief summaries of the training and experience of each professional involved in the study including study director, toxicologist(s), chemist(s), microbiologist(s), and laboratory assistants.

(C) Identity and data on biphenyl, including appropriate physical constants, spectral data, chemical analysis and stability under test and storage conditions.

(D) Study protocols, including rationale for: species/strain selection; dose selection (and supporting data); route(s) or method(s) of exposure; incubation temperature; a description of diet to be used and its source, including nutrients and contaminants and their concentrations; a description of culture medium and its source; and a summary of expected spontaneous chronic disease, genealogy, and life span.

(E) Schedule for initiation and completion of major phases of long-term tests; schedule for submission of interim progress and final reports to EPA.

(ii) Information given under paragraph (c)(3)(i)(B)(4) of this section is not required in proposed study plans if the information is not available at the time of submission; however, the information must be submitted before the initiation of testing.

(4) *Adoption.* Upon receipt of proposed study plans, EPA will publish a notice in the *Federal Register* requesting comments on the ability of the study plans to ensure that data from the tests are reliable and adequate. EPA

will provide a 45-day comment period, and will provide an opportunity for an oral presentation on the request of any person. EPA may extend the comment period if it appears from the nature of the issues raised by EPA's review or public comment that further comment is warranted. Following the close of the comment period, EPA will publish a final rule adopting the study plans as proposed or modified as test standards for the testing of biphenyl.

(5) *Modification of study plans during conduct of study—(i) Application.* Any test sponsor who wishes to modify the adopted study plan for any test required under this rule must submit an application in accordance with this section. Application for modification shall be made in writing or by phone to the Chief, Test Rules Development Branch, with written confirmation to follow as soon as feasible. Applications must explain why the modification is necessary.

(ii) *Adoption.* To the extent feasible, EPA will seek comment on all significant changes in study plans. EPA will issue a notice in the *Federal Register* requesting comments on requested modifications in accordance with section 4(b)(5) of TSCA. However, EPA will act on the requested modification without seeking public comment (A) if EPA believes that an immediate modification to a study plan is necessary in order to preserve the accuracy of an on-going study or (B) if EPA determines that a modification clearly does not pose any significant, substantive issues. EPA will notify the sponsor of the Agency's approval or disapproval. When the Agency approves a modification, it will publish a notice in the *Federal Register* indicating that the study plan has been modified.

(d) *Environmental effects testing—(1) Aquatic macrophyte acute toxicity testing—(i) Required testing.* Testing shall be conducted with *Lemna gibba* G3 to develop data on the acute toxicity of biphenyl to aquatic plants.

(ii) *Study plans.* For guidance in preparing study plans, it is recommended that the TSCA Environmental Effects Test Guidelines for *Lemna* acute toxicity testing (EG-23) available in the public record for this rulemaking, be consulted. Additional guidance may be obtained by consulting the Organization for Economic Cooperation and Development (OECD) test guideline for *Lemna* available in the public record for this rulemaking and the FIFRA Guidelines for Hazard Evaluation: Wildlife and Aquatic Organisms (PB 83-153908).

(2) *Fish early life stage toxicity testing—(i) Required testing.* Testing

using flow-through systems shall be conducted with rainbow trout to develop data on the chronic toxicity of biphenyl to aquatic vertebrates.

(ii) *Study plans.* For guidance in preparing study plans it is recommended that the TSCA Environmental Effects Test Guidelines for the Fish Early Life Stage Toxicity Test (EG-11) published by NTIS (PB 82-232992), be consulted. Additional guidance may be obtained by consulting the OECD test guidance for fish partial life cycle available in the public record for this rulemaking and the FIFRA Guidelines for Hazard Evaluation: Wildlife and Aquatic Organisms (PB 83-153908).

(3) *Daphnid chronic toxicity testing—(i) Required testing.* Testing using flow-through systems shall be conducted with daphnids to develop data on the chronic toxicity of biphenyl to aquatic invertebrates.

(ii) *Study plans.* For guidance in preparing study plans, it is recommended that the TSCA Environmental Effects Test Guidelines for the daphnid chronic toxicity test (EG-2) published by NTIS (PB 82-232992), be consulted. Additional guideline may be obtained by consulting the OECD test guidance for aquatic invertebrates partial life cycle available in the public record for this rulemaking, and the FIFRA Guidelines for Hazard Evaluation: Wildlife and Aquatic Organisms (PB 83-153908), and references cited in the support document for this test rule.

(4) *Oyster acute toxicity testing—(e) Required testing.* Testing using systems that control for biphenyl evaporation shall be conducted with oysters to develop data on the acute toxicity of sediment-associated biphenyl to benthic invertebrates.

(ii) *Study plans.* For guidance in preparing study plans, it is recommended that the TSCA Environmental Effects Test guidelines for the oyster acute toxicity test (EG-5) published by NTIS (PB 82-232992), be consulted. Additional guidance may be obtained by consulting the OECD guidelines for mollusk acute toxicity testing available in the public record for this rulemaking and the FIFRA Guidelines for Hazard Evaluation: Wildlife and Aquatic Organisms (PB 83-153908). Since the testing requires the use of sediment-associated biphenyl, the paper of Lynch and Johnson (1982), which is available in the public record for this rulemaking, should also be consulted.

(5) *Oyster bioconcentration testing—(i) Required testing.* Testing using systems that control for biphenyl

evaporation shall be conducted with oysters to develop data on the potential chronic toxicity and bioconcentration of sediment-associated biphenyl to and in benthic invertebrates.

(ii) *Study plans.* For guidance in preparing study plans, it is recommended that the TSCA Environmental Effects Test Guidelines for the oyster bioconcentration test (EG-6) published by NTIS (PB 82-232992), be consulted. Additional guidance may be obtained by consulting the FIFRA Guidelines for Hazard Evaluation: Wildlife and Aquatic Organisms (PB 83-153908) and references cited in the support document for this test rule. Since the testing requires the use of sediment-associated biphenyl, the paper of Lynch and Johnson (1982), which is available in the public record for this rulemaking, should also be consulted.

(e) *Chemical fate testing—(1) Aerobic biodegradation—(1) Required testing.* Testing using systems that control for biphenyl evaporation shall be conducted to develop data on the persistence of biphenyl in aerobic sediments.

(ii) *Study plans.* For guidance in preparing study plans, it is recommended that the TSCA Chemical Fate Test Guidelines for Aerobic Aquatic Biodegradation (CG-2000) published by NTIS (PB 82-233008), be consulted. Additional guidance may be obtained by consulting the OECD test guidelines for ready biodegradability (301 A, B, C, D, and E) available in the public record for this rulemaking and the FIFRA Guidelines for Chemistry Requirements: Environmental Fate (PB 83-153973).

(2) *Anaerobic biodegradation—(i)*

*Required testing.* Testing using systems that control for biphenyl evaporation shall be conducted with biphenyl to develop data on the persistence of biphenyl in anaerobic sediments.

(ii) *Study plans.* For guidance in preparing study plans, it is recommended that the TSCA Chemical Fate Test guidelines for Anaerobic Biodegradation (CG 2050) published by NTIS (PB82-233000), be consulted. Additional guidance may be obtained by consulting the FIFRA Guidelines for Chemistry Requirements: Environmental Fate (PB 83-153973).

(Sec. 4(e) of TSCA, Pub. L. 94-469, 90 Stat. 2003 *et seq.*; 15 U.S.C. 2601 *et seq.*)

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# **federal register**

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Monday  
May 23, 1983

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**Part IV**

## **Environmental Protection Agency**

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**Ethyltoluenes, Trimethylbenzenes, and  
the C<sub>9</sub> Aromatic Hydrocarbon Fraction;  
Proposed Test Rule**

**ENVIRONMENTAL PROTECTION  
AGENCY**
**40 CFR Part 799**
**[OPTS-42034; TSH-FRL 2346-5]**
**Ethyltoluenes, Trimethylbenzenes, and  
the C<sub>6</sub> Aromatic Hydrocarbon Fraction;  
Proposed Test Rule**
**AGENCY:** Environmental Protection  
Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** In its Tenth Report, the Interagency Testing Committee (ITC) designated mixed ethyltoluenes (ET) and 1,2,4-trimethylbenzene (1,2,4-TMB) for priority consideration for environmental and health effects testing. In its Eleventh Report, the ITC recommended that the other trimethylbenzenes be considered for testing. Under section 4(a) of the Toxic Substances Control Act (TSCA), EPA is proposing that manufacturers and processors of the C<sub>6</sub> aromatic hydrocarbon fraction, which contains ethyltoluene (*ortho*-, *meta*- and *para*-isomers), and the 1,2,3-, 1,3,5- and 1,2,4-isomers of trimethylbenzene as primary components, test the C<sub>6</sub> aromatic fraction for health effects, including neurotoxicity, mutagenicity, teratogenicity, reproductive effects and carcinogenicity (in the event the results of the mutagenicity studies are positive). Health effects testing would be performed according to test standards prescribed in a subsequent rulemaking. Environmental effects testing is not being proposed at this time. This notice constitutes EPA's response to the ITC's designation of ET (mixed isomers) and 1,2,4-TMB as priority candidates for testing, and to the ITC's recommendation that the other trimethylbenzenes (1,2,3- and 1,3,5-isomers) be considered for testing.

**DATES:** The public is asked to submit written comments on or before July 22, 1983. If persons request time for oral comment by July 7, 1983, EPA will hold a public meeting on August 8, 1983 on this rule in Washington, D.C. For further information on arranging to speak at the meeting see Unit VII of this preamble.

**ADDRESS:** Address written comments identified by the document control number (OPTS-42034) in triplicate to: TSCA Public Information Office (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-108, 401 M St. SW., Washington, D.C. 20460.

The administrative record supporting this action is available for public inspection at the above address from

8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

For exact time and place of meeting contact Jack P. McCarthy (see "FOR FURTHER INFORMATION CONTACT").

**FOR FURTHER INFORMATION CONTACT:** Jack P. McCarthy, Director, Industry Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-511, 401 M St. SW., Washington, D.C. 20460, Toll Free: (800-424-9085), In Washington, D.C.: (554-1404), Outside the USA: (Operator-202-554-1404).

**SUPPLEMENTARY INFORMATION:**
**I. Introduction**

Section 4(e) of TSCA (Pub. L. 94-469, 90 Stat. 2003 *et seq.*; 15 U.S.C. 2601 *et seq.*) established an Interagency Testing Committee (ITC) to recommend to EPA

(A) (i) the manufacture, distribution in commerce, processing, use, or disposal of a chemical substance or mixture, or that any combination of such activities, may present an unreasonable risk of injury to health or the environment,

(ii) there are insufficient data and experience upon which the effects of such manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data; or

(B) (i) a chemical substance or mixture is or will be produced in substantial quantities, and (I) it enters or may reasonably be anticipated to enter the environment in substantial quantities or (II) there is or may be significant or substantial human exposure to such substance or mixture,

(ii) there are insufficient data and experience upon which the effects of the manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data.

EPA uses a weight of evidence approach in making section 4(a)(1)(A) findings in which both exposure and toxicity information are evaluated to make the finding that the chemical may present an unreasonable risk. For the first finding under section 4(a)(1)(B), EPA considers only production, exposure and release information to determine if there is or may be substantial production, and substantial release and/or significant or substantial human exposure. For the second finding under both sections 4(a)(1)(A) and 4(a)(1)(B), EPA examines toxicity and fate studies to determine if existing information is adequate either to determine or reasonably predict the effects of human exposure to, or environmental release of the chemical. In making the third finding that testing is

a list of chemicals to be considered for testing under section 4(a) of the Act.

The ITC designated ET (mixed isomers) and 1,2,4-TMB for priority consideration in its Tenth Report, published in the *Federal Register* of May 25, 1982 (47 FR 22585) and recommended in its Eleventh Report published in the *Federal Register* of December 3, 1982 (47 FR 54624) that the other trimethylbenzenes (1,2,3- and 1,3,5-isomers) be considered for testing. These actions were based on the exposure potential and the lack of sufficient information on health and environmental effects.

Under section 4(a)(1) of TSCA, the Administrator shall by rule require testing of a chemical substance to develop appropriate test data if the Agency finds that:

necessary, EPA considers whether any ongoing testing will satisfy the information needs for the chemical and whether testing which the Agency might require would provide the necessary information.

EPA's process for determining when these findings apply is described in detail in EPA's first and second proposed test rules as published in the *Federal Register* of July 18, 1980 (45 FR 48528) and June 5, 1981 (46 FR 30300).

In evaluating the ITC's testing recommendations concerning ET and TMB, EPA considered all available relevant information including the following: information presented in the ITC's report recommending testing consideration; production volume, use, exposure and release information reported by manufacturers of ET and



TMB under the TSCA section 8(a) Preliminary Assessment Information Rule (40 CFR Part 712); and other published and unpublished data available to the Agency. The 8(a) rule covered only isomers of ET and 1,2,4-TMB; it did not require manufacturers of the C<sub>8</sub> fraction or the other TMB isomers to report. Based on its evaluation, as described in this proposed rule and the accompanying technical support document, EPA is proposing health effects testing requirements for the C<sub>8</sub> aromatic hydrocarbon fraction based on EPA's findings of substantial exposure to the C<sub>8</sub> fraction [section 4(a)(1)(B)]. No health effects testing of individual ET or TMB isomers is being proposed at this time. EPA has also concluded that no environmental effects testing should be required for the C<sub>8</sub> fraction, ET, 1,2,4-, 1,2,3- or 1,3,5-TMB at this time.

## II. Proposed Rule

### A. Profile

1. *Ethyltoluenes*. Ethyltoluene (ET) occurs in three isomeric forms: 2-ET (*ortho*), 3-ET (*meta*) and 4-ET (*para*). Unless otherwise noted, the term "ethyltoluene" in this document refers to mixed ethyltoluenes, a substance containing all three isomers. ET (CAS No. 25550-14-5) is a colorless liquid readily soluble in most organic solvents, but relatively insoluble in water. ET is sufficiently volatile to enter the atmosphere, and is chemically stable under normal environmental conditions at room temperature. The individual isomers of ET are found in crude oil, gasoline, petroleum products, and have been detected in air and water, and in foods and natural products. ET, along with other nine-carbon aromatic hydrocarbons (C<sub>9</sub>), is produced during the catalytic reforming of petroleum which is one of several processes involved in the production of gasoline. A portion of this C<sub>9</sub> stream is used as a solvent or a component in solvents. The remainder, estimated to be more than 90 percent, is used in gasoline blending. The solvents produced from the C<sub>9</sub> aromatic hydrocarbons are used in paint and varnish formulations, paint thinners, printing inks, pesticide formulations and, to a lesser extent, hydrocarbon lubricating oils for refrigerants. Solvents known to contain significant amounts of ET are Suresol 100, Aromatic 100 and Espersol 10.

Nearly pure *ortho*-ET is synthetically produced by Dow Chemical and used in the production of *ortho*-vinyltoluene which is used in fiber reinforced polyesters, vinyltoluene alkyds and copolymer resins. Conversion of *ortho*-ET to these products is nearly complete.

Mobil synthesizes *para*-ET to produce *para*-vinyltoluene.

Total ET production (pure isomers plus that contained in the C<sub>8</sub> aromatic hydrocarbon fraction) is estimated to be between 30-50 billion pounds annually. All refiners of petroleum are manufacturers of the C<sub>8</sub> fraction. Despite the ITC's designation of ET and the existence of a CAS number, EPA has been unable to identify any product containing only mixed ET isomers. With the exception of the *ortho*-ET manufactured by Mobil, ET is found exclusively as one of the major components of the C<sub>8</sub> fraction.

### 2. Trimethylbenzenes.

Trimethylbenzene (TMB) also occurs in three isomeric forms: 1,2,3-TMB, (CAS No. 526-73-8); 1,3,5-TMB, (CAS No. 108-67-8), and 1,2,4-TMB, (CAS No. 95-63-6). The 1,2,4-isomer is the most abundant and commercially is the most important isomer. 1,2,4-TMB is a clear, colorless liquid, readily soluble in organic solvents, but with low solubility in water. It is a stable compound under normal conditions, it undergoes typical electrophilic substitutions such as nitration, halogenation, sulfonation and alkylation, and is oxidized in the presence of catalysts.

Similar to ET, 1,2,4-TMB and other trimethylbenzenes are produced during catalytic reforming and comprise a major portion of the aromatic C<sub>8</sub> fraction. The uses of the C<sub>8</sub> fraction were discussed in the profile of ET.

1,2,4-TMB is separated from the aromatic C<sub>8</sub> reformate by the Koch Refining Company. Koch's 1,2,4-TMB production was in the range of 10 to 50 million lbs in 1977. Current volume appears to be in excess of 50 million lbs, with imports in 1981 of approximately 11.9 million lbs. Phillips Petroleum Company has reported production only of research quantities of 1,2,4-TMB since 1971. No synthetic process is currently used commercially for the production of 1,2,4-TMB.

Most of the isolated 1,2,4-TMB appears to be consumed as a raw material in the manufacture of trimellitic anhydride (approximately 50 million lbs/yr) which is subsequently used in the production of plasticizers, alkyd resins, unsaturated polyesters, and other industrial chemicals.

The other isomers of TMB are also present in the C<sub>8</sub> fraction. Some of the 1,3,5-isomer (*mesitylene*) is separated from the C<sub>8</sub> fraction and is used as an intermediate, primarily for production of 1,3,5-trimethyl-2,4,6-tris(3,5-di-*tert*-butyl-4-hydroxybenzyl) benzene. This is produced by Ethyl Corporation and sold as Ethanox 330. It is an important

antioxidant (noncoloring stabilizer) for plastics such as polypropylene, high-density polyethylene, polyamides, adhesives, specialty rubbers such as spandex fibers, and waxes.

The 1,2,3-isomer (*hemimellitene*) is used principally to make a musk, similar to xylene musk. It is also oxidized to anhydro hemimellitic acid. No information is currently available to EPA on the quantities consumed through these uses, although those quantities are expected to be a small percentage of the total TMB production which is estimated to be approximately 30 billion pounds per year. EPA plans to require reporting under Section 8(a) of TSCA to obtain information on the production, exposure and release of 1,2,3- and 1,3,5-TMB. Should such reports indicate that there is substantial production of and exposure to these isolated isomers, EPA will reconsider the need for their testing as separate substances.

### B. Findings

The EPA is basing its proposed testing on the authority of section 4(a)(1)(B) of TSCA. EPA finds that:

1. There is no production of the mixed ETs aside from production of the C<sub>8</sub> aromatic hydrocarbon fraction. Likewise, although there is no evidence of substantial release of isolated TMB isomers to the environment, available data are adequate to predict that these isolated TMB isomers neither persist nor accumulate in the environment in sufficient quantity that would likely result in an unreasonable risk to the environment. The exposure of potential concern is to the C<sub>8</sub> fraction, not to mixed ETs, or isolated TMB isomers.

2. There are substantial amounts of the C<sub>8</sub> aromatic hydrocarbon fraction produced in the U.S. each year (approximately 80 billion pounds).

3. A substantial number of workers and consumers are exposed to the C<sub>8</sub> aromatic fraction through exposure to solvents and gasoline. EPA has concluded that this constitutes "substantial exposure" as that term is used in section 4 of TSCA.

4. There are insufficient data on neurotoxicity, reproductive effects, teratogenicity, and mutagenicity upon which to reasonably determine or predict the effects of exposure to the C<sub>8</sub> fraction, and testing is necessary to develop such data.

5. There are sufficient data on the subchronic effects and metabolism of the C<sub>8</sub> fraction; therefore, EPA is not proposing testing for these effects.

6. There are no data to indicate that exposure to 1,2,4-TMB or other isolated isomers of TMB is substantial and there

is no basis for finding that exposure to isolated isomers of TMB may present an unreasonable risk to human health from the effects mentioned by the ITC; therefore, EPA is not proposing testing of 1,2,4-TMB or other isomers separate from the proposed testing of the C<sub>9</sub> fraction.

7. Although the C<sub>9</sub> fraction is released to the environment in substantial quantities, available data are adequate to predict that this material neither persists nor accumulates in the environment in sufficient quantity that would likely result in an unreasonable risk to the environment. For this reason, EPA is not proposing that environmental effects testing be conducted at this time.

8. EPA is not proposing an oncogenicity bioassay based on the

section 4(a)(1)(B) finding because EPA considers the required mutagenicity tests as an appropriate first tier for oncogenicity. However, EPA finds that if certain of the required mutagenicity tests produce positive results, this will be sufficient to indicate that the C<sub>9</sub> fraction may present an unreasonable risk of oncogenic effects. In such circumstances, EPA finds that unless a 2-year bioassay has been initiated, there will be insufficient data to predict oncogenicity, and testing will be necessary to develop oncogenicity data.

The ET and TMB technical support documents are available from the Industry Assistance Office. The ITC's recommendations and EPA's proposed tests are summarized below.

Test	ITC recommendation		EPA proposed testing  C <sub>9</sub>
	ET	1,2,4-TMB <sup>1</sup>	
Health effects:			
Subchronic.....	X	X	No testing.
Neurotoxicity.....		X	X.
Reproduction.....		X	X.
Teratogenicity.....		X	X.
Mutagenicity.....	X		X.
Metabolism.....	X		No testing.
Carcinogenicity.....			X (if mutagenicity test results are positive).
Environmental effects:			
Acute and chronic (fish and invertebrates).....	X	X	No testing.
Aquatic and terrestrial plants.....	X	X	Do.
Bioconcentration.....	X	X	Do.
Environmental fate:			
Aquatic persistence and transformation.....	X	X	Do.
Atmospheric persistence and transformation.....	X	X	Do.

<sup>1</sup>No specific testing recommendations were made for 1,2,3-TMB and 1,3,5-TMB.

### C. Test Substance

EPA is proposing that a synthetic C<sub>9</sub> petroleum fraction, composed of specific concentrations of mixed isomers of ET, and 1,2,4-, 1,2,3- and 1,3,5-TMB, in such proportion that it is representative of a typical aromatic hydrocarbon fraction produced during the refining of crude petroleum, be formulated and used as the test substance. EPA is requesting comment on the range of composition of the C<sub>9</sub> fraction, on whether a single test substance can adequately represent the C<sub>9</sub> fraction and, what the composition of the test substance should be. Comments are also requested on the use of a representative composite sample of actual C<sub>9</sub> fractions gathered from industrial sources for use as the test substance.

### D. Persons Required To Test

Section 4(b)(3)(B) specifies that the activities for which the Administrator makes section 4(a) findings (manufacturing, processing, distribution, use and/or disposal) determine who

bears the responsibility for testing. Manufacturers are required to test if the findings are based on manufacturing ("manufacture" is defined in section 3(7) of TSCA to include "import"). All petroleum refiners located in the U.S. are considered "manufacturers" of the C<sub>9</sub> petroleum fraction, as are importers (if any) of the C<sub>9</sub> fraction. Processors are required to test if the findings are based on processing. (Section 3(7) of TSCA, defines "process" as the preparation of a chemical substance or mixture, after its manufacture, for distribution in commerce.) Both manufacturers and processors are required to test if the exposures giving rise to the potential risk occur during use, distribution, or disposal. Because EPA has found that the use of the C<sub>9</sub> fraction may give rise to substantial exposure, EPA is proposing that persons who manufacture or process, or who intend to manufacture or process, the C<sub>9</sub> aromatic hydrocarbon fraction at any time from the effective date of this test rule to the end of the reimbursement

period be subject to the rule. The end of the reimbursement period will be 5 years after the submission of the final report required under the test rule.

Because TSCA contains provisions to avoid duplicative testing, not every person subject to this rule must individually conduct testing. Section 4(b)(3)(A) of TSCA provides that EPA may permit two or more manufacturers or processors who are subject to the rule to designate one such person or a qualified third person to conduct the tests and submit data on their behalf. Section 4(c) provides that any person required to test may apply to EPA for an exemption from that requirement. As discussed in Unit II.F, EPA expects that manufacturers will conduct testing and processors will ordinarily be exempted from testing.

### E. Development and Adoption of Study Plans

EPA proposed generic test methodology requirements (generic test standards) for various health effects in the *Federal Register* of May 9, 1979 (44 FR 27334) and of July 26, 1979 (44 FR 44054). In response to concerns about rigid generic test methodology requirements, EPA changed its approach for providing test standards for TSCA section 4 test rules and has instead issued generic test methodology guidelines to replace previously proposed generic test methodology requirements. The guidelines have been published by the National Technical Information Service (NTIS) under publication number PB 82-232984. Test methodology requirements for particular chemicals will be developed on a case-by-case basis. Good Laboratory Practice (GLP) standards will continue to be promulgated as generic requirements. (See the *Federal Register* of March 26, 1982; 47 FR 13012.)

Under the new approach, test rule development will be a two-phase process. In Phase I, test rules will be promulgated for individual chemicals specifying the health or environmental effects characteristics for which test data are to be developed. In Phase II, following promulgation of a test rule, those persons subject to the rule will be required to develop study plans for the development of data pertaining to the effects and characteristics specified in the rule. For guidance in preparing study plans, it is recommended that the TSCA Health Effects Test Guidelines, published by NTIS (PB 82-232984), be consulted. Additional guidance may be obtained from the Organization for Economic Cooperation and Development (OECD) Test Guidelines

and the Pesticide Assessment Guidelines, published by NTIS (PB 83-153916).

Manufacturers who sponsor testing must submit their study plans to EPA within 90 days from the effective date of the test rule. After an opportunity for public comment, EPA will issue a rule adopting the study plans as proposed or modified. The approved and adopted study plans, including the names and addresses of laboratories conducting the tests, will become the enforceable test requirements and will serve as the chemical specific test standards for the test rule. Testing will also be subject to EPA's generic Good Laboratory Practice (GLP) standards. Modifications to the adopted study plans may be made only with EPA approval.

For the purposes of announcing the carcinogenicity test if it is needed, the Agency will publish a Notice in the Federal Register announcing the receipt of the mutagenicity test data, EPA's evaluation of the results of the testing, and the need for the carcinogenicity testing. This Notice will then start the Phase II portion of the rule requiring carcinogenicity testing. Persons subject to the rule will follow the existing mechanisms for submission of study plans within the allowed time.

EPA intends to issue a procedural rule outlining the details of the two-phase rulemaking process, which will apply to the test rule for the C<sub>9</sub> aromatic hydrocarbon fraction and all other test rules. Information on this proposed procedure appears in the July 18, 1980 Federal Register (45 FR 48512), the March 26, 1982 Federal Register (47 FR 10312), and the April 29, 1982 Federal Register (47 FR 18390). If there are significant changes in the final procedural rule which will be issued before the C<sub>9</sub> hydrocarbon mixture rule is promulgated, EPA may allow a short period of supplementary comment on the C<sub>9</sub> aromatic hydrocarbon proposal.

#### F. Exemption Procedures

Within 30 days after the effective date of the final rule, each manufacturer of the C<sub>9</sub> aromatic hydrocarbon fraction must either (1) notify EPA that it intends to conduct or sponsor testing and to submit study plans for the required tests, or (2) apply for an exemption on a belief that testing will be performed by others. Study plans must be submitted within 90 days after the effective date of this rule. If no manufacturer notifies EPA of its intent to sponsor testing, EPA will inform manufacturers that their exemption will not be granted. They will, nevertheless, have the opportunity to submit study plans in compliance

with this rule until 90 days from the effective date of this rule.

Processors of the C<sub>9</sub> fraction will not be required to apply for an exemption, submit study plans or conduct testing unless manufacturers fail to sponsor the required tests. If manufacturers do not submit study plans and conduct testing, EPA will issue a notice in the Federal Register requiring processors to submit notices of intent to test or apply for an exemption, to submit study plans and to conduct testing. No exemptions will be granted until a study plan for each of the required tests is received and approved.

EPA is not proposing to require equivalence data as a condition for exemption from the proposed testing of the C<sub>9</sub> fraction. EPA will require for testing a mixture that is representative of the C<sub>9</sub> fractions to which persons are most commonly exposed. Comment is being solicited in this rulemaking on the appropriate makeup of the representative C<sub>9</sub> fraction.

EPA proposed exemption procedures for section 4 test rules in the Federal Register of July 18, 1980 (45 FR 48512). EPA intends to issue these procedures as a final rule shortly. If there are significant changes in the exemption procedures, EPA may allow a short period of supplementary comment on the C<sub>9</sub> aromatic hydrocarbon proposal.

#### G. Reporting Requirements

EPA is proposing that all data be reported in accordance with TSCA Good Laboratory Practice (GLP) standards. Such standards were proposed in the Federal Register of May 9, 1979 (44 FR 28369) and November 21, 1980 (45 FR 77332) and will appear in final form in 40 CFR Part 792. EPA has reviewed public comments on the proposed GLP Standards and is now developing final GLP standards. The final GLP standards will apply to this rule.

EPA is required by TSCA section 4(b)(1)(C) to specify the time period during which persons subject to a test rule must submit test data. These deadlines will be established in the Phase II rulemaking in which study plans are approved.

TSCA section 14(b)(1)(A)(ii) governs Agency disclosure of all test data submitted pursuant to section 4 of TSCA. Upon receipt of data required by this rule, the Agency will publish a notice of receipt in the Federal Register as required by section 4(d).

#### H. Enforcement Provisions

Section 15(1) of TSCA makes it unlawful for any person to fail or refuse to comply with any rule or order issued under section 4. Section 15(3) of TSCA

makes it unlawful for any person to fail or refuse to: (1) Establish or maintain records, (2) submit reports, notices, or other information, or (3) permit access to or copying of records required by the Act or any regulation or rule issued under TSCA. The Agency considers that failure to comply with any aspect of a section 4 rule may be a violation of sections 15(1) and 15(3) of TSCA.

Additionally, TSCA section 15(4) makes it unlawful for any person to fail or refuse to permit entry or inspection as required by section 11. Section 11 applies to any "establishment, facility, or other premises in which chemical substances or mixtures are manufactured, processed, stored, or held before or after their distribution in commerce \* \* \*." The Agency considers a testing facility to be a place where the chemical is held or stored, and therefore, subject to inspection. Laboratory audits/inspections will be periodically conducted in accordance with the authority and procedures outlined in TSCA section 11 by authorized representatives of the EPA for the purpose of determining compliance with any final rule issued in this proceeding. These inspections may be conducted for purposes which include verification that testing has begun, that schedules are being met, that reports accurately reflect the underlying raw data and interpretations and evaluations thereof, and that the studies are being conducted according to TSCA GLP standards and the test standards adopted in the rule.

Violators of TSCA are subject to criminal and civil liability. Persons who submit materially misleading or false information in connection with the requirement of any provision of this rule may be subject to penalties which may be calculated as if they never submitted their data. Under the penalty provision of section 16 of TSCA, any person who violates section 15 could be subject to a civil penalty of up to \$25,000 for each violation with each day of operation in violation constituting a separate violation. This provision would be applicable primarily to manufacturers or processors that fail to submit a letter of intent or an exemption request and that continue manufacturing or processing after the deadlines for such submissions. Knowing or willful violations could lead to the imposition of criminal penalties of up to \$25,000 for each day of violation and imprisonment for up to one year. Other remedies are available to EPA under sections 7 and 17 of TSCA, such as seeking an injunction to restrain violations of TSCA section 4 and the seizure of chemical substances

manufactured or processed in violation of the rule.

Individuals, as well as corporations, could be subject to enforcement actions. Section 15 and 16 of TSCA apply to "any person" who violates various provisions of TSCA. EPA may, at its discretion, proceed against individuals as well as companies themselves. In particular, this includes individuals who report false information or who cause it to be reported.

### III. Issues For Comment

1. Is the  $C_8$  fraction the appropriate test substance? Can a single  $C_8$  substance or mixture be selected which will be representative, for toxicological purposes, of the  $C_8$  fraction to which persons are exposed through exposure to solvents and gasoline? If so, what should the specifications be for such substance or mixture? If not, what substances should be selected for testing and why? Should a commercial  $C_8$  fraction be used for testing instead of a synthetic mixture?

2. Can a negative result (or a high non-observed-effect-level) on the  $C_8$  fraction be used to make reasonable predictions that the individual ET and TMB isomers will not present an unreasonable risk of that effect?

3. Should the testing of the individual isomers be required for any of the tests? If so, which isomers and which tests?

4. Should oncogenicity testing of the  $C_8$  fraction be required only if selected mutagenicity tests produce non-negative results, or should oncogenicity testing be required immediately on the basis of the TSCA section 4(a)(1)(B) findings?

5. What should the routes of exposure for the test substance be?

### IV. Economic Analysis of Proposed Rule

To evaluate the potential economic impact of test rules, EPA has adopted a two-stage approach. All candidates for test rules go through a Level I analysis. This consists of evaluating each chemical or chemical group on four principal market characteristics: (1) Demand sensitivity, (2) cost characteristics, (3) industry structure, and (4) market expectations. The results of the Level I analysis, along with a consideration of the cost of the required tests, indicate whether the possibility of a significant adverse economic impact exists. Where the indication is negative, no further economic analysis is done for that chemical substance or group. However, for those chemical substances or groups where the Level I analysis indicates a potential for significant economic impact, a more comprehensive and detailed analysis is conducted. This Level II analysis attempts to predict

more precisely the magnitude of the expected impact.

For a more complete and thorough discussion of the methodology used to conduct economic analyses of this test rule, see the *Level I Economic Impact Analysis for Ethyltoluene and 1,2,4-Trimethylbenzene* (EPA Contract No. 68-01-6630).

Total testing costs for this proposed rule are estimated to range from \$513,800 to \$1,537,900. The annualized cost range is \$133,100 to \$398,500 over 15 years based on a 25 percent cost of capital. Because of the huge production volume of the  $C_8$  petroleum fraction, the unit test costs (i.e., the cost per pound) are negligible.

The potential for adverse economic effects resulting from testing requirements for the  $C_8$  fraction is low for the following reasons:

The overall demand for the  $C_8$  fraction is relatively inelastic due to: (1) The superior octane qualities of the aromatic  $C_8$  fraction, (2) the relatively inelastic demand for gasoline, and (3) the price advantages of aromatic solvents containing unisolated ethyltoluene.

The estimated unit test costs are negligible; approximately 0.0004 cents per pound of the  $C_8$  fraction in the upper bound case.

### V. Availability of Test Facilities and Personnel

Section 4(b)(1) requires EPA to consider "the reasonably foreseeable availability of the facilities and personnel needed to perform the testing required under the rule." Therefore, EPA conducted a study to assess the availability of test facilities and personnel to handle the additional demand for testing services created by section 4 test rules and test programs negotiated with industry in place of rulemaking. Copies of the study, "Chemical Testing Industry: Profile of Toxicological Testing," can be obtained through the National Technical Information Service (NTIS), Springfield, Virginia (Publication No. 82-140773).

The conclusions reached in the laboratory availability study were: (1) The chemical testing industry's anticipation of increased testing requirements has prompted the rapid expansion of testing facilities in recent years; (2) currently, excess capacity exists in all major testing areas, and surveyed laboratories indicated they could perform about 29 percent more testing; (3) measurable industry concentration exists, but it is not enough to restrict market entry or control key resources; and (4) currently, capital and professional manpower are the most constraining resources on industry

expansion of testing facilities. Capital is understandably a cyclical constraint. The constraint imposed by a shortage of professional personnel can be long-term because of the lengthy period required for professional preparation; however, current personnel numbers appear adequate relative to present testing levels.

On the basis of this study, the Agency believes that there will be available test facilities and personnel to perform the testing required in this proposed rule.

### VI. Environmental Impact Statement

EPA is not required to prepare Environmental Impact Statements (EIS) under the National Environmental Policy Act (NEPA), 41 U.S.C. 4321, for test rules. EPA has determined that voluntary preparation of an EIS is not appropriate for regulations issued under section 4 of TSCA. See the preamble to the Agency's rules for compliance with NEPA published in the *Federal Register* of November 6, 1979 (44 FR 64174).

### VII. Public Meetings

If persons wish to present comments on this proposed rule to EPA officials who are directly responsible for developing the rule and supporting analyses, EPA will hold a public meeting on August 8, 1983 in Washington, D.C. This meeting is scheduled after the deadline for submission of written comments, so that issues raised in the written comments can be discussed by EPA and the public commenters. Information on the exact time and place of the meeting will be available from the Industry Assistance Office. Toll Free: (800-424-9065). In Washington, D.C.: 554-1404. Outside the U.S.A.: (Operator—202-554-1404).

Persons who wish to attend or present comments at the meeting should call the Industry Assistance Office by July 7, 1983. While the meeting will be open to the public, active participation will be limited to those persons who have arranged to present comments and to designated EPA participants. Attendees should call the Industry Assistance Office before making travel plans because the meeting will not be held if members of the public do not wish to make oral comments.

The Agency will transcribe the meeting and include the written transcript in the public record. Participants are invited, but not required, to submit copies of their statements prior to or on the day of the meeting. All such written materials will become part of EPA's record for this rulemaking.

### VIII. Public Record

EPA has established a public record for this rulemaking, docket number OPTS-42034, which is available for inspection in the OPTS Reading Room, Rm. E-107, 401 M St. SW., Washington, D.C., from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays. This record includes the basic information considered by the Agency in developing this proposal, and appropriate Federal Register notices. The Agency will supplement the record with additional information as it is received.

The Public Record shall include the following information:

(1) Federal Register notices pertaining to this rule consisting of:

(a) Notice of Proposed Rule on C<sub>6</sub> Aromatic Hydrocarbon Fraction and Response to the ITC on ET and 1,2,4-, 1,2,3- and 1,3,5-TMB

(b) Notice containing the ITC designation of ET and 1,2,4-TMB to the Priority List.

(c) Notice containing the ITC recommendation of the other trimethylbenzenes to the Priority List.

(d) Notices relating to EPA's health effects test guidelines and TSCA GLP standards.

(e) Notice of Proposed Rule on Exemption Policy and Procedures.

(f) Notice of Proposed Rulemaking on Reimbursement Policy and Procedures.

(g) Notice of change in Test Standards Policy and Test Rule Development Process.

(2) Support Documents: consisting of:

(a) ET and TMB Technical support documents

(b) Economic analysis support document

(3) Minutes of informal meetings

(4) Communications before proposal consisting of:

(a) Written public comments

(b) Summaries of telephone conversations

(5) Reports-published and unpublished factual materials, including contractors' reports.

### IX. Classification of Rule

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore subject to the requirement of preparing a Regulatory Impact Analysis. This test rule is not major because it does not meet any of the criteria set forth in section 1(b) of the Order. First, the estimated annual cost of the testing proposed is less than \$398,500 over the testing and reimbursement period. Second, because the cost of the required testing will be distributed over a large production

volume, the rule will have only very minor effects on users' prices for these chemicals, even if all tests cost were passed on. Finally, taking into account the nature of the market for the C<sub>6</sub> fraction, the low level of costs involved, and the expected nature of the mechanisms for sharing the costs of the required testing, EPA concludes that there will be no significant adverse economic effects of any type as a result of this rule.

This proposed regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

### X. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (15 U.S.C. 601 *et seq.*, Pub. L. 96-354, September 19, 1980), EPA is certifying that this test rule, if promulgated, will not have a significant impact on a substantial number of small businesses for the following reasons:

1. Small manufacturers or processors will not perform testing themselves, or participate in the organization of the testing effort.

2. Small manufacturers or processors will experience only very minor costs in securing exemption from testing requirements.

3. Small manufacturers and processors are unlikely to be affected by reimbursement requirements.

The basis for this decision is the same as that discussed in detail in the Federal Register of June 5, 1981 (46 FR 30300).

### XI. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) authorizes the Director of OMB to review certain information collection requests by Federal agencies. The test rule proposed in this notice, if promulgated, could result in the submission of several types of information related to the required testing, including study plans and final reports for each test required by persons sponsoring the tests. For the reasons set out in the Federal Register of June 5, 1981 (46 FR 30300), EPA believes that the test rule contained in this notice does not constitute an information collection request as defined in the Paperwork Reduction Act. An information collection request subject to the provisions of the Paperwork Reduction Act might be triggered by the exemption provisions related to this test rule. The need for such information will be reviewed by the Office of Management and Budget as part of its review of EPA's rule on TSCA section 4(c) exemptions.

### List of Subjects in 40 CFR Part 799

Testing, Environmental protection, Hazardous material, Chemicals.

Dated: May 10, 1983.

Lee L. Verstandig,

Acting Administrator.

### PART 799—IDENTIFICATION OF SPECIFIC CHEMICAL SUBSTANCES TESTING REQUIREMENTS

Therefore, it is proposed that a new § 799.1625 be added to Part 799 Chapter I of 40 CFR, to read as follows:

#### Subpart A—[Reserved]

#### Subpart B—Specific Chemical Testing

##### § 799.1625 C<sub>6</sub> aromatic hydrocarbon fraction.

(a) *Identification of test substance.* (1) A synthetic C<sub>6</sub> mixture consisting of *ortho*-, *meta*- and *para*-ethyltoluene, 1,2,4-, 1,2,3- and 1,3,5-trimethylbenzene that is representative of a typical C<sub>6</sub> aromatic petroleum fraction obtained from the reforming of crude petroleum shall be prepared.

(2) A synthetic C<sub>6</sub> mixture as described above shall be used as the test substance in all tests.

(b) *Persons required to test.* (1) All persons who manufacture (includes import), process, or intend to manufacture or process the C<sub>6</sub> aromatic product of petroleum refining (hereafter known as manufacturers and processors as defined in sections 3(7) and 3(10) of TSCA) from the effective date of this rule to the end of the reimbursement period shall submit study plans and conduct tests and submit data as specified by this part.

(2) Any person subject to the requirements of this section may apply to EPA for an exemption from study plan submission, testing, and data submission. No later than 30 days after the effective date of this rule, each manufacturer of the C<sub>6</sub> fraction must notify EPA by letter of an intent either to submit a proposed study plan or to be exempted from testing for each test or study required in this rule.

(3) If manufacturers submit study plans, conduct testing, and submit data in a satisfactory manner, processors will be given an automatic exemption by EPA. If manufacturers fail to submit satisfactory study plans or data, all persons who process or intend to process the C<sub>6</sub> fraction from the effective date of this rule to the end of the reimbursement period shall be directed in a special Federal Register Notice to submit study plans, and to conduct tests

and submit data as specified by this Part or be in violation of this rule.

(c) *Study plans*—(1) *Testing*. Testing shall be performed using a study plan submitted and approved in accordance with 40 CFR Part 770. All raw data, documentation, records, protocols, specimens and reports generated as a result of a study shall be developed, reported and retained in accordance with the EPA Good Laboratory Practices (GLP) standards in 40 CFR Part 792. These data and other reports shall be made available during an inspection or submitted to EPA upon request by EPA or its authorized representative.

(2) *Submission*. (i) Manufacturers of the  $C_6$  fraction who indicate they will perform testing must submit proposed study plans on or before 90 days after the effective date of this rule. Only one set of study plans should be prepared and submitted by persons who are jointly sponsoring testing.

(ii) If, by the date specified in paragraph (b)(2) of this section, no manufacturer files a letter of intent to submit a proposed study plan for any test required by this rule, EPA will so notify the manufacturers to assure them an opportunity to submit study plans and conduct testing in compliance with this rule. If no manufacturer intends to conduct testing, EPA will publish a **Federal Register** notice of this fact and then (A) no later than 30 days after publication of such a notice, each processor must notify EPA by letter of its intent either to submit a proposed study plan for each test that will not be covered by a manufacturer's study plans or to be exempted from testing and (B) processors who indicate they will perform testing must submit proposed study plans on or before 90 days after publication of such a notice.

(iii) Manufacturers who do not notify EPA of their intent, either to submit a proposed study plan or to be exempted from testing for each test or study for which testing is required in this rule, will be considered in violation of the rule beginning on the 31st day after the effective date of the rule. Manufacturers who indicate they will perform testing and which do not submit proposed study plans on or before 90 days after the effective date of this rule will be considered in violation of the rule beginning on the 91st day after the effective date of this rule. Each processor who fails to submit a letter of intent to submit a study plan or to request an exemption when required will also be considered in violation of this rule beginning on the 31st day after publication of the notice described in paragraph (c)(2)(ii) of this section.

(iv) If no study plan is proposed for each test or study required in this rule, every manufacturer and every processor of such chemicals will be in violation of TSCA beginning on the 91st day after the publication of the notice described in paragraph (c)(2)(ii) of this section, until such a study plan is submitted by an appropriate sponsor.

(3) *Content*. (i) All study plans are required to contain the following information:

(A) Identity of the test rule and the specific test requirements of that rule to be covered by the study plan.

(B)(1) The names and addresses of the test sponsors.

(2) The names and addresses of the responsible administrative officials and project manager(s) in the principal sponsor's organization.

(3) The name, address and telephone number of the appropriate individual for oral and written communications with EPA.

(4)(i) The name and address of the testing facility, including responsible administrative officials and project manager(s) responsible for this testing.

(ii) Brief summaries of the training and experience of each professional involved in the study including study director, veterinarian(s), pathologist(s), and pathology assistants.

(C) Identity and data on the mixture or substance being tested including appropriate physical constants, spectral data, chemical analysis and stability under test and storage conditions.

(D) Study protocols including rationale for: species/strain selection; dose selection (and supporting data); route(s) or method(s) of exposure; incubation temperature; a description of diet to be used and its source, including nutrients and contaminants and their concentrations; a description of culture medium and its source; and a summary of expected spontaneous chronic disease, genealogy, and life span.

(E) Schedule for initiation and completion of major phases of long-term tests; schedule for submission of interim progress and final reports to EPA.

(ii) Information given under paragraph (c)(3)(i)(B)(4) of this section is not required in proposed study plans if the information is not available at the time of submission; however, the information must be submitted before the initiation of testing.

(4) *Adoption*. Upon receipt of proposed study plans, EPA will publish a notice in the **Federal Register** requesting comments on the ability of the study plans to ensure that data from the tests are reliable and adequate. EPA will provide a 45-day comment period,

and will provide an opportunity for an oral presentation on the request of any person. EPA may extend the comment period if it appears from the nature of the issues raised by EPA's review or public comments that further comment is warranted. Following the close of the comment period, EPA will publish a final rule adopting the study plans as proposed or modified as test standards for the testing of the  $C_6$  fraction.

(5) *Modification of study plans during conduct of study*—(i) *Application*. Any test sponsor who wishes to modify the adopted study plan for any test required under this rule must submit an application in accordance with this section. Application for modification shall be made in writing or by phone to the Chief, Test Rules Development Branch, with written confirmation to follow as soon as feasible. Applications must explain why the modification is necessary.

(ii) *Adoption*. To the extent feasible, EPA will seek comment on all significant changes in study plans. EPA will issue a notice in the **Federal Register** requesting comments on requested modifications in accordance with section 4(b)(5) of TSCA. However, EPA will act on the requested modification without seeking public comment (A) if EPA believes that an immediate modification to a study plan is necessary in order to preserve the accuracy of an on-going study or (B) if EPA determines that a modification clearly does not pose any significant, substantive issues. EPA will notify the sponsor of the Agency's approval or disapproval. When the Agency approves a modification, it will publish a notice in the **Federal Register** indicating that the study plan has been modified.

(d) *Health Effects Testing*—(1) *Mutagenic effects—Chromosomal aberrations*. (i) *Required testing*. (A) An *in vitro* cytogenetics test shall be conducted with the synthetic  $C_6$  mixture as specified in paragraph (a) of this section.

(B) An *in vivo* cytogenetics test shall be conducted if the synthetic  $C_6$  mixture produces a negative result in the *in vitro* cytogenetics test.

(C) A dominant lethal assay shall be conducted for the synthetic  $C_6$  mixture if it produces a positive result in the *in vitro* or *in vivo* cytogenetics test.

(D) A heritable translocation assay shall be conducted with the synthetic  $C_6$  mixture if it produces a positive result in the dominant lethal assay.

(E) Further testing for chromosomal aberrations is not required for the synthetic  $C_6$  mixture if it produces a negative result in the *in vivo*

cytogenetics test or the dominant lethal assay.

(ii) *Study plans.* For guidance in preparing study plans, it is recommended that the TSCA Health Effects Test Guidelines for Chromosomal Effects, published by NTIS (PB 82-232984), be consulted. Additional guidance may be obtained from the OECD Test Guidelines for Genetic Toxicology and the Pesticide Assessment Guidelines, published by NTIS (PB 83-153916).

(2) *Mutagenic effects—Gene Mutation—(i) Required testing.* (A) A *Salmonella* microsomal assay shall be conducted on the synthetic C<sub>9</sub> mixture specified as the test substance, both with and without activation.

(B) A DNA damage assay shall be conducted.

(C) A sister chromatid exchange (SCE) assay shall be conducted.

(D) A gene mutation in mammalian cells in culture assay shall be conducted.

(E) A second gene mutation in mammalian cells in culture assay, using a different cell line from that used in the first assay, shall be conducted if the synthetic C<sub>9</sub> mixture produces a negative result in the first gene mutation in cells in culture assay, specified by paragraph (d)(2)(i)(D) of this section, coupled with positive results in at least two of the following three tests: the *Salmonella* microsomal, DNA damage or SCE assays.

(F) The synthetic C<sub>9</sub> mixture shall be tested in a *Drosophila* sex-linked recessive test, in the event it produces a positive result in the *Salmonella* microsomal assay, DNA damage assay, SCE assay or a gene mutation in cells in culture assay.

(G) A mouse specific locus assay shall be conducted with the synthetic C<sub>9</sub>

mixture if it produces a positive result in the *Drosophila* sex-linked recessive test.

(H) Further testing for gene mutations is not required for the synthetic C<sub>9</sub> mixture if it produces a negative result in the *Drosophila* sex-linked recessive test.

(ii) *Study plans.* For guidance in preparing study plans, it is recommended that the TSCA Health Effects Test Guidelines for Gene Mutations and DNA Effects, published by NTIS (PB 82-232984), be consulted. Additional guidance may be obtained from the OECD Test Guidelines for Genetic Toxicology, and the Pesticide Assessment Guidelines, published by NTIS (PB 83-153916).

(3) *Carcinogenicity—(i) Required testing.* A 2-year inhalation oncogenicity bioassay shall be conducted with the synthetic C<sub>9</sub> mixture unless it produces negative results in all of the following tests: *In vitro* cytogenetics test, *in vivo* cytogenetics test, first gene mutation in cells in culture assay, second gene mutation in cells in culture assay (if required) and *Drosophila* sex-linked recessive test.

(ii) *Study plans.* For guidance in preparing study plans, it is recommended that the TSCA Health Effects Guidelines for Chronic Exposure-Oncogenicity published by NTIS (PB 82-232984), be consulted. Additional guidance may be obtained from the OECD Test Guidelines for Health Effects Section #451 and the Pesticide Assessment Guidelines, published by NTIS (PB 83-153916).

(4) *Teratogenicity—(i) Required testing.* An inhalation teratogenicity study shall be conducted with the synthetic C<sub>9</sub> mixture.

(ii) *Study plans.* For guidance in preparing study plans, it is recommended that the TSCA Health

Effects Test Guidelines for Specific Organ/Tissue Toxicity-Teratogenicity, published by NTIS (PB 82-232984), be consulted. Additional guidance may be obtained from the OECD Test Guidelines for Health Effects, and the Pesticide Assessment Guidelines, published by NTIS (PB 83-153916).

(5) *Reproductive Effects—(i) Required testing.* A two-generation inhalation reproductive effects study shall be conducted with the synthetic C<sub>9</sub> mixture.

(ii) *Study plans.* For guidance in preparing study plans, it is recommended that the TSCA Health Effects Test Guidelines for Specific Organ/Tissue Toxicity-Reproduction/Fertility Effects, published by NTIS (PB 82-232984), be consulted. Additional guidance may be obtained and the Pesticide Assessment Guidelines, published by NTIS (PB 83-153916).

(6) *Neurotoxicity—(i) Required testing.* The neurotoxicity test battery shall consist of a 90-day subchronic inhalation exposure incorporating the following tests:

(A) A neuropathology test shall be conducted with the synthetic C<sub>9</sub> mixture.

(B) A motor activity test shall be conducted with the synthetic C<sub>9</sub> mixture.

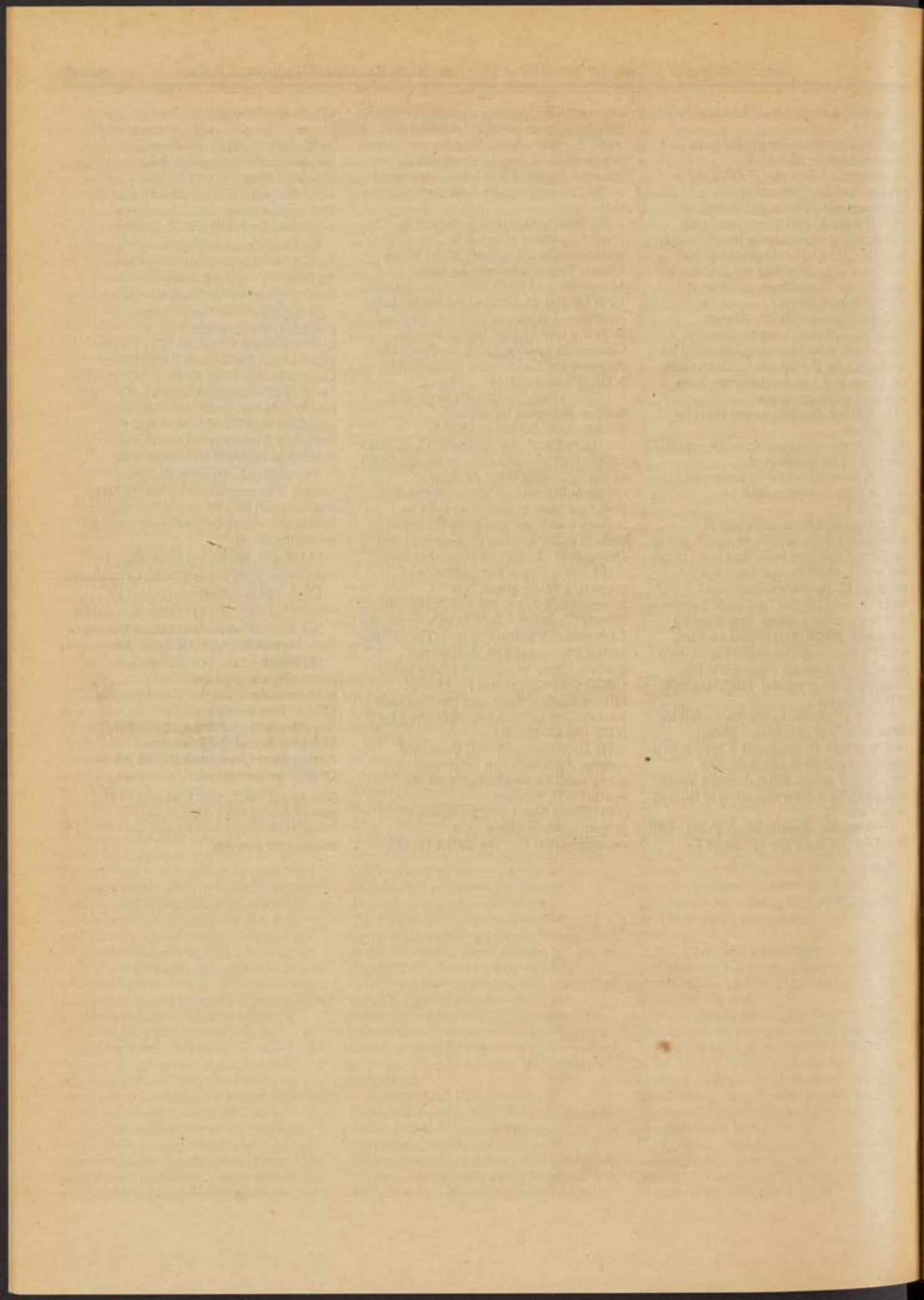
(C) A functional observation battery shall be conducted with C<sub>9</sub> mixture.

(ii) *Study plans.* For guidance in preparing study plans, it is recommended that the TSCA Health Effects Test Guidelines for Neurotoxicity, published by NTIS (PB 82-232984), and the Pesticide Assessment Guidelines (NTIS; PB 83-153916) be consulted.

(Sec. 4(e) of TSCA, Pub. L. 94-469, 90 Stat. 2003 et seq.; 15 U.S.C. 2601 et seq.)

[FR Doc. 83-13747 Filed 5-20-83; 8:45 am]

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# **federal register**

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Monday  
May 23, 1983

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**Part V**

## **Environmental Protection Agency**

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**Formamide; Response to the Interagency  
Testing Committee**

**ENVIRONMENTAL PROTECTION  
AGENCY**

[OPTS-42032 TSH-FPL 2346-4]

**Formamide; Response to the  
Interagency Testing Committee**
**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Tenth Report of the Interagency Testing Committee (ITC) designated the chemical formamide for health effects testing consideration. Subsequent to the designation, BASF Wyandotte Corporation, the sole importer of formamide, presented to EPA plans for subchronic effects testing of formamide. In addition, the National Toxicology Program (NTP) initiated a testing program to define formamide's genotoxic potential. The Agency has concluded that these combined programs are sufficient to evaluate chronic effects, other than oncogenicity, and genotoxic effects, as recommended for testing by the ITC. Further, the Agency believes that oncogenicity testing recommended by the ITC is not warranted based on the available data. Consequently, the EPA is not initiating rulemaking under section 4(a) of the Toxic Substances Control Act (TSCA) to require additional health effects testing of formamide. This notice constitutes the Agency's response to the ITC's designation of formamide, as mandated by section 4(e) of TSCA.

**DATE:** Interested persons are invited to comment on this proposed decision. All comments should be submitted on or before July 7, 1983.

**ADDRESS:** Written comments should bear the document control number [OPTS-42032] and should be submitted in triplicate to: TSCA Public Information Officer (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Room E-108, 401 M St. SW., Washington, D.C. 20460.

**FOR FURTHER INFORMATION CONTACT:** Jack P. McCarthy, Director, Industry Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-511, Washington, D.C. 20460, Toll Free: (800-424-9065), In Washington, D.C.: (554-1404), Outside the USA: (Operator 202-554-1404).

**SUPPLEMENTARY INFORMATION:**
**I. Background**

Section 4(a) (Pub. L. 94-489, 90 Stat. 2003 *et seq.*, 15 U.S.C. 2601 *et seq.*) of the Toxic Substances Control Act (TSCA) authorizes EPA to promulgate regulations which require manufacturers

and processors to test chemical substances and mixtures. Data developed through these test programs are used by EPA to determine the risks that these chemicals may present to health and the environment. Section 4(e) of TSCA established an Interagency Testing Committee (ITC) to recommend to EPA a list of chemicals to be considered for the promulgation of testing rules under section 4(a) of the Act. The ITC may designate up to 50 of its recommendations at any one time for priority consideration by EPA. EPA is required to respond within 12 months of the date of designation, either by initiating rulemaking under section 4(a) or publishing in the *Federal Register* reasons for not doing so.

On May 10, 1982, the ITC forwarded to EPA its Tenth Report which designated formamide for priority consideration by EPA (Ref. 29). It recommended that formamide be considered for testing for genotoxic effects, carcinogenicity, and other chronic effects. The reasons for the ITC's recommendations were: (1) The presumed high worker exposure resulting from formamide's widespread use as a solvent and chemical intermediate, (2) insufficient data to determine its genotoxic potential, (3) observed teratogenic effects in laboratory animals, and (4) the lack of data on chronic and carcinogenic effects.

Subsequent to the ITC Report, BASF Wyandotte Corporation, the sole importer of formamide, submitted to EPA market information, industrial and consumer use descriptions, and health effects data (Refs. 3, 4, 5, 7 thru 15). EPA also considered the data reported by BASF under TSCA section 8(a) which includes importation volume, use, exposure, and release information. EPA has used these data, in conjunction with other information, to reach its decision not to initiate rulemaking on formamide under section 4(a).

**II. Assessment of Exposure and Health Effects**
**A. Production, Use, and Exposure**

Formamide (CAS No. 75-12-7), or methanamide, is a clear, viscous, hygroscopic liquid with low volatility and a faint ammonia-like odor. Production of formamide in the United States ceased in 1979 (Ref. 22). BASF Wyandotte Corporation, Wyandotte, Michigan, imports formamide in volumes between 1 and 11 million pounds per year from BASF Aktiengesellschaft (Federal Republic of Germany) (Ref. 3).

About 82 percent of the imported formamide is used as a chemical intermediate, primarily by the pharmaceutical industry, in the production of antibacterial, antiviral, and antiulcer drugs for human and animal health (Ref. 22). About 1.0 percent of the formamide imported from Germany is exported to countries outside the United States (Ref. 3). The major TSCA use of formamide (13 percent) is in petroleum production, where it acts as a carrier for the corrosion inhibiting additives pumped into wells during drilling operations. In this capacity, formamide is expected to be quickly hydrolyzed because of the high temperature, high pressure, and low pH conditions of the well (Ref. 3 and 4). Other non-consumptive TSCA uses include soil stabilization (1.0 percent), polymerization (0.5 percent), laboratory (1.0 percent), and ink solvent (1.5 percent) uses (Ref. 3). Consumer products containing formamide as a result of its use as an ink solvent include a number of porous-tip writing instruments (fiber, plastic, and felt-tip pens and markers) (Ref. 5).

The National Occupational Hazard Survey conducted between 1972 and 1974 by the National Institute for Occupational Safety and Health (NIOSH) estimated that 6,516 workers in 1,010 plants or businesses were exposed to formamide (Ref. 25). This exposure estimate was cited by the ITC as the number of workers exposed to formamide (Ref. 29). However, these numbers reflect worker exposure when formamide was still being produced in the United States. Since over 50 percent of the workers included in the survey were employed in plants producing either the chemical or allied products, EPA has concluded that the NIOSH figure cited by the ITC substantially overstates the number of workers currently being exposed to formamide.

BASF Wyandotte, using data from a customer survey, estimates that about 400 workers are currently being exposed to formamide (Ref. 4). A representative sample of BASF's large and small customers from every market segment was interviewed to determine their handling procedures and the number of potentially exposed workers. The following is excerpted from that survey. When formamide is used as a chemical intermediate or polymerization solvent the reactions take place in enclosed systems resulting in low worker exposure. Points of potential exposure appear to occur on an intermittent basis from loading, mixing or drumming operations. Formamide's use in oil production would also result in low

worker exposure due to controlled use conditions. In this process drummed formamide is pumped into closed mixing tanks and combined with other additives. The drummed additive package is injected into the well by pumping. Exposure in the production area and at the wells occurs on an intermittent basis. Potential for exposure to formamide from its use as a solvent in water soluble inks occurs both in the formulation of the ink and in the loading of the ink into the writing instrument. The larger manufacturers of these instruments use automated equipment which approach enclosed systems. In less automated equipment, some inhalation of formamide could occur, although dermal exposure to the inks is expected to be minimal. One percent of the imported volume of formamide is used as a laboratory chemical for end uses in life science research. BASF's customers indicated that hazard warnings are clearly indicated on their bottles. In addition, BASF reported that company labels advise the use of protective equipment, such as gloves, respirators, and goggles. A special warning to pregnant workers to avoid contact with formamide unless adequate precautions are observed to minimize exposure is also given.

Based on the above information, EPA believes that the number of workers exposed to formamide is not substantial. Although no data on the levels of exposure in any of the industries using formamide was submitted, EPA has no evidence which might suggest that the levels of exposure are significant given the use of proper protective equipment recommended on existing labels.

Consumer exposure to formamide may result from its use in water soluble ink formulations. Formamide is used in about 4.0 percent of the pens used in the United States, or 130 million pens (Ref. 3). However, a substantial percentage of these pens are for high performance industrial uses, such as high speed computer plotter pens, which would result in very little opportunity for human exposures (Ref. 4). It is difficult to characterize the uses of the remainder of pens containing formamide. Because of its characteristic quick absorption to paper, resistance to smearing, and added expense, EPA would expect that it is generally used in finer point pens, not the marker pens often used by children (Ref. 4).

Several factors tend to minimize the potential for exposure to persons writing with pens containing formamide. Formamide's low vapor pressure and high surface tension tend to reduce the possibility of inhalation. Thus, the only

significant potential route of exposure would be from skin contact with wet ink. Because formamide is rapidly absorbed in the fiber of the paper through a wicking action, smearing is prevented. As a result, once the ink is applied to paper, there would be no opportunity for dermal exposures. EPA recognizes that a person may from time to time get a small amount of ink on his hands from accidental contact with the tip of a pen. However, the amount of ink that would be applied to an entire written page would contain only 1 milligram of formamide (Ref. 5). EPA believes that the amount of ink which a person would generally place on the hands accidentally would be a very small percentage of that which would be applied to a page of writing. In addition, the construction of these porous-tip devices usually is such that the ink is held within the device and will emerge only through the porous tip. Thus, under reasonably foreseeable conditions, including abuse by children, the ink should stay in the device. Devices of similar construction and limited ink capacity are exempt from the special labeling requirements normally necessary for hazardous substances under the Federal Hazardous Substances Act as administered by the Consumer Product Safety Commission (40 CFR 1500.83).

Worst case exposure estimates using a child as a model were submitted to EPA by BASF (Ref. 5). Calculations for the ink application exposures were based on a total formulation loading of 1.5 gm for a pen; 6.0 gm for a marker; and an average formamide concentration of 20 percent. Oral exposure to a 20 kg child who ingested the entire ink contents from a porous-tip pen or marker would be, 0.3 gm (.015 g/kg) and 1.2 gm (.06 g/kg), respectively. If a child painted the central surface of both hands with ink from a broad-tip marker, assuming 100 percent absorption of formamide, the dermal exposure would be about 0.1 mg/kg. Both the oral and dermal exposure values are well below the reported values for acute toxicity (Oral LD<sub>50</sub> Mouse 3.2 g/kg; Dermal LD<sub>50</sub> Rat 6.0 g/kg). Considering the physical-chemical properties of formamide and the construction of the porous-tip device, which acts to hold the ink in the pen, EPA believes the use of these products would not result in substantial exposure.

Based on the above information, EPA has concluded that although a large number of consumers may use writing instruments containing formamide, the levels of individual exposure are likely to be extremely low. EPA does not

believe that this exposure should be considered substantial or significant as those terms are used in section 4 of TSCA.

## B. Health Effects Data

Formamide and its vapors can cause moderate irritation to the skin, eyes, and mucous membranes (Ref. 7). The acute toxicity of formamide to laboratory animals is in the slight to moderate range. Oral LD<sub>50</sub> values range from 3.2 g/kg in the mouse to 7.5 g/kg in the rat (Refs. 32, 17). Dermal LD<sub>50</sub> values are reported to be as high as 17 g/kg in the rabbit; the lowest lethal dermal dose for this species is 6.0 g/kg (Refs. 16, 28).

Formamide has not demonstrated a mutagenic response in *in vitro* assays. Limited studies performed to date using bacterial, yeast, and cell culture systems show that formamide exhibits a slight degree of cellular toxicity but not a mutagenic response. When tested for use as a vehicle in the *Salmonella* mutagenicity test formamide was nontoxic and nonmutagenic in concentrations up to 200 micrograms per plate but was toxic to the bacteria at 500 micrograms per plate (Ref. 23). No indication of mutagenicity was seen using strains TA-98, TA-100, TA-1535, and TA-1537 (+S9) using the *Salmonella* assay (Ref. 30). Formamide's effect on cell survival was studied in yeast and mammalian cells (Ref. 1). Relatively low toxicity was reported in *Schizosaccharomyces pombe* and V 79 lines of Chinese hamster cells; however, no data on the mutagenic activity of formamide was reported in this study (Ref. 1). Negative results were also observed in a dominant lethal assay on formamide, and on a series of structurally related amides (Refs. 9, 27). No mutagenic effects were demonstrated after single intraperitoneal applications ( $\frac{1}{2}$  LD<sub>50</sub>) to NMRI mice of formamide, acetamide and their mono- and dimethyl- derivatives.

Formamide was without effect in a cell transformation test of carcinogenic potential using rat embryo cells infected with Rausher leukemia virus (Ref. 19). Concentrations ranged from 0.001 to 100 mg/ml. In the same test, acetamide, a structural analogue, which is a weak hepatocarcinogen in rats, gave variable results with transformation induced in two out of five trials. The authors postulated that the variable results seen with acetamide in this test may be consistent with *in vivo* studies of this agent where large doses and extended periods were needed to induce a response (Ref. 19).

The teratogenic effects of formamide have been studied following administration by the dermal, oral, and intraperitoneal routes (Refs. 10 thru 15, 20). Dose-dependent embryotoxic and/or teratogenic effects have been observed in rats, mice, and rabbits (Refs. 10, 13, 14, 15, and 24). These studies indicate that formamide is embryotoxic and teratogenic in animals, but the effective doses appear to vary widely depending on the route of exposure, species, strain, time of application, and the methods used to identify teratogenic effects.

Very little is known about the chronic effects of formamide. The Agency received one study showing that repeated doses of formamide administered by gavage to rats 5 days per week for 4 weeks resulted in dose-dependent cumulative effects expressed as gastritis and erosion of the gastric mucosa, probably related to the release of formic acid (and ammonia) by stomach acid (Ref. 8). The no-observed-effect level reported in the study was 34 mg/kg. While this study cannot be used to predict the likely chronic effects of formamide, it does demonstrate the limitations of the oral route of exposure for testing formamide. The Agency could find no data to predict the potential chronic effects of formamide resulting from dermal exposure, the most common route of human exposure.

EPA is aware of no bioassays performed to assess the carcinogenic potential of formamide. However, there are no data which indicated any potential for oncogenic effects.

### III. Ongoing Testing

The National Toxicology Program is currently screening formamide for its potential genetic toxicity. Measurement of potential gene mutation in somatic cells (Ames test) and germinal cells (*Drosophila*) has been initiated. Testing commenced in August, 1982, with the Ames Test and is scheduled for completion in April, 1983. A program review of the data by the NTP staff will then be made before further testing is initiated. Cytogenetic testing on formamide is not planned at this time.

### IV. Planned Testing

BASF Wyandotte Corporation presented a testing proposal to EPA designed to characterize the potential subchronic effects of formamide. The BAPF proposal consists of a range-finding study followed by a 90-day subchronic study. Because dermal exposure is the most common route of human exposure the program is designed to clarify the doses at which formamide causes toxic effects after

repeated exposure to intact skin over a prolonged period (Ref. 6). The study will be conducted according to the Organization for Economic Cooperation and Development Subchronic Dermal Toxicity Guideline No. 411 (Ref. 20). The study will be performed in male and female Wistar rats, using dermal exposure for 6 hours/day and 5 days/week. The protocols for these studies have been reviewed by EPA scientists and appear to be acceptable. They are also available for examination in the public record of this proceeding.

Industry has agreed to begin the range-finding study on or about October 1, 1983. A program review by BASF and EPA personnel will occur after the range finding study is complete to review the data and select doses for the subchronic study. The subchronic phase of testing can be expected to begin by early 1984. The subchronic testing, including histopathology, will be completed in 6-8 months, i.e., late 1984. An additional three months will be required for preparation of the study report and consultation among BASF and EPA scientists. The final report would be completed in early 1985.

BASF Wyandotte has furnished EPA with the name and address of the laboratory conducting the tests under this agreement. BASF has also agreed to adhere to the Good Laboratory Practice Standards issued by the U.S. Food and Drug Administration as published in the *Federal Register* of December 22, 1978 (43 FR 59986). BASF has agreed to permit laboratory inspections and study audits in accordance with the provisions outlined in TSCA section 11 at the request of authorized representatives of the EPA for the purpose of determining compliance with this agreement. These inspections may be conducted for purposes which include verification that testing has begun, that schedules are being met, that reports accurately reflect the underlying raw data and interpretations and evaluations thereof, and that the studies are being conducted according to Good Laboratory Practice provisions.

BASF has further agreed that all raw data, documentation, records, protocols, specimens, and reports generated as a result of each study will be retained for at least 10 years from the date of publication of the acceptance of any protocols by EPA and made available during an inspection or submitted to EPA if requested by EPA or its designated representative. BASF understands that the Agency plans to publish quarterly in the *Federal Register* a notice of the receipt of any test data submitted under this agreement. Subject to TSCA section 14, the notice will

provide information similar to that described in TSCA section 4(d). Except as otherwise provided in TSCA section 14, any data submitted will be made available by EPA for examination by any person.

Finally, BASF understands that failure to conduct the testing according to the specified protocols and failure to follow Good Laboratory Practices procedures may invalidate the tests. In such cases, a data gap may still exist, and the Agency may decide to require further testing.

### V. Decision Not To Initiate Rulemaking

EPA believes that the testing program proposed by BASF Wyandotte will provide sufficient data to reasonably predict the potential chronic effects of formamide. EPA has concluded that there is not a sufficient basis to require carcinogenicity testing of formamide under section 4 of TSCA at this time or to require additional genotoxicity testing of formamide beyond that being conducted by the NTP. For these reasons, EPA has decided not to initiate rulemaking under section 4(a) of TSCA to require testing of formamide. EPA's specific responses to the recommendations of the ITC are discussed below.

1. *Genotoxicity.* EPA has concluded not to propose to require any further genotoxicity testing for formamide. This decision is based on the fact that the testing being conducted by the NTP, in conjunction with existing genotoxic data, is expected to provide sufficient data to reasonably predict the genotoxic potential of formamide.

EPA recognizes that gene mutation is only one aspect of mutagenicity, and that the existing data and data from tests currently underway will not provide sufficient data to predict formamide's potential to induce chromosomal damage. However, EPA has concluded that there is not a sufficient basis to require such testing under section 4 of TSCA. The number of workers exposed to formamide is not substantial, and EPA has no reason to believe that the levels of exposure are significant. Although a large number of consumers may be potentially exposed to formamide in ink pens, EPA has concluded that this does not constitute "substantial human exposure" as those terms are used in section 4, because information about the use and design of the products indicates that even when exposure occurs, levels are extremely low. In addition, there are no data indicating that formamide is likely to cause chromosomal damage or any other mutagenic effect, and thus there is no basis for EPA to find that formamide

may present a risk from mutagenic effects.

2. **Carcinogenicity.** EPA has concluded that there is no basis for proposing testing for carcinogenicity at this time. As discussed above, the evidence indicates that there is neither significant nor substantial human exposure to formamide as those terms are used in section 4. EPA has also concluded that the existing data do not support a finding that formamide "may present an unreasonable risk" of carcinogenicity. Formamide has given consistently negative results in *in vitro* tests used to predict mutagenicity and carcinogenicity. Additionally, there were not other data indicating that formamide has potential carcinogenic activity.

EPA recognizes that acetamide, a structural analogue of formamide, is a carcinogen. In some cases this may be sufficient basis to require that a bioassay be conducted. However, as discussed below, EPA believes that based on the negative mutagenicity data for formamide and the uniqueness of acetamide's carcinogenic response in animals, a risk finding for the carcinogenicity of formamide cannot be made at this time.

Based on the available data, EPA believes that acetamide is not a valid indicator of the potential carcinogenicity of formamide. Formamide belongs to a series of compounds which include the amides of simple carboxylic acids, their N,N-dialkyl derivatives, and related compounds. Weak carcinogenic activity of acetamide, one member of this series, has been reported in rodents in a number of studies (Refs. 18, 21, 31). However, a recent review of the literature on acetamide and structurally related amides indicates that acetamide is unique in this amide series (Ref. 2). Despite its well established hepatocarcinogenic activity, acetamide is not mutagenic *in vitro* in various test systems (Ref. 2). Furthermore, in a cell transformation assay using rat embryo cells, acetamide induced transformation in two out of five trials, whereas the results for formamide were clearly negative (Ref. 19). As noted in section II B, acetamide required high doses (2.5-5.0 percent of the diet) over most of the animals' life span to induce liver tumors in rodents (Refs. 18, 21, 31). This fact has led a number of investigators to postulate reasons for the unique effects seen in rodent liver from high doses of acetamide; including *in situ* liberation of ammonia, interaction with latent viruses or hormones, or the alteration of cell membranes (Refs. 2, 18, 31). EPA has no reason to believe that formamide, even

at the high doses used in the acetamide bioassays, would induce cancer. Other structurally related amides, such as dimethylformamide and dimethylacetamide, have also failed to demonstrate any carcinogenic activity in a variety of animal studies (Ref. 2). In another series of screening tests of structurally related amides conducted by the NCI, only acetamide induced significant compound-related tumors (Ref. 18). Therefore, EPA has concluded that the acetamide data are insufficient to predict that formamide may present an unreasonable risk from oncogenic effects. Accordingly, EPA finds no current basis to require oncogenicity testing.

3. **Chronic Effects.** EPA has decided not to initiate a rulemaking to require chronic effects testing of formamide at this time because the Agency believes that the 90-day subchronic study to be conducted by BASF is likely to provide sufficient data to reasonably predict the potential of formamide to cause chronic health effects. EPA generally will accept, for purposes of section 4, a well conducted 90-day subchronic study as providing sufficient data to reasonably predict the chronic risks of a chemical other than oncogenicity. The protocols submitted by BASF have been reviewed by the Agency and appear to be acceptable.

Because of the expectation that the data received from the testing already undertaken by the NTP and committed to by BASF Wyandotte will be provided more expeditiously than would be possible under a test rule, EPA has tentatively concluded not to initiate rulemaking to require testing at this time. EPA's conclusion that the test data to be provided will serve to reasonably determine or predict chronic effects is reinforced by the provision for inspection to verify that the testing is being properly conducted by BASF. In addition, the data developed by BASF will be available to the public on a similar basis as the results of a test rule.

EPA is soliciting comments on the BASF Wyandotte's program and the Agency's decision to accept it and the NTP program in lieu of section 4(a) rulemaking at this time. After considering these comments, EPA will either publish in the *Federal Register* a final notice of acceptance of a negotiated test program or will initiate rulemaking under section 4(a) of TSCA.

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## VII. Public Record

The EPA has established a public record of this testing decision (docket number OPTS-42032). This record includes:

- (1) Federal Register notice designating formamide to the priority list.
- (2) Communications before industry testing proposal consisting of letters, contact reports of telephone conversation, and meeting summaries.
- (3) Testing proposals and protocols.
- (4) Published and unpublished data.
- (5) Federal Register notice requesting comment on the negotiated testing proposal and comments received in response thereto.

The record, containing the basic information considered by the Agency in developing the decision, is available for inspection in the OPTS Reading Room from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays, in Rm. E-107, 401 M St., SW., Washington, D.C. 20460. The Agency will supplement this record periodically with additional relevant information received.

(Sec. 4, 90 Stat. 2003; (15 U.S.C. 2601))

Dated: May 10, 1983.

Lee L. Verstandig,

Acting Administrator.

[FR Doc. 83-13385 Filed 5-20-83; 8:45 am]

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# **federal register**

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**Monday  
May 23, 1983**

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**Part VI**

**Department of  
Health and Human  
Services**

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**Office of Human Development Services**

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**Foster Care Maintenance Payments,  
Adoption Assistance, and Child Welfare  
Services; Final Rule**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of Human Development Services

45 CFR Parts 1355, 1356, 1357 and 1392

### Foster Care Maintenance Payments, Adoption Assistance, and Child Welfare Services

**AGENCY:** Office of Human Development Services (OHDS), HHS.

**ACTION:** Final rule.

**SUMMARY:** The Department is issuing final rules to govern two Social Security Act programs: the new title IV-E program, Federal Payments for Foster Care and Adoption Assistance, and the title IV-B program, Child Welfare Services. This final regulation implements the provisions of the Adoption Assistance and Child Welfare Act of 1980 (Pub. L. 96-272) and provides the basic programmatic requirements under titles IV-E and IV-B. Final fiscal rules for these two programs were published on July 15, 1982 (47 FR 30922).

**EFFECTIVE DATE:** June 22, 1983.

**FOR FURTHER INFORMATION CONTACT:** Frank Ferro, Associate Chief, Children's Bureau, P.O. Box 1182, Washington, D.C. 20013, (202) 755-7418.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Child Welfare Services program has been a part of the Social Security Act since the Act's inception in 1935. In 1968 Congress transferred this program to title IV, Part B of the Act (sections 420-425 of the Act). Historically, title IV-B, has provided Federal grants to States to establish, extend and strengthen child welfare services. Under this program, services are available to all children, including the handicapped, homeless, neglected and dependent.

The Adoption Assistance and Child Welfare Act of 1980 (Pub. L. 96-272) was enacted on June 17, 1980. In addition to amending title IV-B, Pub. L. 96-272 establishes a new program, the title IV-E program, Federal Payments for Foster Care and Adoption Assistance, which replaced on October 1, 1982, the title IV-A foster care program in the States. The law creates links between the two programs with numerous program and fiscal incentives.

The impetus behind the passage of Pub. L. 96-272 was the belief of Congress and most State child welfare administrators, supported by extensive research, that the public child welfare system responsible for serving

dependent and neglected children, youth and families had become a receiving or holding system for children living away from their parent(s). Congress envisioned in the new legislation a system that would help families remain together by assisting parents in carrying out their roles and responsibilities and providing alternative permanent placement for those children who cannot return to their own homes. Studies showed that thousands of children were stranded in the public foster care system with little hope of being reunited with their families or having a permanent home through adoption or other permanency planning, thereby causing harm to the children and high costs to the States. Other findings included:

- The number of children in foster care had increased during the last decade while the length of stay in substitute care has also increased.
- Caseloads are large in the social service field and case workers are often unable to provide full and appropriate services to children in care and to their families.
- Many children in foster care could have been cared for in their own homes if homemaker, day care or other services had been available.
- Home based services and adoptive care are the most cost beneficial forms of care.

#### *Content and Purpose of Pub. L. 96-272*

The passage and enactment into law of Pub. L. 96-272 demonstrated a Congressional concern and commitment to provide financial assistance and technical consultation to States to make changes in their child welfare services systems. To reduce the number of children entering foster care, the law emphasizes the use of preplacement preventive services to help solve or alleviate the family problems that would otherwise result in the child's removal from the home. To reduce the number of children already in the foster care system, the law requires States to undertake several initiatives:

1. A State must enact a law by October 1, 1982, establishing annual goals for the number of children funded under the title IV-E program who remain in foster care over 24 months.
2. If a State is to receive Federal financial participation (FFP) in foster care maintenance payments under title IV-E after October 1, 1983, it must provide services to facilitate the reunification of foster children with their families.
3. To ensure that children do not remain adrift in the foster care system, a State must implement case plan and

case review procedures that periodically assess the appropriateness of the child's placement and reevaluate the services provided to assist the child and the family.

4. To encourage family reunification, a State must attempt to place a child in close proximity to the family and in the least restrictive (most family-like) setting.

5. Finally, for those children who cannot be reunited with their families and who have "special needs," financial assistance will be available to families adopting these children.

In short, the new law rests on three pillars:

- Prevention of unnecessary separation of the child from the parents;
- Improved quality of care and services to children and their families; and
- Permanency through reunification with parents or through adoption or other permanency planning.

#### **Discussion of Major Comments on the NPRM and Changes in This Final Rule**

The Department published an initial NPRM to implement the provisions of Pub. L. 96-272 on December 31, 1980 (45 FR 86817). Subsequently, the Department determined that a less prescriptive approach to implement the statutory requirements was advisable. Therefore, a second NPRM was published on July 15, 1982 (47 FR 30932). That second NPRM and the public comments received by the Department are the basis of this final rule.

The Department received 97 letters from individuals, advocacy organizations, national and local service organizations and State agencies in response to the second NPRM. Included below is a summary of comments from respondents, the Department's response to those comments and a discussion of the changes made in the final rule.

#### *Changes Made in the Code of Federal Regulations*

This final rule amends three Parts (Parts 1355, 1356 and 1357) in Subchapter G (The Administration for Children, Youth and Families, Foster Care and Adoption Assistance; Child Welfare Services). These Parts were created by a final regulation published July 15, 1982 (47 FR 30922).

In addition to amending Parts 1355, 1356 and 1357, this final rule removes Part 1392 of this title, which contains the current requirements for the title VI-B program. New requirements for this program will be found in Parts 1355 and 1357 of this title. Part 1392 also contained the requirements for the



Social Services program under title IV-A provided only by the Territories. The title IV-A services program was abolished by the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97-35. The Territories now provide social services under the Social Services Block Grant Program (Title XX).

Final rules have already been published to implement the titles IV-B and IV-E fiscal provisions and the Medicaid requirements of Pub. L. 96-272.

#### Section by Section Discussion

##### Part 1355—General

##### 45 CFR 1355.20—Definitions

45 CFR 1355.20 contains several definitions which have common applicability to both titles IV-E and IV-B. There were several supportive comments for these definitions. Beyond the general support, however, several commenters made specific suggestions for improving the definitions of "detention", "foster family home" and "State agency."

##### Comment—"Detention facility"

The definition of "child care institution" in section 472(c)(2) of the Act excludes certain facilities from that definition including "detention facilities". The NPRM defines the term "detention" in an effort to clarify what type of facilities were "detention facilities."

Several commenters were concerned that the second NPRM language for "detention" could be read to preclude "time-out rooms" within a facility, as distinct from the statutory exclusion (section 472(c)(2) of the Act) of an entire detention facility. Some commenters were also concerned about the use of the vague term "determined" when speaking of the juvenile's delinquency status in the NPRM definition of "detention". Other commenters were concerned about the broadness of the definition itself.

##### Response

The Department has made two changes to clarify the statutory intent of section 472(c)(2) of the Act. First, we have defined "detention facility" rather than "detention". It is the Department's intent to make clear that it is the overall nature and purpose of the institution that determines whether or not it may be considered a "child care institution" under the Act, and not a particular treatment activity within the institutional program that determines whether a child in that institution may receive a title IV-E payment. Second, we have reworded the definition to make clear that the prohibition in

section 472(c)(2) of the Act applies to facilities housing both pre- and post-adjudication children. This means that the status of the child, whether having been adjudicated or awaiting adjudication, is essentially irrelevant to the purpose of the Act's prohibition. It is the nature of the facility—is it secure custody, does it house children who are in need of a physically restricting facility, etc.—that is determinative.

##### Comment—"Foster family home"

The NPRM provided a definition of "foster family home" which included group homes if the group home was licensed or approved by the State as a foster family home.

Several commenters pointed out that their State licensing law licensed group homes as a separate category of living arrangement, not as foster family homes. Other commenters suggested that the NPRM definition did not take into account other categories of possible foster care placements. Suggestions were made to allow for placements which, while providing foster care, were not licensed or approved under a State's foster family home provisions but under another provision of State law, including agency operated boarding homes.

All commenters agreed, however, that all foster care placements must be licensed or approved under some provision of State law or rules whether called foster family care or not.

##### Response

The Department's intent was to make the broadest possible range of appropriate foster care placements eligible for FFP. Therefore, the Department has revised the definition of "foster family home" to include a variety of possible foster care placements giving States the greatest flexibility in selecting the most appropriate placement. At the same time, we have maintained the important principle of licensing or approval. This would include Indian foster homes, both on and off the reservation, provided that the homes are licensed or approved.

##### Comment—"State agency"

The definition of "State agency" in the NPRM included local agencies administering the State plan. This addition is not consistent with section 472(a)(2)(B) of the Act and raised questions about the roles and responsibilities for administering the program.

##### Response

The State agency supervising the administration of the title IV-E State plan may enter into an agreement with

other public agencies to implement the placement and care responsibilities under the plan (section 472(a)(2)(B)). However, the responsibility for assuring that the plan is administered in accordance with the Act and this final rule rests with the title IV-E/IV-B State agency. Thus, to avoid confusion, we have deleted the reference to local agencies from the definition of State agency.

##### 45 CFR 1355.21—State plan requirements for titles IV-E and IV-B

##### Comment—"Fair Hearings" (45 CFR 1355.21(b))

The NPRM contained a cross-reference in § 1355.21(c) to 45 CFR 1355.30, a previously published final rule to implement the fiscal requirements of titles IV-E and IV-B. Paragraph (k) of 45 CFR 1355.30 is a State plan requirement for fair hearings for recipients of both title IV-E and title IV-B programs.

One commenter suggested that the Department eliminate the requirement for fair hearings under title IV-B because the NPRM language exceeded the statutory authority.

##### Response

The Department believes that the close programmatic and fiscal relationship between titles IV-E and IV-B make a fair hearings requirement appropriate. In addition, the fair hearing requirement has been a part of the title IV-B regulations since the 1960's (see 45 CFR 1392.11). Therefore, under the general rulemaking authority granted to the Secretary by section 1102 of the Act, the Department has not made any change in the language of the final rule.

One commenter asked if fair hearings were available under the adoption assistance program. Section 471(a)(12) of the Act is clear that fair hearings are available for both the foster care maintenance payments and adoption assistance programs under title IV-E.

##### Comment—"Public Access" (45 CFR 1355.21(c))

The NPRM did not contain a specific provision to require public access to the State plan document and materials for either title IV-E or title IV-B.

There was strong interest in and support for requirements for public participation in a variety of areas including development of the State plans for both titles IV-E and IV-B, review of foster care and adoption assistance payment standards, and review of State foster care standards.

*Response*

The Department has given consideration to the comments and how to address the legitimate need for public information and participation. We believe that, at a minimum, public access to the fundamental document, materials and information which form the basis of the State's title IV-E and IV-B plans and activities is essential. Therefore, the Department is requiring (45 CFR 1355.21(c)) that the State agency make the State plans and plan amendments available for public review and inspection.

While the Department has chosen to limit this requirement to making the materials and information available, we strongly encourage the States to involve representatives from a broad cross-section of the community in the development of and on-going reviews of the State plans and programs.

The Department has declined to require public participation in reviews of foster care standards and foster care and adoption assistance payments. However, as with the plan development and program reviews, the Department also strongly encourages the States to involve a broad cross-section of the community in these efforts.

*Part 1356—Requirements Applicable to Title IV-E**45 CFR 1356.20—State plan document and submission requirements**Comment*

The NPRM (§ 1356.20) provided the procedural framework for development, submission and approval of the title IV-E State plan. The NPRM language proposed to give the State flexibility on the format and effective period of the plan. This section also specified the additional State plan document requirements which become applicable if a State chooses to claim FFP for voluntary care. The comments on this section fell into two categories. One category dealt with the effective period and format of the plan document. The other addressed the optional nature of the voluntary care provisions.

*Response*

Compared with other State plans (e.g., title IV-B), the title IV-E State plan is a relatively static document. The State is required to provide assurances that the statutory and regulatory requirements are being implemented. These fundamental requirements and assurances are not likely to change from year to year even though specific methods of implementation may change. To the extent that substantial changes are made or required to be made, the

final rule mandates a plan amendment. The Department believes that requiring an annual plan, the specific content or format of the plan, or similar recommendations are unnecessary to achieve the goals of the title IV-E program. Therefore, no change was made in the final rule.

The second area of comment suggested making mandatory State participation in the voluntary placement FFP program. Section 102 of Pub. L. 96-272, as it amends section 472(d) of the Act, clearly makes the voluntary care provision optional in that the State may receive FFP for the costs of voluntary placements only if it meets the requirements of section 427(b) of the Act. It is a State decision and cannot be mandated by the Department. Therefore, no change was made in the final rule.

In the NPRM, we proposed in paragraph (c) of this section that the approval procedures in 45 CFR 201.3 would apply to the title IV-E program. We have incorporated the pertinent language of § 201.3 into the final regulation.

The Department wishes to call to the reader's attention that the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, corrected an erroneous cross-reference in section 471(a)(10) of the Act to day care standards. The correct reference is now to the foster care standards which are reasonably in accord with recommended standards of national organizations concerned with foster homes and institutions.

*45 CFR 1356.21—Foster care maintenance payments program implementation requirements*

The Department received a great many comments on this section of the NPRM.

*General implementation (45 CFR 1356.21(a))**Comment*

The provisions of the NPRM (45 CFR 1356.21(a)) and those of this final rule (also 45 CFR 1356.21(a)) give the general implementation and FFP requirements for the title IV-E foster care maintenance payments program.

Comments received regarding 45 CFR 1356.21(a) fell into two categories: requests for specification in the regulation of the Federal monitoring approach and methodology, and requests for specification of the "procedural safeguards" required under section 475(5) of the Act.

Additionally, commenters pointed out an incorrect reference to section 475(5) was included in the NPRM.

*Response*

We have made the correction to the erroneous reference by changing the final rule to provide that States must meet the requirements of sections 475(5)(A) and (B) of the Act.

The Department believes that the Federal monitoring approach and methodology are best described in another forum.

As to the "procedural safeguards" recommendation, the incorrect reference in the NPRM to section 475(5) created some confusion. The statutory requirement for "procedural safeguards" arises only in the context of the dispositional hearing requirement in section 475(5)(C) and not under section 475(5)(A) and (B) as the reference should have read. Moreover, the Department's approach to development of this final rule has been to give the States maximum operational flexibility. Consequently, inclusion of detailed requirements is not appropriate under this provision of the final rule. (See discussion under "dispositional hearings", 45 CFR 1356.21(e).)

*"Reasonable efforts" (45 CFR 1356.21(b))*

Sections 471(a)(15) and 472(a)(1) of the Act require that, after October 1, 1983, in each child's case, "reasonable efforts" be made to prevent removal and to reunify children separated from their parent(s).

*Comment*

In 45 CFR 1356.21(e), the NPRM proposed that if a State had a system of preplacement preventive and reunification services as required by section 427(a)(2)(C) and (b)(3) of the Act, the requirement for "reasonable efforts" would be met.

Commenters strongly objected to this proposed section arguing that the establishment of a Statewide services program under section 427 in no way ensures that "reasonable efforts" will be made for an individual child. They recommended, alternatively, that the regulations specify a list of core services that must be provided; mandate at least three services; list the acceptable services from which the State could select a fixed minimum number; or require that the specific services provided to the child be identified in the case plan.

In general, State agencies responded to the proposed regulation by supporting the approach and the flexibility it offered. In these times of limited resources and substantial service demands, they commented, the States

must have wide latitude to develop resource priorities and service choices.

#### Response

As a general principle, the Department agrees with the State agencies' comments. The Department believes that it is an inappropriate and unnecessary Federal intrusion to dictate nationally a specific set of services which may or may not address a particular State's situation. Moreover, the Department believes that it is essential to give States the flexibility and responsibility for these service decisions.

However, we agree with commenters that reasonable efforts must be made on behalf of each child. Therefore, the Department has provided in 45 CFR 1356.21(b), that in order to meet the reasonable efforts requirement, the State agency must identify, in the child's case plan, those services offered and the services provided to the child and/or his parent(s) to prevent placement or achieve reunification of the family. This is not a new or additional requirement. It is similar to the case plan requirement in 45 CFR 1356.21(d)(4) upon which we received no negative comments.

In implementing these requirements, the Department does recognize the importance and need for information and guidance to the States. Therefore, after this final rule is published the Department will issue non-binding informational materials which will discuss preplacement preventive and reunification services and "reasonable efforts". In the interim, the Department believes that the States may want to consider inclusion of the services listed in 45 CFR 1357.15(e) as they move toward implementing the "reasonable efforts" and service program requirements of the Act.

#### Case Review (45 CFR 1356.21(c))

##### Comment

A number of comments were received regarding various aspects of the requirements under section 471(a)(15) of the Act, the State's case review system. These comments recommended that the final rule address the Federal monitoring role; require various forms of public and parental participation; specify the review panel composition, procedures and role; clarify access to the review process; define a method of calculation of due dates for reviews; and include criteria and guidelines for the various worker decisions required by the Act.

Specific concerns revolved around the case review requirements in sections 471(a)(15), 475 (5) and (6) of the Act, particularly regarding the use of the

public as members of the case review boards and panels. One of the requirements of the case review system is for a periodic (six month) review. Section 475(6) of the Act requires that if the periodic (six month) review is an administrative review conducted by the State agency, at least one member of the review panel, whatever its makeup, must be an appropriate person not responsible for the case management of, or delivery of services to, either the child or the parent(s) who are the subject of the review. The commenters recommended a detailed and prescriptive regulation, e.g., that the Department specify the type of person(s) permissible on review panels, the role they may play and the procedural ground rules. At the same time, several State agencies concurred in the language of the proposed regulation stating that the statutory provisions were more than adequate to protect the child's best interests and needs.

Similar comments were received regarding public participation in the dispositional hearing as required by section 475(5)(C) of the Act.

#### Response

The Department considered the comments but chose to make no changes in this particular provision. The Department has opted to give the States the responsibility for development of standards, procedures and guidelines in implementing this program. We have, however, added a definition of "original foster care placement" in 45 CFR 1356.21(f) to assist States to calculate due dates for the periodic reviews and dispositional hearings. As noted earlier, the Department believes that the regulation is not the appropriate place to specify the Federal monitoring role.

In addition, the Department wishes to clarify several questions and concerns raised by the comments. First, the requirement for dispositional hearings is applicable only in three circumstances: when the State requests additional FFP under section 427 of the Act; chooses to implement a program of voluntary foster care maintenance payments; or transfers unneeded title IV-E foster care funds to title IV-B.

Second, dispositional hearings may be held by the court or by an administrative body appointed or approved by the court. This may include court appointed or approved review panels comprised of members of the public. Periodic (six month) reviews which are conducted through the courts may be done by the court itself or by an administrative panel appointed or approved by the court.

Periodic (six month) reviews conducted by the State agency can take various forms at the State's option. These reviews may be conducted by State agency staff, by a review panel made up of members of the public selected by the State agency, or by a panel comprised of both agency staff and the public.

The Department believes that the realities of program operations in dealing with State courts and other review bodies necessitates decision-making at the State agency level. Therefore, while strongly encouraging the use of voluntary sector in the periodic and dispositional reviews, the Department does not believe it is in the best interest of the program to mandate specific requirements. We believe it is better left to the judgment of the State agencies, courts and legislatures to determine the method of review and participation of outside parties. However, the State agency must still observe the provisions of section 475(5)(B) and 475(6) of the Act when they are applicable.

#### Case Plan Requirements (45 CFR 1356.21(d))

##### Comment—"Case plan elements" (45 CFR 1356.21(d)(1))

The NPRM (45 CFR 1356.21(b)) proposed several case plan requirements, i.e. the case plan must be developed within 60 days of the original foster care placement; include a discussion of how the plan is designed to achieve the least restrictive most family-like setting in close proximity to the home of the parent(s); and after 10/1/83, include a description of the preplacement preventive and reunification services offered or provided to the child and family.

Many commenters recommended returning to the specific case plan elements proposed in the December 1980 NPRM. Commenters alleged that the statute and practical reality require the Department to mandate the specific elements to be included in the case plan in order to achieve the aims of the Act.

At the same time, many State agencies commented that the proposed regulation was too prescriptive and needed more flexibility. They suggested that the language of the Act is sufficiently clear and specific and requires no regulatory augmentation.

Some commenters also suggested that rather than addressing how "close proximity" and "least restrictive setting" were achieved in each case plan (section 475(5)(A) of the Act), the case plan should discuss these topics by

exception, i.e. only if these requirements were not met.

#### Response

On balance, the Department has concluded that the regulation as proposed adequately addressed the elements of the case plan required by the Act. There was considerable support for the 60 day time period to develop the case plan. Given the current state of practice, the Department believes this time period is reasonable and has retained this provision in the final rule. However, as some commenters suggested, and as became apparent in the Department's reviews of program implementation, a specific document as opposed to a massive case record, is needed if the case planning process is to be helpful to both parent(s) and agency.

Therefore, the Department, in 45 CFR 1356.21(d), has required that the case plan be a written document which is a discrete part of the case record and that the document be available to the parent(s) or guardian of the child. The State may determine the format of the case plan document.

With respect to the suggestion that the case plan requirement for a discussion of close proximity and least restrictive setting be discussed by exception, this suggestion has merit and the Department intends to explore its possibilities. In the interim, however, we have chosen to leave this case plan requirement unchanged.

In addition, some commenters interpreted with words in the NPRM (i.e., a description of the services offered or provided) to mean that a case plan should contain either the services offered or the services provided. That was not the intent of the provision. We have clarified, in paragraph (d)(4), that, after October 1, 1983, the child's case plan must include a description of the services offered and the services provided to prevent removal of the child from the home and to reunify the family. The purpose of having the case plan also describe the services offered is to enable the State to demonstrate that it meets the statutory case plan requirements by offering the needed services whether or not the services are accepted by the child and/or the family.

#### Dispositional Hearing (45 CFR 1356.21 (e) and (f))

##### Comment

The NPRM (45 CFR 1356.21(d)) proposed that the first dispositional hearing shall take place within 18 months of the original foster case placement and within reasonable time periods thereafter as defined by the

State. This requirement is based upon section 475(5)(C) of the Act.

Two distinct groups of commenters emerged regarding the timing of the dispositional hearing. One group, comprised mainly of individuals and advocacy groups, strongly recommended return to the first NPRM requirement for annual dispositional hearings following the initial hearing. These commenters argued that good practice and the Act do not allow the Department to give the States the broad flexibility in defining "periodically thereafter" or specifying procedures and guidelines for the conduct or content of the dispositional hearing. They further argue that without a specific Federally mandated definition for "periodically thereafter" (section 475(5)(C) of the Act—and content of the hearing, the intent of the Act to move children out of foster care could be thwarted. Therefore, they believe that annual dispositional hearings and specified content are essential to give meaning to the Act's requirements and protect the best interests of the children in care.

Another area of concern expressed by this group of commenters was the coverage of the case review system and specifically which children are entitled to dispositional hearings. Comments received claimed that in some jurisdictions, children entitled to the dispositional hearing protection were not receiving it. Whether this was by design or by circumstance was not clear. A number of suggestions were made, therefore, that all children in care receive annual dispositional hearings.

The second group of commenters, primarily State agencies, essentially supported the flexibility of the proposed rule. They argued that State law or regulation will assure that the rights of children in care will be adequately protected and the intent of the Act fully met. They also believed that it is essential to have some flexibility in this area to allow for the individual needs, resources and procedures of the various States, particularly in relation to a State's judicial system.

In addition, the comment letters from both States and other commenters evidenced considerable confusion and requested clarification in 3 areas: When dispositional hearings are required; what children are covered by the requirement for a dispositional hearing; and the definition of the term "date of original placement" as an aid to calculating the various time periods for reviews.

##### Response

As noted earlier, the requirement for dispositional hearings, as part of the

overall case review system, becomes operative under any of the three following circumstances:

(1) If a State seeks additional funds under section 427(a) or seeks to avoid a reduction of funds under section 427(b), it must certify that it has met the requirements of the appropriate section. Section 427(a)(2)(B) requires the State to have a case review system " \* \* \* as defined in section 475(5) \* \* \*". Part of section 475(5) is the dispositional hearing requirement (section 475(5)(C)).

(2) If a State wishes to claim FFP under title IV-E for children voluntarily placed in foster care (as provided in section 102 of Pub. L. 96-272 as it amends section 472 of the Act), it must meet the requirements of section 427(b) of the Act. Section 427(b) references section 427(a) which in turn references section 475(5) and the requirement for a dispositional hearing.

(3) If a State wishes to transfer unneeded foster care funds from title IV-E to title IV-B, under the provisions of section 474(c) of the Act, the State must meet the requirements of section 427 of the Act. Again, section 427 references section 475(5) and its dispositional hearing requirements in section 475(5)(C) of the Act.

For purposes of clarifying this matter, the final rule indicates the situations which trigger the dispositional hearing requirement in 45 CFR 1356.21(e), 45 CFR 1356.30(a) and 45 CFR 1357.25(d).

Assuming, then, that one of the three situations above applies, the State must hold dispositional hearing(s) for each child for whom the title IV-E/title IV-B agency has the responsibility for placement and care.

The Department wishes to clarify which children are covered by the requirement for dispositional hearings. The Act in section 475(5)(C) says that " \* \* \* each child in foster care under the supervision of the State \* \* \*" is to receive the protections of dispositional hearings. The Department has interpreted this section of the Act to mean that all children in foster care under the responsibility for placement and care of the title IV-E/IV-B State agency must receive the protections of dispositional hearings if any of the three circumstances described previously obtain. This includes children who are voluntarily placed as well as children placed through court decision. It also includes all children in foster care both within the State and those placed outside the State. It includes all foster children regardless of the type of placement, e.g. foster family homes, group homes, child care institutions, etc.

However, we agree with the comments that the proposal to require dispositional hearings for all children in foster care under the responsibility of the title IV-E/IV-B State agency warrants some limited modification. After review of the examples given in the comment letters and our practical experience in reviewing program operations, the Department has concluded that under two specific circumstances a subsequent dispositional hearing is not necessary. The first circumstance is when a court has determined that the child should remain permanently in foster care with a specified foster family. In this specific situation, a dispositional hearing, as defined in section 475(5)(C) of the Act, would yield no productive result because the maximum benefit of the dispositional hearing, i.e., permanency, has been achieved. To the extent, therefore, that the placement and caregiver remain constant, no additional benefit to the child would derive from further court involvement.

The second circumstance is a child who is placed in a home awaiting the finalization of his adoption. To the extent that this child is free for adoption, placed in an approved home for the purpose of adoption and the child's case plan goal is adoption, a subsequent dispositional hearing is not required. Assuming the child is adopted within a reasonable time after placement (e.g., mandatory waiting period under State law prior to filing a formal petition for a final decree of adoption), no additional dispositional hearing is required. However, it should be noted that if, in either circumstance, the care-giver or placement were to change or the final decree of adoption was not obtained within a reasonable period of time, that child would be entitled to subsequent dispositional hearings. We have incorporated these exceptions in 45 CFR 1356.21(e) (1) and (2).

We have made several other changes in 45 CFR 1356.21 in response to comments.

First, in 45 CFR 1356.21(e), the Department is requiring each State to have a reasonable specific time-limited definition of the phrase "periodically thereafter." This means that States will have the flexibility to determine the dispositional hearing time-frame(s) as a policy matter, but that they cannot arbitrarily hold subsequent hearings on an unplanned basis. A reasonable schedule for the next hearing must be established by the State in advance. The interval may be a specified time period for all children (e.g., 18 months) or a

specified time period or range of time periods (e.g., 12 to 24 months) within which all hearings must take place.

Second, the Department also agrees with the comments that a definition of the date of original foster care placement is needed and has included the definition in 45 CFR 1356.21(f). We believe this definition will assist States in the calculation of the due dates for both the six month periodic reviews and the required dispositional hearings.

#### *Payments and Standards Review (45 CFR 1356.21(g))*

##### *Comment*

The NPRM (45 CFR 1356.21(g)) proposed that the payment and standards reviews (section 471(a)(11) of the Act) be conducted at intervals and in a manner determined by the State.

Several commenters strongly recommended the final rule require either a three year cycle for reviews or public participation in the various standards and payment reviews mandated by section 471(a)(11) of the Act. Commenters asserted that without either of these requirements, standards would not be reviewed and would become outdated or ineffective, and foster care and adoption assistance payments would not be based on current economic conditions nor attract qualified persons. They gave examples of States that had not reviewed standards or payments in the last ten years. They also asserted that the public has a right to know and participate in the important policy decisions of these programs.

Generally, the State agencies took a differing view. They supported the permissive approach of the proposed regulation arguing that the form public input takes is essentially a State matter and does not need regulatory prompting.

##### *Response*

As a general principle, the Department is committed to voluntary public involvement in these programs. In reviewing the comments and operational experience, the Department has concluded that additional Federal mandates are not the answer. However, the Department does encourage the States to involve the public in the review process. The Department is also concerned that these reviews be conducted at reasonable intervals. Therefore, the Department is requiring the State agency to establish reasonable specific time-limited intervals for conducting these reviews (45 CFR 1356.21(g)).

#### *Foster Care Goals (45 CFR 1356.21(h))*

##### *Comment*

The NPRM proposed that the State could establish by either State law or administrative regulation the specific foster care goals required under section 471(a)(14) of the Act. The Act requires that these goals be established by State law.

The Department received two types of comments: general support for the requirement; and requests to delete the option for the State to set goals by administrative regulation.

##### *Response*

The Department believes that the NPRM language is a fair interpretation of the Act's requirements and intent. The Department also believes that this approach strikes a reasonable balance between effective implementation and State flexibility and appropriate Federal stewardship. Consequently, no change was made in this provision in the final rule.

#### *45 CFR 1356.30—Implementation requirements for children voluntarily placed in foster care*

##### *Comment*

The NPRM (45 CFR 1356.30) established the general requirements for States claiming FFP for voluntarily placed children.

The Department received recommendations in three areas: make State participation in the voluntary placement program mandatory; require a judicial determination after 90 days (not 180 days as in Act); and specify the timing and procedures for the return home of a voluntarily placed child.

##### *Response*

The first two recommendations are not possible under the provisions of the Act. Section 102 of the Adoption Assistance and Child Welfare Act of 1980, as it amends section 472 of the Act, makes clear that participation is optional to the State and that a judicial determination is required within 180 days of the voluntary placement, not 90 days as recommended.

In response to the third recommendation, the Department has concluded that the practice among the States in returning children voluntarily placed is sufficiently responsive as to obviate the need for Federal requirements. Moreover, whatever process the State establishes, 45 CFR 1356.30(c) requires that the process be consistent with State law. Therefore, no change was made in the final rule.

*45 CFR 1356.40—Adoption assistance program: Administrative requirements to implement section 473 of the Act*

The NPRM (45 CFR 1356.40) outlined the requirements for implementing the adoption assistance program required under sections 471 and 473 of the Act and these regulations.

*General requirements (45 CFR 1356.40(a))*

*Comments*

45 CFR 1356.40(a) addresses the general implementation requirements for the adoption assistance program.

Commenters suggested that the Department strongly advocate use of the "Model Adoption Act" as a fundamental resource for implementing this program. Another suggestion was that the Department mandate the adoption assistance program as an entitlement to all eligible children. Another commenter suggested extending the coverage of the program to age 21 for those children engaged in educational programs.

*Response*

The Department has considered these comments but cannot accept them. The "Model Act" has been widely distributed and discussed in many ways and forums. It would be inappropriate to mandate what was originally designed to be resource information for the States. The Department encourages the States to make use of the Model Act but will not mandate its use. There is no legal basis for the Department to accept the remaining two recommendations. Section 473(a)(1) of the Act specifies the children eligible for the adoption assistance program. It also makes clear that FFP in adoption assistance payments is available up to age 18 with the exception of a child with mental or physical handicaps which warrant continuation of assistance up to age 21.

*Adoption assistance agreement (45 CFR 1356.40(b))*

*Comments*

The NPRM (45 CFR 1356.40(b)) proposed the requirements for the adoption assistance agreement document. Two comments were received regarding the beginning date of an agreement. One of these comments suggested that the Department clarify and strengthen the required timing of agreement signature by the State and parent(s). The other comment suggested we eliminate the timing requirement altogether. The remaining comments addressed the need for specifying procedures to ensure continuation of the agreement if the family changes its State of residence.

*Response*

In reviewing the comments, the Department compared the NPRM, the comments, the Act and its program experience. We have reached the conclusion that the comments on timing offer no additional constructive material justifying modification of the regulatory language. The NPRM and the referenced provisions of the Act are clear on signature and timing.

With regard to the recommendation to specify procedures for ensuring continuation of the agreement when a family moves out of State, no change is necessary. The final rule (45 CFR 1356.40(b)(4)) specifies that, under section 475(3)(B) of the Act and section 101(a)(4)(A) of Pub. L. 96-272, any adoption assistance agreement meeting the requirements of the Act and this final rule entered into after October 1, 1983 must remain in effect if a family moves to another State. The Department has opted not to unnecessarily specify procedures and the final rule is unchanged.

*FFP and interlocutory decree (45 CFR 1356.40(c))*

*Comment*

The NPRM (45 CFR 1356.40(c)) proposed a definition of the phrase "interlocutory decree" which appears in section 473(a)(4) of the Act. This section of the Act provides that FFP in an adoption assistance payment may begin when an eligible child is placed for adoption pursuant to an interlocutory decree or upon final adoption.

Several commenters, particularly from States with no interlocutory decree, suggested that we allow alternate State agency or court procedures to substitute for an interlocutory decree.

*Response*

Given the clear language of the Act (section 473(a)(4)), it is not possible to accept these recommendations.

*"Means test" (45 CFR 1356.40(d))*

*Comment*

The NPRM (45 CFR 1356.40(d)) proposed that there may not be a "means test" for eligibility for adoption assistance. In general, respondents supported this provision. However, there was some confusion on how it should be applied.

*Response*

The various provisions of section 473, particularly sections 473(a)(1), (2) and (3), are clear that the issue in determining eligibility for adoption assistance is related to the child and not the parent. Section 473(a)(1) of the Act

contains the specific eligibility requirements a child must meet to receive adoption assistance. Section 473 refers to parental resources only in the context of determining how much the adoption assistance payment should be, not in the context of eligibility to receive such payments.

Moreover, the legislative history of Pub. L. 96-272 directly rejects the concept of a "means test." (Congressional Record, October 25, 1979, S15157—S15162; October 29, 1979, S15286). Therefore, the Department has concluded that it is appropriate to prohibit a means test.

*Medicaid and social services (45 CFR 1356.40(e))*

*Comment*

The NPRM (45 CFR 1356.40(e)) proposed to clarify eligibility for Medicaid (title XIX of the Act) and social services (title XX of the Act) of a child receiving adoption assistance when the family moves out of State.

The comments generally supported the NPRM language but recommended that the Department specify that the eligibility under titles XIX and XX be automatic; asked for procedures to implement these requirements; and sought clarification of the State's actual responsibility for providing services when the family moves to another State.

*Response*

While the eligibility for title XIX (Medicaid) remains automatic, the Department does not have the legal authority to mandate automatic eligibility for title XX because the social services block grant leaves the determination of eligibility criteria to the States.

However, section 473(b) of the Act provides that all children receiving adoption assistance payments are deemed to be recipients of AFDC. Since all States are currently offering title XX services to AFDC eligible children, the Department does not see the commenters' concern as a serious problem area.

The Department believes that the development of arrangements and procedures for continuation of services when the family moves to another State are best left to the States.

*Placement across State lines (45 CFR 1356.40(f))*

*Comment*

The NPRM (45 CFR 1356.40(f)) proposed that a State may enter into an adoption assistance agreement with a parent(s) who resides in another State

In that event, all provisions of the regulation regarding adoption assistance (45 CFR 1356.40) would be applicable.

One comment was received which sought to have the Department specify the procedural steps in such a situation. Several commenters also requested clarification on the coverage of titles XIX and XX for children placed across State lines for the purpose of adoption.

#### Response

The Department is working with the American Public Welfare Association to develop non-binding guidance materials for use by the States in implementing out-of-State placements. That information should be available to the States shortly. The Department believes that these guidance materials will more than adequately address this problem. Given the differences among the various States' laws and the interaction of other Federal programs, the Department has elected this flexible approach over a prescriptive provision in the final rule. No change, therefore, was made in the final rule.

#### Promotion of the program (45 CFR 1356.40(g))

##### Comments

The NPRM proposed that the States must actively seek ways to promote the adoption assistance program. Several commenters sought to have the Department specify the means of promotion and to strengthen this requirement.

#### Response

The Department believes that the decision on how to promote the program is best left to each individual State. Requirements established by the Department would, of necessity, be general in nature and could not address individual State needs and interests. Consequently, the Department believes that States will see the self-interest in this requirement and develop their own means of promoting the program.

#### Part 1357—Requirements Applicable to Title IV-B

##### 45 CFR 1357.10—Scope and definitions

##### Comment—(45 CFR 1357.10(b))

The NPRM (45 CFR 1357.10(b)) proposed that child welfare services were to be available on the basis of need for services, and should not be denied on the basis of legal residence or financial need.

One comment asked the basis of the proscription of a "means test" for title IV-B services. Another comment was received which raised the issue of residency as an eligibility criteria for

receipt of services under the State's title IV-B program. The problem raised was that the proposed regulation, as written, could be read to allow a person living in one State to cross the State line in order to receive a service not available in his own State of residence. This would be done, in the context of the commenter's concern, solely for the purpose of obtaining a service while the person remained a resident and domiciled in the other State. This would have the effect of causing one State to bear the costs of services to residents of another.

#### Response

Regarding the issue of a financial "means test" for title IV-B service eligibility, the Department believes that the Act, the legislative history and the history of title IV-B program have always supported the proscription of a "means test." Therefore, the Department has made no change in the final rule.

The Department agrees that the commenter's residency concern may be valid. The sole intent of the prohibition of a "residency" restriction in the final rule is to ensure that people moving from one State to another will be able to obtain needed services without having to reside in the new State a specified period of time before being able to obtain those services. The regulation has been revised to make this clear.

##### Definitions (45 CFR 1357.10(c))

##### Comment—"Child Welfare Service"

The NPRM (45 CFR 1357.10(c)) proposed to define child welfare services as all services meeting the definition of section 425(a)(1) of the Act regardless of the funding source (title IV-B or otherwise) for that service.

Several commenters voiced criticism regarding this definition as going beyond the law. The essential concern was that by inclusion of the phrase " \* \* \* regardless of funding source of such services \* \* \* " the Department had overstepped the definition in the law. They recommended deletion of this phrase.

#### Response

After examining the statutory definition (section 425(a)(1) of the Act) and the history of the program, and considering the comments, the Department has chosen to modify the definition as it appeared in the NPRM. The Department believes that the statutory definition is intended to cover only the social services for which the title IV-B State agency is responsible, not all child welfare services throughout the State. The expectation is that in order to develop an effective and

dynamic title IV-B State plan, the resources utilized by the title IV-B State agency need to be considered. In this way, the joint planning process will yield a realistic view of services provided by or under the auspices of the title IV-B State agency and consequently will form the foundation upon which an effective and comprehensive child welfare services program may be built.

Consequently, the title IV-B State plan should include all those services for which the title IV-B State agency is responsible.

##### Comment—"Child welfare services plan"

The NPRM (45 CFR 1357.10(c)) proposed that "child welfare services plan" means the document which describes the State agency's total child welfare services program. Commenters found this definition confusing particularly in regard to the broad definition of "child welfare services."

#### Response

The Department agrees and has revised the definition to require the State to describe only those child welfare services for which the title IV-B State agency is responsible.

##### Comments—"Joint Planning"

The NPRM (45 CFR 1357.10(c)) proposed to define "joint planning" as a " \* \* \* State and Federal review and analysis of the State's child welfare services \* \* \* " Three comments were received on this definition. Two recommended inclusions of the public and service providers (other than governmental agencies) and one suggested limiting the review and analysis strictly to the requirements of section 422(b) of the Act.

#### Response

The definition proposed by the Department does not limit additional participants. However, since the formal relationship under title IV-B is between the Federal and State governments, the Department will leave the decision on additional participants to the State's discretion.

In terms of the substantive program matter to be covered in the planning process itself, section 422(a) of the Act speaks of a plan for "child welfare services" which has been developed jointly and the title IV-B State plan requirements of section 422(b) of the Act. The Department believes that the definition of "joint planning" appropriately takes into account these

tasks. Therefore, no change in the final rule was made.

*45 CFR 1357.15—Child welfare services State plan requirements and submittal*  
*Comments—State plan document*

The NPRM (45 CFR 1357.15 (a) and (c)) proposed to require the State agency to enter into a joint planning effort with the Federal Government to develop the State's child welfare services State plan. The joint planning process was defined but the format of the State plan document which resulted was left to the State's discretion.

Several commenters recommended annual State plan documents which would include a careful examination of needs, services and resource allocations. One suggestion was made to eliminate the requirement of services specified by political subdivision on the grounds that it limited State planning by regional or geographical districts. Another was to require public and voluntary agency participation in the development of the plan. One commenter raised the question of coordination of the State's title IV-B plan with those of Indian Tribal Organizations (ITO) directly funded under section 428 of the Act.

*Response*

In response to the suggestion that annual State plans be required, the Department cannot accept this suggestion for two reasons. To undertake the comprehensive joint planning process each year places an undue burden on the States and would not yield constructive results in relation to the effort required.

In addition, in the interest of greater flexibility and reduced paperwork burden and reporting requirements, in § 1357.15(b), we have allowed States to submit the title IV-B State plan in two parts. The assurances required by the Act (section 422(b) (1) through (4) and (7) and (8)) may be submitted on a one time only basis with amendments required only if significant changes are made in a State's program in these areas.

The descriptive information pertaining to the State's ongoing services program required by section 422(b) (5) and (6) must be submitted and be in effect for one, two or three fiscal years. The State may elect either one, two or three year intervals to be used for this portion of the plan.

The comment regarding elimination of the State plan's discussion of services available by political subdivision is acceptable to the Department. While the Department would like States to

describe their title IV-B program by political subdivision, we recognize that such a provision is inappropriate as a requirement. Therefore, the Department has eliminated this provision in the final rule.

Regarding the recommendation that the public and voluntary agencies should be required to participate in the development of the State plan, the Department believes that this is a matter for a State decision. Nothing in the final rule would preclude such involvement. However, the Department believes that it would be inappropriate to mandate such a requirement.

With regard to the coordination of the State's title IV-B plan with that of an ITO, the Department has added a requirement that the State coordinate its plan and services with those provided under the ITO's (45 CFR 1357.15(d)). This provision also contains the requirements proposed in 45 CFR 1357.40(d)(3), that upon request by the ITO the State must make available a copy of the title IV-B State plan. Moreover, both these provisions are consistent with the coordination requirements contained in section 422(b)(2) of the Act.

*Comments—State plan and section 427 implementation (45 CFR 1357.15(e))*

The NPRM (45 CFR 1357.15(b)) proposed that the State plan document specify what preplacement preventive and reunification services are available. An illustrative list of services was included but the NPRM did not require any specific service to be provided.

Many commenters recommended a return to the detailed prescriptive approach of the first NPRM by recommending, alternatively, that the Department require States to provide certain core services that have proven effective; require States to provide at least three services or limit services to those on the illustrative list. Others requested additional language to specify the Federal monitoring and evaluation activities as well as suggesting several additional services for inclusion in our list.

*Response*

After reviewing the comments and the Department's operational experience of the last year, we have concluded that a change in the regulatory language is not necessary. We have reached this conclusion for essentially the same reasons discussed under the "reasonable efforts" response (45 CFR 1356.21(b) and (d)(4)). To require States to implement a Federally selected list of specific services is not consistent with the discretion and flexibility necessary

for the States to operate their title IV-B program. We have included two additional services, as suggested: services to unmarried parents and post-adoption services. This provision is now found in paragraph (d).

*45 CFR 1357.25—Requirements for eligibility for additional payments under section 427*

This section of the NPRM (45 CFR 1357.25) proposed the programmatic requirements for implementing section 427 of the Act, when applicable. It included the coverage requirements for the inventory and statewide information system and case review system (specifically the dispositional hearing requirement in section 475(5)(C) of the Act).

*Comments*

Many comments, questions and recommendations were received on this provision of the NPRM. Commenters were concerned that the provisions of section 427 of the Act were not clear on their face and required clarification and interpretation so that they would be sure of the standards for receipt of the additional FFP available. Commenters also recommended that the final rule require: specific data elements in the Statewide information system and the inventory; child health information in the information system; the data gained from the inventory be submitted to the Federal Government; annual publication of and public access to aggregate data in the information system and inventory; a requirement that the inventory and information system cover all children in the State in foster care not just those under the responsibility for placement and care of the title IV-E/IV-B State agency.

In addition, several letters provided detailed comments on the section 427 compliance review process being conducted in the States and urged that the Department's requirements for FFP and for meeting the compliance requirements be specifically included in the final rule.

*Response*

The language of section 427 of the Act is unusually detailed. Thus, the Department believes there is no need for further specification of data elements for either the inventory or the information system, and has not changed the final rule.

With regard to access to information by the public, we reject these suggestions in so far as other than aggregate data are sought. We do so for two reasons. First, the nature of the data



on individuals in foster care or their families developed in either the inventory or the information system is by good practice confidential, as indicated by section 471(a)(8) of the Act. The risk of highly private and personal information leakage is too high to justify a reporting or information collection mandate. If, however, the State wished to aggregate its data and publish it, that is an option available but that decision would have to be made by the State. Second, the Department has embarked on a voluntary reporting system for certain aggregate data in its work with the States. We choose to pursue this course rather than mandate reporting.

In regard to coverage of the inventory and information system, Congress, in its debate, continually referred to the "500,000 children in foster care," when one looks at the various research studies done on foster care, it quickly becomes apparent that the 500,000 number often referred to by the Congress are those children in the public social service/State social service agency foster care programs and not all children in foster care, both public and private.

Therefore, it is the Department's belief that Congress did not intend to cover all children in foster care but rather only those for whom the title IV-A(FC)/IV-E/IV-B State agencies have the responsibility for placement and care. Consequently, we have maintained the NPRM language with some very minor editorial changes in the final rule.

One of these editorial changes was the deletion of the language in this provision which referred to " \* \* \* other agencies with which these agencies have an agreement to provide care \* \* \*." We have changed the language to make clear that the title IV-E/IV-B State agency may not delegate away its ultimate responsibility to ensure that the State plan is carried out. The confusing and unclear language was, therefore, deleted.

Beyond the changes discussed above, two new provisions have been added to the regulation. One as a clarification of the Act and the other in response to our operational experience and comments on section 427 of the Act.

As discussed under "dispositional hearings" in this preamble (45 CFR 1356.21(e)), section 427 references section 475(5) of the Act. The Department has added paragraph (d) to 45 CFR 1357.25 in order to clarify and simplify the relationship of these two statutory provisions and the applicability of the dispositional hearing requirement. This provision is consistent with those found in 45 CFR 1356.21(e) and 1356.30.

The Department has also added a provision (45 CFR 1357.25(e)) which establishes the Departmental Grant Appeals Board (45 CFR Part 16) as the arbiter in disputes arising under section 427 of the Act and 45 CFR 1357.25 or its related provisions. The Department believes that this forum is best suited to resolve disputes between a State and the Department regarding whether the State meets the requirements of section 427 of the Act. These disputes would arise in three circumstances: when a State certifies that it meets section 427 requirements in order to obtain additional funds under section 427(a) or to avoid a reduction in funds under section 427(b); when the provisions of section 427(b) of the Act become applicable under the voluntary care provisions of section 102 of Pub. L. 96-272 as it amends section 472 of the Act; and when section 427 is applicable to a State wishing to transfer unneeded title IV-E foster care funds to title IV-B, Child Welfare Services.

#### *45 CFR 1357.40—Direct Payments to Indian Tribal Organizations*

Under section 428 of the Act, the Secretary is empowered to establish a system for making direct title IV-B grants to Indian Tribal Organizations. The NPRM, in 45 CFR 1357.40, proposed the eligibility criteria and procedural requirements for the direct funding program. Those requirements included eligibility criteria for tribes; procedural steps for applying for funds; child welfare services plan and document requirements; joint planning; section 427 requirements as applicable; and general requirements.

#### *Comments*

The Department received only a few comments on this section. One was a statement of general support for the NPRM language but also raised the commenter's concerns regarding the lack of specificity in the title IV-B requirements applicable to the tribes and States; one suggested requiring public input to the Federal/tribe joint planning process; one sought a clearer statement of the Indian Tribal Organization/State relationship; another recommended that the information disclosure provisions (45 CFR 1355.21(b)) applicable to States be made applicable to tribal grantees; and one supported the coordination provision of the NPRM.

#### *Response*

As stated previously, the Department declined to add more specificity to the requirements applicable to the States. We maintain that approach in

implementing section 428 of the Act and direct funding of Indian Tribal Organizations (ITO). Also as stated previously, public input is optional to the State or tribe and this provision needs no change.

However, the Department agrees that the information disclosure (safeguarding of information) provision should apply to the ITO as well as to States. We have included this requirement in 45 CFR 1357.40(c)(3) by a cross reference to 45 CFR 1355.21(a).

Also in 45 CFR 1357.40(c), we have clarified by cross references that the following provisions are also applicable to tribal grantees: the definitions found in 45 CFR 1357.20; the requirement that the services under section 427 of the Act be specified in the ITO's title IV-B plan; and the other applicable regulations as required by 45 CFR 1355.30.

We have revised paragraph (d)(3) to allow ITOs the same planning options as States, i.e., ITOs may submit the required assurances on a one time only basis with amendments as necessary. The other statutory requirements must be submitted and be in effect for one, two or three fiscal years. The interval must be selected by the ITO.

To parallel the requirements for public access to State plans and plan amendments, we have required, in paragraph (e), that the ITO make its title IV-B plan and plan amendments available for public review and inspection.

Finally, as proposed in 45 CFR 1357.40(d)(3), we have included in paragraph (e) the requirement that the ITO must provide a copy of its title IV-B plan to the State on request.

#### **Impact Analysis**

##### *Executive Order 12291*

This rule primarily codifies statutory provisions. The rule itself imposes no significant burdens on the States or other affected parties. Therefore, the Secretary has determined, in accordance with Executive Order 12291, that this rule does not constitute a major rule because it will not have an annual effect on the economy of \$100 million or more; result in a major increase in costs or process for consumers, any industries, any governmental agency or any geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or import markets.

*Regulatory Flexibility Act*

The Regulatory Flexibility Act of 1980, Pub. L. 96-354, requires that an agency prepare a regulatory flexibility analysis for a proposed final rule if the rule would have a significant economic impact on a substantial number of "small entities," i.e. small businesses, small non-profit organizations, or small governmental jurisdictions.

Although actual delivery of services may be provided in some circumstances by proprietary, public and not-for-profit agencies or organizations under contract to the State agency, the responsibility for meeting the requirements of this regulation is on the State agencies, which are not "small entities" within the meaning of the Act. This final rule will impose no significant burdens on States or other affected parties and will provide flexibility to States in implementing the provisions of the amended Social Security Act. For these reasons, the Secretary hereby certifies that this final rule will not have a significant impact on a substantial number of small entities.

*Recordkeeping and Reporting*

This rule contains certain information collection requirements which have been approved by OMB under section 3507 of the Paperwork Reduction Act. These information collection requirements are as follows:

1. Case Plan Review System OMB Control No. 0980-0140 (§ 1356.21 (c) and (d)).
2. Statewide Information System, OMB Control No. 0980-0138 (§ 1357.25(b)).
3. Child Welfare Services State Plan, OMB Control No. 0980-0142 (§ 1357.15).
4. State Plan for Foster Care Assistance, OMB Control No. 0980-141 (§ 1356.20).

**List of Subjects***45 CFR Part 1355*

Adoption assistance, Child welfare services, Foster care, Information (confidentiality), State plan requirements.

*45 CFR Part 1356*

Adoption assistance, Administrative costs, Administrative practice and procedure, Administrative reviews, Allotments to States, Case plan, Case review system, Contacts (agreements), Definitions, Dispositional hearings, Federal financial participation, Foster care maintenance payments, Medicaid, Preplacement preventive services, Reunification services, Social services, Statewide information system, State plan, Training, Voluntary placements.

*45 CFR Part 1357*

Child welfare services, Federal financial participation, Foster care, Grants-in-Aid, Indians, Inventory, Preplacement preventive services, Reunification services, State plan, Training.

(Catalogue of Federal Domestic Assistance Program No. 13.645, Child Welfare Services—State Grants; 13.658, Foster Care Maintenance; and 13.659, Adoption Assistance)

Dated: April 4, 1983.

**Dorcas R. Hardy,**

*Assistant Secretary for Human Development Services.*

Approved: April 26, 1983.

**Margaret M. Heckler,**

*Secretary for Health and Human Services.*

45 CFR Chapter XIII is amended for the reasons set forth in the preamble as follows:

1. The title and table of contents of Subchapter G is revised to read as follows:

**SUBCHAPTER G—THE ADMINISTRATION FOR CHILDREN YOUTH AND FAMILIES, FOSTER CARE MAINTENANCE PAYMENTS, ADOPTION ASSISTANCE, CHILD WELFARE SERVICES**

Sec.

1355 General.

1356 Requirements Applicable to Title IV-E.

1357 Requirements Applicable to Title IV-B.

**PART 1355—GENERAL**

- 2a. The authority citation for Part 1355 reads as follows:

*Authority:* Adoption Assistance and Child Welfare Act of 1980, Pub. L. 96-272, 42 U.S.C. 670 et seq., 94 Stat. 501, 42 U.S.C. 620 et seq., 94 Stat. 516 et seq., Section 1102 of the Social Security Act, as amended, 42 U.S.C. 1302.

- 2b. The table of contents for Part 1355 is amended by adding §§ 1355.10, 1355.20 and 1355.21 to read as follows:

Sec.

1355.10 Scope.

1355.20 Definitions.

1355.21 State plan requirements for titles IV-E and IV-B.

3. Part 1355 is amended by adding §§ 1355.10, 1355.20, 1355.21 to read as follows:

**§ 1355.10 Scope.**

Part 1355 applies to State programs and contains general requirements for Federal financial participation under titles IV-E and IV-B of the Social Security Act, as amended.

**§ 1355.20 Definitions.**

(a) Unless otherwise specified, the following terms as they appear in 45 CFR Parts 1355, 1356 and 1357 of this title are defined as follows—*Act* means the Social Security Act, as amended.

*ACYF* means Administration for Children, Youth and Families, Office of Human Development Services, U.S. Department of Health and Human Services.

*Child abuse and neglect* means the definition contained in 45 CFR Part 1340, Child Abuse and Neglect Prevention and Treatment Program.

*Commissioner* means the Commissioner for Children, Youth and Families (ACYF), Office of Human Development Services, U.S. Department of Health and Human Services.

*Department* means the United States Department of Health and Human Services.

*Detention facility* in the context of the definition of child care institution in section 472(c)(2) of the Act means a physically restricting facility for the care of children who require secure custody pending court adjudication, court disposition, execution of a court order or after commitment.

*Foster family home* means the home of an individual or family licensed or approved by the State licensing or approval authority(ies) (or with respect to foster family homes on or near Indian reservations, by the tribal licensing or approval authority(ies)), that provides 24-hour out-of-home care for children. The term may include group homes, agency operated boarding homes or other facilities licensed or approved for the purpose of providing foster care by the State agency responsible for approval or licensing of such facilities.

*State* means the 50 States, the District of Columbia, and, except in 45 CFR 1356.65 and 1356.70, the Commonwealth of Puerto Rico, Guam, the Virgin Islands and the Commonwealth of the Northern Mariana Islands.

*State agency* means the State agency administering or supervising the administration of the title IV-E and title IV-B State plans.

(b) Unless otherwise specified, the definitions contained in section 475 of the Act apply to all programs under titles IV-E and IV-B of the Act.

**§ 1355.21 State plan requirements for titles IV-E and IV-B.**

(a) The State plans for titles IV-E and IV-B must provide for safeguards on the use and disclosure of information which meet the requirements contained in section 471(a)(8) of the Act.

(b) The State plans for titles IV-E and IV-B must provide for compliance with the Department's regulations listed in 45 CFR 1355.30.

(c) The State plans and plan amendments for titles IV-E and IV-B

must be made available by the State agency for public review and inspection.

**PART 1356—REQUIREMENTS APPLICABLE TO TITLE IV-E**

4a. The authority citation for Part 1356 reads as follows:

Authority: Adoption Assistance and Child Welfare Act of 1980, Pub. L. 96-272, 42 U.S.C. 670 et seq., 94 Stat. 501, 42 U.S.C. 620 et seq., 94 Stat. 516 et seq., Section 1102 of the Social Security Act, as amended, 42 U.S.C. 1302.

4b. The table of contents for Part 1356 is amended by adding §§ 1356.10, 1356.20, 1356.21, 1356.30, 1356.40 and 1356.50 to read as follows:

Sec.

1356.10 Scope.

1356.20 State plan document and submission requirements.

1356.21 Foster care maintenance payments program implementation requirements.

1356.30 Implementation requirements for children voluntarily placed in foster care.

1356.40 Adoption assistance program: Administrative requirements to implement section 473 of the Act.

1356.50 Withholding of funds for non-compliance with the approved title IV-E State plan.

5. Part 1356 is amended by adding §§ 1356.10, 1356.20, 1356.21, 1356.30, 1356.40 and 1356.50 to read as follows:

**§ 1356.10 Scope**

This part applies to State programs for foster care maintenance payments, adoption assistance payments and related administrative and training expenditures under title IV-E of the Act.

**§ 1356.20 State plan document and submission requirements.**

(a) To be in compliance with the State plan requirements and to be eligible to receive Federal financial participation (FFP) in the costs of foster care maintenance payments and adoption assistance under this part, a State must have a State plan approved by the Secretary that meets the requirements of this part, Part 1355 and section 471(a) of the Act. The title IV-E State plan must be submitted to the appropriate Regional Office, ACYF, in a form determined by the State.

(b) If a State chooses to claim FFP for voluntary foster care placements, the State must meet the requirements of paragraph (a) of this section and section 102 of Pub. L. 96-272, the Adoption Assistance and Child Welfare Act of 1980, as it amends section 472 of the Act.

(c) The following procedures for approval of State plans and amendments apply to the title IV-E program:

(1) The State plan consists of written documents furnished by the State to

cover its program under Part E of title IV. After approval of the original plan by the Commissioner, ACYF, all relevant changes, required by new statutes, rules, regulations, interpretations, and court decisions, are required to be submitted currently so that ACYF may determine whether the plan continues to meet Federal requirements and policies.

(2) *Submission.* State plans and revisions of the plans are submitted first to the State governor or his designee for review and then to the regional office, ACYF. The States are encouraged to obtain consultation of the regional staff when a plan is in process of preparation or revision.

(3) *Review.* Staff in the regional offices are responsible for review of State plans and amendments. They also initiate discussion with the State agency on clarification of significant aspects of the plan which come to their attention in the course of this review. State plan material on which the regional staff has questions concerning the application of Federal policy is referred with recommendations as required to the central office for technical assistance. Comments and suggestions, including those of consultants in specified areas, may be prepared by the central office for use by the regional staff in negotiations with the State agency.

(4) *Action.* The Regional Office, ACYF, exercises delegated authority to take affirmative action on State plans and amendments thereto on the basis of policy statements or precedents previously approved by the Commissioner, ACYF. The Commissioner, ACYF, retains authority for determining that proposed plan material is not approvable, or that a previously approved plan no longer meets the requirements for approval, except that a final determination of disapproval may not be made without prior consultation and discussion by the Commissioner, ACYF with the Secretary. The Regional Office, ACYF, formally notifies the State agency of the actions taken on State plans or revisions.

(5) *Basis for approval.* Determinations as to whether State plans (including plan amendments and administrative practice under the plans) originally meet or continue to meet, the requirements for approval are based on relevant Federal statutes and regulations.

(6) *Prompt approval of State plans.* The determination as to whether a State plan submitted for approval conforms to the requirements for approval under the Act and regulations issued pursuant thereto shall be made promptly and not later than the 45th day following the

date on which the plan submittal is received in the regional office, unless the Regional Office, ACYF, has secured from the State agency a written agreement to extend that period.

(7) *Prompt approval of plan amendments.* Any amendment of an approved State plan may, at the option of the State, be considered as a submission of a new State plan. If the State requests that such amendment be so considered the determination as to its conformity with the requirements for approval shall be made promptly and not later than the 45th day following the date on which such a request is received in the regional office with respect to an amendment that has been received in such office, unless the Regional Office, ACYF, has secured from the State agency a written agreement to extend that period. In absence of request by a State that an amendment of an approved State plan shall be considered as a submission of a new State plan, the procedures under § 201.6 (a) and (b) shall be applicable.

(8) *Effective date.* The effective date of a new plan may not be earlier than the first day of the calendar quarter in which an approvable plan is submitted, and with respect to expenditures for assistance under such plan, may not be earlier than the first day on which the plan is in operation on a statewide basis. The same applies with respect to plan amendments.

(d) Once the title IV-E State plan has been submitted and approved, it shall remain in effect until amendments are required. An amendment is required if there is any significant and relevant change in the information or assurances in the plan, or the organization, policies or operations described in the plan.

(This requirement has been approved by the Office of Management and Budget under OMB Control Number 0980-0141)

**§ 1356.21 Foster care maintenance payments program implementation requirements.**

(a) To implement the foster care maintenance payments program provisions of the title IV-E State plan and to be eligible to receive Federal financial participation for foster care maintenance payments under this part, a State must meet the requirements of this section, and sections 472, 475(1), 475(4), 475(5) (A) and (B) and 475(6) of the Act.

(b) In meeting the "reasonable efforts" requirements of sections 471(a)(15) and 472(a)(1) of the Act, effective October 1, 1983, the State must meet the requirements of paragraph (d)(4) of this

section. (See also section 45 CFR 1357.15(e) for examples of services.)

(c) In meeting the requirements of section 471(a)(16) of the Act for a case review system, each State's case review system must meet the requirements of sections 475(5)(B) and 475(6) of the Act.

(d) In meeting the case plan requirements of sections 471(a)(16), 475(1) and 475(5)(A) of the Act, the State agency must promulgate policy materials and instructions for use by State and local staff to determine the appropriateness of and necessity for the foster care placement of the child. The case plan for each child must:

(1) Be a written document, which is a discrete part of the case record, in a format determined by the State, which is available to the parent(s) or guardian of the foster child; and

(2) Be developed within a reasonable period, to be established by the State, but in no event later than 60 days starting at the time the State agency assumes responsibility for providing services including placing the child; and

(3) Include a discussion of how the plan is designed to achieve a placement in the least restrictive (most family-like) setting available and in close proximity to the home of the parent(s), consistent with the best interest and special needs of the child; and

(4) After October 1, 1983, include a description of the services offered and the services provided to prevent removal of the child from the home and to reunify the family.

(This requirement has been approved by the Office of Management and Budget under OMB Control Number 0980-0140)

(e) If a State chooses to claim FFP for the costs of voluntary foster care maintenance payment; chooses to transfer funds from title IV-E to title IV-B, or certifies compliance with the requirements of section 427 of the Act, it must, among other requirements, meet the requirements for dispositional hearings in section 475(5)(C) of the Act. In meeting the requirements of section 475(5)(C), the dispositional hearing must take place within 18 months of the date of the original foster care placement and within reasonable, specific, time-limited periods to be established by the State. The provisions of this paragraph and section 475(5)(C) of the Act must apply to all children under the responsibility for placement and care of the title IV-E/IV-B State agency except:

(1) For those children who are placed in a court sanctioned permanent foster family home placement with a specific care giver, no subsequent dispositional hearings are required during the continuation of that specific permanent

placement. If the foster care placement of such a child is subsequently changed, the child is again entitled to dispositional hearings.

(2) For those children who are free for adoption and are placed in adoptive homes pending the finalization of the adoption, no subsequent dispositional hearings are required during the continuation of that placement. If such a child is not adopted within a reasonable time after placement, the child is again entitled to dispositional hearings.

(f) For purposes of meeting the requirements of the Act and regulation with respect to paragraphs (c), (d) and (e) of this section, 45 CFR 1356.30(b) and sections 471(a)(16) and 475(5) of the Act, the following definition applies: *Original foster care placement* means the date of the child's most recent removal from his home and placement into foster care under the care and responsibility of the State agency. This definition is the point in time used in calculating all time periods related to the case review system. (See also section 475(5) of the Act.)

(g) In meeting the requirements of section 471(a)(11) of the Act, the State must review at reasonable, specific, time-limited periods to be established by the State:

(1) The amount of the payment made for foster care maintenance and adoption assistance to assure their continued appropriateness; and

(2) The licensing or approval standards for child care institutions and foster family homes.

(h) The specific foster care goals required under section 471(a)(14) of the Act must be incorporated into State law by statute or administrative regulation provided such administrative regulation has the force of law.

**§ 1356.30 Implementation requirements for children voluntarily placed in foster care.**

(a) As a condition of receipt of Federal financial participation (FFP) in foster care maintenance payments for a dependent child removed from his home under a voluntary placement agreement, the State must meet the requirements of:

(1) Section 472 of the Act (as amended by section 102(a) of Pub. L. 96-272);

(2) Section 102(d) of Pub. L. 96-272;

(3) Sections 427(b) and 475(5) of the Act;

(4) 45 CFR 1356.21 (e) and (f); and

(5) The requirements of this section.

(b) Federal financial participation is available only for voluntary foster care maintenance expenditures made within the first 180 days after the date of the original foster care placement unless there has been a judicial determination

by a court of competent jurisdiction within the first 180 days of the date of that original placement to the effect that the continued voluntary placement is in the best interests of the child.

(c) The State agency must establish and maintain a uniform procedure or system, consistent with State law, for revocation by the parent(s) of a voluntary placement agreement and return of the child.

**§ 1356.40 Adoption assistance program: Administrative requirements to implement section 473 of the Act.**

(a) To implement the adoption assistance program provisions of the title IV-E State plan and to be eligible for Federal financial participation in adoption assistance payments under this Part, the State must meet the requirements of this section and sections 471(a), 473 and 475(3) of the Act.

(b) The adoption assistance agreement must meet the requirements of section 475(3) of the Act and must:

(1) Be signed and in effect at the time of or prior to the interlocutory decree or at the time of or prior to the final decree of adoption. A copy of the signed agreement must be given to each party; and

(2) Specify its duration; and

(3) Specify the amount of assistance and other services to be provided and, for purposes of eligibility under title XIX of the Act, specify that the child is eligible for medicaid services; and

(4) Specify, with respect to agreements entered into on or after October 1, 1983, that the agreement remains in effect if a family changes its State of residence.

(c) For purposes of implementing section 473 of the Act, *interlocutory decree* means a court order granting legal custody or guardianship to the adoptive petitioner prior to the final decree of adoption.

(d) There must be no income eligibility requirement (means test) for the prospective adoptive parent(s) in determining eligibility for adoption assistance payments.

(e) In the event an adoptive family moves from one State to another State, the family may apply for social services on behalf of the adoptive child in the new State of residence. However, for agreements entered into on or after October 1, 1983, if a needed service(s) specified in the adoption assistance agreement is not available in the new State of residence, the State making the original adoption assistance payment remains financially responsible for providing the specified service(s).

(f) A State may make an adoption assistance agreement with adopting parent(s) who reside in another State. If so, all provisions of this section apply.

(g) The State agency must actively seek ways to promote the adoption assistance program.

**§ 1356.50 Withholding of funds for non-compliance with the approved title IV-E State plan.**

(a) To be in compliance with the title IV-E State plan requirements, a State must meet the requirements of the Act and 45 CFR 1356.20, 1356.21 and 1356.40 of this part.

(b) To be in compliance with the title IV-E State plan requirements, a State that chooses to claim FFP for voluntary placements must meet the requirements of the Act, 45 CFR 1356.30 and paragraph (a) of this section; and

(c) For purposes of this section, the provisions of 45 CFR Part 213, Practice and Procedure for Hearings to States on Conformity of Public Assistance Plans to Federal Requirements, apply.

6. In Part 1356, § 1356.60 is amended by revising paragraph (a)(1) to read as follows:

**§ 1356.60 Fiscal requirements (title IV-E).**

(a) *Federal matching funds for foster care maintenance and adoption assistance payments.* (1) Effective October 1, 1980, Federal financial participation (FFP) is available to States under an approved title IV-E State plan for allowable costs in expenditures for:

(i) Foster care maintenance payments as defined in section 475(4) of the Act, made in accordance with 45 CFR 1356.20 through 1356.30 of this part, section 472 of the Act and section 102(d) of Pub. L. 96-272, the Adoption Assistance and Child Welfare Act of 1980;

(ii) Adoption assistance payments made in accordance with 45 CFR 1356.20 and 1356.40 and sections 473 and 475(3) of the Act.

**PART 1357—REQUIREMENTS APPLICABLE TO TITLE IV-B**

7a. The authority citation for Part 1357 reads as follows:

Authority: Adoption Assistance and Child Welfare Act of 1980, Pub. L. 96-272, 42 U.S.C. 670 et seq., 94 Stat. 501, 42 U.S.C. 620 et seq., 94 Stat. 516 et seq., Section 1102 of the Social Security Act, as amended, 42 U.S.C. 1302.

7b. The table of contents for Part 1357 is amended by adding §§ 1357.10, 1357.15, 1357.20, 1357.25 and 1357.40 to read as follows:

Sec.  
1357.10 Scope and definitions.

Sec.  
1357.15 Child welfare services State plan requirements and submittal.  
1357.20 Child abuse and neglect programs.  
1357.25 Requirements for eligibility for additional funds under section 427.  
1357.40 Direct payments to Indian Tribal Organizations.

8. Part 1357 is amended by adding §§ 1357.10, 1357.20, 1357.25 and 1357.40 to read as follows:

**§ 1357.10 Scope and definitions.**

(a) *Scope*—This Part applies to State programs for child welfare services (including related administrative expenditures) under title IV-B of the Act.

(b) Child welfare services under the title IV-B State plan must be available on the basis of need for services and must not be denied on the basis of financial need or length of residence in the State.

(c) *Definitions.* *Child Welfare Services* means the definition of services contained in section 425(a)(1) of the Act for which the State agency is responsible. (For purposes of 45 CFR 1357.40, Direct Payments to Indian Tribal Organizations, substitute "Indian Tribal Organization" for "State agency" wherever State agency appears.)

*Child Welfare Services Plan (CWSP)* means the document developed through joint planning which describes the child welfare services program for which the State agency is responsible, including services, program deficiencies, plans for program improvement and allocation of resources by type of service.

*Joint Planning* means State and Federal review and analysis of the State's child welfare services, including analysis of the service needs of children and their families, selection of unmet service needs that will be addressed in a plan for program improvement, and development of goals and objectives to enhance the capability of the State in providing child welfare services.

**§ 1357.15 Child welfare services State plan requirements and submittal.**

(a) In order to be eligible for Federal financial participation (FFP) under this Part and title IV-B of the Act, a State must have a Child Welfare Services State Plan (CWSP) which meets the requirements of this section, sections 422 (a) and (b) of the Act and 45 CFR Part 1355.

(b) (1) The title IV-B State plan assurances required by sections 422(b) (1) through (4) and (7) and (8) of the Act may be submitted one time only and will remain in effect on an on-going basis. However, these assurances must be amended when significant changes are made in a State's program in these areas.

(2) The descriptive information on the State's services program required by section 422(b) (5) and (6) of the Act must be submitted and be in effect for one, two or three fiscal years. The State may select which of the three intervals it wishes to use.

(c) In meeting the requirements of section 422(b)(5) of the Act, the State plan must contain a description of child welfare services provided to children and their families in the State and specify the geographic areas where these services will be available.

(d) In meeting the coordination requirements of section 422(b)(2) of the Act, and in the event that an Indian Tribal Organization (ITO) in a State applies for and receives direct title IV-B funding under section 428 of the Act, the State agency must make every reasonable effort to coordinate its title IV-B program with the title IV-B program of the ITO. The State must provide a copy of the title IV-B State plan upon request of the ITO.

(This requirement has been approved by the Office of Management and Budget under OMB Control Number 0980-0142)

(e) (1) In implementing the requirements of this section and sections 427(a) (2)(C) and 427(b) (3) of the Act, the State must specify, in its title IV-B State plan, which preplacement preventive and reunification services are available to children and families in need.

(2) The services specified may include: twenty-four hour emergency caretaker, and homemaker services; day care; crisis counseling; individual and family counseling; emergency shelters; procedures and arrangements for access to available emergency financial assistance; arrangements for the provision of temporary child care to provide respite to the family for a brief period, as part of a plan for preventing children's removal from home; other services which the agency identifies as necessary and appropriate such as home-based family services, self-help groups, services to unmarried parents, provision of, or arrangements for, mental health, drug and alcohol abuse counseling, vocational counseling or vocational rehabilitation; and post adoption services.

(f) The State plan may be written in a form determined by the State.

(g) The jointly developed State plan must be submitted to the appropriate Regional Office, ACYF. The Regional Office, ACYF will notify the State when the State plan meets all the requirements of the Act.

**§ 1357.20 Child abuse and neglect programs.**

The State agency must assure that, with regard to any child abuse and neglect programs or projects funded under title IV-B of the Act, the requirements of paragraph (3) of section 4(b) of the Child Abuse Prevention and Treatment Act of 1974, as amended 42 U.S.C. Sec. 5103(b)(3) (Pub. L. 93-247), are met.

**§ 1357.25 Requirements for eligibility for additional payments under section 427.**

(a) For any fiscal year after FY 1979 in which a sum in excess of \$141,000,000 is appropriated under Section 420 of the Act, a State is not eligible for payment of an amount greater than the amount for which it would be eligible if the appropriation were equal to \$141,000,000 unless the State complies with the requirements of Section 427(a) of the Act.

(b) In meeting the requirements for the inventory and statewide information system in sections 427 (a)(1) and (2)(A) of the Act, the inventory and statewide information system must include those children under the placement and care responsibility of the State title IV-B or IV-E agencies. At the State's discretion, other children may be included. The six month requirement in section 427(a)(1) and the twelve month requirement in section 427(a)(2)(A) of the Act must also be met.

(The requirement has been approved by the Office of Management and Budget under OMB Control Number 0980-0138.)

(c) If, for each of any two consecutive fiscal years after FY 1979, there is appropriated under Section 420 of the Act a sum equal to or greater than \$266,000,000, a State's allotment amount for any fiscal year after two such consecutive fiscal years shall be reduced to an amount equal to what the allotment amount would have been for FY 1979 unless the State has implemented the requirements of Section 427(b) of the Act.

(d) In meeting the requirements of section 427(a)(2)(B) of the Act for dispositional hearings the State agency must meet the requirements of section 475(5)(C) of the Act and 45 CFR 1356.21(e).

(e) A State may appeal a final decision by ACYF that the State has not met the requirements of this section and section 427 of the Act to the Department Grant Appeals Board under the provisions of 45 CFR Part 16.

**§ 1357.40 Direct payments to Indian Tribal Organizations.**

(a) *Who may apply for direct funding?* Any Indian Tribal Organization (ITO) that meets the definitions in section 428(c) of the Act, or any consortium or other group of eligible tribal organizations authorized by the membership of the tribes to act for them is eligible to apply for direct funding if:

(1) The Indian tribe (or tribes comprising the ITO) is providing, under a contract (or grant) with the Secretary of the Interior under section 102 of the Indian Self-Determination Act (25 U.S.C. 450f) child welfare services which would, otherwise, be provided directly by the Secretary of the Interior; and  
(2) The Indian tribe, consortium or group has a plan for child welfare services provided by the ITO that is jointly developed by the Indian Tribal Organization and the Department.

(b) *Joint planning.* For purposes of this section, Joint Planning means ITO and Federal review and analysis of the ITO's child welfare services including analysis of the service needs of children and their families, selection of unmet service needs that will be addressed in a plan for program improvement, and development of goals and objectives to enhance the capability of the tribe providing child welfare services.

(c) *Title IV-B plan requirements.* The Indian Tribal Organization's Title IV-B plan must meet all of the requirements of this paragraph. With respect to paragraph (c)(1) through (c)(5), of this section, the Indian Tribe/ITO must meet the requirements applicable to the State/State (or local) agency.

(1) Sections 422(a) and 422(b) (2) through (8) of the Act;

(2) 45 CFR 1355.20 and the definition of child welfare services in 45 CFR 1357.10(c);

(3) 45 CFR 1355.21(a);

(4) 45 CFR 1357.15(e);

(5) 45 CFR 1355.30 except that requirements of paragraphs (i) and (m) do not apply;

(6) The name of the ITO;

(7) A brief description of the ITO;

(8) A brief description of the legal and organizational relationship of the Tribal Organization to the Indians in the area to be served;

(9) A statement of the legal responsibility, if any, for children who are in foster care on the reservation and those awaiting adoption;

(10) A description of tribal jurisdiction in civil and criminal matters, existence or nonexistence of a tribal court and the type of court and codes, if any;

(11) An identification of the standards for foster family homes and institutional care and day care;

(12) The Indian Tribal Organization's political subdivisions, if any;

(13) Whether the Tribal Organization is controlled, sanctioned or chartered by the governing body of Indians to be served and if so, documentation of that fact;

(14) Any limitations on authorities granted the ITO; and

(15) The tribal resolution(s) authorizing it to apply for a direct title IV-B grant under this Part.

(d) *Submission of the title IV-B services plan and annual budget request.* (1) The ITO's title IV-B Annual Budget Request must be submitted, in a form and manner prescribed by the Department to the appropriate regional Office, ACYF.

(2) The title IV-B services plan must be submitted to the appropriate Regional Office, ACYF, in a form, determined by the ITO.

(3) (i) ITO's title IV-B plan may, at the ITO's option, be submitted in two parts. One part may contain the information and assurances that typically remain in effect on an on-going basis. This part of the plan may be submitted one time only but must be amended when significant changes occur in an ITO's program.

(ii) The items in paragraph (c) of this section that may be submitted on a one time only basis are: the assurances required by section 422(b)(1) through (4) and (7) and (8) of the Act and the information required in paragraphs (c) (6) through (15) of this section.

(iii) The second part of the ITO's IV-B plan must be submitted and in effect for one, two or three fiscal years. The ITO may select which of the three intervals it wishes to use. This part of the plan must contain the information required by section 422(b) (5) and (6) of the Act.

(4) Upon submission to the appropriate Regional Office, ACYF, of a jointly developed plan, the ITO must promptly notify the title IV-B agency of the State(s) in which the tribe is located of the submission.

(e) *Coordination of services.* (1) In meeting the requirements of section 422(b)(2) of the Act, the ITO's plan must assure coordination of services with other Federal, State or tribal programs to ensure maximum availability and utilization of resources that promote and enhance the welfare of children, youth and families served under title IV-B.

(2) For purposes of coordination, the ITO must provide a copy of its plan to the State(s) upon request. The ITO must also make its title IV-B plan and plan amendments available for public review and inspection.

(f) *Requirements for eligibility for additional payments.* (1) For any fiscal year after FY 1979 in which a sum in

excess of \$141,000,000 is appropriate under Section 420 of the Act, an ITO is not eligible for payment of an amount greater than the amount for which it would be eligible if the appropriation were equal to \$141,000,000 unless the Indian Tribe/ITO has implemented the requirements applicable to the State/State agency in section 427(a) of the Act.

(2) If, for each of any two consecutive fiscal years after fiscal year 1979, there is appropriated under Section 420 of the Act a sum equal to or greater than \$266,000,000, a Tribe's allotment amount for any fiscal year after those two consecutive fiscal years must be reduced to an amount equal to what the allotment amount would have been for fiscal year 1979 unless the Indian Tribe/ITO has implemented the requirements

applicable to the State/State agency in section 427(b) of the Act.

(3) The provisions applicable to the State/State agency in 45 CFR 1357.25 (d) and (e) apply to the Indian tribe/ITO.

(g) *Grants: General.* (1) Grants may be made to eligible Indian Tribal Organizations in a State which has a jointly developed Child Welfare Services Plan under title IV-B of the Act.

(2) Federal funds made available for a direct grant to an eligible ITO shall be paid by the Department, from the title IV-B allotment for the State in which the ITO is located. Should a direct grant be approved, the Department shall promptly notify the State(s) affected.

(3) If an eligible ITO includes population from more than one State, a

proportionate amount of the grant will be paid from each State's allotment.

(4) The receipt of title IV-B funds must be in addition to and not a substitute for funds otherwise previously expended by the ITO for child welfare services.

(5) The Indian Tribe/ITO must adhere to the requirements applicable to the State/State agency in 45 CFR 1357.30, Fiscal Requirements (title IV-B).

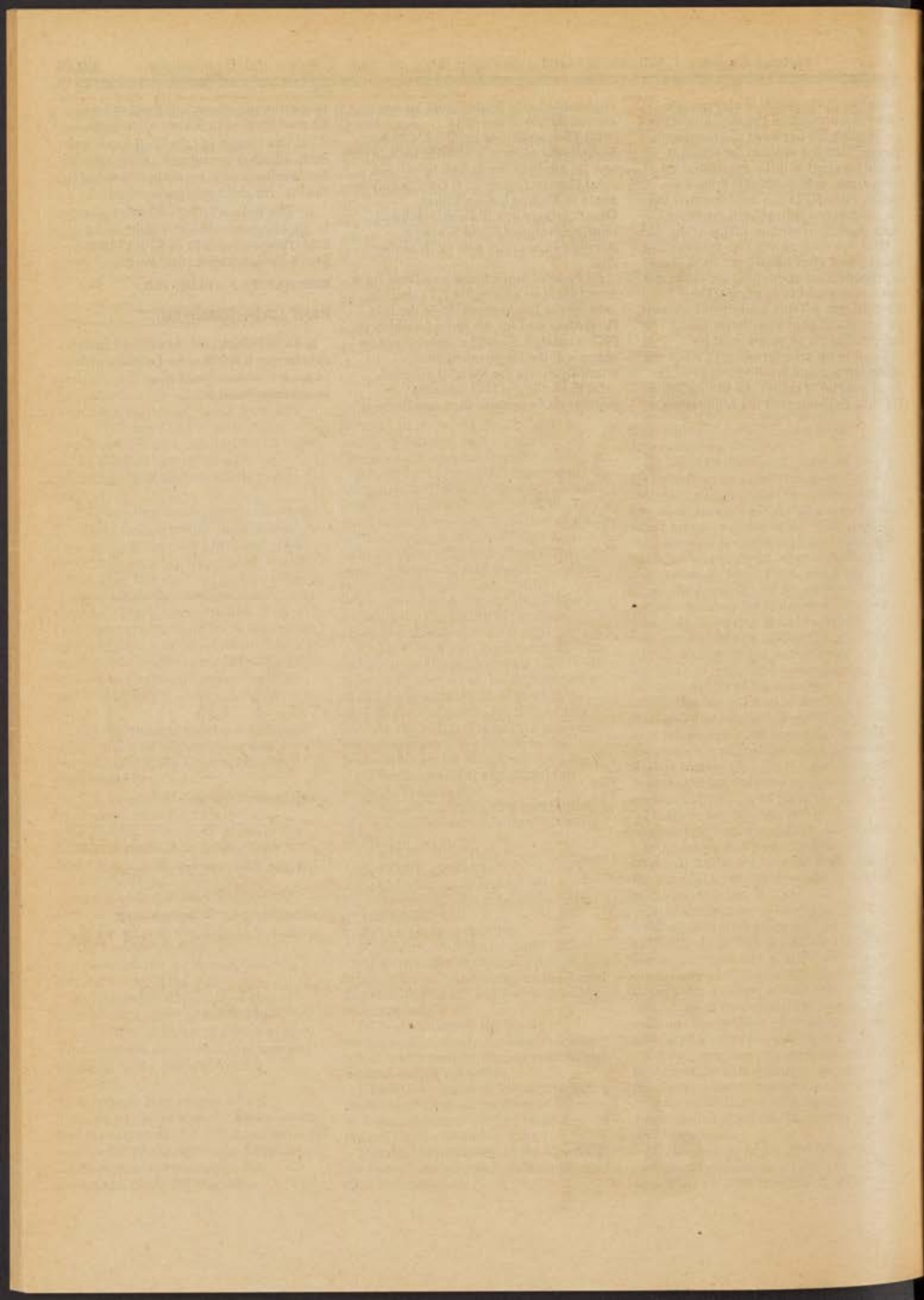
#### SUBCHAPTER J—[RESERVED]

#### PART 1392—[REMOVED]

9. 45 CFR Part 1392 is removed from subchapter J; subchapter J is reserved.

[FR Doc. 83-13681 Filed 5-20-83; 8:45 am]

BILLING CODE 4130-01-M





# **federal register**

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Monday  
May 23, 1983

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## **Part VII**

### **Department of Commerce**

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#### **Patent and Trademark Office**

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**Trademark Applications and Examination  
Proceedings; Trademark Interference,  
Concurrent Use, Opposition and  
Cancellation Proceedings; Trademark  
Post-Registration Proceedings; Final Rule  
and**

**Revision of Foreign Filing License  
Procedure; Proposed Rule**

## DEPARTMENT OF COMMERCE

## Patent and Trademark Office

## 37 CFR Part 2

[Docket No. 30428-69]

**Trademark Applications and Examination Proceedings; Trademark Interference, Concurrent Use, Opposition and Cancellation Proceedings; Trademark Post-Registration Proceedings**

**AGENCY:** Patent and Trademark Office, Commerce.

**ACTION:** Final rule.

**SUMMARY:** The Patent and Trademark Office is amending the rules of practice in trademark cases to clarify and revise procedures for the examination of applications; appeals from final refusals of registration; the institution and/or conduct of trademark interference, concurrent use, opposition and cancellation proceedings; the examination of affidavits or declarations under section 8 of the Trademark Act of 1946; amendments to registrations under section 7 (d) of the Trademark Act; and petitions to the Commissioner. The procedures revise or codify existing practices, or simplify procedures, or establish periods of time, to assist the orderly and prompt resolution of issues.

**EFFECTIVE DATE:** June 22, 1983.

**FOR FURTHER INFORMATION CONTACT:** Miss Janet E. Rice by telephone at (703) 557-3551 or by mail addressed to the Commissioner of Patents and Trademarks, Attention: Miss Janet E. Rice, Crystal Square 5, Suite 1008, Washington, D.C. 20231.

**SUPPLEMENTARY INFORMATION:** Amendments to §§ 2.20, 2.27, 2.63, 2.64, 2.65, 2.72, 2.81, 2.96, 2.98, 2.99, 2.101, 2.102, 2.103, 2.104, 2.105, 2.106, 2.107, 2.111, 2.112, 2.113, 2.115, 2.116, 2.117, 2.120, 2.121, 2.122, 2.123, 2.124, 2.125, 2.127, 2.128, 2.129, 2.131, 2.132, 2.134, 2.135, 2.142, 2.146, 2.165, 2.173, 2.184, and 2.186 and the removal of §§ 2.88, 2.94, 2.95, 2.97, 2.126, 2.147, and 2.148 were proposed in a rulemaking notice published in the *Federal Register* on June 29, 1982, at 47 FR 28324, the Patent and Trademark Office *Official Gazette* of July 27, 1982, at 1020 O.G. 25, and Vol. 24 of *BNA's Patent, Trademark & Copyright Journal* (July 1, 1982) at p. 236. The purpose of these proposed amendments was to revise and codify existing practices. One of the proposed amendments (subsequently not adopted) was to interchange §§ 2.101 and 2.102. Interested parties were requested to submit written comments on or before

October 4, 1982. An oral hearing was held on the same date. Written comments were submitted by four organizations and four individuals. Three persons testified at the oral hearing. Two of the individuals testified in behalf of organizations which also submitted written comments. Each of the two testified that the organization which he represented approved of the proposed amendments except as indicated in the organization's written comments. The third individual testified concerning the history and purpose of the proposed amendments and expressed his approval of them.

However, further changes to several of these proposed rules, as well as amendments to other trademark rules, were required in order to implement certain trademark provisions of intervening Pub. L. 97-247 enacted August 27, 1982. The text of the law is published in the Patent and Trademark Office *Official Gazette* of October 26, 1982, at 1023 O.G. 31.

Provisions of Pub. L. 97-247 relating to trademark fees were implemented by trademark fee rule changes which were published in the *Federal Register* on July 30, 1982 at 47 FR 33086 and which took effect on October 1, 1982. That final rule document was based alternatively on the law in effect at that time, Pub. L. 96-517, and on H.R. 6260, which was then pending but is now Pub. L. 97-247. As a result of the fee rule changes, which were based on Pub. L. 97-247 and subsequently confirmed in a document published in the *Federal Register* on September 17, 1982 at 47 FR 41282, further changes to § 2.101 [identified in the June 29, 1982 notice as § 2.102] were required.

Additional changes to § 2.101 [identified in the June 29, 1982 notice as § 2.102] and § 2.111, the removal of § 2.103, and changes to §§ 2.161 and 2.162 were required in order to implement the provisions of Sections 8 and 9 of Pub. L. 97-247. Section 8 of the new law amends Section 8 of the Trademark Act of 1946 (15 U.S.C. 1058) to require that an affidavit or declaration filed under Section 8 show use of the mark in commerce. Section 9(a) amends Section 13 of the Trademark Act (15 U.S.C. 1063) to eliminate the requirement for verification of oppositions (thus permitting a party's attorney to sign an opposition before the Trademark Trial and Appeal Board), and to require that additional requests for extension of time to oppose be filed prior to the expiration of the extension. Section 9(b) amends Section 14 of the Trademark Act (15 U.S.C. 1064) to eliminate the requirement for verification of petitions to cancel

(thus permitting a party's attorney to sign petitions to cancel before the Trademark Trial and Appeal Board). The provisions of Sections 8 and 9 of the new law became effective February 27, 1983.

The additional proposed changes to § 1.101 (identified in the June 29, 1982 notice as § 2.102) and § 2.111, the changes to §§ 2.161 and 2.162, and the proposed removal of § 2.103, all required as a result of the enactment of Pub. L. 97-247, were published in the *Federal Register* on November 24, 1982 at 47 FR 53054. In that notice, as in the June 29, 1982 notice, §§ 2.101 and 2.102 were interchanged, and it was indicated in the notice that although § 2.102 [identified in the notice as § 2.101] and § 2.112, as proposed in the June 29, 1982 notice, already included the necessary changes called for by Pub. L. 97-247 and thus were not being republished, further comments on the two proposed rules would be entertained. Interested parties were requested to submit written comments on or before January 7, 1983. Comments were received from one organization.

In a notice of final rulemaking published in the *Federal Register* on January 28, 1983 at 48 FR 3972, and in the *Official Gazette* of February 22, 1983 at 1027 O.G. 129, § 2.103 was removed, and §§ 2.101, 2.102, 2.111, 2.112, 2.161, and 2.162 were amended, to incorporate changes adopted both as a result of the notice of proposed rulemaking of June 29, 1982 (to revise and codify existing practices) and as a result of the notice of proposed rulemaking of November 24, 1982 (to implement the provisions of Sections 8 and 9 of Pub. L. 97-247). All of the comments relating to §§ 2.101, 2.102, 2.103, 2.111, 2.112, 2.161, and 2.162 which were received in response to the two notices of proposed rulemaking were discussed in that final rule notice and the rule changes adopted therein became effective on February 27, 1983.

Accordingly, this final rule notice does not include a discussion of the comments relating to §§ 2.101, 2.102, 2.103, 2.111, and 2.112 which were received in response to the June 29, 1982 notice of proposed rulemaking.

**Discussion of Specific Sections Changed:**

The rules which are being amended are discussed below. (The designation § is used in The Code of Federal Regulations to denominate a rule. If internal division of a section is necessary, it is divided into paragraphs designated as follows: "a", "b", etc. at the first level; "1", "2", etc. at the second level; "i", "ii", etc. at the third level; "A", "B", etc. at the fourth level; "1", "2", etc.

at the fifth level; and "I", "i", etc. at the sixth level.)

In this preamble to the rulemaking, "Patent and Trademark Office" is abbreviated as "PTO" and "Trademark Trial and Appeal Board" is abbreviated as "TTAB".

Section 2.20 was proposed to be amended by the addition of a new paragraph (b) to codify the practice whereby a nonofficer of a corporation or association who is authorized to sign a notice of opposition or petition for cancellation may verify the pleading by a declaration in lieu of an oath or affirmation. Inasmuch as the requirement for verification has been eliminated (see Pub. L. 97-247, enacted August 27, 1982 and the final rule notice published in the *Federal Register* on January 28, 1983 at 48 FR 3972), this proposal is withdrawn as moot.

Section 2.27(e) is added to permit the PTO to retain in confidence, not available for public inspection, anything filed under seal pursuant to a protective order [see amended §§ 2.120(f) and 2.125(e)]. Conforming amendments are made in paragraphs (b) and (d) of § 2.27.

Section 2.63 is clarified and designated as paragraph (a).

Section 2.63(b) is added to codify the practice of allowing an applicant to petition to the Commissioner for relief from either an examiner's repeated but nonfinal formal requirement which is appropriate for petition to the Commissioner or a final action which is limited to subject matter which is appropriate for petition to the Commissioner. The paragraph also requires that a petition be timely and sets a time limit for action after denial of a petition. See amended § 2.146(b) for a description of nonpetitionable subject matter and amended § 2.146(d) for the time limit (sixty days) for a petition. The final text includes a phrase that was not included in the proposed paragraph, namely, the phrase "and the subject matter of the requirement is appropriate for petition to the Commissioner" which now appears in the clause "(1) the requirement is repeated, but the examiner's action is not made final, and the subject matter of the requirement is appropriate for petition to the Commissioner;". The phrase has been added in order to further clarify the intent of the paragraph and is not considered to result in a material alteration thereof.

Section 2.64 is designated as paragraph (a) and revised to agree with the provision in § 2.63(b) permitting petitions to the Commissioner concerning some requirements which have been made final.

Section 2.64(b) is added to clarify the existing practice of replying to requests for reconsideration after final action, and to permit entry of amendments accompanying such requests if they comply with the Act of 1946 and the rules of practice in trademark cases.

Section 2.65 is designated as paragraph (a) and amended by the addition of a sentence to provide that a timely and proper petition under § 2.63(b) avoids the abandonment of an application. A new paragraph (b) permits the examiner to allow an applicant additional time to explain and supply an inadvertent omission which would otherwise have resulted in the application being held abandoned. The final text of (b) includes a phrase that was not included in the paragraph as proposed, namely, the phrase "filed within the six-month response period" which now appears in the clause beginning "When action by the applicant filed within the six-month response period is a bona fide attempt to advance the examination of the application \* \* \*". The phrase has been added in order to further clarify the intent of the paragraph and is not considered to result in a material alteration thereof.

Section 2.72 is revised so that the standard for amendment of a mark in an application now is the same in terms as the standard for amendment of a registered mark set forth in section 7(d) of the Act of 1946.

Section 2.72 was proposed to be further revised to allow non-material changes in the drawing to be supported by specimens which were not necessarily in use at the time the original application was filed. However, upon further consideration, it appears that the proposed revision might result in so many amendments to marks as to constitute a burden on the Patent and Trademark Office. Accordingly, this part of the proposal is withdrawn.

Section 2.81 is revised to clarify the language of the section. Proposed § 2.81 has been slightly reworded herein so as to further improve the clarity of the section.

Section 2.88 is deleted because requests to consolidate applications are very rare and the procedure is unworkable. See *Official Gazette* notice of July 29, 1981, 1009 TMOG 17.

Section 2.94 is deleted because interferences are declared only upon petition [see § 2.91], which assumes proper review before an interference is declared, and existing § 2.94 is unnecessary.

Section 2.95 is deleted because the deletion of § 2.94 makes § 2.95 unnecessary.

Section 2.96 is amended to codify existing practice on the issues determinable in an interference and the order of the parties and burden of proof. The amended rule states who is the junior party if two applications have the same filing date but different dates of execution. The third and fourth sentences of proposed § 2.96 have been reworded herein so as to improve the clarity of the section.

Section 2.97 is deleted because it is unnecessary in view of the codification in § 2.96.

Section 2.98 is amended to make the rule consistent with existing § 2.91.

Section 2.99 is reorganized and amended to describe the concurrent use application procedure in greater detail. Paragraph (a) of the amended rule provides that an application for a concurrent use registration will be examined in the same manner as other applications for registration.

Paragraphs (b) and (c) and paragraph (d)(1) of § 2.99 describe the procedure to be used to institute a concurrent use proceeding.

Paragraphs (d) (2) and (3) of § 2.99 codify existing practice on who must file an answer to a notice of institution of a concurrent use proceeding and the effect of not filing an answer.

Section 2.99(e) codifies existing practice on the order of the parties and the burden of proof and states who is the junior party if two applications have the same filing date but different dates of execution. A person specified as an excepted user but who has not filed an application is stated to be a senior party to every party that has an application involved in the proceeding because a party without an application is seeking no relief and therefore has no burden of proving entitlement to relief.

Section 2.99(f) provides for the issuance of a concurrent use registration upon the basis for a court's determination of the rights of the parties to use their marks in commerce, without the institution of a proceeding by the TTAB, when all of the conditions specified in the rule are fulfilled. The first clause in paragraph (f), which, as proposed, read "when a concurrent use registration is sought on the basis of a court's determination of the rights of the parties to use the marks in commerce, \* \* \*", has been modified herein to read "When a concurrent use registration is sought on the basis that a court of competent jurisdiction has finally determined that the parties are entitled to use the same or similar marks in commerce, \* \* \*". The modified clause closely follows the language of that portion of section 2(d) of the Act of 1946

upon which the rule is based. The modification has been made in order to clarify the subsection and is not considered to result in a material alteration thereof.

Section 2.99(g) codifies existing law that registrations and applications to register on the Supplemental Register and registrations under the Act of 1920 are not subject to concurrent use registration proceedings and implements section 26 of the Act of 1946, which provides, *inter alia*, that applications for and registrations on the Supplemental Register shall not be subject to section 17 of the Act, which is the statutory authority for a concurrent use registration proceeding [cf. existing § 2.91(b)].

Section 2.104 is amended to clarify existing § 2.104.

Section 2.105 is amended to clarify existing § 2.105 and codify the practice thereunder.

Section 2.106(c) is amended to codify the practice under existing § 2.106(c) that, after an answer is filed, an opposition may be withdrawn without prejudice only with the written consent of the applicant.

Section 2.107 is amended to codify the practice under existing § 2.107 whereby any pleading, including the answer, may be amended.

Section 2.113 is amended to clarify existing § 2.113, which described the procedure for notifying a registrant of the filing of a proper petition for cancellation of his registration. The amended section includes cross-references to §§ 2.111 and 2.112 (amended effective February 27, 1983), which pertain to the "filing" of and proper form for a petition for cancellation, and to § 2.118, which pertains to undelivered Office notices.

Section 2.115 is amended to codify the practice under existing § 2.115 whereby any pleading, including the answer, may be amended.

Section 2.116(b) is amended to clarify the language and intent of existing § 2.116(b).

Section 2.116(c) is amended to clarify existing § 2.116(c). Any complaint filed by a party in an interference or concurrent use proceeding would be a petition for cancellation, and the position of the parties in the consolidated proceeding will be set by the TTAB as required.

Section 2.117 is amended by designating the present section as paragraph (a) and adding two new paragraphs, (b) and (c). Section 2.117 as proposed contained four subsections. Proposed paragraph (b) is withdrawn and proposed paragraphs (c) and (d) are redesignated (b) and (c).

Section 2.117(b) codifies existing practice as to determination of a potentially dispositive motion when the question of suspension of proceedings is raised.

Section 2.117(c) permits a party to move, or parties to stipulate, for suspension, which usually occurs when negotiations for settlement are undertaken and the parties want proceedings suspended for that purpose.

Section 2.120 is amended in several respects, commencing with a reorganization of the rule to state how discovery may be taken, then how discovery may be compelled, then how admissions may be requested and the sufficiency of admissions or objections to requests therefor may be tested, and then how the results of discovery may be used in a proceeding.

Section 2.120(a) clarifies the language of the introductory paragraph of existing § 2.120.

Section 2.120(b) clarifies existing § 2.120(a)(1) and codifies the practice thereunder, and is made applicable to domestic parties.

Section 2.120(c)(1) restates in modified form the provisions of existing § 2.120(a)(2), and in addition, permits oral discovery depositions in foreign countries on motion for good cause or by stipulation of the parties.

Section 2.120(c)(2) provides for oral discovery depositions within the United States of foreign parties or their officers, etc. if they will be in the United States during a discovery period.

Section 2.120(d) makes specific provision for requests for production and codifies the practice for this kind of discovery.

Section 2.120(e) clarifies existing § 2.120(c)(1) and codifies the practice on motions to compel discovery.

Section 2.120(f) adds provisions pertaining to protective orders during discovery.

Section 2.120(g) clarifies existing § 2.120(c)(2) and further codifies the practice on sanctions for failing to obey orders pertaining to discovery.

Section 2.120(h) adds to the discovery rules provisions pertaining to requests for admissions and codifies the practice pertaining to requests for admissions.

Section 2.120(i) codifies the practice on the use of telephone and pre-trial conferences to resolve disputes.

Section 2.120(j) clarifies existing § 2.120(a)(3) relating to the use of discovery depositions, and codifies and revises the practice on the filing with the TTAB of matter obtained during discovery and the use thereof at trial.

Section 2.121 clarifies existing § 2.121 and codifies the practice thereunder.

Section 2.122 consolidates in one section the rules governing the introduction and admission of certain types of evidence in *inter partes* proceedings before the TTAB.

Section 2.122(a) identifies the sources of the law of evidence to be applied in *inter partes* proceedings.

Section 2.122(b)(1) clarifies the language and codifies the practice under existing § 2.122(a).

Paragraph (b)(2) and paragraph (c) of § 2.122 clarify existing § 2.126 and codify the practice under that section.

Section 2.122(d)(1) incorporates all of the substance of existing § 2.122(b) relating to the introduction in evidence of a plaintiff's pleaded registration with the complaint, except that the provision permitting the submission of an order for status and title copies of a pleaded registration with the complaint has been eliminated.

Section 2.122(d)(2) provides for the introduction in evidence of a registration owned by a party to a proceeding during the taking of testimony or by the filing of a notice of reliance on the registration, together with status and title copies thereof, during that party's testimony period.

Section 2.122(e) [identified in the notice of proposed rulemaking as § 2.122(c)(1)] clarifies and adds to the provisions of existing § 2.122(c) relating to printed publications and official records. Section 2.122(e) requires that an official record or copy thereof offered under the rule be an authentic record or copy pursuant to the Federal Rules of Evidence and also requires that, when a copy of a relevant portion of a printed publication is offered, the copy include the title page and any other page needed to show the place and date of publication, the name and address of the publisher, and the name of the author or the editor, which information is intended to enable the party against whom the evidence is offered to identify what it is. In the proposed and final rules, a new phrase, namely, "among members of the public or that segment of the public which is relevant under an issue in a proceeding", has been added to the opening clause of existing § 2.122(c), so that that clause now reads "Printed publications, such as books and periodicals, available to the general public in libraries or of general circulation among members of the public or that segment of the public which is relevant under an issue in a proceeding". The phrase was added so that it would be clear that a trade journal, for example, is a printed publication of the type contemplated by the rule notwithstanding the fact that it

may be circulated only among members of the trade rather than among members of the general public; the addition is not to be construed as an indication that an individual company's promotional literature, product booklets, annual reports, etc., are admissible under this section. Cf. *Glamorene Products Corporation v. Earl Grissmer Company, Inc.*, 203 USPQ 1090 (TTAB 1979); *Litton Industries, Inc. v. Litronix, Inc.*, 188 USPQ 407 (TTAB 1975); and *Minnesota Mining and Manufacturing Company v. Stryker Corporation*, 179 USPQ 433 (TTAB 1973).

Section 2.122(f) clarifies existing § 2.122(d) and codifies the practice thereunder.

Section 2.123 is amended by revising paragraphs (a), (e)(3), (j), and (k) thereof.

Section 2.123(a)(1) provides that testimony may be taken by depositions upon oral questions or upon written questions and further provides that if a party serves a notice of taking a testimonial deposition upon written questions, any adverse party may move to have the deposition taken upon oral questions if the witness, even though he may be a foreign party or a person who usually resides in a foreign country, is, at the time of the deposition will be, in the United States or any territory under the control and jurisdiction of the United States.

Section 2.123(a)(2) provides that testimony in a foreign country is ordinarily to be taken by a deposition upon written questions but that the party against whom a testimonial deposition will be taken may move for good cause shown to have it taken by oral questions in a foreign country, and further provides that the parties may stipulate to have testimony taken by an oral deposition in a foreign country.

Section 2.123(e)(3) codifies the practice that a party who did not receive a proper notice of the taking of a deposition with respect to any witness may cross-examine that witness under protest while preserving his right to move to strike the whole of the testimony of that witness.

Section 2.123(j) is revised to provide that Rule 32(d) (1), (2), and (3) (A) and (B) of the Federal Rules of Civil Procedure shall apply to errors and irregularities in depositions; that notice will not be taken of merely formal or technical objections which shall not appear to have wrought a substantial injury to the party raising them; and that in case of such injury it must be made to appear that the objection was raised at the time specified in the aforesaid rule.

Section 2.123(k) is revised to provide that objections to the competency of a witness or to the competency, relevancy,

or materiality of testimony must be raised at the time required by Rule 32(d)(3)(A) of the Federal Rules of Civil Procedure, and that such objections will not be considered until final hearing.

Section 2.124 sets out the procedure to be followed in taking a discovery deposition or a testimonial deposition upon written questions.

Section 2.124(a) provides that a deposition upon written questions may be taken before any of the persons described in Rule 28 of the Federal Rules of Civil Procedure.

Section 2.124(b)(1) provides for the kind of notice which must be served by a party desiring to take a testimonial deposition upon written questions and further provides that a copy of the notice, without the questions, must be filed with the TTAB.

Section 2.124(b)(2) provides for the kind of notice which must be served by a party desiring to take a discovery deposition upon written questions and further provides that a copy of the notice, without the questions, must be filed with the TTAB. This paragraph also provides that, if the name of the person to be deposed is not known to the party who will take the deposition, a general description sufficient to identify the class or group to whom the prospective witness belongs shall be stated in the notice and the party to be deposed shall designate one or more discovery witnesses.

Section 2.124(c) requires that every notice of deposition upon written questions name or describe by title the officer before whom the deposition will be taken.

Section 2.124(d)(1) specifies the procedure and timetable for serving the questions, objections, and substitute questions for a deposition upon written questions.

Section 2.124(d)(2) provides that the TTAB may reset the times specified in § 2.124(d)(1) and, when a testimonial deposition is to be taken upon written questions, shall suspend or reschedule other proceedings in the matter to allow for the completion of the deposition.

Section 2.124(e) provides the procedure for sending the notice and questions to the officer designated in the notice, the taking of the deposition, and the certification and mailing of the transcript to the party who took the deposition.

Section 2.124(f) provides for the service of copies of the transcript and exhibits, states that the party who took the deposition is responsible for the correctness of the transcript, permits the use of a discovery deposition as provided by § 2.120(j), and provides for the filing with the TTAB of a testimonial

deposition, a copy thereof, and the exhibits.

Section 2.124(g) states that objections to questions and answers may be considered at final hearing.

Section 2.125(a) provides for the service of a transcript of an oral testimonial deposition and the exhibits, and, in respect of that requirement, continues the rule of existing § 2.125(a).

Section 2.125(b) makes the party who took a deposition responsible for its correctness and for serving the adverse party with a corrected transcript or corrected pages.

Section 2.125(c) continues the requirement of existing § 2.125(a) that a certified transcript and the exhibits be filed promptly with the TTAB and further provides that notice of filing be served on the adverse party and that a copy of the notice be filed with the TTAB. The requirement for the filing of a copy of the transcript (in addition to the certified transcript), which appeared both in existing § 2.125(a) and in proposed § 2.125(c), has not been retained in the final rule since the TTAB does not really need the copy and the printing of it is an unnecessary expense for parties involved in proceedings before the TTAB.

Section 2.125(d) continues the requirements of existing § 2.125(b).

Section 2.125(e) provides that the TTAB, on motion, may order that any part of a deposition transcript or exhibits that directly disclose a trade secret or other confidential research, development, or commercial information may be filed under seal and kept confidential and provides for sanctions for failure to comply with the order.

Section 2.126 is deleted because the substance of the existing section has been shifted to § 2.122 (b)(2) and (c).

Paragraphs (a), (b), and (c) of § 2.127 clarify, and codify the practice under, existing paragraphs (a), (b), and (c) of that section.

Section 2.127(d) codifies the practice with respect to suspending all matters in a case not germane to a potentially dispositive motion until the determination thereof.

Section 2.128(a)(1) clarifies existing § 2.128(a) except that the rule requiring copies of a brief is shifted to final § 2.128(b).

Section 2.128(a)(2) codifies the practice of having the TTAB set the briefing schedule by order when proceedings are consolidated, or when there is a counterclaim, or when more than two parties are involved.

Section 2.128(a)(3) contains a new provision enabling the TTAB to enter judgment against a plaintiff who fails to

file a brief at final hearing and also fails to respond to an order to show cause why such judgment should not be entered against him or files a response indicating that he has lost interest in the case.

Section 2.128(b) clarifies and codifies the practice under the last sentence of existing § 2.128(a) and existing § 2.128(b).

Section 2.129(a) clarifies and codifies the practice under existing § 2.128(c) and existing § 2.129(a).

Section 2.129(b) clarifies existing § 2.129(b).

Section 2.129(c) clarifies existing § 2.129(c), from which the language referring to a decision on a motion which is finally dispositive of a case has been deleted because any requests for reconsideration or modification of a decision issued on a motion would be made under final § 2.127(b).

Section 2.131 clarifies and codifies the practice under existing § 2.131. The effect is to eliminate the dichotomy between inter partes and ex partes issues and to provide for the determination by the TTAB of all issues that have been expressly pleaded by the parties or tried by their express or implied consent and to reserve for remand to the examiner for reexamination only issues neither pleaded nor tried but which appear to make the mark of an applicant unregistrable.

Section 2.132(a) changes the practice under existing § 2.132(a) by eliminating the step of having the TTAB issue an order to the plaintiff to show cause why judgment should not be entered against him. Under amended § 2.132(a), the plaintiff will have fifteen days from the date of service of the defendant's motion for dismissal within which to show cause why judgment should not be rendered against the plaintiff.

Section 2.132(b) clarifies existing § 2.132(b).

Section 2.134(a) codifies the practice under existing § 2.134 that the written consent of the adverse party is required to avoid judgment against a cancellation respondent who applies to cancel his registration under section 7(d) of the Act of 1946 while the registration is involved in a proceeding.

Section 2.134(b) provides that, after the commencement of a cancellation proceeding, if it comes to the attention of the TTAB that a respondent (registrant) has permitted his registration to be cancelled under section 8 of the Act of 1946 or has failed to renew his registration under section 9 of the Act, an order may be issued allowing respondent until a set time in which to show cause why the resulting

demise of the registration should not be deemed to be the equivalent of a cancellation of the registration by request of the respondent without the written consent of the adverse party and should not result in entry of judgment against the respondent; and that, in the absence of a showing of good and sufficient cause, judgment may be entered against respondent. Section 2.134(b) is added to avoid situations where a respondent in a cancellation proceeding may moot the case and avoid judgment because of the fortuitous circumstance that his registration happens to reach its sixth anniversary or twentieth anniversary while a proceeding is pending and the respondent exploits this situation by simply failing to file an affidavit under section 8 of the Act or a renewal application under section 9 of the Act.

Section 2.135 codifies the practice under existing § 2.135, which is parallel to the practice under existing § 2.134 and final § 2.134(a), that the written consent of the adverse party is required to avoid judgment against an applicant who abandons his application or mark while the application is involved in an opposition, concurrent use or interference proceeding. It should be noted that existing § 2.135 begins, "If, in a proceeding, an applicant \* \* \*", but that the section as proposed referred only to "an opposition proceeding". The narrowing of the application of the rule in the section as proposed was an inadvertent error. In order to correct the error, the proposal to revise the section to include only a reference to an opposition proceeding is withdrawn. The wording of the beginning of final § 2.135, namely, "After commencement of an opposition, concurrent use, or interference proceeding, if the applicant \* \* \*", is legally equivalent to the beginning of existing § 2.135.

Section 2.142(a) clarifies existing § 2.142(a).

Section 2.142(b) requires the examiner to file with the TTAB a brief answering the appellant's brief and requires the examiner to file the brief within sixty days after appellant's brief is sent to the examiner by the TTAB. Section 2.142(b) as proposed required that the examiner's brief (referred to therein as a "statement") answer "every point in" the appellant's brief, whereas existing § 2.142(b) requires only that the examiner furnish a written statement "in answer to" appellant's brief. Upon further consideration, the proposal to modify § 2.142(b) to require that the examiner's brief answer "every point in" the appellant's brief is withdrawn since it is likely to result in briefs which are unduly lengthy. An appellant's brief may

contain points which are so insignificant, immaterial, etc. as to require no response.

Section 2.142(c) codifies the practice that all requirements made by the examiner and not the subject of appeal shall be complied with prior to the filing of an appeal.

Section 2.142(d) provides that the record in the application should be complete prior to the filing of an appeal, states that the TTAB will ordinarily not consider additional evidence filed with the TTAB by the appellant or by the examiner after an appeal is filed, and provides that either the appellant or the examiner may request the TTAB to suspend the appeal and remand the application for further examination if the appellant or the examiner desires to introduce additional evidence.

Section 2.142(e)(1) amends existing § 2.142(c), and codifies the practice under the existing rule, by changing the due date for a request for an oral hearing on an appeal from the date when the appellant's brief is filed to a date ten days after the due date for a reply brief.

Section 2.142(e)(2) requires the examiner to present an oral argument if an oral argument is requested by the appellant.

Section 2.142(e)(3) allots twenty minutes to the appellant for oral argument and ten minutes to the examiner for oral argument.

Section 2.142(f) provides for situations where, during an appeal, it appears to the TTAB that an issue not previously raised may render the mark of the appellant unregistrable, that is, when something on the face of the record on appeal indicates that a question concerning the registrability of the mark may exist but has not been considered. The paragraph provides the procedure to be followed by the TTAB, the Examiner, and the appellant when the TTAB suspends an appeal and remands an application on the TTAB's own initiative. The paragraph as amended includes certain words, namely, "to be completed", appearing in the phrase "and remand the application to the examiner for further examination to be completed within thirty days", which were not included in the paragraph as proposed. The words have been added in order to further clarify the intent of the paragraph and are not considered to result in a material alteration thereof. Further, for the reason indicated in connection with § 2.142(b), the words "every point in" have been omitted from § 2.142(f)(4).

Section 2.146 collects in one section the rules on petitions to the

Commissioner in existing §§ 2.146, 2.147, and part of § 2.148. For this reason existing § 2.147 is removed. In the notice of proposed rulemaking, it was also proposed that existing § 2.148 be deleted. The reason for the proposal was a belief that the entire substance of § 2.148 was incorporated in proposed § 2.146(a)(5), which provides that petition may be taken to the Commissioner in any extraordinary situation, when justice requires and no other party is injured thereby, to request a suspension or waiver of any requirement of the rules not being a requirement of the Act of 1946. However, existing § 2.148 provides that in an extraordinary situation, when justice requires and no other party is injured thereby, any requirement of the rules not being a requirement of the statute may be suspended or waived by the Commissioner. That rule is not limited to waiver upon petition but rather also encompasses waiver upon the Commissioner's own initiative. Inasmuch as the entire substance of existing § 2.148 is not incorporated in proposed and final § 2.146(a)(5), the proposal to remove § 2.148 is withdrawn.

Section 2.146(a) reflects the change in § 2.63(b) permitting petitions concerning some requirements which have been made final.

Section 2.146(b) delineates classes of questions which are not considered to be appropriate subject matter for petitions to the Commissioner. These questions are substantive issues of registrability of marks and are considered to be appropriate for appeal to the TTAB. Section 2.146(b) as proposed read "Questions arising under Sections 2, 3, 4, 5, 6 and 23 of the Trademark Act during the ex parte prosecution of applications are not considered to be appropriate subject matter for petitions to the Commissioner.", whereas paragraph (b) as adopted herein reads "Questions of substance arising during the ex parte prosecution applications, including, but not limited to, questions arising of under Sections 2, 3, 4, 5, 6, and 23 of the Act of 1946, are not considered to be appropriate subject matter for petitions to the Commissioner." The wording of the paragraph has been modified for purposes of clarification, and such modification is not considered to result in a material alteration of the paragraph.

Section 2.146(c) specifies the contents of a petition to the Commissioner, and in this respect clarifies requirements previously included in § 2.146(b).

Section 2.146(d) specifies the time limit for filing a petition on any matter not otherwise specifically provided for.

In proposed § 2.146(d), an attempt was made to list the matters otherwise specifically provided for. However, several matters were inadvertently omitted. In order to ensure that the rule is correct, the list has been omitted from the final rule.

Section 2.146(e) provides time limits and specifies the procedure for a petition to the Commissioner from the denial of a request for an extension of time to file an opposition or from an interlocutory order of the TTAB. Section 2.146(e)(1) contains a new requirement that a petition from the denial of a request for an extension of time to oppose must be served on the applicant or his attorney and provides for a response by the applicant to the petition.

Section 2.146(f) clarifies a provision previously included in § 2.146(c).

Section 2.146(g) clarifies and codifies the practice previously under § 2.146(d) and, in addition, makes § 2.146 consistent with §§ 2.63(b) and 2.65, as adopted herein.

Section 2.146(h) codifies the practice previously under § 2.146(e) whereby authority to act on classes of petitions, in addition to any particular petition, may be delegated.

Paragraphs (a), (b), and (c) of § 2.165 specify the procedure when an affidavit or declaration filed under section 8 of the Act of 1946 is refused. The steps to be taken by the registrant to request reconsideration and to petition to the Commissioner and the time limits for such requests and petitions are stated.

Section 2.165(d) states that a petition to the Commissioner for review of the action refusing the affidavit or declaration under section 8 of the Act of 1946 shall be a condition precedent to an appeal to or action for review by any court. This implements section 21 (a)(1) and (b)(1) of the Act, which provides, inter alia, that a registrant who has filed an affidavit under section 8 of the Act who is dissatisfied with the decision of the Commissioner may appeal to the U.S. Court of Appeals for the Federal Circuit or may have remedy by a civil action.

Section 2.173(b) clarifies the circumstances in which an amendment of the identification of goods or services of a registration is permitted. The rules states that an identification of goods or services can be restricted or can be otherwise changed in ways that would not require republication of the mark.

Paragraphs (a), (b), and (c) of § 2.184 specify procedures and time limits for relief when an application for renewal of a registration under section 9 of the

Act of 1946 is refused, in parallel with final § 2.165.

Section 2.184(d) is parallel to final § 2.165(d) and has the same statutory basis.

Section 2.186 clarifies and codifies the practice under existing § 2.186 that action with respect to an assigned application or registration may be taken by the assignee provided that the assignment has been recorded.

#### Response to Comments on the Rules

The written comments and oral testimony offered in response to the notice of proposed rulemaking published in the *Federal Register* on June 29, 1982 have been given careful consideration, and a substantial number of the suggested modifications have been adopted. The comments and responses (except those pertaining to §§ 2.101, 2.102, 2.103, 2.111, and 2.112, which were included in the final rule notice published in the *Federal Register* on January 28, 1983 at 48 FR 3972) appear below:

*Comment:* In response to the proposal to amend § 2.20 by adding a new paragraph (b) to codify a particular practice relating to the verification of oppositions and petitions for cancellation, one organization noted that the question of verification of oppositions and petitions for cancellation appeared to be moot in view of Pub. L. 97-247; indicated its belief, with respect to the phrase "person who is authorized to sign" in proposed § 2.20(b), that the rules pertaining to oppositions and petitions for cancellation should be amended to require that when an opposition or petition for cancellation is signed on behalf of a corporation or an association by a person who is authorized to sign the document but who is not an officer, the person must represent that he has such authority; and submitted its proposal for a substitute § 2.20 (modeled on the corresponding patent rule, § 1.68) which is broader in scope than present § 2.20.

*Response:* Inasmuch as Pub. L. 97-247 has amended the Trademark Act of 1946 so as to eliminate the requirement for verification of oppositions and petitions for cancellation, the proposal to amend § 2.20 by adding a new paragraph (b) relating to verification of oppositions and petitions for cancellation has been withdrawn. The other two suggestions involve substantive rule changes which are outside the scope of the proposed rule changes as published and hence cannot be adopted without affording members of the public an opportunity to comment thereon. However, these

suggestions will be considered in connection with any future proposals to amend the rules in question. In this regard, it should be noted that when an opposition or petition for cancellation is signed by a person whose authority to sign is not apparent, it is the practice of the Trademark Trial and Appeal Board to inquire as to that person's authority to sign.

*Comment:* One organization suggested that the word "Anything" be substituted in proposed § 2.27(e) for the phrase "Any documents, tangible things, answer to interrogatories, or all or any part of any discovery or testimonial deposition transcripts" because the attempt to list all of the types of things subjected to the rule might invite disputes as to whether particular items are covered. The same organization suggested that the following sentence be added to paragraph (e): "When possible, only confidential portions of filings with the Board shall be filed under seal."

*Response:* The paragraph has been modified as suggested.

*Comment:* One organization and three members of another organization suggested that proposed § 2.64(b), which concerns requests for reconsideration after final action by the examiner, be modified to require that any request for reconsideration filed within three months of the final action be responded to by the examining attorney before the time for appeal.

*Response:* The six-month period for appealing from a final refusal of registration, or for complying with a requirement which has been made final, or for petitioning the Commissioner [if permitted by § 2.63(b)] with respect to such a requirement, is statutory, and the Patent and Trademark Office cannot guarantee that any request for reconsideration filed within three months of the final action will be responded to by the examining attorney before the time for appeal. However, the paragraph has been modified to provide that normally the examiner will reply to a request for reconsideration before the end of the six-month period if the request is filed within three months after the date of the final action.

*Comment:* Two organizations expressed disapproval of the final sentence of proposed § 2.64(b), which reads: "Amendments accompanying requests for reconsideration after final action will be entered if they place the application in condition for publication or in better form for appeal." The organizations criticized this provision as being unduly restrictive and vague, and suggested that the subsection be modified to permit any amendment that complies with the Trademark Act of

1946 and the Rules of Practice in Trademark Cases.

*Response:* The paragraph has been modified as suggested.

*Comment:* One organization suggested that proposed § 2.65(a), which includes a reference to proposed § 2.63(b), be modified to include also a reference to proposed § 2.146, for the asserted reason that if reference is made to other sections of the rules, the reference should include all the most pertinent rules.

*Response:* The Paragraph has been modified as suggested.

*Comment:* Two organizations urged with respect to proposed § 2.65(b) (which concerns the filing of an incomplete response to an examiner's action), that the word "may" in the clause "opportunity to explain and supply the omission may be given before the question of abandonment is considered" be changed to "shall".

*Response:* The suggestion has not been adopted. A requirement that an opportunity to explain and supply an omission be given in every case would result in a significant increase in the work load of the Trademark Examining Operation and hence an undue burden upon the Patent and Trademark Office. Accordingly, the word "may" has been retained in the final paragraph so as to leave the Trademark Examining Attorney with the discretion to determine whether such an opportunity should be given, depending upon the nature of the omission. The final paragraph parallels corresponding patent § 1.135(c).

*Comment:* One member of one of the organizations commented that as a result of the proposed revision of § 2.72 (which would allow non-material changes in the drawing of a mark to be supported by specimens which were not necessarily in use at the time the original application was filed), an applicant might amend its mark sought to be registered in order to overcome a reference under section 2(d) of the Trademark Act of 1946.

*Response:* The proposed revision might well have the result suggested in the comment, and an amendment for such a purpose would not be wrong, in and of itself. However, upon further consideration it appears that the proposed revision might result in so many amendments to marks as to constitute a burden upon the Patent and Trademark Office. Accordingly, the proposal to revise § 2.72 in the manner described above is withdrawn. A second proposal to change the last sentence of § 2.72 from "Amendments may not be made if the nature of the mark is changed thereby." to

"Amendments may not be made if the character of the mark is materially altered.", so that the standard for amendment will be the same as the standard for amendment of registered marks (see section 7(d) of the Act of 1946), is adopted.

*Comment:* One organization commented, with respect to proposed § 2.81, that there is a typographical error in the first line of the section, namely, that "with" should be "within." Another organization noted certain errors in the corrections to proposed § 2.121(b)(1) and (c) published in the Federal Register at 47 FR 32955.

*Response:* The noted errors were made in printing. They do not appear in the original text of the notice of proposed rulemaking which was prepared and retained by the Patent and Trademark Office.

*Comment:* One individual, one organization, and one member of another organization expressed their belief that the second sentence in proposed § 2.99(a) (which states, "The examiner may require an applicant for registration as a concurrent user to make a prima facie showing that the applicant is entitled to a concurrent use registration") is too vague to be of help in drafting a concurrent use application, and suggested that this portion of the paragraph either be deleted or made more specific.

*Response:* Upon further consideration, it appears that the subject matter of this portion of the subsection should be developed either through decisional law or in the Trademark Manual of Examining Procedure. Accordingly, the sentence has been deleted.

*Comment:* Proposed § 2.99(f) lists the conditions which must be met when an applicant seeks to obtain a concurrent use registration under the provisions of section 2(d) of the Act of 1946 based on a court decree, without the necessity of a concurrent use proceeding in the Patent and Trademark Office. One organization urged that the fifth condition (which states: "the excepted use specified in the concurrent use application does not involve a registration") be deleted for the reason that it is vague and, in any event, inappropriate where the registration involved was otherwise before the court.

*Response:* When the excepted use specified in a concurrent use application based on a court decree involves an unrestricted registration, a concurrent use registration proceeding must be instituted in order that the Trademark Trial and Appeal Board may restrict the registration in accordance with the court decree. In such cases, the concurrent use



registration proceeding does not go forward to trial but rather is terminated on the basis of the court decree immediately after institution of the proceeding. However, if the registration has been restricted by the Commissioner in accordance with the court decree, and the other conditions listed in paragraph (f) have been met, there is ordinarily no need for a concurrent use registration proceeding. Accordingly, paragraph (f) has been modified to read: "the excepted use specified in the concurrent use application does not involve a registration, or any involved registration has been restricted by the Commissioner in accordance with the court decree."

*Comment:* One organization noted that in §§ 2.104 and 2.105, as proposed, the term "opposition", when used to refer to the complaint in an opposition proceeding, has been changed to "notice of opposition". The organization expressed its belief that there is no reason for reverting to the phrase "notice of opposition" except tradition, and that that phrase is confusingly similar to the phrase "notification of opposition".

*Response:* The proposal to change "opposition" to "notice of opposition" in certain instances has not been adopted.

*Comment:* One organization commented that proposed § 2.113 should be modified to indicate that the effective filing date of a petition for cancellation will be the date that the statutory requirements, including payment of the required fee(s), are satisfied. The organization indicated that it was concerned here and elsewhere (see comment and response pertaining to § 2.111 in the final rule notice published in the *Federal Register* on January 28, 1983 at 48 FR 3972) about cases in which an incomplete filing is made within five years of the date of registration and not perfected until the five-year period of section 14(a) of the Act of 1946 has passed. The organization also suggested that the section be modified to include a cross-reference to existing § 2.118, which pertains to undelivered notifications.

*Response:* The section has been modified to include a cross-reference to § 2.118. Additionally, the first clause in the section, which as proposed read "When a petition for cancellation has been filed in proper form and the correct fee(s) have been submitted," has been modified by the inclusion of a cross-reference to §§ 2.111 and 2.112 and by the deletion of the words "and the correct fee(s) have been submitted," so that the modified clause reads "When a petition for cancellation has been filed in proper form (see §§ 2.111 and 2.112)," Section 2.111, as amended effective

February 27, 1983 (see the final rule notice published in the *Federal Register* on January 28, 1983 at 47 FR 3972) provides in effect that the filing date of a petition for cancellation with respect to each named party petitioner and each class sought to be cancelled is the date of receipt in the Patent and Trademark Office of the petition together with the required fee for that party petitioner and class, and that is those cases where the five-year limitation of sections 14 (a) and (b) of the Acts of 1946 is applicable, the petition and required fee(s) must be filed prior to the expiration of the five-year period. Section 2.112, as amended effective February 27, 1983, pertains to the proper form for a petition for cancellation.

*Comment:* One organization stated, with respect to proposed § 2.117(b), that it failed to appreciate the necessity for requiring that issue be joined in both the civil action and the proceeding in the Patent and Trademark Office before the Trademark Trial and Appeal Board will consider suspension of the Board proceeding pending the outcome of the civil action. The organization also noted that the retained paragraph of § 2.117 needs a paragraph reference, i.e., "(a)".

*Response:* The retained paragraph of § 2.117 has designated been "a". Insofar as proposed paragraph (b) is concerned, it is not in fact the practice of the Board to require that issue be joined in the civil action before suspension of the Board proceeding will be considered [see *Tokaido v. Honda Associates, Inc.*, 179 USPQ (TTAB 1973)]. Moreover, while it may not be possible in some cases to determine whether a civil action is likely to be determinative of a proceeding before the Board until an answer has been filed in one or both proceedings, in other cases it is feasible and advantageous to suspend prior to answer. Accordingly, proposed § 2.117(b) has been withdrawn, and proposed paragraphs (c) and (d) have been redesignated (b) and (c).

*Comment:* One organization suggested that suspension be considered automatic upon the showing of the institution of a civil action between the parties provided that the party in the position of plaintiff in the Board proceeding has neither commenced taking testimony nor filed any evidence in such proceeding.

*Response:* It is the normal practice of the Board to suspend under the circumstances outlined in the comment if it appears that the civil action may be dispositive of the proceeding before the Board. However, even under these circumstances there are times when it may be desirable to go forward with the Board proceeding, as, for example, when

the civil court has a large backlog or suspends its own action pending the final determination of the Board proceeding. Accordingly, it is believed that the matter of suspension should be left to the discretion of the Board, and the suggested amendment has not been adopted.

*Comment:* With respect to § 2.117(b) [identified in the notice of proposed rulemaking as § 2.117(c)], which as proposed reads "Whenever there is pending, at the time when the question of the suspension of proceedings is raised, a motion which is potentially dispositive of the case, the motion will be decided before the question of suspension will be considered.", one organization and two members of another organization suggested that the phrase "the motion will be decided" be changed to "the motion may be decided", so that the Board will have the discretion to either suspend or rule in such a case, and will not be compelled to determine the motion before it if, for example, a similar motion is pending in the civil action.

*Response:* The paragraph has been modified in accordance with this suggestion.

*Comment:* Four members of one organization objected to proposed § 2.120(c)(2) (which provides in effect that whenever a foreign party or its officers, etc., is or will be in the United States during a discovery period, such party may be deposed in the United States by oral examination upon notice by the party seeking discovery). The reason given for the objection was that the foreign officer could be seriously inconvenienced because of the proposed rule, which invites abuse.

*Response:* While it is true that a foreign officer who is traveling in the United States on other business might find it inconvenient to have his oral discovery deposition taken, it is equally true that there are instances in which it is inconvenient for a domestic officer to have his oral deposition taken. Further, there can be no doubt that the oral deposition is a far better discovery device than the deposition upon written questions. It is believed that the advantages offered by the oral deposition outweigh the disadvantage of possible inconvenience. Accordingly, proposed § 2.120(c)(2) is being adopted herein as a final rule.

*Comment:* With respect to proposed § 2.120(d), which provides for the production of documents, in response to a request for production of documents, at the place where the documents are usually kept, or where the parties agree, or where and in the manner which the

Trademark Trial and Appeal Board, upon motion, orders, one individual suggested that the paragraph be modified to require that the party upon which the request is served respond to the request by sending copies of all documents requested to the party making the request.

*Response:* The purpose of § 2.120(d) is to permit the Board, upon motion, to order that a party produce requested documents by photocopying and mailing them to the requesting party at the latter's expense. However, inasmuch as there are cases in which some other manner of production is more appropriate or feasible, the manner of production is a matter which is better left to the discretion of the Board. Accordingly, the suggestion has not been adopted.

*Comment:* One individual suggested that proposed § 2.120(e), which concerns motions to compel discovery, be modified to provide that if counsel for the parties reach an agreement relating to a disputed discovery matter, a motion may be brought to enforce the agreement.

*Response:* Inasmuch as it is not the function of the Board to enforce agreements between parties, this suggestion has not been adopted. However, a party may always argue the existence of such an agreement as a factor bearing on the merits of a motion to compel discovery.

*Comment:* With respect to proposed § 2.120(i) (which provides, in essence, that the Board may at its discretion request that the parties come to its offices for a pre-trial conference when pre-trial questions or issues have been so complex that their resolution by correspondence or telephone conference is not practical), one individual, noting that the paragraph provides for a pre-trial conference at the Board's option and discretion, suggested that the paragraph be modified to indicate that such a conference may also be requested by a party to a proceeding but that the Board be left with the discretion to grant the request. The same individual also suggested that the paragraph, which as proposed contains only a passing reference to a "telephone conference", be broken into two parts, the first being devoted to the telephone conference (with provision therefor at the option of the Board or at the request of a party to a proceeding, but again leaving the Board with discretion to grant the request), and the second being devoted to the pre-trial conference. The individual expressed his belief that attorneys should be made aware of the telephone conference procedure since it

can be very useful to them as well as to the Board.

*Response:* The paragraph has been modified as suggested to include two paragraphs and to provide that the Board may utilize the telephone and pre-trial conference procedures either upon its own initiative or upon request made by one or both of the parties. Although neither of the new paragraphs contains the words "at its discretion," both contain the words "the Board may," which clearly indicate that the utilization of these procedures is a matter which is left to the discretion of the Board.

*Comment:* A number of comments were received with respect to proposed § 2.120(j), which pertains to the use of discovery depositions, admissions, or answers to interrogatories. Two organizations noted that proposed § 2.120(j)(2) (which incorporates the "fairness exception" of Rule 32(a)(4) of the Federal Rules of Civil Procedure ("F.R.C.P.") apparently limits the use of discovery depositions only to the inquiring party, while Rule 32(a)(4) F.R.C.P. allows the use of the deposition for any purpose by either party once the adverse party has relied upon any part of it. These organizations recommended that the paragraph be modified to follow Rule 32(a)(4) F.R.C.P. One organization objected to proposed § 2.120(j)(3) (which permits the introduction into evidence on motion of the discovery deposition of a non-party under certain circumstances provided that the motion is filed promptly after the circumstances claimed to justify use of the deposition become known) on the ground that the timing requirement for the motion is unnecessary and unduly restrictive and that the better practice would be to let the motion be filed at the time of the purported offer of the deposition into evidence. Another organization recommended that consideration be given to permitting much greater use of non-party discovery depositions than permitted by proposed § 2.120(j)(3), or at least that the burden imposed by the last of the listed instances in which such depositions may be introduced into evidence, namely, "upon a showing of extraordinary circumstances and necessity in the interest of justice", should be lessened. Three members of one organization commented that any party, not just the deposing party, should be able to make a discovery deposition of record if its use at trial is permitted by Rule 32 F.R.C.P. Finally, one individual noted that proposed § 2.120(j), which permits only the inquiring party to introduce a discovery deposition into evidence (unless the

"fairness exception" applies), conflicts with Rule 32(a)(2) F.R.C.P., which provides that a deposition of a party "may be used by an adverse party for any purpose", and with Rule 32(a)(3) F.R.C.P., which provides that the deposition of "a witness, whether or not a party, may be used by any party for any purpose" in the limited circumstances corresponding to those set forth in proposed § 2.120(j)(3) (except for the 100-mile exception, which is not applicable to proceedings before the Trademark Trial and Appeal Board). This individual submitted a suggested alternative text for § 2.120(j) which conforms to Rule 32(a) F.R.C.P. by (a) eliminating the restriction in proposed § 2.120(j) (1) and (2) that only the inquiring party may offer a discovery deposition in evidence, and (b) broadening proposed § 2.120(j)(2) to cover any "witness, whether or not a party". In the suggested text, paragraphs (1)-(3) of proposed § 2.120(j) are also reorganized and rearranged for clarity.

*Response:* The text suggested by the individual has been adopted with certain modifications in order to resolve the conflicts and objections noted by this individual and others, as outlined above. In the final paragraph, the text of § 2.120(j)(1) follows the text of Rule 32(a)(2) F.R.C.P. The text of the discovery deposition "fairness exception", which appears in final § 2.120(j)(4), is essentially the same as the text of Rule 32(a)(4) F.R.C.P. The provision relating to the introduction into evidence, by order of the Board upon motion, of the discovery deposition of a non-party under certain circumstances [which appears in final § 2.120(j)(2)] has been broadened to permit the introduction, by order of the Board upon motion, of the discovery deposition of a witness, whether or not a party, by any party under the stated circumstances. The final such circumstance, which in the proposed paragraph read "upon a showing of extraordinary circumstances and necessity in the interest of justice", has been modified to read "upon a showing that such exceptional circumstances exist as to make it desirable, in the interest of justice, to allow the deposition to be used," which closely follows the wording of Rule 32(a)(3) F.R.C.P. The timing requirement for a motion filed under the paragraph has been changed from "filed promptly after the circumstances claimed to justify use of the deposition became known" to "filed at the time of the purported offer of the deposition in evidence" for all such motions except those based upon a claim of exceptional circumstances. In

the latter instance, the proposed timing requirement, namely, "filed promptly after the circumstances claimed to justify use of the deposition became known", has been retained in the final rule for two reasons: first, to provide an adverse party with the best possible opportunity to investigate the claim of exceptional circumstances, and second, so that in those cases where the circumstances become known prior to the taking of the deposition, the motion will be filed, and hence can be determined, before the deposition is taken. Finally, in order to make it clear that once a discovery deposition, or a part thereof, or an answer to an interrogatory, or an admission, has been properly made of record by one party, it may be referred to by any party for any purpose permitted by the Federal Rules of Evidence, a provision to that effect, identified as paragraph (j)(7), has been included in the final paragraph.

*Comment:* With respect to proposed § 2.122(c)(2) (which provides that a registration owned by a party to a proceeding may be made of record by that party by filing a notice of reliance accompanied by a certified copy of the registration showing current status and title), two organizations and three members of another organization objected to the requirement for certification of the status and title copies as being unnecessary, expensive, and unduly harsh. One of these organizations, noting that proposed § 2.122 is modified to eliminate the practice set forth in existing § 2.122(b) (which provides that a registration of an opposer or petitioner pleaded in an opposition or petition to cancel will be received in evidence and made part of the record if two copies showing status and title of the registration or an order for such copies accompany the opposition or petition), expressed its belief that, accepting the Patent and Trademark Office's position that the practice set forth in existing § 2.122(b) has caused delays and problems for the Office, still there is no reason for requiring that the status and title copies of the registration be certified when made of record, pursuant to proposed § 2.120(c)(2), by the filing of a notice of reliance during the testimony period of the party filing the notice.

*Response:* The proposal to require that status and title copies of registrations also be certified has not been adopted herein. Further, since the only part of existing § 2.122(b) which caused trouble was the provision involving the submission of an order for status and title copies with the complaint, the proposal to modify

existing § 2.122 by eliminating that provision is adopted herein, but the proposal to eliminate the provision involving the submission of actual status and title copies with the complaint is withdrawn. Hence, final § 2.122 provides, in paragraph (d)(1), that a registration of the opposer or petitioner pleaded in an opposition or petition to cancel will be received in evidence and made part of the record if the opposition or petition is accompanied by two copies of the registration prepared and issued by the Patent and Trademark Office showing both the current status of and current title to the registration.

*Comment:* One organization suggested that the word "competent" should be inserted before the word "evidence" in two (unspecified) places in proposed § 2.122(b)(2) and in one place in proposed § 2.122(b)(3), and that the first clause in proposed § 2.122(c)(2) be changed from "A registration owned by any party to a proceeding may be made of record in the proceeding by that party by filing a notice of reliance," to "A registration owned by any party to a proceeding may be made of record in the proceeding by that party by appropriate identification and introduction during the proper testimony period or by filing a notice of reliance." The same organization also submitted a suggested plan for reorganizing proposed § 2.122 and for giving each paragraph therein a heading. Three members of another organization expressed their agreement with these suggestions.

*Response:* The suggested plan for reorganization and for headings has been adopted herein with certain minor modifications necessitated by the response to the foregoing comment (e.g., the comment concerning the introduction of registrations in evidence).

The word "competent" has been inserted before the word "evidence" only once in final § 2.122(b)(2) and not at all in final § 2.122(c) [identified in the notice of proposed rulemaking as § 2.122(b)(3)]. The clauses in these paragraphs where the word "competent" might have been, but was not, inserted before the word "evidence" read "The allegation in an application for registration, or in a registration, of a date of use is not evidence on behalf of the applicant or registrant"; "Specimens in the file of an application for registration, or in the file of a registrant, are not evidence on behalf of the applicant or registrant \* \* \*"; and "An exhibit attached to a pleading is not evidence on behalf of the party to whose pleading the exhibit is attached \* \* \*"

The reason why the word "competent" was not inserted in these instances is that in each one the matter in question is not evidence *on behalf of the named party* at all (although specimens, or the allegation of a date of use, for example, may be used as evidence against an applicant or registrant, e.g., as an admission against interest).

Finally, the first clause in proposed § 2.122(c)(2) [identified herein as § 2.122(d)(2)] has been modified to read "A registration owned by any party to a proceeding may be made of record in the proceeding by that party by appropriate identification and introduction during the taking of testimony or by filing a notice of reliance." There is a slight difference between the clause as adopted and the clause as suggested by the organization (the organization's suggested wording "during the proper testimony period" has been changed to "during the taking of testimony"). The change in the wording was made so that it would be clear that this portion refers to identification and introduction during the taking of testimony as distinguished from identification and introduction by notice of reliance. This change is not to be construed as an indication that such identification and introduction does not have to be made "during the proper testimony period"; with the deception of status and title copies of a plaintiff's pleaded registration submitted with the complaint, any evidence which a party offers on the case must be offered during the proper testimony period.

*Comment:* With respect to proposed § 2.123(a)(1) (which provides, *inter alia*, that if a party serves notice of the taking of a testimonial deposition upon written questions of a witness within the United States, any adverse party may, within fifteen days from the date of service of the notice, file a motion with the Trademark Trial and Appeal Board, for good cause, for an order that the deposition be taken by oral examination), one individual, noting that the procedure for taking testimony by written questions is unsatisfactory and often frustrating, suggested that the paragraph be changed to require that a party seeking to utilize this procedure (in lieu of an oral examination) file a motion requesting, for good cause shown, permission to by-pass the oral examination of its witness, that is, that the burden of filing a motion and showing good cause be shifted to the party who wants to take testimony upon written questions.

*Response:* If the burden of filing the motion were shifted in the manner suggested, the Trademark Trial and

Appeal Board would have to rule on a motion in every case where a party desires to take testimony by written questions. Under the rule as proposed, the Board would have to rule on a motion only in those cases where one party desires to take testimony by written questions and the adverse party objects to the use of this procedure in lieu of an oral deposition. Often, the adverse party does not object. Moreover, Rule 31 F.R.C.P., which provides for the use of depositions upon written questions in federal district courts, does not require that a party who wishes to use this procedure file a motion requesting permission to do so. Accordingly, this suggestion has not been adopted.

*Comment:* Two organizations commented that proposed paragraphs (j) and (k) of § 2.123, which relate to the raising of objections to testimony depositions taken in inter partes proceedings, appear to be inconsistent and unclear as to the timing of objections. Both organizations suggested that the paragraphs be modified to rely upon the pertinent portion of the Federal Rules of Civil Procedure, namely, Rule 32(d)(3). Similarly, one individual commented that proposed paragraph (k) is ambiguous as to the timing of an objection to testimony based upon lack of competency of the witness.

*Response:* In order to improve their consistency and clarity, the paragraphs have been modified as suggested. It should be noted that the result of the modification of paragraph (j) is that if a party fails to attend the taking of a deposition, he thereby waives any objection which under Rule 32(d)(3)(A) and (B) F.R.C.P. is deemed to be waived if not made at the taking of the deposition. This is a significant change from existing § 2.123(j), which permits the raising of formal or technical objections as soon as a party becomes aware of them, e.g., in the case of a party who did not attend the taking of a deposition, at the time when such party receives a copy of a transcript of the deposition.

*Comment:* With respect to the same paragraphs, one individual suggested that the Trademark Trial and Appeal Board entertain and determine, prior to the briefing period, motions to strike testimony, so that parties to a proceeding before the Board will know exactly what is in the record when they write their briefs.

*Response:* The adoption of this suggestion would put an intolerable burden on the Board because the Board would have to read testimony depositions both at the time of determination of a motion to strike them

and again at final hearing. It is the longstanding policy of the Board not to read trial testimony taken in a proceeding before it, or to examine other evidence offered by the parties in support of their respective cases, until final hearing. See, for example: *Curtice-Burns, Inc. v. Northwest Sanitation Products, Inc.*, 182 USPQ 572 (Comr. 1974), and *Clairol Incorporated v. Holland Hall Products, Inc.*, 161 USPQ 616 (TTAB 1969). Accordingly, the suggestion has not been adopted.

*Comment:* With respect to proposed § 2.124(d)(2) (which provides in part that when one or more testimonial depositions are to be taken upon written questions, the Trademark Trial and Appeal Board may suspend or reschedule other proceedings in the matter to allow for the orderly completion of the depositions upon written questions), one individual expressed his belief that when the Board receives notice that a deposition is to be taken upon written questions, it should immediately suspend proceedings for a sixty-day period to allow for the completion of the deposition, thereby avoiding unnecessary motions to extend the trial periods.

*Response:* The paragraph has been modified to provide that in such situations the Board "shall" suspend or reschedule other proceedings in the matter to allow for the orderly completion of the deposition. The length of the suspension has been left to the discretion of the Board since the time required to complete the taking of a deposition upon written questions varies according to the place where the witness is located.

*Comment:* One organization, noting that the words "the letter" in proposed § 2.124(e) have no antecedent and hence create an unnecessary ambiguity, suggested that the words "the notice and of all of the questions mailed" be substituted therefor. With respect to the statement in proposed § 2.124(f) that it is the responsibility of the party who takes a deposition upon written questions to assure that the transcript is correct, the same organization suggested that the paragraph be modified to include a cross-reference to proposed § 2.125(b), which specifies procedures for correcting transcripts.

*Response:* The paragraphs have been modified as suggested.

*Comment:* With respect to proposed §§ 2.27(e), 2.120(f), and 2.125(e), which relate to the provision, in inter partes proceedings before the Trademark Trial and Appeal Board, of certain types of discovery information, and the submission of certain types of trial evidence, under protective order, one

individual commented that the proposed rules would appear to permit parties to keep virtually all relevant information confidential from the public at large.

*Response:* Under the rules as proposed and adopted, only trade secrets and confidential information are held under seal and kept confidential by the Board. Very little of the evidence offered in inter partes proceedings before the Trademark Trial and Appeal Board is of this nature.

*Comment:* Two organizations objected to proposed § 2.128(a)(3) (which provides in essence that when a party fails to file a brief on the case, the Trademark Trial and Appeal Board may treat such failure as a concession of the case) on the grounds that the proposed rule is unduly harsh; that it constitutes an abrogation of the Board's responsibility to decide cases on the record before it, regardless of the absence of briefs; that the granting or denial of a registration with its evidentiary presumptions is too important an issue to be decided on the basis of a presumed concession; and that a party who fails to file a brief should at least be given an opportunity to show cause why judgment should not be entered against him for such failure. Similarly, one member of another organization believes that the proposed rule would encourage the filing of spurious oppositions in cases where the opposer feels that the applicant may not be in a position to afford the legal fees required for preparing a brief.

*Response:* For the reasons indicated in the comments, proposed § 2.128(a)(3) has been modified to refer only to the party in the position of plaintiff, and proposed § 2.128(a)(1) has been modified to make it clear that the filing of a brief on the case is not mandatory for the party in the position of defendant. Further, the primary purpose of proposed § 2.128(a)(3) was to save the Board the burden of determining cases of the merits in instances where the parties have settled, but have failed to inform the Board thereof, or where one party, particularly the plaintiff, has lost interest in the case. It is not the intention of the Board to enter judgment against a plaintiff for failure to file a brief on the case if the plaintiff still desires to obtain a determination of the case on the merits. Accordingly, proposed § 2.128(a)(3) has been modified herein to provide an opportunity for the plaintiff who fails to file a main brief on the case to show cause why such failure should not be treated as a concession of the case. Additionally, the paragraph has been modified to indicate that judgment may

be entered against a plaintiff for failure to file a main brief only if plaintiff fails to file a response to the order to show cause or files a response indicating that he has lost interest in the case.

*Comment:* One organization, noting that proposed § 2.128(b) permits briefs to be filed on legal or letter size paper, suggested that since the federal courts now permit only the use of letter size paper, consideration should be given to requiring that briefs and all other formal papers filed in the Patent and Trademark Office be on letter size paper only. With respect to the same paragraph, one individual recommended, because of the different paper sizes permitted under the rule, that the rule be modified to specify the number of words that a brief can contain or, alternatively, to specify separately the number of pages permitted for briefs written on each size of paper. The same individual suggested that it should be made clear that the permitted number of pages in a brief does not include pages containing the index and the alphabetical list of cases.

*Response:* The paragraph has been modified to require that briefs be submitted on letter size paper. As to what is included within the specified page limitations, the paragraph as proposed and adopted states in part that "no brief shall contain more than fifty pages of argument and, in the case of a reply brief, the entire brief shall not exceed twenty-five pages" (emphasis added). It is believed that the paragraph as written clearly indicates that the fifty-page limitation for a main brief applies only to the length of the argument and does not include the index and case list pages, but that the twenty-five page limitation for a reply brief applies to the entire brief, e.g., argument, index, case list, and all. Accordingly, no further modification has been made.

*Comment:* With respect to proposed § 2.134(b) (which provides that if the respondent in a cancellation proceeding permits his involved registration to be cancelled under section 8 of the Act of 1946 or fails to renew the registration under section 9 of the Act of 1946, such cancellation or failure to renew shall be deemed to be the equivalent of a cancellation by request of respondent without the consent of the adverse party and shall result in entry of judgment against respondent), two organizations commented that the judgment entered against a respondent under the proposed paragraph would have a res judicata effect; that the entry of such a judgment would be unduly harsh where the cancellation or expiration was the result of an inadvertence or mistake; and that,

at a minimum, a respondent should be allowed to "show cause" why such a judgment should be entered. Similarly one individual commented that in such situations, a respondent whose use of its registered mark has in fact been discontinued should be put in a position whereby it can terminate the dispute with prejudice only as to the ground of abandonment.

*Response:* The paragraph has been modified to provide an opportunity for the respondent in such situation to "show cause" why judgment should not be entered against it. If respondent submits a showing that the cancellation or expiration was the result of an inadvertence or mistake, judgment will not be entered against it. If respondent submits a showing that the cancellation or expiration was occasioned by the fact that its registered mark had been abandoned and that such abandonment was not made for purposes of avoiding the proceeding but rather was the result, for example, of a two-year period of nonuse which commenced well before respondent learned of the existence of the proceeding, judgment will be entered against it only and specifically on the ground of abandonment.

*Comment:* Apparently with respect to proposed § 2.135 (which provides that after the commencement of an opposition proceeding, if applicant files a written abandonment of the application or of the mark without the written consent of every adverse party, judgment shall be entered against the applicant), one individual expressed his belief that if an applicant involved in an opposition were allowed to abandon its mark or application without the consent of the opposer without incurring entry of judgment against itself, more applicants would abandon, thus saving money for the Patent and Trademark Office.

*Response:* The purpose of § 2.135 is to prevent an applicant involved in an opposition from abandoning its opposed application and then refile, thus putting opposer (and the Patent and Trademark Office) to the expense of multiple proceedings. A rule to the contrary would be inequitable. Accordingly, § 2.135 has not been modified in the manner suggested by this comment.

*Comment:* One individual questioned the necessity for the requirement in proposed § 2.142(e)(2) that if the appellant in an ex parte proceeding requests an oral argument, the examiner who issued a refusal of registration or a requirement from which an appeal is taken, or in lieu thereof another examiner from the same examining division as designated by the

supervisory attorney thereof, shall present an oral argument.

*Response:* The purpose of the requirement is to ensure that the examining attorney will be present at the oral hearing to respond to any new arguments raised by appellant and to answer any questions which the members of the panel assigned to hear the case may have. The examining attorney's oral argument need not be lengthy; if he/she has nothing to add to what he/she has already said in his/her appeal brief, he/she may simply say so.

*Comment:* With respect to the last sentence of proposed § 2.165(a) (which states in essence that the certificate of mailing procedure provided by § 1.8 does not apply to affidavits or declarations filed under section 8 (a) or (b) of the Act), one organization expressed its belief that the sentence should be deleted in light of H.R. 6260.

*Response:* H.R. 6260, which was enacted on August 27, 1982 as Pub. L. 97-247, amended 35 U.S.C. 21 to include a provision that the Commissioner may by rule prescribe that any paper or fee required to be filed in the Patent and Trademark Office will be considered filed in the Office on the date on which it was deposited with the United States Postal Service or would have been deposited with the United States Postal Service but for postal service interruptions or emergencies designated by the Commissioner. As a result thereof, a new section, § 1.10, effective February 27, 1983, has been added, by final rule notice published in the *Federal Register* on January 20, 1983 at 48 FR 2696, to Part I of Title 37 CFR. The new section provides a procedure for assigning the date on which any paper or fee is deposited as "Express Mail" with the United States Postal Service as the filing date of the paper or fee in the Patent and Trademark Office. Inasmuch as this new section applies to "any paper or fee", it applies to affidavits or declarations filed under section 8 (a) or (b) of the Act of 1946. However, the § 1.8 certificate of mailing procedure has not been eliminated, and that section still specifically provides that the procedure outlined therein does not apply to affidavits filed under section 8 (a) or (b) of the Act. In view thereof, the last sentence of § 2.165(a) has been amended by the addition of a final clause, namely, "but the certificate of mailing by 'Express Mail' procedure provided by § 1.10 does apply thereto."

*Comment:* One organization has submitted suggestions for changes to rules not involved herein.

*Response:* The suggested changes cannot be adopted without affording

members of the public an opportunity to comment thereon. However, these suggestions will be considered in connection with any future proposals to amend the rules in question.

Environmental, energy and other considerations: The rule change will not have a significant impact on the quality of the human environment or the conservation of energy resources.

The rule change will not have a significant adverse economic impact on a substantial number of small entities (Regulatory Flexibility Act, Pub. L. 96-354). The rule change includes no additional or increased fees. Substantive rights to use valuable trademarks are not adversely affected.

The rule change does not impose a record keeping or reporting burden under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. No additional information is required from the public. No additional records are required to be maintained by the Patent and Trademark Office because there are no additional fees or proceedings to monitor.

The Patent and Trademark Office has determined that this rule change is not a major rule under Executive Order 12291. The annual effect on the economy will be less than \$100 million. There will be no major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. There will be no significant, adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign based enterprises in domestic or export markets.

#### List of Subjects in 37 CFR Part 2

Administrative practice and procedures, Courts, Lawyers, Trademarks.

#### Amendment of Regulations

After consideration of the comments received and pursuant to the authority contained in 15 U.S.C. 1123, Part 2 of Title 37 of the Code of Federal Regulations is amended as set forth below.

### PART 2—RULES OF PRACTICE IN TRADEMARK CASES

1. Section 2.27 is amended by revising paragraphs (b) and (d) and adding paragraph (e) to read as follows:

#### § 2.27 Pending trademark application index; access to applications.

(b) Except as provided in paragraph (e) of this section, access to the file of a

particular pending application will be permitted prior to publication under § 2.80 upon written request.

(d) Except as provided in paragraph (e) of this section, after a mark has been registered, or published for opposition, the file of the application and all proceedings relating thereto are available for public inspection and copies of the papers may be furnished upon paying the fee therefor.

(e) Anything ordered to be filed under seal pursuant to a protective order issued or made by any court or by the Trademark Trial and Appeal Board in any proceeding involving an application or a registration shall be kept confidential and shall not be made available for public inspection or copying unless otherwise ordered by the court or the Board, or unless the party protected by the order voluntarily discloses the matter subject thereto. When possible, only confidential portions of filing with the Board shall be filed under seal.

2. Section 2.63 is revised to read as follows:

#### § 2.63 Reexamination.

(a) After response by the applicant, the application will be reexamined or reconsidered. If registration is again refused or any formal requirement[s] is repeated, but the examiner's action is not stated to be final, the applicant may respond again.

(b) After reexamination the applicant may respond by filing a timely petition to the Commissioner for relief from a formal requirement if: (1) The requirement is repeated, but the examiner's action is not made final, and the subject matter of the requirement is appropriate for petition to the Commissioner (see § 2.146(b)); or (2) the examiner's action is made final and such action is limited to subject matter appropriate for petition to the Commissioner. If the petition is denied, the applicant shall have until six months from the date of the Office action which repeated the requirement or made it final or thirty days from the date of the decision on the petition, whichever date is later, to comply with the requirement. A formal requirement which is the subject of a petition decided by the Commissioner may not subsequently be the subject of an appeal to the Trademark Trial and Appeal Board.

3. Section 2.64 is revised to read as follows:

#### § 2.64 Final action.

(a) On the first or any subsequent reexamination or reconsideration the refusal of the registration or the

insistence upon a requirement may be stated to be final, whereupon applicant's response is limited to an appeal, or to a compliance with any requirement, or to a petition to the Commissioner if permitted by § 2.63(b).

(b) During the period between a final action and expiration of the time for filing an appeal, the applicant may request the examiner to reconsider the final action. The filing of a request for reconsideration will not extend the time for filing an appeal or petitioning the Commissioner, but normally the examiner will reply to a request for reconsideration before the end of the six-month period if the request is filed within three months after the date of the final action. Amendments accompanying requests for reconsideration after final action will be entered if they comply with the rules of practice in trademark cases and the Act of 1946.

4. Section 2.65 is revised to read as follows:

#### § 2.65 Abandonment.

(a) If an applicant fails to respond, or to respond completely, within six months after the date an action is mailed, the application shall be deemed to have been abandoned. A timely petition to the Commissioner pursuant to §§ 2.63(b) and 2.146 is a response which avoids abandonment of an application.

(b) When action by the applicant filed within the six-month response period is a bona fide attempt to advance the examination of the application and is substantially a complete response to the examiner's action, but consideration of some matter or compliance with some requirement has been inadvertently omitted, opportunity to explain and supply the omission may be given before the question of abandonment is considered.

5. Section 2.72 is revised to read as follows:

#### § 2.72 Amendments to description or drawing of the mark.

Amendments to the description or drawing of the mark may be permitted only if warranted by the specimens (or facsimiles) as originally filed, or supported by additional specimens (or facsimiles) and a supplemental affidavit or declaration in accordance with § 2.20 alleging that the mark shown in the amended drawing was in actual use prior to the filing date of the application. Amendments may not be made if the character of the mark is materially altered.

6. Section 2.81 is revised to read as follows:

**§ 2.81 Allowance of application.**

If no opposition is filed within the time permitted or all oppositions filed are dismissed, and if no interference is declared and no concurrent use proceeding is instituted, the application will be prepared for issuance of the certificate of registration as provided in § 2.151.

**§ 2.88 [Removed]**

7. Section 2.88 is removed.

**§ 2.94 [Removed]**

8. Section 2.94 is removed.

**§ 2.95 [Removed]**

9. Section 2.95 is removed.

10. Section 2.96 is revised to read as follows:

**§ 2.96 Issue; burden of proof.**

The issue in an interference between applications is normally priority of use, but the rights of the parties to registration may also be determined. The party whose application involved in the interference has the latest filing date is the junior party and has the burden of proof. When there are more than two parties to an interference, a party shall be a junior to and shall have the burden of proof as against every other party whose application involved in the interference has an earlier filing date. If the involved applications of any parties have the same filing date, the application with the latest date of execution will be deemed to have the latest filing date and that applicant will be the junior party. The issue in an interference between an application and a registration shall be the same, but in the event the final decision is adverse to the registrant, a registration to the applicant will not be authorized so long as the interfering registration remains on the register.

**§ 2.97 [Removed]**

11. Section 2.97 is removed.

12. Section 2.98 is revised to read as follows:

**§ 2.98 Adding party to interference.**

A party may be added to an interference only upon petition to the Commissioner by that party. If an application which is or might be the subject of a petition for addition to an interference is not added, the examiner may suspend action on the application pending termination of the interference proceeding.

13. Section 2.99 is revised to read as follows:

**§ 2.99 Application to register as concurrent user.**

(a) An application for registration as a lawful concurrent user will be examined in the same manner as other applications for registration.

(b) When it is determined that the mark is ready for publication, the applicant may be required to furnish as many copies of this application, specimens and drawing as may be necessary for the preparation of notices for each applicant, registrant or user specified as a concurrent user in the application for registration.

(c) Upon receipt of the copies required by paragraph (b) of this section, the examiner shall forward the application for concurrent use registration for publication in the Official Gazette as provided by § 2.80. If no opposition is filed, or if all oppositions that are filed are dismissed or withdrawn, the Trademark Trial and Appeal Board shall prepare a notice for the applicant for concurrent use registration and for each applicant, registrant or user specified as a concurrent user in the application. The notices for the specified parties shall state the name and address of the applicant and of the applicant's attorney or other authorized representative, if any, together with the serial number and filing date of the application.

(d)(1) The notices shall be sent to each applicant, in care of his attorney or other authorized representative, if any, to each user, and to each registrant. A copy of the application shall be forwarded with the notice to each party specified in the application.

(2) An answer to the notice is not required in the case of an applicant or registrant whose application or registration is specified as a concurrent user in the application, but a statement, if desired, may be filed within forty days after the mailing of the notice; in the case of any other party specified as a concurrent user in the application, and answer must be filed within forty days after the mailing of the notice.

(3) If an answer, when required, is not filed, judgment will be entered precluding the specified user from claiming any right more extensive than that acknowledged in the application(s) for concurrent use registration, but the applicant(s) will remain with the burden of proving entitlement to registration(s).

(e) The applicant for a concurrent use registration has the burden of proving entitlement thereto. If there are two or more applications for concurrent use registration involved in a proceeding, the party whose application has the latest filing date is the junior party. A party whose application has a filing date between the filing dates of the earliest

involved application and the latest involved application is a junior party to every party whose involved application has an earlier filing date. If any applications have the same filing date, the application with the latest date of execution will be deemed to have the latest filing date and that applicant will be the junior party. A person specified as an excepted user in a concurrent use application but who has not filed an application shall be considered a party senior to every party that has an application involved in the proceeding.

(f) When a concurrent use registration is sought on the basis that a court of competent jurisdiction has finally determined that the parties are entitled to use the same or similar marks in commerce, a concurrent use registration proceeding will not be instituted if all of the following conditions are fulfilled:

(1) The applicant is entitled to registration subject only to the concurrent lawful use of a party to the court proceeding; and

(2) The court decree specifies the rights of the parties; and

(3) A true copy of the court decree is submitted to the examiner; and

(4) The concurrent use application complies fully and exactly with the court decree; and

(5) The excepted use specified in the concurrent use application does not involve a registration, or any involved registration has been restricted by the Commissioner in accordance with the court decree.

If any of the conditions specified in this paragraph is not satisfied, a concurrent use registration proceeding shall be prepared and instituted as provided in paragraphs (a) through (e) of this section.

(g) Registrations and applications to register on the Supplemental Register and registrations under the Act of 1920 are not subject to concurrent use registration proceedings.

14. Section 2.104 is revised to read as follows:

**§ 2.104 Contents of opposition.**

The opposition must set forth a short and plain statement showing how the opposer would be damaged by the registration of the opposed mark and state the grounds for opposition. A duplicate copy of the opposition, including exhibits, shall be filed with the opposition.

15. Section 2.105 is revised to read as follows:

**§ 2.105 Notification of opposition proceeding(s).**

When an opposition in proper form has been filed and the correct fee(s) have been submitted, a notification shall be prepared by the Trademark Trial and Appeal Board, which shall identify the title and number of the proceeding and the application involved and shall designate a time, not less than thirty days from the mailing date of the notification, within which an answer must be filed. A copy of the notification shall be forwarded to the attorney or other authorized representative of the opposer, if any, or to the opposer. The duplicate copy of the opposition and exhibits shall be forwarded with a copy of the notification to the attorney or other authorized representative of the applicant, if any, or to the applicant.

16. Section 2.106 is amended by revising paragraph (c) to read as follows:

**§ 2.106 Answer.**

(c) The opposition may be withdrawn without prejudice before the answer is filed. After the answer is filed, the opposition may not be withdrawn without prejudice except with the written consent of the applicant.

17. Section 2.107 is revised to read as follows:

**§ 2.107 Amendment of pleadings in an opposition proceeding.**

Pleadings in an opposition proceeding may be amended in the same manner and to the same extent as in a civil action in a United States district court.

18. Section 2.113 is revised to read as follows:

**§ 2.113 Notification of cancellation proceeding.**

(a) When a petition for cancellation has been filed in proper form (see §§ 2.111 and 2.112), a notification shall be prepared by the Trademark Trial and Appeal Board, which shall identify the title and number of the proceeding and the registration or registrations involved and shall designate a time, not less than thirty days from the mailing date of the notification, within which an answer must be filed. A copy of the notification shall be forwarded to the attorney or other authorized representative of the petitioner, if any, or to the petitioner. The duplicate copy of the petition for cancellation and exhibits shall be forwarded with a copy of the notification to the respondent (see § 2.118). If the petition is found to be defective as to form, the party filing the petition shall be so advised and allowed

a reasonable time for correcting the informality.

19. Section 2.115 is revised to read as follows:

**§ 2.115 Amendment of pleadings in a cancellation proceeding.**

Pleadings in a cancellation proceeding may be amended in the same manner and to the same extent as in a civil action in a United States district court.

20. Section 2.116 is amended by revising paragraphs (b) and (c) to read as follows:

**§ 2.116 Rules of Procedure.**

(b) The opposer in an opposition proceeding or the petitioner in a cancellation proceeding shall be in the position of plaintiff, and the applicant in an opposition proceeding or the respondent in a cancellation proceeding shall be in the position of defendant. A party that is a junior party in an interference proceeding or in a concurrent use registration proceeding shall be in the position of plaintiff against every party that is senior, and the party that is a senior party in an interference proceeding or in a concurrent use registration proceeding shall be a defendant against every party that is junior.

(c) The opposition or the petition for cancellation and the answer correspond to the complaint and answer in a court proceeding.

21. Section 2.117 is revised to read as follows:

**§ 2.117 Suspension of proceedings.**

(a) Whenever it shall come to the attention of the Trademark Trial and Appeal Board that parties to a pending case are engaged in a civil action which may be dispositive of the case, proceedings before the Board may be suspended until termination of the civil action.

(b) Whenever there is pending, at the time when the question of the suspension of proceedings is raised, a motion which is potentially dispositive of the case, the motion may be decided before the question of suspension is considered.

(c) Proceedings may also be suspended, for good cause, upon motion or a stipulation of the parties approved by the Board.

22. Section 2.120 is revised to read as follows:

**§ 2.120 Discovery.**

(a) *In general.* The provisions of the Federal Rules of Civil Procedure relating to discovery shall apply in opposition, cancellation, interference and

concurrent use registration proceedings except as otherwise provided in this section. The Trademark Trial and Appeal Board will specify the closing date for the taking of discovery.

(b) *Discovery deposition within the United States.* The deposition of a natural person shall be taken in the Federal judicial district where the person resides or is regularly employed or at any place on which the parties agree by stipulation. The responsibility rests wholly with the party taking discovery to secure the attendance of a proposed deponent other than a party or anyone who, at the time set for the taking of the deposition, is an officer, director, or managing agent of a party, or a person designated under Rule 30(b)(6) or Rule 31(a) of the Federal Rules of Civil Procedure. See 35 U.S.C. 24.

(c) *Discovery deposition in foreign countries.* (1) The discovery deposition of a natural person residing in a foreign country who is a party or who, at the time set for the taking of the deposition, is an officer, director, or managing agent of a party, or a person designated under Rule 30(b)(6) or Rule 31(a) of the Federal Rules of Civil Procedure, shall, if taken in a foreign country, be taken in the manner prescribed by § 2.124 unless the Trademark Trial and Appeal Board, upon motion for good cause, orders or the parties stipulate, that the deposition be taken by oral examination.

(2) Whenever a foreign party is or will be, during a time set for discovery, present within the United States or any territory which is under the control and jurisdiction of the United States, such party may be deposed by oral examination upon notice by the party seeking discovery. Whenever a foreign party has or will have, during a time set for discovery, an officer, director, managing agent, or other person who consents to testify on its behalf, present within the United States or any territory which is under the control and jurisdiction of the United States, such officer, director, managing agent, or other person who consents to testify in its behalf may be deposed by oral examination upon notice by the party seeking discovery. The party seeking discovery may have one or more officers, directors, managing agents, or other persons who consent to testify on behalf of the adverse party, designated under Rule 30(b)(6) of the Federal Rules of Civil Procedure. The deposition of a person under this paragraph shall be taken in the Federal judicial district where the witness resides or is regularly employed, or, if the witness neither resides nor is regularly employed in a



Federal judicial district, where the witness is at the time of the deposition. This paragraph does not preclude the taking of a discovery deposition of a foreign party by any other procedure provided by paragraph (c)(1) of this section.

(d) *Request for production.* The production of documents and things under the provisions of Rule 34 of the Federal Rules of Civil Procedure will be made at the place where the documents and things are usually kept, or where the parties agree, or where and in the manner which the Trademark Trial and Appeal Board, upon motion, orders.

(e) *Motion for an order to compel discovery.* If a party fails to designate a person pursuant to Rule 30(b)(6) or Rule 31(a) of the Federal Rules of Civil Procedure, or if a party, or such designated person, or an officer, director or managing agent of a party fails to attend a deposition or fails to answer any question propounded in a discovery deposition, or any interrogatory, or fails to produce and permit the inspection and copying of any document or thing, the party seeking discovery may file a motion before the Trademark Trial and Appeal Board for an order to compel a designation, or attendance at a deposition, or an answer, or production and an opportunity to inspect and copy. The motion shall include a copy of the request for designation or of the relevant portion of the discovery deposition; or a copy of the interrogatory with any answer or objection that was made; or a copy of the request for production, any proffer of production or objection to production in response to the request, and a list and brief description of the documents or things that were not produced for inspection and copying. The motion must be supported by a written statement from the moving party that such party or the attorney therefor has made a good faith effort, by conference or correspondence, to resolve with the other party or the attorney therefor the issues presented in the motion and has been unable to reach agreement. If issues raised in the motion are subsequently resolved by agreement of the parties, the moving party should inform the Board in writing of the issues in the motion which no longer require adjudication.

(f) *Motion for a protective order.* Upon motion by a party from whom discovery is sought, and for good cause, the Trademark Trial and Appeal Board may make any order which justice requires to protect a party from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the types of orders provided by

clauses (1) through (8), inclusive, of Rule 26(c) of the Federal Rules of Civil Procedure. If the motion for a protective order is denied in whole or in part, the Board may, on such conditions (other than an award of expenses to the party prevailing on the motion) as are just, order that any party provide or permit discovery.

(g) *Failure to comply with order.* If a party fails to comply with an order of the Trademark Trial and Appeal Board relating to discovery, including a protective order, the Board may make any appropriate order, including any of the orders provided in Rule 37(b)(2) of the Federal Rules of Civil Procedure, except that the Board does not have authority to hold any person in contempt or to award any expenses to any party. The Board may impose against a party any of the sanctions provided by this subsection in the event that said party or any attorney, agent, or designated witness of that party fails to comply with a protective order made pursuant to Rule 26(c) of the Federal Rules of Civil Procedure.

(h) *Request for admissions.* Requests for admissions shall be governed by Rule 36 of the Federal Rules of Civil Procedure except that the Trademark Trial and Appeal Board does not have authority to award any expenses to any party. A motion by a party to determine the sufficiency of an answer or objection to a request made by that party for an admission shall include a copy of the request for admission and any exhibits thereto and of the answer or objection. The motion must be supported by a written statement from the moving party that such party or the attorney therefor has made a good faith effort, by conference or correspondence, to resolve with the other party or the attorney therefor the issues presented in the motion and has been unable to reach agreement. If issues raised in the motion are subsequently resolved by agreement of the parties, the moving party should inform the Board in writing of the issues in the motion which no longer require adjudication.

(i) *Telephone and pre-trial conferences.* (1) Whenever it appears to the Trademark Trial and Appeal Board that a motion filed in an inter partes proceeding is of such nature that its resolution by correspondence is not practical, the Board may, upon its own initiative or upon request made by one or both of the parties, resolve the motion by telephone conference.

(2) Whenever it appears to the Trademark Trial and Appeal Board that questions or issues arising during the interlocutory phase of an inter partes

proceeding have become so complex that their resolution by correspondence or telephone conference is not practical and that resolution would be likely to be facilitated by a conference in person of the parties or their attorneys with a Member or Attorney-Examiner of the Board, the Board may, upon its own initiative or upon motion made by one or both of the parties, request that the parties or their attorneys, under circumstances which will not result in undue hardship for any party, meet with the Board at its offices for a pre-trial conference.

(j) *Use of discovery deposition, admission, or answer to interrogatory.* (1) The discovery deposition of a party or of anyone who at the time of taking the deposition was an officer, director or managing agent of a party, or a person designated by a party pursuant to Rule 30(b)(6) or Rule 31(a) of the Federal Rules of Civil Procedure, may be offered in evidence by an adverse party.

(2) Except as provided in paragraph (j)(1) of this section, the discovery deposition of a witness, whether or not a party, shall not be offered in evidence unless the person whose deposition was taken is, during the testimony period of the party offering the deposition, dead; or out of the United States (unless it appears that the absence of the witness was procured by the party offering the deposition); or unable to testify because of age, illness, infirmity, or imprisonment; or cannot be served with a subpoena to compel attendance at a testimonial deposition; or there is a stipulation by the parties; or upon a showing that such exceptional circumstances exist as to make it desirable, in the interest of justice, to allow the deposition to be used. The use of a discovery deposition by any party under this paragraph will be allowed only by stipulation of the parties approved by the Trademark Trial and Appeal Board, or by order of the Board on motion, which shall be filed at the time of the purported offer of the deposition in evidence, unless the motion is based upon a claim that such exceptional circumstances exist as to make it desirable, in the interest of justice, to allow the deposition to be used, in which case the motion shall be filed promptly after the circumstances claimed to justify use of the deposition became known.

(3) A discovery deposition, an answer to an interrogatory, or an admission to a request for admission, which may be offered in evidence under the provisions of paragraph (j) of this section may be made of record in the case by filing the deposition or any part thereof with any

exhibit to the part that is filed, or a copy of the interrogatory and answer thereto with any exhibit made part of the answer, or a copy of the request for admission and any exhibit thereto and the admission (or a statement that the party from whom an admission was requested failed to respond thereto), together with a notice of reliance. The notice of reliance and the material submitted thereunder should be filed during the testimony period of the party who files the notice of reliance. An objection made at a discovery deposition by a party answering a question subject to the objection will be considered at final hearing.

(4) If only part of a discovery deposition is submitted and made part of the record by a party, an adverse party may introduce under a notice of reliance any other part of the deposition which should in fairness be considered so as to make not misleading what was offered by the submitting party.

(5) An answer to an interrogatory, or an admission to a request for admission, may be submitted and made part of the record by only the inquiring party except that, if fewer than all of the answers to interrogatories, or fewer than all of the admissions, are offered in evidence by the inquiring party, the responding party may introduce under a notice of reliance any other answers to interrogatories, or any other admissions, which should in fairness be considered so as to make not misleading what was offered by the inquiring party.

(6) Paragraph (j) of this section will not be interpreted to preclude the reading or the use of a discovery deposition, or answer to an interrogatory, or admission as part of the examination or cross-examination of any witness during the testimony period of any party.

(7) When a discovery deposition, or a part thereof, or an answer to an interrogatory, or an admission, has been made of record by one party in accordance with the provisions of paragraph (j)(3) of this section, it may be referred to by any party for any purpose permitted by the Federal Rules of Evidence.

(8) Interrogatories, requests for production, requests for admissions, and materials or depositions obtained during the discovery period should not be filed with the Board except when submitted with a motion to compel discovery, or in support of or response to a motion for summary judgment, or under a notice of reliance during a party's testimony period.

23. Section 2.121 is revised to read as follows:

**§ 2.121 Assignment of times for taking testimony.**

(a)(1) The Trademark Trial and Appeal Board will issue a trial order assigning to each party the time for taking testimony. No testimony shall be taken except during the times assigned, unless by stipulation of the parties approved by the Board, or, upon motion, by order of the Board. Testimony periods may be rescheduled by stipulation of the parties approved by the Board, or upon motion granted by the Board, or by order of the Board. The resetting of the closing date for discovery will result in the rescheduling of the testimony periods without action by any party.

(2) The initial trial order will be mailed by the Board after issue is joined.

(b)(1) The Trademark Trial and Appeal Board will schedule a testimony period for the plaintiff to present its case in chief, a testimony period for the defendant to present its case and to meet the case of the plaintiff, and a testimony period for the plaintiff to present evidence in rebuttal.

(2) When there is a counterclaim, or when proceedings have been consolidated and one party is in the position of plaintiff in one of the involved proceedings and in the position of defendant in another of the involved proceedings, or when there is an interference or a concurrent use registration proceeding involving more than two parties, the Board will schedule testimony periods so that each party in the position of plaintiff will have a period for presenting its case in chief against each party in the position of defendant, each party in the position of defendant will have a period for presenting its case and meeting the case of each plaintiff, and each party in the position of plaintiff will have a period for presenting evidence in rebuttal.

(c) A testimony period which is solely for rebuttal will be set for fifteen days. All other testimony periods will be set for thirty days. The periods may be extended by stipulation of the parties approved by the Trademark Trial and Appeal Board, or upon motion granted by the Board, or by order of the Board.

(d) When parties stipulate to the rescheduling of testimony periods or to the rescheduling of the closing date for discovery and the rescheduling of testimony periods, a stipulation presented in the form used in a trial order, signed by the parties, or a motion in said form signed by one party and including a statement that every other party has agreed thereto, and submitted in one original plus as many photocopies as there are parties, will, if approved, be

so stamped, signed, and dated, and the copies will be promptly returned to the parties.

24. Section 2.122 is revised to read as follows:

**§ 2.122 Matters in evidence.**

(a) *Rules of evidence.* The rules of evidence for proceedings before the Trademark Trial and Appeal Board are the Federal Rules of Evidence, the relevant provisions of the Federal Rules of Civil Procedure, the relevant provisions of Title 28 of the United States Code, and the provisions of this Part of Title 37 of the Code of Federal Regulations.

(b) *Application files.* (1) The file of each application or registration specified in a declaration of interference, of each application or registration specified in the notice of a concurrent use registration proceeding, of the application against which a notice of opposition is filed, or of each registration against which a petition or counterclaim for cancellation is filed forms part of the record of the proceeding without any action by the parties and reference may be made to the file for any relevant and competent purpose.

(2) The allegation in an application for registration, or in a registration, of a date of use is not evidence on behalf of the applicant or registrant; a date of use of a mark must be established by competent evidence. Specimens in the file of an application for registration, or in the file of a registration, are not evidence on behalf of the applicant or registrant unless identified and introduced in evidence as exhibits during the period for the taking of testimony.

(c) *Exhibits to pleadings.* Except as provided in paragraph (d)(1) of this section, an exhibit attached to a pleading is not evidence on behalf of the party to whose pleading the exhibit is attached unless identified and introduced in evidence as an exhibit during the period for the taking of testimony.

(d) *Registrations.* (1) A registration of the opposer or petitioner pleaded in an opposition or petition to cancel will be received in evidence and made part of the record if the opposition or petition is accompanied by two copies of the registration prepared and issued by the Patent and Trademark Office showing both the current status of and current title to the registration. For the cost of a copy of a registration showing status and title, see § 2.6(n).

(2) A registration owned by any party to a proceeding may be made of record

in the proceeding by that party by appropriate identification and introduction during the taking of testimony or by filing a notice of reliance, which shall be accompanied by a copy of the registration prepared and issued by the Patent and Trademark Office showing both the current status of and current title to the registration. The notice of reliance shall be filed during the testimony period of the party that files the notice.

(e) *Printed publications and official records.* Printed publications, such as books and periodicals, available to the general public in libraries or of general circulation among members of the public or that segment of the public which is relevant under an issue in a proceeding, and official records, if the publication or official record is competent evidence and relevant to an issue, may be introduced in evidence by filing a notice of reliance on the material being offered, which notice shall specify the printed publication or the official record and the pages to be read, indicate generally the relevance of the material being offered, and be accompanied by the official record or a copy thereof whose authenticity is established under the Federal Rules of Evidence, or by the printed publication or a copy of the relevant portion thereof, including the title page and any other page needed to show the place and date of publication, the name and address of the publisher, and the name of the author or the editor. A copy of an official record of the Patent and Trademark Office need not be certified to be offered in evidence. The notice of reliance shall be filed during the testimony period of the party that files the notice.

(f) *Testimony from other proceedings.* By order of the Trademark Trial and Appeal Board, on motion, testimony taken in another proceeding, or testimony taken in a suit or action in a court, between the same parties or those in privity may be used in a proceeding, so far as relevant and material, subject, however, to the right of any adverse party to recall or demand the recall for examination or cross-examination of any witness whose prior testimony has been offered and to rebut the testimony.

25. Section 2.123 is amended by revising paragraphs (a), (e)(3), (j) and (k) to read as follows:

**§ 2.123 Trial testimony in inter partes cases.**

(a)(1) The testimony of witnesses in inter partes cases may be taken by depositions upon oral examination as provided by this section or by depositions upon written questions as provided by § 2.124. If a party serves

notice of the taking of a testimonial deposition upon written questions of a witness who is, or will be at the time of the deposition, present within the United States or any territory which is under the control and jurisdiction of the United States, any adverse party may, within fifteen days from the date of service of the notice, file a motion with the Trademark Trial and Appeal Board, for good cause, for an order that the deposition be taken by oral examination.

(2) A testimonial deposition taken in a foreign country shall be taken by deposition upon written questions as provided by § 2.124, unless the Board, upon motion for good cause, orders that the deposition be taken by oral examination, or the parties so stipulate.

**(e) Examination of witnesses. \* \* \***

(3) Every adverse party shall have full opportunity to cross-examine each witness. If the notice of examination of witnesses which is served pursuant to paragraph (c) of this section is improper or inadequate with respect to any witness, an adverse party may cross-examine that witness under protest while reserving the right to object to the receipt of the testimony in evidence. Promptly after the testimony is completed, the adverse party, if he wishes to preserve the objection, shall move to strike the testimony from the record, which motion will be decided on the basis of all of the relevant circumstances. A motion to strike the testimony of a witness for lack of proper or adequate notice of examination must request the exclusion of the entire testimony of that witness and not only a part of that testimony.

(j) *Effect of errors and irregularities in depositions:* Rule 32(d) (1), (2), and (3) (A) and (B) of the Federal Rules of Civil Procedure shall apply to errors and irregularities in depositions. Notice will not be taken of merely formal or technical objections which shall not appear to have wrought a substantial injury to the party raising them; and in case of such injury it must be made to appear that the objection was raised at the time specified in said rule.

(k) *Objections to admissibility:* Subject to the provisions of paragraph (j) of this section, objection may be made to receiving in evidence any deposition, or part thereof, or any other evidence, for any reason which would require the exclusion of the evidence from consideration. Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony must be raised at the time

specified in Rule 32(d)(3)(A) of the Federal Rules of Civil Procedure. Such objections will not be considered until final hearing.

26. Section 2.124 is revised to read as follows:

**§ 2.124 Depositions upon written questions.**

(a) A deposition upon written questions may be taken before any person before whom depositions may be taken as provided by Rule 28 of the Federal Rules of Civil Procedure.

(b)(1) A party desiring to take a testimonial deposition upon written questions shall serve notice thereof upon each adverse party within ten days from the opening date of the testimony period of the party who serves the notice. The notice shall state the name and address of the witness. A copy of the notice, but not copies of the questions, shall be filed with the Trademark Trial and Appeal Board.

(2) A party desiring to take a discovery deposition upon written questions shall serve notice thereof upon each adverse party and shall file a copy of the notice, but not copies of the questions, with the Board. The notice shall state the name and address, if known, of the person whose deposition is to be taken. If the name of the person is not known, a general description sufficient to identify him or the particular class or group to which he belongs shall be stated in the notice, and the party from whom the discovery deposition is to be taken shall designate one or more persons to be deposed in the same manner as is provided by Rule 30(b)(6) of the Federal Rules of Civil Procedure.

(c) Every notice given under the provisions of paragraph (b) of this section shall be accompanied by the name or descriptive title of the officer before whom the deposition is to be taken.

(d)(1) Every notice served on any adverse party under the provisions of paragraph (b) of this section shall be accompanied by the written questions to be propounded on behalf of the party who proposes to take the deposition. Within twenty days from the date of service of the notice, any adverse party may serve cross questions upon the party who proposes to take the deposition; any party who serves cross questions shall also serve every other adverse party. Within ten days from the date of service of the cross questions, the party who proposes to take the deposition may serve redirect questions on every adverse party. Within ten days from the date of service of the redirect

questions, any party who served cross questions may serve recross questions upon the party who proposes to take the deposition; any party who serves recross questions shall also serve every other adverse party. Written objections to questions may be served on a party propounding questions; any party who objects shall serve a copy of the objections on every other adverse party. In response to objections, substitute questions may be served on the objecting party within ten days of the date of service of the objections; substitute questions shall be served on every other adverse party.

(2) Upon motion for good cause by any party, or upon its own initiative, the Trademark Trial and Appeal Board may extend any of the time periods provided by paragraph (d)(1) of this section. Upon receipt of written notice that one or more testimonial depositions are to be taken upon written questions, the Trademark Trial and Appeal Board shall suspend or reschedule other proceedings in the matter to allow for the orderly completion of the depositions upon written questions.

(e) Within ten days after the last date when questions, objections, or substitute questions may be served, the party who proposes to take the deposition shall mail a copy of the notice and copies of all the questions to the officer designated in the notice; a copy of the notice and of all the questions mailed to the officer shall be served on every adverse party. The officer designated in the notice shall take the testimony of the witness in response to the questions and shall record each answer immediately after the corresponding question. The officer shall then certify the transcript and mail the transcript and exhibits to the party who took the deposition.

(f) The party who took the deposition shall promptly serve a copy of the transcript, copies of documentary exhibits, and duplicates or photographs of physical exhibits on every adverse party. It is the responsibility of the party who takes the deposition to assure that the transcript is correct (see § 2.125(b)). If the deposition is a discovery deposition, it may be made of record as provided by § 2.120(j). If the deposition is a testimonial deposition, the original, together with copies of documentary exhibits and duplicates or photographs of physical exhibits, shall be filed promptly with the Trademark Trial and Appeal Board.

(g) Objections to questions and answers in depositions upon written questions may be considered at final hearing.

27. Section 2.125 is revised to read as follows:

#### § 2.125 Filing and service of testimony.

(a) One copy of the transcript of testimony taken in accordance with § 2.123, together with copies of documentary exhibits and duplicates or photographs of physical exhibits, shall be served on each adverse party within thirty days after completion of the taking of that testimony.

(b) The party who takes testimony is responsible for having all typographical errors in the transcript and all errors of arrangement, indexing and form of the transcript corrected, on notice to each adverse party, prior to the filing of one certified transcript with the Trademark Trial and Appeal Board. The party who takes testimony is responsible for serving on each adverse party one copy of the corrected transcript or, if reasonably feasible, corrected pages to be inserted into the transcript previously served.

(c) One certified transcript and exhibits shall be filed promptly with the Trademark Trial and Appeal Board. Notice of such filing shall be served on each adverse party and a copy of each notice shall be filed with the Board.

(d) Each transcript shall comply with § 2.123(g) with respect to arrangement, indexing and form.

(e) Upon motion by any party, for good cause, the Trademark Trial and Appeal Board may order that any part of a deposition transcript or any exhibits that directly disclose any trade secret or other confidential research, development, or commercial information may be filed under seal and kept confidential under the provisions of § 2.27(e). If any party or any attorney or agent of a party fails to comply with an order made under this paragraph, the Board may impose any of the sanctions authorized by § 2.120(g).

#### § 2.126 [Removed]

28. Section 2.126 is removed.

29. Section 2.127 is revised to read as follows:

#### § 2.127 Motions

(a) Every motion shall be made in writing, shall contain a full statement of the grounds, and shall embody or be accompanied by a brief. A brief in response to a motion shall be filed within fifteen days from the date of service of the motion unless another time is specified by the Trademark Trial and Appeal Board or the time is extended by order of the Board on motion for good cause. When a party fails to file a brief in response to a motion, the Board may treat the motion as conceded. An oral hearing will not be held on a motion except on order by the Board.

(b) Any request for reconsideration or modification of an order or decision issued on a motion must be filed within thirty days from the date thereof. A brief in response must be filed within fifteen days from the date of service of the request.

(c) Interlocutory motions, requests, and other matters not actually or potentially dispositive of a proceeding may be acted upon by a single Member of the Trademark Trial and Appeal Board or by an Attorney-Examiner of the Board to whom authority so to act has been delegated.

(d) When any party files a motion to dismiss, or a motion for judgment on the pleadings, or a motion for summary judgment, or any other motion which is potentially dispositive of a proceeding, the case will be suspended by the Trademark Trial and Appeal Board with respect to all matters not germane to the motion and no party should file any paper which is not germane to the motion. If the case is not disposed of as a result of the motion, proceedings will be resumed pursuant to an order of the Board when the motion is decided.

30. Section 2.128 is revised to read as follows:

#### § 2.128 Briefs at final hearing.

(a)(1) The brief of the party in the position of plaintiff shall be due not later than sixty days after the date set for the close of rebuttal testimony. The brief of the party in the position of defendant, if filed, shall be not later than thirty days after the due date of the first brief. A reply brief by the party in the position of plaintiff, if filed, shall be due not later than fifteen days after the due date of the defendant's brief.

(2) When there is a counterclaim, or when proceedings have been consolidated and one party is in the position of plaintiff in one of the involved proceedings and in the position of defendant in another of the involved proceedings, or when there is an interference or a concurrent use registration proceeding involving more than two parties, the Trademark Trial and Appeal Board will set the due dates for the filing of the main brief, and the answering brief, and the rebuttal brief by the parties.

(3) When a party in the position of plaintiff fails to file a main brief, an order may be issued allowing plaintiff until a set time, not less than fifteen days, in which to show cause why the Board should not treat such failure as a concession of the case. If plaintiff fails to file a response to the order, or files a response indicating that he has lost

interest in the case, judgment may be entered against plaintiff.

(b) Briefs shall be submitted in typewritten or printed form, double spaced, on letter size paper. Without leave of the Trademark Trial and Appeal Board, no brief shall contain more than fifty pages of argument and, in the case of a reply brief, the entire brief shall not exceed twenty-five pages. Each brief shall contain an alphabetical index of cases cited therein. One original and two legible copies, on good quality paper, of each brief shall be filed.

31. Section 2.129 is revised to read as follows:

**§2.129 Oral argument; reconsideration.**

(a) If a party desires to have an oral argument at final hearing, the party shall request such argument by a separate notice filed not later than ten days after the due date for the filing of the last reply brief in the proceeding. Oral arguments will be heard by three Members of the Trademark Trial and Appeal Board at the time specified in the notice of hearing. If any party appears at the specified time, that party will be heard. If the Board is prevented from hearing the case at the specified time, a new hearing date will be set. Unless otherwise permitted, oral arguments in an inter partes case will be limited to thirty minutes for each party. A party in the position of plaintiff may reserve part of the time allowed for oral argument to present a rebuttal argument.

(b) The date or time of a hearing may be reset, so far as is convenient and proper, to meet the wishes of the parties and their attorneys or other authorized representatives.

(c) Any request for rehearing or reconsideration or modification of a decision issued after final hearing must be filed within thirty days from the date of the decision. A brief in response must be filed within fifteen days from the date of service of the request. The times specified may be extended by order of the Trademark Trial and Appeal Board on motion for good cause.

32. Section 2.131 is revised to read as follows:

**§2.131 Remand after decision in inter partes proceeding.**

If, during an inter partes proceeding, facts are disclosed which appear to render the mark of an applicant unregistrable, but such matter has not been tried under the pleadings as filed by the parties or as they might be deemed to be amended under Rule 15(b) of the Federal Rules of Civil Procedure to conform to the evidence, the Trademark Trial and Appeal Board, in

lieu of determining the matter in the decision on the proceeding, may refer the application to the examiner for reexamination in the event the applicant ultimately prevails in the inter partes proceeding. Upon receiving the application, the examiner shall withhold registration pending reexamination of the application in the light of the reference by the Board. If, upon reexamination, the examiner finally refuses registration to the applicant, an appeal may be taken as provided by §§ 2.141 and 2.142.

33. Section 2.132 is revised to read as follows:

**§2.132 Involuntary dismissal for failure to take testimony.**

(a) If the time for taking testimony by any party in the position of plaintiff has expired and that party has not taken testimony or offered any other evidence, any party in the position of defendant may, without waiving the right to offer evidence in the event the motion is denied, move for dismissal on the ground of the failure of the plaintiff to prosecute. The party in the position of plaintiff shall have fifteen days from the date of service of the motion to show cause why judgment should not be rendered against him. In the absence of a showing of good and sufficient cause, judgment may be rendered against the party in the position of plaintiff. If the motion is denied, testimony periods will be reset for the party in the position of defendant and for rebuttal.

(b) If no evidence other than a copy or copies of Patent and Trademark Office records is offered by any party in the position of plaintiff, any party in the position of defendant may, without waiving the right to offer evidence in the event the motion is denied, move for dismissal on the ground that upon the law and the facts the party in the position of plaintiff has shown no right to relief. The party in the position of plaintiff shall have fifteen days from the date of service of the motion to file a brief in response to the motion. The Trademark Trial and Appeal Board may render judgment against the party in the position of plaintiff, or the Board may decline to render judgment until all of the evidence is in the record. If judgment is not rendered, testimony periods will be reset for the party in the position of defendant and for rebuttal.

(c) Any motion filed under paragraph (a) or (b) of this section must be filed before the opening of the testimony period of the moving party.

34. Section 2.134 is revised to read as follows:

**§2.134 Surrender or voluntary cancellation of registration.**

(a) After the commencement of a cancellation proceeding, if the respondent applies for cancellation of the involved registration under section 7(d) of the Act of 1946 without the written consent of every adverse party, judgment shall be entered against the respondent.

(b) After the commencement of a cancellation proceeding, if it comes to the attention of the Trademark Trial and Appeal Board that the respondent has permitted his involved registration to be cancelled under section 8 of the Act of 1946 or has failed to renew his involved registration under section 9 of the Act of 1946, an order may be issued allowing respondent until a set time, not less than fifteen days, in which to show cause why such cancellation or failure to renew should not be deemed to be the equivalent of a cancellation by request of respondent without the consent of the adverse party and should not result in entry of judgment against respondent as provided by paragraph (a) of this section. In the absence of a showing of good and sufficient cause, judgment may be entered against respondent as provided by paragraph (a) of this section.

35. Section 2.135 is revised to read as follows:

**§2.135 Abandonment of application or mark.**

After the commencement of an opposition, concurrent use, or interference proceeding, if the applicant files a written abandonment of the application or of the mark without the written consent of every adverse party, judgment shall be entered against the applicant.

36. Section 2.142 is proposed to be revised to read as follows:

**§2.142 Time and manner of ex parte appeals.**

(a) Any appeal filed under the provisions of §2.141 must be filed within six months from the date of final refusal or the date of the action from which the appeal is taken. An appeal is taken by filing a notice of appeal and paying the appeal fee.

(b) The brief of appellant shall be filed within sixty days from the date of appeal. If the brief is not filed within the time allowed, the appeal may be dismissed. The examiner shall, within sixty days after the brief of appellant is sent to the examiner, file with the Trademark Trial and Appeal Board a written brief answering the brief of appellant and shall mail a copy of the

brief to the appellant. The appellant may file a reply brief within twenty days from the date of mailing of the brief of the examiner.

(c) All requirements made by the examiner and not the subject of appeal shall be complied with prior to the filing of an appeal.

(d) The record in the application should be complete prior to the filing of an appeal. The Trademark Trial and Appeal Board will ordinarily not consider additional evidence filed with the Board by the appellant or by the examiner after the appeal is filed. After an appeal is filed, if the appellant or the examiner desires to introduce additional evidence, the appellant or the examiner may request the Board to suspend the appeal and to remand the application for further examination.

(e)(1) If the appellant desires an oral hearing, a request therefor should be made by a separate notice filed not later than ten days after the due date for a reply brief. Oral argument will be heard by three Members of the Trademark Trial and Appeal Board at the time specified in the notice of hearing, which may be reset if the Board is prevented from hearing the argument at the specified time or, so far as is convenient and proper, to meet the wish of the appellant or his attorney or other authorized representative.

(2) If the appellant requests an oral argument, the examiner who issued the refusal of registration or the requirement from which the appeal is taken, or in lieu thereof another examiner from the same examining division as designated by the supervisory attorney thereof, shall present an oral argument. If no request for an oral hearing is made by the appellant, the appeal will be decided on the record and briefs.

(3) Oral argument will be limited to twenty minutes by the appellant and ten minutes by the examiner. The appellant may reserve part of the time allowed for oral argument to present a rebuttal argument.

(f)(1) If, during an appeal from a refusal of registration, it appears to the Trademark Trial and Appeal Board that an issue not previously raised may render the mark of the appellant unregistrable, the Board may suspend the appeal and remand the application to the examiner for further examination to be completed within thirty days.

(2) If the further examination does not result in an additional ground for refusal of registration, the examiner shall promptly return the application to the Board, for resumption of the appeal, with a written statement that further examination did not result in an

additional ground for refusal of registration.

(3) If the further examination does result in an additional ground for refusal of registration, the examiner and appellant shall proceed as provided by §§ 2.61, 2.62, 2.63 and 2.64. If the ground for refusal is made final, the examiner shall return the application to the Board, which shall thereupon issue an order allowing the appellant sixty days from the date of the order to file a supplemental brief limited to the additional ground for the refusal of registration. If the supplemental brief is not filed by the appellant within the time allowed, the appeal may be dismissed.

(4) If the supplemental brief of the appellant is filed, the examiner shall, within sixty days after the supplemental brief of the appellant is sent to the examiner, file with the Board a written brief answering the supplemental brief of appellant and shall mail a copy of the brief to the appellant. The appellant may file a reply brief within twenty days from the date of mailing of the brief of the examiner.

(5) If an oral hearing on the appeal had been requested prior to the remand of the application but not yet held, an oral hearing will be set and heard as provided in paragraph (e) of this section. If an oral hearing had been held prior to the remand or had not been previously requested by the appellant, an oral hearing may be requested by the appellant by a separate notice filed not later than ten days after the due date for a reply brief on the additional ground for refusal of registration. If the appellant files a request for an oral hearing, one will be set and heard as provided in paragraph (e) of this section.

(g) An application which has been considered and decided on appeal will not be reopened except for the entry of a disclaimer under section 6 of the Act of 1946 or upon order of the Commissioner, but a petition to the Commissioner to reopen an application will be considered only upon a showing of sufficient cause for consideration of any matter not already adjudicated.

37. Section 2.146 is revised to read as follows:

#### § 2.146 Petitions to the Commissioner.

(a) Petition may be taken to the Commissioner: (1) From any repeated or final formal requirement of the examiner in the ex parte prosecution of an application if permitted by § 2.63(b); (2) in any case for which the Act of 1946, or Title 35 of the United States Code, or this Part of Title 37 of the Code of Federal Regulations specifies that the matter is to be determined directly or

reviewed by the Commissioner; (3) to invoke the supervisory authority of the Commissioner in appropriate circumstances; (4) in any case not specifically defined and provided for by this part of Title 37 of the Code of Federal Regulations; (5) in an extraordinary situation, when justice requires and no other party is injured thereby, to request a suspension or waiver of any requirement of the rules not being a requirement of the Act of 1946.

(b) Questions of substance arising during the ex parte prosecution of applications, including, but not limited to, questions arising under sections 2, 3, 4, 5, 6 and 23 of the Act of 1946, are not considered to be appropriate subject matter for petitions to the Commissioner.

(c) Every petition to the Commissioner shall include a statement of the facts relevant to the petition, the points to be reviewed, the action or relief that is requested, and the requisite fee (see § 2.6). Any brief in support of the petition shall be embodied in or accompany the petition. When facts are to be proved in ex parte cases (as in a petition to revive an abandoned application), the proof in the form of affidavits or declarations in accordance with § 2.20, and any exhibits, shall accompany the petition.

(d) A petition on any matter not otherwise specifically provided for shall be filed within sixty days from the date of mailing of the action from which relief is requested.

(e)(1) A petition from the denial of a request for an extension of time to file a notice of opposition shall be filed within fifteen days from the date of mailing of the denial of the request and shall be served on the attorney or other authorized representative of the applicant, if any, or on the applicant. Proof of service of the petition shall be made as provided by § 2.119(a). The applicant may file a response within fifteen days from the date of service of the petition and shall serve a copy of the response on the petitioner, with proof of service as provided by § 2.119(a). No further paper relating to the petition shall be filed.

(2) A petition from an interlocutory order of the Trademark Trial and Appeal Board shall be filed within thirty days after the date of mailing of the order from which relief is requested. Any brief in response to the petition shall be filed, with any supporting exhibits, within fifteen days from the date of service of the petition. Petitions and responses to petitions, and any papers accompanying a petition or

response, under this subsection shall be served on every adverse party pursuant to § 2.119(a).

(f) An oral hearing will not be held on a petition except when considered necessary by the Commissioner.

(g) The mere filing of a petition to the Commissioner will not act as a stay in any appeal or inter partes proceeding that is pending before the Trademark Trial and Appeal Board nor stay the period for replying to an Office action in an application except when a stay is specifically requested and is granted or when §§ 2.63(b) and 2.65 are applicable to an ex parte application.

(h) Authority to act on petitions, or on any petition, may be delegated by the Commissioner.

**§ 2.147 (Removed)**

38. Section 2.147 is removed.

39. Section 2.165 is revised to read as follows:

**§ 2.165 Reconsideration of affidavit or declaration.**

(a)(1) If the affidavit or declaration filed pursuant to § 2.162 is insufficient or defective, the affidavit or declaration will be refused and the registrant will be notified of the reason. Reconsideration of the refusal may be requested within six months from the date of the mailing of the action. The request for reconsideration must state the grounds for the request. A supplemental or substitute affidavit or declaration required by section 8 of the Act of 1946 cannot be considered unless it is filed before the expiration of six years from the date of the registration or from the date of publication under section 12(c) of the Act. The certificate of mailing procedure provided by § 1.8 does not apply to affidavits or declarations or to supplemental or substitute affidavits or declarations filed under section 8 (a) or (b) of the Act, but the certificate of mailing by "Express Mail" procedure provided by § 1.10 does apply thereto.

(2) A request for reconsideration shall be a condition precedent to a petition to

the Commissioner to review the refusal of the affidavit or declaration unless the first action refusing the affidavit or declaration directs the registrant to petition the Commissioner for relief, in which event the petition must be filed within six months from the date of mailing of the action.

(b) If the refusal of the affidavit or declaration is adhered to, the registrant may petition the Commissioner to review the action under § 2.146(a)(2). The petition to the Commissioner requesting review of the action adhering to the refusal of the affidavit or declaration must be filed within six months from the date of mailing of the action which denied reconsideration.

(c) The decision of the Commissioner on the petition will constitute the final action of the Patent and Trademark Office. If there is no petition to the Commissioner, the Commissioner will notify the registrant of the refusal of the affidavit or declaration after the expiration of six years from the date of registration or from the date of publication under section 12(c) of the Act of 1946, and such notice will constitute the final action of the Office.

(d) A petition to the Commissioner for review of the action shall be a condition precedent to an appeal to or action for review by any court.

40. Section 2.173 is amended by revising paragraph (b) to read as follows:

**§ 2.173 Amendment; disclaimer in part.**

(b) No amendment in the identification of goods or services in a registration will be permitted except to restrict the identification or otherwise to change it in ways that would not require republication of the mark. No amendment seeking the elimination of a disclaimer will be permitted.

41. Section 2.184 is revised to read as follows:

**§ 2.184 Refusal of renewal.**

(a) If the application for renewal is incomplete or defective, the renewal will be refused. The application may be completed or amended in response to a refusal, subject to the provisions of § 2.183. If a response to a refusal of renewal is not filed within six months from the date of mailing of the action, the application for renewal will be considered abandoned. A request to reconsider a refusal of renewal shall be a condition precedent to a petition to the Commissioner to review the refusal of renewal.

(b) If the refusal of renewal is adhered to, the registrant may petition the Commissioner to review the action under § 2.146(a)(2). The petition to the Commissioner requesting review of the action adhering to the refusal of the renewal must be filed within six months from the date of mailing of the action which adhered to the refusal. If a timely petition to the Commissioner is not filed, the application for renewal will be considered abandoned.

(c) The decision of the Commissioner on the petition will constitute the final action of the Patent and Trademark Office.

(d) A petition to the Commissioner for review of the action shall be a condition precedent to an appeal to or action for review by any court.

42. Section 2.186 is revised to read as follows:

**§ 2.186 Action may be taken by assignee of record.**

Any action with respect to an assigned application or registration which may or must be taken by a registrant or applicant may be taken by the assignee provided that the assignment has been recorded.

Dated: April 28, 1983.

Donald J. Quigg,

Deputy Commissioner of Patents and Trademarks.

[FR Doc. 83-13500 Filed 5-20-83; 6:45 am]

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## DEPARTMENT OF COMMERCE

## Patent and Trademark Office

## 37 CFR Parts 1 and 5

[Docket No. 30422-64]

## Revision of Foreign Filing License Procedure

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking.

**SUMMARY:** The Patent and Trademark Office proposes to revise the rules of practice in patent cases to establish a streamlined procedure for granting a license for foreign filing. The term "transmitting" as used in the proposed rules would include transmittal of technical data to a foreign country for purposes of filing a patent application. The proposed rules also specify the content of a petition for retroactive license. The proposed changes would simplify the obtaining of foreign filing licenses for amendments, modifications, and supplements and would result in reduced work for both patent applicants and the Patent and Trademark Office. At the same time, national security protections would be strengthened.

**DATES:** Comments must be submitted on or before July 20, 1983; a public hearing will be held July 20, 1983; requests to present oral testimony should be received prior to July 13, 1983.

**ADDRESSES:** Address written comments and requests to present oral testimony to the Commissioner of Patents and Trademarks; Attention: Kenneth L. Cage, Special Laws Administration, Group 220, Room 4-10D17, Washington, D.C. 20231. The hearing will be held in Room 3-11C24 of Building 3, Crystal Plaza, located at 2021 Jefferson Davis Highway, Arlington, VA. Written comments and transcripts of the public hearing will be available for public inspection in Room 3-11A13 of Building 3, Crystal Plaza.

**FOR FURTHER INFORMATION CONTACT:** Kenneth L. Cage by telephone at (703) 557-2877 or by mail marked to his attention and addressed to the Commissioner of Patents and Trademarks, Washington, D.C. 20231.

**SUPPLEMENTARY INFORMATION:** Under the present procedures, all licenses for foreign filing of a patent application have the same scope, as set forth in current § 5.15. The scope of these licenses, as held by the Court in *In re Gaertner*, 202 USPQ 714 (C.C.P.A. 1979), does not include amendments and modifications of an application which contain additional subject matter.

Under the proposed rules, there would be two types of licenses of differing scope for foreign filing. The first type under § 5.15(a), the grant of which would be indicated on the filing receipt in accordance with § 5.12(a) published at 48 FR 2696, would permit the transmittal for filing of the application and of any amendments or modifications to the application in a foreign country, even if "additional subject matter" were introduced into the foreign application provided the subject matter did not change the general nature of the subject matter disclosed and did not pertain to certain categories of potentially sensitive material which are set forth in proposed § 5.15(a) (1)-(5). This scope of license under § 5.15(a) would also be granted under § 5.12(b) pursuant to § 5.13 petition, if the § 5.15(a) scope of license is indicated on the license grant.

The second type of license under § 5.15(b) would be limited in scope to the original subject matter disclosed at the time the license was granted and would not cover "additional subject matter" as the phrase is currently interpreted (*In re Gaertner*, 202 USPQ 714 (C.C.P.A. 1979)). The licenses under §§ 5.12(b), 5.13, and 5.14 would be of the same scope as those granted under present practice unless a § 5.15(a) license is indicated on the license grant. If a petition for a license under § 5.12(b) is granted prior to the grant of the § 5.12(a) filing receipt licenses, the former would merge into the latter and would be considered a § 5.12(a) license for the purpose of proposed § 5.15.

A new § 5.20 is proposed which would set forth in the regulations the requirements to be met for the granting of a retroactive license. The proposed requirements include (1) a list of the foreign countries which received the information; (2) the date(s) of transmittal; (3) an oath or declaration which avers to (i) the non-sensitive nature of the material, (ii) a showing of diligence in attempting to obtain the license upon discovery of the error, and (iii) a showing of facts which support a conclusion of inadvertence; and (4) the required fee. The section as proposed also provides in paragraph (b) for review from a denial of a petition for a retroactive license.

A revised § 5.11(a) is proposed which would set forth in the regulations a requirement that a license from the Commissioner of Patents and Trademarks is required before transmitting an application to a foreign country, if the United States application has not been on file for six months, or no application has been filed in the United States. This proposed rule

change would more accurately reflect the intent of the statutes and make the rules more closely conform with the regulations of other agencies which deal with the export of technical data to a foreign country. The proposed change requiring a license before transmitting an application to a foreign country is not intended to interpret the language in 35 U.S.C. 184 "file or cause or authorize to be filed" as necessarily requiring a license before an application is transmitted to a foreign country. Further, the proposed change is not intended to imply that every transmission within six months of U.S. filing without a license is prohibited under the existing regulations, such as where an application has been transmitted to a foreign agent without an authorization to file a foreign application. The proposed regulations are intended to change existing practice by requiring a license in all situations to transmit an application abroad. This change is proposed under the authority of 35 U.S.C. 6 to assure adequate protection of sensitive material under title 35 and to provide for consistency with the Arms Control Act and the Export Administration Act and their implementing regulations.

A revised § 5.11(b) is proposed which would state that applications under secrecy order under § 5.2 cannot be transmitted or filed in a foreign country except in accordance with § 5.5.

A revised § 5.11(c) is proposed which would state that a license pursuant to paragraph (a) is not required where the invention is not made in the United States, or the U.S. application was on file for six months without a secrecy order being issued.

A new § 5.11(d) is proposed which would state that a license for foreign filing may be revoked at any time upon written notice.

Sections 5.1, 5.12(b), 5.13, 5.14, 5.15 and 5.17, as proposed are revised to conform to the § 5.11 requirement of a license for transmittal of an application to a foreign country.

Finally, §§ 5.12(b), 5.13, 5.14, 5.15, and 1.17, as proposed, also would refer to the new fees for these services.

## Discussion of Specific Sections Proposed To Be Changed

Section 1.17(h) is proposed to be amended to include a specific reference to § 5.20 petitions for retroactive licenses for which the petition fee is charged, rather than having the present retroactive license fee under § 1.182 petitions. The fee for § 5.12(b) licenses is new and is for special handling of these license request.



Section 5.1, as proposed, would reflect the proposed § 5.11 license requirement for transmittal to a foreign country.

Section 5.11, as proposed, would require a license for transmitting an application to a foreign country for filing if the U.S. application has not been on file for at least six months prior to the date of transmittal, or no application has been filed in the United States. This will enable the Patent and Trademark Office to better exercise the export control functions set forth in §§ 5.18 and 5.19 established in accordance with 35 U.S.C. 184, the Arms Control Act of 1977 and the Export Administration Act of 1979, respectively.

Under these Acts, the export of technical data is the activity to be controlled. Proposed § 5.11(a) controls export activity by requiring a license for transmittal of technical data in connection with foreign filing of an application and to that extent implements the Arms Control Act and the Export Administration Act. If a license as required by proposed § 5.11 is obtained under §§ 5.12, 5.13 or 5.14, no license for the export of technical data to a foreign country in connection with a patent application is required under the Arms Administration Act of 1979 or the Arms Control Act of 1977. It is emphasized that the scope of the license for transmittal of technical data is limited to transmitting an application for foreign filing and does not include selling or using the technical data in a foreign country. These latter acts continue to require separate licenses under the Export Administration Act and the Arms Control Act.

Also, the transmittal of technical data in any form to a foreign country for purposes other than filing or supporting the filing of a patent application or consideration whether a patent application should be filed is not controlled by title 35 United States Code or the existing or proposed regulations in Part 5. The transmittal of data to a foreign country in such cases would be subject to other laws and regulations such as the export and arms control regulations.

Section 5.11(b), as proposed, states that an application cannot be transmitted to a foreign country when the corresponding United States application is under secrecy order except under § 5.5.

Section 5.11(c), as proposed, states that no license is required if the invention was not made in the United States, or the application was on file in the United States at least six months and is not under a secrecy order issued under § 5.2.

Section 5.11(d), as proposed, states that any license for foreign filing may be revoked at any time by written notification.

Section 5.12(b), as proposed, would refer to the license fee under proposed § 1.17(h).

Section 5.13, as proposed, would refer to the fee under proposed § 1.17(h) for a petition for license where no corresponding national or international application has been filed in the United States.

Section 5.14(a), as proposed, would indicate that petitions under this section require a fee as set forth in proposed § 1.17(h).

The other changes make grammatical corrections and would not alter the intent of the section.

Section 5.14(c), as proposed, would reflect the proposed § 5.11 license requirement for transmittal to a foreign country.

Section 5.15, as proposed, would change the scope of licenses granted under § 5.12(a). Paragraph (a) of § 5.15 defines the scope of licenses to be granted under § 5.12(a), the granting of which is indicated on the filing receipt. This license permits transmitting corresponding subject matter in the application to any foreign country for filing and any amendments, modifications, and supplements, including divisions, changes or supporting matter consisting of the illustration, exemplification or explanation of subject matter disclosed in the application. This includes new matter which does not change the general nature of subject matter disclosed and does not pertain to certain prohibited subjects or areas listed on various export restriction lists. These lists are established by the Department of State, the Department of Commerce, the Department of Energy, and various executive orders and statutes.

These changes also permit an applicant to take action in the prosecution of the foreign or international application and submit supporting data such as affidavits, test data or the like as long as it directly relates to the application and does not pertain to the prohibited subjects or areas enumerated in § 5.15(a).

New paragraph (b) of § 5.15, as proposed, would define the scope of a license granted under § 5.12(b) to be the same as a license granted under the provisions of present § 5.15. The existing prohibition against the filing of "subject matter additional to that covered by the license" is being continued. Accordingly, court interpretations of this language would still apply. Only the scope of a § 5.12(a) license would be different from

foreign filing licenses which have been granted in the past. Subject matter listed in § 5.15(a)(1)-(a)(5) would require an additional license, regardless of which provision authorized the original license grant.

New paragraph (c) of § 5.15, as proposed, would define the scope of a license granted pursuant of § 5.13 to be of the same scope as a paragraph (a) license, if it is indicated on the license grant.

New paragraph (d) of § 5.15, as proposed, would provide for a reorganization of paragraphs with no significant change in substance.

New paragraph (e) of § 5.15, as proposed, would recite the situations in which a license would be required to file any amendment or other papers abroad. Amendments to applications under both types of licenses are covered. Any amendment to an application licensed under proposed § 5.12(a) requires a separate license only if it pertains to specifically identified areas or subjects. Any amendment to an application licensed under § 5.12(b) requires a separate license if the amendment discloses additional subject matter.

Paragraph (f) of § 5.15, as proposed, would set forth the licensing requirements for combining or dividing applications. If any of the applications have not been licensed under § 5.12(a), then any additional subject matter must be separately licensed. If all of the applications have been licensed under § 5.12(a), then only subject matter listed in paragraph 5.15 (a)(1)-(a)(5) need be separately licensed.

Paragraph (g) of § 5.15, as proposed, would include a reference to the section dealing with the requirements for a petition for a retroactive license.

Section 5.17, as proposed, would include the transmittal requirement of proposed § 5.11 in the use of a license.

Section 5.20, as proposed, is new and would set forth the requirements for seeking a retroactive license.

New § 5.20(a) requires identification of the subject matter which is to be licensed as in §§ 5.13 or 5.14. New § 5.20 (a)(1) and (a)(2) identify the specific proscribed transmittal for filing for which the license is made retroactive. New § 5.20(a)(3) provides for the specific showing of inadvertence. New § 5.20(a)(4) refers to the required fee. New § 5.20(b) provides for time periods to renew petitions that have been denied, and procedures to be followed after denial of a renewed petition.

Section 5.23, as proposed, would reflect the new organizational title.

Environmental, energy, and other considerations: The proposed rule

change will not have a significant impact on the quality of the human environment or the conservation of energy resources.

The proposed rule change will not have a significant adverse economic impact on a substantial number of small entities (Regulatory Flexibility Act, Pub. L. 96-354) for several reasons. Under this proposed rulemaking, small entities would be able to obtain licenses without filing separate requests therefor. In general, the rule change will also expedite proceedings before the Patent and Trademark Office, changing existing procedures where they can be simplified.

The Patent and Trademark Office has determined that this proposed rule change is not a major rule under Executive Order 12291. The annual effect on the economy will be less than \$100 million. There will be no major increases in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposed rule change would not impose a burden under the Paperwork Reduction Act of 1980, 44 U.S.C. 3401 *et seq.*, since no additional recordkeeping or reporting requirements are placed on the public.

#### List of Subjects

##### 37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of information, Inventions and patents, Lawyers, Small businesses.

##### 37 CFR Part 5

Classified information, Foreign relations, Inventions and patents.

#### Proposed Amendment of Regulations

Notice is hereby given that, pursuant to the authority granted to the Commissioner of Patents and Trademarks by 35 U.S.C. 6, the Patent and Trademark Office proposes to amend Title 37 of the Code of Federal Regulations as set forth below.

It is proposed to amend 37 CFR, Parts 1 and 5 as follows, with deletions indicated by brackets and additions by arrows:

#### PART 1—[AMENDED]

1. Section 1.17 is proposed to be amended by revising paragraph (h) to read as follows:

##### § 1.17 Patent application processing fees.

(h) For filing a petition to the Commissioner under a section of ▶ Part 1 or 5 ◀ [this part] listed below which refers to this paragraph, \$120.00.

—§ 1.47—for filing by other than all the inventors or a person not the inventor

—§ 1.48—for correction of inventorship

—§ 1.182—for decision on questions not specifically provided for

—§ 1.183—to suspend the rules

—§ 1.268—for late filing of interference settlement agreement

▶—§§ 5.13 and 5.14—for special handling of foreign filing license

—§ 5.20—for retroactive license ◀

#### PART 5—[AMENDED]

2. Section 5.1 is proposed to be amended by revising paragraph (a) to read as follows:

##### § 5.1 Defense inspection of certain applications.

(a) The provisions of this part shall apply to both national and international applications filed in the Patent and Trademark Office and, with respect to inventions made in the United States, to applications filed in any foreign country or any international authority other than the United States Receiving Office. The

(1) ▶ transmittal for ◀ filing of a national or an international application in a foreign country or with an international authority other than the United States Receiving Office, or

(2) transmittal of an international application to a foreign agency or an international authority other than the United States Receiving Office is considered to be a foreign filing within the meaning of Chapter 17 of Title 35, United States Code.

3. The center heading preceding § 5.11 and § 5.11 are proposed to be amended by revising the center heading and paragraphs (a), (b), and (c), and adding new paragraph (d) to read as follows:

##### Licenses for Foreign ▶ Transmittal or ◀ Filing

§ 5.11 License for ▶ transmitting ◀ [filing] application ▶ on an invention made in the United States to a ◀ [in] foreign country [or for transmitting international applications].

(a) [When no secrecy order has been issued under § 5.2, a] ▶ A ◀ license from the Commissioner of Patents and Trademarks [under 35 U.S.C. 184] is

required before [filing] any application for patent or for the registration of a utility model, industrial design, or model [in a foreign country, or transmitting an international application to any foreign patent agency or any international agency other than the United States Receiving Office, or causing or authorizing such filing or transmittal, with respect to] ▶ on ◀ an invention made in the United States ▶ can be transmitted to a foreign country (including an international agency in a foreign country) for filing if:

(1) An application on the invention has been on file in the United States less than six months prior to the date on which the application is to be transmitted, or

(2) No application on the invention has been filed in the United States. The license from the Commissioner of Patents and Trademarks referred to in this paragraph would be issued pursuant to, and meet the requirements of, 35 U.S.C. 184 and §§ 5.18 and 5.19 of this part. ◀ [if:

(1) The foreign application is to be filed or its filing caused or authorized before a national or international application for patent is filed in the United States, or

(2) The foreign application is to be filed, or its filing caused or authorized, or the transmittal of the international application is caused or authorized, prior to the expiration of six months from the filing of the application in the United States.]

(b) ▶ If a secrecy order has been issued under § 5.2, an application cannot be transmitted to, or filed in, a foreign country (including an international agency in a foreign country), except in accordance with § 5.5. ◀ [When there is no secrecy order in effect, a license under 35 U.S.C. 184 is not required if:

(1) The invention was not made in the United States, or

(2) The foreign application is to be filed or the international application is to be transmitted, or its filing or transmittal caused or authorized, after the expiration of six months from the filing of the national application in the United States.]

(c) ▶ No license pursuant to paragraph (a) of this section is required if:

(1) the invention was not made in the United States, or

(2) the United States application is not subject to a secrecy order under § 5.2, and was filed at least six months prior to the date on which the application is transmitted to a foreign country. ◀

[When a secrecy order has been issued under § 5.2, an application cannot be filed in a foreign country, nor can an

international application be transmitted to any agency other than the United States Receiving Office except in accordance with § 5.5.]

►(d) A license pursuant to paragraph (a) of this section can be revoked at any time upon written notification by the Patent and Trademark Office. ◀

4. Section 5.12 is proposed to be amended by revising paragraph (b) to read as follows:

#### § 5.12 Petition for license.

(b) Petitions for license under 35 U.S.C. 184 should be presented in letter form and [should] ►must ◀ include ►any required fee, ◀ petitioner's address, and full instructions for delivery of the requested license when it is to be delivered to other than the petitioner.

5. Section 5.13 is proposed to be revised to read as follows:

#### § 5.13 Petition for license; no corresponding application.

►If ◀ [Where there is] no corresponding national or international application ►has been filed in the United States ◀, the petition for license ►under § 5.12(b) ◀ must be accompanied by ►any required fee (§ 1.17(h)) and ◀ a legible copy of the material upon which ►a ◀ license is desired. This copy will be retained as a measure of the license granted. For assistance in the identification of the subject matter of each license so issued, it is suggested that the petition or requesting letter be submitted in duplicate and provide a title and other description of the material. The duplicate copy of the petition will be returned with the license or other action on the petition. [Where an international application is being filed in the United States Receiving Office, the petition may accompany the international application.]

6. Section 5.14 is proposed to be amended by revising paragraphs (a) and (c) to read as follows:

#### § 5.14 Petition for license; corresponding U.S. application.

(a) Where there is a corresponding United States application on file ►a ◀ [the] petition for license ►under § 5.12(b) must include any required fee (§ 1.17(h)) and ◀ must identify this application by serial number, filing date, inventor, and title. ►but ◀ [and] a copy of the material upon which the license is desired is not required. The subject matter licensed will be measured by the disclosure of the United States application. Where the title is not descriptive, and the subject

matter is clearly of no interest from a security standpoint, time may be saved by a short statement in the petition as to the nature of the invention.

(c) where the application to be [filed or] transmitted abroad ►for filing ◀ contains matter not disclosed in the United States application or applications, including the case where the combining of two or more United States applications introduces subject matter not disclosed in any of them, a copy of the application as it is to be ►transmitted for filing ◀ [filed] in the foreign country or international application ►as it ◀ [which] is to be transmitted to a foreign international or national agency [as it is to be filed] ►for filing ◀ in the Receiving Office must be furnished with the petition. If, however, all new matter in the foreign or international application to be ►transmitted ◀ [filed] is readily identifiable, the new matter may be submitted in detail and the remainder by reference to the pertinent United States application or applications.

7. Section 5.15 is proposed to be amended by revising paragraph (a), redesignating paragraphs (b), and (c) as paragraphs (f) and (g) and adding new paragraphs (b), (c), (d), and (e) to read as follows:

#### § 5.15 Scope of license.

(a) [A] ►Grant of a ◀ license ►under § 5.12(a) authorizes the transmittal of ◀ [to file] an application ►to ◀ [in] a foreign country or [transmit] ►the transmittal of ◀ an international application to any foreign ►patent agency ◀ or international ►patent ◀ agency [other than the United States Receiving Office, when granted.] ►where the subject matter of the foreign or international application corresponds to that of the domestic application. Further, this license ◀ includes authority to forward all duplicate and formal papers to the foreign country or international agencies and to make amendments ►, modifications and supplements, including new matter which does not change the general nature of the subject matter disclosed, at the time of transmittal, or later, ◀and► to ◀ take any action in the prosecution of the foreign or international application [.] ►unless the paper, modification, amendment, supplement of action involves subject matter pertaining to:

(1) Defense services or articles designated in the United States Munitions List applicable at the time of filing, the unlicensed exportation of

which is prohibited pursuant to the Arms Export Control Act of 1977;

(2) Restricted Data, sensitive nuclear technology or technology useful in the production or utilization of special nuclear material or atomic energy, the dissemination of which is subject to restrictions of the Atomic Energy Act of 1954, as amended, and the Nuclear Non-Proliferation Act of 1978, as implemented by the Regulations for unclassified Activities in Foreign Atomic Energy Programs;

(3) Articles, materials and supplies, the export of which is prohibited or restricted pursuant to the Export Administration Act of 1979, as implemented by the Export Administration Regulations;

(4) Information subject to classification in accordance with executive orders protecting national security information from disclosure; or

(5) Information, the dissemination, disclosure or exportation of which is restricted by a statute, regulation or executive order which amends or supersedes any of paragraphs (a)(1)-(4) of this section. ◀ [Provided subject matter additional to that covered by the license is not involved. In those cases in which no license is required to file the foreign application or transmit the international application, no license is required to file papers in connection with the prosecution of the foreign or international application not involving the disclosure of additional subject matter. Any paper filed abroad or with an international agency following the filing of a foreign or international application which involves the disclosure of additional subject matter must be separately licensed in the same manner as a foreign or international application.]

►(b) Grant of a license under § 5.12(b) authorizes the transmittal of an application to a foreign country or the transmittal of an international application to any foreign patent agency or international patent agency. Further, this license includes authority to forward all duplicate and formal papers to the foreign patent agency or international patent agency and to make amendments, modifications or supplements to and take any action in the prosecution of the foreign or international application, provided subject matter additional to that covered by the license is not involved.

(c) Grant of a license under § 5.12(b) pursuant to § 5.13 shall have the same scope of a license granted in paragraph (a) of this section, if it is so specified in the license.

(d) In those cases in which no license is required to transmit the foreign application or the international application, no license is required to transmit papers in connection with the prosecution of the foreign or international application not involving the disclosure of additional subject matter.

(e) Any paper transmitted abroad or to an international patent agency following the transmittal of a foreign or international application which involves the disclosure of subject matter listed in paragraphs (a)(1)-(a)(5) of this section must be separately licensed in the same manner as a foreign or international application. Further, if no license has been granted under § 5.12(a) on filing the corresponding United States application, any paper filed abroad or with an international patent agency which involves the disclosure of additional subject matter must be licensed in the same manner as a foreign or international application. ◀

▶ (f) ◀ (b) Licenses separately granted in connection with two or more United States applications may be exercised by combining or dividing the disclosures, as desired, provided ▶:

(1) Subject matter listed in paragraph (a)(1)-(a)(5) of this section is not introduced and,

(2) In the case where at least one of the licenses was obtained under § 5.12(b), ◀ additional subject matter is not introduced.

▶ ◀ (c) A license does not apply to acts done before the license was granted unless the petition specifically requests and describes the particular acts and the license is worded to apply to such acts. ▶ See § 5.20. ◀

8. Section 5.17 is proposed to be revised to read as follows:

**§ 5.17 Who may use license.**

Licenses may be used by anyone interested in the ▶ transmitting for ◀ foreign filing or international transmittal for or on behalf of the inventor or the inventor's assigns.

9. A new § 5.20 is proposed to be added to read as follows:

**▶ § 5.20 Petition for retroactive license.**

(a) A petition for retroactive license under 35 U.S.C. 184 shall be presented in accordance with § 5.13 or § 5.14, and shall include:

(1) A listing of the foreign countries to which the patent application material was transmitted,

(2) The dates on which the material was transmitted,

(3) A verified statement containing:

(i) An averment that the subject matter in question was not under a secrecy order at the time it was transmitted and filed abroad, and that it is not currently under a secrecy order,

(ii) A showing that the license has been diligently sought after discovery of the proscribed transmittal and foreign filing, and

(iii) An explanation of why the material was inadvertently transmitted and filed abroad without the required license under § 5.11 first having been obtained, and

(4) The required fee (§ 1.17(h)).

The above explanation must include a showing of facts from which a conclusion of inadvertence may be drawn rather than a mere allegation of inadvertence. The showing of facts should include statements by those

persons having personal knowledge of the acts regarding transmitting and filing in a foreign country and should be accompanied by copies of any necessary supporting documents such as letters of transmittal or instructions for filing. The acts which are alleged to constitute inadvertence should cover the period from the time of transmission until actual filing of the petition under this section.

(b) If a petition for a retroactive license is denied, a time period of not less than thirty days shall be set, during which the petition may be renewed. Failure to renew the petition within the set time period will result in a final denial of the petition. If a renewed petition is denied, the denial is final unless recourse be had under § 1.181 within two months of the date of the denial. If the petition for a retroactive license is denied with respect to the invention of a pending application and no petition under § 1.181 has been filed, a final rejection of the application under 35 U.S.C. 185 will be made. ◀

10. Section 5.23 is proposed to be revised to read as follows:

**§ 5.23 Correspondence.**

All correspondence in connection with this part, including petitions, should be addressed to "Commissioner of Patents and Trademarks (Attention ▶ Licensing and Review ◀ [Patent Security Division]), Washington, D.C. 20231."

Dated: May 18, 1983.

Gerald J. Mossinghoff,  
Commissioner of Patents and Trademarks.

[FR Doc. 83-13610 Filed 5-20-83; 8:45 am]

BILLING CODE 3510-16

# **federal register**

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**Monday  
May 23, 1983**

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**Part VIII**

**Department of  
Education**

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**Student Assistance General Provisions**

## DEPARTMENT OF EDUCATION

## 34 CFR Part 668

## Student Assistance General Provisions

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

**SUMMARY:** The Secretary proposes a new definition of an independent student. Over the past several years, as the definition of an independent student has been liberalized, the number of independent students has increased. This increase has raised a question of equity in the distribution of funds. The new proposed definition of an independent student includes a more stringent definition for some students. It is intended that the new definition will result in a reemphasis of the traditional premise of student aid that the student and/or his or her parents have the main responsibility for financing the cost of postsecondary education.

**DATE:** Comments must be received on or before July 7, 1983.

**ADDRESS:** Comments should be addressed to Mr. Brian Kerrigan, Basic Grant Policy Section, Office of Student Financial Assistance, U.S. Department of Education, Room 4318, Regional Office Building 3, 400 Maryland Avenue, SW., Washington, D.C. 20202.

**FOR FURTHER INFORMATION CONTACT:** David Morgan or Deborah Cohen, (202) 472-4300.

**SUPPLEMENTARY INFORMATION:** In the 1976-77 award year, when half-time students became eligible to participate in the Pell Grant Program, 38 percent of the eligible Pell Grant applicants filed as independent students. Since then, the percentage of eligible independent applicants has steadily increased, with 1981-82 estimates indicating that independent students will comprise 42-46 percent of the eligible Pell Grant applicant pool. A similar trend exists in the other aid programs. In addition, there is concern about both the legitimacy and ramifications of many claims of independency.

The Department of Education published a comprehensive analysis of the independent student issue in the December, 1981 *OSFA Bulletin*, and requested comments from the financial aid community. That analysis elicited a wide range of suggestions from members of the community, and almost all of them requested a more stringent definition. From those suggestions three concepts were frequently repeated:

1. The use of age as a criterion for determining automatic dependency. Those suggestions focused on a specific

age or on the use of four years of elapsed time after high school graduation. Advocates of automatic dependency expressed a concern for an equitable distribution of a limited amount of funds. Parents who are able to contribute to a student's education are expected to contribute at least until the student reaches the age of twenty-two.

2. An emphasis on using prior year data to determine dependency, rather than estimated information. Many commenters suggested extending the current criteria to one or two years before the base year. (The base year for the 1984-85 award year would be 1983.)

3. A distinction between undergraduate and graduate students. Many commenters thought that parents should not be automatically responsible for financing the student's cost for graduate study merely because they supported the student as an undergraduate. Such a presumption of dependency is often made when there is an emphasis on data from prior years.

The Secretary has incorporated many of these concepts in his proposal to change the definition of the independent student. Under this proposal, for award year 1984-85, a non-veteran, unmarried student who does not have any dependents of his or her own would be deemed to be dependent if he or she is not at least twenty-two years old on December 31, 1983, and the student received or will receive more than \$750 from the parents, was claimed or will be claimed as a dependent for Federal income tax purposes by the parent(s), or lived or will live for more than six weeks in the home of the parent(s) in any of the three calendar years before, or the first calendar year of, the award year. A non-veteran, unmarried student who is at least 22, or who has dependents, would be dependent if any of the above three criteria affirmatively apply to him or her during either the most recent calendar year before, or the first calendar year of, the award year. As in award years 1982-83 and 1983-84, a married student will be considered dependent if any of the three criteria affirmatively apply to him or her for the first calendar year of an award year only. This rule for married students will also apply to students who are veterans. For the 1984-85 award year, the first calendar year of an award year will be 1984. As in the past, if a student is a ward of the court or both the parents of the student are deceased, the student would automatically be independent.

The extension of the three traditional criteria to prior years has been favored by many members of the financial aid community, including the National

Association of Student Financial Aid Administrators. This extension also emphasizes the traditional focus of the parental duty of providing for the student's postsecondary education. The state of California currently applies these three dependency criteria to four calendar years for most students under the age of 30 who apply for state-sponsored financial aid programs. However, the California model does not make explicit exceptions for married students or students with dependents.

The Secretary has agreed to the suggestion of many commenters that his extension to prior years should be phased in gradually. The Secretary is phasing in the new definition for these students so that he will not have to go beyond 1982 in determining independence. This assures that a student who begins post-secondary education in award year 1983-84 will not have his or her independent student status changed as a result of events transpiring before 1982.

The current criteria for determining dependency are retained for those students above the age of twenty-two. This separate criteria for students above the age of 22 is proposed because of the widely held view that, while parents should at least finance their children's undergraduate education, they should not be expected continually to pay for their children's schooling. The age of 22 was chosen because most students complete their undergraduate education at this age. Most students are not eighteen years old before the calendar year they graduate from high school. In most cases, a student is expected to complete his or her undergraduate education in four years, therefore, a student who is 22 before the first calendar year of an award year is likely to have completed his or her undergraduate studies. In those instances where the parents help the student through his or her undergraduate studies, a student might retain his or her dependency status for one year beyond the undergraduate level since the dependency criteria apply to the base year and the first calendar year of the award year. However, inclusion of the current dependency criteria for several years prior to the base year would cause a student to retain his or her dependency status well beyond the undergraduate level.

The extension of the dependency criteria to prior years does not apply to married students because of the statutory mandate found in section 482(c)(1)(E) of the Higher Education Act of 1965, as amended. That section calls

for a determination of a married student's independent status based on the student's relationship with his or her parents in the year of application. For reasons of form design and ease of application, the term "the year of application" has been equated with the term "the first calendar year of the award year." Further, since students with dependents are more often financially independent, regardless of age, compared to unmarried students with no dependents, the same exemption from the age requirement that applies to married students is proposed to apply to students with dependents.

The proposal with regard to veterans is made in cooperation with the Department of Defense and reflects the special circumstances of a veteran. A person who has served in the military has almost always established a history of economic independence from his family for a period of several years, including living away from the parental home. However, the special circumstances of military service (e.g., tours of duty outside of the country) often result in a tendency for the veteran to return home for a brief period to renew family ties once he or she is discharged from the armed services. This situation is not adequately taken into account when the current dependency criteria are applied. Since the veteran would ordinarily have established his independence while in the military, the Secretary believes it would be appropriate to ignore the relationship with his or her parents during a transitional period in determining his independent student status. Thus, in determining whether a veteran is an independent student, the definition proposes to disregard whether the veteran resided with his or her parents or received financial support from them during a one year period immediately following the veteran's date of discharge from active duty.

The definition of an "award year" as the period of time between July 1 of one calendar year and June 30 of the following calendar year already exists in the Pell Grant and campus-based regulations. It is repeated here as a component of the "independent student" definition because it does not currently exist either in the regulations for, or the administration of, the Guaranteed Student Loan or the PLUS program. The term is needed in the proposed "independent student" definition since one of the dependency criteria applies to students who are twenty-two years old before the first calendar year of an award year. Thus, for the 1984-85 award year, the age criterion would apply to

students who were twenty-two before January 1, 1984, i.e., by December 31, 1983.

The proposed regulation refers to dependents as defined in 34 CFR 690.42. Section 690.42, "Special definitions, is taken from the proposed 1984-85 Pell Grant Family Contribution Schedule. Currently, the Secretary is proposing alternative regulations for determining the expected family contributions for the 1984-85 award year under the Pell Grant Program.

The proposed definitions of "dependent of the student" as written in § 690.42 under Alternatives A and B are listed below:

#### Alternative A

A "dependent of the student" means, the student's spouse, and other persons who have been claimed on the 1983 Federal income tax return as a dependent by the student and student's spouse. If the student has not filed a 1983 Federal tax return at the time of application, "dependent of the student" means the student's spouse and other persons who were eligible to be claimed in 1983 by the student and the student's spouse under the Internal Revenue Code of 1954.

#### Alternative B

A "dependent of the student" means—

(a) The student's spouse (unless separated or divorced from the student),

(b) Any of the student's or spouse's children who are deemed to be dependent students (with respect to the student or spouse) when filing for title IV aid,

(c) Other dependent children of the student or spouse, and

(d) Other persons who live with and receive more than one-half of their support from the student or spouse and will continue to receive more than half of their support from the student or spouse for the 1984-85 award year.

The Secretary will include in the final regulation for the 1984-85 Family Contribution Schedule, a definition based on one of these alternatives. That final definition in 34 CFR 690.42 will be the one referred to in the final independent student regulation, which will apply to all student financial assistance programs (except for the State Student Incentive Grant Program), authorized by title IV of the Higher Education Act of 1965, as amended.

*Executive Order 12291:* These proposed regulations have been reviewed in accordance with Executive Order 12291. They are classified as non-major because they do not meet the

criteria for major regulations established in the order.

#### Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. These regulations revise the definition of an independent student for the title IV student financial aid programs. The definition is used in determining a student's eligibility for financial assistance. The regulations will not have an impact on small entities.

#### Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. Written comments and recommendations may be sent to the address given at the beginning of this document. All comments submitted on or before the 45th day after publication of this document will be considered before the Secretary issues final regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 4318, ROB-3, 7th and D Streets, SW., Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

#### List of Subjects in 34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Loan programs, education, Grant programs—education, Student aid.

#### Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these proposed regulations.

(Catalogue of Federal Domestic Assistance Numbers: Supplemental Educational Opportunity Grant Program, 84.007; Guaranteed Student Loan Program, 84.032; Auxiliary Loan Program (PLUS), 84.032; College Work-Study Program, 84.033; National Direct Student Loan Program, 84.038; Pell Grant Program, 84.063)

Dated: May 11, 1983.

T. H. Bell,

Secretary of Education.

The Secretary proposes to amend Part 668 of Title 34 of the Code of Federal Regulations as follows:

1. The table of contents for subpart A is amended by adding a new section to read as follows:

**PART 668—STUDENT ASSISTANCE  
GENERAL PROVISIONS**

**Subpart A—General 8**

Sec.

668.1a Independent Student.

2. A new § 668.1a is added to read as follows:

**§ 668.1a Independent Student**

(a) An independent student is—

(1) An unmarried student who is not a veteran, and who is not 22 years old before the first calendar year of an award year, and who does not have dependents as defined in 34 CFR 690.42, who during the three calendar years immediately before, and the first calendar year of, an award year—

(i) Has not lived and will not live for more than six weeks in any of those years in the home of the parent(s) for whom income must be reported according to 34 CFR 690.33;

(ii) Has not been claimed and will not be claimed as a dependent for Federal income tax purposes by the parent(s) for whom income must be reported according to 34 CFR 690.33; and

(iii) Has not received and will not receive financial assistance of more than \$750 in any of those years from the parent(s) for whom income must be reported according to 34 CFR 690.33;

(2) An unmarried student who is not a veteran, and who is 22 years old before the first calendar year of an award year, or who is not 22 years old, but has

dependents as defined in 34 CFR 690.42, who during the most recent calendar year before, and the first calendar year of, an award year—

(i) Has not lived and will not live for more than six weeks in the home of the parent(s) for whom income must be reported according to 34 CFR 690.33;

(ii) Has not been claimed and will not be claimed as a dependent for Federal income tax purposes by the parent(s) for whom income must be reported according to 34 CFR 690.33; and

(iii) Has not received and will not receive financial assistance of more than \$750 from the parent(s) for whom income must be reported according to 34 CFR 690.33; or

(3) A married student or a veteran who, for the first calendar year of an award year—

(i) Has not lived and will not live for more than six weeks in the home of the parent(s) for whom income must be reported according to 34 CFR 690.33;

(ii) Has not been claimed and will not be claimed as a dependent for Federal income tax purposes by the parent(s) for whom income must be reported according to 34 CFR 690.33; and

(iii) Has not received and will not receive financial assistance of more than \$750 from the parent(s) for whom income must be reported according to 34 CFR 690.33.

(b) However, if both parents have died, or the student has been declared a ward of the court, the student is independent.

(c) Under paragraph (a)(3) of this section, in determining whether a veteran is an independent student,

disregard whether the veteran resided with his parents or received financial assistance from them during a one year period immediately following the date the veteran was discharged from active duty from the Armed Services.

(d) An award year is the period of time between July 1 of one calendar year and June 30 of the following calendar year.

(e) A veteran is a person who served on active duty for more than 365 consecutive days in the U.S. Armed Forces and was discharged or released with an honorable discharge.

(f) Paragraph (a)(1) of this section will not become effective until the 1985-86 award year. In 1984-85 an unmarried student who is not a veteran, and is not 22 years old before January 1, 1984, and who does not have dependents as defined in 34 CFR 690.42 is independent if for 1982, 1983, and 1984, he or she—

(1) Has not lived and will not live for more than six weeks in any of those years in the home of the parent(s) for whom income must be reported according to 34 CFR 690.33;

(2) Has not been claimed and will not be claimed as a dependent for Federal income tax purposes by the parent(s) for whom income must be reported according to 34 CFR 690.33; and

(3) Has not received and will not receive financial assistance of more than \$750 in any of those years from the parent(s) for whom income must be reported according to 34 CFR 690.33.

[FR Doc. 83-13222 Filed 5-20-83; 8:45 am]

BILLING CODE 4000-01-M



# **federal register**

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Monday  
May 23, 1983

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## **Part IX**

### **Department of Commerce**

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#### **Economic Development Administration**

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**Standards for Designation of  
Redevelopment Areas Under Section  
401(a) of the Act; Interim Rule and  
Public Works and Development Facilities  
Program; Interim Rule**

## DEPARTMENT OF COMMERCE

Economic Development  
Administration

## 13 CFR Part 302

Standards for Designation of  
Redevelopment Areas Under Section  
401(a) of the Act

**AGENCY:** Economic Development  
Administration (EDA), Commerce.

**ACTION:** Interim rule.

**SUMMARY:** This rule amends EDA's Designation of Areas regulation to modify the meaning of "substantial unemployment". This term is now defined as an annual average rate of unemployment equal to or above the national average rate of unemployment during the most recent quarter for which appropriate data is available, instead of as a fixed rate of unemployment. The amendment will not apply to projects authorized prior to May 23, 1983.

**DATES:** Effective date: May 23, 1983.

Comments by: July 22, 1983.

**ADDRESS:** Send comments to the Assistant Secretary for Economic Development, U.S. Department of Commerce, Room 7800B, Washington, D.C. 20230.

**FOR FURTHER INFORMATION CONTACT:** Walter Archibald, Director, Office of Compliance Review, U.S. Department of Commerce, Economic Development Administration, Room 7325, Washington, D.C. 20230, (202) 377-2710.

**SUPPLEMENTARY INFORMATION:** EDA is amending its Designation of Areas regulation at 13 CFR Part 302, Subpart A—Standards for Designation of Redevelopment Areas Under Section 401(a) of the Act. The regulation to be amended states one of the conditions which if met enables an area to be designated as a Public Works Impact Area. The amendment defines "substantial unemployment" as an annual average unemployment rate equal to or above the national average unemployment rate during the most recent quarter for which appropriate data is available. This change will assure designation of areas where unemployment is highest.

Because this rule relates to EDA's public works program, it is exempt from the notice and comment procedures described in Section 553 of the Administrative Procedure Act (5 U.S.C. 553). However, while the rule will become effective upon publication in interim form, the public will be given an opportunity to comment before it is published in final form.

In accordance with Section 3(c)(3) of Executive Order No. 12291, this rulemaking has been submitted to the Director of the Office of Management and Budget. Since this is a "major rule," a Regulatory Impact Analysis is required.

In accordance with section 8(a)(1) of Executive Order 12291, "Federal Regulation" this regulation is exempt from the procedures prescribed by such Order because it responds to an emergency situation. The emergency situation to which this regulation responds is the implementation of Pub. L. 98-8 (97 Stat. 13), the Emergency Jobs Act. Public Law 98-8, enacted on March 24, 1983, is intended to "provide productive employment for hundreds of thousands of jobless Americans". Sections 101 (e) and (f) of Pub. L. 98-8 (97 Stat. 32) provide:

(e) Notwithstanding any other provision of law, the head of each Federal agency to which appropriations are made under this title, with respect to project grants or project contracts in this section, shall expedite final approval of projects \* \* \*. Nothing required by this section shall impede the rapid expenditure of funds under this section.

(f) Notwithstanding any other provisions of law, any agency rulemaking proceeding conducted in order to implement the provisions of this title shall be conducted expeditiously, and in no case shall an agency hearing on the record be required.

The amendment to 13 CFR 302.7, "Designation of public works impact program areas," in concert with an amendment to 13 CFR 305.5, "Supplementary grant rates", will promote the purposes of the Emergency Jobs Act by ensuring a fairer distribution of the limited funds available to EDA under that Act and by ensuring that projects located in areas of relatively greater economic distress, as indicated by unemployment rates, receive a proportionately greater share of Federal funding.

In addition, there are no reporting or recordkeeping requirements under the Paperwork Reduction Act of 1980 (Pub. L. 96-511).

It has been determined by the General Counsel of the Department of Commerce that this rulemaking will not have a significant economic impact on a substantial number of small entities.

**List of Subjects in 13 CFR Part 302**

Community development.

Accordingly, EDA revises 13 CFR 302.7(a)(3) as follows:

**PART 302—DESIGNATION OF AREAS****§ 302.7 Designation of public works  
impact program areas.**

(a) The Assistant Secretary shall designate communities or neighborhoods defined without regard to political or other subdivisions or boundaries when he determines one of the following conditions has been met.

(3) Substantial unemployment as established by an annual average unemployment rate equal to or more than the national average unemployment rate during the most recent quarter for which appropriate data is available. Notwithstanding, the minimum substantial unemployment rate for designation under this section is fixed at 8.5 percent. This definition of substantial unemployment does not apply to projects authorized prior to May 23, 1983.

(Sec. 701, Pub. L. 89-136, 79 Stat. 570) (42 U.S.C. 3211). Sec. 1-105, E.O. 12185, DOC Organization Order 10-4, as amended (40 FR 56702, as amended)

Dated: May 13, 1983.

**Carlos C. Campbell,**  
Assistant Secretary for Economic  
Development.

[FR Doc. 83-13953 Filed 5-20-83; 10:33 am]

**BILLING CODE 3510-24-M**

**13 CFR Part 305****Public Works and Development  
Facilities Program**

**AGENCY:** Economic Development  
Administration (EDA), Commerce.

**ACTION:** Interim rule.

**SUMMARY:** This rule amends EDA's Public Works and Development Facilities Program regulations. The amendment to 13 CFR 305.5(b)(iv) changes requirements for supplementary grant rates for Public Works Impact Program (PWIP) projects so that such rates will be determined on a graduated basis. This change will not apply to projects authorized prior to May 23, 1983. The amendment to 13 CFR 305.5(e) provides for retention of the highest applicable maximum grant rate in effect between the time of authorization by the Assistant Secretary—the Regional Directors no longer authorize projects—and the time of project approval.

**DATES:** Effective date: May 23, 1983.

Comments by July 22, 1983.

**ADDRESS:** Send comments to the Assistant Secretary for Economic Development, U.S. Department of

Commerce, Room 7800B, Washington, D.C. 20230.

**FOR FURTHER INFORMATION CONTACT:** Walter Archibald, Director, Office of Compliance Review, U.S. Department of Commerce, Economic Development Administration, Room 7019, Washington, D.C. 20230, (202) 377-2710.

**SUPPLEMENTARY INFORMATION:** EDA is amending its Public Works and Development Facilities Program regulation at 13 CFR Part 305, Subpart A—*Direct and Supplementary Grants for Public Works and Development Facilities*. The regulation to be amended at 13 CFR 305.5(b)(iv) provides for a maximum grant rate of 80 percent for Public Works Impact Program (PWIP) projects in areas designated under Section 401(a)(6) [42 U.S.C. 3161(a)(6)] of the Public Works and Economic Development Act of 1965, as amended which cannot meet the requirements for a 100 percent maximum grant rate under 13 CFR 305.5(b)(3)(ii). The amendment will assure that grant rates for projects authorized on or after May 23, 1983, will be determined on a graduated basis. This change will assure equitable treatment for PWIP grantees. The regulation to be amended at 13 CFR 305.5(e) states that projects are authorized by the Assistant Secretary—not the Regional Directors. Maximum applicable grant rates for the period from project authorization to project approval, are to be applied.

Because this rule relates to EDA's public works program, it is exempt from the notice and comment procedures described in Section 553 of the Administrative Procedure Act (5 U.S.C. 553).

In accordance with Section 3(c)(3) of Executive Order No. 12291, this rulemaking has been submitted to the Director of the Office of Management and Budget. Since this is a "major rule," a Regulatory Impact Analysis is required.

In accordance with section 8(a)(1) of Executive Order 12291, "Federal Regulation" this regulation is exempt from the procedures prescribed by such Order because it responds to an

emergency situation. The emergency situation to which this regulation responds is the implementation of Pub. L. 98-8 (97 Stat. 13), the Emergency Jobs Act. Pub. L. 98-8, enacted on March 24, 1983, is intended to "provide productive employment for hundreds of thousands of jobless Americans". Sections 101(e) and (f) of Pub. L. 98-8 (97 Stat. 32) provide:

(e) Notwithstanding any other provision of law, the head of each Federal agency to which appropriations are made under this title, with respect to project grants or project contracts in this section, shall expedite final approval of projects \* \* \*. Nothing required by this section shall impede the rapid expenditure of funds under this section.

(f) Notwithstanding any other provisions of law, any agency rulemaking proceeding conducted in order to implement the provisions of this title shall be conducted expeditiously, and in no case shall an agency hearing on the record be required.

The amendment to 13 CFR 305.5, "Supplementary grant rates", in concert with an amendment to 13 CFR 302.7, "Designation of public works impact program areas," will promote the purposes of the Emergency Jobs Act by ensuring a fairer distribution of the limited funds available to EDA under that Act and by ensuring that projects located in areas of relatively greater economic distress, as indicated by unemployment rates, receive a proportionately greater share of Federal funding.

In addition, there are no reporting or recordkeeping requirements under the Paperwork Reduction Act of 1980 (Pub. L. 96-511).

It has been determined by the General Counsel of the Department of Commerce that this rulemaking will not have a significant economic impact on a substantial number of small entities.

#### List of Subjects in 13 CFR Part 305

Community development, Community facilities, Grant programs—community development, Indians, Loan programs—community development.

Accordingly, EDA revises 13 CFR 305.5 (b)(3)(iv) and (e) as follows:

## PART 305—PUBLIC WORKS AND DEVELOPMENT FACILITIES PROGRAM

### § 305.5 Supplementary grant rates.

(b) In determining the amount of supplementary grant assistance, the Assistant Secretary will take into consideration the following factors:

(3) The maximum grant rate of funds granted under authority of title I of the Act for projects in designated areas, determined by relative needs, is as follows:

(iv) Projects located in redevelopment areas designated under section 401(a)(6) of the act but which cannot meet the requirement of paragraph (b)(3)(ii) of this section will be:

(A) The annual average unemployment rate for the preceding 12 months is 12 percent or higher,

(B) The annual average unemployment rate for the preceding 12 months is 10.5 percent to 11.9 percent,

(C) The annual average unemployment rate for the preceding 12 months is 9 percent to 10.4 percent,

(D) The annual average unemployment rate for the preceding 12 months is less than 9 percent.

This amendment will not affect projects authorized prior to May 23, 1983.

(e) Notwithstanding paragraphs (c) and (d) of this section an applicant shall be eligible for the highest applicable maximum grant rate in effect between the time the Assistant Secretary authorizes the application and the time the project is approved.

**Authority:** (Sec. 701, Pub. L. 89-136, 79 Stat. 570) (42 U.S.C. 3211). Sec. 1-105, E.O. 12185, DOC Organization Order 10-4, as amended (40 FR 56702, as amended)

Dated: May 13, 1983.

**Carlos C. Campbell,**  
Assistant Secretary for Economic Development.

[FR Doc. 83-13964 Filed 5-20-83; 10:33 am]

BILLING CODE 3510-24-M

The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that every entry should be supported by a valid receipt or invoice. This ensures transparency and allows for easy verification of the data.

In the second section, the author outlines the various methods used to collect and analyze the data. This includes both manual and automated processes. The goal is to ensure that the data is as accurate and reliable as possible.

The third section provides a detailed breakdown of the results. It shows that there has been a significant increase in sales over the period covered by the report. This is attributed to several factors, including improved marketing strategies and better customer service.

Finally, the document concludes with a series of recommendations for future actions. These include continuing to invest in marketing, improving operational efficiency, and maintaining a strong focus on customer satisfaction.

# Reader Aids

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**AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK**

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday).

This is a voluntary program. (See OFR NOTICE 41 FR 32914, August 6, 1976.) Documents normally scheduled for publication

on a day that will be a Federal holiday will be published the next work day following the holiday.

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
DOT/COAST GUARD	USDA/FNS		DOT/COAST GUARD	USDA/FNS
DOT/FAA	USDA/REA		DOT/FAA	USDA/REA
DOT/FHWA	USDA/SCS		DOT/FHWA	USDA/SCS
DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/MA	LABOR		DOT/MA	LABOR
DOT/NHTSA	HHS/FDA		DOT/NHTSA	HHS/FDA
DOT/RSPA			DOT/RSPA	
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	

Note: The Office of the Federal Register proposes to terminate the formal program of agency publication on assigned days of the week. See 48 FR 19283, April 28, 1983.

**List of Public Laws****Last Listing May 18, 1983**

This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the *Federal Register* but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 [phone 202-275-3030].

**S.J. Res. 51 / Pub. L. 98-30** Designating May 21, 1983, as "Andrei Sakharov Day". (May 18, 1983; 97 Stat. 190) Price \$1.75.